



**TRUST DEED**

Deed of Establishment  
Self Managed Superannuation Rules

**WG & KM HENRY SELF MANAGED  
SUPERANNUATION FUND**

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# Trust Deed of the WG & KM HENRY SELF MANAGED SUPERANNUATION FUND

## Date of Establishment

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30TH day of MARCH, 2012.

## This deed is made by

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**WAYNE GERALD HENRY** and **KELLY MARIE HENRY** of 19 NORTHMORE STREET, NAREMBEEN in the State of Western Australia ('the Trustee').

## Background

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- A. The Trustee wishes to establish a Self Managed Superannuation Fund for the provision of superannuation benefits for those persons who become Members of the Fund and their Dependants.
- B. It is intended by this Deed to establish a Self Managed Superannuation Fund to be known as the **WG & KM HENRY SELF MANAGED SUPERANNUATION FUND** (hereinafter called '**the Fund**').
- C. The Trustee has agreed to act as the first trustee of the Fund.
- D. The Trustee will at all times maintain the Fund as a Complying Self Managed Superannuation Fund.

## The Trustee HEREBY DECLARES that the terms of this Deed are as follows:

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### 1 Name of the Fund

The trusts created by this Deed shall be the **WG & KM HENRY SELF MANAGED SUPERANNUATION FUND**.

### 2 Establishment of the Fund

- 2.1 The Fund will be established as and from the date of this Deed.
- 2.2 The Fund will be managed, administered and applied in accordance with both this Deed, the Rules of the Fund and the Relevant Law.

### 3 Fund vested in Trustee

The Fund will be vested in the Trustee and:

- 3.1 will at all times be held, controlled and managed by the Trustee in accordance with this Deed, the Rules of the Fund and the Relevant Law; and
- 3.2 no Member will have any beneficial interest in the Fund or any asset of the Fund.

#### **4 Regulated Superannuation Fund**

**4.1** Upon execution of this Deed the Trustee will elect for the Fund to be a Regulated Superannuation Fund.

**4.2** Either:

(a) the Trustee will be the sole trustee which is a constitutional corporation within the meaning of the Relevant Law; or

(b) the primary purpose of the Fund will be to provide old age pensions for the members of the Fund upon their retirement and for any other purposes which may be permitted under the Relevant Law from time to time.

#### **5 Complying Self Managed Superannuation Fund**

The Trustee will do all things as may be necessary to establish and maintain the Fund as a Complying Self Managed Superannuation Fund.

#### **6 The Rules of the Fund**

The Rules of the Fund are those rules and schedules attached to this Deed and any amendment of or replacement of those rules or any other rule deemed by the SIS Act to be a governing rule of the Fund.

**Executed as a Deed**

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Signed by the Trustees of the **WG & KM HENRY SELF MANAGED SUPERANNUATION FUND.**

Signed by **WAYNE GERALD HENRY** in the presence of:

Wayne Henry

[Signature]  
Signature of Witness

Danelle Fricker  
Full Name of Witness (print)

Narembeen Police Station  
Witness Address

Police Officer  
Witness Occupation

Signed by **KELLY MARIE HENRY** in the presence of:

Kelly Marie Henry

[Signature]  
Signature of Witness

Danelle Fricker  
Full Name of Witness (print)

Narembeen Police Station  
Witness Address

Police Officer  
Witness Occupation

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# The Rules of the Fund

## 1. Purpose of the Fund – Core and Ancillary Purposes

The Fund is to be maintained:

- 1.1 solely for one or more Core Purposes; or
- 1.2 solely for one or more Core Purposes and one or more Ancillary Purposes.

## 2. Trustee

### 2.1 Number of Trustees

Where the Trustee consists of:

2.1.1 natural persons then,

- (a) there must be at least two Trustees and up to any maximum number prescribed by the Relevant Law in order for the Fund to be a Self Managed Superannuation Fund;
- (b) the expression 'Trustee' where it appears in these Rules shall mean all of the Trustees.

2.1.2 a company then,

- (a) the Trustee will be the sole Trustee, and a constitutional corporation as defined in the Relevant Law;
- (b) the expression 'Trustee' where it appears in these Rules shall mean all of the directors of the company.

### 2.2 Trustees are Members

2.2.1 All Trustees (and if a company, each of its directors) must be a Member; and

2.2.2 All Members must be a Trustee (and if a company, a director),

unless the person satisfies an exception prescribed by the Relevant Law.

### 2.3 Legal Personal Representative

2.3.1 Where a person is unable to perform their duties as a Trustee then to the maximum extent permitted under the law (including the Relevant Law), that person's Legal Personal Representative may be appointed as a Trustee.

2.3.2 Subject to **Rule 2.4**, upon death of a Member, the Legal Personal Representative will be appointed as a Trustee for the period:

- (a) from the date of death of the Member; and
- (b) until Benefits commence to be paid as a consequence of the death of the Member.

## **2.4 Appointment and Removal of Trustee**

2.4.1 Subject to the Relevant Law, the Members shall have the right from time to time to appoint and remove the Trustee by deed.

2.4.2 Prior to, or upon becoming appointed to the position of Trustee, each Trustee (and if a company, all of its directors) must:

- (a) agree in writing to be bound by the Deed and the Rules;
- (b) consent in writing to the appointment; and
- (c) complete a declaration in the form approved by the Relevant Law certifying that it understands its duties and obligations as a Trustee of the Fund.

2.4.3 A Trustee will continue to hold office until the Trustee:

- (a) resigns by notice in writing to the Members;
- (b) if a natural person, dies;
- (c) if a natural person, becomes incapable of performing their duties as a Trustee;
- (d) if a natural person, ceases to be a Member;
- (e) if a company, becomes an externally administered body corporate (as defined in the Corporations Act ) or has a provisional liquidator appointed;
- (f) is removed from office by the Members pursuant to the provisions of the Rules or the Relevant Law; or
- (g) becomes a Disqualified Person under the Relevant Law.

