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**TRUST DEED FOR THE  
BT HARDIE SUPERANNUATION  
FUND**

16

**DATED** 15<sup>th</sup> MAY 2003

**PARTIES**

**DARIEN HOLDINGS PTY LTD**  
ACN 102 212 813

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Western Australia



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**BT HARDIE SUPERANNUATION FUND**

**PARTICULARS**

**DATE OF DEED:** The 15<sup>TH</sup> day of MAY 2003

**NAME OF FUND:** BT HARDIE SUPERANNUATION FUND

**TRUSTEES:** DARIEN HOLDINGS PTY LTD  
ACN 102 212 813 of "Curragen" Farm,  
Dwarda East Road, Williams, Western  
Australia

**RESTRICTIONS ON PERSONS,  
OR CLASS OF PERSONS, ELIGIBLE  
TO BE MEMBERS  
(IF APPLICABLE, SEE CLAUSE 6.1)**



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**THIS DEED** is made on the date set out in the Particulars.

**BY:** The Person(s) named in the Particulars as the trustee ("**Trustee**")

## **INTRODUCTION**

- A.** The Trustee wishes to establish and maintain a superannuation fund to provide superannuation benefits for those persons who become members of the Fund and in the event of their death for their Dependents.
- B.** The Trustee has agreed to act as the first trustee of the Fund in accordance with the provisions of this Trust Deed.
- C.** The Fund is established and maintained for the primary purpose of providing superannuation benefits for Members in the event of their retirement or in other circumstances as specified in SIS or for the Members' Dependants if a Member dies.

## **IT IS AGREED**

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### **1. The Fund**

#### **1.1 Establishment**

The Trustee establishes a fund (the "**Fund**") with the name set out in the Particulars as from the date of execution of this Deed.

#### **1.2 Purpose**

The Trustee agrees to maintain the Fund for the primary purpose of providing superannuation benefits for the Members in the event of their retirement and for the other core and ancillary purposes set out in SIS. The Fund must therefore have a corporate trustee.

#### **1.3 Self Managed Fund**

The Trustee may operate the Fund so that it is a self managed fund, and if so the provisions of this Deed not applicable to such funds do not need to be adhered to.

### **2. Covenants to Perform**

#### **2.1 General**

The Trustee for itself and its successors agrees to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustee.

#### **2.2 The Requirements**

The Trustee covenants to comply with the Requirements.

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### **3. Fund Trustee**

#### **3.1 General**

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

#### **3.2 Retirement, Removal of the Trustee**

A person must cease to act as a Trustee (or as Director of a corporate Trustee) if:

- (1) the Members give a written notice of removal;
- (2) the Trustee gives a written resignation to the Members;
- (3) a director gives a written resignation to the corporate Trustee, or to the Members;
- (4) the Trustee is disqualified from holding office by operation of law (in particular SIS);
- (5) being an individual, the Trustee dies;
- (6) being a company, the Trustee is wound up;

#### **3.3 Appointment**

- (1) The then Trustee (or if there is no Trustee the Members) must appoint a new or additional trustee. The board of directors may appoint a new or additional director of a corporate trustee.
- (2) If for any reason the Members are unable to appoint a new Trustee then a new Trustee (or director) may be appointed by any person who is or may be a Beneficiary and if more than 1 then by majority

#### **3.4 Self Managed Fund**

- (1) The Trustee and the Members must use their best endeavours to ensure the Fund remains a self managed fund.
- (2) The Trustee and the Members agree that if the Fund fails the definition of self managed fund then they will take action necessary to rectify, failing which they must appoint an approved trustee as required by SIS.

#### **3.5 Corporate Trustee**

The Trustee must (except for any period during which the provisions are to the effect that the sole or primary purpose of the Fund is the provision of old age pensions) be a constitutional corporation as defined in SIS.

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### **3.6 Vesting of Assets**

Any person who acts as a Trustee must on ceasing to be a Trustee do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

### **3.7 Vacancy**

- (1) In the event of a vacancy occurring, a new Trustee must be appointed within 60 days.
- (2) If for any reason there is no Trustee of the Fund at any time the Members must undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions.
- (3) If the Trustee is an individual and the Members are unable to appoint a new Trustee then upon the death of the Trustee the Trustee's legal personal representative becomes the Trustee until a new Trustee is appointed.

## **4. Trustee's Powers of Management**

### **4.1 Powers**

The Trustee has the following powers:

- (1) those which it has at law;
- (2) those contained elsewhere in this Deed;
- (3) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (4) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;
- (5) to borrow but only if consistent with the Requirements;
- (6) to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance or like company;
- (7) to purchase an Annuity to provide all or a part of a pension payable in respect of a Member;
- (8) to retain the services of and to appoint professional or other advisers (including actuaries) in relation to the management, administration or investment of the Fund;
- (9) to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund;

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- (10) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
  - (11) to comply with any order of any Tribunal, Board, Court or Authority; and
  - (12) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

#### **4.2 Trustee Fees**

For any period the Fund is a self managed fund, the Trustee must not be paid any fees but may recover costs and disbursements incurred.

#### **4.3 Trustees Indemnity**

The Trustee (and in the case of a Trustee company, each director) is, except in the case of:

- (1) fraud;
- (2) wilful or reckless failure to exercise proper care and diligence; or
- (3) a civil penalty order pursuant to SIS,

indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law.

#### **4.4 Information Confidential**

The Trustee must maintain strict confidentiality (so far as practicable) of all information disclosed to or gained by it in the course of administering the Fund.

#### **4.5 Trustee's Discretion**

The Trustee in the exercise of the powers and discretions conferred by this Deed has an absolute and uncontrolled discretion. If after the exercise of a discretion, the Trustee for any reason forms the opinion that the discretion should be exercised differently, then the Trustee may, subject to the Requirements, re-exercise that discretion.

#### **4.6 Comply with the Regulator**

The Trustee must abide by all lawful applicable directions, orders and authorities of the Regulator in force from time to time.



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## **5. Trustee's Powers of Investment and Sale**

### **5.1 Trustee to Invest**

The Trustee has power to invest in:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (2) any loan, whether secured or not, or mortgage;
- (3) on deposit with any bank, building society or like financial institution;
- (4) on deposit with or on loan to any person or organisation whatsoever (including an Employer) with or without security and at such rate of interest upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly;
- (5) in shares, stock, or warrants (of any class or description) or of any type of bond, debenture, note, option or other like security and whether the shares, stock or warrants are fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (6) any policy of assurance;
- (7) any annuity or like product;
- (8) any chose in action;
- (9) the purchase or acquisition of any real or personal property and the improvement or extension thereof;
- (10) any unit, sub-unit or interest in any trust whether such units, sub-units or interests are fully paid up or whether their issue involves any contingent or reserve liability;
- (11) any other investments which the Trustee considers appropriate and which are consistent with the Requirements;

provided that all investments and purchases are consistent with the Requirements and the Fund's investment strategy.

