

# **LawCentral**

## **Legal Documents**

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### Deed of Variation

for

### The Howat Cowan Superannuation Fund

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**This Deed of Variation** is made by

Howat Cowan Insurance Group Pty Ltd (ACN 089 767 699)

of 1 Willowbank Entrance, Gwellup, Western Australia 6018 Australia

("Trustee")

## **BACKGROUND:**

- A. The Howat Cowan Superannuation Fund ("**Fund**") is evidenced by a deed ("**Trust Deed**") made on 15-October-2002.
- B. The Trust Deed and the *Superannuation Industry (Supervision) Act 1993* (Cth) ("**SIS Act**") state that the trustee has the power to revoke, add to and vary the trusts constituted by the Trust Deed subject to the terms set out in the Trust Deed.
- C. The Fund has not vested.
- D. The Trustee seeks to vary the Trust Deed from the date of this Deed of Variation and the parties to this Deed of Variation give their consent to the variation.

## **THIS DEED STATES:**

### **1. HOW DOES THIS DEED VARY THE TRUST DEED?**

Subject to clauses 2, 3 and 4 of this Deed of Variation, and pursuant to the powers given to the trustee of the Fund by the Trust Deed, the Trustee varies the Trust Deed from the date of this Deed of Variation as follows:

- i. by replacing the terms of the Trust Deed and any variations with the terms contained in the enclosed Self Managed Superannuation Fund document marked as "Annexure A".

### **2. WHAT IS IN THE DEED OF VARIATION?**

- i. The term "**Deed of Variation**" includes this deed and all annexures and schedules to this deed.
- ii. The parties to this Deed of Variation have provided copies of this Deed of Variation and any annexures to all the members of the Fund.

### **3. DO WE USE THE DEFINITIONS IN THE TRUST DEED?**

Unless the context otherwise requires, the expressions contained in this Deed of Variation have the same meanings as in the Trust Deed.

### **4. WHAT IF THERE IS A CONFLICT BETWEEN THIS DEED OF VARIATION AND THE TRUST DEED?**

- i. This Deed of Variation is supplemental to the Trust Deed. This Deed of

Variation is to be, as far as it may, read and have effect to endorse the Trust Deed in all Australian jurisdictions.

- ii. If any of the terms of the Trust Deed are inconsistent with the terms of this Deed of Variation then the terms of this Deed of Variation prevail. However, this Deed of Variation in no way constitutes a resettlement of the Fund or any part of the Trust, established by the Trust Deed. If anything in this Deed of Variation establishes a resettlement of the Fund, then the applicable words are read down so as not to constitute a resettlement.

## 5. **PROTECTING GRANDFATHERED STRUCTURES AND DEFINED BENEFITS**

- i. **In house asset rules:** If any clause in this Deed of Variation adversely affects the grandfathering provisions for any structures or transactions that the Fund has in place for the in-house asset rules as provided for in any laws, including sections 71A to 71E of the SIS Act, then the offending words are read down so as not to adversely affect any such transactions or structures that are in place.
- ii. **Defined Benefit Pensions:** Further, this Deed of Variation is read down so as to preserve any payments of defined benefit pensions and any other pensions and payments. Any power to pay a defined benefit pension (under a previous deed) is preserved.
- iii. Should any inconsistency occur between the preserved provisions and the remaining provisions of this Deed of Variation, then the preserved provisions prevail.

## 6. **WHEN DOES THIS DEED OF VARIATION TAKE EFFECT?**

Unless otherwise stated in any minutes, this Deed of Variation takes effect on the date of this Deed of Variation.

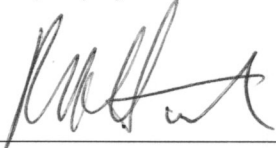
## 7. **WHO PAYS FOR THIS DEED OF VARIATION?**

The Trustee pays the cost of preparing, signing and stamping this Deed of Variation.

**THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

Signed, sealed and delivered as a Deed on 18 day of May 2012

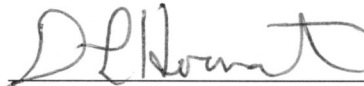
Executed by Howat Cowan Insurance Group  
Pty Ltd ACN 089 767 699  
in accordance with s127 of the *Corporations Act*  
2001 (Cth) by



1<sup>st</sup> Director's signature

Robert A Howat

1<sup>st</sup> Director's name  
(please print)



Company Secretary's signature  
(if applicable)

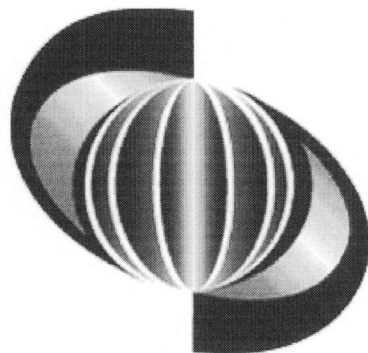
Diane L Howat

Company Secretary's name  
(please print)

and if only one person has signed that person states that he/she is the sole director and sole secretary of the company.



Annexure "A"



**LawCentral**  
Legal Documents

**The Howat Cowan Superannuation Fund**  
**Deed of Trust**



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## Self Managed Superannuation Fund - Amended Terms

### This Annexure is made by:

Howat Cowan Insurance Group Pty Ltd (ACN 089 767 699)

of 1 Willowbank Entrance, Gwellup, Western Australia 6018 Australia

("Trustee")

### Declaration of Trust

#### 1. DEFINITIONS AND INTERPRETATION

##### a. Definitions

Unless a contrary intention appears:

**"Actuary"** means a practising member of the Institute of Actuaries of Australia or any other actuaries approved by the Relevant Requirements;

**"Allocation Period"** means a period ending on an Allocation Date and starting the day after the previous Allocation Date. The first Allocation Period is such period as the Trustee determines;

**"Asset"** means any cash investments and any other form of property;

**"Asset-test Exempt Pension"** means a Benefit that is paid as a Pension that is exempt or excluded from the assets test under relevant provisions of the *Social Security Act 1991* (Cth) or the *Veterans Entitlement Act 1986* (Cth) (and any applicable regulations);

**"Associate"** means a related person or entity as defined in the Relevant Requirements;

**"Benefit"** means any amount paid or payable by the Fund to or in respect of a member (or any other person as permitted by the Relevant Requirements) as a lump-sum Benefit or Pension Benefit under this Deed;

**"Binding Death Benefit Nomination"** means a direction which is a binding direction for the purposes of payment of the Member's Benefit on death;

**"Child"** includes a step child, ex nuptial child, a legally adopted child, a person recognised by the Trustees as an adopted child and a child of a Member born within 10 months after the death of the Member;

**"Child Member"** means a Child of a nominating Member who meets the conditions required under the Relevant Requirements;

**"Child Member Representative"** means a nominating Member or any person advised to the Trustee in writing as having the authority to act as representative and signatory of the Child Member until the earlier of 18 years of age or the age which the Trustee

determines subject to the Relevant Requirements;

**“Co-Contribution”** has the same meaning as defined in *Superannuation (Government Co-contribution for Low Income Earners) Act 2003 (Cth)*;

**“Complying Pension”** includes:

- i. any pension that the Trustee determines to be a complying pension; and
- ii. unless the Trustee determines otherwise, a Pension permitted by the Relevant Requirements either in the past, currently or in the future including account-based pension, asset-test exempt pension, complying lifetime, fixed term pension, market-linked income stream, market linked pension, growth pension, defined benefit pension, lifetime pension, transition to retirement income stream, allocated pension, transition to retirement allocated pension, annuities, term and lifetime income stream;

**“Complying Superannuation Fund”** means a complying superannuation fund for the purposes of the Tax Act and the SIS Legislation;

**“Commencement Date”** means the date of execution of this Deed;

**“Corporate Trustee”** means a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under section 51 (xx) of the *Commonwealth of Australia Constitution Act* eligible to act as a trustee of a regulated superannuation fund according to the Relevant Requirements;

**“Date of Disablement”** means the date a Member is accepted (as the case requires) as being Totally and Permanently Disabled or Totally and Temporarily Disabled under any Insurance providing benefits on disablement under which the Trustees may have insured the Member or if there is no such Insurance or if no such date can be ascertained, such date as the Trustees in their discretion may determine;

**“Deed”** means the deed of trust by which the Fund has been established as amended from time to time;

**“Dependant” of a Member** includes:

- i. a Member's Spouse;
- ii. a Member's Child;
- iii. any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Member;
- iv. any other person who, in the opinion of the Trustee where the Member had a legal or moral obligation to support at the relevant date; and
- v. any person who is a dependant within the meaning of the Relevant Requirements;

**“Disbursements”** means, unless the Trustee determines otherwise:

- i. the direct costs of establishing, administering, managing, operating and terminating the Fund; and
- ii. any administrative or insurance costs or Taxes which are or which relate to those direct costs;