## **2.5 Transfer of Assets**

2.5.1 If a Trustee's office terminates, the outgoing Trustee must:

- (a) provide to any new or continuing Trustee all records, information and other property relating to the Fund in its control; and
- (b) do all things necessary to complete the appointment of a new Trustee.

2.5.2 If a new Trustee is appointed, then the new Trustee must do such things as is necessary to notify any person and provide such information as is relevant to the assets of the Fund in its control.

## **2.6 Trustee Meetings**

2.6.1 Any Trustee may at any time convene a Trustees' meeting by notice to the other Trustees.

2.6.2 A Trustees' meeting may be held by any technological means by which the Trustees are able simultaneously to hear each other and to participate in discussion.

2.6.3 Subject to these Rules the Trustees may meet together, adjourn and regulate their meetings as they think fit.

2.6.4 A quorum for a meeting of Trustees is two Trustees unless the Trustee is a company with a sole director, in which case this Rule does not apply.

## 2.7 Decisions of Trustees

2.7.1 Unless otherwise agreed, each Trustee has one vote for every one dollar of their Superannuation Interest attributable to their membership of the Fund.

2.7.2 Questions arising at a Trustees' meeting will be decided by a majority of the Trustees present and voting.

## 2.8 Written Resolutions

A resolution in writing signed by a majority of the Trustees will:

2.8.1 have the same effect and validity as a resolution of a majority of the Trustees present and voting at a Trustees' meeting; and

2.8.2 be deemed to have been passed on the day on which the document was last signed by a Trustee, notwithstanding that the written resolution may have been signed in two or more counterparts and may be in the form of a copy or electronic transmission.

## 2.9 Conflict of Interest

2.9.1 A Trustee and any firm, body or entity in which a Trustee has a direct or indirect interest may in any capacity:

- (a) enter into any contracts or arrangement with the Fund;
- (b) be appointed to and hold any office or place of profit under the Trustees, other than the office of Auditor; and
- (c) act in a professional capacity, other than as the Auditor, for the Fund,

and may receive and retain for its own benefit any remuneration, profits or benefits as if he was not a Trustee.

2.9.2 Every Trustee must disclose his interest to the other Trustees and all declarations must be recorded in the minutes of the relevant Trustees' meeting.

2.9.3 The failure by a Trustee to make disclosure under this **Rule 2.9** does not render void or voidable a contract or arrangement in which the Trustee has a direct or indirect interest.

2.9.4 A Trustee may vote in respect of a contract or arrangement or any other matter in which the Trustee has a direct or indirect interest.

## 2.10 Validity of Acts of Trustees

The acts of the Trustee will remain valid notwithstanding that it is subsequently discovered that there was a defect in the appointment of a person as a Trustee or a person appointed as a Trustee was a Disqualified Person.



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### 2.11 Constituent documents of the Trustee

The Trustee must, if a constitutional corporation, ensure that its constituent documents are consistent with any requirements under the Relevant Law.

## 3. Trustee's Duties

The Trustee must:

- 3.1 act honestly in all the Trustee's dealings with the Fund;
- 3.2 exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom the person felt morally bound to provide;
- 3.3 ensure that the Trustee's duties and powers in respect of the Fund are performed and exercised in the best interests of Members;
- 3.4 keep the money and other assets of the Fund separate from:
  - 3.4.1 any money and assets of the Trustee; and
  - 3.4.2 any money and assets held by the Members personally; and
- 3.5 not enter into any contract or do anything else that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers in respect of the Fund.

## 4. Trustee's Powers

### 4.1 All Powers

The Trustee will have power to do everything necessary or desirable to manage, administer and deal with the Fund and all proceedings, matters and things connected with the Fund in an efficient and economical manner and so as to comply with the Relevant Law, including:

- 4.1.1 **Deal with Fund assets:** entering into and executing all contracts, deeds and documents and doing all such matters and things as it considers expedient for the purpose of investing Fund monies and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by the Deed and the Rules;
- 4.1.2 **Bank accounts and negotiable instruments:** the Trustee may open and operate any account of any description with any financial institution and to draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
- 4.1.3 **Fund obligations:** giving such undertakings and incurring all such obligations relating to the Fund as the Trustee thinks fit;
- 4.1.4 **Legal proceedings:** instituting, conducting, defending or abandoning, settling, compromising or submitting to arbitration any claim, proceedings, matter or thing relating to the Fund or to the rights of Members or other persons claiming to be entitled to be paid a Benefit from the Fund;

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- 4.1.5 **Vary investments:** the Trustee may at any time vary or realise an investment of any part of the Fund and reinvest money resulting from the realisation in any form of investment;
- 4.1.6 **Conduct businesses and profit making undertakings:** the Trustee may conduct and terminate any trade, business or profit making undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name as the Trustee thinks fit;
- 4.1.7 **Engage:** the Trustee may engage and pay remuneration to any person (including a Member or Trustee) in connection with anything required to be done pursuant to the Deed and the Rules;
- 4.1.8 **Borrowing:** borrowing money on such terms and only for those purposes, including those described in **Rule 8**, allowed by the Relevant Law;
- 4.1.9 **Lending:** lending money and securing the repayment of that money in any manner and upon any terms which the Trustee may consider advisable within the confines of the Relevant Law;
- 4.1.10 **Insurance:** insuring or re-insuring any risks, contingencies or liabilities of the Fund including policies of life assurance of any kind on the life of a Member;
- 4.1.11 **Pay expenses:** paying out of the Fund all expenses of and incidental to the management and administration of the Fund, including the fees of any advisers or agents and the remuneration of persons appointed pursuant to the Rules;
- 4.1.12 **Discharge liabilities:** giving receipts and releases or discharges of any other kind in relation to any debts owed to the Fund;
- 4.1.13 **Indemnification:** indemnifying or undertaking to indemnify any person in respect of any claim, matter or thing relating to the Fund or to the rights of Members, or other persons entitled in respect of the Fund; and
- 4.1.14 **Receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person and to hold these gifts according to the Rules and to administer such additions under these provisions.

