

SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)

SUPERANNUATION DEED

for

ENN TOHVER SUPERANNUATION FUND

Prepared by:

GODFREY VIRTUE & CO.

Barristers & Solicitors

IRWIN CHAMBERS

Level 5, Cnr Hay and Irwin Streets

Perth, Western Australia, 6000

Telephone: (08) 9325 6188

Fax: (08) 9221 1745

On Instructions From:

INDEPENDENT CORPORATE SERVICES

5th floor, 16 Irwin Street

Perth, Western Australia, 6000

Telephone: 1300 360 260

TABLE OF CONTENTS

<i>Clause Number</i>	<i>Description</i>
1	Definitions and Interpretation
2	The Fund
3	Trustee
4	Trustee Powers
5	Limitation of Liability
6	Indemnity
7	Investment
8	Records, Audit and Information
9	Membership
10	Actuarial Requirements
11	Contributions
12	Benefits: General Provisions
13	Transfers
14	Investment Options
15	Reserve Account
16	Confidentiality
17	Termination of the Fund
18	Amendments
19	Severance
20	Notices
21	Governing Law
 <i>Schedules</i>	
1	General
2	Benefits
3	Application for Membership

DEED made on the date specified in the General Schedule

BY The person or persons named as the Trustee in the General Schedule

RECITALS

- A. The Trustee has resolved to establish a Self Managed Superannuation Fund to be known by the name specified in the General Schedule, for the purpose of providing superannuation benefits for its Members and their Dependants and for such incidental and ancillary purposes as the Regulator may from time to time approve.
- B. The Trustee has resolved to act as trustee of the Fund with and subject to the powers and provisions contained within this deed.
- C. The Fund was established on the date of this deed.

OPERATIVE PART

1. Definitions and Interpretation

1.1 Definitions

In this deed:

"Act" means the Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1997 or the Income Tax Assessment Act 1936 (as the context requires) and includes any regulations, declarations or orders made under that Act or any other law or any requirement of a Regulator:

- (a) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or
- (b) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund;

"Asset" means any asset that the Trustee holds for the purposes of the Fund;

"Associate" has the meaning given by the Act;

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act and shall include a Non-Member Spouse;

"Benefit arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts' Reserve;

"Benefit Schedule" means Schedule 2 to this Deed;

"Binding Death Benefit Nomination" means a direction which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit and referred to in Clause 12.6.4;

"Child", in relation to a Beneficiary, includes a stepchild, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the Act;

"Constitutional Corporation" has the meaning given by the Act;

"Contribution" means payments and/or transfers of property to the Fund by or in respect of a Member and/or payments of expenses on behalf of the Fund;

"Death Benefit" means a benefit payable on a Member's death. It includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death;

"Death Benefit Nomination" means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination;

"Deed" means this Deed as amended from time to time;

"Dependant", in relation to a Beneficiary, includes:

- (a) the Beneficiary's Spouse or Child;
- (b) any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Beneficiary;
- (c) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- (d) any person who is a dependant within the meaning of the Act;

"Eligible Rollover Fund" has the meaning given by the Act;

"Employer" means an employer of a Member who contributes to the Fund on behalf of the Member;

"Expenses" means all direct and indirect costs of the establishment, operation and termination of the Fund, including any tax, insurance costs and any fees or charges imposed on or paid by the Trustee in connection with the Fund;

"Family Law Act" means the Family Law Act 1975 (Cth);

"Fund" means the fund referred to in Recital A and established in accordance with this Deed;

"Gainful Employment" has the meaning given by the Act;

"General Schedule" means Schedule 1 to this Deed;

"Indicative Death Benefit Nomination" means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes as to payment of the Member's Death Benefit and referred to in Clause 12.6.4;

"Investment Earnings" means the positive or negative amount which the Trustee determines to be the Fund's profit for the period, having regard to the income of the Fund, the expenses of the Fund, the movement in the value of the Fund assets (including unrealised assets), the Fund liabilities (including unrealised liabilities) and any other matters the Trustee considers appropriate.

"Investment Option" means an investment strategy that may be chosen in respect of investments in the Fund in accordance with this Deed;

"Legal Personal Representative" means the executor of the will or administrator of the estate of a deceased member, the Trustee of the estate of a member under a legal disability, a person who holds an enduring power of attorney granted by a member or the parent or legal guardian of a member under the age of eighteen.

"Liabilities" means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;

"Member" means a person who has been admitted as a member of the Fund in accordance with Clause 9 and who has not ceased to be a Member;

"Member's Account" means an account maintained in respect of a Member in accordance with Clause 9.8;

"Member's Account Balance" means the amount standing to the credit of a Member's Account, determined in accordance with Clause 9.8.2;

"Non-Member Spouse" has the same meaning as that term has under the Family Law Act;

"Old Age Pensions" has the meaning given by the Act;

"Policy" means an insurance policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest;

"Preserved Benefits" means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits;

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other governmental authority responsible for the administering of the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds, as relevant;

"Reserve Account" means an account or accounts established and maintained in accordance with Clause 15;

"Retirement Age" means:

- (a) age 65; or
- (b) if the Act stipulates another age at which benefits can generally be paid from a regulated superannuation fund whether or not a Member has ceased Gainful Employment, that age;

"Rule" means a provision of the Schedules;

"Service" means a period of Gainful Employment by the Member;

"Social Security Act" means the Social Security Act 1991 and the Veterans' Entitlement Act 1986 and all other requirements with which a payment made from the Fund must comply to be treated as an Asset-Test Exempt Income Stream for the purposes of that Act;

"Spouse", in relation to a person, includes:

- (a) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
- (b) any other person who is a spouse for the purposes of the Act;

"Successor Fund" has the meaning given by the Act;

"Tax" includes:

- (a) all actual or anticipated stamp, financial institutions, registration and any other duties, bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever;
- (b) any goods and services tax, value added tax or similar tax imposition or charge; and
- (c) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraphs (a) or (b);

"Total and Permanent Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, total and permanent disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the same meaning as the term 'permanent incapacity' has for the purposes of the Act;

"Temporary Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, temporary disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the same meaning as the term 'temporary incapacity' has for the purposes of the Act;

"Trustee" means the trustee for the time being of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund.

1.2 Compliance

If the Act requires certain provisions to be included in the governing rules of a regulated superannuation fund, those provisions are (to the extent they are relevant to the Fund) deemed to appear in this Deed and to override any inconsistent provisions.

Nothing in this Deed requires the Trustee or any other person to do anything that is contrary to the Act or prevents the Trustee or any other person doing anything that is required to be done to comply with the Act.

