

**TRUST DEED**

**OF**

**MK DAY SUPERANNUATION FUND**

**(THE 'FUND')**

THIS DEED is made on 8<sup>th</sup> August 2017

**BY:** MK DAY Pty Limited (ACN: 620 963 644)  
(the '**Trustee**')

**AND:** Matthew Simon Day  
Kate Elizabeth Day  
(the '**Members**')

## BACKGROUND

- A By this Deed, the Trustee establishes an indefinitely continuing superannuation fund to be known as MK DAY Superannuation Fund (the '**Fund**') for the purpose of providing superannuation benefits to any person who is a Member of the Fund.
- B The Fund is a self managed superannuation fund as defined in the *Superannuation Industry (Supervision) Act 1993* (Cth) (the '**SIS Act**').
- C The Trustee has accepted the appointment to act as the initial Trustee of the Fund.
- D The Members are the initial members of the Fund.
- E The Fund is vested in the Trustee and will be controlled, managed and administered by the Trustee on behalf of any person who is a Member of the Fund, in accordance with the provisions of this Deed and the Schedule attached to this Deed.
- F The Trustee will ensure that the Fund continues to maintain its status as a complying self managed superannuation fund in accordance with the SIS Act.

## AGREEMENT

- 1. The Trustee and the Members agree that:
  - (a) the Fund is established on the date of this Deed; and
  - (b) the Governing Rules of the Fund are as set out in this Deed and the Schedule attached to this Deed, as amended from time to time.
- 2. The Trustee declares that the Fund is vested in the Trustee and that the Trustee will control, manage and administer the Fund in accordance with the Governing Rules.

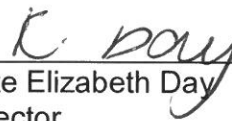
3. This Deed and the Governing Rules are to be interpreted in accordance with the law and if any provision of the Governing Rules is prohibited or unenforceable, then such provision shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Governing Rules and any obligation imposed by law in respect of the Fund that is not expressed in the Governing Rules, is to be regarded as being incorporated into the Governing Rules, by reference.

**EXECUTED** as a Deed

**EXECUTED** by the Trustee

MK DAY Pty Limited (ACN: 620 963 644)  
in accordance with s127 *Corporations Act 2001* (Cth):

  
Matthew Simon Day  
Director

  
Kate Elizabeth Day  
Director

**EXECUTED** by the Members

Matthew Simon Day in the presence of the person below who is over 18 years of age and has legal capacity and is not a signatory to this deed other than as a witness:



Signature of Witness



Signature of Matthew Simon Day

DENISE JASON McPATRICK

Name of Witness – please print

188 LAMBTON ROAD NEW LAMBTON NSW

Address of Witness – please print street address

Kate Elizabeth Day in the presence of the person below who is over 18 years of age and has legal capacity and is not a signatory to this deed other than as a witness:



Signature of Witness



Signature of Kate Elizabeth Day

DENISE JASON McPATRICK

Name of Witness – please print

188 LAMBTON ROAD NEW LAMBTON NSW

Address of Witness – please print street address

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## 1. Interpretation

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### 1.1 Unless it appears otherwise in these rules:

- (a) statutes, ordinances, codes or other laws includes regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them;
- (b) a person includes an individual, partnership, constitutional corporation, unincorporated association, court, government or governmental authority;
- (c) the singular includes the plural and vice versa; and
- (d) headings and sub-headings do not affect the interpretation of any provision of these rules.