**“Eligible Fund”** means a superannuation fund, an approved deposit fund, an eligible roll-over fund, a roll-over annuity or any like fund or annuity or any other entity that the Trustees determine as an Eligible Fund for which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not in the opinion of the Trustees, be in breach of the Relevant Requirements;

**“Eligible Person”** means a person who can contribute to and participate in a superannuation fund under the Relevant Requirements (including a Child Member, Member’s spouse, a non-Member’s spouse and any other person as decided by the Trustee);

**“Employer”** means the person by which a Member is for the time being employed and that has agreed in a form acceptable to the Trustee to be bound by the terms of this deed;

**“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 and any other period determined by the Trustees;

**“Family Law Act”** means the *Family Law Act 1975* (Cth) and the regulations made under that Act;

**“Family Law Account”** means the account maintained in respect of a Non-Member Spouse;

**“Family Law Requirements”** means those imposed under the Family Law Act as are binding on the Trustee, relating to superannuation and family law;

**“Flagging Order and Flag Agreement”** has the same meaning as in the Family Law Requirements;

**“Forgone Benefit”** means that part of any account established for a Member that is not payable to or for a Member by virtue of this Deed, excluding any amount which is not payable to or for a Member by virtue of being preserved under the Relevant Requirements;

**“Fund”** means the superannuation fund established by deed known as The Howat Cowan Superannuation Fund;

**“Insurance”** means any policy of insurance effected by the Trustees to provide the whole or part of a death or Total and Permanent Disablement Benefit payable to or for a Member or to provide the whole or part of a Total and Temporary Disablement Benefit payable to or for a Member;

**“Insurer”** means a person authorised to carry on life insurance business under the *Life Insurance Act 1945* or any other person authorised to carry on life insurance business or to issue an annuity in any State or Territory of Australia;

**“Legal Personal Representative”** means the executor of the will or administrator of the estate of a deceased Member, the trustee of the estate of a Member who is under a legal disability or a person who holds an enduring power of attorney

**“Member”** means a person admitted as a member under the terms of this Deed and recorded in the Schedule of Members and has not ceased to be a Member under this Deed;

**“Non Binding Death Benefit Nomination”** means a direction which is a not a binding direction for the purposes of payment of the Member’s Benefit on death;

**“Non Member Spouse”** has the same meaning as in the Family Law Requirements;

**“Normal Retirement Date”** means a date as the Member and the Trustee may agree;

**“Payment Split”** means a payment split pursuant to the Family Law Requirements;

**“Permitted Contributor”** includes:

- i. Members who are under 65 and not working or who are working part-time and are over 65 and under 75;
- ii. an Employer;
- iii. an Associate of a Member or Employer;
- iv. any person, corporation, trust, institution, agency, government, government agency or other entity including a spouse, eligible spouse, the Federal Government, the Federal Government co-contributions, employer, member and any other person in any capacity; and
- v. other persons permitted to make contributions to the Fund under the Relevant Requirements;

**“Pension”** means a pension or annuity permitted by the Relevant Requirements;

**“Relevant Requirements”** means the SIS Legislation, the *Corporations Act 2001* (Cth), the Tax Act and any other law of the Commonwealth of Australia which deals with superannuation or taxation in relation to superannuation (as the context requires) and includes any regulations, declarations or orders made under that Act or any other law or any requirement of a regulator which must be satisfied so that:

- i. the Fund obtains concessional tax treatment; and
- ii. the Fund remains a complying superannuation fund.

**“Responsible Authority”** means the Australian Prudential Regulation Authority (and prior to 1 July 1998 includes a reference to the Insurance and Superannuation Commission) or the Australian Taxation Office, as the case may be, including the authorised officers of these bodies, or such other persons or bodies empowered to administer the Relevant Requirements;

**“Review Date”** means such date as the Trustees may from time to time nominate for either the Fund or a particular Member and for a Member who first joins the Fund between Review Dates, the date the Member joined the Fund and then the Review Date described beforehand;

**“Review Period”** means a period commencing on a Review Date and ceasing immediately prior to the next Review Date;

**“Salary Sacrifice Contribution”** means a contribution in respect of a Member under a salary sacrifice arrangement;

**“SIS Legislation”** means the *Superannuation Industry (Supervision) Act 1993* (Cth), and includes any regulations, declarations or orders and all other requirements whether legislative or administrative including any administrative guidelines issued by the Responsible Authority or statements by government advising changes and any proposed changes to the SIS Legislation with which the Fund must comply or in the opinion of the Trustee ought to comply to be a Complying Superannuation Fund or not to be in contravention of the SIS Legislation;

**“Shortfall Component”** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth);

**“Single Acquirable Asset”** means an asset that is not money (whether Australian currency or currency of another country);

**“Splitting Order”** has the same meaning as in the Family Law Requirements and the *Tax Laws Amendment (Superannuation Contributions Splitting) Act 2005* (Cth);

**“Spouse”** in relation to a person, includes another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and any other person who is a spouse for the purposes of the Act;

**“Spouse Member”** means a spouse of a nominating member who is not already a Member of the Fund where a nominating Member nominates to the Trustee a Spouse Member who meets the conditions required under the Relevant Requirements;

**“Spouse Member Account”** means an account maintained in respect of a Spouse Member;

**“Superannuation Agreement”** has the same meaning as in the Family Law Requirements;

**“Surcharge”** has the same meaning as in the *Superannuation Contributions Tax Imposition Act 1997* (Cth) and the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (Cth), and any like or replacement tax, charge, surcharge, levy or duty;

**“Superannuation Guarantee Charge”** means a charge or tax imposed on employers for not making certain superannuation contributions;

**“Tax Act”** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as amended) as appropriate and the regulations made under the relevant Act;

**"Taxes"** means income tax (including any tax on the disposal of assets), withholding tax, stamp, financial institutions and other duties, and any other tax for this Deed or the Fund;

**"Total and Permanent Disablement"** of a Member has:

- i. the meaning given to it (or any corresponding term) in any Insurance providing benefits for such disablement under which the Trustee has insured the Member; or
- ii. if no meaning can be ascertained under paragraph i., the meaning for the time being adopted by the Trustee in the Trustee's discretion;

and **"Totally and Permanently Disabled"** has a corresponding meaning;

**"Total and Temporary Disablement"** of a Member has:

- i. the meaning given to it (or any corresponding term) in any Insurance providing benefits for such disablement under which the Trustee has insured the Member; or
- ii. if no meaning can be ascertained under paragraph i., the meaning for the time being adopted by the Trustee in the Trustee's discretion;

and **"Totally and Temporarily Disabled"** has a corresponding meaning;

**"Trustee"** or **"Trustees"** means the trustee or trustees for the time being of the Fund; and

**"Trustee Investments"** means any investments in which Trustee for the time being is authorised by the law of any State or Territory of the Commonwealth of Australia to invest trust moneys.

**b. Interpretation of Terms in this Deed**

Unless a contrary intention appears:

- i. if any part of the Deed is invalid, that does not affect the validity of the remainder of the Deed;
- ii. a reference to the Deed or any other document includes any variation or replacement of them;
- iii. 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;
- iv. headings do not affect the interpretation of this Deed;
- v. singular includes the plural;
- vi. **"person"** includes a firm, a body corporate, an unincorporated association or



an authority; and

- vii. a term used in this Deed which is defined in the Relevant Requirements has the same meaning in this Deed.

## **2. DECLARATION OF TRUST**

- i. The Trustee declares this trust and agrees to act as the Trustee of the Fund.
- ii. The Trustee establishes an indefinitely continuing superannuation fund called The Howat Cowan Superannuation Fund according to this Deed as a self managed superannuation fund as defined under the SIS Legislation to:
  - A. provide superannuation benefits to Members and their Dependents; and
  - B. for such ancillary and incidental purposes as permitted from time to time by the SIS Legislation.
- iii. The Trustee wishes to maintain the Fund as a complying superannuation fund under the Relevant Requirements.

## **3. FUND'S PURPOSE**

By this Deed, the Trustee establishes a self managed superannuation fund within the meaning of the SIS Legislation which it shall hold and administer for the Members:

- i. while the Trustee is not a Corporate Trustee, the sole or primary purpose of the Fund is the provision of old-age pensions to Members as required under the Relevant Requirements; and
- ii. while the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members as required under the Relevant Requirements.

## **4. MEMBERS**

### **a. Eligible Person**

- i. Unless the Trustee otherwise directs an Eligible Person, may apply to become a Member of the Fund upon making application in such form as the Trustee may from time to time prescribe or otherwise accept.
- ii. An Eligible Person becomes a Member on the date the Trustee accepts the application for membership or a date the Trustee states otherwise.
- iii. The Trustee may set eligibility conditions for membership of the Fund.

