

**HARRY PTY LTD**

**ACN 075 015 879**

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**SUPERANNUATION  
TRUST DEED  
FOR THE  
HARRISON SUPERANNUATION  
FUND**

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**ANDERSSSEN & COMPANY**

**SOLICITORS**

105 Alfred Street

Fortitude Valley 4006

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WGSA:DOC:960618H.SD1

THIS DEED Poll is made the 30<sup>th</sup> day of September, 1996.

BY: **HARRY PTY LTD ACN 075 015 879** ("Trustee") of care of Messrs Colin Wisemantel & Co, Accountants, 6 Hansells Parade, Riverview in the State of Queensland

# RECITALS:

- A. The Trustee has decided to establish an indefinitely continuing superannuation plan to be known as **THE HARRISON SUPERANNUATION FUND** ("the Fund").
- B. The Trustee has agreed to act as the first trustee of the Fund.

## OPERATIVE PROVISIONS

1. The Trustee declares that the primary purpose of the Fund is to ensure that the benefits to which the members are entitled shall be applied in payment to them of old-age pensions in accordance with the rules and the statutory requirements but that benefits may be commuted to a lump sum pursuant to the rules.
2. The Fund shall come into operation on the date of this deed ("commencement date").
3. The "Rules" means the rules and schedules attached hereto as amended from time to time, and they shall have effect as if set out in the body of this deed.
4. The assets of the Fund shall be vested in the trustee upon trust to apply the same in the manner set forth in the Rules.
5. The Fund shall be managed and administered in all respects according to the Rules.
6. The power of appointing and removing trustees shall be as provided in the Rules.
7. The provisions of this deed may be amended in the manner set out in the Rules.
8. This deed and the Rules shall be governed by and construed in accordance with the law of Queensland.

## EXECUTED AS A DEED

THE COMMON SEAL of  
**HARRY PTY LTD**  
**ACN 075 015 879**  
 was hereunto duly affixed  
 by the authority of the Board  
 of Directors by  
**DAVID CHARLES HARRISON** a  
 Director and  
**LINDA ANN HARRISON** a Director )

*de Harrison*

*[Signature]*





## THE RULES

### 1. INTERPRETATION

- 1.1 In this deed and in these Rules unless the context indicates otherwise the following words and expressions (with or without the use of capital letters) have the following meanings:

"Accumulated contributions" shall mean in respect of a member the member's actuarial interest in the Fund determined as follows:

- (a) each 30 June the trustee shall determine, upon a basis determined after taking such advice as it considers necessary (including advice from the actuary appointed to the Fund, if any), in respect of each person who was at any time a member during the previous twelve (12) months, the accumulated contributions in respect of such member. Regard shall be had in making such determination to the contributions made by or in respect of the member, earnings or losses relating to such contributions, any contributions tax liability relating to such contributions, and the insurance premiums paid in respect of the member;
- (b) the accumulated contributions in respect of each member at a date other than 30 June shall be the accumulated contributions at the previous 30 June together with contributions paid since the previous 30 June, less insurance premiums paid by the trustee in respect of the member since the previous 30 June, plus or minus such additional amount (referable to the earnings or losses as the case may be relating to such accumulated contributions during the period since the previous 30 June) as the trustee thinks appropriate in the circumstances PROVIDED ALWAYS that at any particular date the accumulated contributions in respect of a member shall include any amount received by the trustee under any policy or policies of insurance, assurance or endowment effected in respect of the member; and
- (c) benefits payable in respect of a member shall be debited to the member's accumulated contributions, but pending the exhaustion of such accumulated contributions they shall continue to attract their proportion of the net income of the Fund and shall suffer their proportion of any losses.

"Act" means the *Superannuation Industry (Supervision) Act* 1993 and includes Regulations made pursuant to the Act.

"Allocated pension account" means an account to which a member's eligible termination payment is rolled over and from which pension payments are made under these Rules.

"Allocated pension" means a pension paid from a member's allocated pension account in accordance with these Rules.

"Approved deposit fund" means a fund established for the purpose of qualifying as such under the Tax Act and which satisfies all statutory requirements.