## 4.2 Absolute Discretion

- 4.2.1 The Trustee in the exercise of the authorities, powers and discretions given to it under the Deed and the Rules, has an absolute and unfettered discretion, and may from time to time exercise or enforce all or any of such powers, authorities and discretions, and will have power generally to do all such things as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under the Deed, the Rules and the Relevant Law.
- 4.2.2 The Trustee may, in its absolute discretion, waive any requirement of the Deed and the Rules in respect of any Member provided any such action does not cause a breach of the Relevant Law.

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#### **4.3 Delegation and Appointment of Attorney by Trustee and Appointment of Custodian**

4.3.1 The Trustee may delegate and vary or remove any delegation to any entity, on such terms as the Trustee may think fit, any of the authorities, powers and discretions conferred upon the Trustee by the Deed, the Rules or the Relevant Law.

4.3.2 The Trustee may appoint one or more attorneys under power of attorney upon such terms as the Trustee thinks fit to perform any of the powers, authorities, duties or functions conferred on the Trustee by the Deed, Rules or by law. Any such power of attorney will remain valid and effectual for the period nominated by the Trustee or until revoked by the Trustee.

4.3.3 The Trustee may appoint any person as custodian or nominee to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the Trustee thinks fit.

#### **4.4 Remuneration of the Trustee**

4.4.1 The Trustee will not receive any salary or remuneration from the Fund in respect of its services as Trustee unless permitted under the Relevant Law.

4.4.2 Subject to the Relevant Law, nothing in the Deed or the Rules will preclude any firm, corporation or partnership of which the Trustee or any of its directors is a partner, director, shareholder, related body corporate (as defined in the Corporations Act) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

#### **4.5 Inquiries and Complaints**

The Trustee must to the extent required by the Relevant Law establish arrangements to deal with inquiries or complaints about the operation or management of the Fund.

#### **4.6 Dependants and Other Beneficiaries**

The Trustee may exercise all its powers under the Deed, the Rules and the Relevant Law in respect of Dependants and any other person entitled to a Benefit. All such persons must comply with the provisions of the Rules and any direction of the Trustee in relation to the payment of any Benefit.

#### **4.7 Indemnity**

##### **4.7.1 Trustee's Responsibility**

Subject to **Rule 4.9**:

- (a) the Trustee is not personally responsible or liable in respect of the execution or purported or attempted execution of, or failure or neglect to exercise or carry out any of the Trustee's duties, authorities, powers or discretions;

- (b) the Trustee (and if a company, each of its directors) is entitled to be indemnified out of the Fund against all liabilities incurred by the Trustee as the trustee of the Fund; and
- (c) the Trustee is entitled to a lien on, or may use the Fund for the indemnity and generally for the payment of all proper costs and expenses of performing the Trustee's duties under the Deed and the Rules.

#### **4.7.2 Trustee's Right of Indemnity and Exoneration**

- (a) The Trustee's right of indemnity is limited to the right described in **Rule 4.7.1**;
- (b) The Trustee has no right to indemnity or exoneration by any of the Members against any liability incurred by the Trustee as trustee of the Fund.

#### **4.8 Release**

The Trustee (and if a company, each of its directors) is released from all liabilities, losses, costs and expenses incurred in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee or at law, including in respect of any payments made to any person whom the Trustee bona fide believes to be entitled to the payment and it is subsequently found that the person was not in fact so entitled.

#### **4.9 Limited Indemnity and Release**

Nothing in this Deed has the effect of giving the Trustee (and if a company, each of its directors) an indemnity or release in respect of any liability:

- 4.9.1 for a breach of trust, where the Trustee fails to act honestly, or intentionally or recklessly fails to exercise, the degree of care and diligence that the Trustee was required to exercise; or
- 4.9.2 for a monetary penalty under a civil penalty order.

### **5. Membership**

#### **5.1 Admission**

The Trustee may in its absolute discretion admit any person who has lodged with the Trustee an application for membership in such form as the Trustee may require, to membership of the Fund.

#### **5.2 Bound by the Deed and the Rules**

Every person admitted to membership of the Fund becomes a Member and is bound by the Deed and the Rules.

#### **5.3 Member must be a Trustee**

Every person admitted to membership, or the Legal Personal Representative of that person, must be appointed as a Trustee (and if a company, a director) in accordance with the Rules.

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#### **5.4 Variation of Membership Terms**

The Trustee may, by written agreement with any Member, vary the terms and conditions applicable to that Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member.

#### **5.5 Information to New Members**

The Trustee must, as soon as practicable after the admission of a Member, give to that Member any information required by the Relevant Law.

#### **5.6 Trustee's Requirements**

A Member must provide such information and documents, submit to such medical examinations, and generally do such things as the Trustee deems necessary in order for the Trustee to satisfy itself that such person is entitled to a Benefit from the Fund.

#### **5.7 Person to Receive a Reversionary Pension**

Subject to the Rules and the Relevant Law, the Trustee must admit a person as a Member where that person will be paid a Pension from the Fund as a consequence of the death of another Member.

### **6. Contributions to the Fund**

The Trustee:

6.1.1 may accept contributions for the benefit of a Member from the Member or from any person to the extent permitted by the Relevant Law;

6.1.2 must not accept any contribution if, in the opinion of the Trustee, the acceptance of the contribution would be in breach of the Relevant Law; and

6.1.3 may refuse to accept contributions as the Trustee deems appropriate.

