

**Deed of Variation**

**- varying -**

**Harry Winkel Super Fund**

# Deed of Variation

## Harry Winkel Super Fund

Date 21 / 7 / 2015

### Parties

DPT Qld Pty Ltd ACN 106 949 884  
of 1334 Yandina Coolum Road, Yandina, Queensland (Trustee)

Harry Winkel  
1334 Yandina Coolum Road, Yandina, Queensland (Members)

### Recitals

- A The **Harry Winkel Super Fund** (Fund) was established by trust deed dated 15th February 2007 (Trust Deed).
- B The Trustee is the trustee of the Fund.
- C The Member is the members of the Fund.
- D Under clause 40.1 of the Trust Deed, the Trustee has the power to vary the Trust Deed.
- E The Trustee wishes to exercise its powers under clause 40.1 to vary the terms of the Trust Deed to update the governing rules of the Fund in light of recent changes to superannuation law.
- F The Members have agreed to give their consent to the proposed variation of the Trust Deed.
- G Each member has been provided with a copy of this Deed.

The parties agree

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#### 1 Variation

With effect from the date of this deed, the Trustee declares that the terms of the Trust Deed are varied by replacing them with clauses 1 to 52 and schedule 1 as set out in annexure A to this deed.

#### 2 Rights of Members

The Trustee declares and confirm, in accordance with clause 40.1 of the Trust Deed, that the proposed variation will not reduce or adversely affect the rights of any member in relation to an accrued benefit or any amount of any accrued benefit payable to any member or beneficiary of the Fund.

#### 3 Consent of Members

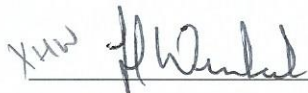
By execution of this deed, the Members confirm their consent to the variation in clause 1.

#### 4 Confirmation

In all other respects the terms of the Trust Deed remain unaltered.

**EXECUTED as a deed.**

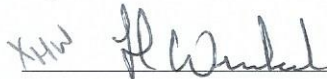
**EXECUTED** by DPT Qld Pty Ltd )  
ACN: 106 949 884 as Trustee in )  
accordance with the *Corporations Act 2001* )  
by being signed by the following officers:



Signature of Director

HARRY WINKEL

Name of Director (*please print*)

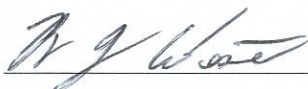


Signature of Director / company secretary

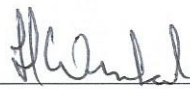
HARRY WINKEL

Name of Director / company secretary  
(*please print*)

**SIGNED SEALED AND DELIVERED** by )  
**Harry Winkel** as Member in the )  
presence of:



Signature of witness



Signature of **Harry Winkel**

ROBERT JOHN WEST

Name of witness (*please print*)

# Annexure A

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# Part 1 - How to read this deed

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## 1 Overview of deed

This deed explains the way the Fund will operate and also sets out the roles and the responsibilities of each of the Trustees as well as the obligations of any person, company or entity associated with or having some responsibility under this deed.

The deed comprises fourteen parts. Each part deals with a specific aspect of the Fund. These parts are described as follows:

Part number	Description
Part 1	How to read this deed
Part 2	The Fund
Part 3	Trustees
Part 4	Other persons in the Fund
Part 5	Powers of Trustees
Part 6	Accounts of the Fund
Part 7	Record keeping
Part 8	General matters
Part 9	Membership of the Fund
Part 10	Contributions to the Fund
Part 11	Benefits
Part 12	Family Law
Part 13	Termination of Trust
Part 14	Amendment

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## 2 Definitions

In this deed:

**Account** means any one of the following (as the case requires):

- (a) Accumulation Account;
- (b) Equalisation Account;
- (c) Forfeiture Account;
- (d) Income Account;



- (e) Income Stream Account; and
- (f) any other accounts required to be opened or maintained by the Trustee in accordance with the Superannuation Law or any other accounts the Trustee decides to establish and maintain.

**Accumulation Account** means the Account established on behalf of each Member or Beneficiary as described in clause 15.

**Actuary** means a person for the time being appointed as actuary of the Fund under clause 10.1(b).

**Administrator** means a person appointed as administrator of the Fund under clause 10.1(c).

**Allot** has the same meaning given to that term in the SIS Regulations.

**Annuity** means a Benefit payable by instalments that satisfies the meaning of Annuity in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law.

**Applicant** means a Member who makes a Splittable Contributions application under clause 29.6.

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund, including:

- (a) another Complying Superannuation Fund;
- (b) an Approved Deposit Fund;
- (c) an Annuity arrangement; or
- (d) an Eligible Roll Over Fund,

into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law.

**Approved Deposit Fund** in relation to a year of income means a fund which is a complying approved deposit fund in accordance with the Taxation Act.