5.2 The Trustee may earn income or profit on Fund investments in any way it chooses, including by:

- (1) leasing, developing, subdividing or granting rights (e.g. profits à prendre) over property;
- (2) granting options, warrants and like instruments over shares and stocks

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provided that the Trustee is not obliged to derive income on a Fund asset and may hold the asset for capital growth.

## **6. Membership of Fund**

### **6.1 Invitation by Trustee**

Membership is by written application to, and acceptance by, the Trustee in its absolute discretion.

6.2 If the Particulars specify the persons eligible to become members no person other than the persons specified are eligible to become Members.

6.3 If the Fund is (and is to remain) a self managed fund:

- (1) each member must be appointed a Trustee or a director of the corporate trustee; and
- (2) no person may become a member who is an employee of another member or associate unless they are relatives.

### **6.4 Application Form and Information**

- (1) An application for membership must be made in writing and may be in the form of Schedule 1.
- (2) The Member must supply such information to the Trustee as the Trustee requires for the purposes of the Fund.

### **6.5 Admission of Member**

If the Trustee decides to admit a person as a Member the Member joins:

- (1) on the date determined by the Trustee;
- (2) if the Trustee makes no such determination, the same date as the completed application for membership;

on admission the Trustee must give to the new Member the information (if any) specified in the Requirements

### **6.6 Type of Membership**

The Trustee may determine different classes, groups or types of membership.

### **6.7 Conditions of Membership**

The Trustee may impose conditions on membership and may impose limits or conditions upon Benefits.

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## 6.8 Cessation of Membership

A person ceases to be a Member on:

- (1) the date of payment of all his Benefits;
- (2) his death; or
- (3) the provisions of clause 21.2 or otherwise operating to terminate his membership.

## 6.9 Self Managed Fund

If the Fund is (and is to remain) a self managed fund then:

- (1) a Member must on becoming a disqualified person immediately resign as a Member and advise the Trustee as to how the Member's Benefits are to be paid; and
- (2) the Member must immediately retire as a Trustee or director of a corporate trustee (if so required for the Fund to remain a self managed fund).

6.10 Nothing in clause 6.2 prevents a person from becoming entitled to a benefit (and accordingly becoming a Member) due to the membership of another person (and without limiting the generality of the foregoing because of the death of the Member or pursuant to clause 21).

## 7. Meetings of Members, Trustees and Directors

7.1 Unless agreed otherwise the procedure set out in this clause applies to meetings of Members, Trustees and Directors of a corporate Trustee.

### 7.2 Notice

To call a meeting requires a notice requesting a meeting to be served on the other parties signed by at least one party.

### 7.3 Trustee convene

The standing chairman (or chairman of the last meeting) must convene a meeting as soon as practicable and send a notice of meeting to each person.

### 7.4 Notice of Meeting

The Notice must be posted or given not less than 7 days and not more than 14 days before the meeting and specify:

- (1) the place and time of the meeting;
- (2) if the Member may appoint a proxy to vote on his behalf at the meeting; and

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(3) the matters (and any motions) to be considered at the meeting.

#### **7.5 Conduct of Meeting**

Those present must appoint a Chairman of the meeting who may determine the conduct of the meeting.

#### **7.6 Quorum**

A quorum for the meeting is two-thirds of the persons entitled to be present in person or by proxy. If a quorum is not present within 30 minutes of the time appointed for the meeting the Chairman of the meeting must adjourn the meeting to the same time and place in each following week thereafter until a quorum is present in person or by proxy.

#### **7.7 Members Vote**

Each person (including the Chairman) is entitled to one vote.

#### **7.8 Decisions**

Decisions require a two-thirds majority of those entitled to attend to vote in favour of the decision.

### **8. Fund Records**

#### **8.1 Receipt**

A receipt given on behalf of the Fund by the Trustee or by Trustee's delegate is a sufficient discharge to the person paying the money.

#### **8.2 Accounts etc**

The Trustee must:

- (1) keep account of all moneys received by and disbursed from the Fund and of all Fund dealings;
- (2) keep records and accounts in proper order;
- (3) make suitable arrangements for custody of all Fund documents;
- (4) prepare accounts as at the end of the Fund Year, as are specified in the Requirements and arrange for the Fund audit; and
- (5) provide to the Members, any Employers, and other persons reports, statements and notices as are specified in the Requirements.

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### **8.3 Inspect Deed**

A Member may inspect the Deed at the registered office of the Trustee during hours when that office is open.

### **8.4 Employer Information**

An Employer must give to the Trustee on the Trustee's all information which may be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer without further enquiry.

## **9. Accounts and Earnings**

### **9.1 Establishment of Accounts**

The Trustee must establish such accounts, including one or more Accumulation Accounts for each Member as the Trustee determines necessary for the operation of the Fund.

### **9.2 Credits to Accumulation Account**

The Trustee must credit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (1) any amount paid into the Fund in respect of the Member whether contributions or a rollover payment;
- (2) the proceeds of any policy of assurance effected by the Trustee in respect of the Member;
- (3) positive earnings as are allocated by the Trustee;
- (4) such forfeited amounts as allocated (unless paid directly to the Member).

### **9.3 Debits to Accumulation Account**

The Trust must debit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (1) any amount paid out of the Fund in respect of the Member whether as a benefit, a transfer or a rollover payment;
- (2) the costs of any policy of assurance effected by the Trustee in respect of the Member;
- (3) negative earnings as apportioned by the Trustee;
- (4) any amount forfeited by the Member;

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- (5) any costs (including Taxation) that relate to that particular Member as may be determined by the Trustee.

#### 9.4 **Establishment of Income Account**

The Trustee must establish an Income Account for the Fund.

#### 9.5 **Credits to Income Account**

The Trustee must credit the Income Account with all amounts properly referable to that account including:

- (1) income and profits of the Fund each year;
- (2) any surplus arising from a valuation of assets; and
- (3) any contributions in respect of costs.