1.3 Interpretation

In this Deed unless the contrary intention appears or can reasonably be implied from the context:

A term used in this Deed which is defined in the Act has the same meaning in

this Deed.

A reference to this Deed or any other instrument includes any variation or replacement of them;

A reference to a statute or other law includes regulations and other instruments ("subordinate instrument") made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;

The singular includes the plural and vice versa;

Terms such as "including", "for example" and similar expressions or words are not words or expressions of limitation;

A reference to a person includes:

- (a) a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons; and
- (b) a person's legal personal representatives, successors and assigns;

Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

Headings are inserted for convenience of reference only and are not to be taken into account in interpreting this Deed;

A reference to any thing (including any amount) is reference to the whole or any part of it; and

A reference to a group of persons is a reference to any one or more of them.

2. The Fund

2.1 Assets

The Fund comprises all Assets held by the Trustee at any time in accordance with this Deed. The Trustee shall hold the Assets on trust for the objects and purposes of this Deed.

2.2 Name

The name of the Fund is specified in the General Schedule. The Trustee may change the name or promote the Fund under a different name without the necessity of amending this Deed.

2.3 Single trust

Nothing in this Deed is to be taken as establishing a separate trust in respect of any of the categories of Investment Options, any Investment Option or any part of the Fund.

3. Trustee

3.1 Trustee

The person or persons named in the General Schedule is or are appointed as Trustee with effect from the date of this Deed.

3.2 Regulated superannuation fund

- (a) The number of Trustees appointed shall be in accordance with the requirements of the Act relevant to the number of Members of the Fund;
- (b) Subject to Clause 3.2(c), the Trustee must be a Constitutional Corporation;
- (c) Despite Clause 3.2(b) the Trustee may be, or include a person or persons, other than a Constitutional Corporation, but in that event and for so long as that situation continues, the primary purpose of the Fund will be the provision of Old Age Pensions;
- (d) Despite Clause 3.2(c) the Fund may also be conducted for any other ancillary purpose which may be permitted under the Act.

3.3 Conditions

- (a) A person that is to be appointed as Trustee must give written consent to the appointment in accordance with the Act before accepting the appointment;
- (b) A members Legal Personal Representative may act as Trustee in the members stead where permitted by the Act;
- (c) The Trustee must otherwise comply with any other requirements of the Act.

3.4 Termination of Trustee's office

3.4.1 A Trustee will hold office until:

- (a) the Trustee resigns the office by notice in writing to the Members; or
- (b) the Trustee ceases to be a member of the Fund; or
- (c) being a natural person, dies or becomes incapable of performing his duties hereunder; or
- (d) being a corporation, goes into liquidation or has a receiver appointed or enters into administration; or
- (e) the Trustee is removed, or ceases to be eligible to act as Trustee under the Act; or
- (f) the Trustee is removed by vote of the Members pursuant to Clause 3.4.2.

3.4.2 The Members shall have the right to appoint and remove the Trustee subject at all times to the Act.

3.4.3 If a Trustee:

- (a) retires;
- (b) becomes aware that it will be removed as Trustee;
- (c) becomes aware that it will cease to be eligible to act as Trustee; or
- (d) is otherwise disqualified or removed from its office as

Trustee;

it must appoint another person to act as Trustee that otherwise complies with the Act (unless there is more than one Trustee and the Act does not require the vacancy to be filled).

3.4.4 If the Act or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with Clause 3.4.2 or the terminating Trustee fails to do so, the new Trustee may be appointed:

- (a) where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
- (b) where paragraph (a) does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Members; or
- (c) in accordance with any procedure prescribed by the Act.

3.4.5 Where the office of Trustee becomes vacant due to the operation of Clause 3.4.1(c) the Members Legal Personal Representative shall act as Trustee until such time as the Members benefits have been dealt with as prescribed by this Deed and the Act.

3.5 Transfer of assets

If a Trustee's office terminates, it must:

- (a) provide to any Trustee all records, information and other property relating to the Fund in its control; and
- (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Trustee.

3.6 Power to appoint

Without limiting any other power conferred on the Trustee by this Deed or law, the Trustee has power to appoint any additional Trustee by deed or by resolution in writing of the Trustee. This power is to be exercised subject to any relevant provision of the Act.

3.7 Rules

The Members may make rules (subject to the Act) regarding all matters concerning the Trustee provided that any such rule is recorded in writing and signed by all the Members. Such rules may be varied or rescinded by the Members at any time. Any such rule which shall be in conflict with the provisions of this Deed and/or the Act shall be void and of no effect.

4. Trustee Powers

4.1 Powers

Subject to the Act, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development of the Fund or to otherwise further the interests of the Fund;
- (b) has, in addition to the powers conferred by this Deed, all the powers

conferred on a trustee by statute or general law;

- (c) has the power to do anything required or permitted by the Act.
- (d) has the power to do anything or refrain from doing any thing as is necessary to comply with an order or agreement made pursuant to the Family Law Act or such equivalent legislation applicable to de facto or same sex relationships.

4.2 Compliance

Without limiting anything in Clause 4.1 the Trustee may:

- (a) do anything that the Trustee considers necessary or desirable in order to comply with the Act; and
- (b) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the Act.

4.3 Discretions

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under this Deed;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all;
- (d) may exercise a power even if the Trustee or any of the Trustee's Associates have an interest that may be affected by the exercise of that power;
- (e) may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund and retain for the Trustee's own benefit, any commission, profit or other gain received in connection with such arrangements; and
- (f) may exercise a power even if the Trustee or any of the Trustee's Associates has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Trustee or any Associate are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.

4.4 Fees

Subject to the Act, the Trustee may charge fees and set the amount of those fees and the circumstances in which they will be charged.

4.5 Decisions

4.5.1 Subject to Clause 4.5.2, where the Trustee comprises:

- (a) two individuals – Trustee decisions require unanimous approval;
- (b) more than two individuals – Trustee decisions require

majority approval;

- (c) a constitutional corporation – Trustee decisions shall be in accordance with the governing rules of the corporation unless the Act requires otherwise.

4.5.2 Where there is a deadlock in making any Trustee decision the deadlock shall, subject to the Act, be resolved by weighting each Trustee's vote in accordance with their respective Member's Account Balance as a proportion of the total Member Account balances of the Fund.

4.6 Meetings

4.6.1 Subject to the Act and the Deed, the Trustees may communicate with each other, meet together and otherwise regulate their business as Trustee as they think fit.

