
Dated 4th September 1997

**Trust Deed
Babe Superannuation Fund**

**Babe Nominees Pty Ltd
ACN 079 930 037
("Babe Nominees")**

**William Gordon Babe
and
Kathleen Babe
("Dr and Mrs Babe")**

**Mallesons Stephen Jaques
Solicitors**

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GJC:KEHE0570-001



Trust Deed

Babe Superannuation Fund

WESTERN AUSTRALIA STAMP DUTY
12-DEC-97 001155242-001
DEE VALUE \$
SD \$ *****5.00 PEN \$*****.00

Date:

Parties:

Babe Nominees Pty Ltd ACN 079 930 037 of c/- KE Healey & Co,
21 Railway Road, Kalamunda, Western Australia (“**Babe
Nominees**”)

William Gordon Babe and Kathleen Babe both of 11 Gloucester
Road, Kalamunda, Western Australia (“**Dr and Mrs Babe**”)

Recitals:

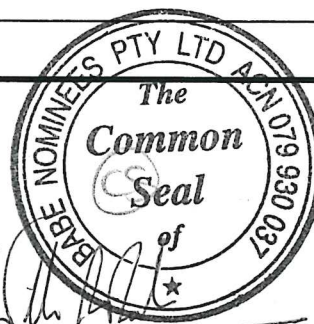
- A. Babe Nominees wishes to establish an indefinitely continuing superannuation fund (“**Fund**”) to provide superannuation benefits for Fund members.
- B. Babe Nominees has agreed to act as the first trustee of the Fund.
- C. Babe Nominees, in its capacity as trustee of The Babe Family Trust, has agreed to act as “Principal Employer” in relation to the Fund.
- D. Dr and Mrs Babe are the first members of the Fund and agree to Babe Nominees being the initial Trustee and the initial Principal Employer.

Operative provisions:

- 1.1 The Fund is to be known as the Babe Superannuation Fund.
- 1.2 This deed includes the rules attached to it (“**Rules**”).
- 1.3 The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
- 1.4 This deed may be amended in the manner set out in the Rules.

EXECUTED as a deed

Execution page



THE COMMON SEAL of **BABE**)
NOMINEES PTY LTD is affixed in)
accordance with its articles of association)
in the presence of:)

KB *K Babe*

Signature of authorised person

DIRECTOR

Office held

KATHLEEN BABE

Name of authorised person (block letters)

WB
[Signature]

Signature of authorised person

DIRECTOR

Office held

WILLIAM BABE

Name of authorised person (block letters)

SIGNED by **WILLIAM GORDON**)
BABE in the presence of:)

[Signature]

Signature of witness

JULIE LAWRENCE

Name of witness (block letters)

PO Box 392, Kalamundga

Address of witness

Property Manager

Occupation of witness

WB
[Signature]

Signature of **William Gordon Babe**

SIGNED by **KATHLEEN BABE** in the)
presence of:)

[Signature]

Signature of witness

JULIE LAWRENCE

Name of witness (block letters)

PO Box 392, Kalamundga

Address of witness

Property Manager.

Occupation of witness

KB
[Signature]

Signature of **Kathleen Babe**

Babe Superannuation Fund

Summary

Name of Fund:	Babe Superannuation Fund
Trustee:	Babe Nominees Pty Ltd
Principal Employer:	Babe Nominees Pty Ltd as trustee of The Babe Family Trust
Initial Members:	Dr William Gordon Babe Mrs Kathleen Babe

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Rules

1 Definitions and interpretation

1.1 Unless the contrary intention appears:

Accumulated Credit means the total balances of the Contribution Accounts of a Member.

Award means an agreement certified or award made on or after 1 July 1986 or any other arrangement which the Employer and the Trustee agree should be treated as an Award.

Child includes an adopted child, a step-child or an ex-nuptial child.

Commencement Date means the date of establishment of the Fund.

Compulsory Contribution Account means the account kept for a Member under rule 10.6(b).

Compulsory Contributions means:

- (a) contributions the Employer makes for a Member to the Fund under an Award;
- (b) contributions the Employer makes for a Member for the purpose of avoiding any Superannuation Guarantee Charge;
- (c) Shortfall Components received for a Member.

Constitutional Corporation has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Contribution Account means a Compulsory Contribution Account, Employer Contribution Account or Member Contribution Account.

Death Benefit means a benefit payable under rule 6.3.

Deed means the deed to establishing the Fund.

Dependant of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person whom the Trustee believes is, or was at the date of death, dependent on the Member.

Distribution Date means a date determined by the Trustee under rule 10.10 for the declaration of a Fund Earning Rate.

Distribution Period means a period commencing on the Commencement Date or the day after a Distribution Date and ending on the next Distribution Date.