### **b. Information from Potential Members?**

Before admitting a Member, the Trustee may require the Eligible Person to provide

any information or documents the Trustee considers relevant. A person seeking to become a member completes an application for membership.

**c. Trustees decide Member**

The Trustee may reject an application for membership of this Fund.

**d. Members are Bound by this Deed**

Each Member agrees to be bound by this Deed.

**e. Ceasing as a Member**

- i. A person ceases to be a Member when:
  - A. all benefits which are or may be payable for the Member have been paid; or
  - B. a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to benefits; or
  - C. the Member's entitlement to benefits is terminated.
- ii. If a person is disqualified for any reason from being a Member then the majority of Trustees can remove the person by simple vote.

**5. CONTRIBUTIONS**

**a. Purpose**

All amounts forming part of the Fund are held in trust by the Trustee. The contributions by and for a Member are applied to provide the benefits referred to in this Deed to or for the Member and their Dependents.

**b. Tax File Number**

The Trustee must not accept any Member contributions if the Member has not quoted (for superannuation purposes) his or her tax file number to the Fund.

**c. Permitted Contributions**

Contributions can be accepted by the Trustee subject to the Relevant Requirements in:

- i. the form of money;
- ii. the form of securities listed on a stock exchange in Australia and other SIS Regulation approved exchanges;
- iii. any form of real estate including commercial residential industrial farm land and vacant land;

- iv. any form of chattels; or
- v. other property and assets, including assets in specie.

**d. Types of contributions**

Subject to the Relevant Requirements, the Trustee:

- i. may accept contributions from a Permitted Contributor;
- ii. may accept Member concessional and non concessional contributions;
- iii. may accept Employer contributions, mandated contributions and contributions made pursuant to a salary sacrifice agreement;
- iv. may accept Government co-contributions Surcharge Offset Contributions and Eligible spouse contributions and contributions in respect of minors;
- v. may accept Family Law Offset Contributions;
- vi. may accept a Shortfall Component;
- vii. at the time of the contribution or after the contribution is made, may, at any time, refuse, reject, return, or otherwise deal with such contributions (whether excess contributions, or otherwise) as the Trustee considers appropriate or wishes in accordance with the Relevant Requirements.

**e. Excess Contributions tax**

- i. The Trustee is restricted from accepting all or part of a contribution if it causes the member to exceed a contribution cap (including concessional and non-concessional caps).
- ii. If the Trustee does accept the contribution the trustee holds this amount (and any earnings) in a separate trust, not under the SIS Legislation, for the sole benefit of the relevant Member in their personal capacity.
- iii. The amount is not counted as a contribution and the Trustee may return the amount to the member relying on this clause.

**f. Excess Contributions tax liability**

If a Member has an excess contributions tax liability and has lodged with the Trustee a release the Trustee shall in accordance with the Relevant Requirements pay to the Member or at the Member's request pay to the Australian Taxation Office the:

- i. amount requested;
- ii. amount of excess contributions tax stated on that release; or
- iii. Member's Benefit in the Fund.

**g. Defective contributions**

- i. If the Trustee after accepting a contribution considers that it should have not done so the Trustee will repay an appropriate amount to the person making the contribution (less any amounts paid out for expenses or Taxes for those contributions).
- ii. In so repaying any contributions the Trustee is entitled to (but is not liable or required to) pay any earnings or interest attributable to such contributions.
- iii. If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

**h. Spouse Contribution Splitting**

- i. A Member may apply to the Trustee to transfer to the account of the Spouse Member some or all of the Member's Benefit representing contributions made by, for, or on behalf of the Member ("Contribution Split"). The Trustee may only deal with Contribution Split as allowed under the Relevant Requirements.
- ii. The Spouse in whose favour a Contribution Split is made need not be a member of the Fund. Nor is the Spouse required to become a member of the Fund.
- iii. A Contribution Split can be made either by:
  - A. allowing a transfer or roll over (or any other method as permitted by the Relevant Requirements) to a different fund (of which the Spouse is a member or is to become a member); or
  - B. establishing an entitlement to benefits for the Spouse within the Fund,provided that any Contribution Split must be permitted by the Relevant Requirements.

**i. Deduction Tax and Costs from Contributions**

The Trustee can deduct from any contribution or other payment made to the Fund:

- i. any Taxes that are payable for it; and
- ii. any expense of the Fund that is attributable to a Member, for whom such contribution or payment is being made.

**6. BENEFITS**

**a. Payment of Benefits**

Benefits are payable to or for a Member:

- i. on or after the Member's Normal Retirement Date; or
- ii. at any age and whether working full time or part time as permitted by the SIS Legislation; or
- iii. after a Member's death; or
- iv. in such other circumstances as are permitted or required by the Relevant Requirements.

**b. Providing information**

- i. The payment of any Benefit is subject to the person claiming that Benefit producing such evidence, doing such acts and executing such documents as the Trustee reasonably requires.
- ii. The Trustee in paying a Benefit may act on any proofs or presumptions they consider appropriate, even if they are of no legal effect.
- iii. The Trustee may postpone the payment of any Benefit until the requirements of this clause have been met to its satisfaction.
- iv. A Benefit, the payment of which is postponed pursuant to this clause, does not (unless the Trustee determines otherwise) accrue any interest or earnings for the period that the payment is postponed.

**c. How Benefits are Paid**

Benefits are paid in money or, in any other form of property and subject to the Relevant Requirements the Trustee may provide the following Benefits to or for a Member:

- i. a lump-sum Benefit;
- ii. an asset including an asset *in specie*;
- iii. a Complying Pension;
- iv. an annuity;
- v. any other form of pensions and Benefits as permitted by the Relevant Requirements; and
- vi. a combination of the above Benefits which may include more than one of each.

**d. Value of Benefit**

- i. The value of a Benefit payable to or for a Member is ascertained with reference to the Member's interest and entitlement in the Fund as at the date or dates of the occurrence of the event or events that gave rise to the Benefit.

- ii. If the Trustee considers the payment of a lump sum Benefit has been unduly delayed, the Trustee in the Trustee's sole discretion may add interest to the Benefit on the date of payment calculated, from the date the entitlement to the Benefit arose, at such rate or rates as they may determine.

**e. Minimum Benefits**

Notwithstanding any other provision in this Deed, a Member's minimum benefits are as set out in the SIS Legislation.

**f. Preservation of Benefits**

If the Trustee considers that all or any part of a Benefit is preserved to comply with the Relevant Requirements, the Trustee:

- i. pays that part of the Benefit to an Eligible Fund whose governing rules require the preservation of such Benefit under the Relevant Requirements;
- ii. retains that part of the Benefit, including earnings of the Fund, until the Relevant Requirements permit it to be paid; or
- iii. otherwise deals with such Benefit according to the Relevant Requirements.

**g. Insurance of Benefits**

- i. If the Trustee takes out or increases Insurance, or seeks to do so, for a Member's benefits, and:
  - A. the Insurer does not accept the Member on its standard terms or on terms acceptable to the Trustee; or
  - B. the Insurer restricts the level or scope of Insurance,the Trustee may modify the Member's Benefit as the Trustee considers appropriate.
- ii. The Trustee is not required to pay to or for a Member that part of a Benefit which is insured or intended to be insured except to the extent that the Trustee has received the proceeds of any Insurance attributable to the Benefit.

**h. Adjustment of Benefit if Incomplete or Incorrect Information**

The Trustee may modify a Member's Benefit as the Trustee considers appropriate, if any information given to the Trustee for the Member is incomplete or incorrect.

**i. Legal Disability of Person and Bankruptcy**

If the Trustee forms the opinion that a Member or other person to whom a Benefit would otherwise be payable is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with such Benefit the Trustee may pay or apply the whole or part of any such Benefit in one or more of the following ways:

- i. to any Dependant of the Member or other person;
- ii. for or towards the maintenance, education, advancement or otherwise for the Benefit of the Member or other person in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and
- iii. without limiting the generality of paragraph ii. of this clause, to a person who appears to the Trustee to be a trustee or, or a parent or guardian of, or to have for the time being the care or custody of the Member or other person or to have the financial expenses of the care or custody of the Member or other person,
- iv. IRRESPECTIVE OF THE ABOVE, at all times, while a Member is bankrupt:
  - A. any increase of that bankrupt Member's pension amount requires the consent and approval of the Trustee. Where the Trustee is solely controlled by the bankrupt Member the Trustee is restricted from increasing the pension amount;
  - B. automatically, without reference to the bankrupt member, any Pension (or similar product) is reduced to the minimum pension allowable at law; and
  - C. the Member is unable to request the Trustee to commute a pension.