## 2. Definitions

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### 2.1 Unless it appears otherwise in these rules, the following words are defined as follows:

- (a) **Act** means the Superannuation Industry (Supervision) Act 1993 (Cth) and its Regulations.
- (b) **Binding Death Benefit Notice** means a notice made in accordance with Rule 15 which is binding on the Trustee.
- (c) **Deed** means the deed to which these rules are attached.
- (d) **Guardian** means an individual appointed in accordance with Rule 7.
- (e) **Member** means an individual who the Trustee has admitted as a Member and who has not ceased to be a Member of the Fund, in accordance with Rule 6.
- (f) **Member Account** means any account that the Trustee has set aside on behalf of a Member.
- (g) **Net Income of the Fund** means the income earned or loss incurred by the Fund from time to time, calculated in accordance with whatever accounting standards the Trustee considers appropriate for the Fund at that time and after the allocation of any directly attributable amounts in accordance with Rule 12.1.
- (h) **Other Account** means any account that the Trustee has set aside that is not a Member Account. This may include reserves.
- (i) **Pension** means any pension permitted by the Act.
- (j) **Pensioner** means a Member who receives a Pension from the Fund.
- (k) **Regulator** means the Australian Taxation Office or any person having the statutory power to regulate self managed superannuation funds.
- (l) **Reversionary Pension** means a Pension that automatically continues to be paid to a Reversionary Pensioner upon the death of a Member who was in receipt of a Pension at the time of their death.

- (m) **Reversionary Pensioner** means an individual who has been nominated in writing by the Member before the Member's death, in accordance with Rule 14, to automatically continue to receive the Member's Pension upon their death.
- (n) **Superannuation Law** means any law and any related regulations (and any variation of them) of the Commonwealth of Australia and any law of a State or Territory of Australia including, but not limited to, the Superannuation Industry (Supervision) Act 1993 (Cth), the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth), the Corporations Act 2001 (Cth), the Social Security Act 1991 (Cth) and the Family Law Act 1975 (Cth) which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the Fund by the Australian Taxation Office, the Australian Prudential Regulation Authority (APRA), the Australian Securities & Investments Commission (ASIC) or any other body that has responsibility in connection with the regulation of superannuation. It also includes any proposed law or lawful requirement that the Trustee believes may have retrospective effect.

2.2 In these rules, unless a term is specifically defined, then it will have the same meaning and definition as set out in the Act.

### 3. Compliance with superannuation law

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- 3.1 If there is any inconsistency between the provisions of these rules and Superannuation Law, then these rules must be read as subject to Superannuation Law.
- 3.2 Despite the provisions of these rules, the Trustee is empowered to act in accordance with Superannuation Law.
- 3.3 If Superannuation Law requires certain provisions to be included in these rules, those provisions are (to the extent they are relevant to the Fund) deemed to be included in these rules.
- 3.4 Where the Regulator, if permitted by Superannuation Law, determines that a requirement of Superannuation Law does not have to be complied with, either generally or specifically in relation to the Fund or the Trustee, then it is not a requirement of Superannuation Law for the purposes of these rules unless the Trustee determines otherwise.

### 4. Trustee

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- 4.1 The Fund property is vested in the Trustee and the Trustee will hold the Fund property subject to the provisions of these rules.
- 4.2 Subject to Superannuation Law, the Trustee of the Fund will be:
  - (a) a single constitutional corporation; or
  - (b) one or more individuals; and / or
  - (c) any other person permitted or required to act as trustee.

- 4.3 Where the Trustee is comprised of one or more individuals, the primary purpose of the Fund will be the provision of old-age pensions.

*Appointment and removal of Trustee*

- 4.4 A majority of Members may appoint a Trustee, or an additional Trustee where the Trustee is comprised of one or more individuals, at any time providing the appointment does not cause the Fund to breach the definition of a self managed superannuation fund.
- 4.5 Any appointment of a Trustee must be made by a deed executed by the Members and the new Trustee. Any deed prepared for this purpose does not need to be registered.
- 4.6 The Trustee, when comprised of a single constitutional corporation will continue to act as the Trustee of the Fund until:
- (a) it notifies the Members in writing that it retires;
  - (b) it receives notice that it has been removed as a result of the written agreement of the majority of Members;
  - (c) it goes into liquidation or has a receiver of any kind appointed or enters into administration; or
  - (d) it ceases to be eligible to act as Trustee in accordance with Superannuation Law.
- 4.7 Where the Trustee is comprised of one or more individuals, an individual will continue to act as a Trustee of the Fund until:
- (a) the individual notifies the Members in writing of their retirement;
  - (b) the individual receives notice that they have been removed as a result of the written agreement of the majority of Members;
  - (c) the individual is unfit or incapable of acting as a Trustee due to suffering from a loss of mental capacity;
  - (d) the individual is an undischarged bankrupt or otherwise ceases to be eligible to act as a Trustee in accordance with Superannuation Law; or
  - (e) the individual dies.