Employee means:

- (a) any employee of an Employer;
- (b) if the Employer is a company - a director of the company;
- (c) any other person nominated by an Employer.

Employer means the Principal Employer or any Participating Employer and in relation to any particular Member the Employer by which that Member is employed or nominated.

Employer Contribution Account means the account kept for a Member under rule 10.6(c).

Financial Year means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

Forgone Benefits Account means the account kept under rule 10.19.

Fund means the entire superannuation fund as constituted by the Deed and the Rules.

Fund Earning Rate means a rate declared under rule 10.11 or 10.12.

Fund Secretary means a person appointed under rule 12.7.

Gainful Employment in relation to a person means that the person is employed, engaged or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

Gainfully Employed Person means a person engaged in Gainful Employment.

Investment Fluctuation Reserve means an account maintained under rule 10.17.

Investment Portfolio means a separate part of the Fund maintained under rule 10.21.

Member means a person who:

- (a) is named as a Member in the Deed; or
- (b) has been admitted to membership under rule 4.4,

and has not ceased to be a Member under rule 4.14.

Member Contribution Account means the account kept for a Member under rule 10.6(a).

Participating Employer means an employer that is admitted to the Fund under rule 3.1 and whose participation in the Fund has not been terminated under rule 3.2.

Principal Employer means the Principal Employer for the time being under rule 2.

Required Payment Date means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

Rules means these rules forming part of this deed.

Service means the service of a Member while engaged by an Employer and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme sponsored by the Employer; and
- (b) any other period declared by the Employer to be Service.

Shortfall Component has the same meaning as in the Superannuation Guarantee (Administration) Act 1992.

Spouse includes a person who, although not legally married to a Member, lives (or lived at the time of the Member's death) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Superannuation Authority means the Insurance and Superannuation Commissioner or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

Superannuation Guarantee Charge means a charge or tax imposed on employers for not making certain superannuation contributions or providing certain superannuation benefits.

Superannuation Law means any requirements under the Superannuation Industry (Supervision) Act 1993 or any other law or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) that the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

Total and Permanent Disablement has the same meaning as that or any corresponding term has under any insurance policy covering a Member for permanent disablement.

Trustee means the trustee of the Fund.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (b) a power to appoint includes a power to vary or cancel the appointment;
- (c) **amend** includes delete or replace;
- (d) **including** when introducing a list of items does not exclude a reference to other items of the same class;
- (e) **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (f) **tax** includes any duty or government impost.

2 Principal Employer

- 2.1 The initial Principal Employer is the person named as the Principal Employer in the Deed.
- 2.2 The Principal Employer may appoint another person to replace it if that person agrees in writing to be bound by the Rules and the Trustee consents.
- 2.3 If an order is made or an effective resolution is passed for the winding-up of the Principal Employer, another person may take its place by written agreement with the Trustee.

3 Participating Employers

Admission

- 3.1 The Trustee must admit an employer as a Participating Employer if:
 - (a) the Principal Employer invites the employer; and
 - (b) the employer agrees in a manner approved by the Principal Employer to be bound by the Rules.

Termination

- 3.2 The participation of a Participating Employer terminates if:
 - (a) the Employer gives written notice to the Trustee; or
 - (b) the Principal Employer gives written notice to the Employer and the Trustee that the Participating Employer may not make further contributions.

The termination takes place on a date specified by the Trustee.

- 3.3 On termination:
- (a) the Employer and its Employees who are Members must immediately pay any arrears of contributions up to the termination date but must make no further contributions;
 - (b) the Trustee must continue to pay out of the Fund benefits that became payable on or before the termination date; and
 - (c) the Trustee must transfer the amount representing the total Accumulated Credits of the Employer's Employees, together with any share of the Forgone Benefits Account or of any reserves agreed between the Principal Employer and Trustee to:
 - (i) a fund agreed to by the Employer and the Trustee; or
 - (ii) if they do not agree to a fund within 90 days after the termination date, a fund selected by the Trustee,in a manner consistent with Superannuation Law.

4 Eligibility and membership

Eligibility

- 4.1 An Employee is eligible to become a Member if:
- (a) the Employer invites the Employee and the Employee applies within the time specified in the invitation; or
 - (b) the Employer directs the Trustee to admit the Employee without an application.
- 4.2 A Gainfully Employed Person is eligible to become a Member if:
- (a) the Trustee invites the person; and
 - (b) the person applies within the time specified in the invitation.

Membership

- 4.3 Before admitting a person as a Member, the Trustee may require the person:
- (a) to have a medical examination; and
 - (b) to provide information which the Trustee considers relevant to the administration of the Fund.
- 4.4 A person becomes a Member:
- (a) on the date when the Trustee has approved the person's application; or
 - (b) on the date directed by the Employer under rule 4.1(b).