**j. Unrestricted Non-Preserved Benefits**

A Member's unrestricted non-preserved benefits, within the meaning of the SIS Legislation, are only payable to the Member according to the other provisions of this Deed applicable to payment of benefits unless the Trustee in the Trustee's sole discretion determines otherwise.

**k. Death Benefits & Binding Nominations**

- i. Only on a form approved by the Trustee, a Member may provide the Trustee with a binding written nomination as to the payment of Benefits on a Member's death to the Member's estate or to Dependents.
- ii. A binding nomination may relate to the type, amount and proportions of different components of the Benefits to be paid upon a Member's death.
- iii. A Member may vary any such binding nomination at any time in writing prior to the Member's death, according to the Relevant Requirements.
- iv. The Trustee ensures that the instructions contained in the binding nomination are followed.
- v. A nomination is non lapsing and may be amended at any time.

**l. Death Benefits & Non-Binding Nominations**

- i. A Member may provide the Trustee with a non-binding written nomination as

to the preferred payment of Benefits on a Member's death to one or more of the Member's Dependants or to the Member's Legal Personal Representative, subject to the Relevant Requirements ("Non-Binding Nominated Beneficiaries").

- ii. Where the Member has not made a binding nomination under the Relevant Requirements, the Trustee may make any determination relating to the type, amount and proportions of different components in any Benefit and pay a Member's Benefit on the Member's death to:
  - A. the Member's Dependant;
  - B. the Member's Legal Personal Representative (even though there are Member Dependants);
  - C. the Non-Binding Nominated Beneficiaries; or
  - D. a combination of A. – C. above in the proportions that the Trustee, in its absolute discretion, determines.
- iii. A Trustee is not bound to pay Benefits on a Member's death to the Non-Binding Nominated Beneficiaries.

**m. No Dependant, or Legal Personal Representative**

- i. If after 12 months from the date of a Member's death, the Trustee is of the opinion (after reasonable enquiry) that the Member left no Dependants and a Legal Personal Representative of the Member has not been appointed, the amount otherwise payable as a death Benefit is forfeited.
- ii. If subsequently a Legal Personal Representative is appointed or a Member's Dependant is found the Trustee may (at the Trustee's discretion) pay the whole or part of the forfeited amount to the Legal Personal Representative or a Member's Dependant.

**n. Total and Permanent Disablement Benefits**

- i. The Trustee (subject to this Deed) may pay a Total and Permanent Disablement Benefit to a Member or any one or more of the dependants. The payment is made as the Trustee sees fit.
- ii. Such part of the Benefit as insured is paid on such terms as the Insurer may prescribe under any Insurance providing such part of the Benefit or as the Insurer may agree with the Trustee.

**o. Total and Temporary Disablement Benefits**

A Total and Temporary Disablement Benefit as insured is paid on the terms and conditions of the Insurance or as the Insurer may agree with the Trustee.

**p. Tax on Benefits**



The Trustee may deduct from any Benefit payable any Taxes that are payable for it.

**q. Anti Detriment Payment**

The Trustee may in its absolute discretion increase the amount of the Death Benefit by an amount equal to such amount (if any) which is available as a deduction to the Fund under the Tax Act.

**r. Trustee Discharge**

The Trustee is discharged from all liability for a Benefit where it pays the Benefit in good faith to a person or another person, on behalf of the person, they believe is entitled to it, or according to this Deed.

**7. FAMILY LAW REQUIREMENTS**

**a. Trustee to Comply**

- i. The Trustee is empowered to do or arrange to be done, all acts, matters and things which the Trustee considers appropriate to comply with or satisfy the provisions of the Family Law Requirements, including, but not limited to:
  - A. providing information to an eligible person, as that term is defined in the Family Law Requirements;
  - B. dealing with Superannuation Agreements;
  - C. dealing with Flagging and Splitting Orders and Agreements; and
  - D. dealing with any other agreement or order imposed or made under the Family Law Requirements in relation to a Member's benefit or a Member's future benefit.
- ii. Subject to the Relevant Requirements, the Trustee may allocate or impose any fees or charges it considers appropriate in relation to compliance with or administration of the Family Law Requirements.
- iii. Subject to the Relevant Requirements, the Trustee may, at its discretion, pay, transfer or rollover any benefits or amounts, in accordance with the Family Law Requirements, to:
  - A. a Non-Member Spouse;
  - B. another Complying Superannuation Fund chosen by a Non-Member Spouse; or
  - C. an Eligible Rollover Fund chosen by the Trustee.

**b. Splitting and Flagging of Benefits**

- i. If a Member's benefit becomes subject to a payment split or a Flagging Order

or Flagging Agreement then the Trustee gives to both the Member and the Member's spouse the required notice and information under the Relevant Requirements.

- ii. The Trustee calculates the benefit for the Member and the Member's spouse according to the Relevant Requirements.
- iii. The Trustee preserves the benefit for the Member and the Member's spouse under the terms of the Fund and as required by the Relevant Requirements.
- iv. If either the Member or the Member's spouse requests the transfer of the benefits of the Member's spouse then the Trustee transfers the benefit under the terms of the Fund and as permitted or required by the Relevant Requirements.
- v. The Trustee pays the benefit for the Member and the Member's spouse under the terms of the Fund and as permitted or required by the Relevant Requirements.

**c. Pensions**

Subject to the Relevant Requirements, the Trustee may:

- i. use Benefit to provide a Complying Pension (in instalments or otherwise) on terms including that the Fund remains eligible to be a Complying Superannuation Fund;
- ii. commute (wholly or partially) a Complying Pension to any value (including a capital sum or lump sum Benefit);
- iii. roll back or initiate an internal roll over into the Fund; or
- iv. stop any Complying Pension and then restart that pension, start a new pension or convert to accumulation mode (including converting an allocated pension or any Pension to accumulation).

**d. Transition to Retirement Pension**

- i. The Trustee may pay a transition to retirement pension and for so long as the pension is payable, the Trustee must ensure that at least one payment is made during each financial year within the maximum and minimum limits as set out in the Relevant Requirements;
- ii. If at any time during a Financial Year, no selection has been made for a pension for that year and a pension was being paid in the previous Financial Year, the Trustee must either:
  - A. if there is no agreement, continue to pay a pension at the level prevailing at the end of the previous Financial year; or
  - B. pay the pension for the current year calculated according to any existing agreement between the Trustee and the Member.

- iii. Subject to the Relevant Requirements, the whole or a part of any pension may be commuted by the Member, provided the Trustee approves.
- iv. The capital value of the Member's pension and the income from it cannot be used as security for a borrowing.
- v. The capital supporting the pension cannot be added to by way of a contribution or rollover after the pension has commenced.

**e. Account based pensions**

- i. The Trustee must pay all or part of a benefit as an account based pension if the Member requests.
- ii. The Trustee must pay the pension from a Member Account of the Member on terms that the Trustee and Member agree as to the level and frequency of payment within the minimum and maximum levels (if any) prescribed by Relevant Requirements.
- iii. The Trustee must pay the pension at least annually.
- iv. The pension entitlement must not be transferred or used as security for a borrowing.
- v. After the pension commences the capital supporting it must not be added to by way of contribution or a rollover of a superannuation benefit.
- vi. The pension commences when the Trustee and Member agree but no later than required by Relevant Requirements and ends when the balance of the relevant Member Account is nil.

**f. Reversionary Pension**

- i. The Trustee may decide whether to pay a reversionary pension to a dependant on death, where the pension was initially set up as a non-reversionary pension.
- ii. If a member dies and another rule permits the Trustee to pay a reversionary pension, the Trustee may continue paying the relevant pension to any or all of the Member's Dependants and Legal Personal Representative in proportions the Trustee decides after considering any relevant Benefit Nomination.

**g. Annuities**

- i. If the Trustee is required to pay an old age pension or a Pension the Trustee is absolutely empowered to provide such pensions by way of an annuity purchased by the Trustee in the name of the Member or in the name of the Member and one or more of the Member's Dependants. This is upon such terms as the Member and the Trustee may agree, subject to the Relevant Requirements.
- ii. Where the Member, Dependant or beneficiary is:

- A. an infant; or
  - B. in the Trustee's view, of unsound mind or incapable of managing their own affairs; or
  - C. no agreement is reached as to the terms of an annuity,
- then in all of these cases the Trustee, at the discretion of the Trustee, may determine the nature and terms of the annuity.

## 8. TRANSFERS

### a. To Another Fund

- i. If a Member or a beneficiary makes a written request, the Trustee may pay or transfer all or part of the Member's or beneficiary's interest and entitlement in the Fund to an Eligible Fund. However:
  - A. the payment or transfer must be consistent with the Relevant Requirements;
  - B. the Trustee may not pay or transfer more than the amount requested by the Member or the beneficiary; and
  - C. the payment or transfer satisfies the Member's entitlement to any benefit for the amount so paid or transferred.
- ii. The Trustee may pay or transfer the whole or part of any benefit or the interest or entitlement of any person in the Fund to another Eligible Fund or otherwise in circumstances permitted or required by the Relevant Requirements whether or not the person has requested or consented to such payment or transfer, and such payment or transfer satisfies the person's entitlement to any benefit for the amount so paid or transferred.

