

Hocking-Speight Super Fund Trust Deed



Hocking-Speight Super Fund

Trust Deed

Table of contents

1. The Fund	2
2. Trustees	2
3. Indemnities and liability.....	3
4. Trustee meetings	3
5. Trustee's powers.....	4
6. Members.....	6
7. Fund accounts	7
8. Fund records	8
9. Contributions	8
10. Transfers	9
11. Benefits	10
12. Forfeiture of Benefits	11
13. Fund Earnings.....	11
14. Taxes	11
15. Termination.....	12
16. General.....	12
17. Interpretation.....	13

Hocking-Speight Super Fund

Trust Deed

Parties

Full name	Hocking-Speight Super Pty Ltd ACN 168 739 348
Short name	First Trustee
Address	485 Military Road, Largs Bay SA 5016

Background

- A The First Trustee intends to establish a superannuation fund for the benefit of the Members, on the terms set out in this Deed.
- B The First Trustee has consented to act as the first Trustee.

2.3 Remuneration

- (a) The Trustee is not entitled to receive any salary or remuneration from the Fund in respect of its services as Trustee.
- (b) Nothing in this Deed will preclude any firm, corporation or partnership of which the Trustee or any directors of a Trustee is a partner, director, shareholder, related body corporate (as defined in the *Corporations Act 2001* (Cth)) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

2.4 Validity of acts of Trustees

If it is discovered that there was a defect in the appointment of a person as a Trustee or a person appointed as a Trustee was disqualified, all acts of the person as Trustee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

3. INDEMNITIES AND LIABILITY

3.1 Indemnity of Trustees and directors

- (a) A person acting (or who formerly acted) as a Trustee or as a director of a Trustee will:
 - (i) be indemnified out of the Fund against all liabilities, losses, costs and expenses (excluding any liability for a monetary penalty under a civil penalty order imposed under SIS) incurred in the exercise or purported or attempted exercise or failure to exercise of the trusts, powers, authorities and discretions vested in them by this Deed or at law; and
 - (ii) have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity and generally for the payment of all legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing their duties under the deed.
- (b) For the avoidance of doubt, no Member or Beneficiary is personally liable to indemnify the Trustee or any director of a Trustee or any other person claiming through or against the Trustee or director.

3.2 Trustees and directors not liable for loss

- (a) A person acting (or who formally acted) as a Trustee or as a director of a Trustee will not be liable for any loss or breach of trust whatsoever other than:
 - (i) loss attributable to the person, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the person was required to exercise; or
 - (ii) liability for a monetary penalty under a civil penalty order made against the person under SIS.
- (b) A Trustee is not required to take proceedings against a former Trustee or former director of a Trustee for breach of Trust.

4. TRUSTEE MEETINGS

4.1 Rules and procedures

- (a) The Trustee or Trustees may establish their own rules and procedures for Trustees' meetings as they see fit.
- (b) If the Trustee is a Constitution Corporation, then the rules and procedures contained in the Trustee's Constitution for Directors' meetings will apply to the directors of the Trustee.
- (c) During any period where there are Individual Trustees and the Trustees have not established their own rules and procedures for Trustees' meetings, then the rules in clause 4.2 will apply to Trustees' meetings.
- (d) The Trustee must keep all minutes and registers required by this Deed and Superannuation Law.

- (v) the purchase or acquisition in any way of shares of any class or description or of any type of bond mortgage debenture note option or other like security in any company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares be fully or partly paid up and whether secured or unsecured, registered or unregistered;
 - (vi) any Policy or Annuity whether by proposal purchase or otherwise and any choses in action interest for life or any lesser term or in reversion or howsoever arising;
 - (vii) the purchase or acquisition of any interest in real or personal property and the improvement or extension thereof;
 - (viii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
 - (ix) the discounting of loans mortgages contracts hire purchase agreements or leases; and
 - (x) bills of exchange, promissory notes or other negotiable instruments.
- (b) The Trustee will have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.
- (c) The Trustee may (but is not bound) from time to time, in its absolute discretion, allow a Member or Members to give directions to the Trustee in relation to the investment of a portion of the Fund's assets representing the Member's Member Accounts on such terms as the Trustee may determine in its absolute discretion.