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- 4.5 The Trustee, the Employer (if any) and the Member may agree that the Member is to be regarded as having become a Member on an earlier date.
- 4.6 The Trustee may:
- (a) reject an application or direction; or
 - (b) impose special conditions when accepting an application or direction.
- 4.7 Each Member is bound by the Rules.

Transfer to Fund

- 4.8 The Trustee may make arrangements it considers appropriate with:
- (a) a Member; or
 - (b) any employer or previous employer of the Member; or
 - (c) the trustee of any superannuation fund of which the Member has been a member; or
 - (d) the issuer of an annuity held by the Member,

to transfer assets to the Fund and to provide benefits in respect of the Member, which may be calculated in a different manner than set out in the Rules. The arrangement must comply with Superannuation Law.

Transfer from Fund

- 4.9 If a Member is or is eligible to be a member of another superannuation fund the Trustee may transfer assets to the other fund. However:
- (a) if the Member is an Employee, the Trustee must obtain the Employer's consent; and
 - (b) the transfer must comply with Superannuation Law; and
 - (c) the Trustee must not transfer more than the Member's Accumulated Credit or more than is requested by the Member.
- 4.10 If the Employer requests, the Trustee may transfer all or part of a Member's Accumulated Credit to another fund if Superannuation Law permits.
- 4.11 The transfer satisfies the Member's entitlement to any benefit in respect of the amount transferred and the Trustee may declare that it satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustee of the other fund deals with the amount transferred.

Temporary absences

- 4.12 If a Member:
- (a) leaves Service but the Employer believes the Member is likely to return to Service within a reasonable period;

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- (b) takes unpaid leave, or
 - (c) ceases to be in Gainful Employment but the Trustee believes the Member is likely to return to Gainful Employment within a reasonable period,

the Trustee and Employer (if any) may make arrangements they consider appropriate concerning contributions and benefits for the Member for the period of absence.

Transfer of Service

- 4.13 The transfer of a Member from Service with one Employer to Service with another Employer is not a termination of Service unless the Principal Employer and the Trustee declare it to be.

Membership ceases

- 4.14 A person ceases to be a Member when:
 - (a) all benefits which are or may be payable in respect of the Member have been paid; or
 - (b) a transfer is made under rule 3.3, 4.9 or 4.10 in satisfaction of all the Member's entitlement to benefits; or
 - (c) all the Member's entitlement to benefits is terminated.

5 Contributions

Member contributions

- 5.1 A Member may contribute to the Fund amounts determined by the Member and notified to the Trustee from time to time.
- 5.2 If the Member is an Employee, unless the Member and the Employer agree otherwise, the Employer may deduct the Member's contributions from the Member's remuneration. The Employer must pay the contributions to the Trustee:
 - (a) in the manner and at the times agreed between the Employer and the Trustee; and
 - (b) within any time limit imposed by law.

Employer contributions

- 5.3 The Employer must contribute to the Fund in respect of a Member amounts determined by the Employer and notified to the Trustee from time to time.
- 5.4 The Trustee may accept contributions in respect of a Member from any other person if Superannuation Law permits.

SGC shortfall

- 5.5 The Trustee may accept a Shortfall Component as a contribution in respect of a Member.

General

- 5.6 The Trustee may accept contributions by accepting the transfer of assets to the Fund. The Trustee and Member must agree the value of any contribution made by transfer of assets.
- 5.7 The Trustee may refuse to accept all or part of a contribution from a person without giving any reason.
- 5.8 The Trustee must not accept contributions contrary to Superannuation Law.
- 5.9 If the Trustee finds that it has accepted contributions contrary to Superannuation Law, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for any insurance effected or expenses incurred in relation to the contributions.
- 5.10 If the Employer makes contributions to the Fund for a Member who is an Employee in relation to a period that are intended to satisfy the Employer's obligations under any Award in relation to the period, but do not do so, and Superannuation Law permits, the Trustee must transfer the contributions from the Member's Contribution Accounts to:
- (a) the Forgone Benefits Account; or
 - (b) another fund that satisfies the Award.
- 5.11 If the Employer is required to make contributions to the Fund for a Member under rule 5.3 in relation to a period but has not yet made them, and the Employer becomes bound to:
- (a) make contributions under an Award to another fund for the Member in relation to the period; or
 - (b) pay the Superannuation Guarantee Charge for the Member in relation to the period,

then the Employer's liability to contribute under rule 5.3 is reduced to the extent that the Employer must make the Award contributions or pay the Superannuation Guarantee Charge.