4.6.2 The Trustees may communicate via any means they approve, and a resolution passed by such communication method shall, notwithstanding that the Trustees are not present together in the same place, be deemed to have been validly passed at a Trustee's meeting.

4.6.3 If all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees as set out in the document, a resolution in those terms shall be deemed to have been validly passed.

5. Limitation of Liability

5.1 Limitation

Subject to Clause 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason.

5.2 Exceptions

Clause 5.1 does not apply to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise or is otherwise inconsistent with the Act.

6. Indemnity

6.1 Indemnity

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.

6.2 Payment and reimbursement

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in Clause 6.1; and

- (b) to meet all expenses and liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

7. Investment

7.1 General

- 7.1.1 The Trustee shall invest the assets of the Fund in such a manner that complies with the investment strategy of the Fund and does not contravene the Act.
- 7.1.2 Subject to the Act, the Trustee may invest the Assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the Assets. To the maximum extent possible any duties and limitations under State laws relating to trustee investments do not apply to the Fund.
- 7.1.3 Subject to Clause 7.1.1 and without limiting Clause 7.1.2, the Trustee has power:
 - (a) to vary, substitute, sell or otherwise deal with Assets in any manner; and
 - (b) to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property (as long as separate records are maintained that enable Assets attributable to the Fund or any Investment Option to be identified).

7.2 Investment strategy

- 7.2.1 Investments of the Fund must be made in accordance with a written investment strategy formulated by the Trustee that complies with the Act. Such strategy to be formulated in light of all of the circumstances relevant to the Fund and shall be reviewed on a regular basis.
- 7.2.2 The Trustee may formulate and adopt separate investment strategies for each Investment option offered in accordance with Clause 14.1.
- 7.2.3 If the Trustee invests in what are known as derivative investments the Trustee shall, if required by the Act, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Act and any guidelines issued by a Regulator.

7.3 Reserves management

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Act.

7.4 Valuation

The Trustee will arrange for valuations of Assets at such times and on such basis as it considers appropriate, subject to the Act.

7.5 Investment earnings

- 7.5.1 As at the end of each financial year, and at such other times as the Trustee determines, the Trustee shall distribute the whole or any portion of the Investment Earnings of the Fund as the Trustee determines to be appropriate to the Member's Account(s) maintained in respect of each Member.
- 7.5.2 Any Investment Earnings not applied to Member Accounts in accordance with Clause 7.5.1 shall be applied to a Reserve Account maintained under Clause 15.

8. Records, Audit and Information

The Trustee must, in accordance with the Act:

- (a) keep records and accounts for the Fund;
- (b) prepare and/or lodge financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to Beneficiaries, prospective Members, Employers, Superannuation Authorities and any other person in connection with the Fund.

9. Membership

9.1 Eligibility

The Trustee may set eligibility conditions for membership of the Fund.

9.2 Acceptance

9.2.1 Membership applications:

- (a) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example a child of the person); and
- (b) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 3 provides forms of application to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Clause 12.6.4.

9.2.2 The Trustee may:

- (a) accept or reject any application;
- (b) establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the

application;

- (c) prior to making a decision under Clause 9.2.2(a) the Trustee may, subject to the Act, request an applicant provide all relevant information and evidence and sign all documents as may be required by the Trustee.

9.2.3 The Trustee may admit a person as a Member even though a formal application has not been completed where:

- (a) the applicant is under eighteen years of age and the applicants Legal Personal Representative is eligible to act as a Trustee; or
- (b) the applicant becomes entitled to a benefit or interest in the Fund under an order or agreement made pursuant to the Family Law Act or such equivalent legislation applicable to de facto or same sex relationships.

9.3 Information

Without limiting Clause 9.2, the Trustee may require a prospective Member or a person admitted as a Member to undergo a medical examination and to provide any relevant information.

9.4 Deed

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Deed.

9.5 Member's attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

9.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all benefits to which the member has become entitled under this Deed have been paid;
- (b) the whole of the Member's Account Balance relating to that Member has been transferred out of the Fund in accordance with Clause 13.2;
- (c) the Member dies;
- (d) the Member is required to cease his membership to comply with the Family Law Act or an agreement made pursuant to that Act;
- (e) the Trustee requires that a member ceases his membership in order to comply with the Act; or
- (f) the Beneficiary's entitlement to benefits is otherwise terminated.

9.7 Beneficiaries' interests and liabilities

9.7.1 No Beneficiary has any interest in any particular Asset of the Fund.

9.7.2 The liability of Beneficiaries in connection with the Fund is limited as described below:

- (a) The Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's Assets; and
- (b) Beneficiaries are not liable (in their capacity as Beneficiaries):
 - (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
 - (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

9.7.3 The rights of Beneficiaries to receive benefits are those set out in this Deed.

9.8 Member's account

9.8.1 The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under this Deed.

9.8.2 The Member's Account Balance at any time is determined by adding or deducting as appropriate:

- (a) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Clause 13.1;
- (b) investment earnings determined having regard to Clause 7.5 and Clause 9.9, the requirements of the Act, and any Investment Options applicable to the Member;
- (c) proceeds of any Policy in respect of the Member;
- (d) benefits paid from the Member's Account or transferred to another Benefit Arrangement in accordance with Clause 13.2;
- (e) premiums on any Policy in respect of the Member;
- (f) amounts in respect of Tax paid out or payable by the Fund;
- (g) amounts transferred to or from a Reserve Account established in accordance with Clause 15;
- (h) amounts transferred to or from a Forfeited Benefits Account established in accordance with Clause 12.9;
- (i) amounts transferred to or from the Member's Account in accordance with an order or agreement made pursuant to the Family Law Act or such equivalent legislation applicable to de facto or same sex relationships; and
- (j) any other amount that the Trustee considers applicable to the Member's Account.

9.8.3 More than one Member's Account may be maintained in respect of a

Member if a Member participates in the Fund in more than one capacity. If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

- 9.8.4 A Member may notify the Trustee where he is already in excess of his applicable Reasonable Benefits Limit (RBL) or where the allocation of Investment Earnings in respect of that Member would result in him exceeding his applicable RBL. Subject to the Act, upon receipt of such notification the Trustee shall not allocate any further Investment Earnings to the Member unless that member subsequently advises otherwise.

9.9 Separate Investments

- 9.9.1 Subject to the Act, the Trustee may (but is not obliged to) provide Members with the ability to request that a separate investment be made in respect of that Member being:

- (a) a separate investment option or investment strategy; and/or
- (b) a specific investment.