5.3 Additional specific powers

In addition to the powers which it has by law and which are otherwise granted to it by this Deed the Trustee will have the following powers:

- (a) to settle compromise or submit to arbitration any claim matter or thing relating to this Deed or the Fund or to the rights of Members former Members or any other persons claiming to be entitled to be paid a benefit pursuant to this Deed;
- (b) to commence carry on or defend proceedings relating to the Fund or to the rights of Members former Members or other persons claiming to be entitled to be paid a benefit from the Fund;
- (c) subject to any restrictions contained in Superannuation Law, to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any of the Fund's assets as security for any such financial accommodation to the extent permitted by the Superannuation Law;
- (d) subject to any restrictions contained in Superannuation Law, to lend, advance money and give credit or financial accommodation to any person in any manner and upon any terms with or without security which the Trustee may consider advisable;
- (e) to insure or reinsure any risks contingencies or liabilities of the Fund;
- (f) to retain the services of and to appoint professional or other advisers or agents in relation to the management administration or investment of the Fund and to pay out of the Fund all expenses of and incidental to the management and administration of the Fund including the fees of any advisers or agents and the remuneration of persons appointed pursuant to this Deed and to revoke any such appointment;
- (g) to delegate to any one or more persons firms or companies on such terms as the Trustee may think fit any of the authorities powers and discretions conferred upon the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (h) to appoint from time to time such one or more persons firms or companies as the Trustee may think fit to act either as custodian or investment manager or both subject to such terms as the Trustee may from time to time determine.
- (i) to indemnify or undertake to indemnify any person company government or institution in respect of any claim matter or thing relating to the Fund or to the rights of Members, former Members or other persons entitled in respect of the Fund.

6.4 Cessation of Membership

A person ceased to be a Member when:

- (a) all of that person's entitlements from the Fund have been paid or transferred;
- (b) that person dies; or
- (c) as required by Superannuation Law.

7. FUND ACCOUNTS

7.1 Member Accounts

- (a) The Trustee must establish and maintain one or more Member Accounts for each Member.
- (b) Subject to Superannuation Law, a Member's Member Account will be credited with:
 - (i) any Contributions accepted by the Trustee in respect of that Member;
 - (ii) any amounts transferred into the Fund from another Superannuation Fund in respect of that Member;
 - (iii) any amount transferred into the Fund or from another Member of the Fund in respect of that Member that comprises a transfer from, or in connection with, that Member's spouse or former spouse;
 - (iv) the proceeds of any Policy taken out by the Trustee in respect of that Member or on account of that Member;
 - (v) an amount equal to such portion of the Fund Earnings (if positive) as the Trustee determines in accordance with clause 13; and
 - (vi) any other amounts that the Trustee determines will be credited to the Member Account.
- (c) Subject to Superannuation Law, a Member's Member Account will be debited with:
 - (i) any Benefit paid to, or in respect of, that Member;
 - (ii) an amount equal to the whole or any part of any Contribution refunded under clause 9.4;
 - (iii) any amounts transferred out of the Fund to another Superannuation Fund in respect of that Member;
 - (iv) any amount transferred out of the Fund or to another Member of the Fund that comprises a transfer to or for the benefit of that Member's spouse or former spouse;
 - (v) the costs of any Policy taken out by the Trustee in respect of that Member or on account of that Member;
 - (vi) any amount equal to such portion of the Fund Earnings (if negative) as the Trustee determines in accordance with clause 13;
 - (vii) an amount equal to such portion of the Fund Expenses and Tax (including any Excess Contributions Tax) as the Trustee determines; and
 - (viii) any other amounts that the Trustee determines will be debited to the Member Account.

7.2 Fund Account

- (a) The Trustee must establish and maintain the Fund Account.
- (b) The amount standing to the credit of the Fund Account at any time will be equal to the value of the Fund less the sum of the amounts credited to all of the Member Accounts and any other accounts which may be established pursuant to clause 7.3.
- (c) The Trustee may from time to time credit and debit the Fund Account with such amounts as the Trustee may determine and Superannuation Law allows.

9.4 Refund of ineligible Contributions

If Superannuation Law requires or allows the whole or any part of any Contribution to be refunded, the Trustee may refund the whole or part of that Contribution, less a reasonable portion of the Fund Expenses and Taxes attributable to dealing with that Contribution or the refund of it and debit the Member's Member Account accordingly.

9.5 Contributions splitting

- (a) A Member may give a Contributions Splitting Application to the Trustee.
- (b) Subject to Superannuation Law, the Trustee may (but is not bound to) accept a Contributions Splitting Application from a Member.
- (c) If the Trustee accepts a Contributions Splitting Application, the Trustee must give effect to the Contributions Splitting Application in accordance with the requirements prescribed by Superannuation Law:
- (d) The Trustee may accept from any other Superannuation Fund any money or assets received by the Trustee for the benefit of a Receiving Spouse who is a Member.
- (e) In this clause 9.5:

Contributions Splitting Application means an application by a Member to the Trustee, requesting the Trustee to roll over, transfer or allot an amount of the Splittable Contributions made by, for, or on behalf of that Member for the benefit of that Member's Spouse, which application must be in such form, and contain such information, as may be prescribed by Superannuation Law or as the Trustee may from time to time accept.