"Complying superannuation fund" means a superannuation fund which satisfies all statutory requirements.



"Dependants" means the spouse and children (including posthumous children) of a member and all persons who are, in the opinion of the trustee in its absolute discretion, at the relevant time dependent in whole or in part upon the member for their maintenance and support.

"Eligible person" means a person engaged in any business, trade, profession, vocation, calling, occupation or employment, or a person in respect of whom the Fund may accept a contribution pursuant to the provisions of Regulation 7.04 of the Superannuation Industry (Supervision) Regulations.

"Employer" means a person or company by whom a member is employed, whether on a full-time or part-time basis, and in relation to any particular member the employer by which that member is for the time being employed. Reference to the employer in any rule requiring the exercise of any discretion, any agreement, determination or approval of any matter, or a decision, opinion, appointment or declaration by it, shall in the case of an employer being a company mean the principals of such employer or any person appointed by the principals of such employer to act on their behalf.

"Excluded fund" means a fund with fewer than five (5) members.

"Financial year" means a period of twelve calendar months ending on the last day of June, or any part of such a period that may occur at the commencement or termination of the Fund.

"Mandated employer contributions" means contributions by or on behalf of an employer, comprising contributions which reduce the employer's potential liability for the superannuation guarantee charge imposed by Section 5 of the *Superannuation Guarantee Charge Act 1992*, or payments of shortfall components and contributions towards satisfaction of the employer's obligation under an award made on or after 1 July 1986 by an industrial authority as defined in the statutory requirements.

"Member" means a person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in Rule 7. The term member shall include former members who continue to have rights or contingent rights to benefits under this Fund.

"Principals" mean the directors for the time being of the relevant employer.

"Retire" means cease to be engaged in the business, trade, profession, vocation, calling, occupation or employment in which the member is for the time being engaged. A member who ceases to devote at least ten (10) hours per week to a business, trade, profession, vocation, calling, occupation or employment shall be deemed to have retired from that business, trade, profession, vocation, calling, occupation or employment.

"Spouse" means the legal spouse of a member and any person regarded by the trustee, in its absolute discretion, as a de facto spouse and any previous spouse or de facto spouse who is dependent upon the member.



"Statutory requirements" means the requirements imposed under any law or by any statutory authority which must be satisfied by a superannuation fund or any approved deposit fund, or pooled superannuation trust, as the case may be, in order to qualify for income tax concessions.

"Statutory authority" means, as the case may require, any one or more of the Insurance and Superannuation Commissioner, the Commissioner of Taxation, or any other governmental authority responsible for administering the statutory requirements.

"Tax Act" means the *Income Tax Assessment Act* 1936 as amended from time to time and all associated legislation.

"Total and permanent disablement" has the same meaning which it has under any policy of insurance which the trustee has obtained for the purpose of providing a benefit on a member's total and permanent disablement. In the absence of any such policy, or any relevant definition in such a policy, or if the trustee otherwise determines, a member shall be deemed to suffer total and permanent disablement if the member has, in the opinion of the trustee (after having regard to such medical evidence as the trustee considers appropriate) become incapacitated through illness, accident or injury to such extent as to render the member unlikely ever to be able to resume the member's usual occupation or any occupation of a similar nature.

1.2 Unless the context indicates otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing one gender shall include each other gender;
- (c) references to a person shall be construed as references to an individual, firm, body corporate, association, government or governmental authority; and
- (d) references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing them.

1.3 Headings inserted in any rule are for convenience only and shall not affect the interpretation of the Rules.

**2. ASSETS AND INVESTMENTS**

2.1 The assets of the Fund shall be held by the trustee upon trust to be applied in accordance with the provision of these Rules.