6 Benefit entitlement

Leaving Service or Gainful Employment

- 6.1 A Member who leaves Service or ceases to be in Gainful Employment for any reason is entitled to a benefit equal to the Accumulated Credit (except where rule 6.2 or 6.3 applies).

Permanent disablement

- 6.2 A Member who suffers Total and Permanent Disablement is entitled to a benefit equal to:
- (a) the Accumulated Credit; and

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- (b) if the Trustee insured the Member in respect of Total and Permanent Disablement - any amount received by the Trustee from the insurer.

Death

- 6.3 On the death of a Member in Service or Gainful Employment, the Trustee must pay a benefit equal to:
- (a) the Accumulated Credit; and
- (b) if the Trustee insured the Member in respect of death - any amount received by the Trustee from the insurer.

Request

- 6.4 A Member who is in Service or Gainful Employment on or after age 65 and requests payment is entitled to a benefit equal to the Accumulated Credit.

Required Payment Date

- 6.5 If a Member remains in Service or Gainful Employment but reaches the Required Payment Date, the Trustee must pay the Member the Accumulated Credit.

Temporary disablement

- 6.6 If the Trustee insures the Member in respect of temporary disablement or incapacity, and a benefit becomes payable under that insurance, the Trustee must pay the benefit received to the Member.

Voluntary deferral

- 6.7 A Member who is entitled to a benefit may ask the Trustee to defer payment of all or part of it. The Trustee may comply with the request if Superannuation Law permits.

Preservation

- 6.8 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit, then the Trustee must:
- (a) with the Member's written consent (if that is required by Superannuation Law), pay that part of the benefit to a fund or organisation which also preserves it under Superannuation Law; or
- (b) retain it in the Fund until it may be paid under Superannuation Law.

Retained benefits

- 6.9 Any part of a benefit retained in the Fund remains credited to the appropriate Contribution Account until payment and the Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit as if it were a Death Benefit.

Trustee determinations

- 6.10 A benefit is payable only if the Rules permit it.

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- 6.11 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

Assignments

- 6.12 The Trustee need not recognise any purported assignment or charge of a benefit.

Interest

- 6.13 The Trustee may credit or debit interest at a rate it considers appropriate to a benefit which is paid within 1 month after the date it becomes payable. However, the Trustee is not required to do so.
- 6.14 The Trustee must credit or debit interest at a rate it considers appropriate to a benefit which is not paid within 1 month after the date it becomes payable.

7 Restrictions on benefit entitlement

Debt or wrongdoing

- 7.1 At the time a benefit becomes payable or available for transfer, the Trustee may reduce it by:
- (a) any amount actually or contingently owed by the Member to the Employer (if any) or to the Trustee; and
 - (b) any loss incurred by an Employer because of the Member's misconduct, dishonesty or gross negligence; and
 - (c) any costs incurred by an Employer or the Trustee in attempting to recover an amount or loss in (a) or (b).
- 7.2 However, a benefit may only be reduced if Superannuation Law permits.
- 7.3 The Trustee may rely on a written statement from an Employer as evidence of the amount and cause of any debt, loss or cost incurred by the Employer.
- 7.4 If Superannuation Law permits, the Trustee may reimburse the Employer from the amount by which the Member's benefit is reduced.

Excessive benefits

- 7.5 If the Trustee believes that payment of a benefit will result in the Trustee or an Employer contravening any law relating to corporations, the Trustee may, if Superannuation Law permits:
- (a) reduce the contributions payable in respect of the Member; or
 - (b) transfer an amount from a Contribution Account of the Member to the Forgone Benefits Account; or
 - (c) reduce the Member's benefit; or
 - (d) apply a combination of (a), (b) and (c),

as it considers appropriate.

Forfeiture

- 7.6 A Member forfeits a benefit if Superannuation Law permits and:
- (a) the Member has purported to assign, alienate or charge; or
 - (b) any other event occurs which results in another person becoming entitled to,
- all or part of the benefit. This rule has no effect on the Member's bankruptcy to the extent that its operation would be contrary to the Bankruptcy Act.
- 7.7 The Trustee must apply a forfeited benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate and Superannuation Law permits.

8 Payment of benefits

Lump sum

- 8.1 A benefit payable under rule 6.1, 6.2, 6.4, 6.5, 8.13 or 8.14 is to be paid as a lump sum unless one of rules 8.2-8.4 applies.

Annuity or pension

- 8.2 The Trustee must, if a Member entitled to a benefit requests, apply all or part of the Member's benefit to purchase an annuity in the name of the Member or in the name of the Member and one or more Dependants.
- 8.3 The Trustee may pay a pension on terms agreed between the Trustee and the person entitled to a benefit.
- 8.4 The Trustee and the Member may agree that a benefit is to be paid as an allocated pension in accordance with rule 9.