#### 9.6 **Debits to Income Account**

The Income Account shall be debited with the following:

- (1) any loss sustained on the disposal of any investments of the Fund;
- (2) any costs or charges incurred or provided for (including Tax);
- (3) any deficiency arising from a valuation of Fund assets;
- (4) the allocation of earnings to the Member's Accumulation Accounts;
- (5) any transfers to a Reserve Account pursuant to clause 9.9.

#### 9.7 **Earning Rate**

At the end of each Fund Year the Trustee must determine at its discretion the earning rate (which may be negative) for the Fund ("**Fund Earning Rate**") taking into account the Fund's income and profits, the Fund's Reserves (and the purposes of those Reserves) and such other matters as the Trustee considers relevant.

#### 9.8 **Allocation of Earning Rate**

The Trustee must adjust each Accumulation Account and Reserve Account by allocating the earnings due in accordance with the Fund Earning Rate (in proportion to the amount standing to the credit of each Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to each Account since that date).

#### 9.9 **Unallocated earnings**

Any amount remaining in the Income Account after distribution of earnings must be transferred to a Reserve Account.

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#### 9.10 Interim Earning Rate

If the Trustee is required to pay a Benefit during the course of a Fund Year, the Trustee must determine a Fund Earning Rate to the date of payment on an equitable basis and debit or credit the appropriate Member's Accumulation Account accordingly.

#### 9.11 Specific Investments

- (1) The Trustee may invest or hold assets separately in respect of:
  - (a) certain Members;
  - (b) certain classes or groups of Members; or
  - (c) a Reserve Account.
- (2) The Trustee must record on whose behalf (or for which Account) such specific investments are made.
- (3) The income and profits (less losses and expenses) arising from such specific investments are to be allocated directly to the appropriate Member's Accumulation Account or the Reserve Account.

#### 9.12 Members interest in assets

No Member or Beneficiary has or acquires beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole except where the Trustee has invested specific assets under clause 9.11.

#### 9.13 Reserve Account

- (1) The Trustee may establish one or more Reserve Accounts for the Fund.
- (2) Any amounts held in a Reserve Account do not form part of any Accumulation Account.
- (3) A Reserve Account may be used by the Trustee in the Trustee's absolute discretion to augment Member's Benefits, to stabilise the investment earnings of the Fund to enable the payment of complying pensions, or for such other purpose as the Trustee sees fit.
- (4) The Trustee has the discretion to deal with the assets of a Reserve Account as forfeited benefits as per clause 21.4.
- (5) The following amounts may be credited to a Reserve Account:
  - (a) forfeited benefits pursuant to clause 21;
  - (b) amounts remaining in the Income Account pursuant to clause 9.9;

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- (c) income generated from assets held specifically for the Reserve Account;
  - (d) contributions the contributor has advised the Trustee are to be credited to the Reserve Account.

## **10. Audit**

### **10.1 Appointment of Auditor**

The Trustee must appoint an auditor or other person able to audit the Fund pursuant to the Requirements to carry out an annual audit of the accounts and records of the Fund.

### **10.2 Auditor's Report**

- (1) The Trustee must give the auditor access to all papers, accounts, books, records and documents in respect of the Fund.
- (2) The Trustee must give a copy of the auditor's report to the Members and any Employers.

### **10.3 Auditors queries**

The Trustee shall use its best endeavours to satisfactorily respond to any matters raised by the Auditor pursuant to SIS.

## **11. Disclosure Standards**

### **11.1 Disclosure**

The Trustee must disclose to:

- (1) the Regulator;
- (2) the Members (including prospective and former Members);
- (3) any Employers;
- (4) the trustee of any other fund to which a rollover payment is made;
- (5) the auditor; and
- (6) such other persons as may be specified in the Requirements,

such information from time to time concerning the Fund, Contributions and Benefit entitlements as the Trustee determines reasonable, and in particular so as to satisfy the disclosure provisions in the Requirements.



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## **12. Complaint Resolution Procedure**

### **12.1 Implementation**

The Trustee may (but is not obliged to unless the Fund is no longer a self managed fund) implement a complaints resolution procedure.

## **13. Fund Assets**

### **13.1 Acceptance of Money**

The Trustee must deposit all money of the Fund as soon as practicable to the credit of an account in the name of the Fund kept with a Bank, Building Society or similar body as determined from time to time by the Trustee or into a trust account of a Solicitor, Accountant or Investment Manager appointed pursuant to this Deed.

### **13.2 Acceptance of Assets**

The Trustee may accept a transfer of assets and must become the registered owner (or appoint a Custodian trustee to hold the assets) of the assets as soon as practicable. Any asset transfers by way of contribution must be recorded at market value.

### **13.3 Assets in Name of Trustee or Custodian**

The Trustee must hold the Fund's assets in the name of the Trustee or may appoint another person in writing for that purpose (provided that if the Fund is not a self managed fund the person must satisfy the Requirements to be a custodian of Fund assets).

## **14. Policies of Assurance**

### **14.1 Power to Insure**

- (1) The Trustee take out life insurance on the life of any Member to augment death or disablement benefits to the relevant Member.
- (2) In the event of death or disablement the Trustee shall credit the Accumulation Account of the Member or former Member with the amount of the proceeds received under the policy of assurance less any expenses.

### **14.2 Premiums**

Premiums may be debited to the Accumulation Account of the relevant Member or the Income Account as the Trustee determines.

### **14.3 Inform Member**

The Trustee must inform the Member of any policies in effect for that Member as specified in the Requirements.

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## **15. Contributions**

### **15.1 Contributors**

- (1) Any person may make contributions to the Fund if the Trustee agrees.
- (2) The contributor must identify the Member for whom the contributions are made (unless unallocated) and the Benefits to which they are to fund.

### **15.2 Contribution in Cash or Assets**

Contributions may be paid in cash or by transfer of assets provided that where a contribution is made by the transfer of an asset:

- (1) the Trustee must determine if the asset transferred is appropriate;
- (2) the Trustee must value the asset for the purposes of the Fund's accounts; and
- (3) there is no breach of the Requirements or this Deed.

### **15.3 Unallocated Contributions**

The Trustee may accept unallocated contributions or contributions subject to conditions or directions.

### **15.4 Reallocation of Contributions**

The Trustee may, with the consent of the person contributing, or for whom the contributions are made, and if SIS permits, reallocate contributions to other Members, or to other accounts within the Fund.

## **16. Transfers to Other Funds**

### **16.1 Transfers out**

If a Member requests all or part of his entitlement in the Fund is transferred to another superannuation or like entity ("**Entity**") the Trustee may pay the amount (or transfer investments of equivalent value) to the trustee of the Entity ("**Rollover**").