- 9.9.2 Subject to the Act, if a separate investment is made for a Member under Clause 9.9.1 it is made for the sole benefit of and at the sole risk of the Member, and any income, gains, losses or expenses incurred in respect of that investment must be attributed to the relevant Member Account prior to calculating the Funds Investment earnings in accordance with Clause 7.5.

- 9.9.3 The Trustee is not liable for the performance of or for any loss attributable to any separate investment referred to in Clause 9.9.1.

10. Actuarial Requirements

The Trustee shall engage an actuary where required under the Act and shall cause the Fund to otherwise comply with the actuarial requirements of the Act, if applicable.

11. Contributions

11.1 Powers

The Trustee may accept contributions from:

- (a) Members or prospective Members;
- (b) Employers;
- (c) A Spouse of a Member or prospective Member.
- (d) Any related person or entity as defined in the Act; or
- (e) Other persons or entities permitted to make contributions under the Act.

Without limiting this Clause 11, the Trustee may accept a shortfall component, as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth), in respect of a Member.

11.2 Defective contributions

- 11.2.1 Notwithstanding any other provision of this Deed the Trustee shall

not accept contributions by or in respect of a Member if receipt of the contributions would be inconsistent with the Act;

11.2.2 If the Trustee finds after accepting contributions that it should have not done so, it will, if the Act permits, repay an appropriate amount to the person making the contribution. That amount must be calculated on a fair and reasonable basis after allowing for reasonable administrative charges incurred in relation to the contribution.

11.2.3 If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

11.3 A person permitted to make contributions may make contributions by way of:

- (a) money;
- (b) securities listed on a stock exchange in Australia
- (c) other property
- (d) payment of fund expenses or liabilities

to the Fund on behalf of one or more Members with the consent of the Trustee subject to compliance with the Act.

11.4 Subject to the Act, the Trustee, at the direction of a Member, may split a contribution made on behalf of that Member amongst other members.

12. Benefits: General Provisions ,

12.1 Schedules

Particulars regarding calculation of benefits and the circumstances in which they are payable appear in the Benefit Schedule.

12.2 Conditions

The Trustee may impose any reasonable conditions regarding payment of a benefit.

12.3 Policy

If a benefit would ordinarily include an insured component under a Policy but:

- (a) no amount is paid under that Policy; or
- (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;

the amount payable to the Member may be adjusted accordingly.

12.4 Method

Benefits may be paid by any method that the Trustee considers appropriate.

12.5 Circumstances and amounts — general

12.5.1 Benefits:

- (a) may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Act;
- (b) must be paid in the form and in the circumstances in which the Act compels benefits to be paid;
- (c) may be paid in any form and in any circumstances in which the Act permits benefits to be paid;
- (d) may, where payable in lump sum form, be paid in more than one instalment;
- (e) must not be paid if payment of the Benefit would result in the Fund not complying with the Act.

12.5.2 Except where this Deed provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:

- (a) exceeding the Member's Account Balance; or
- (b) less than any amount required under the Act.

12.6 Death benefits

12.6.1 This Clause 12.6 applies to Death Benefits.

12.6.2 A Death Benefit to which this Clause applies must, subject to the remaining provisions of this Clause 12.6, be paid in proportions decided by the Trustee to one or more of the following:

- (a) one or more of the Member's Dependants; and
- (b) the Member's legal personal representative.

The Trustee must consider any Death Benefit Nomination made in accordance with Clause 12.6:4, but unless Clause 12.6.5 applies may not treat the Death Benefit Nomination as binding.

12.6.3 Subject to the Act, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependants or the legal personal representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.

12.6.4 For the purposes of this Clause 12.6, the following provisions apply:

- (a) Members may give the Trustee a Death Benefit Nomination;
- (b) A Death Benefit Nomination may be an Indicative Death Benefit Nomination, or, alternatively, but subject to the Act, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
- (c) Subject to any requirements of the Act, members may vary Death Benefit Nominations at any time;
- (d) Death Benefit Nominations must be in the form included in the Member application forms contained in Schedule 3 or in another form acceptable to the Trustee;
- (e) The Trustee may disregard an Indicative Death Benefit

Nomination if it does not comply with any formal requirements set by the Trustee; and

- (f) Subject to the Act, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of the Act.

12.6.5 The Trustee will treat a Binding Death Benefit Nomination as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is given in accordance with the requirements of the Act and is current and valid at the date of the Member's death.

12.6.6 The Trustee may in its absolute discretion increase the amount of the Death Benefit by an amount equal to such amount (if any) which is available as a deduction to the Fund under s279D of the Income Tax Assessment Act 1936.

12.6.7 Subject to Clause 12.6.5 the Trustee may pay a Death Benefit in any manner permitted by the Act, including as a lump sum, pension or combination of both.

12.7 Transfer of assets

Subject to the Act (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more Assets of equivalent value to the Beneficiary.

12.8 Form of Benefits

12.8.1 If the Trustee is not a Constitutional Corporation any benefit payable under this Deed, other than a Death Benefit, is payable in the form of one or more pensions.

12.8.2 If the Trustee is a Constitutional Corporation any Benefit payable under this Deed, other than a Death Benefit, is, subject to the Act, payable in the form of:

- (a) one or more lump sums; or
- (b) one or more pensions; or
- (c) a combination of one or more pensions and one or more lump sums.

12.9 Forfeited benefits

12.9.1 Subject to the Act a Beneficiary forfeits a contingent or prospective or current entitlement to an interest if:

- (a) the Trustee determines that a Beneficiary has attempted to assign, alienate or charge all or part of their interest under this Deed;
- (b) the Beneficiary is declared mentally ill or the Beneficiary's affairs are liable to be dealt with under the laws relating to mental health;
- (c) the Beneficiary's whereabouts cannot be traced by the Trustee for a period of 5 years after making reasonable

enquiries; or

- (d) any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of this Deed).

Subject to the Act, the amount representing any interest that is forfeited in accordance with this Clause may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Trustee considers appropriate.

12.9.2 The Trustees may credit to a Forfeited Benefits Account the amount of any forfeited interest or other interest or benefits which are not dealt with under this Deed and may debit amounts applied under this Deed.

12.9.3 The Trustees may apply amounts in the Forfeited Benefits Account:

- (a) to supplement benefits that all or some of the Beneficiaries or their Dependants have rights to receive from the Fund; or
- (b) to provide additional benefits for all or some of the Beneficiaries or their Dependants; or
- (c) for any other purpose the Trustee determines.

12.9.4 Amounts to the Forfeited Benefits Account must be applied in a manner and within a period which satisfies the Act.