Payment to other fund

- 8.5 If a person entitled to a benefit asks the Trustee in writing to pay all or part of it to another fund, and the payment complies with Superannuation Law, the Trustee must comply with the request.
- 8.6 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it if Superannuation Law permits.

Transfer of assets

- 8.7 At the request of a person entitled to a benefit the Trustee may, if Superannuation Law permits, pay the benefit by transferring assets of equivalent value to the person or the person's nominee.

General

- 8.8 The Trustee must pay all benefits in a manner consistent with Superannuation Law.

Unclaimed benefits

- 8.9 The Trustee must comply with Superannuation Law in relation to benefits which Superannuation Law:

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- (a) treats as unclaimed money; or
 - (b) requires to be transferred to another fund.

Death Benefits

- 8.10 The Trustee must pay a Member's Death Benefit to one or more of the Member's:
- (a) Dependants; and
 - (b) legal personal representative,
- in proportions which the Trustee decides. The Trustee may pay each benefit as a lump sum, pension or annuity, or in any other form, as the Trustee considers appropriate.
- 8.11 If there is no person to whom a Death Benefit can be paid under rule 8.10 then the Death Benefit may be paid to any other person if Superannuation Law permits.

Member's wishes

- 8.12 A Member may give the Trustee a notice indicating how the Member would prefer the Member's Death Benefit to be distributed among the Member's Dependants and legal personal representative. The Member may give a new notice at any time. A notice given under this rule is given for information only and does not limit the Trustee's discretion on the distribution of the Death Benefit.

Benefits while in Service or Gainful Employment

- 8.13 The Trustee may pay a benefit to a Member who has not left Service or Gainful Employment where:
- (a) the Member requests payment;
 - (b) the benefit is an unrestricted unpreserved benefit under Superannuation Law; and
 - (c) Superannuation Law permits.

Hardship

- 8.14 If the Superannuation Authority determines that a benefit may be paid to a Member by reason of financial hardship, the Trustee may pay that benefit.

Trustee's discharge

- 8.15 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

Financial incapacity

- 8.16 If the Trustee believes that a person who is entitled to a benefit is unable to manage financial affairs, and Superannuation Law permits, the Trustee may:
- (a) pay the benefit to another person to be used for the advantage of the person entitled to it; and

(b) accept the other person's receipt as a good discharge.

8.17 The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

Tax

8.18 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for tax.

9 Allocated pensions

General

9.1 An allocated pension payable under rule 8.4 must be paid in accordance with this rule 9.

Commencement and termination

9.2 The Trustee must pay the allocated pension:

- (a) commencing on the date agreed between the Trustee and the Member which must be no later than the date necessary to comply with Superannuation Law; and
- (b) terminating when the Member's Accumulated Credit has been exhausted.

9.3 An allocated pension must not be transferred to another person unless permitted by Superannuation Law.

Complying allocated pension

9.4 An allocated pension provided by the Fund must comply with Superannuation Law.

Frequency of payment

9.5 The Trustee must make payments of the allocated pension to the Member at the frequency agreed between the Member and the Trustee from time to time.

9.6 If the Member and Trustee have not agreed on the frequency of payments, the Trustee must pay the allocated pension annually.

9.7 For so long as the allocated pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year.

Selecting allocated pension level

9.8 For each Financial Year (or part of a Financial Year), the allocated pension payments to the Member must not be:

- (a) larger than the maximum limits; nor
- (b) smaller than the minimum limits,

set out in Superannuation Law for allocated pensions.

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- 9.9 The Trustee must notify each member of the current minimum and maximum levels for allocated pension payments at the time the benefit first becomes payable and at each 1 July.
- 9.10 At any time during a Financial Year the Member may select the level of allocated pension payments for that Financial Year within the limits in rule 9.8. The selection must be in a manner approved by the Trustee.

Default allocated pension level

- 9.11 If in any Financial Year the Member has not selected a payment level the Trustee must:
- (a) if the pension was being paid in the previous year, continue to make payments at the level prevailing at the end of the previous Financial Year (adjusted if necessary to comply with rule 9.8); or
 - (b) otherwise, make payments at the minimum level required under rule 9.8.

Commutation

- 9.12 The Member may commute the whole or a part of the Member's allocated pension at any time by giving written notice to the Trustee, if Superannuation Law permits.
- 9.13 On a Member fully commuting the Member's allocated pension, the Trustee must pay a lump sum to the Member equal to the Member's Accumulated Credit.
- 9.14 On a Member partially commuting the Member's allocated pension, the Trustee must pay a lump sum to the Member equal to the amount requested by the Member (but not greater than the amount of the Member's Accumulated Credit).

