

**SCHEDULE A: APPLICATION FOR MEMBERSHIP**

NAME OF FUND: COPPABELLA SUPERANNUATION FUND

Mr/Mrs/Miss/Ms/Other Richard Wallace Gollin Osborne

HOME ADDRESS: 1705/168 Kent Street  
SYDNEY NSW 2000

DATE OF BIRTH: 17 / 09 / 53  
(DAY) (MONTH) (YEAR)

NAME OF EMPLOYER: COPPABELLA INVESTMENTS PTY. LTD

OCCUPATION: DIRECTOR

Do you wish to transfer benefits received on termination of a prior employment or from a Superannuation Scheme, Approved Deposit Fund or Annuity Fund? NO  
(YES/NO)

I hereby apply for admission as a Member of the Fund and I undertake to be bound by all the terms and conditions of the Trust deed constituting the Fund and relating thereto and any future variations, amendments or modifications lawfully made from time to time.

I declare that the above information is correct in every particular and acknowledge that the Trustees and other persons will rely upon it and that such information forms the basis upon which my entitlement under the Fund may be calculated. To the extent that any misdescription or error (whether innocent or not) gives rise to a liability or loss upon the Trustees or the Fund I hereby personally indemnify that liability or loss. I undertake to promptly provide the Trustees with such further information as they may require.

  
SIGNED - Richard Wallace Gollin Osborne

10.3.97  
DATED

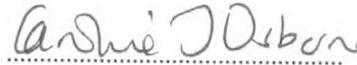
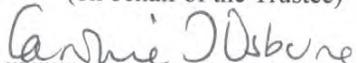
**TRUSTEE/EMPLOYER USE ONLY**

Approval of Trustee:

10 / 3 / 97

Approval of Employer:

10 / 3 / 97

  
Caroline Jane Osborne  
(on behalf of the Trustee)  
  
Caroline Jane Osborne  
(on behalf of the Employer)

## SCHEDULE B

### MEMBERS NOTIFICATION OF PREFERRED BENEFICIARIES

To: The Trustee  
Coppabella Superannuation Fund

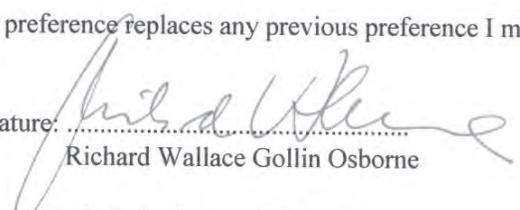
I understand that in the event of my death the Trustee may refer to this Notice of Preferred Beneficiaries to determine such of my Dependants to whom the death benefit will be paid from the Fund.

I also understand that this Notice of Preferred Beneficiaries is optional and not binding on the Trustee unless I have elected my Legal Personal Representative and elected for it to be binding.

Full Name and address of Preferred Beneficiary	Relationship	% of Member's Death Benefit	* Nature of Benefit Lump Sum or Annuity
Mrs. C. J. OSBORNE	WIFE	100%	Lump Sum

If you have elected "your estate", do you wish it to be binding  Yes  No

This preference replaces any previous preference I may have expressed.

Signature:  .....

Richard Wallace Gollin Osborne

Date: 6/3/87

\* Mark desired nature of benefit

NB. You may nominate your estate in which event please write "my Estate". If you elect your estate you must ensure that your Will will direct your superannuation entitlements as appropriate. I acknowledge that this statement signed by me is not a testamentary disposition and is therefore not acceptable of being admitted to Probate or Letters of Administration or otherwise.

## OVERVIEW - LEGAL POINTS

In regard to the Fund, it is essential that you be aware of the important areas of law which apply to any superannuation fund, namely:

1. Superannuation Law;
2. Income Tax Law; and
3. Trust and Equity law.

These areas above are not exhaustive of the laws which may apply in respect of the Fund, but in our view they are the most important and in our experience, are the areas in which most parties are interested.

### SUPERANNUATION LAW

The trust deed and rules have been drafted so as to satisfy the requirements of Superannuation Industry (Supervision) Act and Regulations ("SIS").

This not only includes the provisions contained in the trust deed, but also includes having important regard to the administration and investment management of the Fund. Compliance with all the day to day requirements should ensure that the Fund will be treated as a complying superannuation fund under SIS and therefore subject to concessional tax treatment under the Income Tax Assessment Act, 1936 ("the Tax Act").

Perhaps the most important criteria that requires satisfaction is the "sole purpose test". Broadly this requires that the Fund was established and is maintained for the sole purpose of providing superannuation and retirement benefits. These may include a retirement pension, a lump sum, disability benefits, support for dependants of members following death, payment of benefits at certain ages or such other approved purposes identified by the Insurance and Superannuation Commission.

The sole purpose test permeates every aspect of a superannuation fund. Failure to comply with this jeopardises the whole underlying structure of the Fund. Examples which fail the sole purpose test usually include running a business through the Fund, using the Fund to support a business or causing the Fund to buy assets from members to release monies to the members. However, there are some exceptions. For example, a fund of 4 or less members may purchase commercial property from a member, at market price, provided that the value of such property does not exceed 40% of the total value of the Fund.