2.2 The expenses of the operation of the Fund shall be paid out of the Fund.

2.3 Subject to the statutory requirements all moneys received by the trustee but not required to meet current payments may, in the absolute discretion of the trustee, either be and remain on deposit in the name of the trustee, or be reinvested directly or indirectly, in any manner in which the trustee, if it were personally entitled to such assets, could invest, and without restricting the generality of the foregoing may be invested:

- (a) in any one or more of the modes of investment authorised by law for the investment of trust funds;
- (b) on deposit with any bank, company or financial institution;
- (c) in the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as the trustee shall think fit;
- (d) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
- (e) in units of any common fund, property trust or unit trust; or
- (f) in any policies of life insurance, assurance or endowment, including policies providing a sum or sums on the death, or disablement of a member;

with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with the person's own property may do so PROVIDED THAT the trustee shall not invest in:

- (g) loans to members; or
- (h) loans to or investments in employers or associates of employers which do not comply with statutory requirements.

2.4 Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the trustee shall from time to time determine.

2.5 (a) The trustee may borrow money if:

- (i) the purpose is to enable the trustee to make a payment to a beneficiary which the trustee is required to make and which, apart from the borrowing, the trustee would not be able to make;
- (ii) the period of the borrowing does not exceed ninety (90) days; and
- (iii) the total amount borrowed by the trustee does not exceed ten per cent (10%) of the value of the assets of the Fund.

(b) The trustee shall also be entitled to borrow money if:

- (i) the purpose is to enable the trustee to pay the bonds, debentures, stock, bills or exchange or other securities; shares in the company; units in unit trusts; futures contracts; forward contracts; interest rate swap contracts; currency swap contracts; forward exchange rate contracts; forward interest rate contracts; a right or option in respect



of such a security, share, unit, contract or policy; any similar financial instrument; and foreign currency;

- (ii) at the time when the investment decision was made it was likely that the borrowing would not be needed;
- (iii) the borrowing is not taken under a written determination from the Insurance and Superannuation Commissioner, to be exempt from this paragraph;
- (iv) the period of the borrowing does not exceed seven (7) days; and
- (v) the total amount borrowed by the trustee does not exceed 10% of the value of the assets of Fund.

### 3. ADMINISTRATION

- 3.1 Every member shall have the right to inspect a copy of these Rules at the address of the trustee during usual business hours.
- 3.2 Every member and every person claiming a benefit shall, from time to time give to the trustee such information and produce to it such documents, as the trustee considers are required for the purpose of putting these Rules into effect, and for arranging insurances for the purposes of the Fund.
- 3.3 Nothing in these Rules shall restrict the right of an employer to dismiss an employee, or be used to increase damages in any action brought against the employer in respect of such dismissal, or affect the rights of a member or the legal personal representative of a member, or other persons, to claim damages or compensation at common law, or under a *Workers' Compensation Act* or any other statute in force governing compensation to a member injured or dying from an accident arising out of, or in the course of, employment with the employer.

### 4. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES

- 4.1 The members may at any time by a notice in writing signed by at least seventy-five per cent (75%) of them:
  - (a) remove any one or more of the trustees;
  - (b) appoint a trustee or a person as one of the trustees of the Fund.
- 4.2 Unless a company is the sole trustee, there shall be at least two (2) trustees.
- 4.3 If the Fund is not an excluded fund, the statutory requirements shall be observed at all times.
- 4.4 The right of a member pursuant to Rule 4(1) may be exercised:
  - (a) by a person acting as the duly appointed attorney of the member; or
  - (b) after the death of the member

- (i) by the executors or executor of the will of the member; or
- (ii) by the administrators or administrator of the estate of the member.

4.5 A member or person exercising a right to appoint a trustee pursuant to this Rule 4 may appoint himself or herself to be a trustee.

#### 4A. COVENANTS BY TRUSTEE

In the exercise of its powers and the discharge of its duties and responsibilities as trustee of the Fund the trustee shall perform and observe the following covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) in relation to all matters affecting the Fund to exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;
- (c) to ensure that the trustee's duties and powers are performed and exercised in the best interests of the members;
- (d) to keep the money and other assets of the Fund separate from any money and assets that are held by the trustee personally or that are money or assets of a standard employer-sponsor or an associate of a standard employer-sponsor of the Fund;
- (e) not to enter into any contract or do anything else which would prevent or hinder the trustee from properly performing or exercising its functions and powers;
- (f) if required pursuant to Regulation 4.09 of the Superannuation Industry (Supervision) Regulations, to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
  - (i) the risk involved in making, holding and realising and the likely return from Fund's investments, having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole, including the extent to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities.
- (g) to formulate and give effect to a strategy for the prudential management of any reserves of the Fund consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and



- (h) to allow a member access to any prescribed information or any prescribed documents.

