

**SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)**

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**SUPERANNUATION DEED**

**for**

**THE XARION SUPERANNUATION FUND**

Prepared By:

**Karl Burnett, Solicitor**

On Instructions From:

**David Fisher & Co  
5th Floor, Suite 502  
220 Pacific Highway  
Crows Nest NSW 2065**

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THIS DEED is made on the date set forth in the Schedule hereto as the date of making of this Deed

**BY** The person whose name is set forth in the Schedule hereto beside the words The Trustee (hereinafter called "The Trustee")

WHEREAS:-

- A. The Trustee wish to establish an indefinitely continuing superannuation trust fund to provide superannuation benefits for such approved persons who may by application become members of the fund.

1. **THE FUND**

- 1.1 The trust fund constituted by this Trust Deed ("the Fund") shall be called by and known as the name set forth in the Schedule hereto beside the words "Name of this Superannuation Fund"
- 1.2 The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who shall hold the same on trust for the objects and the purposes of this Deed.

2. **PROPER LAW**

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State or Territory set forth in the Schedule hereto beside the words "Law of this Fund".

3. **THE TRUSTEE - "CONSTITUTIONAL CORPORATION"**

The expression "the Trustee" shall include such new trustee as is appointed hereunder Provided that the Trustee shall only be a Constitutional Corporation.

4. **INTERPRETATION**

- 4.1 This Trust Deed shall be read and construed subject to clauses 35.1 and 35.6 (a) of this Deed.
- 4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.
- 4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-

"Act" means the Income Tax Assessment Act, 1936 (Cth) the Occupational Superannuation Standards Act, 1987 (Cth) the Superannuation Industry (Supervision) Act 1993 (as the case may be) and any regulations issued under those Acts and any replacement or additional legislation in respect of superannuation and any reference to the provisions or requirements of the Act means the provisions or requirement of such legislation and regulations which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation;

"Commissioner" means either the Commissioner of Taxation or the Insurance and Superannuation Commissioner or any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Complying Superannuation Fund" means a complying superannuation fund for the purposes of the Act.

"Constitutional Corporation" means a trading corporation or a financial corporation within the meaning of paragraph 51(xx) of the Australian Constitution.

**"Dependants"** means the spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustee was dependant on the Member at the relevant date;

**"Employer"** means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the Employer of that person at the relevant time;

**"Employer's Contribution Account"** has the meaning given to it in clause 11 hereof,

**"Excluded Superannuation Fund"** has the same meaning as defined in the Superannuation Industry (Supervision) Act 1993;

**" Full-Time Basis"** means a Member who is employed or self-employed on a full-time basis within the meaning of the Act;

**"Member"** means a person whom the Trustee has admitted as a Member of the Fund and includes a person who at the relevant time is receiving or is entitled to receive benefits from the Fund;

**"Member's Benefit"** in respect of a Member is the net amount then standing to his credit in the Employer's Contribution Account (if any) plus the amount standing to his credit in the Member's Contribution Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Employer's Contribution Account or Member's Contribution Account;

**"Member's Contribution Account"** has the meaning given to it in clause 11 hereof-,

**"Part-Time Basis"** refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Act;

**"Permanently and Totally Disabled"** means -

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or
- (ii) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance,

**PROVIDED THAT**, the Trustee shall only regard a Member as being permanently and totally disabled if the Trustee has received a certificate signed by two registered medical practitioners certifying that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;

**"Revenue Account"** has the meaning given to it in clause 11 hereof;

**"Rules"** means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

**"self employed"** refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

**"Superannuation Industry (Supervision) Act 1993"** refers to the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder and any amendment thereof or law passed in substitution therefor.

**"Taxation Reserve Account"** has the meaning given to it in clause 11 hereof;

**"Trust Deed"** means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time.

- 4.4 Unless a contrary intention appears the following terms have the same meanings they have from time to time in the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder:

"alternative agreed representation rules"  
"approved auditor"  
"basic equal representation rules"  
"civil penalty order"  
"beneficiary"  
"constitutional corporation"  
"eligible rollover fund"  
"group or trustees"  
"independant trustee"  
"legal personal representative"  
"mandated employer contributions"  
"old age pension"  
"regulated superannuation fund"  
"spouse".

5. **DATE OF COMMENCEMENT**

The Fund was constituted on the date hereinbefore mentioned.

6. **ADMISSION OF MEMBERS**

- 6.1 Persons who are engaged on a Full Time Basis or a Part Time Basis in a business, trade, profession, vocation, calling, occupation or employment OR such persons which the Trustee may otherwise approve provided that the requirements of the Superannuation Industry (Supervision) Act 1993 are satisfied, who wish to become Members shall apply for membership by completing the form of application in Appendix A or such other form of application as the Trustee decides upon. Upon acceptance of the application by the Trustee the person making the application shall be bound by this Trust Deed in all respects as if he were an original party to this Deed.
- 6.2 All applicants for membership of the Fund shall provide the Trustee with such information that the Trustee may require, including proof of their correct age.
- 6.3 A Member shall inform the Trustee, as soon as practicable, after he ceases:
- (a) to be employed or self employed on a Part-Time Basis after attaining age 65; and
  - (b) to be employed or self employed on a Full-Time Basis after attaining age 65.