Other important features of satisfying SIS requirements include:

1. The vesting of member contributions together with net earnings thereon calculated at the earnings rate of the Fund (adjusted for the purposes of averaging of earnings if appropriate);
2. Compliance with the appropriate investment standards;
3. Providing appropriate portability of benefits;
4. Preserving industrial/productivity style benefits and all other contributions that are subject to preservation;

5. Satisfying all matters relevant to disclosure and reporting of information including providing annual financial reports to each member;
6. Satisfying all requirements as to the composition of the trustee board or other governing committee;
7. Incorporating into the trust deed of the Fund all appropriate requirements to satisfy SIS; and
8. Satisfying conditions generally so far as they relate to the impact of taxation upon superannuation funds.

You should also be aware that the following has to be provided to the Insurance and Superannuation Commissioner each year at the times prescribed:

1. A return in the form prescribed from time to time;
2. A certificate from the Trustees;
3. A certificate from the Auditor;
4. The payment of the appropriate fee.

Providing the Fund satisfies the SIS requirements, we would expect that contributions made to the Fund by or in respect of members would attract appropriate taxation concessions (eg be deductible) in accordance with the Tax Act up to any maximum allowed.

## **INCOME TAX LAW**

Satisfaction of SIS requirements will result in the Fund being recognised as a complying fund (refer section 267 of the Tax Act). If maximum taxation concessionary treatment is sought it is necessary that the Fund be established and at all times maintained to come within complying fund status.

Complying funds are granted special tax concessionary treatment under Part IX of the Tax Act depending upon the manner of investments and the general approach to management.

Examples of special taxation concessionary treatment includes tax deductions for life insurance premiums, ability to off-set excessive dividend tax credits against other tax liabilities and the income on "pension assets" is free of taxation.

Complying fund status is also critical to ensuring that the benefit paid from the Fund attracts maximum taxation concessions. Loss of such status may cause a benefit to be fully taxable at ordinary marginal rates of taxation.

## **TRUST AND EQUITY LAW**

It is important to acknowledge that the Fund is a trust and accordingly has been established for its perpetuity period according to its express terms at the time of declaration of the trust. The relevant perpetuity clause may appear to you to be extremely legalistic. It is nevertheless important to ensure that the trust fund does not breach the rule against perpetuities, which could result in it being totally ineffective.

Further recognition of the Fund being a trust results in an acknowledgment that any failure at trust law may result in failure of the Fund to comply with SIS, which will result in non-complying status and higher marginal rates of taxes.

You should also note that whilst the perpetuity clause allows a maximum time period for the trust to continue, there are other provisions in the Rules allowing for a termination of the Fund (subject to the preservation standards) within an earlier time period.

Since the Fund is constituted as a trust, it is important that you understand that it requires four essential criteria:

1. A trustee, who accepts the fiduciary duties associated with the Fund (although if the Fund at any stage does not have a trustee, the trust will not necessarily fail but a court may appoint a substitute trustee);
2. Beneficiaries (principally members but also their dependants) for whose benefit the trust is created;
3. Trust property (the original amount settled and all investments); and
4. A personal obligation upon the trustee to deal with the trust property for the benefit of the beneficiaries.

You should also be aware that the following are the common principal duties of a trustee:

1. To acquaint himself with the terms of the trust;
2. To get in all the trust property;
3. Not to impeach the validity of the trust instrument or the title of the beneficiaries;
4. To adhere to and carry out the terms of the trust;
5. To act impartially between the beneficiaries;
6. To properly invest the trust funds;
7. To keep and render proper accounts and to give full information when required;
8. To act honestly and exercise reasonable care;
9. Not to delegate duties of power;
10. To pay and transfer the trust property and the income thereof to the right persons;
11. To act gratuitously; and
12. Not to deal with the trust property for personal benefit, or otherwise to profit by the trust.

Whilst the above are the general responsibilities and duties of the Trustee, you may acknowledge that some of the duties are varied according to the express terms of the Rules. Accordingly, the above list should be seen as a formal statement of the general duties of a trustee and should be read in the light of any deviation under the Rules.

The duty of the trustee to acquaint himself with the express terms of the trust is of paramount significance.

In particular, your attention is drawn to the requirement that the Trustees must formulate and give effect to an investment strategy for the Fund. For assistance in this regard please refer to the "Investment Strategy" Minute.

## **OTHER LAWS**

Many other laws will impact upon the Fund and superannuation generally. Some which you may find of interest include:

### **Superannuation Guarantee Levy**

Employers who do not comply with this will face a non-deductible levy equal to the amount they should have paid plus an "administrative charge" plus interest. Broadly, the intent is that the levy will be channelled to where the payments should have been made in the first place.

### **Industrial Laws**

Failure to satisfy industrial laws (including relevant employment awards) may expose employers to significant personal liabilities. A prime example is where the employee under award conditions was entitled to life insurance cover through superannuation and the employer failed to provide this. The employer (and if a company the directors) may find himself personally liable for the amount of the death cover.

### **Estate and Tax Laws**

Significant tax planning opportunities and failures arise in Will drafting and estate tax planning. Please consult your qualified adviser further on this to ensure that you do not create unnecessary liabilities or miss the very significant opportunities that exist.

### **Bankruptcy**

With effect from 1 July, 1994 protection from bankruptcy has been extended to include a person's superannuation investments. The value of the protection is limited to the relevant threshold amount identified in the Bankruptcy Act.