The covenant referred to in Rule 4A(e) does not prevent the trustee from engaging or authorising persons to do acts or things on its behalf.

An investment strategy shall be taken to be in accordance with Rule 4A(f), even if it provides for a specified beneficiary or specified class of beneficiaries to give directions to the trustee where:

- (a) the directions relate to the strategy to be followed by the trustee in relation to the investment of particular asset or assets of the Fund; and
- (b) the directions are given in circumstances covered by the relevant law.

If, at any time, the relevant law prescribes covenants additional to those set out in this Rule 4A, those additional covenants shall be deemed to be included in these Rules.

## **5. TRUSTEES GENERALLY**

- 5.1 Upon a change of trustee, the retiring trustee or trustees shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new trustee or trustees.
- 5.2 Without prejudice to the powers vested in the trustee by the deed and the Rules or otherwise, the trustee shall have the following powers:
  - (a) to purchase or otherwise acquire, and to sell or otherwise dispose of property, rights or privileges which the trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
  - (b) to appoint and at its discretion remove or suspend any actuary, auditor, investment managers, administration managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments, require security in such instances and to such amount as it may think fit; and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the trustee;
  - (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
  - (d) to refer any claims or demand by or against the Fund to arbitration and observe and perform the awards;
  - (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

- (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (h) to pay benefits out of the Fund to persons entitled;
- (i) to decide, as and when the need shall arise, who are dependants for the purposes of the Rules;
- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to benefits, to pay or apply such benefits or any part thereof at its discretion to, or for the benefit of, such person and the dependants of such person, or any of them as the case and the dependants of such person, or any of them as the case may be, without being responsible for seeing to the application of payments under this paragraph, or payments made in the exercise of any other power vested in the trustee by the deed and the Rules; and
- (k) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the deed, the Rules or any other document or statute or as to the administration of the trusts hereof, without being liable to any members or their dependants in respect of any act done by it in accordance with such opinion.

5.3 The trustee shall not be liable for any act or default done or omitted in good faith in the administration of the Fund or for any loss or damage incurred by the Fund and shall be fully indemnified by the Fund for any act done or omitted in good faith in administering the Fund, unless:

- (a) the trustee fails to act honestly; or
- (b) the trustee intentionally or recklessly fails to exercise the degree of care and diligence that the trustee is required by law to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the statutory requirements.

The trustee shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the members of any of them or any other person entitled to benefits from the Fund and the members shall not be liable for the debts of the Fund.

5.4 For the purposes of the deed and the Rules, the trustees shall be entitled to regard an exercise of a discretion, or the giving of any instruction or other authorisation made orally, or written and signed by, or purported to be signed by, a principal for the time being of an employer as a valid exercise of discretion, instruction or other authorisation of the employer.



- 5.5 Where the trustee consists of more than one person, the trustee:
- (a) may meet together for the dispatch of business;
  - (b) may adjourn and otherwise regulate their meetings as they think fit;
  - (c) may determine the quorum necessary for the transaction of business provided it is no less than two-thirds ( $\frac{2}{3}$ ) of trustees;
  - (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
  - (e) may act on any resolution approved by two-thirds ( $\frac{2}{3}$ ) of the trustees.

Where the trustees cannot agree upon a chairman for the time being, or from time to time, or of a particular meeting, the chairman shall be the trustee chosen by the trustees present for the meeting. A determination by two-thirds ( $\frac{2}{3}$ ) of the trustees shall for all purposes be deemed a determination of the trustees.