### b. From Another Fund

If a Member makes a written request, the Trustee:

- i. may accept the transfer of assets from another Eligible Fund; and
- ii. where the transfer is made for the Member's interest or entitlement in the Eligible Fund, provide benefits to the Member pursuant to such transfer in the manner set forth in this Deed; and
- iii. where the transfer is not attributable to a Member's interest or entitlement in the Eligible Fund, the Trustee may treat the amount of such transfer in such manner as it considers equitable. This includes deeming the assets being so transferred as a Forgone Benefit under this Deed and applying them under this Deed,

however, any transfer must be permitted by the Relevant Requirements.

**9. RECORDS AND AUDIT**

**a. Fund Records**

The Trustee must keep records for the Fund of Members, assets and liabilities, income and expenditure, and all other matters specified by the Relevant Requirements and retain them for the period specified by the Relevant Requirements.

**b. Fund Auditor**

The Trustee must appoint an approved auditor, for each Financial Year or as otherwise required by the Relevant Requirements to:

- i. audit the accounts and records of the Fund; and
- ii. report in writing to the Trustee,

within the time specified by the Relevant Requirements.

**c. Annual Accounts**

The Trustee must, for each Financial Year, prepare an income and expenditure account and a statement of net assets of the Fund.

**10. ACCOUNTS**

**a. Accounts and Reserves**

The Trustee may establish such accounts in the records of the Fund as they consider necessary or desirable including:

- i. an accumulation reserve account, an accumulation retirement account, a pension reserve account, investment reserve account (that can amongst other things, hold undistributed investment income and income above the Fund's required return), contributions reserve account (that can amongst other things hold unallocated contribution made by an employer on behalf of a group of employees), miscellaneous reserve accounts (that can amongst other things include pre 12 May 2004 forgone and forfeited benefits, plus expenses and other legal provisions);
- ii. such reserve accounts or liability accounts as may assist the Trustee to identify the value of assets that may have been exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different sub-fund, segment or partition; and
- iii. such other accounts and reserves as the Trustee considers appropriate from time to time including, one or more contribution, miscellaneous and investment reserve accounts.

**b. Allocations**

- i. The Trustee is not restricted from allocating amounts either to or from such

reserve accounts.

- ii. The Trustee has the flexibility to allocate earnings of the Fund on a basis other than the Members' respective Fund balances. This flexibility includes the Trustee having the discretion to allocate such earnings having regard to account balances, specific investment portfolios and the like. The Trustee has the flexibility of crediting rate of investment returns to each Member. The Trustee can allocate such accounts and reserves upon a Member's death.

**c. Provision and Adjustments to Accounts**

- i. The Trustee may make provision or adjustments in the accounts for all Disbursements (including Taxes on unrealised gains, advance tax instalments and notional surcharge amounts), liabilities, tax credits, depreciation, amortisation or revaluations as the Trustee considers appropriate.
- ii. The Trustee may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or partitions and account for them separately.

**d. Debits and Credits to Accounts**

The Trustee is to record in the accounts in such proportions the Trustee determines to be appropriate or as required by the Relevant Requirements as a credit, contributions paid to the Fund:

- i. as a debit, any losses to the Fund;
- ii. as a credit, any profits and earnings of the Fund;
- iii. as a credit, proceeds of Insurance, except proceeds of Insurance that are otherwise payable to or for a Member on death, Total and Permanent Disablement, or Temporary Total Disablement;
- iv. as a debit, amounts to pay Taxes and other expenses, or amounts to provide for them;
- v. as a credit, amounts no longer required to meet Taxes or expense liabilities;
- vi. as a debit, amounts to pay premiums for Insurance or the consideration for an annuity;
- vii. as a credit, amounts received from the Forfeited Benefits Account;
- viii. as a debit, amounts transferred to the Forfeited Benefits Account;
- ix. as a debit, amounts paid as benefits or transferred to other Eligible Funds; or
- x. as a debit or a credit any other amounts for such matters or things as they consider appropriate.

**e. Allocation Date**

On each Allocation Date the Trustee adds to a Member's account all contributions for that Member, the Interim Fund Earning Rate or Fund Earning Rate and any other amounts including allocating of reserves, subject to the Relevant Requirements.

**f. Fund Earning Rate**

In regards to the Allocation Date the Trustee may declare a Fund Earning Rate.

**g. Interim Fund Earning Rate**

The Trustee, as the Trustee considers appropriate, may set an Interim Fund Earning Rate to be applied to the accounts of a Member as at the date when an amount becomes payable from the Fund, for the period since the last Allocation Date.

**h. How Fund Earning Rate to be Determined**

- i. In determining a Fund Earning Rate the Trustee will comply with the Relevant Requirements 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 Taxes that are or may be incurred by the Trustee which is not debited to an account;
  - C. any provisions established by the Trustee for Taxes and expenses;
  - D. the appropriateness of averaging profits, earnings, losses and expenses over two or more Allocation Periods; and
  - E. such other matters the Trustee considers appropriate.
- ii. A Fund Earning Rate or Interim Fund Earning Rate may be positive or negative.

**i. How are Fund Earning Rates applied to Accounts?**

- i. Where relevant, the Trustee may decide whether a Fund Earning Rate or Interim Fund Earning Rate is applied to accounts on daily balances, on average balances, or on some other basis.
- ii. The Trustee may distribute the losses, profits and earnings of the Fund to the accounts at the applicable Fund Earning Rate or Interim Fund Earning Rate.

**j. Averaging Earnings Losses and Expenses?**

Where applicable, if the Trustee in determining a Fund Earning Rate decides to average the earnings, losses and expenses of the Fund over two or more Allocation Periods, the Trustee may establish an Earnings Averaging Account to or against which the Trustee may:

- i. credit such amount as the Trustee may retain from the Fund's earnings; or
- ii. debit such amount as the Trustee may use to supplement the Fund's earnings.

## 11. INVESTMENTS

- i. The Trustee may invest all or part of the money and other assets of the Fund in any manner in which they could if they were personally entitled as beneficial owners of those assets and without limiting the foregoing to invest:
  - A. in Insurance and any other type of insurance;
  - B. in Trustee Investments;
  - C. in real property (including residential, commercial, industrial, retail - direct, listed or unlisted);
  - D. in any tangible property and chattels (such as vehicles, boats, furniture, jewellery, livestock, machinery, clothing, art, writings or household goods);
  - E. in any intangible personal property and choses in action (such as common funds, bills of exchange, negotiable instruments, securities and intangible assets);
  - F. on deposit with any bank or building society (and the power to open and close such accounts) or any other company partnership or person with or without security;
  - G. in shares, stocks, options, debentures, bonds, unsecured notes, securities, leases, mortgages, charges or hire purchase;
  - H. in units or sub-units of any unit trust including units in a pooled superannuation trust;
  - I. in options, hedging contracts, futures contracts, limited recourse borrowing arrangements, derivatives, similar securities to the above and other financial instruments such as forex trading;
  - J. and hold a beneficial interest in any asset using warrants and limited recourse borrowing arrangements;
  - K. to acquire the legal ownership of a Single Acquirable Asset or replacement asset at any time under a limited recourse loan arrangement;
  - L. for only capital growth, pure income or a combination; and
  - M. in other investments, which the Trustee considers on a case-by-case basis, such as investments in agribusiness.



- ii. The Trustee may dispose of, vary, transpose, replace or encumber investments or mix investments with investments of other people or trustees as if they were personally entitled to them as beneficial owners.
- iii. The Trustee may invest in a manner which is consistent with the Relevant Requirements.
- iv. The Trustee may lend money to Members and lease assets to Members on any terms subject to the Relevant Requirements.