12.10 Minor beneficiaries or those without legal capacity

If:

- (a) a Beneficiary is a minor;
- (b) the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit.

12.11 Discharge

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

12.12 Deductions

Subject to the Act, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment.

12.13 Excessive benefits

If a Member's benefits exceed the Member's RBL the Trustee may with the consent of the Member and subject to the requirements of the Act:

- (a) Upon the Member satisfying a condition of release in accordance with the Act reduce the Member's benefit to the relevant RBL and the remainder shall be forfeited and thereafter applied in accordance with Clauses 12.8 and 12.9.
- (b) Reduce the Member's benefit to the relevant RBL and transfer the balance to a Fund Reserve established for the payment of future liabilities or contingencies including future pension obligations.

12.14 Repayment

If a Benefit is paid to a Member and the Trustee subsequently determines that the Benefit should not have been paid the Member shall, upon demand by the Trustee, repay to the Trustee the full amount of the Benefit.

13. Transfers

13.1 Transfers in

Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement, Employer or other person or entity permitted to do so under the Act.

13.2 Transfers out

13.2.1 The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.

13.2.2 The Trustee may make such a transfer without the Member's consent where the Act permits (including to a Successor Fund or an Eligible Rollover Fund).

13.2.3 The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Act (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997 (Cwth)*) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Act.

13.2.4 A transfer of an amount under this Clause 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

14. Investment Options

14.1 Investment options

14.1.1 The Trustee may offer Investment Options in accordance with this Clause 14.1.

14.1.2 The Trustee may offer a new Investment Option at any time.

14.1.3 On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of Asset or Assets to be held, the investment objectives and strategy

and other relevant matters). The Trustee may change the name or other specifications at any time.

14.1.4 Subject to the Act, the Trustee may merge, divide or discontinue Investment Options at any time. In this event the Trustee will determine how the interests of Beneficiaries will be attributed between the Investment Options to reflect those changes.

14.1.5 The Trustee will ensure that the Assets and Liabilities associated with each Investment Option can be identified separately.

14.2 Selection of investment options

Amounts may be attributed to one or more Investment Options requested by the Member and accepted by the Trustee.

14.3 Switches

14.3.1 A Member may apply to switch amounts between Investment Options.

14.3.2 The Trustee may accept or reject a switch application and, if it accepts an application, determine the date on which it takes effect.

14.4 Order of debiting

14.4.1 Where there are two or more Investment Options attributable to a Beneficiary, the order in which debits relating to the Member's Account (including those relating to benefit payments) attributed to those Investment Options will be in accordance with arrangements selected by the Member and accepted by the Trustee.

14.4.2 The Trustee:

- (a) may determine the form in which a selection referred to in Clause 14.4.1 is to be made; and
- (b) may suspend a selection made in accordance with Clause 14.4.1.

15. Reserve Account

15.1 Maintenance of account

15.1.1 The Trustee for the convenient and efficient operation and administration of the Fund may establish such accounts in the records of the Fund as the Trustee considers necessary or desirable; including:

- (a) an accumulation reserve account;
- (b) an accumulation retirement account;
- (c) a pension reserve account;
- (d) such reserve accounts or liability accounts as may assist the Trustee to identify the value of assets that may have been exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different sub-fund, segment of partition;

- (e) such other accounts and reserves as the Trustee considers appropriate from time to time including, one or more contribution, miscellaneous and investment reserve accounts.

15.1.2 (a) The Trustee may make provision or adjustments in the accounts for all liabilities (including any account of Tax on unrealised gains, advance tax instalments and notional surcharge amounts), tax credits, depreciation, amortisation or revaluations as the Trustee considers appropriate.

- (b) The Trustee may alter exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or partitions and account for them separately.

15.2 Additions/Deductions

Subject to the Act, the following amounts may be added to or deducted from a Reserve Account:

- (a) amounts transferred from another Benefit Arrangement that are not allocated to any Member's Account;
- (b) any amount in a Member's Account that is not required or that cannot be applied to pay benefits in respect of the Member;
- (c) any investment earnings determined having regard to Clause 7.5, Clause 9.9, the requirements of the Act, and any Investment Options applicable; and
- (d) any other amounts for such matters or things as the Trustee considers appropriate.
- (e) any amounts to be credited to Member's Accounts by way of:
 - (i) additions to benefits otherwise payable; or
 - (ii) satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;

16. Confidentiality

16.1 Non-disclosure

The Trustee will not disclose any confidential information regarding Beneficiaries or Employers acquired in the course of acting as Trustee to other parties, except in connection with Members' interests in the Fund.

16.2 Exceptions

This Clause 16 does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for, failure to disclose such information; or
- (b) to disclosures made to Employers or agents or delegates of the Trustee in connection with the operation of the Fund; or
- (c) where non-disclosure of the material may cause adverse tax

consequences to the Fund.

17. Termination of the Fund

17.1 General

17.1.1 The Fund will be terminated upon the first to occur of the following:

- (a) if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
- (b) if the Trustee resolves to terminate the Fund in accordance with Clause 17.2; or
- (c) if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts established under this Deed.

17.1.2 Where Clause 17.1.1(a) applies, references in Clauses 17.3 and 17.4 to:

- (a) the "Trustee", refer to any entity appointed after the ninety (90) day period referred to in Clause 17.1.1 (a); and
- (b) the "Closure Date" refers to the date of expiry of the ninety (90) day period referred to in Clause 17.1.1 (a).

17.1.3 Where Clause 17.1.1(c) applies, references in Clauses 17.3 and 17.4 to the "Closure Date" refer to the date on which the Fund terminates by law.

17.2 Termination by Trustee

The Trustee may resolve to terminate the Fund at any time. If it decides to do so the following provisions will apply:

- (a) the Members and Employers will be notified in accordance with the Act; and
- (b) the Trustee will determine a closure date ("Closure Date").

17.3 Application of assets

Assets of the Fund will be applied in the following order on termination:

- (a) to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;
- (b) to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid in pension form;
- (c) in relation to Beneficiaries for whom benefits have not become payable under paragraph (b), and subject to this Deed, to provide for a benefit being an amount equal to the Member's Account Balance;
- (d) in the case of Members in respect of whom a Reserve Account is maintained in the Fund, to increase any benefits by application of amounts from the Reserve Account on a basis determined by the Trustee; and

- (e) subject to the Act, to pay any amounts remaining to or for the benefit of one or more of the Members or former Members, as the Trustee considers appropriate.