- 5.6 Where there is more than one trustee, a resolution in writing, signed by all the trustees for the time being, shall be a valid and effectual as if it had been duly passed at a meeting of the trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more trustees.
- 5.7 If the trustee is a company, then such a company may exercise or concur in exercising any discretion or power conferred on the trustee by the deed or by these Rules by a resolution of its directors or governing body in accordance with the company's memorandum and Rules of association or constituent document. Such a company may delegate the right and power to exercise, or concur in exercising any such discretion or power, to one or more members of its board of directors or governing body, appointed as aforesaid from time to time by the said directors or governing body for the purpose.
- 5.8 Any individual trustee (where the trustee is a company, any director or other officer of the trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the trustee by the deed or by these Rules or by law given to the trustee notwithstanding that it, or the person respectively, may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion. Any trustee or director or officer as aforesaid may abstain from acting except as a merely formal party in any manner in which such person may be so personally interested.
- 5.9 Subject to the statutory requirements the trustee in the exercise of the powers, authorities and discretions vested in it by the deed and these Rules shall have an absolute and uncontrolled discretion. The trustee may exercise or enforce all or any of those powers, authorities and discretions at any time, and from time to time, or may refrain from exercising all or any of them from time to time, or at all.
- 5.10 Where there is more than one trustee, the trustee may, from time to time, delegate to any one or more of their number the right and power on behalf of the trustee to sign, draw, accept, make, endorse, issue, discount or otherwise execute, (as the case



may be) all or any cheques, promissory notes, drafts, bills of exchange, bills of lading and other negotiable or transferable instruments, all or any receipts for money paid to the trustees, and all or any other documents connected with the due administration of the Fund, or with the deed or these Rules. The trustee may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or investment manager appointed by them.

5.11 The trustee may cause:

- (a) minutes of any proceedings of meetings of the trustee, as the case may be, to be entered in books kept for that purpose; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

5.12 Any minutes entered in accordance with Rule 5(11)(a) in books kept for that purpose that purport to be signed as provided in Rule 5(11)(b) shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

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

6.1 The trustee shall keep or cause to be kept a complete record of all persons who become members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund.

6.2 The trustee shall appoint an auditor to the Fund, or a firm of such persons, who shall comply with all statutory requirements and may remove any such auditor.

6.3 The trustee shall each financial year cause to be prepared an income and expenditure account and balance sheet of the Fund which shall, if the trustee thinks fit, or if necessary to comply with statutory requirements, and within any time limits specified by statutory requirements, be audited by the auditor. The auditor shall have access to all papers, accounts and documents connected with the Fund and shall report in writing to the trustee the result of such audit, if any, and where relevant, within the time limits specified by statutory requirements. A copy of the income and expenditure account and balance sheet shall be sent by the trustee to every employee.

6.4 The trustee shall disclose to members such information, at the time and in the manner, prescribed by statutory requirements to be so disclosed to members.

6.5 The trustees shall comply with the statutory requirements concerning records of the Fund and their retention.

## **7. ELIGIBILITY AND MEMBERSHIP**

7.1 Any person may make application in writing to the trustee in a form prescribed by the trustee, from time to time, to join the Fund. Every such application shall include full details of the person's membership of any approved deposit fund, pooled superannuation trust, or complying superannuation fund, and may also include an undertaking by the person to notify the trustee immediately if the person



becomes a member of any other complying superannuation fund or approved deposit fund.

- 7.2 The trustee may accept or refuse any application for membership in its absolute discretion whether or not such person is an eligible person, and shall not be required to assign any reason for any refusal.
- 7.3 A person shall become a member from the date when notice in writing by the trustee that it approves the application has been given to the person.
- 7.4 A person ceases to be a member on the happening of the first of the following:
- (a) when the total amount of all amounts payable under the Rules in respect of the persons membership has been paid; or
  - (b) when under the Rules any benefit payable to the person or any person on the persons account ceases to be payable,

notwithstanding that the member may have died, and the right and entitlement of a deceased member for the purposes of Rules 4 and 14 may be exercised by the executor or executors of the member's will or the administrator of the member's estate.