#### **6.2 Form of Contributions**

6.2.1 Subject to the Relevant Law, contributions may be made either in cash or by in specie transfer.

6.2.2 If a contribution is made by via an in specie transfer:

(a) the amount of the transfer will be the market value of the asset determined by the Trustee at the time of its transfer; and

(b) any other terms and conditions of the transfer will be as determined by the Trustee.

#### **6.3 Excess Contributions**

Where a Member has made a contribution in excess of the statutory limits, which results in a Excess Contributions Tax liability, and the Member has lodged a Release Request with the Trustee, the Trustee will within thirty (30) days of receipt of that request pay to the Member or, at the Member's request pay to the Regulator the amount that is the lesser of:

6.3.1 an amount specified by the Member in the Release Request; or

6.3.2 the amount of Excess Contributions Tax specified on the Release Request; or

6.3.3 the total of the Member's Superannuation Interest in the Fund.

## **7. Investments**

### **7.1 Strategy**

7.1.1 The Trustee must formulate in writing, and give effect to an investment strategy.

7.1.2 The investment strategy should have regard to:

- (a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to the Fund's objectives and cash flow requirements;
- (b) the composition of the Fund's investments as a whole, including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities; and
- (e) any other circumstances of the Fund, and other factors or matters the Trustee considers appropriate to have regard to.

### **7.2 Pooled or Separate Strategy**

The Trustee may adopt either a single pooled investment strategy for the whole of the Fund or separate investment strategies for different parts of the Fund including:

7.2.1 separate strategies for particular Members;

7.2.2 a separate strategy for any assets supporting a pension for particular Members.

### **7.3 Notify Members**

The Trustee must, to the extent required by the Relevant Law, notify Members in writing of the investment strategy and any changes to the investment strategy.

### **7.4 Reserves**

The Trustee must formulate in writing and implement a separate investment strategy for any reserve.

### **7.5 Authorised Investments**

7.5.1 Subject to the Relevant Law, the Trustee may invest all or so much of the assets of the Fund as is not required immediately for the payment of Benefits or other amounts authorised by the Rules in any investment which the Trustee considers appropriate.

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7.5.2 The Trustee may invest alone, in partnership or jointly with any other entity in:

- (a) any investment authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust funds;
- (b) the acquisition of any interest in real or personal property, and the improvement or extension of that property;
- (c) any mortgage on freehold or leasehold property situated in Australia or elsewhere;
- (d) any deposit with any bank, building society, other financial institution or any person or organisation whatsoever and at such rate of interest and upon such terms as the Trustee may deem reasonable;
- (e) the making of any loan to any entity (except to a Member or a relative of a Member) with or without security, and at such rate of interest and upon such terms as the Trustee considers reasonable;
- (f) the acquisition of foreign currencies, commodity contracts, hedging contracts or futures contracts of any kind quoted on a recognised stock exchange;
- (g) the acquisition of shares or stock of any class or description, or of any type of bond, mortgage, debenture, note option, warrant, derivative or other like security in any company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up, and whether secured or unsecured, registered or unregistered;
- (h) the acquisition of, or subscription for, any unit or interest in any unit trust established or situated anywhere in the world, and whether such units or interests are fully paid up or whether their issue involves any contingent or reserve liability;
- (i) the acquisition of any financial product (including, for example 'instalment warrants' or other derivative) over any asset(s) in which the Trustee is authorised to invest;
- (j) the acquisition of any precious metals, coins, stamps, works of art, antiques and any other precious objects;
- (k) the acquisition of any insurance policy or annuity of any kind whatsoever and wherever made;
- (l) the discounting of loans, mortgages, contracts, hire purchase agreements or leases; and
- (m) bills of exchange, bill of lading, promissory notes or other negotiable or transferable instruments.

## 7.6 Power to Sell and Vary Investments

The Trustee may sell or otherwise dispose of any investments and to vary and transpose any investments into other investments authorised by the Rules.

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## 7.7 Gifts and Distributions

- 7.7.1 Subject to the Relevant Law, the Trustee may accept gifts or distributions made to the Fund from any person or organisation whatsoever.
- 7.7.2 The Trustee may allocate such gifts or distributions to any Account of the Fund for any purpose as it sees fit.

## 7.8 Investment Income

The Trustee must at the Review Date:

- 7.8.1 value all of the assets of the Fund; and
- 7.8.2 determine the net income and net capital gains of the Fund (whether realised or unrealised) for the period since the last Review Date, after deducting any capital losses, expenses and Taxes as the Trustee considers appropriate.

## 7.9 Fund Earning Rate

At the Review Date, the Trustee must determine the rate at which the income of the Fund is to be credited or debited to Member Accounts and other Accounts and reserves established by the Trustee, having regard to:

- 7.9.1 the amount of income for the Financial Year ending on the relevant Review Date;
- 7.9.2 the amount of income expected for the subsequent Financial Year;
- 7.9.3 the amount of income credited to the Member's Accounts in previous Financial Years;
- 7.9.4 the amount of Taxes, costs and other liabilities of the Fund;
- 7.9.5 the investment strategy of the Fund; and
- 7.9.6 any other matters the Trustee considers relevant.

## 7.10 Interim Fund Earning Rate

During a Financial Year, the Trustee may determine an interim rate at which the income of the Fund is to be credited or debited to any Member Account for the purpose of calculating the Member's Benefits.

## 8. Borrowing Arrangements - section 67A and section 67B of the SIS Act

Pursuant to **Rule 4.1.8** and subject to the Relevant Law, the Trustee may:

- 8.1 borrow monies for the purposes of acquiring asset(s); and
- 8.2 authorise a charge to be given over asset(s) to be acquired.



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## 9. Estate Planning

### 9.1 Non-Binding Death Benefit Nomination

9.1.1 A Member may, in writing, notify the Trustee of the manner in which the Member would prefer their Benefit to be distributed upon the Member's death ('**Non-Binding Death Benefit Nomination**').