### **16.2 Requirements**

The Rollover must comply with the Requirements.

### **16.3 Transfer of Restricted Benefits**

Where the Rollover contains Restricted Benefits the Trustee may assume that the Entity's governing rules will ensure that such amounts are preserved or dealt with in accordance with the Requirements.

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#### **16.4 Discharge**

Valid payment of the Rollover is a discharge to the Trustee of all liability in respect of it and the Trustee is not responsible to see to its application.

#### **16.5 Complete Documents**

The Member must complete the documentation required by the Trustee to enable the Rollover to occur.

#### **16.6 Consent**

Unless permitted by the Requirements the Trustee must not effect a Rollover without the consent of the Member.

#### **16.7 Payments authorised by SIS**

The Trustee:

- (1) must pay benefits described in section 244(3) of SIS; and
  - (2) may pay Benefits described in section 244(1) of SIS,
- to an eligible rollover fund as determined by the Trustee.

### **17. Transfers from Other Funds**

#### **17.1 Transfers in**

The Trustee may accept money or assets by transfer or otherwise from the trustee of an Entity by way of Rollover.

#### **17.2 Acceptance of Restricted Benefits**

Where the Trustee is advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustee must deal with such amount in accordance with the Requirements.

#### **17.3 Amount, Composition of Entitlement**

On any transfer in accordance with this clause, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustee and the composition thereof is as determined by the Trustee having regard to the information provided by the trustee of the Entity.

### **18. Payment of Benefits**

#### **18.1 Requirements**

Benefits must be paid in a manner consistent with the Requirements.

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## 18.2 Procedure before Benefits payable

Benefits accrue and are due and payable when:

- (1) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustee:
  - (a) the evidence as the Trustee requires as to the entitlement to the Benefit;
  - (b) a written request that the Trustee pay the Benefit to or in respect of the Member identifying the intended recipient; and
- (2) the Trustee has:
  - (a) received the evidence and the request;
  - (b) determined in writing that the benefit is payable; and
  - (c) notified in writing the person requesting the benefit of the Trustee's determination.

## 18.3 Address etc

Benefits are payable in the manner and to the address of the Member or Beneficiary advised to the Trustee from time to time or as otherwise determined by the Trustee.

## 18.4 Receipt

Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release as required by the Trustee.

## 18.5 Deduction of Tax from Benefits Payable

The Trustee must deduct any Taxation from any Benefit payable.

## 18.6 Deferral

With the consent of the Member the Trustee may defer payment (or commencement of payment) of a Benefit until the earlier of:

- (1) the Member's request for the Benefit to be paid; or
- (2) when the Requirements specify the Benefit must be paid.

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## **19. Transfer in Specie**

### **19.1 Assets**

The Trustee may with the consent of the person entitled to a Benefit transfer investments of the Fund of equivalent value in lieu of paying the whole or part of the amount otherwise payable.

## **20. Payment to Others on Behalf of Members or Beneficiaries**

### **20.1 Payment to Others**

(1) Where:

- (a) any Member or Beneficiary is under the age of 18 years; or
- (b) it would be in the Trustee's opinion in the best interests of the Member or the Beneficiary,

the Trustee may pay all or part of any Benefit to any other person to be held on trust for, or for application on behalf of, the Member or the Beneficiary.

- (2) The receipt of the person to whom the Benefit is paid is a good discharge to the Trustee and is deemed to be payment to the Member or the Beneficiary. The Trustee is not bound or concerned to see to the application of the Benefit so paid.

## **21. Forfeiture of Benefits**

### **21.1 Forfeiture**

All Benefits:

- (1) accruing; or
- (2) accrued,

are held by the Trustee upon the trusts herein contained until the Member or Beneficiary:

- (3) assigns or charges or attempts to assign or charge any Benefit;
- (4) loses entitlement to his Benefits (whether by his own act, operation of law, Court order or otherwise) because the Benefits become payable to or vested in any other person, company, government or other public authority;
- (5) who has a judgment entered against him for an amount not less than \$10,000;
- (6) who has a garnishee order made against him;

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- (7) who becomes insolvent; or
  - (8) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs,

## 21.2 Forfeiture

Upon the happening of an event as described in clause 21.1, subject to the Requirements and the *Bankruptcy Act*, any Member or Beneficiary immediately forfeits entitlement to:

- (1) all his Benefits which are accruing or may thereafter accrue;
- (2) all his Benefits which have at that time accrued,

other than that part which represents the Member's Minimum Benefit. If there is no Minimum Benefit he shall cease to be a Member of the Fund.

## 21.3 Residual Amounts

Any Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid to him and who still has a residual amount standing to the credit of his Accumulation Account shall forfeit such amount forthwith and such amount shall be dealt with as a Forfeited Benefit.

## 21.4 Dealing with Forfeited Benefits

The Trustee must hold upon trust and pay or apply any Benefits which have been forfeited as follows:

- (1) to or for the benefit of the former Member or Beneficiary or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee determines provided that any payment from the Fund is consistent with the Requirements (whether by payment to, or crediting to an account within the Fund established for, such person);
- (2) to or for the benefit of Members and former Members of the Fund who have rights to receive Benefits from the Fund or for their Dependants on a basis that the Trustee considers reasonable having regard to all the circumstances (and if more than one of them in such proportions between them and on such terms as the Trustee determines) (whether by payment to, or crediting to an account within the Fund established for, such person);
- (3) to a Reserve Account;
- (4) in lieu of Contributions; or
- (5) for any other purpose consistent with the Requirements or approved from time to time by the Regulator.

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21.5 In exercising its powers under this clause the Trustee may (and to the extent required by law must) preserve and distribute as the Trustee sees fit the various tax and SIS components of the amount forfeited (and without limiting the foregoing the "*undeducted contributions*" as defined in the ITAA and "*unrestricted non-preserved*" benefits as defined in SIS).

**21.6 Balance to former Members on Winding-Up**

If on the winding up of the Fund there remains no person entitled to any Benefits forfeited hereunder then any residual amount shall be apportioned amongst the former Members or contributors (including Employers) in such proportions as the Trustee determines.

**22. Excessive Benefits**

**22.1 Limit on Benefits**

Notwithstanding any other clause of this Deed, unless the Trustee determines otherwise the RBL amounts of Benefits payable to any Member are limited (when added to the RBL amounts of any benefits which the Member has already received) to the Member's Pension RBL.