Death

- 9.15 If a Member dies while receiving an allocated pension, the balance of the Member's Accumulated Credit must be paid:
- (a) in accordance with any instructions given by the Member prior to death that comply with Superannuation Law; or
 - (b) if (a) does not apply - as a Death Benefit in accordance with rules 8.10 and 8.11.

10 Records and accounts

Records

- 10.1 The Trustee must keep records for the Fund:
- (a) of the matters; and
 - (b) for the period; and
 - (c) in the manner,

required by Superannuation Law.

Accounts and audit

- 10.2 The Trustee must appoint an auditor who satisfies Superannuation Law.
- 10.3 For each Financial Year the Trustee must prepare any financial statements for the Fund required by Superannuation Law.
- 10.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
 - (b) reports in writing to the Trustee,
- within the time specified by Superannuation Law.
- 10.5 The Trustee must give to the Principal Employer a copy of the financial statements and auditor's report.

Contribution Accounts

- 10.6 The Trustee must record for each Member:
- (a) in a Member Contribution Account - Member contributions and contributions received from any other person who is not a Participating Employer; and
 - (b) in a Compulsory Contribution Account
 - (i) Compulsory Contributions made by the Employer for the Member; and
 - (ii) Compulsory Contributions received for the Member; and
 - (c) in an Employer Contribution Account - all other Employer contributions for the Member.
- 10.7 The Trustee must also record in each Contribution Account:
- (a) amounts transferred from other funds which the Trustee decides to credit to the account;
 - (b) life insurance premiums which the Trustee decides to debit to the account;
 - (c) amounts debited to the account for tax or other expenses;
 - (d) amounts credited or debited to the account for earnings or losses of the Fund;
 - (e) amounts paid as benefits or transferred to other funds from the account;
 - (f) amounts transferred to or from the Forgone Benefits Account.

Tax and expenses

- 10.8 The Trustee may debit to Contribution Accounts:

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- (a) tax incurred by the Trustee;
 - (b) expenses of the Fund;
 - (c) administration expenses of the Trustee;
 - (d) provisions for (a), (b) and (c),

in proportions that the Trustee considers fair and which are consistent with Superannuation Law.

- 10.9 If tax which would otherwise be incurred on Employer contributions is reduced or avoided because the contributions are met from the Forgone Benefits Account, then the Trustee must determine a reduced amount to be transferred to Contribution Accounts in respect of the contributions as if the full rate of tax was being incurred and deducted from the full rate of contributions.

Distribution Date

- 10.10 The Trustee must declare a Distribution Date at least once in each Financial Year.

Fund Earning Rate

- 10.11 As soon as practicable after a Distribution Date the Trustee must declare a Fund Earning Rate to be applied as at the Distribution Date to Contribution Accounts that remain at the date of declaration.
- 10.12 Whenever it considers appropriate, the Trustee may declare an interim Fund Earning Rate to be applied to the Contribution Accounts of a Member as at the date when a benefit or transfer becomes payable from them for the period since the last date as at which a distribution was made to those Contribution Accounts.
- 10.13 The Trustee must decide whether a Fund Earning Rate is to be applied to Contribution Accounts:
- (a) on daily balances; or
 - (b) on average balances; or
 - (c) on some other basis.
- 10.14 In determining a Fund Earning Rate the Trustee must comply with Superannuation Law and take into account:
- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
 - (b) the realised and unrealised losses and expenses of the Fund (including any tax that is or may be incurred by the Trustee) that are not debited to a Contribution Account;
 - (c) the costs of the Fund and the extent to which they exceed (or fall below) the amount debited to Contribution Accounts for costs;

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- (d) the level of the Fund's reserves (if any); and
 - (e) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.

10.15 A Fund Earning Rate may be positive or negative.

10.16 The Trustee must distribute earnings or losses to Contribution Accounts at the Fund Earning Rate which applies to them.

Investment Fluctuation Reserve

10.17 The Trustee must set up a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Contribution Accounts for a Distribution Period.

10.18 The Trustee must not declare a Fund Earning Rate that would take the Investment Fluctuation Reserve into debit.

Forgone Benefits Account

10.19 The Trustee must keep a Forgone Benefits Account to hold any part of a Member's Accumulated Credit no longer required to pay benefits for the Member.

10.20 The Trustee must apply amounts held in the Forgone Benefits Account for one or more of these purposes:

- (a) replacement of contributions otherwise payable by any Employer or Member;
- (b) additional benefits for Members;
- (c) payment to an Employer;
- (d) other purposes that the Trustee determines.

However, the Trustee may only apply amounts as approved by the Principal Employer and permitted by Superannuation Law, and must apply all amounts within the time limit imposed by Superannuation Law.