9.1.2 The Trustee may comply with a Non-Binding Death Benefit Nomination.

9.1.3 A Member may vary a Non-Binding Death Benefit Nomination at any time.

### 9.2 Binding Death Benefit Nomination

9.2.1 A Member may, in writing, notify the Trustee of the proportions to which the Member nominates their Benefit to be distributed upon their death to their Dependants and / or Legal Personal Representative ('**Binding Death Benefit Nomination**').

9.2.2 A Member may confirm, vary or revoke a Binding Death Benefit Nomination at any time.

9.2.3 A Binding Death Benefit Nomination requiring a Benefit to be paid to a spouse of a Member will be revoked if proceedings have commenced, or will be commenced, under the *Family Law Act 1975* (Cth) or similar laws seeking a dissolution of the marriage between that Member and the spouse.

### 9.3 Member Directed Superannuation Benefit Plan

9.3.1 A Member may, in writing, notify the Trustee of the manner and form in which it wishes its Benefit to be distributed upon their death between their Dependants and/or Legal Personal Representative ('**Member Directed Superannuation Benefit Plan**').

9.3.2 Subject to the Relevant Law, the Trustee must comply with a Member Directed Superannuation Benefit Plan, except if the Member has made a Binding Death Benefit Nomination under **Rule 9.2**.

9.3.3 A Member may confirm, vary or revoke a Member Directed Superannuation Benefit Plan.

### 9.4 Reversionary Pension

9.4.1 If a Member has accepted the terms and conditions of a pension offered by the Trustee, then those terms and conditions will be a Rule.

9.4.2 Subject to the Relevant Law, the Trustee must comply with any terms and conditions dealing with a continuation of a pension to a Dependant or a Legal Personal Representative upon death of the Member.

### 9.5 Priority of Reversionary Pensions

9.5.1 Subject to the Relevant Law, if a deceased Member had accepted a pension, and either or both of a Binding Death Benefit Nomination (Rule 9.2) and Member Directed Superannuation Benefit Plan (Rule 9.3), the terms and conditions of the pension will prevail.

9.5.2 The Trustee must ensure that there is consistency as between all of:

- (a) the terms and conditions of any pension (**Rule 9.4**);
- (b) Non-Binding Death Benefit Nominations (**Rule 9.1**);
- (c) Binding Death Benefit Nominations (**Rule 9.2**); and / or
- (d) Member Directed Superannuation Benefit Plan,  
made by the Member(s).

## **10. Fund Accounts**

### **10.1 Fund Accounts**

The Trustee must keep Accounts and reserves that the Trustee considers appropriate for the purpose of administering the Fund and calculating the Benefits payable to each Member.

### **10.2 Member Accounts**

The Trustee must keep separate Accounts for each Member and if necessary, separate Accounts for the purposes of:

- 10.2.1 differentiating between contributions made by Member(s) and contributions made by others for the benefit of the Member(s);
- 10.2.2 differentiating between a Member(s) preserved and non-preserved benefits;
- 10.2.3 calculating the tax free and taxable components of a Member(s) benefits within the meaning of the Relevant Law;
- 10.2.4 identifying particular assets which are funding a Member(s) pension;
- 10.2.5 enabling Member(s) to have more than one pension; and
- 10.2.6 any other purpose as the Trustee considers appropriate.

### **10.3 Crediting and Debiting Member Accounts**

The Trustee will credit or debit (as the case may be) each Member's Accounts with:

- 10.3.1 contributions received from the Member or for the benefit of the Member;
- 10.3.2 income or losses of the Fund as determined by the Trustee;
- 10.3.3 amounts transferred to or from a reserve of the Fund;
- 10.3.4 amounts transferred to or from an Eligible Fund;
- 10.3.5 the amount of any Splittable Contributions as agreed between the Member and the Trustee;
- 10.3.6 the amount of any payment split that the Trustee is required to apply in accordance with the *Family Law Act 1975 (Part VIII B)*;

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- 10.3.7 any Taxes, expenses or liabilities in relation to the contributions received in respect of the Member;
  - 10.3.8 any Taxes, expenses or liabilities of the Fund that the Trustee considers appropriate;
  - 10.3.9 any Benefits paid to the Member or any other person as approved by the Trustee;
  - 10.3.10 any premiums and other expenses of any insurance policies in respect of the Member; and
  - 10.3.11 any other amounts that the Trustee considers appropriate.

#### 10.4 Reserves

The Trustee may establish reserves for the purposes of:

- 10.4.1 smoothing any fluctuations in the value and earnings of investments of the Fund;
- 10.4.2 making provision for any existing or prospective liability for Taxes or any other liability; or
- 10.4.3 for any other purpose the Trustee considers appropriate.

### 11. Fund Expenses and Taxation

#### 11.1 Expenses

- 11.1.1 Except as otherwise provided, all expenses relating to the establishment, administration, operation or winding up of the Fund will be borne by the Fund and paid by the Trustee out of the assets of the Fund.
- 11.1.2 The Trustee may debit Member Accounts, reserves and any other Accounts as it considers appropriate to reflect the payment, or the provision of expenses.

#### 11.2 Taxes

- 11.2.1 The Trustee must pay all Taxes assessed to the Fund.
- 11.2.2 The Trustee may deduct from a Member's Account, a reserve or any other Account any Taxes referable to:
  - (a) contributions made to the Fund for the benefit of a Member;
  - (b) earnings attributed to a Member's Account;
  - (c) any Benefit from which the Trustee considers Taxes may be payable.
- 11.2.3 The Trustee may deduct from a Member's Account any Excess Contributions Tax payable by that Member in accordance with **Rule 6.3**.
- 11.2.4 Subject to the Relevant Law the Trustee may allocate any refund of Taxes to a Member's Account, reserve or other Account.