18. Amendments

18.1 Power

Subject to this Clause 18 the Trustee may amend any provision of this Deed (including this Clause) at any time by deed or by resolution in writing of the Trustee.

18.2 Effective date

An amendment made under this Clause will take effect from a date specified by the Trustee (whether before or after the date of the deed or resolution), or if none is specified, from the date of the deed or resolution.

19. Severance

If any provision of this Deed or part thereof is void, prohibited or unenforceable in a jurisdiction then such provision or the relevant part thereof will be severed. The remainder of this Deed will have full force and effect notwithstanding any consequential alteration to the meaning or construction of that provision or this Deed that may result unless severing the provision would be contrary to public policy or the Act.

20. Notices

20.1 Form

Any notice given under this Deed must be in writing.

20.2 Receipt

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or
- (b) they are sent by pre-paid post addressed to:
 - (i) in the case of Beneficiary, the person's last known address or place of employment; or
 - (ii) in the case of a Trustee or an Employer which is a corporation, its registered office or place of business; or
 - (iii) in the case of a Trustee or an Employer which is not a corporation, its place of business or other last known address.

21. Governing Law

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

GENERAL SCHEDULE

Date of Making This Deed	The... <i>29th</i> ...day of <i>April</i> ...20 <i>05</i>
The Trustees	Enn Tohver 4 Rose Street BIRCHGROVE NSW 2041 Adam Stratton 61 Glassop Street BALMAIN NSW 2041
The Name of the Fund	ENN TOHVER SUPERANNUATION FUND
Law of this Fund:	New South Wales

SCHEDULE 2
BENEFIT SCHEDULE
PART 1

1. Circumstances

Subject to the Act and this Deed, benefits are payable in the following circumstances:

- (a) if the Member has reached the Retirement Age;
- (b) if the Member has ceased Service;
- (c) if the Member has died;
- (d) if the Member has become Totally and Permanently Disabled; or
- (e) if the Member has become Temporarily Disabled.

To avoid doubt, a benefit must be paid when required under the Act as provided by Clause 12.5.1(b).

2. Calculation of benefits other than pension benefits

2.1 General

Subject to this Deed and except where Rules 2.2 or 3 of this Schedule apply, the amount of a Member's benefit will be the amount of the Member's Account Balance plus any additional amount included in accordance with Clause 12.6.6 where applicable;

2.2 Disablement benefit

Rule 2.1 does not apply in the case of a benefit payable on the Member's Total and Permanent Disablement or Temporary Disablement. The benefit payable in those circumstances will be calculated having regard to:

- (a) the amount or amounts payable under the Policy in respect of the Member's Disablement;
- (b) the timing of those payments;
- (c) the liabilities incurred by the Trustee in connection with the Policy (including receipt and payment of proceeds); and
- (d) any relevant Policy terms.

3. Pension benefits

3.1 General

Where a benefit in respect of a Member is to be payable in pension form, the amount referred to in Rule 3.2 will be applied for the purposes of providing that pension.

3.2 Relevant amount

For the purposes of Rule 3.1, the relevant amount is:

- (a) the amount that would be payable as a lump sum under Rule 2.1 if it

applied; or

- (b) if the Member requests that only part of that amount be applied to fund the pension and the Trustee accepts that request, the amount of the part requested.

3.3 Pension conditions

3.3.1 The conditions applicable to payment of pension benefits appear in Part 2 of this Benefit Schedule.

3.3.2 A Member who is entitled to receive a pension may nominate one or more reversionary beneficiaries to receive pension payments after the Member's death.

3.3.3 The Trustee may ignore any of the provisions of Part 2 of this Benefit Schedule or impose additional conditions on any pension payable under this Deed if this is necessary to ensure the Fund complies with the Act and /or the Social Security Act.

3.4 Commute to Lump Sum

A Member to whom a pension is payable is entitled, subject to the Act, to commute part or all of that benefit to a lump sum prior to the pension commencing or being established for the Member. Such commutation to be on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

PART 2

PROVISIONS APPLYING TO PENSION BENEFITS

1. Forms of pension

Without limiting anything in this Deed, the Trustee and a Beneficiary may agree that the whole or any part of any amount payable to a Beneficiary under this Deed will be paid in one or more of the following forms:

- (a) a Lifetime Pension;
- (b) an Allocated Pension;
- (c) a Defined Pension;
- (d) a Life Expectancy Pension;
- (e) a Market Linked Pension; and
- (f) subject to the Act, any other form of pension that the Trustee chooses to make available at the relevant time.

Terms relating to each type of pension referred to in paragraphs (a) to (e) are provided in the subsequent Rules 4 to 10 of this Schedule ("Pension Clauses").

2. Provisions of Act

The Pension Clauses are designed to reflect certain provisions of the Act relating to pensions. To the extent that those provisions of the Act may be:

- (a) varied or supplemented, the Trustee may offer pensions on terms that are

consistent with the varied or supplemented provisions; or

- (b) removed, the Trustee may adjust the features of pensions to which the Pension Clauses apply, having regard to the provisions that have been removed.

Subject to the Act, where a change of the type referred to in paragraphs (a) or (b) of this Rule 2 occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current pension is paid, without being required to amend the terms of this Deed.

3. Additional terms

Subject to the Act, the Trustee is also permitted to:

- (a) pay pensions in any form permitted by the Act, which may include forms other than those described in the Pension Clauses;
- (b) make the payment of pensions, including those governed by the Pension Clauses, subject to any other terms that the Trustee considers appropriate. Those other terms may supplement or wholly or partly replace the terms that would otherwise apply; and
- (c) further document the terms governing any pension, including those governed by the Pension Clauses, in any manner it considers appropriate, whether by way of variation, supplement, qualification or deletion of terms that might otherwise apply.

4. Terms

Terms used in the Pension Clauses have the same meaning as in the Act (and in particular those provisions of the Act relating to pensions) unless the context otherwise requires.