- 7.5 Each member shall, by virtue of the member's application, be deemed to have consented to be bound by the provisions of the deed and the Rules.

## **8. CONTRIBUTIONS**

- 8.1 (a) Subject to the provisions of this Rule 8, a member may contribute to the Fund at such rate as the member determines as long as the member is a person in respect of whom the Fund may accept contributions pursuant to the Act;
- (b) Subject to the provisions of this Rule 8, where the spouse of a Member is entitled pursuant to the Act to contribute to the Fund in respect of the Member, such spouse may contribute to the Fund at such rate as the spouse determines within limits allowed by the Fund.
- 8.2 If any member of the Fund ceases to be an eligible person the member shall not make any further contribution to the Fund until the member shall again become an eligible person.
- 8.3 Subject to the provisions of this Rule 8, if and so long as a member is a person in respect of whom the Fund may accept contributions pursuant to the Act, the member's employer may contribute to the Fund in respect of the member at such rate as may be agreed from time to time between the employer, the member and the trustee.
- 8.4 An employer wishing to contribute to the Fund in respect of a member shall make application to the trustee in the form prescribed by the trustee from time to time provided that every such application shall include an undertaking by the employer to be bound by the provisions of the deed and Rules.



- 8.5 An employer may, at any time and from time to time, by notice in writing to the trustees suspend payment of or reduce the contributions payable by it in respect of a member.
- 8.6 The trustee shall not accept from the member or from any person in respect of the member any contribution to the Fund while to its knowledge a member continues not to be a person in respect of whom the Fund may accept a contribution pursuant to the Act.
- 8.7 Within sixty (60) days of becoming aware that a member has ceased to be a person in respect of whom the Fund may accept a contribution pursuant to the Act the Trustee shall refund to the member or to the person making the same as the case may be any contributions made to the Fund in respect of the member since the member ceased to be a person in respect of whom the Fund may accept a contribution pursuant to the Act, and for the purpose of determining the member's interest in the Fund it shall be assumed that such contributions were not made to the Fund.

## **9. BENEFITS**

- 9.1 A member who retires shall be entitled to receive a retirement benefit equal to the member's accumulated contributions.
- 9.2 A member who retires on the grounds of total and permanent disablement shall be entitled to receive a permanent disablement benefit equal to the member's accumulated contributions.
- 9.3 On the death of a member a death benefit shall become payable equal to the member's accumulated contributions.
- 9.4 Where, in order to comply with all statutory requirements, it is necessary to ensure that payment of all or part of a withdrawal benefit is not made to the member prior to his attaining a particular age, or satisfying other conditions, then the benefit or such part of it, as the case may be, shall if requested by the member and if authorised by the statutory requirements be used to purchase a pension payable for life in the name of the member, or shall be retained in the Fund for so long as is necessary for such purpose, unless otherwise transferred in accordance with Rule 11 or Rule 13 PROVIDED THAT no such transfer shall be made unless similar restrictions are applied by the fund or organisation to which the transfer is made. A benefit or part thereof the payment or transfer which is deferred hereunder shall continue to participate in the earnings of the Fund as if it constituted a member contribution account.

## **10. PAYMENT OF BENEFITS**

- 10.1 A member's retirement benefit or permanent disablement benefit shall be paid by way of annuity, pension or other periodical payment, or lump sum payment, or any combination of such methods of payment as the trustee and the member shall agree PROVIDED THAT, subject to statutory requirements, the member shall be entitled to require the trustee to pay the member's retirement benefit or permanent disablement benefit as a lump sum.