Investment Portfolios

10.21 The Trustee may maintain the Fund in separate parts called Investment Portfolios. For any Investment Portfolio the Trustee must:

- (a) select the assets which comprise it; and
- (b) apply rules 10.11 to 10.18 separately to the Investment Portfolio and the Contribution Accounts it represents.

10.22 The Trustee may transfer assets between different Investment Portfolios.

10.23 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.

10.24 The Trustee may make rules on when and how Members may give directions to apply:

- (a) future contributions; or
- (b) existing balances in Contribution Accounts

to Investment Portfolios. The rules must be consistent with Superannuation Law.

11 Assets, investments, borrowing

Assets

11.1 The assets of the Fund consist of:

- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
- (b) investments that the Trustee makes and all income on those investments.

11.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Rules.

Investments

11.3 The Trustee must formulate and give effect to strategies in relation to:

- (a) the investment of the Fund's assets; and
- (b) reserves held in the Fund (if any),

in accordance with Superannuation Law.

11.4 The Trustee may invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled to the money, including:

- (a) in investments authorised by the laws relating to investment of trust funds;
- (b) in policies of life insurance;
- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, stocks, notes, options, debentures or other securities;
- (g) in options, hedging contracts, futures contracts and other financial instruments.

11.5 If Superannuation Law permits the Trustee may:

- (a) mix investments with investments of other people or trusts; and

(b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.

11.6 The Trustee must invest in a manner that complies with Superannuation Law.

11.7 The Trustee may make a loan or give financial assistance to a person only if that complies with Superannuation Law.

11.8 The Trustee may appoint nominees to hold investments. The appointment must comply with Superannuation Law.

Borrowing

11.9 The Trustee may not borrow or raise money or charge the Fund's assets unless Superannuation Law permits.

Insurance

11.10 The Trustee may, but is not required to, insure a Member under an insurance policy providing benefits on death, disablement or incapacity.

12 Trustee

Nature

12.1 The Trustee must be a Constitutional Corporation.

Removal

12.2 The Trustee ceases to be the Trustee when:

- (a) the Trustee serves written notice to that effect on the Principal Employer; or
- (b) Superannuation Law requires.

Appointment

12.3 The Principal Employer and Trustee may appoint any Constitutional Corporation as the new Trustee. The appointment must be made in writing and comply with Superannuation Law.

12.4 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

Trustee's powers

12.5 The Trustee may do anything it considers appropriate to administer the Fund and comply with Superannuation Law, including:

- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) compromising any claim;
- (e) giving any guarantee or indemnity;

- (f) insuring any risks;
- (g) acting as an underwriter;
- (h) making rules for rounding off contributions and benefits;
- (i) providing for and transferring liability for any tax;
- (j) electing to be bound by any legislation.

Manager

- 12.6 The Trustee may appoint any person who satisfies Superannuation Law to administer the Fund or to manage investments of the Fund or both. The appointment must:
- (a) be in writing on terms which the Trustee considers appropriate; and
 - (b) comply with Superannuation Law.

Fund Secretary

- 12.7 The Trustee may appoint a secretary to the Fund.

Delegation

- 12.8 The Trustee may delegate any of its powers, duties and discretions to any person.

Trustee's liability

- 12.9 The Trustee is only liable for its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

Trustee's indemnity

- 12.10 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee unless:
- (a) it results from the Trustee's dishonesty or intentional or reckless failure to exercise the degree of care and diligence required of it; or
 - (b) the law prevents it.
- 12.11 A Member or Employer must indemnify the Trustee for any:
- (a) liability incurred; or
 - (b) overpayment made; or
 - (c) failure to provide for tax,

as a result of the Trustee relying on information given to it by that Member or Employer.

- 12.12 The benefit of rules 12.9 to 12.11 also applies to:
- (a) any directors or employees of the Trustee or an Employer;

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- (b) the Fund Secretary;
 - (c) any other person nominated in writing by the Trustee;
 - (d) a former Trustee or any person who previously fell within any of (a) to (c).

Employer authorisation

- 12.13 The Trustee may treat a written or oral authorisation given, or purported to be given, by a director of an Employer as a valid authorisation by the Employer.

Member authorisation

- 12.14 The Trustee may treat an authorisation purported to be given by a Member as given by the Member.

Trustee's discretions

- 12.15 The Trustee and any officer or employee of the Trustee, may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.
- 12.16 The Trustee is completely unrestricted in the exercise of its powers and discretions.

Remuneration

- 12.17 The Trustee may receive remuneration for its office from the Fund at a rate agreed by the Principal Employer and Trustee. An Employer may remunerate the Trustee from its own resources.

13 Administration

Expenses

- 13.1 All the expenses in connection with the Fund or the administration of the Trustee which are not paid by an Employer are payable from the Fund. The Trustee must reimburse an Employer for expenses in connection with the Fund unless:
- (a) the Employer does not require reimbursement; or
 - (b) Superannuation Law does not permit.