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## **12. Records**

### **12.1 Records and Accounts to be kept**

The Trustee must:

- 12.1.1 keep full and comprehensive minutes of meetings;
- 12.1.2 keep account of all moneys received for, and disbursed from, the Fund and of all dealings of the Fund;
- 12.1.3 collect and promptly pay into a bank or other account of the Fund all moneys due to the Fund;
- 12.1.4 keep appropriate records, books and accounts, having regard to the requirements of the Relevant Law;
- 12.1.5 make suitable arrangements for the custody of documents relating to the investments of the Fund; and
- 12.1.6 prepare accounts and statements in relation to the Fund as at the end of the Financial Year in accordance with the Relevant Law.

### **12.2 Audit**

The Trustee must appoint an Auditor to audit the accounts and statements of the Fund and to report in writing to the Trustee in respect of such audit within the time specified by the Relevant Law.

### **12.3 Disclosure**

The Trustee must provide to Members such documents and information as required by the Relevant Law.

## **13. Transfers to and from Other Funds**

### **13.1 Transfers to Other Funds**

Subject to the Relevant Law, if requested by a Member, the Trustee may pay or transfer all or part of the Member's Benefits to an Eligible Fund.

### **13.2 Transfer by Trustee**

Whether or not requested or consented by a Member, the Trustee may pay or transfer the whole or part of a Member's Benefits to an Eligible Fund if permitted or required by the Relevant Law.

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### 13.3 Benefits Cease

If there is a payment or transfer made under this Rule 13:

- 13.3.1 the payment or transfer will satisfy the Member's entitlement to those Benefits to the extent of the amount paid or transferred;
- 13.3.2 the receipt of the payment or transfer by the trustee of the Eligible Fund will discharge the Trustee with respect to any liabilities referable to the amount paid or transferred; and
- 13.3.3 after the payment or transfer, the Trustee will not be responsible for the future application of the particular amount.

### 13.4 Transfers from Other Funds

13.4.1 Upon a member's requests, the Trustee may accept the transfer of money or assets from:

- (a) an Eligible Fund; or
- (b) an overseas pension scheme, which is recognised as such in the country in which the pension scheme is established. For the avoidance of doubt, the Trustee will ensure that the Fund (if relevant) will be a 'qualifying recognised overseas pension scheme' for the purposes of the United Kingdom's pension transfer provisions.

13.4.2 Subject to the requirements of the Relevant Law, the Trustee will credit the Member's Accounts in the manner agreed between the Trustee and the Member with the money or assets so received under this **Rule 13.4**.

## 14. Benefits

### 14.1 When Payable

14.1.1 Subject to the Relevant Law and these Rules, a Benefit may be paid when:

- (a) the Member has reached the Preservation Age;
- (b) the Member has reached the Retirement Age;
- (c) the Member has ceased to be Gainfully Employed;
- (d) the Member suffers Temporary Incapacity; or
- (e) the Member suffers Permanent Incapacity.
- (f) the Member suffers from a Terminal Medical Condition;
- (g) the Member has died; or
- (h) such other events or circumstance allow a Benefit to be paid.

14.1.2 A Benefit must be paid by the Trustee if required under the Relevant Law.

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## 14.2 Method of Payment

14.2.1 A Benefit may be paid:

- (a) in a lump sum;
- (b) by way of pension;
- (c) by an in specie transfer;
- (d) as a combination of the above; or
- (e) in any other way as permitted by the Relevant Law.

14.2.2 The Trustee must pay a Benefit in a particular way if required to under the Relevant Law.

## 14.3 Payment Conditions

14.3.1 The Trustee may impose any reasonable conditions regarding payment of Benefits, such as requiring a Member or the Member's Legal Personal Representative to produce evidence of entitlement.

14.3.2 A Benefit must not be paid if doing so would result in the Fund not complying with the Relevant Law.

## 14.4 Lump Sum

14.4.1 The Trustee may, at its discretion, pay a lump sum Benefit if requested by a Member.

14.4.2 The lump sum Benefit may be paid:

- (a) in cash as a single payment or in instalments; or
- (b) by way of an in specie transfer of asset(s) of the Fund of equivalent value, with the value determined on an arms' length basis at the date of transfer.

14.4.3 Subject to **Rule 14.4.4**, the amount of any lump sum Benefit must not:

- (a) exceed the balance of the Member's Accounts; or
- (a) be less than any amount required under the Relevant Law.

14.4.4 Subject to the Trustee's discretion, in addition to any lump sum Benefit paid under **Rule 14.4.2**, the Trustee may pay an amount from a reserve of the Fund to a Member.

## 14.5 Pension

14.5.1 The Trustee may, at its discretion, pay a pension if requested by a Member.

14.5.2 Subject to the Relevant Law and **Rule 14.6**, any pension will be paid in such amount(s) and on such conditions as agreed in writing by Trustee and the Member.

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## 14.6 Pension Conditions

- 14.6.1 Any standards with respect to the payment of pensions contained in the Relevant Law are incorporated in, and form part of these Rules.
- 14.6.2 Any pension paid to a Member must be provided pursuant to any standards contained in the Relevant Law.
- 14.6.3 In providing a pension to a member, and subject to **Rule 14.6.1** and the Trustee's discretion, the Trustee may apply any amount from a Member's Account(s) and / or a reserve of the Fund.

## 14.7 Commutation

- 14.7.1 The Trustee may, at its discretion, commute a part of the whole of a pension if requested by a Member.
- 14.7.2 The Trustee must not commute a part or the whole of a pension if the commutation will cause the Fund breach the Relevant Law.
- 14.7.3 Any commutation amount may be applied by the Trustee to:
  - (a) pay a lump sum Benefit to the Member;
  - (b) pay another pension to the Member; or
  - (c) be allocated to the Member's Account(s).