- 10.2 Any pension or annuity paid pursuant to Rule 10(1) shall commence to be paid no later than the member's seventieth (70th) birthday.
- 10.3 Any lump sum payment made pursuant to Rule 10(1) shall be made no later than the member's seventieth (70th) birthday.
- 10.4 (a) A member wishing to designate a dependant as a nominated beneficiary shall do so in writing to the trustee in such form as it may from time to time approve.
- (b) A member may from time to time change the member's nominated beneficiary by completing and lodging with the trustee a new form.
- 10.5 Any death benefit shall be paid as the trustee in its absolute discretion decides by way of purchased annuity, pension or other periodical payment (in each such case upon such terms as the trustee may decide), or lump sum payment, or any combination of such methods of payment, either:
- (a) to such one or more of the nominated beneficiaries (if any) or other dependants of the member and in such proportions as the trustee in its absolute discretion decides; or
- (b) to the legal personal representative of a member;
- PROVIDED THAT the trustee shall not make any payment otherwise than to the legal personal representative without the consent of such legal personal representative.
- 10.6 Any pension or annuity paid pursuant to Rule 10(5) shall commence to be paid not later than the member's seventieth (70th) birthday and any lump sum payment shall be made no later than the member's seventieth (70th) birthday; PROVIDED THAT where the member was, pursuant to Rule 10(1) receiving a pension or annuity when the member died this Rule 10(6) shall be deemed to be complied with if the pension or annuity paid pursuant to Rule 10(5) commences to be paid upon the death of the member, notwithstanding that this may occur after the member's seventieth (70th) birthday.
- 10.7 The trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any benefit or other amount payable pursuant to the provisions of the deed or the Rules, transfer any of the assets of the Fund of equivalent value to the person so entitled PROVIDED THAT in the case of a transfer of an asset other than a life insurance policy the trustee obtains any consent necessary for the Fund to remain a complying superannuation fund.
- 10.8 The trustee may, at the request of a person entitled, pay all or part of any benefit payable pursuant to the provisions of the Rules to such approved deposit fund, or for the purchase of such annuity as the person so entitled may request.
- 10.9 With the consent of the trustee a person who is receiving or entitled to receive a pension from the Fund may commute it to the extent permissible in accordance with statutory requirements or may request the trustee to purchase any annuity in the name of the member for a consideration equal to that member's credit and on



terms which will not prejudice the status of the Fund, as a complying superannuation fund.

## **11. FORFEITED BENEFITS**

### **11.1 Benefits payable out of the Fund shall be:**

- (a) forfeited if, without the prior approval of the trustee, the person entitled thereto purports to assign, alienate or charge such benefits or part thereof;
- (b) suspended if the person entitled thereto, not yet having retired at the relevant time, becomes or is in the opinion of the trustee, mentally ill, or of unsound mind, or incapable of managing himself or his own affairs.

### **11.2 The whole of the benefits forfeited by a person under Rule 11(1)(a) shall be applied by the trustee as trustee may think fit for the benefit of such person and the person's Dependants, or any one or more of them PROVIDED THAT while such person is a member the trustee may delay making any payment to, or for the benefit of, the person or his Dependants until the Member's fifty-fifth (55th) birthday other than for personal maintenance and support in case of hardship.**

### **11.3 The whole of the benefits to which a person would otherwise have been entitled but which have been suspended under Rule 11(1)(b) shall be dealt with in accordance with, and shall be subject to, the following provisions:**

- (a) Upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such benefits.
- (b) If, prior to the date upon which the person ceases to be a member for any reason whatsoever, the person ceases to be one to whom Rule 11(1)(b) applies then the suspension of such benefits shall cease and the trustee shall thereafter hold such benefits in respect of the person as if the suspension had not intervened.
- (c) If such benefits remain suspended at the time when the person ceases to be a member for any reason whatsoever, such benefits shall thereupon be forfeited.
- (d) While such benefits are suspended the trustee may pay amounts thereout to, or for the benefit of, the relevant person or the relevant person's dependants for, but only for, personal maintenance and support in the case of hardship.