Receiving Spouse, Splittable Contribution and Spouse all have the same meaning as in the Superannuation Law.

10. TRANSFERS

10.1 Transfers from other Superannuation Funds

- (a) Where a Member is or was at any time a member or beneficiary under any other Superannuation Fund, the Trustee may (but is not bound to) receive money or assets in respect of the Member's interest in the other Superannuation Fund from the trustee of the other Superannuation Fund (**Received Amount**).
- (b) Upon receipt of the Received Amount, the Trustee will:
 - (i) hold the Received Amount as part of the Fund; and
 - (ii) will credit the particular Member's Member Account as the Trustee determines to take account of the Received Amount.

10.2 Transfers to other Superannuation Funds

- (a) Subject to Superannuation Law:
 - (i) where a Member is, or is eligible to become, a member of another Superannuation Fund; and
 - (ii) the Member requests that the whole or part of the Member's interest in the Fund be transferred to the other Superannuation Fund (**Transferred Amount**);

the Trustee may, subject to such conditions and indemnities as the Trustee may require, pay to the trustee of the other Superannuation Fund the Transferred Amount or transfer investments of the Fund of equivalent value to the Transferred Amount.

- (b) The Trustee will debit the Member's Member Account as the Trustee determines to take account of the Transferred Amount and a reasonable portion of the Fund Expenses and Taxes in relation to that transfer.
- (c) The receipt of the Transferred Amount by the trustee of the other Superannuation Fund will be a complete discharge to the Trustee of all liabilities in respect of, and the Trustee will have no responsibility to see to the application of, the Transferred Amount.

- (e) If the Member or former Member has no Dependants and no legal personal representative has been appointed within 12 months of the date of death of the Member or former Member or within such shorter period as the Trustee in its absolute discretion considers reasonable, the Trustee must, subject to Superannuation Law, pay the Death Benefit to any one or more of the Relatives of the Member or former Member in such proportions between them (if more than one) as determined by the Trustee in its absolute discretion.
- (f) If a Death Benefit becomes payable to any one or more of the Dependants or legal personal representatives of a deceased Member or former Member under this clause 11.3, the Trustee may, in its absolute discretion, increase the Death Benefit by an amount equivalent to the value of the advantage that would accrue to the Fund if a deduction were allowed under section 295-485 of the Tax Act (or its successor provision) in respect of the payment.

11.4 Retention of Benefit and payment to others

If any Beneficiary is under the age of 18 years and either the Trustee considers it to be in the best interests of that Beneficiary or a Beneficiary requests, the Trustee may:

- (a) retain the Benefit in the Fund until the Beneficiary attains 18 years of age or the Trustee is satisfied that the Benefit should be paid to the Beneficiary; or
- (b) pay all or part of the Benefit to any other person for application on behalf of that Beneficiary.

11.5 Unclaimed Benefits

The Trustee may deal with any unclaimed money in the manner specified in Superannuation Law.

12. FORFEITURE OF BENEFITS

- (a) Subject to Superannuation Law and unless the Trustee determines otherwise, a Member or Beneficiary automatically forfeits their entitlement to all of their Benefit if he or she:
 - (i) assigns, charges or conveys all or any part of any Benefit (or attempts to do so); or
 - (ii) becomes bankrupt or insolvent.
- (b) Any amounts forfeited under this clause will be dealt with in such manner as the Trustee determines and Superannuation Law allows, including transferring such amounts to a Forfeiture Account or other account established under clause 7.

13. FUND EARNINGS

- (a) The Trustee must:
 - (i) collect and receive all interest, dividends, rent and other gross income and profits of the Fund; and
 - (ii) pay out of such gross income and profits (and where that is insufficient, the capital of the Fund) all Fund Expenses and Taxes.
- (b) The Trustee will as soon as reasonably practicable after the end of the Financial Year (or at such other times as the Trustee may determine) credit (if the Fund Earnings are positive) or debit (if the Fund Earnings are negative) the Member Accounts in respect of all Members, the Fund Account and any other accounts established under clause 7 on such basis as the Trustee considers equitable and in accordance with any requirements of Superannuation Law.

14. TAXES

- (a) The Trustee must pay any Taxes which are due and payable by the Fund.
- (b) The Trustee may make provision in such manner as it considers appropriate to allow for any anticipated or future liability for Taxes.

16.4 Severance

- (a) If any provision of this Deed is void, voidable, unenforceable or illegal in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly.
- (b) If notwithstanding clause 16.4(a), a provision of this Deed would still be void, voidable, unenforceable or illegal:
- (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be omitted; and
 - (ii) in any other case, the whole provision must be severed;
- and the remainder of this Deed will be of full force or effect.