**5. Trustee powers, discretions and duties**

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- 5.1 Subject to Superannuation Law, the Trustee has all the authorities, powers and discretions concerning the Fund, and may act, as if it were the legal and absolute beneficial owner of the assets of the Fund.
- 5.2 However, without limiting the generality of the foregoing, the Trustee may subject to these rules and Superannuation Law:
- (a) do anything whatsoever necessary or desirable for the purpose of the maintenance, operation, management, development or promotion of the Fund;



- (b) open an account with any financial institution and operate the account on the terms and conditions that the Trustee considers appropriate;
- (c) 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;
- (d) invest, purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this rule, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence the premises;
- (e) borrow money, with or without security or interest, on the terms and conditions that the Trustee considers appropriate. Any borrowing which does not comply with Superannuation Law must be immediately repaid;
- (f) give or authorise security over an asset, by way of a mortgage, charge or any other form of security as determined by the Trustee and that security takes priority over the interests of the Members;
- (g) delegate any or all of the powers conferred on the Trustee to any person in writing and on the terms and conditions as the Trustee considers appropriate;
- (h) subject to the terms and conditions of the delegation, the Trustee may in writing alter or revoke a delegation;
- (i) appoint an attorney and for this purpose, the Trustee may sign a power of attorney;
- (j) appoint any person as a custodian in writing and on the terms and conditions as the Trustee considers appropriate;
- (k) permit Fund investments to be held in the name of a nominee;
- (l) give indemnities to or on behalf of any person the Trustee thinks fit;
- (m) purchase and maintain any insurance cover permitted by Superannuation Law;
- (n) subject to Rule 5.3, regulate and conduct Trustee meetings, as it considers appropriate; and
- (o) have in addition to the powers conferred by these rules and Superannuation Law, all the powers conferred on a trustee by statute or general law.

*Trustee voting*

- 5.3 Where the Trustee comprises a single constitutional corporation, then Trustee decisions will be made in accordance with the constitution of the constitutional corporation.
- 5.4 Where the Trustee is not comprised of a single constitutional corporation Trustee decisions will be made by the casting of votes. Each:
  - (a) individual Trustee; and / or

- (b) any other person permitted or required to act as trustee

will be entitled to a single vote in respect of each Member for whom that individual Trustee and / or any other person acts, unless:

- (c) more than one individual Trustee and / or any other person acts as Trustee in place of a particular Member, in which case that group of individuals and / or any other persons will only be entitled to a single vote in respect of that particular Member.

5.5 Subject to Rule 5.4, where there is:

- (a) a single Member of the Fund with more than one individual Trustee and / or any other person acting as trustee; or
- (b) two Members of the Fund

Trustee decisions require the unanimous approval of the individual Trustees and / or any other person acting as trustee.

5.6 Subject to Rule 5.4, where there are more than two members of the Fund, Trustee decisions require approval via the majority of votes of the individual Trustees and / or any other person acting as trustee.

5.7 The Trustee will record and retain documents evidencing meetings of the Trustee, meetings of the Members and any resolutions made about the Fund for the period required by the Superannuation Law.

5.8 The Trustee may exercise any of the powers conferred on the Trustee under these rules or at law, even if the Trustee:

- (a) where comprised of a single constitutional corporation, each director or shareholder or any person being a relative of each director or shareholder;
- (b) the Trustee where comprised of one or more individuals, each individual Trustee or any person being a relative of each individual Trustee; or
- (c) acting in any other capacity

has or may have a direct, indirect or personal interest and as a result of exercising the power, the Trustee or an individual Trustee may benefit, directly or indirectly.