### **11.4 The trustee shall be entitled to treat as unclaimed and forfeited and use for the general purpose of the Fund, or otherwise pay in accordance with the provisions of the Act or as the trustee thinks fit, any moneys in the Fund to which any person may be entitled whose whereabouts are unknown to it, and if after making such enquiries as it deems appropriate it is unable positively to trace any person entitled to the benefit of such moneys.**



## **12. TRANSFER FROM AND TO OTHER FUNDS**

- 12.1 The trustee may make such arrangement as it thinks proper with any member, or any previous employer of the member, or the trustee of any superannuation fund, approved deposit fund, or pooled superannuation trust, for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the trustee is incidental to, or consequent upon, the transfer of such assets to the Fund. Such arrangements may include arrangements for the transfer to a member's allocated pension account by way of rollover of all or part of funds which arise from an eligible termination payment from an employer (whether or not the employer has made contributions to the Fund) or from another form of investment which complies with the Statutory Requirements.
- 12.2 Should a member become eligible to join another complying superannuation fund the trustee may, if requested by the member, in lieu of part of all of any other benefit to which the member may be entitled under these Rules, transfer to the trustees of such fund such portion of the assets of the Fund as the trustee considers equitable having regard to the member's accrued benefit at the date of transfer.

## **13. TERMINATION OF TRUST**

- 13.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:
- (a) if it shall appear to the trustee that the Fund is insolvent and resolves to terminate the Fund;
  - (b) if for any reason the trustee thinks it is appropriate to and does resolve to terminate the Fund;
  - (c) if there are no members in the Fund and the trustee resolves to terminate the Fund.
- 13.2 Upon the trusts hereof ceasing and terminating in accordance with Rule 13(1) the trustee shall give notice in writing to each employer and the members, if any, that the Fund shall be wound up on a specified date ("the closing date"). As from the closing date the following shall apply:
- (a) no further contributions shall be made by any employer or any member, other than arrears of contributions due to the closing date, and
  - (b) arrears of contributions, if any, shall be called in immediately.
- 13.3 Upon the trust ceasing and terminating in accordance with Rule 13(1) the trustee shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following benefits in the following order of priority:
- (a) Payments which on, or before, the closing date have become payable to retired members or dependants.

- (b) Payments to each member who has not retired equal to the member's accumulated contributions.

13.4 Where a member dies before receiving a benefit to which the member has become entitled pursuant to Rule 13(3) such benefit shall be paid to such of the member's legal personal representatives and dependants and in such proportions as the trustee determines.

13.5 If after providing benefits for members and their dependants in terms of Rule 13(3) a surplus remains, such surplus shall be paid by the trustee, to or for the benefit of:

- (a) any members;
- (b) any former members;
- (c) any dependants of any such members or former members;
- (d) the legal personal representatives (in their capacities as such) of any such members, former members or dependants; or
- (e) any employer or former employer who has contributed, as the trustee in its absolute discretion determines and, if provided to, or for two (2) or more persons,

in such proportions as the trustee in its absolute discretion determines.

13.6 Subject to Rule 10(7) the payment to be provided under Rules 13(3) and 13(5) shall be in cash, life insurance policies, participation in any other complying superannuation fund, or otherwise as determined by the trustee.

#### 14. AMENDMENT OF DEED

14.1 (a) So long as the Fund is an excluded fund and subject to Rule 14(1)(b), the trustee with the consent of at least seventy-five per cent (75%) of the surviving members may at any time by resolution, or by instrument in writing, amend all or any of the provision of these Rules.

(b) No reduction of the accrued benefit of a surviving member shall be made without the member's consent in writing.

14.2 As soon as practicable after the Rules have been amended pursuant to Rule 14(1)(a), the trustee shall give to each surviving member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the member.

14.3 If the Fund is not an excluded fund, these Rules may only be amended in accordance with the statutory requirements.

#### 15. MISCELLANEOUS

To the extent that they are not incorporated in these Rules, the statutory requirements applicable to the Fund from time to time shall be deemed to be incorporated herein. If



there is any inconsistency between these Rules and the statutory requirements, the latter provisions shall prevail.

16. Where in these Rules the trustee is expressed to have a power or discretion, it shall be exercised at all times having regard to the statutory requirements.

Unless the Fund is an excluded fund, the trustee must take all reasonable steps to ensure that there are at all times in force arrangements under which:

- (a) members have the right to make enquiries into or complaints about the operation or management of the Fund in relation to the member making the enquiry or complaint; and
- (b) enquiries or complaints so made will be properly considered or dealt with within ninety (90) days after they were made.