## 12. THE TRUSTEE'S POWERS

### a. General

The Trustee may do anything they consider necessary to manage the Fund in an efficient and economical manner according to this Deed and to administer the Fund so as to comply with the Relevant Requirements, including:

- i. paying any costs, charges and Taxes relating to the Fund;
- ii. paying professionals who are entitled to be paid fees for work done by themselves or their professional's firm on the same basis as if the professional was not a Trustee or a Member but employed as a professional;
- iii. paying for services and products supplied by individuals and companies even though such entities have a financial or other relationship with the Trustee or Member or a family member of the Trustee or Member (including holding positions of ownership and directorships), provided that such costs are no more than would be charged had the Trustee not been so related to the entity;
- iv. appointing persons to:
  - A. perform administrative functions;
  - B. audit the Fund's accounts;
  - C. prepare tax returns; and
  - D. any returns for the Responsible Authority,and to pay any expenses incurred for this;
- v. conducting and settling legal proceedings;
- vi. entering contracts and executing deeds;
- vii. obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- viii. giving receipts and discharges;

- ix. giving any guarantee or indemnity;
- x. insuring any risks;
- xi. acting as an underwriter;
- xii. making rules for rounding off contributions and benefits;
- xiii. providing for and transferring liability for any Taxes;
- xiv. establishing such reserves, reserve accounts, reserve accounts pursuant to SIS Legislation;
- xv. irrevocably electing that the Fund become a regulated superannuation fund;
- xvi. determining the manner in which they execute, sign and endorse cheques, negotiable instruments, agreements, writings, contracts and documents of any kind whatsoever required in or about the affairs of the Fund and such method of execution is legally binding on the Trustee;
- xvii. opening, operating, maintaining and closing bank accounts at such banks and financial institutions as the Trustee determines and operate upon any of such accounts in a manner determined by the Trustee from time to time;
- xviii. entering into any option agreement relating to any lending or financial facility, agreement or transaction;
- xix. entering into any derivatives contract or purchasing or selling or dealing in any derivatives product, and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world;
- xx. entering into any transactions such as contemplated by sections SIS Legislation regarding limited recourse borrowing arrangements;
- xxi. delegating the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- xxii. dealing or transacting with any Member or Associate in any way or capacity, irrespective of any conflict of interest, including purchasing, receiving, selling or transferring (in specie or otherwise) any asset;
- xxiii. opening any account or accounts with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- xxiv. borrowing money for limited recourse borrowing as provided for under SIS Legislation and applying the moneys towards the purchasing, refinancing and repairs and maintenance of an Single Acquirable Asset, through a bare trust;

- xxv. entering into any transactions in which the Trustee or the directors or shareholders of the Trustee or any person being a relative the Trustee or the directors or shareholders of the Trustee may have a direct or indirect interest;
- xxvi. authorising the giving of security by mortgage, charge (whether fixed or floating) or otherwise over the asset and the rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever;
- xxvii. borrowing from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for any purpose, including the purposes of acquiring an asset (whether beneficially, legally or both) upon such terms with or without security or interest as the Trustee deems fit;
- xxviii. giving, or authorising the giving of security by mortgage, charge (whether fixed or floating) or otherwise over any asset and acknowledging the rights of the mortgagee or chargee and their priorities according to the terms of any such agreements;
- xxix. raising any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument and securing the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit and any money raised by the Trustee will form part of the Fund; and
- xxx. notwithstanding that the Trustee for the time being is the sole Trustee, generally to exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred irrespective of whether:
  - A. any person (including the Trustee, director and shareholder of a Trustee and related parties) has or may have a direct or personal interest in the mode or result of exercising such power or discretion;
  - B. such person may benefit directly or indirectly as a result of the exercise of any such power or discretion; and
  - C. the personal interest may have or could have arisen including whether as trustee of any other settlement, in a personal capacity, a shareholder, director, member, partner of any company, partnership, as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever.

**b. Fund Administrator**

The Trustee may appoint a person to act as administrator of the Fund, to administer the Fund and maintain Fund records including the right and power to receive contributions and pay benefits and terminate a delegation in such manner and terms as they see fit.

**c. Trustee can Delegate**

The Trustee has power to:

- i. delegate the exercise of any of their powers, duties and discretions to any person and terminate a delegation in such manner and terms as they see fit;
- ii. appoint and execute any powers of attorney or other instruments for any purpose. One Trustee acting alone is permitted to bind the other Trustees including the power to open, close and operate bank and other types of accounts; and
- iii. appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the trustee thinks fit.

**d. Trustee may Act on Authorisations**

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

**e. Trustee interprets this Deed**

The Trustee in its absolute discretion may exercise or enforce any powers at any time and may refrain from exercising any powers and the Trustee's interpretation of this Deed is final.

**f. Discretions Only to be Exercised by Trustee**

No provision of this Deed, except to the extent that the SIS Legislation may provide, may permit a discretion under this Deed to be exercised by a person other than the Trustee and any such provision is to be read down construed and interpreted in such a manner so as to be consistent with the provisions of the SIS Legislation.

**13. TRUSTEE**

**a. Who can be a Trustee?**

Any one of the following people may become a Trustee:

- i. a Member's Legal Personal Representative;
- ii. where a Member is under a legal disability, the trustee of the Member's estate; or
- iii. the holder of an enduring power of attorney granted by the Member.

**b. Trustee Declarations**

A Trustee must consent to the appointment in writing and:

- i. complete a declaration in such form as the Relevant Requirements require that the person understands his or her duties as Trustee of the Fund before accepting the appointment; and
- ii. as a director of a Corporate Trustee to complete a declaration in such form as the Relevant Requirements require that the person understands his or her

duties as a director of a Corporate Trustee that is trustee of the Fund before accepting the appointment.

**c. Regulation of Trustee Proceedings**

The Trustee may subject to the provisions and requirements of the SIS Legislation:

- i. regulate their meetings as they see fit;
- ii. determine a quorum;
- iii. act by way of resolution passed by two thirds of all the Trustees based on the weighted value of each Trustee's current contributions; and
- iv. appoint one of them to act as chairman and replace the chairman whenever they think fit.

**d. Deadlock**

Where there is a deadlock in making any Trustee decision (including at a meeting of the directors of a Corporate Trustee) the deadlock shall, subject to the Relevant Requirements, be resolved by weighting each Trustee's vote in accordance with their respective Member's account balance as a proportion of the total Members.

**e. Written Resolutions**

A resolution in writing signed by all the Trustees has the same effect and validity as a resolution of the Trustees passed at a meeting of the Trustees at which a quorum is present.

**f. Telephone Meetings**

A meeting of Trustees is held by telephone or other similar means if:

- i. all Trustees are given written or oral notice of the meeting; and
- ii. such number of the Trustees as represents a quorum of Trustees take part in the meeting.

**g. Minutes**

The Trustee will keep minutes and records of trustee decisions as required by the Relevant Requirements and for at least ten (10) years and accounting records and signed financial reports for at least five (5) years.

**h. Trustee ceasing to be Trustee**

A Trustee holds office until:

- i. retirement or resignation from office by giving notice in writing to other Trustees of the Fund;

- ii. disqualification by law from holding office or becoming a disqualified person within the meaning of the SIS Legislation; or
- iii. the Trustee:
  - A. dies;
  - B. becomes, in the opinion of the other Trustees, mentally or physically incapable of fulfilling the office of Trustee of the Fund;
  - C. is removed by the Responsible Authority pursuant to the provisions of the SIS Legislation; or
  - D. is precluded from being a Trustee in other circumstances prescribed by the SIS Legislation.

**i. Appointment and Removal of Trustees**

The Trustees, Members and Legal Personal Representatives of a Member may appoint and remove Trustees.

**j. Number of Trustees**

Any limitations or requirements under the laws of any State or Territory relating to the number of Trustees are excluded and do not apply to this Deed.

**14. LIABILITY AND INDEMNITY**

**a. Trustee not under Personal Liability**

The Trustee is only liable for:

- i. failing to act honestly in a matter concerning the Fund;
- ii. wilfully or recklessly failing to exercise, for a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- iii. a monetary penalty under a civil penalty order.

**b. Trustee Indemnity**

Subject to the SIS Legislation excluding or limiting any right to an indemnity against liabilities incurred by the Trustee, the Trustees and past Trustee or any of them are indemnified out of the assets of the Fund for any liability incurred while acting as Trustee of the Fund.

**c. Trustee Right to Seek Advice**

The Trustee may seek advice from any person for any matter relating to the performance of the duties or the exercise of the powers of the Trustee. The Trustee is entitled to be indemnified out of the assets of the Fund for the cost of obtaining such

advice.

**d. Insurance against Fund Losses**

The Trustee may in the Trustee's discretion effect or take out insurance against:

- i. any liability which arises against a Trustee, Member or the Fund; or
- ii. any losses or damages which the Fund, a Trustee or Member or may suffer or incur,

as a result of or arising from any act or omission of the Trustee or any person to whom the Trustee has delegated their powers, duties and discretions or any servant, agent or employer of the Trustee or any contractor (including persons acting in any professional role), Fund administrator, other administrator, custodian or other person or body engaged by the Trustee for the purposes of the Fund.