5.9 To the extent allowed by Superannuation Law, neither:

- (a) where it is comprised of a single constitutional corporation, each director; or
- (b) the Trustee where it is comprised of one or more individuals, each individual Trustee,

is liable for anything done or not done in connection with acting as the Trustee or as a director of the Trustee, unless at least one of the following applies:

- (i) they fail to act honestly;
- (ii) they intentionally or recklessly fail to exercise the degree of care and diligence they are required to exercise;

- (iii) they incur a penalty imposed under Superannuation Law; or
- (iv) in any other circumstance specified by Superannuation Law in which their liability may not be excluded or limited.

5.10 To the extent allowed by Superannuation Law, the Trustee:

- (a) where it is comprised of a single constitutional corporation, each director; or
- (b) the Trustee where it is comprised of one or more individuals, each individual Trustee,

is indemnified from the Fund against all and any liabilities incurred in the proper performance of the duties and functions as the Trustee of the Fund.

5.11 If there is a conflict or inconsistency between this Rule 5 and any other provision of these rules, then the Rule 5 will prevail to the extent of the conflict and / or inconsistency.

## **6. Membership**

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6.1 Any individual may make a written application to the Trustee to become a Member of the Fund.

6.2 The written application may be made in any form chosen by the individual.

6.3 The Trustee can, in the absence of a written application, admit an individual as a Member of the Fund at its absolute discretion.

6.4 An individual admitted as a Member of the Fund (whether on a written application or not), is deemed to have approved of, and to become bound by, these rules.

6.5 An individual becomes a Member of the Fund:

- (a) on the date the Trustee accepts their written application for membership; or
- (b) on the date otherwise determined by the Trustee.

The Trustee may then provide the individual with confirmation of their admission as a Member of the Fund.

6.6 Unless otherwise determined by the Trustee, a person ceases to be a Member of the Fund on the earlier occurring of:

- (a) when all of their Member Account(s) are paid out of the Fund;
- (b) when benefits payable to or for the Member cease to be payable;
- (c) when Superannuation Law requires a Member's membership to cease; or
- (d) the Member dies.

6.7 For the avoidance of doubt and subject to Superannuation Law, at no stage is a Member required to have, or to maintain, a balance in their Member Account.

- 6.8 A Member of the Fund must provide any information:
- (a) that the Trustee requires from the Member in order to comply with these rules and Superannuation Law; and
  - (b) in the manner requested by the Trustee.

## **7. Guardians and special rules on death**

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- 7.1 This Rule operates despite any other provision in these rules, but always subject to the Act.
- 7.2 A Member may appoint a Guardian specifically for the purposes of these rules.
- 7.3 An appointment of a Guardian must be in writing.
- 7.4 There is no prescribed form for making the appointment.
- 7.5 For a Guardian's appointment to be valid, the written appointment document:
- (a) must identify the full legal name of the Guardian;
  - (b) must be signed and dated by the appointing Member;
  - (c) must be signed and dated by the Guardian;
  - (d) does not need to be witnessed in any prescribed way or at all; and
  - (e) must be given to the Trustee. There is no requirement for the written appointment document to be given to the Trustee within a set period of time, but it will need to be given to the Trustee prior to the payment of the appointing Member's death benefit.
- 7.6 On receipt of the written appointment document, the Trustee must then regard the individual as the appointing Member's Guardian.
- 7.7 Unless a deceased Member:
- (a) was in receipt of a Pension to which Rules 14.10(d)(i) or 14.10(d)(ii) apply; or
  - (b) had a valid Binding Death Benefit Notice in accordance with Rule 15.5
- the Trustee:
- (c) may only pay the appointing Member's death benefit with the written consent of the Guardian; and
  - (d) must comply with any instruction from the Guardian in relation to the appointing Member's death benefit, subject to the requirements of the Act.
- 7.8 The Guardian's appointment will end if:
- (a) the Guardian:
    - (i) dies;

- (ii) resigns; or
  - (iii) loses their mental capacity. Where a Guardian advises the Trustee that he or she has not lost their mental capacity, the Trustee must obtain contrary evidence from two legally qualified medical practitioners in order for the Guardian's appointment to end; or
- (b) the appointing Member revokes the Guardian's appointment.