**22.2 Excess Benefits**

The Trustee may deal with the Benefits in excess of the Member's Pension RBL as the Trustee determines, including treating such amount as a Forfeited Benefit.

**23. Pension Benefits**

**23.1 Terms of Pension**

The Trustee and the Member or the Beneficiary, must agree the terms upon which a Pension is payable including:

- (1) the commencement day of the pension;
- (2) the frequency of instalments;
- (3) the amount (whether variable or constant);
- (4) if it is payable during the life of the Pensioner, for a fixed period, or is an allocated pension;
- (5) whether on the death of the Pensioner the pension has a reversionary component; and
- (6) whether the Pension can be commuted.

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## 23.2 Trustee may vary

The Trustee may, with the agreement of the Pensioner vary the frequency or basis upon which a Pension is payable.

## 23.3 Allocated Pension

- (1) If the Trustee determines to pay an allocated pension then the terms upon which the pension is payable are deemed to include the following minimum terms:
  - (a) the pension shall not be able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
  - (b) the capital value of the pension and the income from it cannot be used as security for a borrowing;
  - (c) payments are made at least annually;
  - (d) the payments in a year, except a payment by way of commutation, are not larger nor smaller in total than the maximum and minimum limits for a pension calculated in accordance with Schedule 1A of the Superannuation Industry (Supervision) Regulations;
  - (e) if the commencement day of the pension occurs before 1 April in the financial year then there must be an amount paid, calculated pro rata on a daily basis during that financial year.

## 23.4 15 Year/Life Expectancy Pensions

If the Trustee determines to pay a 15 year/life expectancy pension (must not commence prior to the age at which the Member would be entitled to receive the age pension) then the terms upon which the pension is payable are deemed to include the following minimum terms:

- (1) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary:
  - (a) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years – throughout a period equal to the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); or
  - (b) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more – throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the



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next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); and

- (2) 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) is fixed and that payment, or the first of those payments, relates to the period commencing on the day when the primary beneficiary became entitled to the pension; and
- (3) 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) does not fall below the total amount of the payments made in the immediately preceding year ("**previous total**"), and does not exceed the previous total:
  - (a) if  $CPI_c$  is less than or equal to 4% - by more than 5% of the previous total; or
  - (b) if  $CPI_c$  is more than 4% - by more than  $CPI_c + 1\%$ ;

where:

$CPI_c$  is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

and

- (4) the total amount of payments to be made in a year in accordance with clause 23.4(3) may be varied only to allow commutation to pay a superannuation contributions surcharge; and
- (5) the pension does not have a residual capital value; and
- (6) the pension cannot be commuted except:
  - (a) within 6 months after the commencement day of the pension; or
  - (b) by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
  - (c) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
  - (d) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under rules that meet the standards of SIS subregulation 1.06(2), (3) or (7) or under a contract that meets the standards of SIS subregulation 1.05(2), (3) or (9); or

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- (e) to pay a superannuation contributions surcharge; and
  - (7) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
  - (8) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
  - (9) the pension cannot be transferred to a person except:
    - (a) 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
    - (b) on the death of the reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
  - (10) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.

#### 23.5 Complying Lifetime Pension

- (1) If the Trustee determines to pay a complying lifetime pension then the terms upon which the pension is payable are deemed to include the following minimum terms.
- (2) The pension is in accordance with the following:
  - (a) the pension is paid 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 16<sup>th</sup> 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 25<sup>th</sup> birthday (whichever occurs sooner); and
  - (b) the size of payments of benefit in a year is fixed, allowing for variation only:
    - (i) as may be specified in the governing rules; or
    - (ii) to allow commutation to pay a superannuation contributions surcharge; and

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- (c) unless APRA otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:
- (i) if  $CPI_c$  is not less than  $CPI_p$  – not less than  $SP_p$ ; or
  - (ii) if  $CPI_c$  is less than  $CPI_p$  – not less than:  
$$\frac{CPI_c}{CPI_p} \times SP_p$$
  - (iii)  **$CPI_c$**  means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made;
  - (iv)  **$CPI_p$**  means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;
  - (v)  **$SP_p$**  means the sum payable in the immediately preceding year;
- (d) the pension does not have a residual capital value; and
- (e) the pension cannot be commuted except:
- (i) if the commutation is made within 6 months after the commencement day of the pension; or
  - (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; or
  - (iii) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under:
    - (A) rules that meet the standards of this SIS regulation 1.06(2) (3) or (7); or
    - (B) provided under a contract that meets the standards of SIS regulation 1.05(2) or (3); or
  - (iv) to pay a superannuation contributions surcharge; and
- (f) if the pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and

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- (g) that the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
  - (h) that the capital value of the pension and the income from it, cannot be used as security for a borrowing;

provided that the pension may provide that:

- (i) if the primary beneficiary dies within 10 years after the commencement day of the pension, a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period of 10 years; and
- (j) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sums of the amounts that would have been so payable in the period of 10 years, is payable to the primary beneficiary's estate; and
- (k) 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, there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (j) as if that paragraph applied to the reversionary beneficiary.

### **23.6 Purchase of Pension or Annuity**

If the Trustee determines a Pension may be provided by way of purchase of a Pension or Annuity from a life office or like provider.

## **24. Commutation of Pension**

### **24.1 Commutation**

The Trustee may on the written application of a Member or Beneficiary commute all or part of a Pension to a Lump Sum if permitted under, and in a manner consistent with, the Requirements as follows:

- (1) the Trustee must determine the amount of the Lump Sum payable in respect of the Pension being commuted and may for that purpose obtain the advice of an actuary;
- (2) if there is an amount remaining, the Trustee (who may obtain the advice of an actuary) must determine the remaining Pension.

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## **25. Lump Sum Benefits**

### **25.1 Time for Payment**

- (1) The Trustee and the Member must agree the date on which the Benefit is payable.
- (2) The Trustee may defer for a period up to 12 months payment of the Benefit if payment could endanger the financial security of the Fund.

### **25.2 SIS Limitation**

The payment of a Lump Sum (including by way of commutation of Pension) must be consistent with SIS.

## **26. Conversion of Lump Sum to Pension**

### **26.1 Application**

On the written application of a Member or Beneficiary the Trustee may pay a Pension in lieu of the whole or any part of a Lump Sum Benefit.

## **27. Retirement and Termination Benefits**

### **27.1 Form of Benefit**

If a Member:

- (1) has terminated employment or retired in circumstances where the Requirements permit the Benefit to be paid and the Member having requested the Benefit be paid;
- (2) having retired from employment and attained the age when the Benefit must be paid,

the Trustee must pay to the Member his Benefit by way of Pension or Lump Sum as requested by the Member.