**Approved Trustee** means a trustee approved by the Australian Prudential Regulation Authority or any other body or person that has responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds.

**Auditor** means a person for the time being appointed as auditor of the Fund under clause 10.1(d).

**Authorised Deposit Taking Institution** has the same meaning given to that term in the *Banking Act 1959* (Cth).

**Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).

**Beneficiary** means a person who is presently and absolutely entitled or has a contingent right to receive a Benefit under the provisions of this deed at any given time and includes a Member, a Dependant or a Pensioner.

**Benefit** means any amount which is payable by the Trustee out of the Fund in accordance with this deed to or in respect of a Member.

**Benefit Entitlement** means any amount held in the Fund which may become payable to a Beneficiary but to which the person has not become absolutely and indefeasibly entitled and includes a contingent right to payment of an amount.

**Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is binding on the Trustee.

**Child** has the same meaning given to that term in the SIS Act.

**Closing Date** means the date determined in accordance with this deed on which the Fund will be wound up.

**Compassionate Ground** has the same meaning given to that term in the Superannuation Law.

**Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund in accordance with the Superannuation Law.

**Constitutional Corporation** has the same meaning given to that term in the Superannuation Law.

**Contributions** means payments to the Fund by Members, Employers and other Permitted Entities in accordance with the provisions of this deed prior to the deduction of any Tax payable in respect of those Contributions.

**Contributions Cap** means a Member's concessional contributions cap, Non Concessional Contributions cap or CGT cap (as the case requires) as defined in the Taxation Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Custodian** means the person appointed as custodian of the assets of the Fund under clause 10.1(e).

**Date of Establishment** means the date of commencement of the Fund as set out in schedule 1.

**Dependant** in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any Child of a Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or
- (d) any other person who, in the opinion of the Trustee, was financially dependant on the Member at the relevant time.

**Directors** means, where the Trustee is a Constitutional Corporation, the directors or board of management for the time being of the Trustee as applicable.

**Disclosure Document** means any document required to be given under the Corporations Act to a person applying to be a Member.

**Earnings** means all net income and net capital gains derived from the assets of the Fund whether realised or unrealised after deducting any capital losses and such allowances for expenses and Tax as the Trustee considers appropriate.



**Eligible Roll Over Fund** has the same meaning given to that term in the SIS Act.

**Employee** has the same meaning given to that term in the SIS Act.

**Employer** has the same meaning given to that term in the SIS Act.

**Employment Termination Payment** has the same meaning given to that term in the Taxation Act.

**Family Law** means the Payment Splitting arrangements under the Superannuation Law.

**Financial Assistance** means any financial assistance granted to the Fund in accordance with Part 23 of the SIS Act.

**Financial Year** means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee determines.

**Fluctuation Account** means the account established in accordance with clause 18.

**Forfeiture Account** means the account established in accordance with clause 42.3.

**Full Time Gainful Employment** in relation to a Member means Gainful Employment on a full time basis within the meaning of the Superannuation Law.

**Fund** means the superannuation fund under the name set out in schedule 1.

**Fund Earning Rate** means the earning rate for the Fund (which may for the purposes of this deed be negative) determined under clause 17.4 after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable.

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

**Gainful Employment** means, in relation to a Member, engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law.

**Guarantee Act** means the *Superannuation Guarantee Charge Act 1992* (Cth) which incorporates the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any regulations made to that Act.

**Income Stream** means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum as permitted by the Superannuation Law.

**Individual Trustee** means a natural person who is appointed to be a Trustee of the Fund.

**Insured Member** means any Member who has a Policy effected in his or her name by the Trustee.

**Insurer** means any insurer with whom the Trustee effects a Policy or Policies.

**Interdependency Relationship** has the same meaning given to that term in Superannuation Law.

**Investment Manager** means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a).

**Legal Personal Representative** has the same meaning given to that term in the SIS Act.

**Levy** includes a levy payable by the Fund in accordance with the *Superannuation Supervisory Levy Act 1991* (Cth), the *Superannuation (Fund Assistance Levy) Act 1993* (Cth) and any other legislation or regulations which impose a levy or levies on the Fund.

**Maximum Splittable Amount** has the same meaning given to that term in the SIS Regulations.

**Member** means a person who has been admitted as a member of the Fund under clause 25.

**Member Account** means a Member's Accumulation Account or Pension Account as the case may be.

**Membership** means a Member's or Beneficiary's membership of the Fund.

**Nominated Beneficiary** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as a nominated Beneficiary.

**Non Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is not binding on the Trustee.

**Non Concessional Contribution** has the same meaning given to that term in the Taxation Act.

**Non Member Spouse** in relation to a Member has the same meaning given to that term in the Superannuation Law. A person ceases to be a Non Member Spouse when the entitlement of the Non Member Spouse in respect of a Payment Split is paid to the Non Member Spouse or transferred or rolled over in accordance with the Superannuation Law.