5. Lifetime Pension

The following terms apply to Lifetime Pensions:

- (a) Payments of a Lifetime Pension must be made at least annually throughout the life of the primary beneficiary in accordance with paragraphs (b) and (c) and, if there is a reversionary beneficiary:
- (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension — at least until his or her 16th birthday; or
 - (iii) if the person referred to in subparagraph (ii) is a full-time student at age 16 — at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner);
- (b) Unless otherwise agreed in a particular case, and subject to the Act, the size of pension payments in a year will be fixed. The size of a fixed pension payment will be as agreed between the Trustee and Beneficiary or, in the absence of agreement, as determined by the Trustee. This does not limit the ability to allow commutation to pay a superannuation contributions surcharge liability;
- (c) Unless the relevant Regulator otherwise approves, or the Act otherwise allows, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, may be no less than the sum payable in the immediately preceding year;

- (d) The pension will not have a residual capital value;
- (e) The pension cannot be commuted except:
 - (i) if the commutation is made within 6 months after the commencement day of the pension;
 - (ii) if the commutation is made within 10 years after the commencement day of the pension to the benefit of a reversionary beneficiary on the death of the primary beneficiary;
 - (iii) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under arrangements that are consistent with the relevant requirements of the Act;
 - (iv) to pay a superannuation contributions surcharge liability; or
 - (v) for any other purpose permissible under the Act.
- (f) If the pension reverts or is commuted, it may not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (g) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) The capital value of the pension and the income from it cannot be used as security for a borrowing; and
- (i) The pension may be offered on the basis that:
 - (i) if the primary beneficiary dies within 10 years after the commencement day of the pension, a surviving reversionary beneficiary may be paid an amount equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of death until the end of the period of 10 years; and
 - (ii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is no surviving reversionary beneficiary, an amount may be paid to the primary beneficiary's estate, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period of 10 years; and
 - (iii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is a surviving reversionary beneficiary who also dies within that period, an amount may be paid to the reversionary beneficiary's estate, in accordance with the previous subparagraph as if that subparagraph applied to the reversionary beneficiary.

6. Allocated Pension

The following terms apply to Allocated Pensions:

- (a) Subject to the Act, the size of pension payments in a year is not fixed.
- (b) Except where the Act does not require:

- (i) payments must be made at least annually; and
 - (ii) the payments in a year, except a payment by way of commutation, must not be less than the minimum amount nor more than the maximum amount calculated in accordance with the Act; and
 - (iii) the Member must specify the amount to be paid annually. If the Member does not specify the amount to be paid, the annual payment must be the minimum amount applicable under the Act.
- (c) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
 - (d) The capital value of the pension and the income from it cannot be used as security for a borrowing;
 - (e) The pension may be commuted by application to the Trustee, subject to meeting the requirements of the Act;
 - (f) For the purposes of Rule 6(c) the Trustee and Member may agree that on the death of a Beneficiary to whom an allocated pension is being paid, a pension may be paid to one or more reversionary pensioners. In the absence of agreement with the Beneficiary, the Trustee may determine such arrangements;
 - (g) Where a reversionary pension is payable, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee. In the absence of the agreement, the Trustee may determine such matters; and
 - (h) Payments of the pension will cease when the relevant Member's Account Balance is nil.

7. Defined Pension

The following terms apply to Defined Pensions:

- (a) Unless otherwise agreed in a particular case, and subject to the Act, the size of pension payments in a year will be fixed. The size of a fixed pension payment will be as agreed between the Trustee and Beneficiary or, in the absence of agreement, as determined by the Trustee. However:
 - (i) Payments may vary from year to year provided that the variation does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years or any other limit imposed by the Act; and
 - (ii) Nothing in this paragraph (a), including paragraph (a)(i), limits the ability to allow a commutation to pay a superannuation contributions surcharge liability;
- (b) Payments must be made at least annually;
- (c) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (d) Subject to the Act, the pension may be commuted. However, the lump sum payable on commutation may be no greater than the amount permitted by the Act. In accordance with the Act, any commutation made in order to pay a superannuation contributions surcharge liability may be treated separately for this purpose;

- (e) If the pension reverts it may not have a reversionary component greater than 100% of the benefit that was payable before the reversion;
- (f) If the pension is commuted, the commuted amount may not exceed the benefit that was payable immediately before the commutation;
- (g) The capital value of the pension and the income from it cannot be used as security for a borrowing.

8. Life Expectancy Pension

The following terms apply to Life Expectancy Pensions:

- (a) A person is only entitled to be paid a Life Expectancy Pension on or after the day when the person attains pension age;
- (b) Pension payments must be made at least annually;
- (c) If the life expectancy of the primary beneficiary on the commencement day is less than 15 years, the pension must be paid throughout a period equal to the primary beneficiary's life expectancy. Subject to the Act, this period may be rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years;
- (d) If the life expectancy of the primary beneficiary on the commencement day is 15 years or more, the pension must be paid throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy. Subject to the Act, this period may be rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years;
- (e) The total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) must be fixed and that payment, or the first of those payments, must relate to the period commencing on the day when the primary beneficiary became entitled to the pension. The fixed size of pension payments will be as agreed between the Trustee and Beneficiary or, in the absence of agreement, as determined by the Trustee;
- (f) The total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) must not:
 - (i) fall below the total amount of the payments made in the immediately preceding year ("Previous Total"); and
 - (ii) not exceed the Previous Total, but may be adjusted to the extent permitted by the Act;
- (g) The total amount of the payments to be made in a year in accordance with paragraphs (e) or (f) may be varied only to allow commutation to pay a superannuation contributions surcharge liability;
- (h) The pension will not have a residual capital value;
- (i) The pension cannot be commuted except:
 - (i) if the commutation is made within 6 months after the commencement day of the pension;

- (ii) if the commutation is made on the death of the primary beneficiary by payment to the benefit of a reversionary beneficiary, or if there is no reversionary beneficiary, to the estate of the primary beneficiary;
 - (iii) if the commutation is made on the death of a reversionary beneficiary by payment to the benefit of another reversionary beneficiary, or if there is no other reversionary beneficiary, to the estate of the primary beneficiary;
 - (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under arrangements that are consistent with the relevant requirements of the Act;
 - (v) to pay a superannuation contributions surcharge liability; or
 - (vi) for any other purpose permissible under the Act.
- (j) If the pension reverts it may not have a reversionary component greater than 100% of the benefit that was payable before the reversion;
 - (k) If the pension is commuted, the commuted amount may not exceed the benefit that was payable immediately before the commutation;
 - (l) The pension cannot be transferred to a person other than:
 - (i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
 - (m) The capital value of the pension and the income from it cannot be used as security for a borrowing.

9. Market Linked Pension

The following terms apply to Market Linked Pensions:

- (a) Unless otherwise agreed in a particular case, and subject to the Act, the size of pension payments in a year will be fixed. The size of the annual fixed pension payment will be determined with reference to Schedule 6 of the Superannuation Industry (Supervision) Regulations;
- (b) Payments must be made at least annually;
- (c) The Member may choose a term for the pension which is determined by reference to the Act, rounded up to the nearest whole number;
- (d) Subject to the Act, the pension may be commuted. However, the lump sum payable on commutation may be no greater than the amount permitted by the Act. In accordance with the Act, any commutation made in order to pay a superannuation contributions surcharge liability may be treated separately for this purpose;
- (e) Payments of the pension will cease when the relevant Member's Account Balance is nil.
- (f) The capital value of the pension and the income from it cannot be used as

security for a borrowing.