7. **CONTRIBUTIONS BY AN EMPLOYER**

- 7.1 An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it in its absolute and uncontrolled discretion shall determine PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act, to enable the Fund to obtain the maximum income tax concessions or otherwise comply with the Act.
- 7.2 At the time of making such contribution, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member; whether the contribution is a mandated employer contribution and such information which the Trustee requests.
- 7.3 Any payment of contributions by the Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

- 7.4 The Trustee shall refuse to accept contributions to the Fund from persons other than:-
- (a) the Member;
  - (b) the Member's Employer;
  - (c) a company in which the Member's Employer has a controlling interest;
  - (d) if the Member's Employer is a company - a person who is associated with that company within the meaning of the Act; and
  - (e) any other person authorised by the Act to make contributions to the Fund.
- 7.5 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Act.
- 7.6 The Trustee may accept contributions in such manner which complies with the requirements of the Act.
- 7.7 The Trustee shall refuse to accept a contribution by or in respect of a Member who has attained age 65 if to do so would result in the Fund not complying with the Act.

## 8. CONTRIBUTIONS BY MEMBERS

- 8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee PROVIDED THAT the maximum contribution made in any period shall not exceed the maximum permitted under the Act OR so as to enable the Fund to obtain the maximum income tax concessions. Unless otherwise allowed by the Act, the Trustee shall refuse to accept any such contribution during any period that a Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment. The Employer may if authorised by the Member, deduct such contribution from the Member's Salary and remit it to the Trustee within fourteen days of the end of the calendar month in which it was deducted.
- 8.2 At the time of paying the Member's contribution to the Trustee, the Employer or the Member shall advise the Trustee of the contribution in respect of the Member.
- 8.3 Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the insurance company or investment manager.
- 8.4 The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to clause 8.1 hereof from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

## 9. INVESTMENTS

- 9.1 The Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee in exercising its absolute discretion thinks fit and without limiting the generality of the foregoing either directly or indirectly:-
- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
  - (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
  - (c) on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion, determines PROVIDED THAT the Trustee may not loan any part of the moneys or assets of the Fund to Members;

- (d) in shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
- (e) in units or sub-units of any unit trust; and
- (f) in bills of exchange and other negotiable instruments,

**PROVIDED THAT** the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Act in order for the Fund to comply with the Act or to obtain the maximum income tax concessions and **PROVIDED FURTHER THAT** the investments made by the Trustee shall be of such nature that they can be readily realised to enable benefits to be paid in money as they fall due and **PROVIDED FURTHER THAT** the Trustee shall not invest in "in-house assets" within the meaning of the Act if to do so would result in the Fund not complying with the Act or being entitled to the maximum income tax concessions.

- 9.2 The Trustee may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as it, in its absolute discretion, thinks fit, without being responsible for loss occasioned by so varying, transposing or replacing.
- 9.3 Subject to the requirements of the Act, the Trustee may, in its absolute discretion, hold particular investments for particular Members. The earnings on such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and income tax payable in respect of such investments shall be debited to the relevant Member's accounts.
- 9.4 The Trustee must invest in a manner consistent with the Act.

#### 10. POLICIES OF INSURANCE AND ANNUITIES

- 10.1 The Trustee may, in its absolute discretion, invest the whole or any part of the amount standing to the credit of a Member in the Books of the Fund in the payment of premiums on a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- 10.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee thinks fit. The Trustee shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of an annuity on such terms as the Trustee, in its absolute discretion, determines.
- 10.3 The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the Member's credit in the Employer's Contribution Account and/or the Member's Contribution Account in such proportion as is agreed upon by the Trustee and the Member and in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall be credited to the Employer's Contribution Account and/or the Member's Contribution Account in the same proportion as premiums for such policies were paid from those accounts.
- 10.4 The Trustee shall have power to continue such policies or annuities for such periods as the Trustee thinks fit and to discontinue or surrender such policies or annuities.

#### 11. RECORDS, ACCOUNTS AND AUDITING

- 11.1 The Trustee shall keep a complete record of all matters essential to the administration of the Fund including:-
  - (a) A Minute Book in which proceedings and resolutions of the Trustee are recorded.
  - (b) An Employer's Contribution Account for each Member in which is recorded:-
    - (i) contributions to the Fund by the Employer in respect of that Member pursuant to clause 7 of this Trust Deed;
    - (ii) amounts credited to such account pursuant to clause 30 of this Trust Deed;