**15. AMENDMENT OF DEED**

- i. The Trustee may by deed, resolution or minute amend this Deed (either in writing or verbally) provided that no amendment reduces a Member's accrued benefits or imposes any increase in liability on a Member without the Member's consent.
- ii. Any addition, repeal, amendment or alteration is effective from the date (if any) specified for that purpose in such deed or resolution or (in the absence of a specified effective date) the date on which the resolution was made or the deed is executed.
- iii. The Trustee must promptly notify each Member of the nature and purpose of any such addition or alteration and of the effect (if any) which such addition or alteration has on the Member's entitlements under the Fund.

**16. EXPENSES OF THE FUND**

Fund expenses are payable from the Fund and may to the extent the Trustee considers it equitable be debited to the account established for a Member according to the provisions of this Deed.

**17. MEMBER INFORMATION**

- i. A Member will give the Trustee any information or documents the Trustee requests to assist in administering the Fund.
- ii. A Member will give the Trustee the Member's tax file number in the manner required by the Tax Act.
- iii. The Trustee will provide any information required by the Relevant Requirements to a Member or any other relevant person.

**18. EXPENSES AND TAXES**

The Trustee for any potential or actual expenses or taxation liability of the Fund, or of any Member, Dependant, beneficiary or person claiming through the Trustee is empowered to:

- i. establish such reserves, reserve accounts, reserve accounts including those pursuant to the SIS Legislation and provisions as the Trustee considers necessary or desirable to provide for the payment of such expenses or taxation liability;
- ii. deduct from any contribution or other amount paid to the Fund, any benefit or other payment made from the Fund or the interest and entitlement of any Member, Dependant, beneficiary or any person claiming through the Trustee such amount as the Trustee considers equitable to establish and maintain such provisions and reserves;
- iii. pay any such expense or Taxes as and when it becomes payable out of the reserves and provisions and, if necessary, out of the other assets of the Fund and for the purposes of such payment realise the assets of the Fund;
- iv. not be required to make any retrospective adjustments in the event that any expense or Taxes becomes payable for a different period or periods other than that for which the provisions and reserves were established or if the taxation provisions and reserves prove excessive or unnecessary and in such cases the Trustee is entitled to apply the amount of the unnecessary or excessive provisions and reserves as the Trustee may decide including:
  - A. allocating such amount to any existing reserve or provision or future reserve or provision for Taxes or expenses for which it was established or to any existing or future reserve or provision for any other expense or Taxes; and
  - B. crediting any account established in the records of the Fund or the interest or entitlement of any Member, Dependant or person claiming through them; and
- v. deal with any tax deductions, credits and rebates attributable to the Fund as and when they arise on such basis as the Trustee decides including offsetting them against any taxation reserves and provisions notwithstanding the period or periods to which such tax deductions, credits and rebates are attributable or the date they arise or are received.

## 19. NOTICES

Any notice or other written communication in connection with the Fund is given to a person if it is:

- i. handed to the person;
- ii. delivered to the person's last known address; or
- iii. posted by ordinary post from within Australia to the person's last known address, in which case it is taken to be received on the third (3rd) business day after posting.



## **20. TERMINATION**

### **a. When the Fund Terminates**

The Fund is to terminate if:

- i. the Trustee gives written notice to a Member requiring the termination of the Fund; or
- ii. the Relevant Requirements require the Fund to be terminated,

and as soon as practicable thereafter the Trustee must, subject to the Relevant Requirements:

- i. determine a termination date;
- ii. notify the Member that the Fund has terminated from the termination date;
- iii. take reasonable steps to get in any contributions owing by the Member at the termination date; and
- iv. must not accept any other contributions.

### **b. Termination Date is Allocation Date**

To the extent the Trustee considers it equitable, the Trustee will allocate earnings or losses to accounts as at the termination date and such other date or dates as the Trustee considers appropriate.

### **c. How Assets are to be Applied**

The Trustee must, subject to the Relevant Requirements, apply assets in the following priority:

- i. in paying the costs of administering and winding up the Fund;
- ii. in paying or transferring Members' benefits according to this Deed; and
- iii. in paying any balance to Members, Dependants, former Members, deceased Members' Dependants or Legal Personal Representative in proportions the Trustee in the Trustee's discretion determine is appropriate.

## **21. COMPLYING WITH SIS LEGISLATION**

### **a. SIS Legislation to Prevail over Deed Provisions**

- i. If there is a conflict or inconsistency between the provisions of this Deed and the SIS Legislation, the SIS Legislation prevails.
- ii. Any such provision in this Deed is read down, construed and interpreted by the Trustee in such a manner so as to give effect to the SIS Legislation and to

enable the Fund to be operated in a manner that is consistent with the SIS Legislation.

- iii. Where there is a non-mandatory change in the Relevant Requirements and SIS Legislation, beneficial to the Members, then this Deed is taken to be so amended so as to take advantage of these non-mandatory changes.

**b. Power to Act According to SIS Legislation**

- i. The Trustee has the power to do all acts and things or omit to do such acts and things as it considers necessary, desirable or expedient for the Fund to be operated and administered according to the SIS Legislation and to be a Complying Superannuation Fund and for the Trustees, Members, and beneficiaries not to be in contravention or, in the opinion of the Trustee, any possible or potential contravention of the SIS Legislation.
- ii. The powers conferred upon the Trustee under this Deed, without limiting the generality of such powers, include the right to administer and operate the Fund so that:
  - A. the Fund is operated solely for one or more of the core and ancillary purposes specified in the SIS Legislation;
  - B. the Fund is operated to comply with any standards prescribed under the SIS Legislation which are applicable to the Fund;
  - C. the Trustee is entitled to provide the Responsible Authority with such returns and information as the SIS Legislation or the Responsible Authority, may require;
  - D. the Trustee may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Responsible Authority;
  - E. the Trustee may disclose to the Responsible Authority such event, omission or thing that the SIS Legislation may require to be disclosed to the Responsible Authority and seek the advice, ruling or direction of the Responsible Authority as they consider necessary;
  - F. the Trustee may pay from the Fund any levy or charge imposed upon the Fund under the SIS Legislation;
  - G. the Trustee may seek from the Responsible Authority any exemption or modification of the provisions of the SIS Legislation for their application to the Fund; and
  - H. the Trustee may pay a Member's or a beneficiary's benefits or interest in the Fund, in the circumstances prescribed by the SIS Legislation, to the Responsible Authority or an eligible roll-over fund even if no claim for such a benefit has been made by or for the Member or beneficiary.

**c. Trustee Not to be in Breach of Trust**

- i. The Trustee is taken to have not contravened this Deed nor be in breach of trust if in giving effect to this Deed it:
  - A. construes or interprets this Deed;
  - B. does such acts or things; or
  - C. omits to do such acts or things,  
  
which might otherwise contravene this Deed or be in breach of trust but which the Trustee considers necessary, desirable or expedient to avoid a contravention of the SIS Legislation.
- ii. The Trustee is not taken to contravene this Deed or be in breach of trust if it does anything or omits to do anything that is in contravention of the SIS Legislation if:
  - A. the Trustee may rectify the contravention within such period as may be allowed by the SIS Legislation or within such further period as the Responsible Authority allows; or
  - B. the Responsible Authority notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

**d. Trustee not subject to Direction**

Except to the extent permitted by the SIS Legislation, the Trustee in the exercise of their powers under this Deed is not to be subject to the direction of any other person.

**e. SIS Covenants and Requirements**

- i. Notwithstanding any provision of this Deed any covenant or other requirement required by the SIS Legislation to be included in this Deed is deemed to be included as if every such covenant or requirement was set out in this Deed on and from the date that covenant or requirement is required to be so included.
- ii. If the SIS Legislation or the Responsible Authority no longer requires any such covenant or requirement to be so included then that covenant or requirement ceases to be included.
- iii. If any covenant or requirement (or its operation) under the SIS Legislation is modified then the Trustee is only required to comply with the covenant or requirement as modified.
- iv. The Trustee is not taken to be in contravention of this Deed or in breach of trust if the Trustee does or omits to do anything which is in contravention of such a covenant or requirement if the contravention is waived by the Responsible Authority.

**22. GOVERNING LAW**

The Fund and the Deed are governed by the law of the State of the Trustee's address

stated at the beginning of this Deed.

**THIS CONCLUDES ANNEXURE "A"**

**Schedule of Members** (this is bound in the Deed)

from time to time

(a Self Managed Superannuation Fund can never have more than 4 members at one time)

Member	Date Entered	Date Exited
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	
	On date of Acceptance by the Trustee	

(This is bound in the Deed for your future reference. Take copies as required.)

**Nomination Form**

**for The Howat Cowan Superannuation Fund**

Member's Full Name \_\_\_\_\_ Date \_\_\_\_\_ 20\_\_\_\_


**Non-Binding Nominated Beneficiaries**

Upon my death, I propose the Trustee distribute my assets, pay a lump sum, pay a pension, pay a reversionary pension or any other payments as set out below.

I understand that the Trustee is not bound by this nomination.