There is no prescribed form for the appointing Member to revoke the Guardian's appointment, and it need not be in writing.

The appointing Member must notify the Trustee of any revocation. There is no requirement for this notification to be given to the Trustee within a set period of time, but it will need to be given to the Trustee prior to the appointing Member's death.

The Trustee may confirm receipt of any revocation notification to the appointing Member.

## **8. Contributions**

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- 8.1 Subject to Superannuation Law, contributions may be made to the Fund for a Member in cash or by transfer to the Trustee of an asset in-specie.
- 8.2 Subject to Superannuation Law, the Trustee:
- (a) may only accept contributions made by or on behalf of a Member; and
  - (b) has the discretion to refuse the acceptance of any contribution (in part or in full) made by or on behalf of any Member at any time.
- 8.3 Contributions which have been refused by the Trustee:
- (a) will not form part of the Fund;
  - (b) will instead be held on trust for the contributor; and
  - (c) must be returned to the contributor in accordance with Superannuation Law.
- 8.4 Contributions allocated to a Member Account may be:
- (a) transferred;
  - (b) rolled over; or
  - (c) allotted

from the Member Account by the Trustee for the benefit of the Member's spouse or any other person in accordance with Superannuation Law, provided that the requirements of Superannuation Law and these rules have been satisfied.

## **9. Transfers**

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9.1 The Trustee may accept:

- (a) an amount in cash; or
- (b) a transfer to the Trustee of an asset in-specie

on behalf of a Member from another complying superannuation fund or from any entity permitted by Superannuation Law.

9.2 If:

- (a) requested by a Member, the Trustee may; or
- (b) required by a Court or Superannuation Law, the Trustee must arrange the transfer of one or more Member Accounts in full or in part:

- (c) in cash; or
- (d) by way of transfer of an asset in-specie

within the Fund, or from the Fund to another complying superannuation fund, or to a person or entity permitted by the Superannuation Law.

## **10. Investments**

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10.1 Subject to Superannuation Law, the Trustee may;

- (a) invest;
- (b) dispose of;
- (c) vary;
- (d) otherwise deal with

all or any part of the money and other assets and property of the Fund in any manner in which they could if they were personally entitled to, and beneficial owners of, those assets.

10.2 The Trustee may accept a written or verbal direction from a Member about the investment of money or other assets of the Fund.

10.3 The Trustee may allocate all or any part of the money or other assets of the Fund for the benefit of a particular Member Account or Other Account or group of Member Accounts or Other Accounts.

## **11. Accounts**

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- 11.1 The Trustee may establish accounts in the records of the Fund as the Trustee sees fit.
- 11.2 The Trustee will establish a Member Account for each Member of the Fund for the purpose of recording benefit entitlements under these rules.
- 11.3 The Trustee may establish as many Member Accounts for a Member as it considers appropriate.
- 11.4 The Trustee may establish one or more Other Accounts (including reserves) as it considers appropriate, subject to Superannuation Law.

## **12. Allocation of contributions, income and expenses**

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- 12.1 Unless otherwise permitted by Superannuation Law, the Trustee must allocate amounts which are directly attributable to a Member to that individual's Member Account (or between the various Member Accounts maintained for the Member at the discretion of the Trustee) within the time frame required by Superannuation Law or at the times the Trustee determines, including:
  - (a) contributions;
  - (b) rollovers;
  - (c) transfers;
  - (d) insurance premiums;
  - (e) net income or expenses from money or other assets allocated specifically to the Member Account in accordance with Rule 10.3;
  - (f) insurance proceeds;
  - (g) benefit payments (including, where applicable, refunds of excess contributions and payments of excess contributions tax, in the amount prescribed by Superannuation Law);
  - (h) expenses;
  - (i) provisions for any tax or surcharge; and
  - (j) any other amounts as determined by the Trustee.
- 12.2 At times determined by the Trustee, the Trustee will determine the Net Income of the Fund.
- 12.3 This amount will be allocated to Member Accounts and Other Accounts as determined by the Trustee, subject to Superannuation Law.
- 12.4 The Trustee may make an interim or final allocation to Member Accounts and Other Accounts as determined by the Trustee, subject to Superannuation Law.