- (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
  - (iv) forfeited benefits credited to such account pursuant to clause 15 of this Trust Deed;
  - (v) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
  - (vi) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
  - (vii) amounts debited to such account to pay income tax;
  - (viii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.
- (c) A Member's Contribution Account for each Member in which is recorded:-
- (i) contributions by that Member pursuant to clause 8 of this Trust Deed;
  - (ii) amounts credited to such account pursuant to clause 30 of this Trust Deed;
  - (iii) profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1 and 12.2 of this Trust Deed;
  - (iv) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
  - (v) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
  - (vi) amounts debited to such account to pay income tax;
  - (vii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to paragraph (e) of this clause.
- (d) A Revenue Account to which shall be credited all income from investments, profits earned and capital gains realised during each financial year and to which shall be debited all expenses (other than premiums on policies of insurance), outgoings and losses incurred during each financial year.
- (e) A Taxation Reserve Account to which shall be credited amounts set aside by the Trustee to pay income tax payable in respect of contributions to the Fund and earnings of the Fund and to which shall be debited income tax paid and amounts which the Trustee determines from time to time to transfer to the Members' Accounts in proportion to the amounts standing to the credit of those accounts at that time or on such other basis as the Trustee considers to be equitable. The balance in the Taxation Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up or on crystallisation of the Fund.
- (f) A Forfeited Benefits Reserve Account to be credited with amounts in accordance with clause 15 and to which shall be debited any amounts which are applied in accordance with clause 15 hereof.
- 11.2 The Trustee shall appoint an approved auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the Superannuation Industry (Supervision) 1993 Act.
- 11.3 The Trustee shall comply with the Act and shall maintain such records as are required under the Act.



## **12. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES**

### **12.1 Subject to any requirements of the Act:**

- (a) After the thirtieth day of June each year, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities during the preceding financial year; or
- (b) on the winding up of the Fund or whenever the Trustee thinks it necessary, the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities) during the current financial year, less such provision for depreciation, liabilities, losses and taxation as the Trustee in its absolute discretion deems prudent shall be credited or debited by the Trustee to the Employer's Contribution Accounts and Members' Contribution Accounts in proportion to the amounts standing to the credit of such accounts on the thirtieth day of June of the preceding financial year or on such other basis as the Trustee considers to be equitable.

### **12.2 The Trustee may whenever it thinks it necessary make a valuation of the assets of the Fund (other than policies of life insurance and annuities) in such manner as the Trustee may determine and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for taxation as the Trustee in its absolute discretion deems prudent and if the net value of the assets of the Fund determined in accordance with this clause exceeds or is less than the aggregate of the net amounts standing to the credit of all of the Employer's Contribution Accounts and the Members' Contribution Accounts at that date, the Trustee shall credit the surplus or debit the deficit to the Members' Contribution Accounts, and the Employer's Contribution Accounts in proportion to the amounts standing to their respective credits or on such other basis as the Trustee considers to be equitable.**

### **12.3 Subject to any requirements of the Act:**

- (a) the Trustee may allocate to the Member's accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under clause 12.1 or 12.2 to the date on which the benefit is being paid.

## **13. EXCESSIVE BENEFITS**

If at any time, in the opinion of the Trustee, contributions are made contrary to the Act or a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustee may take such of the following actions which it, in its absolute discretion, determines:-

- (a) decline to accept any further contributions for the benefit of that Member,
- (b) establish a separate excessive benefits fund of which the Trustee shall be the trustee and which is subject to the same trusts and powers contained in this Trust Deed;
- (c) transfer to the separate fund established under paragraph (b) of this clause, the amount which the Trustee determines represents the excess over the maximum reasonable benefit for the purposes of the Act.

The Trustee may accept a transfer from the separate fund referred to in paragraph (b) of this clause 13.

## **14. FORFEITURE OF BENEFITS**

### **14.1 Subject to the requirements and provisions of the Superannuation Industry (Supervision) Act 1993, a Member or former Member shall cease to be presently or presumptively entitled to the Member's Benefit at the discretion of the Trustee if in its opinion:-**

- (a) he has become insolvent or has attempted to assign, alienate, charge or encumber all or a part of his Member's Benefit;
- (b) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or

- (c) his whereabouts cannot be traced by the Trustee for a period of five years, after making reasonable enquiries.

- 14.2 In any such event the Trustee shall apply the amount so forfeited that stood to the credit of the Member's Contribution Account for the benefit of the Member or such of the Member's dependants as the Trustee, in its absolute discretion, determines and the Trustee may, in its absolute discretion, in order to relieve hardship only, apply the amount so forfeited that stood to the credit of the Member's Employer's Contribution Account for the maintenance or support of the Member or such of his dependants as the Trustee in its absolute discretion determines or in a manner provided for in the Act. Such application of the Member's Benefit shall be a discharge to the Trustee for the payment thereof.
- 14.3 Notwithstanding the provisions of sub-clause 14.1(a), a Member or former Member shall not cease to be presently entitled or presumptively entitled to the Member's Benefit at the Discretion of the Trustee by reason of the Member or former Member becoming bankrupt or committing an act of bankruptcy.

15. **ALLOCATION OF FORFEITED BENEFITS**

The amount of any forfeited benefit in the Fund by reason of the operation of clause 14 hereof and the Rules annexed hereto which is not applied in accordance with clause 14.2 hereof shall be credited to the Forfeited Benefits Reserve Account established in accordance with the provisions of clause 11.1 (f) and shall be applied within six months of the end of each financial year (or such other period provided for in the Act):-

- (i) to the provision of the benefits that other Members or their dependants have rights to receive from the Fund; or
- (ii) to the provision for other Members or their dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all of the circumstances; or
- (iii) for any purpose approved in writing by the Commissioner; or
- (iv) in such other manner that is permitted or required under the Act.

16. **COMMON LAW RIGHTS OF MEMBERS**

The provisions of this Deed and the Rules annexed hereto shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law, in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

17. **LOANS TO MEMBERS**

The Trustee shall not make any loans or advances to a Member.