## 14.8 Death Benefits

- 14.8.1 Upon the death of a Member:
  - (a) the Legal Personal Representative will be appointed a Trustee in accordance with **Rule 2.3** to attend to the disbursement of the Member's Benefit;
  - (b) the Trustee may continue to pay to the Legal Personal Representative any pension paid to the deceased Member.
- 14.8.2 Subject to the Relevant Law, the Trustee must distribute the balance of the Member's Accounts as a death Benefit to:
  - (a) one or more Dependant(s);
  - (b) the Legal Personal Representative; or
  - (c) any other Account(s) in the Fund.
- 14.8.3 If, pursuant to **Rule 9**, a Member makes a Non-Binding Death Benefit Nomination the Trustee may pay the Death Benefit as requested in the Non-Binding Death Benefit Nomination.
- 14.8.4 If, pursuant to **Rule 9**, a Member makes a Binding Death Benefit Nomination, the Trustee must comply with the Binding Death Benefit Nomination provided that the Death Benefit is paid to:

(a) the Legal Personal Representative; and / or

(b) a Dependant.

14.8.5 If the terms and conditions of a pension payable to the Member include a reversion to another person then the Trustee must pay the pension in accordance with **Rule 9.4.2**.

14.8.6 Subject to the Relevant Law, and notwithstanding any other provision of this **Rule 14.8** the Trustee may in its absolute discretion pay an additional amount from other Accounts and / or reserve, to the Legal Personal Representative or one or more of the deceased's Dependants.

14.8.7 Any additional amount paid as contemplated in **Rule 14.8.6** will not form part of the Member's Death Benefit.

#### **14.9 Suspension of Benefit**

The Trustee may suspend, alter or withhold any Benefit of a Member who:

14.9.1 deliberately fails to provide any information, or if information provided, it is carelessly incorrect, or deliberately misleading; or

14.9.2 otherwise fails to comply with the provisions of the Rules or the requirements of the Relevant Law.

#### **14.10 Preserved Benefits**

Nothing in this Deed requires or permits the payment of a Benefit to a Member where the Relevant Law requires that Benefit to be preserved.

### **15. Termination of the Fund**

#### **15.1 Termination**

The Fund will be terminated if the Trustee resolves to terminate the Fund, and for any of the following circumstances:

15.1.1 the Trustee considers that the Fund is Insolvent;

15.1.2 any reason that the Trustee considers appropriate;

15.1.3 there are no Members in the Fund; or

15.1.4 if the Members, by unanimous resolution, request the Trustee to terminate the Fund.

#### **15.2 Application of Assets**

Subject to the Relevant Law, the Trustee must apply the assets of the Fund in the following priority:

15.2.1 towards the costs of administering and winding up the Fund;

15.2.2 in paying or transferring Members' Benefits in accordance with these Rules; and



- 15.2.3 any remaining amounts to be paid by the Trustee to Members, Dependants, former Members, deceased Members or Legal Personal Representatives, in such proportions as the Trustee in its discretion determines is appropriate. The receipt by any person of any amount under this **Rule 15.2** will be in full discharge of any claims in respect of the Fund.

## **16. Alteration of the Deed and Rules**

### **16.1 Amendment**

The Trustee may by deed amend any of the provisions of the Deed or these Rules, provided that the amendment does not:

- 16.1.1 vary the main purpose of the Deed and Rules, being:
- (a) to establish a Regulated Superannuation Fund; and
  - (b) to provide Benefits to Members on retirement, or to the Dependants of Members in the event of death before retirement of the Member; or
- 16.1.2 subject to **Rule 16.2**, have the effect of reducing any Benefits that have accrued or have become payable to a Member before the amendment taking effect, except if:
- (a) any such reduction is required due to tax payable on income of the Fund;
  - (b) where the reduction is required so as to enable compliance with the Relevant Law;
  - (c) where the reduction is approved in writing by the affected Members; or
  - (d) the Regulator has, in writing, approved the reduction.

### **16.2 Consent of Members**

The Trustee must obtain the written consent of a Member where any amendment may alter the terms and conditions of a:

- 16.2.1 pension payable to the Member or their Dependants
- 16.2.2 Death Benefit Nomination made by the Member.

### **16.3 Amendments Subject to the Relevant Law**

Notwithstanding anything in this Rule, the Deed and the Rules cannot be amended if the amendment is contrary to the Relevant Law.

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## 17. Definitions

In this Deed and Rules unless the contrary intention appears:

**'Account'** means an account established by the Trustee for the purpose of administering the Fund or calculating the Benefits payable in respect of a Member or for any other purpose under the Deed or Rules;

**'Ancillary Purposes'** means those purposes that are defined in section 62 of the SIS Act;

**'Auditor'** means an approved auditor within the meaning of subsection 10(1) of the SIS Act, who is appointed for the purposes of auditing the Fund;

**'Benefit'** means the benefits payable or that may be payable to a Member or their Dependants or any other person under this Deed, Rules or the Relevant Law;

**'Complying Self Managed Superannuation Fund'** means a Fund that satisfies the requirements of section 42A of the SIS Act;

**'Concessional Contribution'** means an amount paid or an asset transferred in-specie to the Trustee for the benefit of Member(s) that is included in the assessable income of the Fund;

**'Core Purposes'** means those purposes for which the Fund is established that are defined in section 62 of the SIS Act;

**'Deed'** means the Deed establishing this Fund, and as amended;

**'Dependant'** means:

- (a) a Member's spouse, and where there is more than one person who fits that description, the person determined by the Trustee to be the Member's spouse;
- (b) a Member's child, including any person who is, in the Trustee's opinion maintained as a child by the Member; or
- (c) any other person with whom the Trustee considers the Member to have an interdependency relationship as defined in section 10A of the SIS Act;

**'Disqualified Person'** has the same meaning as in section 120 of the SIS Act.

**'Eligible Fund'** means a superannuation fund, an approved deposit fund, an eligible rollover fund, a rollover annuity, or any other like fund or annuity which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not, in the opinion of the Trustee, be in breach of the Relevant Law;

**'Excess Contributions Tax'** means any tax imposed by reason of the *Superannuation (Excess Concessional Contributions Tax) Act 2007 (Cth)* or the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2006 (Cth)* or successor legislation.