Inspection of Deed

- 13.2 A Member may inspect a copy of the Deed and Rules at the Employer's office during the Employer's usual business hours.

Giving of information

- 13.3 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.
- 13.4 The Trustee may require a Member to have a medical examination.
- 13.5 The Trustee must give:
- (a) each Member;

- (b) each Employer;
- (c) the Superannuation Authority;
- (d) the trustee of any other fund to which a benefit is transferred;
and
- (e) any other person,

the information which must be given under Superannuation Law at a particular time. For this purpose the Principal Employer may, with the Trustee's consent, determine that a particular group of Members comprise a sub-plan.

Dispute resolution

- 13.6 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
 - (b) inquiries or complaints will be considered and dealt with within 90 days after they are made.

Confidentiality

- 13.7 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and use that information only for the purposes of the Fund or as required by law.

Notices

- 13.8 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
 - (b) delivered to the person's last known address; or
 - (c) posted by ordinary post from within Australia to the person's last known address.
- 13.9 If the notice or communication is posted, it is taken to be received on the third business day after posting.

Power of attorney

- 13.10 Each Member irrevocably appoints the Trustee as the Member's attorney to do all things that the Trustee considers appropriate to administer the Fund.

Other rights unaffected

- 13.11 The Deed and Rules may not be used in any proceedings against an Employer relating to a termination of employment.

Employer not fiduciary

- 13.12 An Employer may exercise any power or discretion given to it under the Rules in its own interest. It is not under any fiduciary or other obligation to any person in exercising that power or discretion.

Governing law

- 13.13 The Fund and the Deed and Rules are governed by the law in force in Western Australia.

14 Termination of the Fund

By Principal Employer

- 14.1 The Principal Employer may give written notice to the Trustee that the Fund is to terminate at a date specified by the Principal Employer.

By Trustee

- 14.2 The Trustee must terminate the Fund on a date chosen by it if an order is made or an effective resolution is passed for the winding up of the Principal Employer, and the Trustee determines that no other person is likely to take the place of the Principal Employer.

Notification

- 14.3 If:
- (a) the Principal Employer gives notice under rule 14.1; or
 - (b) the Trustee terminates the Fund under rule 14.2,

then the Trustee must give written notice to each Employer and Member that the Fund is to terminate. That notice must specify the termination date.

Contributions

- 14.4 Any contributions in arrears at the termination date must be paid immediately.
- 14.5 The Trustee must not accept any other contributions after the termination date.

Final distribution

- 14.6 The Trustee must treat the termination date as a Distribution Date.

Application of Fund

- 14.7 On termination, the Trustee must (subject to Superannuation Law) apply the Fund assets in this order of priority:
- (a) to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable;
 - (b) to provide in respect of each Member:
 - (i) any benefit which became payable before the termination date; or

- (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the termination date;
- (c) to increase any benefits as the Trustee and the Principal Employer agree or, if rule 14.2 applies, as the Trustee decides;
- (d) if Superannuation Law permits, to pay Employers in proportions agreed between the Principal Employer and the Trustee or, if rule 14.2 applies, determined by the Trustee.

Payment to Employers

- 14.8 The Trustee may not pay any part of the Fund to an Employer unless permitted by Superannuation Law.

Payment of benefits

- 14.9 A Member may not receive a benefit under rule 14.7 before Superannuation Law permits.
- 14.10 If a Member dies before receiving a benefit provided under rule 14.7, the Trustee must pay it as if it were a Death Benefit.

15 Amendment of the Deed and Rules

Power to amend

- 15.1 The Trustee may amend any provision of the Deed or Rules including this rule 15. The Trustee must not do so without the Principal Employer's consent.

Form of amendment

- 15.2 An amendment must be in writing.

Date of effect

- 15.3 An amendment may take effect from a date before or after the time it is made.

Limitation of power

- 15.4 No amendment may alter a benefit entitlement unless Superannuation Law permits.
- 15.5 No amendment may enable an individual to become Trustee unless Superannuation Law permits.

Notification

- 15.6 The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with Superannuation Law. However, failure to notify does not invalidate the amendment.

16 Compliance rule

- 16.1 All the standards required by Superannuation Law to be included in the governing rules of superannuation funds form part of these Rules, whether or not they are explicitly stated in the Rules.

16.2 However, if:

- (a) a standard is no longer required to be included; or
- (b) the Superannuation Authority does not require it to be complied with,

then that standard ceases to be included by this rule.

16.3 A standard included by rule 16.1 prevails over any other rule which is inconsistent with it.

17 Saving provision

If a provision of the Deed or Rules would otherwise be void because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.