17. INTERPRETATION

17.1 Definitions

In this Deed:

Account Balance means, in respect of a Member, the total amounts standing to the credit of the Member's Member Accounts.

Annuity has the same meaning as in SIS.

Auditor means the appropriately qualified auditor for the time being appointed pursuant to clause 8.3 of this Deed.

Beneficiary means any person (including a Member or former Member) who may become entitled to be paid a benefit from the Fund.

Benefit means an amount paid or payable out of the Fund to or for the benefit of a Member or Beneficiary.

Binding Nomination means a document substantially in the form set out in Schedule 1, or in such other form that expressly states that it is intended to be binding on the Trustee. For the avoidance of doubt, the Binding Nomination need not comply with any requirements of SIS in relation to binding death benefit nominations.

Child has the same meaning as in SIS.

Complying Superannuation Fund means a fund that is a complying superannuation fund for the purposes of Superannuation Law.

Constitutional Corporation has the same meaning as in SIS.

Contribution includes any contribution accepted by the Trustee pursuant to clause 9 of this Deed.

Death Benefit means a Benefit in respect of a Member or former Member who is not alive when the benefit is to be paid.

Deed means this Deed, including any Schedule, as amended from time to time.

Dependant, in relation to a Member or former Member, has the same meaning as in SIS.

Disqualified Person has the same meaning as in SIS.

Employer means a person or company by whom a Member is employed, and in relation to a particular Member means the employer of that Member.

Excess Contributions Tax has the same meaning as in the Tax Acts.

Financial Year means a period of 12 months ending on 30 June, or such other period ending on such other date as the Trustee from time to time determines.

Fund means Hocking-Speight Super Fund and, where relevant in the context, all of the assets from time to time held by the Trustee on the trusts of this Deed.

Fund Account means the account referred to in clause 7.2(a).

Fund Earnings means the net earnings of the Fund as determined by the Trustee.

17.2 Words & expressions defined in Superannuation Law

Unless the context indicates a contrary intention, words and expressions used in this Deed will have the meanings assigned to them in Superannuation Law.

17.3 Interpretation rules

- (a) In the Deed, reference to:
 - (i) one gender includes the other gender;
 - (ii) the singular includes the plural and vice versa;
 - (iii) a person includes a body corporate;
 - (iv) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) will be construed as a reference to that Statutory Provision as amended or re-enacted from time to time and includes any statute, regulation or provision enacted in replacement of that Statutory Provision;
 - (v) a clause or schedule is a reference to a clause or schedule of the Deed (unless the context otherwise requires);and
- (b) headings are for convenience only and do not affect the interpretation of the Deed.
- (c) If a dispute arises on the interpretation of a provision of this Deed or as to the rights and obligations of a Beneficiary, then (except to the extent otherwise expressly provided in this Deed) the decision of the Trustee is final and binding.

Schedule 2 - Non-Binding Nomination

Hocking-Speight Super Fund

Non-Binding nomination

Member's details

Full Name [Member's name]

Address [Member's address]

Binding nomination

I revoke any previous nomination (whether binding or non-binding) that I have made in relation to my interest in the Fund.

Subject to law and the Fund's governing rules, I direct the Fund trustee(s) to deal with any benefit payable to or in respect of me from the Fund in the event of my death (**Death Benefit**) in accordance with the following directions:

[insert directions]

It is my intention that the above directions **will not be binding** upon the Fund trustee(s), but the Fund trustee(s) may take them into account in exercising any discretion as to how the Death Benefit will be paid or applied.

Member's signature

Date


Sample only – not to be signed

Signing

Executed as a deed

Date 25 MARCH 2014

Executed by Hocking-Speight Super Pty Ltd

x 
Michelle Hocking - Director

x 
Andrew Speight - Director

Hocking-Speight Super Pty Ltd

ACN 168 739 348

Minutes of meeting

Held at (address) 28 STANNINGTON AVENUE HEATHPOOL SA 5068
on (date)

Present

Michelle Hocking

Andrew Speight

Chair

Michelle Hocking was elected chair of the meeting.

Establishing the Fund

The Chairman reported that the Company has been requested to act as trustee of a self managed superannuation fund which is to be called the Hocking-Speight Super Fund (Fund).

The Chairman tabled the proposed Trust Deed for the Fund.

It was noted that the Company is not a *disqualified person* for the purposes of SIS.

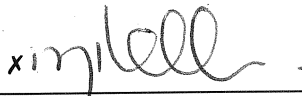
It was resolved:

- that the Company consent to act as trustee of the Fund.
- to approve and execute the proposed Trust Deed
- to take such further necessary steps to establish the Fund and ensure that it will qualify as a regulated superannuation fund.

Closure

There being no further business the meeting was closed.

Signed by the chair as a correct record.



Michelle Hocking

25 MARCH 2014

Date