- (g) If the pension reverts it may not have a reversionary component greater than 100% of the benefit that was payable before the reversion;
- (h) If the pension is commuted, the commuted amount may not exceed the benefit that was payable immediately before the commutation;

10. Particular arrangements

Subject to the Act, the Trustee may:

- (a) Require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension; and
- (b) Agree with the Beneficiary on particular arrangements to apply to the pension. For example, these may relate to the number and identity of any reversionary beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters; and
- (c) Set rules relating to default arrangements that may apply to pension payments, in the absence of agreement between the Trustee and Beneficiary, or relating to any other relevant matter.

11. Reserves

Subject to the Act, where it considers it appropriate, the Trustee may:

- (a) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Rule 11, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- (c) where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the Beneficiary to whom the pension benefit related and that Beneficiary's Dependants.

12. Death benefits

- (a) This Rule 12 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rule 9, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule 12 applies, then unless the Trustee otherwise agrees, and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with Clause 12.6 of the Deed. For this purpose, references in Clause 12.6 to the Member will be treated as references to the deceased pension recipient.

SCHEDULE 3

PART 1
Application for Membership
With Indicative Death Benefit Nomination – No Binding
Death Benefit Nomination

Member details
Name:
Address:
Date of Birth:
Occupation:
Telephone:
Fax:
Amount of Deposit (\$)*:

* (A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)

I hereby apply to become a member of

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED DATED

Employer details
Employer:
Address:

Nomination of dependants

Important information for completion
<p>1. This Nomination Notice is not binding. The Trustee/s will take it into account in the event that a benefit is paid from the Fund on your death. However, the Trustee/s have complete discretion as to which of your Dependants and/or Legal Personal Representative may receive the benefit and in what proportions. If there are no Dependants or Legal Personal Representative, the benefit may be payable to any other person.</p> <p>2. This Nomination Notice must be fully completed in accordance with the details below:</p> <ul style="list-style-type: none"> • Ensure both pages of this Notice are completed. • The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative. Your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death. Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary. • For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.

Nomination of dependants		
Name	Relationship to you	Proportion of benefit

Member declaration

I, _____ of _____
as a member of the Fund, request the Trustee/s to pay my death benefit to the above persons in the proportions shown.

I understand that:

- in the event of my death, the Trustee/s have complete discretion as to which of my dependants and/or estate will receive any death benefit payable.
- this Notice revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries.

Signature of Member	Date / /
---------------------	--------------

SCHEDULE 3

PART 2
Application for Membership
With Binding Death Benefit Nomination

Member details
Name:
Address:
Date of Birth
Occupation:
Telephone:
Fax:
Amount of Deposit (\$)*:

* (A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)

I hereby apply to become a member of.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED

DATED

Employer details
Employer:
Address:

Binding death benefit nomination

Information about binding directions
<p>The operation of the Fund, of which you are a member or are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the Fund is bound to act in accordance with the requirements of the Trust Deed in administering the Fund.</p> <p>Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of your death, to pay the death benefit, which is payable to your estate or to dependants of yours, and, in what proportions.</p> <p>However, the Trust Deed also enables you to override the Trustee's discretion by you giving a binding direction to the Trustee. This is a direction to the Trustee to pay any death benefit payable either to your estate or to dependants specified by you and in the proportions that you specify.</p> <p>You may either elect for the Trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing the direction in this Nomination.</p>

Important points about binding directions
<p>If you decide to give a binding direction by completing this Nomination, it is important for you to note the following:</p> <ol style="list-style-type: none"> 1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify on this Nomination (or both). 2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total death benefit which is to be paid to each of the estate of your dependants. 3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee. 4. The direction that you give automatically ceases to have any effect 3 years after the date on which you sign and date this Nomination. If the direction ceases to have effect, the Trustee will have a discretion to decide who to pay the death benefit to. 5. If, on this Nomination, you direct the Trustee to pay any part of your death benefit to a person who is not a dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your death benefit to. 6. For the purposes of the Trust Deed, a dependant is: <ul style="list-style-type: none"> • a spouse of a Member • any children of a Member • any other person (whether related to the Member or not) who is financially dependant on the Member <p>"Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children.</p> <p>If you have any doubt as to whether a person you wish to nominate to receive any part of your death benefit is a dependant, you should seek advice from the Trustee before completing this Nomination.</p> 7. For this Nomination to be effective, it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.

Important information for completion

1. In order for this Nomination Notice to be valid, it must be fully completed in accordance with the details below:
 - Ensure the Nomination, Member Declaration and Witness Declaration are completed.
 - The Beneficiaries named in this Nomination must be Dependants and/or your Legal Personal Representative.
As mentioned above, your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death.
Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration for your estate.
Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
 - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.
 - The Nomination must be signed and dated by you in the presence of two witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the Nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
2. If any of this information is not provided, then your Nomination may be invalid. The Trustee/s will contact you for clarification if this is the case.
3. It is not compulsory to complete this Nomination. Details of who a death benefit will be paid to in the situation where there is no valid Nomination, can be found in the Member Information document.

Nomination of dependants		
Name of beneficiary	Relationship to you	Proportion of benefit

Total Allocation 100%

Member declaration

I, _____ of _____ as a member of the Fund, direct the Trustees to pay my death benefit to the above persons in the proportions shown above.

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- Unless amended or revoked earlier, this Nomination is binding on the Trustee/s for a period of 3 years from the date it is first signed or last confirmed;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries;
- If this Nomination is not correctly completed, it may be invalid.
- If I have nominated persons who are not "dependants" as explained above, the direction contained in the Nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I acknowledge that I have been provided with information by the Trustee/s of the Fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this Nomination.

Signature of Member	Date / /
---------------------	----------

Witness declaration

We declare that:

- this Nomination was signed by the member in our presence;
- we are aged 18 or more; and
- we are not named as beneficiaries.

Signature of Member	Signature of Witness	Date / /
---------------------	----------------------	----------

EXECUTED AS A DEED

Signed Sealed and Delivered by the said
Enn Tohver
in the presence of:

} Enn Tohver

M. Smith

Witness

Signed Sealed and Delivered by the said
Adam Stratton
in the presence of:

} Adam Stratton

M. Smith

Witness