### **27.2 Amount of Benefit**

The Benefit shall, subject this Deed, be equal to or be calculated by reference to the Member's Accumulation Account.

### **27.3 Discretionary Benefit**

The Trustee may pay an additional amount of Benefit.

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## **28. Benefits for Permanent Incapacity or Permanent Invalidity**

### **28.1 Form of Benefit**

If a Member has ceased to be gainfully employed as a result of Permanent Incapacity or Permanent Invalidity, the Trustee must pay to or in respect of the Member his Benefit by way of Pension or Lump Sum as requested by the Member.

### **28.2 Amount of Benefit**

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the Member's Accumulation Account.

### **28.3 Discretionary Benefit**

The Trustee may pay an additional amount of Benefit.

## **29. Death Benefits**

### **29.1 Form of Benefit**

Upon the death of a Member or Pensioner before the whole of his Benefit has been paid to him, the Trustee must pay the Benefit by way of Lump Sum or Pension as determined by the Trustee in consultation with each Beneficiary.

### **29.2 Amount of Benefit**

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the former Member's Accumulation Account.

### **29.3 Discretionary Benefit**

The Trustee may pay an additional amount of Benefit.

### **29.4 Binding Nomination**

The Trustee must pay all or part of the Benefit (whether Lump Sum or reversionary Pension) in accordance with a binding nomination (as per SIS Regulation 6.17A) if it is valid.

### **29.5 No Binding Nomination**

(1) To the extent to which there is no binding nomination the Trustee must pay the Benefit amongst one or more of:

- (a) the Dependants of the former Member or Pensioner;
- (b) the Estate of the former Member or Pensioner;

in the manner, at the times, and in such proportions between them, and if more than one, as the Trustee determines.

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- (2) The Trustee must have regard to, but is not bound by a non-binding nomination of a Nominated Dependant.
  - (3) If there is no Dependant and the Trustee is of the opinion that a Grant of Probate or Letters of Administration in respect of the Estate will be not made the Trustee must pay the Benefit to one or more other persons (having regard to any wishes stated by the Member, the Member's next of kin and all relevant circumstances) or be treated as a Forfeited Benefit.

29.6 The Trustee may allocate the separable components of a Lump Sum amongst the recipients as it sees fit.

### **30. Splitting Superannuation interests on Divorce**

30.1 This clause applies if a Member's interest in the Fund is subject to Part VIII B of the *Family Law Act 1975*.

30.2 The Trustee:

- (1) must take action as lawfully required of it in respect of a Member's interest in the Fund pursuant to Part VIII B of the Family Law Act, the Family Law (Superannuation Regulations) or by Superannuation Law; and
- (2) may for that purpose promulgate rules or protocols (consistent with such law) to the Fund as it in its absolute discretion determines.

30.3 A non-member spouse as defined in Part VIII B of the Family Law Act is deemed not to be a member of the Fund (in respect of his or her entitlement as a non-member spouse) except:

- (1) as specified by Superannuation Law;
- (2) as necessary to give effect to:
  - (a) the non-member's rights under the Family Law Act or the Family Law (Superannuation) Regulations; and
  - (b) payment or transfer of the non-member spouse's entitlement (including on his or her death in which case the Trustee has the same discretions and powers to pay his or her entitlement as if the non-member spouse were a Member);

and except as specified in this clause has no rights or entitlements under the Fund.

30.4 The Trustee may (but is not obliged to) create a separate interest or account for a non-member spouse.

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30.5 The Trustee may, in its absolute discretion, but subject to Superannuation Law (and provided the Fund does not lose its status as a self managed fund), determine:

- (1) fees, recoverable at the Trustee's discretion from:
  - (a) any Contribution Account of the Member,
  - (b) any account established for, or any amount held for the benefit of the non-member spouse;
  - (c) the Member's Benefit; or
  - (d) the non-member spouse's Benefit; or
  - (e) the Member or the non-member spouse personally;

provided that the fees are payable or borne by, the Member spouse and non-member spouse in equal parts, unless otherwise authorised by Regulation 59 of the Family Law (Superannuation) Regulations;

- (2) a non-member spouse is not otherwise entitled to a Benefit and the non-member spouse's Benefit is dependent upon the Benefit of the Member in accordance with Part VIII B of the Family Law Act.

## 31. Reallocation of Benefits

31.1 The Trustee may, with the consent of the recipient of the Benefit, and if SIS permits, reallocate Benefits otherwise payable to the recipient to other Members of the Fund, or other persons who are able to receive such reallocation in accordance with the law.

## 32. Amendments To The Deed

### 32.1 General Power

The Trustee may by Deed or instrument in writing, executed by the Trustee and without giving prior notice to the Members, amend, add to or revoke all or any of the provisions of the Deed, including this clause.

### 32.2 Purpose of Variation

The variation may be:

- (1) to enable the Fund to comply with any law, custom or practice of the Commonwealth or any State or Territory of Australia in relation to superannuation, pensions, taxation, insurance, employee trust funds or employee benefits generally or otherwise;
- (2) for any other purpose provided that no variation may:



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- (a) vary the objects of the Deed so the Fund is no longer a superannuation fund as defined in the Requirements;
  - (b) require the Fund to operate contrary to the prohibitions contained in SIS;
  - (c) prevent the Fund from being a regulated superannuation fund under SIS;
  - (d) prejudicially affect the existing rights of any Member at the date from which the variation is to be effective unless:
    - (i) the Member consents in writing;
    - (ii) the amendment is within SIS Regulation 13.16; or
    - (iii) approval is granted in writing by the Regulator;
  - (e) impose any further liability on any Employer, without that Employer's consent.

### **32.3 Restricted Membership**

If the Particulars specify the persons eligible to become Members of the Fund then no variation may amend the restrictions on Members of the Fund as set out in clause 6.

### **32.4 Advice to Members**

The Trustee must notify the Members of the effect of variation but any failure to give any such notification or its non-receipt by a Member shall not affect the validity of the variation.

## **33. Termination of the Fund**

### **33.1 Trustee Determination**

The Trustee may determine to wind up the Fund. The Trustee must determine to wind up the Fund if all of the Members give notice in writing to the Trustee of their desire to terminate the Fund.

### **33.2 Notification**

The Trustee must notify in writing all Members and Employers, and if required the Regulator, of the proposed winding up.