- 12.5 The Trustee may allocate to or deduct from a Member Account and / or Other Account any amount, at its discretion, subject to Superannuation Law.
- 12.6 The Trustee may augment a Member Account and / or Other Account at its discretion, subject to Superannuation Law.

### **13. Administration requirements**

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- 13.1 The Trustee must, in accordance with Superannuation Law:
- (a) prepare financial and other statements and returns for the Fund;
  - (b) arrange for the audit of records, financial statements and other information for the Fund;
  - (c) arrange for the retention of records and other information for the Fund; and
  - (d) provide information to beneficiaries, Members, a Regulator and any other person about the Fund.
- 13.2 Any notice or other written communication about the Fund is deemed to have been given to a person if it is:
- (a) handed to the person;
  - (b) sent to the person's last known e-mail address and a transmission failure has not been received by the sender;
  - (c) delivered to the person's last known address; or
  - (d) posted from within Australia to the person's last known address, in which case it is taken to be received on the fifth business day after posting.

### **14. Benefit payments**

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- 14.1 On receipt of a written request from a Member or other person to whom a benefit would otherwise be payable, the Trustee may pay a benefit as set out in the request from one or more Member Accounts held on behalf of the Member to any person at any time subject to Superannuation Law.
- 14.2 The Trustee must provide a benefit from a Member Account if required by Superannuation Law.
- 14.3 Subject to Superannuation Law, the Trustee may provide a benefit from any Other Account at its absolute discretion.
- 14.4 Subject to Superannuation Law, the Trustee may provide a benefit in any of the following forms:
- (a) one or more lump sum payments (including an asset paid in-specie);
  - (b) one or more Pensions; or
  - (c) any combination of the above.



- 14.5 For the purposes of Rules 14.6 - 14.11, any terms and / or conditions of a Pension must be specified in writing and be signed and dated by the:
- (a) Member, when specified at the establishment of the Pension; or
  - (b) Pensioner, when attached, amended or revoked at a later time during the life of the Pensioner.
- 14.6 Despite any other provision of these rules, the Trustee must comply with all terms and / or conditions on which a Pension is established.
- 14.7 A Pension may only include terms and / or conditions not prohibited by the Act, including but not limited to:
- (a) rights of commutation, in whole or in part, as permitted by the Act;
  - (b) rights to stop the pension; and / or
  - (c) rights of reversion to another individual to automatically continue to receive the Pension on the Pensioner's death.
- 14.8 Subject to the terms and / or conditions on which a Pension has been established, the Pensioner may at a later time amend or revoke those terms and / or conditions of the Pension in writing during the life of the Pensioner. Unless required by the Act, any such amendment or revocation to those terms and / or conditions of the Pension can occur without commuting or stopping the Pension.
- 14.9 The terms and / or conditions of a Reversionary Pension cannot be amended after the death of the Pensioner for whom the Pension was established, unless those terms and / or conditions allowed for such an amendment after the death of the Pensioner.
- 14.10 If a Member requests payment of a benefit in the form of a Pension, and:
- (a) a Pension is established for the Member; and
  - (b) either at the time the Pension was established, or at a later time during the life of that Pensioner, a term and / or condition is attached to the Pension in writing that the Pension is to continue to be paid to a Reversionary Pensioner; and
  - (c) that term and / or condition has not subsequently been amended or revoked in writing by that Pensioner; and
  - (d) at the time of that Pensioner's death:
    - (i) that nominated Reversionary Pensioner is eligible to continue to receive the Pension under the Act, the Trustee is required to continue to pay the Pension to that Reversionary Pensioner on the same terms and / or conditions that applied to the Pension payable to the Pensioner; or
    - (ii) that nominated Reversionary Pensioner is not eligible to continue to receive the Pension under the Act, but that nominated Reversionary Pensioner is eligible to receive a lump sum benefit under the Act as a result of the Pensioner's death, the Trustee is required to pay the

remaining Pension balance to that nominated Reversionary Pensioner in lump sum form in accordance with the Act.

*Reversionary Pension overrides Binding Death Benefit Notice*

14.11 If there is any inconsistency between Rule 14.10 and Rule 15.5, Rule 14.10 overrides Rule 15.5 to the extent of any inconsistency.

14.12 Subject to Superannuation Law, if the Member or other person to whom a benefit would otherwise be payable is:

- (a) under any legal disability; or
- (b) unable for any reason to satisfactorily deal with the benefit

the Trustee may, on behalf of that Member, pay the whole or any part of the benefit to any person in the form and manner and subject to the terms and conditions as the Trustee thinks fit, including retaining the benefit within the Fund.

14.13 Where a Member advises the Trustee in writing that he or she is not legally disabled nor unable for any reason to satisfactorily deal with the benefit, the Trustee must obtain:

- (a) contrary evidence from two legally qualified medical practitioners; or
- (b) such other evidence relevant to the particular legal disability or inability to satisfactorily deal with the benefit

in order to pay a benefit in accordance with Rule 14.12. The Member must do all things necessary to assist the Trustee to obtain the required evidence for this purpose.

14.14 If a Member of the Fund is bankrupt, then at all times while the Member is a bankrupt:

- (a) any increase in payment from that bankrupt Member's Pension requires the consent and approval of the Trustee; and
- (b) where the Trustee is solely controlled by the bankrupt Member, the Trustee cannot increase the payment from the Pension

other than as required by Superannuation Law.

14.15 The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full.

## **15. Death benefits**

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15.1 A Member may prepare a written notice relating to the payment of all or part of their benefits on his or her death.

15.2 There is no prescribed form for a Member to make a written notice.

15.3 The Member may, by written notice, amend or revoke a prior written notice at any time prior to the Member's death.

15.4 The notice may:

- (a) relate to some or all of that person's Member Accounts within the Fund; and
- (b) address any matter relating to the payment of a death benefit, including but not limited to:
  - (i) the identity of one or more beneficiaries to whom the benefit is to be paid;
  - (ii) the amount of the benefit to be paid to a particular beneficiary; and
  - (iii) the form in which the benefit is to be paid.

*Binding Death Benefit Notice*

15.5 The Member may instruct the Trustee that the written notice made under Rule 15.1 is binding on the Trustee. Such written notice is referred to in these rules as a Binding Death Benefit Notice.

15.6 For a Binding Death Benefit Notice to be valid and binding on the Trustee, it:

- (a) must be signed and dated by the Member;
- (b) does not need to be witnessed in any prescribed way or at all; and
- (c) must be given to the Trustee. There is no requirement for the Binding Death Benefit Notice to be given to the Trustee within a set period of time, but it will need to be given to the Trustee in order for the payments required under the Binding Death Benefit Notice to be made.

15.7 The Binding Death Benefit Notice may be:

- (a) irrevocable; and / or
- (b) made subject to conditions.

15.8 The Member may amend or revoke a prior Binding Death Benefit Notice in writing at any time prior to the Member's death. For an amendment or revocation of a prior Binding Death Benefit Notice to be effective, it:

- (a) must refer to the prior Binding Death Benefit Notice;
- (b) must:
  - (i) identify the part or parts of the prior Binding Death Benefit Notice that is being amended; or
  - (ii) include a statement that the prior Binding Death Benefit Notice is revoked in full;
- (c) must be signed and dated by the Member;
- (d) does not need to be witnessed in any prescribed way or at all; and