18. **MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS**

- 18.1 A Member shall have no right to or interest in his Member's Benefit except as provided herein and in the Rules annexed hereto and in the Act.
- 18.2 The rights of the Members and their dependants to receive benefits from the Fund shall be those set out in this Trust Deed.
- 18.3 The rights of the Members and their dependants to receive the benefits payable under the Rules shall be fully secured within the meaning of the Act.
- 18.4 The Members shall be provided with statements and information in relation to the administration of the Fund in accordance with the requirements of the Act.

19. **EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT**

- 19.1 Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise determine the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a Director.
- 19.2 The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

20. **TRUSTEE - APPOINTMENT AND REMOVAL**

- 20.1 Subject to the requirements of the Superannuation Industry (Supervision) Act 1993 being satisfied the Trustee shall have the power by deed or by an oral or written resolution to appoint a new or additional Trustee or Trustees provided that such new or additional trustee or trustees is a constitutional corporation or are constitutional corporations.
- 20.2 The office of a Trustee shall become vacant if:-
- (a) the Trustee resigns its office;
  - (b) a resolution is passed or a petition is represented for its winding up or liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or a receiver of its assets is appointed.
  - (c) disqualification by law including pursuant to the Superannuation Industry (Supervision) Act 1993 from holding office.
- 20.3 Subject to the requirements of the Superannuation Industry (Supervision) Act 1993, a majority of the Members may by resolution or in writing remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee provided that such new trustee is a constitutional corporation.

21. **POWERS OF TRUSTEE**

- 21.1 The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:-
- (a) to pay out of the Trust Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
  - (b) to pay out of the Trust Fund expenses incurred in:-
    - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
    - (ii) having the accounts of the Fund audited;
    - (iii) having taxation returns and returns to Government authorities prepared; and
    - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
  - (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
  - (d) Subject to the provisions of the Superannuation Industry (Supervision) Act 1993, to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee (except for the power to vary the or amend this Trust Deed) on such terms and conditions as the Trustee in its absolute discretion thinks fit and the Trustee shall not be responsible for any loss incurred as a result of such delegation;

- (e) to take and act upon the advice of a barrister, solicitor, accountant, actuary or superannuation consultant in relation to the administration of the Fund and pay out of the Trust Fund the fees payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustee in its absolute discretion thinks necessary for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee thinks fit;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee sees fit;
- (i) subject to the provisions of the Act to borrow any sum of money for the purposes of obtaining temporary finance (as defined in the Act) and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee thinks fit and in particular by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) to irrevocably elect that the Fund become a regulated superannuation fund under the Act.
- (k) to lease or rent assets of the Fund in a manner consistent with the requirements of the Superannuation Industry (Supervision) Act 1993 and otherwise in such manner and on such terms as the Trustee sees fit;
- (l) insuring any risks;
- (m) generally to do all such things and perform such acts as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed and the Rules annexed hereto.

## 22. TRUSTEE - EXERCISING DISCRETIONS AND DISCRIMINATION

In administering the Fund and in exercising the trusts, powers and authorities vested in the Trustee herein and pursuant to the Rules annexed hereto, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities **PROVIDED HOWEVER** that the Trustee shall not discriminate against any person on the grounds of that person's race, sex or marital status in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

## 23. LIABILITY OF TRUSTEE

Except as otherwise provided in the Act, a Trustee shall not be liable for any loss that is:-

- (a) not attributable to his own dishonesty;
- (b) attributable to actions or defaults of a co-trustee;
- (c) attributable to any action taken in conformity with the decisions of the Trustee hereunder; or
- (d) attributable to the neglect or default of an agent employed in good faith by the Trustee.

## 24. TRUSTEE'S AND DIRECTORS' INDEMNITY

The Trustee and the directors of the Trustee shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund for such indemnity **PROVIDED THAT** the right of indemnity shall not extend (in relation to the Trustee or any particular director) to:

- (a) any liability arising out of the Trustee or any particular director failing to act honestly in a matter concerning the Trust Fund or intentionally or recklessly failing to exercise, in relation to a matter affecting the Trust Fund, the degree of care and diligence required to be exercised; or
- (b) liability for a monetary penalty under a civil penalty order within the meaning of the Act.

25. **REMUNERATION OF TRUSTEE**

Subject to the requirements of the Act, the Trustee shall be entitled to be indemnified and reimbursed for expenses or costs incurred by the Trustee in carrying out the duties and functions as trustee of the Fund. Excepting for such expenses and costs the Trustee shall not be entitled to be paid remuneration for performance of the trustee's duties, or the provision of any other services to the fund.

26. **REMUNERATION OF PROFESSIONAL PERSONS**

Any person who is an accountant, actuary, solicitor, barrister or other professional person and is a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he would make had he not been a director of a company acting as Trustee hereof.

27. **TRUSTEE AS MEMBER'S ATTORNEY**

Each Member hereby irrevocably appoints the Trustee his attorney to execute and sign all such deeds and instruments and do all such things the Trustee considers necessary or desirable in administering the Fund.

28. **TRUST DEED AVAILABLE FOR INSPECTION**

A copy of this Trust Deed and the Rules annexed hereto shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.

29. **VARIATION OF TRUST DEED**

29.1 The Trustee may at any time and from time to time either by deed executed by the Trustee or by oral resolution vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the Rules annexed hereto and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner **PROVIDED THAT** no such variation, addition or rescission shall have the effect of-

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable, before the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this clause, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

and the benefits that have accrued, or become payable, to or in respect of a Member shall not otherwise be reduced, unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required only to enable the Fund to comply with the Act; or
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction.

- 29.2 No variation, addition or rescission of this Deed shall have the effect of changing the requirement that the Trustee must be a constitutional corporation unless:-
- (a) The provisions of this Deed as varied provide that the sole or primary purpose of this fund is the provision of old age pensions as required by the Superannuation Industry (Supervision) Act 1993 in the case of non-corporate trustees; and
  - (b) Where applicable, the Trustee is satisfied that the requirements of the Superannuation Industry (Supervision) Act 1993 concerning equal representation of employer representatives and members will be satisfied.
- 29.3 The requirements, if any, specified in the Superannuation Industry (Supervision) Act 1993 and relevant for amendment of the governing rules of the Fund must in addition be complied with for the purposes of amending or varying the provisions of this deed.
- 29.4 The Trustee shall as soon as practicable advise the Members in writing of the nature, purpose and effect of any such variation, addition or rescission.

30. **TRANSFER OF BENEFIT FROM ANOTHER FUND**

Where a Member requests that an amount standing to his credit or a policy of insurance in another superannuation or approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Contribution Account **PROVIDED THAT** if the said amount or policy is being transferred from a superannuation fund conducted by or contributed to by an Employer or an associate of an Employer, the said amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account (or the equivalent thereof) in the previous superannuation or provident fund or on such other basis as the Trustee and the Member agree upon and **PROVIDED FURTHER** that the requirements of the Act are satisfied.

31. **TRANSFER OF BENEFIT TO ANOTHER FUND**

The Trustee may, on receiving the written request of a Member, transfer the whole or a part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or provided termination of employment has occurred transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act, **PROVIDED THAT** such a transfer shall only be made if it is a condition of such transfer that the amount transferred shall not be paid from that fund prior to the Member retiring from the workforce and attaining age 55 except in the event of death or permanent incapacity for work or in such other circumstances as are permitted under the Act and it is a condition of such transfer that the benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions. The receipt by the trustees of such fund shall be a complete discharge to the Trustees in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred.

32. **BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

33. **ADMISSION OF EMPLOYERS TO FUND**

- 33.1 The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of Appendix B or such other form of application as the Trustee decides upon. An Employer so admitted shall be bound by the provisions of this Trust Deed and the Rules annexed hereto in the same way the Employer would be if it had been an original party to the Trust Deed.
- 33.2 An Employer admitted as an Employer to the Fund shall supply such information which the Trustee requests so as to enable the Trustee to properly administer the Fund and comply with the requirements of the Act.

34. **DISSOLUTION OF THE FUND**

- 34.1 When the last remaining Member ceases to be a Member the Fund shall be wound up and the Trustee shall, subject to the Rules annexed hereto, pay or transfer to the Members or former Members, benefits in accordance with the provisions of the Rules annexed hereto, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted by the Members and former Members in full discharge of all claims in respect of the Fund.
- 34.2 Notwithstanding anything contained in clause 34.1, the Trustee shall not pay or transfer the benefit to a Member except in accordance with the provisions of the Rules annexed hereto.
- 34.3 If any amount remains in the Fund, after all the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their dependants in such proportions as the Trustee considers to be equitable.
- 34.4 The trusts constituted by this Trust Deed shall, unless previously terminated in accordance with clause 34.1 hereof, endure during the life of the survivor of all the lineal descendants of His Late Majesty King George V living at the date of this Trust Deed and for twenty-one years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts hereby established provided that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provides that the Rule against Perpetuities shall not apply.

35. **COMPLIANCE WITH SIS LEGISLATION**

- 35.1 If there is a conflict or inconsistency between the provisions of this Deed and the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Act 1993 is to prevail and any provision in this Deed is to be read down, construed and interpreted by the Trustees in such a manner so as to give effect to the Superannuation Industry (Supervision) Act 1993 and to enable the Fund to be operated in a manner that is consistent with the Superannuation Industry (Supervision) Act 1993.
- 35.2 The Trustees have the power to do all acts and things or to omit to do such acts or things as they consider necessary, desirable or expedient for the Fund to be operated or administered in accordance with the Superannuation Industry (Supervision) Act 1993 and/or for the Fund to be a Complying Superannuation Fund and for the Trustees, Employers, Members and beneficiaries not to be in contravention or in the opinion of the Trustees any possible or potential contravention of the Superannuation Industry (Supervision) Act 1993.
- 35.3 The powers conferred upon the Trustees by Clause 35.2, without limiting the generality of such powers, include the right to administer and operate the Fund so that:-
- (a) the Fund is operated solely for one or more of the core and ancillary purposes specified in the Superannuation Industry (Supervision) Act 1993;
  - (b) the Fund is operated so as to comply with any standards prescribed under the Superannuation Industry (Supervision) Act 1993 which are applicable to the Fund;
  - (c) the Trustees are entitled to provide to the Commissioner with such returns and information as required by the Commissioner or as required by the Superannuation Industry (Supervision) Act 1993 ;
  - (d) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Commissioner;
  - (e) the Trustees may inform or disclose to, the Commissioner such event, omission or thing that the Superannuation Industry (Supervision) Act 1993 may require to be disclosed to the Commissioner and/or seek the advice or ruling or direction of the Commissioner as they consider necessary;
  - (f) the Trustees may pay from the Fund any levy or charge imposed upon the Fund under the Superannuation Industry (Supervision) Act 1993; and

- (g) the Trustees may seek from the Commissioner any exemption or modification of the provisions of the Superannuation Industry (Supervision) Act 1993 in respect of their application of the Fund;
- (h) the Trustees may pay a Member's or a beneficiary's benefits or interest in the Fund, in the circumstances prescribed by the Superannuation Industry (Supervision) Act 1993, to the Commissioner or an eligible rollover fund even if no claim for such benefit has been made by or in respect of the Member or beneficiary.

35.4 The Trustees are not to be taken to be in contravention of the Deed or in breach of trust if in giving effect to clauses 35.1 and 35.2, they:

- (a) construe or interpret this Deed;
- (b) do such acts or things;
- (c) omit to do such acts or things;

which might otherwise be in contravention of this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of the Superannuation Industry (Supervision) Act 1993.

35.5 The Trustees are not to be taken in contravention of this Deed or in breach of trust if they do anything or make any omission which is contravention of the Superannuation Industry (Supervision) Act 1993 if:

- (a) the Trustees rectify the contravention within such period as may be allowed under the Superannuation Industry (Supervision) Act 1993 or within such further period as the Commissioner allows; or
- (b) the Commissioner notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

35.6 (a) Notwithstanding any provision of this Deed any other covenant or other requirement required by the Superannuation Industry (Supervision) Act 1993 to be included in this Deed is deemed to be included as if every such covenant or requirement was set out in this Deed on and from the date that covenant or requirement is required to be so included.

- (b) If the Superannuation Industry (Supervision) Act 1993 or the Commissioner no longer requires any such covenant or requirement to be included then that covenant or requirement ceases to be included.
- (c) If any such covenant or requirement or its operation is pursuant to the provisions of the Superannuation Industry (Supervision) Act 1993 modified then the Trustees are only required to comply with the covenant or requirement as it may be so modified.
- (d) The Trustees are not to be taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such covenant or requirement if the contravention is waived by the Commissioner.



## SCHEDULE

Date of Making this Deed:

18th February 1998

The Trustee:

Xarion Pty Limited A.C.N. 078 994 840 of  
26/2 Forest Road  
Warriewood NSW 2102

The Name of the Fund:

## The Xarion Superannuation Fund

Law of this Fund:

New South Wales

EXECUTED AS A DEED

THE COMMON SEAL OF  
Xarion Pty Limited  
A.C.N. 078 994 840  
was hereto affixed by  
authority of the Board of  
Directors and in the  
presence of:

)  
)  
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)  
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Csa

Director

T. Smith

Secretary

## SCHEDULE OF RULES

### 1. BENEFIT PAYABLE ON RETIREMENT OR DEATH AFTER RETIREMENT

- 1.1 The amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to a Member upon his retirement from the workforce after attaining age 55, or such other age as may be permitted by the Superannuation Industry (Supervision) Act 1993. In the event of the Member's death on or after attaining age 55 (or such other age as may be permitted by the Superannuation Industry (Supervision) Act 1993), the Member's Benefit or the balance thereof shall, subject to Rules 1.4 and 1.5, be paid or applied by the Trustee in a lump sum in accordance with the provisions of Rule 2. The benefit payable under this Rule 1.1 on retirement shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension or annuity. A pension or annuity paid to a Member shall be paid on a basis that meets the requirements of the Superannuation Industry (Supervision) Act 1993 and so as to be construed as a benefit from a complying superannuation fund.
- 1.2 A benefit payable under Rule 1.1 shall commence to be paid no later than the Member's sixty-fifth birthday unless the Member is continually employed or self employed on a Part-Time Basis after attaining age 65 and elects to retain his benefit in the Fund in which case the benefit payable under Rule 1.1 shall commence to be paid no later than the Member's seventieth birthday.
- 1.3 Where a Member continues to be employed or self employed on a Full-Time Basis, after attaining age sixty five, his benefit may, if he so elects, remain in the Fund until he retires from the workforce **PROVIDED THAT** if the Member ceases to be employed or self employed on a Full-Time Basis, but immediately thereafter becomes continually employed or self employed on a Part-Time Basis, his benefit shall continue to be paid on his seventieth birthday or, if later, the date he ceases to be employed or self employed on a Full-Time Basis.
- 1.4 On the death of a Member to whom a pension or annuity is being paid pursuant to Rule 1.1 and who is survived by a spouse, a pension or an annuity, as the case may be, shall be paid to the deceased Member's spouse. Such pension or benefit shall commence at the date of the Member's death and shall be equal to the annual pension or benefit paid to the deceased Member as at the date of death or such other amount so as to comply with the Superannuation Industry (Supervision) Act 1993 and the requirements, if any, so as to enable the Fund to obtain maximum income tax concessions.
- 1.5 In the event of the death of a retired Member who does not have a spouse or in the event of the death of a Member's spouse to whom a pension or annuity was payable under Rule 1.4, the balance of the Member's Benefit shall be paid in a lump sum to such of the Member's dependants as the Trustee, in its absolute discretion determines. If the payment of part or all of such benefit does not comply with the requirements of the Act for the Fund to be a complying superannuation fund or for the benefit to be construed as being taken from a complying superannuation fund, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustee is unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any dependants, the benefit payable under this Rule 1.5 shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the forfeiture of benefit provisions referred to in the Trust Deed of the Fund.

### 2. BENEFIT PAYABLE ON DEATH BEFORE RETIREMENT

- 2.1 In the event of the death of a Member before his/her retirement from the workforce, the amount of the Member's Benefit shall be held by the Trustee upon trust for the benefit of such one or more of the Member's dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines but otherwise in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993.
- 2.2 If the Trustee is unable to establish within six months of the Member's death that there are any dependants, the benefit payable under Rule 2.1 shall be paid to the Member's Legal Personal Representative but if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years

of his death (or such other period as the Trustee determines), the benefit payable hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the forfeiture of benefit provisions of the Trust Deed.

### **3. BENEFIT PAYABLE ON DISABLEMENT**

- 3.1 In the event of a Member becoming in the opinion of the Trustee, Permanently and Totally Disabled, the amount of the Member's Benefit shall, subject to the provisions of the Trust Deed, be paid to the Member or, if he is unable to manage his own affairs, to such of this dependants and in such proportions as the Trustee, in its absolute discretion, determines. If, prior to the Trustee determining that a Member is Permanently and Totally Disabled, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his dependants as aforesaid **PROVIDED THAT** the benefit shall be paid in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993 for the Fund to be a complying superannuation fund or for the benefit to be construed as being taken from a complying superannuation fund.
- 3.2 The benefit payable under Rule 3.1 on the occurrence of Permanent and Total Disablement shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension or annuity. A pension or annuity shall comply with the requirements of the Superannuation Industry (Supervision) Act 1993 so that the Fund is a complying superannuation fund or for the benefit to be construed as being taken from a complying superannuation fund.
- 3.3 Where a benefit is payable under Rule 3.2 by way of pension or annuity, the Trustee shall, in its absolute discretion, determine the amount of the pension or annuity and the manner in which and the period for which it is paid **PROVIDED THAT** such benefit shall be paid in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993 for the Fund to be a complying superannuation fund or for the benefit to be construed as being taken from a complying superannuation fund.
- 3.4 In the event of the death of a Member or a Member's spouse to whom a pension was payable under Rule 3.2 the balance of the Member's Benefit shall be paid in a lump sum to such of the Member's dependants as the Trustee, in its absolute discretion, determines **PROVIDED THAT** such benefit shall be paid in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993 for the Fund to be a complying superannuation fund or for the benefit to be construed as being taken from a complying superannuation fund. If the payment of part or all of such benefit does not so comply, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated hereunder. If the Trustee is unable to establish within six months of the death of the Member or the Member's spouse (whichever occurs last) that there are any dependants, the balance of the Member's Benefit shall be paid to the Member's Legal Personal Representative but, if a grant of Probate or Letters of Administration in respect of the estate of the Member is not made within three years of his death (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or shall be applied by the Trustee in accordance with the forfeiture of benefit provisions referred to in the Trust Deed for the Fund.

### **4. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

#### **4.1 Severe Financial Hardship**

Upon an application or claim in writing to the Trustee by a Member claiming severe financial hardship, the Trustee shall, upon being satisfied that the conditions for release of benefits as prescribed by the Superannuation Industry (Supervision) Act 1993 are satisfied in respect to severe financial hardship and the Act is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Superannuation Industry (Supervision) Act 1993).

#### **4.2 Compassionate Grounds**

Upon an application or claim in writing to the Trustee by a Member claiming compassionate grounds, the Trustee shall, at the Trustee's absolute discretion upon being satisfied that the conditions for release of benefits as prescribed by the Superannuation Industry (Supervision) Act 1993 are satisfied in respect to compassionate grounds including the relevant consents being obtained from the Commissioner and the Act is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Superannuation Industry (Supervision) Act 1993) in accordance with the Act.

## 5. PAYMENT OF BENEFITS TO MINORS

Where a person, to whom benefits are payable hereunder, is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

## 6. DEDUCTION OF INCOME TAX

The Trustee may deduct from any benefit payable, the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

## 7. PENSION CONDITIONS

7.1 When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.

7.2 The recipient of a pension or an annuity under these Rules may commute to a lump sum payment any amount permitted by the Superannuation Industry (Supervision) Act 1993 for a pension or annuity on making written application to the Trustee **PROVIDED** the option to commute a pension or an annuity to a lump sum payment is exercised within six months ( or such other time permitted under the Act) of the first day of the period to which the first pension payment paid by the Trustee relates, except in the event of the death of a Member or in such other circumstances as are permitted by the Act and provided that the commutation is otherwise in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993.

7.3 An annuity referred to in these Rules shall mean a benefit provided by the Fund if the benefit is taken under the Superannuation Industry (Supervision) Act 1993, to be an annuity for the purposes of the Act, and subject to fulfilling such requirements:-

- (i) an annuity cannot be transferred by a person in receipt of it to a person other than the reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (ii) the capital value of an annuity, and the income from it cannot be used as a security for a borrowing;
- (iii) an annuity payable under these rules shall be paid at least annually or at least for such other periods as may be prescribed or required under the Superannuation Industry (Supervision) Act 1993; and
- (iv) the payment of an annuity, except by way of commutation, shall not be larger or smaller than respectively the maximum and minimum limits calculated in accordance with that specified in the Superannuation Industry (Supervision) Act 1993.

7.4 A pension referred to in these Rules shall mean a benefit provided by the Fund if the benefit is taken under the Superannuation Industry (Supervision) Act 1993, to be a pension for the purposes of the Act, and subject to fulfilling such requirements:-

- (i) a pension cannot be transferred by a person in receipt of it to a person other than the reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (ii) the capital value of a pension, and the income from it cannot be used as a security for a borrowing;
- (iii) an pension payable under these Rules shall be paid at least annually or at least for such periods as may be prescribed or required under the Superannuation Industry (Supervision) Act 1993;
- (iv) the payment of a pension, except by way of commutation, shall not be larger or smaller than respectively the maximum and minimum limits calculated in accordance with that specified in the Superannuation Industry (Supervision) Act 1993; and
- (v) where permitted the term pension used in these rules may include an allocated pension.

7.5 A Member shall comply with the provisions of Rules 7.3(i)-(ii) and 7.4(i) and (ii) at all times.

7.6 Subject to the requirements of the Superannuation Industry (Supervision) Act 1993, a pension payable under these Rules may be increased annually by the Trustee by an amount not exceeding any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) or any replacement index **PROVIDED THAT** the minimum annual increase of the pension shall be the lesser of:-

- (i) 5% of the pension;
- (ii) any percentage increase during the previous 12 months in the Consumer Price Index (All Capital Cities) published by the Australian Statistician for the March quarter in the preceding year or any replacement index; and
- (iii) any other minimum increase permitted under the Act.

7.7 The Trustee may, in its absolute discretion, provide a pension payable under these Rules by applying a Member's Benefit to the purchase, in the ownership of either the Trustee or the Member, of an annuity that meets the requirements of the Act and for the Fund to obtain the maximum income tax concessions.

## **8. PAYMENT OF SMALL DEATH BENEFITS**

Notwithstanding any other provision of these Rules to the contrary, excepting the provisions of rule 9 hereof, where upon the death of a Member:

- (a) the benefits to be paid to that Member do not exceed the sum of \$5,000 or such other amount prescribed under the Superannuation Industry (Supervision) Act;
- (b) the Trustee after reasonable enquiry has not found any dependant or Legal representative of the deceased Member; and
- (c) having regard to the quantum of the relevant benefits and the potential expense for the trust fund and dependant associated with legitimate claimants or claimants subsequently coming forward to be paid the relevant benefits it would be unreasonable for the Trustee to insist that the dependant incur the costs of seeking Letters of Administration;

the Trustee may pay the relevant benefits to the next of kin of the deceased Member or in the event that the Trustee cannot find such next of kin then the Trustee may pay the relevant benefits to such friend of the deceased Member as the Trustee in its absolute discretion decides.

## **9. COMPLIANCE WITH THE ACT**

9.1 Notwithstanding anything to the contrary contained in these Rules:-

- (i) no member shall be entitled to payment of benefits contrary to the provisions, conditions and standards imposed by the Superannuation Industry (Supervision) Act 1993 and the Trustee shall act in accordance with the provisions of such Act and regulations so that the benefits payable under these rules shall be taken as benefits from a complying superannuation fund;
- (ii) these rules shall not restrict the payment of benefits in any way permitted by the Superannuation Industry (Supervision) Act 1993 and the Trustee has full discretion to administer and pay benefits in accordance with the Act.

## **10. PAYMENT OF LUMP SUM BENEFITS IN SPECIE**

Where the Trustee may pursuant to these Rules pay a benefit as a lump sum, the Trustee may at the request of the Member and in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993 pay such benefits by transferring in specie assets of equivalent value to the benefit payable.

## APPLICATION FOR PARTICIPATION BY EMPLOYER *APPENDIX B*

To the Trustees of:

I/We, \_\_\_\_\_  
(hereinafter called "the Associated Employer") hereby applies to participate in the above-mentioned Fund and to include the employees of the Associated Employer as members of the Fund and in consideration of the acceptance of the Associated employer as a participant in the fund, the Associated employer undertakes to contribute to the fund and be bound by the Trust Deed and Rules governing the fund as if it were originally named therein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

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THE COMMON SEAL OF \_\_\_\_\_

was hereto duly affixed in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Secretary

---

Signed Sealed and Delivered by the said

\_\_\_\_\_

\_\_\_\_\_  
(FULL NAME)

\_\_\_\_\_  
(SIGNATURE)

in the presence of:

\_\_\_\_\_

Signed Sealed and Delivered by the said

\_\_\_\_\_

\_\_\_\_\_  
(FULL NAME)

\_\_\_\_\_  
(SIGNATURE)

in the presence of:

\_\_\_\_\_

---

N.B. The upper panel is to be used where the Associated Employer is a Company and the lower panel is to be used where the Associated employer is a Partnership or Sole Trader