33.3 The Trustee must proceed to wind up the Fund as soon as reasonably practicable.

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### **33.4 Application of Assets**

On a winding up the Trustee must apply the Fund's assets in the following order of priority:

- (1) meet all expenses and liabilities of the Fund;
- (2) payment (including by rollover) of Benefits;
- (3) increase Benefits as the Trustee may in its absolute discretion determine;
- (4) pay any forfeited Benefits or amounts in any Reserve Account in accordance with the Trustee's powers;
- (5) pay any remaining amounts to such of the Members and contributors in such proportions as the Trustee determines.

### **33.5 Dissolution**

When all Benefits have been paid, and assets transferred or applied in accordance with the provisions of the Deed the Fund is dissolved.

## **34. Arbitration**

### **34.1 Dispute**

Unless the Fund is no longer a self managed fund (thus giving the right to appeal to the Superannuation Complaints Tribunal) any question or dispute with respect to the Fund or to the construction or meaning of this Deed shall (if the Trustee so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed pursuant to the provisions of the Commercial Arbitration Act 1985.

34.2 Unless the Fund is no longer a self managed fund there is no right of appeal to the Superannuation Complaints Tribunal

### **34.3 Right of Action**

No right of action shall accrue in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

## **35. Proper Law**

### **35.1 Law**

- (1) This Deed is governed, construed and takes effect in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the Deed is executed.

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- (2) The Trustee, Members and Beneficiaries and any Employers must accept the jurisdiction of the Courts of that State.

## **36. SIS**

### **36.1 Deemed inclusion**

Despite any other provision in the Deed:

- (1) the Deed is deemed to include those provisions of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustee to elect for the Fund to become a regulated fund (and to the extent of any inconsistency those provisions of SIS prevail);
- (2) the Trustee has power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements.

### **36.2 Specific Provision**

Without limiting clause 36.1:

- (1) the Trustee has power to elect under SIS for the Fund to become a regulated fund;
- (2) the Trustee (and each director of a corporate Trustee) is, to the maximum extent permitted by SIS, indemnified out of the Fund against all liabilities incurred by the Trustee in the exercise (or purported or attempted exercise) of the trusts powers authorities and discretions vested in the Trustee pursuant to the Deed or by operation of law;
- (3) the provisions contained in SIS which do not apply to certain small funds (whether defined in SIS as "**self managed funds**" or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition.

### **36.3 Non-mandatory Requirements**

The Trustee may determine not to comply with any non-mandatory Requirements.

## **37. Interpretation - General**

### **37.1 Headings**

The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

### **37.2 Capitals**

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply

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that the word or phrase is used with a meaning different from that given by its definition.

**37.3 Statutes**

References to any statute or regulation are references to that statute or regulation as amended, substituted or re-enacted from time to time.

**37.4 Gender etc**

Unless the context otherwise requires:

- (1) The singular includes the plural and vice versa.
- (2) one gender include all other genders.
- (3) Person means and includes a natural person, firm or corporation.

**37.5 Meaning in Act**

Any word or expression defined in SIS, the ITAA the Requirements which is used but not defined herein shall adopt the same meaning.

**37.6 Recitals, Particulars, Schedules**

The recitals, particulars (being as set out on page 1 of this Deed) and schedules (if any) form part of this Deed.

**37.7 Severability**

If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason the same is severed from this Deed with the remainder in full force and effect.

**37.8 Notice etc**

- (1) Any notice or other communication to be made or given under this Deed shall be in writing and signed by the party giving it and shall be served either by delivery, by facsimile transmission or by prepaid registered mail to the address of the party as herein specified or at the last known address of such party.
- (2) All notices shall be deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted.
- (3) Notices sent by facsimile transmission shall be deemed to be delivered on the date of transmission.

**37.9 Clauses etc**

Unless the context otherwise requires, references in this Deed to clauses and schedules means clauses and schedules of this Deed.

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### 37.10 Successors

This deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

### 38. Interpretation - Definitions

38.1 Unless the context otherwise requires:

- (1) "**Accumulation Account**" means the account established on behalf of each Member pursuant to clause 9.1;
- (2) "**Beneficiary**" means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;
- (3) "**Benefit**" means any amount paid or payable by the Trustee out of the Fund pursuant to this Deed to or in respect of a Member;
- (4) "**Child**" includes an adopted child and a step child;
- (5) "**Commissioner of Taxation**" means the Federal Commissioner of Taxation;
- (6) "**Contributions**" means payments to the Fund by Members, Employers and others and include payments of a shortfall component pursuant to the SGC;
- (7) "**Deed**" means this Deed as amended from time to time;
- (8) "**Dependant**" in relation to a Member means:
  - (a) the Spouse of a Member or the widow or widower of a deceased Member; or,
  - (b) any Child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; or,
  - (c) any other person who, in the opinion of the Trustee, was financially dependent on the Member at the relevant time;
- (9) "**Employee**" means a person in the employment of, or a Director of, an Employer or an associate of the Employer;
- (10) "**Employer**" means any employer who contributes to the Fund for a Member;
- (11) "**Fund Year**" means the 12 month period ending on the 30th June, or such other period ending on such other date as the Trustee from time to time may determine;
- (12) "**Gainful Employment**" in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain or reward;

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- (13) "**ITAA**" means the Income Tax Assessment Act 1936 as amended from time to time and the regulations thereunder;
- (14) "**Lump Sum**" means the amount of Benefit, other than a Pension, payable to or in respect of a Member;
- (15) "**Member**" means a person who has been accepted by the Trustee as a member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a Pensioner;
- (16) "**Minimum Benefits**" means the minimum benefits which are required to be applied in respect of a member pursuant to Part 5 of the SIS Regulations;
- (17) "**Nominated Dependant**" means a Dependant nominated by a Member as such and includes a reversionary beneficiary of a Pension;
- (18) "**Permanent Incapacity or Permanent Invalidity**" has the same meaning as in the Requirements or as prescribed by the Regulator provided that where any part of a benefit payable in that event is insured, the definition contained in the policy of insurance applies;
- (19) "**Regulator**" means the regulator to whom the Trustee must provide reports under SIS or whose determination is relevant in the circumstances, being the Australian Securities and Investment Commission, the Commissioner of Taxation or Australian Prudential Regulation Authority as the case may be;
- (20) "**Requirements**" means such of the provisions of SIS, SGC, ITAA or other legislation and any requirements of the Regulator or any Minister of the Crown applicable to superannuation funds compliance with which is mandatory for the Fund;
- (21) "**Reserve Account**" means an account established pursuant to clause 9.13;
- (22) "**Restricted Benefit**" means a benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;
- (23) "**SGC**" means the Superannuation Guarantee Charge Act 1992, the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Administration) Regulations as the context requires;
- (24) "**SIS**" means the Superannuation Industry (Supervision) Act 1993 and the SIS Regulations;
- (25) "**SIS Regulations**" means the Superannuation Industry (Supervision) Regulations;
- (26) "**Spouse**" means:
- (a) a person legally married at any time to a Member; or,