- (e) must be given to the Trustee. There is no requirement for the amendment or revocation to be given to the Trustee within a set period of time, but it will need to be given to the Trustee in order for the amendment or revocation to take effect.
- 15.9 The Trustee must follow instructions contained in the Binding Death Benefit Notice, unless:
- (a) there is any inconsistency between Rule 14.10 and Rule 15.5, to the extent of any inconsistency Rule 14.10 overrides Rule 15.5; or
  - (b) to the extent that, and only to that extent, following an instruction contained in the Binding Death Benefit Notice would cause the Fund to breach the Act; or
  - (c) the person entitled to a death benefit disclaims their entitlement under the Binding Death Benefit Notice; or
  - (d) the Trustee and the person to whom a benefit is to be paid agree to an amendment to that benefit.
- 15.10 A notice about the Member's benefits on his or her death that was prepared:
- (a) prior to the commencement of this Rule and was binding on the Trustee at the time this Rule took effect; or
  - (b) after the commencement of this Rule and is binding on the Trustee at the time a subsequent amendment to these Rules takes effect
- must also be regarded as a Binding Death Benefit Notice.
- 15.11 A Binding Death Benefit Notice will only cease to apply:
- (a) if the Member specifies in writing to the Trustee that the Binding Death Benefit Notice is revoked in accordance with Rule 15.8; or
  - (b) if it specifies a date on which the Binding Death Benefit Notice lapses and that date has passed; or
  - (c) to the extent that, and only to that extent, following an instruction contained in the Binding Death Benefit Notice would cause the Fund to breach the Act. Any instruction contained in a Binding Death Benefit Notice that can be followed without causing the Fund to breach the Act does not cease to apply.
- 15.12 In the absence of any written instruction from the Member that a notice made under Rule 15.1 is binding on the Trustee, the notice will not be a Binding Death Benefit Notice and the Trustee is not required to follow the instructions in the notice.
- Trustee discretion*
- 15.13 Subject to Rule 14.10, the absence of any valid Binding Death Benefit Notice in part or in full, and then subject to Rule 7 the Trustee will have discretion as to:
- (a) the recipient(s) of;
  - (b) the form of payment(s); and

- (c) the amount of death benefit(s) paid

subject to the requirements of the Act.

- 15.14 Subject to Superannuation Law, if the Trustee is obliged to pay a death benefit it may, at the request of the beneficiary, meet that obligation wholly or partly by transferring an asset or part of an asset in-specie to the beneficiary.

## **16. Fund wind up**

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- 16.1 If required by Superannuation Law, the Trustee must wind up the Fund as soon as practicable or within the timeframe required by Superannuation Law.
- 16.2 The Trustee may arrange for the Fund to be wound up at its discretion, including:
  - (a) when the Fund has no Members; or
  - (b) when otherwise determined by the Trustee.
- 16.3 The Trustee must decide on a specific date when the Fund is to be wound up.
- 16.4 The Trustee must inform the Members and Regulator in writing of its decision to wind up the Fund.
- 16.5 The Trustee must determine the Net Income of the Fund as at the date referred to in Rule 16.3.
- 16.6 That amount will be allocated to Member Accounts and Other Accounts, as determined by the Trustee, subject to Superannuation Law.
- 16.7 Subject to Superannuation Law, the Trustee may pay benefits or make transfers in cash or as an asset in-specie from Member Accounts and Other Accounts on winding up to any of the following parties at its discretion:
  - (a) Members or former Members;
  - (b) dependants of Members or former Members; and / or
  - (c) any other person permitted to receive the payment by Superannuation Law.

## **17. Amendment to Deed and / or rules**

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- 17.1 Subject to compliance with any relevant requirements or restrictions of Superannuation Law, the Trustee may amend any provision of the Deed and / or these rules (including this Rule) at any time, by a deed or written resolution executed by the Trustee.
- 17.2 An amendment made under this Rule will take effect from a date specified by the Trustee (whether before or after the date of the deed), or if none is specified, from the date of the deed.

**18. Severance**

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- 18.1 If any provision of these rules is wholly or partly invalid, that provision or the relevant part of the provision will be severed.
- 18.2 The remainder of these rules will have full force and effect unless severing the provision would cause these rules to be contrary to public policy or Superannuation Law.