**'Financial Year'** means a period of twelve (12) months ending on 30 June, or such other period ending on a date determined by the Trustee;

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**'Gainfully Employed'** means employed or self-employed for gain or reward in any business, trade, profession, occupation, vocation or calling on a full time or part time basis;

**'Fund'** means all of the assets from time to time held by the Trustee in the trusts established by this Deed;

**'Insolvent'** means any one or more of the following:

- (a) unable to pay one's debts as and when they become due and payable;
- (b) in relation to a natural person, committing an act of bankruptcy under the *Bankruptcy Act 1996* (Cth);
- (c) in relation to a body corporate, becoming an externally administered body corporate as defined in the *Corporations Act* or having a provisional liquidator appointed; or
- (d) any other similar state, event or process;

**'Legal Personal Representative'** in relation to a Member means the executor of a will or administrator of the estate of a deceased Member, the trustee of the estate of a Member under a legal disability or a person who holds an enduring power of attorney granted by a Member;

**'Member'** means a person who has been admitted to membership of the Fund and includes the Legal Personal Representative of a Member;

**'Permanent Incapacity'** in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience;

**'Preservation Age'** means:

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

**'Regulated Superannuation Fund'** has the same meaning as contained in section 19 of the SIS Act.

**'Regulator'** means the Commissioner of Taxation or any person or entity appointed to regulate a Self Managed Superannuation Fund as defined in section 10(1) of the SIS Act.

**'Release Request'** is a written notice provided by the Regulator authorising the Member to withdraw monies from the Fund to pay Excess Contributions Tax as referred to at Rule 6.3.

**'Relevant Law'** means:

- (a) the *Superannuation Industry (Supervision) Act 1993 (Cth)* ('**SIS Act**');
- (b) the *Income Tax Assessment Act 1997 (Cth)* ('**Tax Act**');
- (c) the *Corporations Act 2001 (Cth)* ('**Corporations Act**');
- (d) any successor acts and all Regulations made pursuant to the above Acts;
- (e) any other legislation, requirements, standards, guidelines, rulings or announcements which must be complied with or that the Trustee considers desirable to comply with in order for the Fund to be a regulated and complying superannuation fund;

**'Review Date'** means the final day of each Financial Year and/or any other date the Trustee determines in its absolute discretion;

**'Retirement Age'** means:

- (a) age 65; or
- (b) if the Relevant Law 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;

**'Self Managed Superannuation Fund'** means a self managed superannuation fund within the meaning of the Relevant Law, or such other term as may apply to like style superannuation funds;

**'Splittable Contribution'** means a spouse contributions-splitting amount as defined in SIS Regulation 6.42;

**'Superannuation Interest'** in relation to a Member generally means the total amount of all superannuation lump sums that could be payable to the Member by the Fund at any time or it is such other interest as defined in section 995-1(1) of the Tax Act as determined by the Trustee with reference to section 307-200 of the Tax Act;

**'Taxes'** includes income tax (including capital gains tax) land tax, goods and services tax, stamp duty and any other taxes or duties; and

**'Temporary Incapacity'** in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;

**'Terminal Medical Condition'** has the meaning given by SIS Regulation 6.01A;

**'Trustee'** means the Trustee(s) for the time being of the Fund.

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## 18. Interpretation

In the Deed and Rules unless it is otherwise stated:

- 18.1 the **singular** includes the plural and vice versa;
- 18.2 a reference to a **person** includes any company, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 18.3 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 18.4 a reference to **amend** includes to add to, modify, vary, replace or delete;
- 18.5 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;
- 18.6 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 18.7 a reference to **pay** includes to credit or distribute;
- 18.8 the **headings** and sub-headings are for convenience only and do not affect the interpretation of these Rules.

## 19. Compliance with the Relevant Law

### 19.1 Inconsistency

If there is any inconsistency between the provisions of the Deed, the Rules and the Relevant Law, the Relevant Law will prevail to the extent of any such inconsistency.

### 19.2 Power to Act in Accordance with Relevant Law

The Trustee has the power to do, or omit to do, all acts and things as the Trustee considers necessary for the Fund to be a Complying Self Managed Superannuation Fund.

### 19.3 Deemed Inclusion of Relevant Law

Notwithstanding any provision of the Deed or the Rules, all the provisions of the Relevant Law that must be included in the Deed and the Rules from time to time in order for the Fund to be a Complying Self Managed Superannuation Fund under the Relevant Law are deemed to be included in the Deed and the Rules as if every such provision was set out in the Deed and the Rules, but only for so long as that deemed inclusion is necessary for the Fund to be a Complying Self Managed Superannuation Fund under the Relevant Law.

## **20. General**

### **20.1 Failure to enforce rights**

The failure or omission of the Trustee to enforce or require strict compliance with a provision of the Deed or the Rules does not affect or impair the Trustee's right to subsequently enforce or require strict compliance with that provision or to avail itself of any remedies it may have in respect of any breach of that provision.

### **20.2 Preservation of rights**

All rights given to a Member under the Deed or the Rules are cumulative of each other and in addition to and do not abrogate, limit or reduce any other rights that beneficiary may have at law, under any other agreement, or otherwise.

### **20.3 Further assurance**

The Trustee must promptly execute all documents and do all things to effect, perfect or complete the Deed and all transactions incidental to it.

### **20.4 Governing law**

The Deed and Rules are governed by the laws of the state in which the Trustee is situate and the Commonwealth of Australia. The Trustee may by resolution nominate that the laws of a different State will prevail.

### **20.5 Severance**

Subject to **Rule 16.3**, a provision of the Deed or these Rules that is invalid or unenforceable must be severed. All other provisions of the Deed and these Rules continue to be valid and enforceable in accordance with their terms.