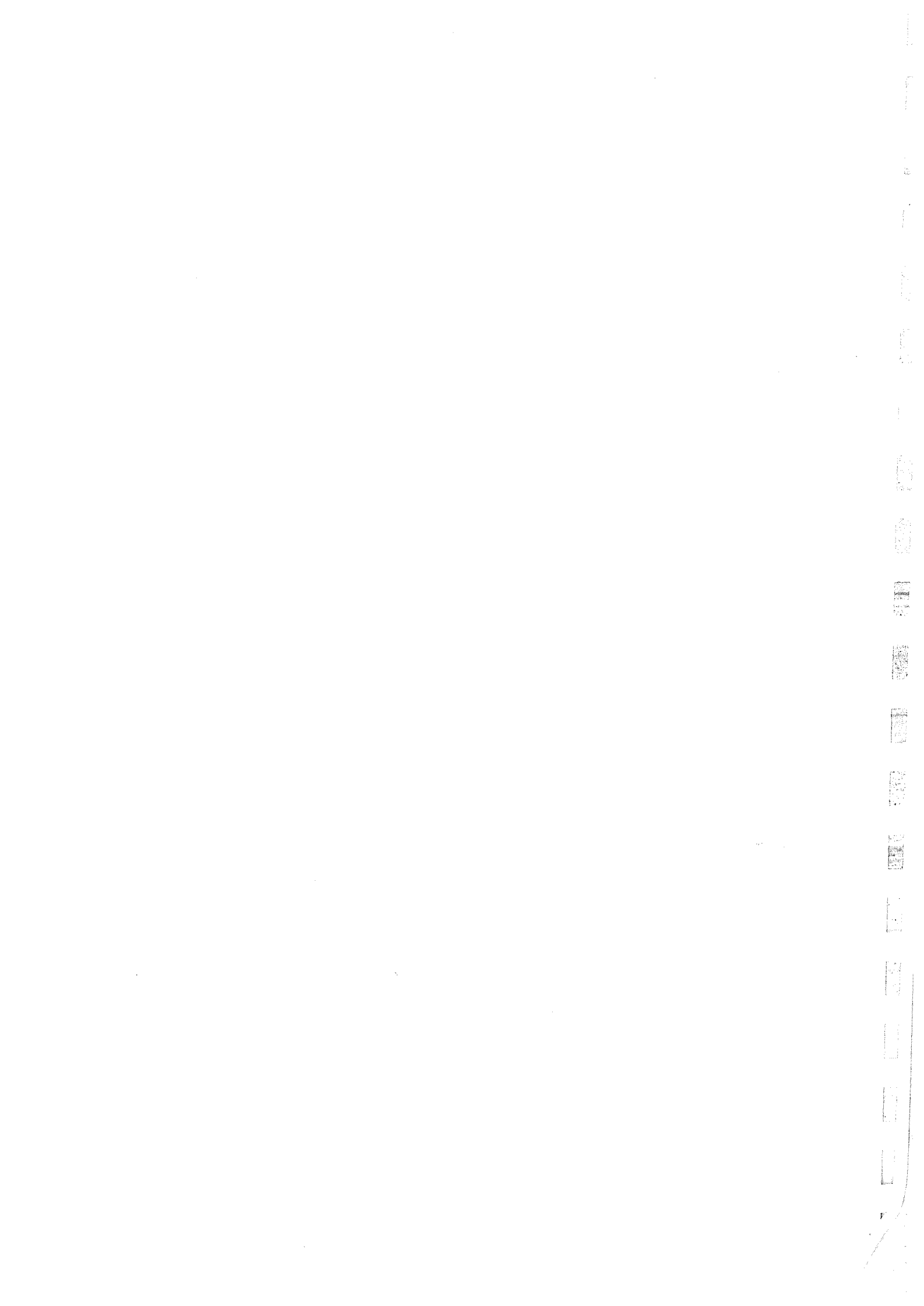
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(b) a person not legally married to the Member who, in the opinion of the Trustee, lives with the Member as the husband or wife of the Member,

and in relation to a deceased Member the term "**widow**" or "**widower**" includes such a person;

provided that where there is more than one such person the Trustee may determine one to the exclusion of the other is the Spouse;

- (27) "**Taxation**" includes income tax, capital gains tax, tax on eligible termination payment, superannuation surcharge, payroll tax, land tax, stamp duty and any other taxes or duties; and
- (28) "**Trustee**" means the Trustee or trustee for the time being of the Fund whether original, additional or substituted.





**Schedule 1**  
**BT HARDIE SUPERANNUATION FUND**  
**APPLICATION FOR MEMBERSHIP**

1. I hereby apply for admission to membership of the Fund.
2. I state I am eligible to be admitted as a member of the Fund and (if the Fund is a self managed fund) appointed a Trustee (or a director of a corporate Trustee).
3. I agree as follows:
  - (1) I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
  - (2) I understand the terms and conditions of the Trust Deed, including the benefits payable, my rights and the rights of my Dependants.
  - (3) I consent to the Trustee acting as Trustee of the Fund.
  - (4) I agree (if the Fund is a self managed fund) to be appointed a Trustee or a director of the corporate Trustee.
  - (5) I agree to give to the Trustee my details (including any Tax File Number), or obtain them from my Employer.
  - (6) I agree to give any other information the Trustee may require for the purposes of the Fund.

Dated the      day of                      20      .

Name: .....  
 Address: .....Signature: .....  
 Occupation: .....  
 Date of Birth: .....Date: .....

**NOMINATED DEPENDANT(S)**

I nominate the following persons as my Nominated Dependants (and acknowledge this is not a binding nomination):

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
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EXECUTED by **DARIEN HOLDINGS PTY** )  
**LTD ACN 102 212 813** in accordance with )  
section 127 of the *Corporations Act 2001*: )

BRADLEY THOMAS HARDIE

Name of Sole Director and Sole Company  
Secretary (BLOCK LETTERS)

BT

*B T Hardie*

Sole Director and Sole Company  
Secretary