This Nomination Notice is not binding. The Trustee/s will take it into account in the event that a benefit is paid from the Fund on your death.

The Trustee/s have a discretion as to which of your Dependants and/or Legal Personal Representative may receive the death benefit and in what proportions. If there are no Dependants or Legal Personal Representative, the benefit may be payable to any other person.

<b>"My Estate" or Full Name of Nominated Beneficiary</b>	<b>Relationship</b> (if not nominating "My Estate")	<b>Entitlement - %</b>
Member's Signature	 (no witness required)	

**Declaration**

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- This Nomination is binding on the Trustee until it is amended or revoked;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries; and
- If this Nomination is not correctly completed or if I have nominated persons who are not "dependants" it may be invalid.

I have been provided with information by the Trustee/s of the Fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this Nomination.

**Binding Nominated Beneficiaries**

This form of Nomination is Binding on the Trustee. The Binding Nomination only allows a straight forward percentage based nomination. To make a more detailed nomination speak to your adviser.

Upon my death, I direct the Trustee to distribute my assets, pay a lump sum, pay a pension, pay a reversionary pension or any other payments as set out below:

For this Nomination to be effective, it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit. In order for this Nomination Notice to be valid, it must be fully completed in accordance with the details below

"My Estate" or Full Name of Nominated Beneficiary	Relationship (if not nominating "My Estate")	Entitlement - %
Member's Signature	✍	
Witness One Signature (I declare I am over 18 years & not related to the Member)	✍	
Witness One Full Name (Print)		
Witness Two Signature (I declare I am over 18 years & not related to the Member)	✍	
Witness Two Full Name (Print)		

**Declaration**

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- This Nomination is binding on the Trustee until it is amended or revoked;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries; and
- If this Nomination is not correctly completed or if I have nominated persons who are not "dependants" it may be invalid.

I have been provided with information by the Trustee/s of the Fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this Nomination.

## What happens to your Super when you die?

You may have Super left when you die. You can nominate which "dependant" gets your Super when you die. There are 2 types of nominations. Non-binding and binding. Non-binding nominations merely suggest to the trustee where you want your Super to go when you die. Your Trustee may or may not follow your suggestion.

Under the Trust Deed, the Trustee has a discretion to decide, in the event of your death, who will receive the death benefit and, in what proportions. To remove the Trustee's discretion, complete the Binding Nomination and the Trustee of the Fund is bound to act in accordance with your direction. If you complete the non binding nomination the Trustee retains their discretion.

1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify (or both).
2. To complete the nomination specify the percentage of your total death benefit which is to be paid to your estate and/or your dependants. Include the names of each person nominated, and their relationships to you and the proportion of any benefit that is to be paid to each.
3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee.
4. This Nomination is binding on the Trustee until it is amended or revoked.
5. If you direct the Trustee to pay a person who is not a dependant, your direction will be of no effect and the Trustee will be required to decide who to pay your death benefit to.
6. The Beneficiaries named in this Nomination must be dependants and/or your Legal Personal Representative, a dependant is:
  - a spouse of a Member
  - any children of a Member
  - any other person (whether related to the Member or not) who is financially dependent on the Member. "Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children.

Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.



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## Minutes of the Meeting of the Trustees of The Howat Cowan Superannuation Fund

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- Held At** 1 Willowbank Entrance, Gwellup, Western Australia 6018 Australia
- Present** Howat Cowan Insurance Group Pty Ltd (ACN 089 767 699) and during those times where the Trustee is a company then the director(s) of the Trustee
- Superannuation Fund** The Trustee tabled a Trust Deed for the establishment of The Howat Cowan Superannuation Fund.
- Resolved that**
1. The Trustee acknowledges that it has the capacity at law to act as Trustee and consents to act as Trustee.
  2. The Trustee (and where applicable each Trustee) acknowledges that it is not a disqualified person under any laws or regulations including section 120 of the *Superannuation Industry (Supervision) Act 1993 (Cth)*.
  3. The Trustee acts as Trustee of the Fund.
  4. The Trustee agrees to be bound by the provisions of the Trust Deed.
  5. The Trust Deed tabled at this meeting is adopted to govern the Fund and that the Deed be executed for that purpose.
  6. The Trust Deed be submitted by the Trustee to the Commissioner of State Revenue for stamping (if required).
  7. A banking account be opened in the name of the Fund.
  8. Contributions to the Fund are made by an employer, another person or by the members as may be decided from time to time.

To accept the application for membership of the Fund for the person(s) named in the attached Application for Membership form(s).

**Closure**

There being no further business the meeting was declared closed.

Signed as a true and correct copy  
of the proceedings of the meeting

\_\_\_\_\_  
Chairperson (as appointed at the meeting)

\_\_\_\_\_  
Date

(A copy of this is bound in the Deed for future reference. Copy as required.)

## Trustee's Certificate of Compliance

### The Howat Cowan Superannuation Fund

To Whom It May Concern:

The Trustee of The Howat Cowan Superannuation Fund certifies that:

1. The Howat Cowan Superannuation Fund is a superannuation entity established in accordance with the *Superannuation Industry (Supervision) Act 1993 (Cth)* ("**SIS Act**") and the Trustee(s) of this Fund is as set out in the enclosed Trust Deed and any subsequent trust deeds and any relevant minutes which change the Trustee.
2. The Trust Deed governing The Howat Cowan Superannuation Fund and any amendments to it comply with the SIS Act and any regulations made under the SIS Act.
3. The Howat Cowan Superannuation Fund is a resident regulated superannuation fund within the meaning of section 19 of the SIS Act.
4. The Australian Prudential Regulation Authority has not directed The Howat Cowan Superannuation Fund not to accept contributions under section 63 of the SIS Act.
5. Our Trust Deed allows benefits to be transferred to our Fund.
6. The SIS Act prohibits Members borrowing monies from the fund, except where authorised by the SIS Act
7. Members can only receive preserved benefits from our fund at their retirement age or under the SIS Act.
8. This Trustee Certificate of Compliance is not a Notice of Compliance that the Australian Tax Office or other regulators may provide from time to time.

\_\_\_\_\_  
Trustee(s) of The Howat Cowan Superannuation Fund

Date: \_\_\_\_\_ 20 \_\_

All current Trustee(s) sign this Certificate at the time when it is required by a third party (if ever).

(Where the Trustee, from time to time, is a company then an authorised person in that company, such as a director or company secretary can sign this Certificate of Compliance.)

Do not mark this original - only write on photocopies of this Page)  
This is bound in the Deed for your convenience.

## Application for Membership of The Howat Cowan Superannuation Fund ("Fund") (each member needs their own Application)

This Application for Membership form contains your Nomination Form and undertakings you make to the Trustee of this Fund. The Fund's Product Disclosure Statement is also attached.

**New Member Full Name** \_\_\_\_\_ **Date of Birth** \_\_\_\_\_

**Address of New Member** \_\_\_\_\_

**Employer** \_\_\_\_\_ **Tax File No.(TFN)** \_\_\_\_\_

1. After having read the Trust Deed, I apply for the membership of the Fund.
2. I consent to my Tax File Number being made available to the Trustee and any third party as required or where expedient. I also enclose a duly completed and signed Tax File Number Declaration (available from the ATO's website).
3. If applicable, I have been invited by the Employer for membership to the Fund.
4. I have been advised of the benefits which I am entitled to receive from the Fund on retirement, death, disablement or termination of service with the Employer (where applicable).
5. In consideration of my admission to membership, I agree to abide by and be bound by the Trust Deed governing the Fund. I declare that I have no entitlement to any annuity and I am not a member of, nor have I received benefits from, any other superannuation fund or approved deposit fund, other than as set out on the attached page (please supply details of benefits paid or payable on a separate page).
6. I undertake to advise the Trustee, in writing, if at any time I receive or become entitled to receive a benefit from any superannuation fund or approved deposit fund or deferred annuity not declared according to the above.
7. I undertake to advise the Trustee in writing of any contributions made by or on behalf of me, other than by the Employer, which would vary the amount specified above.
8. I agree to the Trustee acting as Fund Trustee. I consent to be a Fund Trustee or a director of the Trustee, as required. Further, I comply and give my consent in regards to any other rules for Trustees.
9. I enclose my Nomination Form which deals with how I want my Superannuation to be dealt with if I die.
10. I have read and understood the Fund's Trust Deed. I have noted the benefits payable under this Trust Deed. I have also received my own copy of the Product Disclosure Statement which was attached to this Application for Membership form. I have fully read and understood the Product Disclosure Statement.

11. I acknowledge that I am not a disqualified person under any law or regulation, including the *Superannuation Industry (Supervision) Act 1993 (Cth)* and any regulations made under that Act. Further, I undertake to advise the Trustee if I ever do become so disqualified.

Signed by new member: