

# Deed of Amendment for a self-managed superannuation fund

Dated 01/07/2010  
Day Month Year

By the Trustee Harricks Pty Limited ACN 123 765 355

## INTRODUCTION

- A The Trustee currently acts as Trustee for D A & R J Harricks Superannuation Fund (the Fund), a self-managed superannuation fund.
- B Rule 8 of the Trust Deed of the Fund provides that, subject to the Relevant Law, the Trustee, may by supplemental deed make any modification, addition or deletion to the Trust Deed.
- C The Trustee wishes to amend the Trust Deed of the Fund.
- D The Trustee considers that the amendments do not adversely affect the benefits of members.
- E The Trustee is further of the opinion that the amendments do not breach any of the provisions of the Relevant Law.
- F This Deed of Amendment shall be construed only as operating to amend the provisions of the Trust Deed and not as establishing a new or different trust or superannuation fund.

## OPERATIVE PART

1. Replace all provisions of the Trust Deed of the Fund with the provisions of Schedule 1 to this Deed of Amendment.
2. The amendment made by clause 1 of this Deed of Amendment operates on and from the date of this Deed, but, for the avoidance of doubt, does not affect determinations made by the Trustee prior to the date of commencement of the amendments, nor the payment of benefits on or after that date, in accordance with such determinations.

## EXECUTED AS A TRUST DEED

Robin Jamison Harricks  
Signature  
Robin Jamison Harricks  
Sole Director

Annie J Sutherland  
Signature of Witness  
ANNIE J SUTHERLAND  
Name of Witness

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Deed of Amendment for a self-managed superannuation fund

Date

11/07/2019

By the Trustee

Hemlock Pty Limited AON 158 708 328

INTRODUCTION

- A The Trustee currently acts as Trustee for D & R J Hemlock Superannuation Fund (the Fund), a self-managed superannuation fund.
- B Rule 8 of the Trust Deed of the Fund provides that, subject to the Relevant Law, the Trustee, may by supplemental deed make any modification, addition or deletion to the Trust Deed.
- C The Trustee wishes to amend the Trust Deed of the Fund.
- D The Trustee declares that the amendments do not adversely affect the benefits of members.
- E The Trustee is further of the opinion that the amendments do not breach any of the provisions of the Relevant Law.
- F The Deed of Amendment shall be construed only as operating to amend the provisions of the Trust Deed and not as establishing a new or different trust or superannuation fund.

OPERATIVE PART

- 1. Subject to compliance with the provisions of the Trust Deed of the Fund with the provisions of Schedule 1 to the Deed of Amendment.
- 2. The amendment made by clause 1 of this Deed of Amendment operates on and from the date of this Deed, but for the avoidance of doubt, does not affect determinations made by the Trustee prior to the date of commencement of the amendments, nor the payment of benefits on or after that date, in accordance with such determinations.

EXECUTED AS A TRUST DEED

Signature

*[Handwritten Signature]*

Trustee Hemlock

Role Director

Signature of Witness

*[Handwritten Signature]*

Name of Witness

*[Handwritten Name]*

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# Schedule 1

## Self-managed superannuation fund Trust Deed

### AGREEMENT

1. **Establishment:** The Trustee (**Trustee**) as named in Item 1 of the Schedule has constituted as from the date (**Commencement Date**) in Item 2 of the Schedule, a superannuation fund (**Fund**) known by the name in Item 3 of the Schedule for the members as named in Item 4 of the Schedule and future members of the Fund. The Fund is to be managed in accordance with this Trust Deed for the benefit of Members and their Dependants (as defined by the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994* (SIS)) all of whom shall be bound by this Trust Deed, as a self-managed superannuation fund (SMSF).
2. **Compliance**
  - 2.1 The Trustee may be two or more individuals or a constitutional corporation. Where the Trustee is not a constitutional corporation, then the primary purpose of the Fund shall be the provision of old age pensions. Benefits shall be paid in the form of pensions unless the Member requests otherwise (as permitted by the Relevant Law).
  - 2.2 The Trustee is fully empowered (without being obliged) to comply with any provision or standard of the Relevant Law which is not a requirement. Relevant Law means:
    - (a) SIS
    - (b) the *Corporations Act 2001* (Cth)
    - (c) the *Income Tax Assessment Act 1936* (Cth)
    - (d) the *Income Tax Assessment Act 1997* (Cth) and
    - (e) any other, replacement or additional Commonwealth or State law or regulations, administrative rulings, circulars, guidelines or instruments which relate to superannuation arrangements and which apply to the Fund or any other present, future or proposed legal requirements which the Trustee is legally obliged to comply with, or which the Trustee must comply with to obtain the maximum tax concessions available to the Fund,including any proposed requirements which the Trustee believes will have retrospective effect and any provisions of the above items which are necessary to be complied with in order for any pensions paid by the Fund to satisfy any applicable statutory requirements.
  - 2.3 The Trustee is deemed to have complied with the Relevant Law and this Trust Deed if:
    - (a) the Regulator (as defined in SIS) is satisfied that the Trustee has complied with the Relevant Law
    - (b) the Regulator determines that the Fund will be treated as if it had complied with the Relevant Law, or
    - (c) the Regulator has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with the Relevant Law.
- 2.4 To the extent that any provision (or part of that provision) in this Trust Deed conflicts with Part 6 of SIS:
  - (a) that provision (or part of that provision) must be read down, changed, construed or severed to avoid such conflict, and
  - (b) to the extent that such conflict cannot be avoided, the provision (or part of that provision) will be of no effect.
- 2.5 Where a provision of the Relevant Law is required to be included in this Trust Deed in order to comply with the Relevant Law, such provision is deemed to be included in this Trust Deed for so long as the provision is required to be so included.
- 2.6 Without limiting paragraphs 2.4 and 2.5, the following provisions of the Relevant Law (and any corresponding regulations) apply despite any other provisions of this Trust Deed, for so long as the provision of the Relevant Law is required to so apply:
  - (a) section 52 of SIS (covenants to be included in governing rules)
  - (b) section 56 of SIS (indemnification of Trustee from assets of entity)
  - (c) section 57 of SIS (indemnification of directors of Trustee from assets of entity)
  - (d) section 58 of SIS (Trustee not to be subject to direction)
  - (e) section 59 of SIS (exercise of discretion by person other than Trustee)
  - (f) section 60 of SIS (amendment of governing rules)
  - (g) section 60A of SIS (dismissal of trustee of public offer entity)
  - (h) section 35A of SIS (accounting records)
  - (i) section 35B of SIS (accounts and statements), and
  - (j) section 35C of SIS (audit).
- 2.7 The Trustee must arrange to provide such information or documentation, at such time and in such manner to such persons as is required by the Relevant Law.
3. **Vesting:** All property, rights and income of the Fund (**Fund Property**) vest in the Trustee on trust for Members. **Fund Liabilities** include (without limitation) liabilities, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions, liability to Taxes, and unpaid amounts due and payable to Members or Dependants in respect of benefits. A Member may neither interfere with, nor exercise powers of, the Trustee in respect of any Fund Property or Fund Liability or obligation.



4. **Fund:** The Trustee must hold all Fund Property as a separate fund which is not available to meet liabilities of any other entity. The Trustee at any time may divide the Fund into two or more sub-funds (**Sub-Funds**) relating to the interests of different members or as different accounts for the same Member.
5. **Membership**
- 5.1 The Trustee may admit as a Member of the Fund and, if there are any, of one or more Sub-Funds, any person eligible under the Relevant Law who applies in writing. The Trustee may reject any application for membership without giving a reason. The Trustee may at its discretion create such membership classes with such rights, entitlements, conditions or eligibility and benefits as the Trustee may decide.
- 5.2 A Member must inform the Trustee as soon as practicable of any event which has or may have effect that:
- (a) the Member may enter into an employment relationship with any other Member and the Member is not a relative of the other Member, or
  - (b) the Member may become disqualified under the Relevant Law from holding the office as an individual Trustee, or as a Director of a corporate Trustee.
- 5.3 If at any time, a Member has in fact satisfied either of the events in clauses 5.2 (a) or (b), the Trustee and the Members must complete such arrangements as are necessary to ensure that the membership of the Fund as a whole satisfies the requirements of the Relevant Law by no later than six months after the Member ceased to satisfy those requirements.
- 5.4 Unless the Relevant Law allows otherwise, a person ceases to be a Member on the earliest to occur of the following:
- (a) the date on which payment of all the Member's Benefit is made to the Member or to another regulated superannuation fund on behalf of the Member or to a Member's legal personal representative or Dependant upon the death of the Member
  - (b) the date when Benefits payable to or on behalf of a Member cease to be payable.
- 5.5 If at any time the trusteeship of the Fund does not meet the requirements of the Relevant Law, the Members must:
- (a) complete such arrangements as are necessary, and
  - (b) ensure that the trusteeship of the Fund meets the Relevant Law requirements no later than six months after the trusteeship ceased to meet those requirements.
- 5.6 A Member has all of the powers permitted by the Relevant Law to make such directions to the Trustee as they think fit, including directions as to investments, death benefit nominations, the form of Benefit to be paid, a transfer of a Benefit and the taking of a Benefit in cash or in specie.
6. **Contributions:** If the Trustee agrees, any Member, or other person in respect of a Member (whether the Member, an employer, a spouse, the Government or otherwise) may contribute any amount (**Contribution**) to the Fund or to a Sub-Fund (to which that Member has been admitted) in respect of that Member, as permitted by the Relevant Law. A Contribution may be made to the Trustee in cash or by transfer of an asset or assets.
7. **Powers**
- 7.1 Subject to this Trust Deed, the Trustee has within, and outside, Australia all the powers in relation to the Fund, Fund Property and Fund Liabilities, that it is legally possible for a natural person or corporation to have, including (but not limited to) to manage the operation of the Fund and to invest in real or personal property of any nature (including, but not limited to, the purchase or acquisition in any way of shares of any class or description in the Trustee or a body corporate related to it) and to incur liabilities and obligations of any kind, as if it were the absolute and beneficial owner of all Fund Property.
- 7.2 The Trustee shall be entitled to exercise any power able to be exercised by trustees generally subject to the exercise of such power being prohibited by this Trust Deed or constituting a breach of the Relevant Law.
- 7.3 The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Trust Deed:
- (a) has an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise of which is final and binding
- provided that,
- (b) the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination, and
  - (c) the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Trust Deed must be made as required under, and so as not to breach the Relevant Law, and any such purported exercise shall be of no effect to the extent that it is not made as required under the Relevant Law or would, if effective, breach the Relevant Law.
- 7.4 The Trustee may:
- (a) delegate to any person any of the powers, duties and discretions conferred on it under this Trust Deed on such terms and conditions as it may determine, and
  - (b) vary, limit or revoke any such delegation,
- provided that any such delegation may only be undertaken in accordance with the Relevant Law.



## 8. Attorneys, Custodian, Administrator and Agents

- 8.1 The Trustee may effect execution of this Trust Deed or any other document in the course of administering the Fund by its duly appointed attorney/s.
- 8.2 The Trustee may in its absolute discretion appoint a custodian for purposes including holding the legal title to the Fund Property from time to time subject to the requirements of the Relevant Law.
- 8.3 The Trustee may in its absolute discretion appoint any legal practitioner, accountant, auditor, actuary, administrator, valuer, Australian Financial Services Licensee (including any authorised representative of such a licensee) or other service provider as its agent (whether or not any such agent may be related or not to the Trustee) in the course of administration of the Fund and shall be entitled to pay out of the Fund's assets the reasonable fees and charges of any such duly appointed agent.
9. **Discretion:** The Trustee may determine the manner, mode and time of exercise of its powers in its absolute discretion.
10. **Outgoings:** All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee in connection with the performance of its duties or the exercise of its rights or powers or administration or termination of the Fund are payable or reimbursable out of Fund Property (and, if referable to more than one Sub-Fund, apportioned in a manner determined by the Trustee).
11. **Valuations:** The Trustee is not to be regarded as having any special expertise in valuation. The Trustee may cause Fund Property to be revalued whenever it thinks fit. The value of any property must be determined by, or by a method determined by, a qualified valuer appointed and instructed by the Trustee or such other method as the Trustee and the Members agree is appropriate to determine current market value.
12. **Net Value:** Net Value is the value of Fund Property in the Fund (or in any Sub-Fund) less Fund Liabilities (or referable to the Sub-Fund). The Trustee may calculate Net Value as at any time (**Valuation Time**) (not limited to once a day), on the basis of the most recent valuation of each item of Fund Property and determination of Fund Liabilities, as at the Valuation Time.

## 13. Accounts

- 13.1 The Trustee will keep accounts for the Fund in accordance with the Relevant Law.
- 13.2 The Trustee has power at any time to establish any type or number of accounts as a reserve or otherwise, including a Forfeiture Account or an Income Reserve Account of the Fund. Money held in the Forfeiture or Income Reserve Account does not form part of any Account. Any income earned by the Fund on the money held in an Income Reserve Account must be credited to the Income Reserve Account.
- An Income Reserve Account may, at the discretion of the Trustee, be used for the following purposes:
- (a) to generally give effect to the reserving strategy established by the Trustee to stabilise the investment earnings of the Fund
  - (b) to provide for such contingencies as the Trustee may determine
  - (c) to augment the Fund earning rate
  - (d) to meet any Tax payments payable by the Fund
  - (e) to pay any expenses or charges payable by the Fund
  - (f) to or for the benefit of any Member or former Member including augmentation of an Account or on any other basis that does not breach the Relevant Law, and
  - (g) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

14. **Member Accounts:** The Trustee will keep a separate Member Account for each Member to which it will credit all Contributions (including split contributions), transfers or rollovers in respect of that Member. As at 30 June each year and on each other date the Trustee chooses (**Review Date**) the Trustee must determine the Net Value of the Fund and each Sub-Fund and determine the gain (or loss) since the preceding Review Date. The Trustee will credit (or debit) each Member's Account with the appropriate proportion of the gain (or loss) on such basis as the Trustee considers equitable, including (without limitation) proceeds of Policies (as defined below) effected for the Member's benefit. The Trustee may create and keep other accounts that comply with applicable standards under the Relevant Law.



**15. Liabilities:** All Tax liabilities of the Trustee on account of the Fund shall be borne out of the Fund Property and shall either be taken into account for the purposes of determining the Fund Net Value in accordance with clause 12 or shall be debited against the Member Account of the Member or Members in respect of whom the Trustee may determine the Tax relates. Taxes means all income, capital gains, debits, goods and services, land and other taxes, superannuation surcharge, stamp documentary, financial institutions, registration and other duties, excise and any other levies, imposts, deductions and charges, related interest and penalties. The Trustee may withhold payment of any money payable to a Member until the liability is discharged, or may meet the liability and recover the amount from any money or property held for the Member. Without limiting the generality of this paragraph, the Trustee may debit Member Accounts directly with Taxes which in the opinion of the Trustee will be incurred on acceptance of the Member's Contributions, those Taxes being excluded from any calculation of Net Value of the Fund or any Sub-Fund.

**16. Auditor:** The Trustee must appoint and may at any time replace as **Fund Auditor** an approved auditor.

#### **17. Benefits**

**17.1** At any time after satisfaction by the Member of any condition of release within the meaning of the Relevant Law, and no later than the Relevant Law permits or requires, the Trustee will provide, when requested by the Member (or where applicable, a Dependant of that Member) all or any part of that Member's benefit in any one or more of the forms which the Member (or the Dependant) nominates, which the Trustee approves and which are permitted, and comply with all applicable standards required by the Relevant Law. If the Relevant Law does not require the Member's Benefit to be cashed at that time, the Trustee may decide not to provide a Benefit or part of it.

**17.2** When any beneficiary is under the age of 18 years or is under any legal disability or in the opinion of the Trustee it would be in the best interests of the beneficiary, the Trustee may pay all or part of any Benefit in one or more of the following ways as the Trustee may determine:

- (a) to or towards the maintenance, education, advancement, support or benefit of the beneficiary in such manner and on such terms and conditions as the Trustee determines, or
- (b) to any other person who appears to the Trustee to be a trustee for the beneficiary or spouse, child, parent or guardian or a person having custody of the beneficiary for application on behalf of the beneficiary,

and the receipt by the person to whom the Benefit is paid is complete discharge of the Trustee for the payment in respect of the beneficiary and the Trustee is not bound or concerned to see to the application of the Benefit so paid.

**17.3** The Trustee will choose a Review Date for the Fund and any relevant Sub-Fund on the latest practicable date prior to the date on which the Benefit is provided. The amount of the Benefit is the amount standing to the credit of the Member's Account following that Review Date.

**17.4** To the extent permitted by the Relevant Law, the Trustee may, with the consent of a Member:

- (a) to whom a Benefit is payable, or
- (b) in respect of whom a transfer of a Benefit or roll over of a Benefit is to be made

transfer or roll over investments of the Fund of equivalent value to the Member or to the trustee of the other regulated superannuation fund or eligible rollover fund in lieu of paying the whole or part of the amount otherwise payable under the provisions of this Trust Deed.

**17.5** In this Trust Deed, Benefit means a payment from the Fund to a Member by:

- (a) lump sum made in cash or by way of asset transfer, or
- (b) the commencement of an account-based pension, or
- (c) the continuation of a pension previously prescribed by the SIS Regulations.

#### **18. Death**

**18.1** If a Member dies (in a case other than a Member in receipt of a pension, in which case clause 18.3 will apply) the Trustee shall pay or apply the Member's Benefit to any one or more of the Member's legal personal representatives or Dependents in accordance with the Member's written binding nomination and which may be by way of a pension payable to Dependents and/or a lump sum (where permitted by the Relevant Law). A Member's written nomination will be a 'binding nomination' unless it is expressly stated as being non-binding or does not comply with Relevant Law.

For the avoidance of doubt, the requirements of regulation 6.17A do not apply to any nomination made by a Member.

**18.2** If the Member has not made a nomination or the Member has made a nomination but it is expressly stated as being non-binding or does not comply with Relevant Law, the Trustee shall pay or apply the Benefit to or for the benefit of one or more of the Member's Dependents and legal personal representative in such proportions, form, manner and at such times as the Trustee, in its discretion, determines from time to time and if there are no Dependents and there is no legal personal representative, may pay or apply the Benefit for the benefit of such relatives of the Member or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines.



18.3 If a Member in receipt of a pension permitted by the Relevant Law to be paid by the Trustee dies, then the Trustee shall, subject to the Relevant Law and any particular pension rules:

- (a) pay or apply the balance of the Member's account to any one or more of the Member's legal personal representatives or Dependants in accordance with the member's written nomination which may be by way of lump sum (where permitted by the Relevant Law) and/or reversionary pension as nominated by the Member, except that, to the extent permitted by the Relevant Law, the Trustee may in its absolute discretion apply the Member's benefit by way of a pension, and
- (b) If the Member has not made a nomination or there is no valid nomination, pay or apply the Benefit to or for the benefit of one or more of the Member's Dependants and legal personal representative in such proportions, form, manner and at such times as the Trustee, in its discretion, determines from time to time and if there are no Dependants and there is no legal personal representative, may pay or apply the Benefit for the benefit of such relatives of the Member or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines.

18.4 Subject to the Relevant Law the Trustee may increase the Benefit payable to any Dependants or legal personal representatives of a deceased Member by crediting an amount to the Member Account of the deceased Member which amount shall be equivalent to such amount (if any) which is available as a tax deduction to the Fund as a result of the payment of a Member's death benefit.

18.5 The Trustee may in its absolute discretion establish a death benefit nomination regime and an anti-detriment death benefit policy in accordance with the Relevant Law.

## 19. Provision of Investment Choice

19.1 Without limiting in any way the obligations and powers vested in the Trustee, the Trustee may:

- (a) establish any number of investment strategies
- (b) nominate the assets which will be subject to each particular investment strategy
- (c) offer Members the opportunity of having amounts held in one or more of their Accounts invested in accordance with a particular investment strategy, and
- (d) make rules regarding when and how Members may give the Trustee directions in this respect.

19.2 Where a Member is provided with an opportunity to have an amount in an Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's Account in such manner as, in its absolute discretion, it may consider appropriate.

20. **Insolvency:** All rights of a Member in respect of the Fund Property (to the extent the Member does not have a presently existing entitlement to claim the same as against the Trustee) and any other entitlement under the Fund likewise not being in the nature of a present entitlement to claim as against the Trustee shall be forfeited (to the extent that is possible under SIS) upon the Member committing an act of bankruptcy.

21. **Transfers:** The Trustee may, and when required under the Relevant Law will, in relation to a Member receive from, or pay to, another regulated superannuation fund or arrangement, approved deposit fund, eligible rollover fund or annuity any amount (**Rollover Amount**) as requested by the Member on such conditions as the Trustee may consistently with the Relevant Law require, and the Member may approve. The Trustee may also transfer a Rollover Amount to a successor fund within the meaning of the Relevant Law without the request or consent of the Member. The Trustee will ensure that any such transaction is appropriately reflected in the Member Account for the Member.

22. **Payments:** Any money payable by the Trustee to any Member may be deposited into an account with a bank or other financial institution nominated by the Member, or applied in any other manner which the Member in writing directs or paid by cheque posted to the Member.

23. **Independent Rights:** The Trustee and any related company or associate of the Trustee may, subject always to acting in good faith to Members, deal in any capacity with the Fund or act in any capacity in relation to any other trusts, without in any such case being liable to account to the Fund or to any Member.

24. **Indemnity:** Except if the Trustee or Director of the Trustee (as the case may be) fails to act honestly in a matter concerning the Fund or intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or the Director (as the case may be) was required to exercise or unless the liability is for a monetary penalty under a civil penalty order imposed under SIS:

24.1 The Trustee or the Director (as the case may be) shall not be liable for any loss or breach of trust, and

24.2 The Trustee and each Director is indemnified out of Fund Property against all Fund liabilities, losses, costs and expenses incurred in the proper exercise or purported exercise of the Trustee's powers.

25. **Limitation:** The Trustee is not required to do anything for which it does not have a full right of indemnity out of Fund Property. Any indemnity to which the Trustee is entitled under this Trust Deed is in addition to any indemnity allowed by law.



- 26. Liability of Member:** The liability of each Member is limited to the Net Value of that Member's account. No Dependant shall be under any liability. Recourse of the Trustee and Fund creditors is limited to Fund Property. Any relationship of agency between the Trustee and any Member or Dependant is expressly excluded.
- 27. Limitation of Liability**
- 27.1 Neither the Trustee nor a Director is liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if that person:
- (a) fails to act honestly
  - (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or
  - (c) incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.
- 27.2 Without limiting the generality of the exemption from liability under clause 27.1, the Trustee will not incur any liability for:
- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund
  - (b) any act or default of any former trustee or any Director of a former corporate trustee, of any Member or of any agent employed in good faith by the Trustee
  - (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee, or
  - (d) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.
- 28. Trust Deed Amendments:** Subject to the Relevant Law, the Trustee, with the consent of any Member whose Benefit would be affected adversely, may by supplemental trust deed make any modification, addition or deletion to this Trust Deed. Section 35B of the *Trustee Act 1936* (South Australia) or any other equivalent provision of legislation of a State, has no application.
- 29. Trustee's Fees:** The Trustee shall not be entitled to charge Trustee fees.
- 30. Duration:** The Fund begins on the Commencement Date and ends when the Trustee decides to terminate the Fund. On termination, the Trustee will make such arrangements in relation to any remaining Fund Property and Fund Liabilities and the rights and obligations of Members, as it may determine, consistent with the Relevant Law.
- 31. Trustee's Retirement and Appointment:** The Trustee may retire as Trustee of the Fund by giving three months notice to the Members or any shorter notice the Members unanimously may accept. The Trustee may, by deed, appoint a new Trustee.
- 32. Meanings:** Unless a contrary intention appears, words and phrases used in this Trust Deed have the same meanings as in the Relevant Law. The singular includes the plural and vice versa. **Trustee** means the trustee of the Fund from time to time. **Trust Deed** means this Trust Deed as amended from time to time. Legislation is referred to as amended or replaced from time to time. The Trust Deed is governed by the laws of the State referred to in Item 3 of the Schedule.
- 33. Family Law Provisions**
- 33.1 Notwithstanding any other provision of this Trust Deed but subject to clause 33.2 and the Relevant Law the Trustee may create a new interest in the Fund for a non-member spouse (**new interest**) as contemplated by the Relevant Law in which case:
- (a) when creating a new interest the Trustee may determine the terms and conditions which will apply to the new interest
  - (b) the Trustee may adjust the Member Account balance of the member spouse in such manner as it determines to effect the creation of the new interest
  - (c) if the non-member spouse is already a Member, the amount to otherwise be applied to the new interest shall be credited to the non-member spouse's Member Account
  - (d) the Trustee may make rules from time to time to apply in respect of a non-member spouse who has become a Member.
- 33.2 A non-member spouse is not permitted to become a Member if;
- (a) the value of the new interest as at the date of creating the new interest would be less than the Minimum Investment Amount (if any) at that date, or
  - (b) the member spouse requests that the Trustee transfer the amount of the new interest in respect of the non-member spouse to another regulated superannuation fund.
- 33.3 The Trustee shall be bound and give effect, notwithstanding any provision of this Trust Deed, to any family court order, superannuation splitting agreement or a payment flag which relates to the Member Account of any Member.
- 33.4 In this clause 33:
- (a) member spouse and non-member spouse have the same meanings as in the *Family Law Act 1975*, and
  - (b) Minimum Investment Amount means the minimum one off initial contribution that a Member must make in order to become a Member of the Fund determined by the Trustee for the purposes of this clause 33 from time to time.



**34. Policies:** The Trustee may effect separate Policies with an insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another. The Trustee is not responsible or liable to a Member, a Member's legal personal representative or the Dependants of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies.

**35. Forfeiture**

35.1 Any Member or after the death of a Member, any of the Dependants of the Member:

- (a) who assigns or charges or attempts to assign or charge any Benefit other than as permitted under the Relevant Law
- (b) whose interest in any Benefit, whether by the Member's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority
- (c) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit or who, in the opinion of the Trustee is incapable of managing the person's affairs, or
- (d) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

forfeits entitlement to any Benefit held in the Fund at that time by that person, provided however, that this clause 35 only applies to the extent that it is not limited by or inoperative under the Relevant Law or the *Bankruptcy Act 1966*. The Trustee must not recognise an assignment or charge of a Benefit which is prohibited under the Relevant Law, and may in its absolute discretion recognise or decline to recognise an assignment or charge of a Benefit which is permitted under the Relevant Law. Forfeited Benefits must be held in a Forfeiture Account.

35.2 The Trustee must pay or apply any amounts which have been forfeited in any one or more of the following ways:

- (a) to or for the benefit of the Member who forfeited the amount (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine
- (b) to the trustee of the estate of the Member who forfeited the amount
- (c) to or for the benefit of the Member who forfeited the amount (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship
- (d) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund
- (e) for the provision to other Members or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances
- (f) for any other purpose approved in writing by the Regulator,

provided that the Trustee may only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law.



**SCHEDULE**

**Item 1**

Name and address of Trustee

Harricks Pty Limited  
ACN 123 765 355  
72 Fern Street CLOVELLY NSW 2031

**Item 2**

Date Trust Deed established

01 July 2007

**Item 3**

Name of Fund

D A & R J Harricks Superannuation Fund

**Item 4**

Name of members of the Fund

Robin Jamison Harricks

**Item 5**

State

NSW