**Normal Retirement Age** means the age of 65 years or any other age being not less than 55 years as is acceptable to or required by the Superannuation Law and as the Trustee determines.

**Part Time Gainful Employment** means, in relation to a Member, a Member who is in Gainful Employment on a part time basis within the meaning of the Superannuation Law.

**Payment Flag** has the same meaning given to that term in the Superannuation Law.

**Payment Split** has the same meaning given to that term in the Superannuation Law.

**Pension** means a Benefit payable by instalments that satisfies the meaning of Pension in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law and (without limiting the foregoing) includes a Transition to Retirement Income Stream (TRIS).

**Pensioner** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and includes a Reversionary Beneficiary in receipt of a Pension.

**Pension Account** means the account established in respect of a Pensioner in accordance with clause 16.



**Permanent Incapacity** has the same meaning given to that term in the Superannuation Law.

**Permitted Entity** means an entity permitted to contribute to the Fund at the sole discretion of the Trustee from time to time subject to the Superannuation Law.

**Policy** means any policy of assurance, including:

- (a) a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member, Policy means the particular assurance on the life of the Member or former Member);
- (b) any policy covering any two or more of the risks described in paragraph (a); and
- (c) any policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member,

provided that the acquisition of any given policy is not prohibited by Superannuation Law.

**Preservation Age** means:

for a person born before 1 July 1960	55 years of age
for a person born during the year 1 July 1960 to 30 June 1961	56 years of age
for a person born during the year 1 July 1961 to 30 June 1962	57 years of age
for a person born during the year 1 July 1962 to 30 June 1963	58 years of age
for a person born during the year 1 July 1963 to 30 June 1964	59 years of age
for a person born after 30 June 1964	60 years of age

**Preserved** means the prohibition against paying any amount held in the Fund before a Member reaches Preservation Age or is otherwise entitled to be paid that amount in accordance with the Superannuation Law and **Preserve** has a corresponding meaning.

**Preserved Payment** means a payment made to the Fund which is required to be Preserved in order for the Fund to be a Complying Superannuation Fund.

**Relative** has the same meaning given to that term in the SIS Act.

**Reserve Account** means an account established in accordance with clause 19.

**Retires from Employment** means retirement as defined by the Superannuation

Law. **Retires from Gainful Employment** means actual retirement by a Member

from Gainful

Employment or retirement as defined for the purposes of the Superannuation Law for the payment of Benefits.

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit on the death of a Pensioner.

**RSE Licensee** has the same meaning given to that term in the SIS Act.



**Self Managed Superannuation Fund** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.

**Severe Financial Hardship** has the same meaning given to that term in the Superannuation Law.

**Shortfall Component** has the same meaning given to that term in the Guarantee Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994 (Cth).

**Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Spouse** has the same meaning given to that term in the SIS Act.

**Statutory Authority** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body or person that has responsibility for the administration of superannuation.

**Superannuation Law** means any requirement under the SIS Act, the SIS Regulations, the *Occupational Superannuation Standards Act 1987* (Cth), the *Occupational Superannuation Standards Regulations 1987* (Cth), the *Family Law Act 1975* (Cth), the Corporations Act, the Corporations Regulations, the Taxation Act, the *Financial Sector (Collection of Data) Act 2001* (Cth), the *Financial Institutions Supervisory Levies Collection Act 1998* (Cth), the Superannuation (Unclaimed Money and Lost Members) Act, and any other present or future legislation which the Trustee must comply with in order for the Fund:

- (a) to qualify for concessional Tax treatment as a Complying Superannuation Fund; or
- (b) to meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.

**Superannuation Lump Sum** has the same meaning as in the Taxation Act.

**Superannuation (Unclaimed Money and Lost Members) Act** means the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth)

**Taxation Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax (Transitional Provisions) Act 1997* (Cth) and any regulations issued under those Acts.

**Tax** includes income tax, pay roll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary.

**Taxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Temporarily Totally Disabled** means disablement as a result of illness (whether physical or mental), accident or injury which commences at or prior to a Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier) and which causes the Member to be continuously absent from the Member's business, trade, profession, occupation or employment for such period as any Policy effected in respect of the Member in respect of total disablement requires provided that the Trustee expects the Member's

disablement to be temporary and **Temporary Total Disablement** has a corresponding meaning.

**Temporary Incapacity** has the same meaning given to that term in the Superannuation Law.

**Terminal Medical Condition** has the same meaning given to that term in the Superannuation Law.

**Total and Permanent Disablement** means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill health, ever again to engage in Full Time Gainful Employment or Part Time Gainful Employment for which the Member is reasonably qualified by education, training or experience.

**Transition to Retirement Income Stream (or TRIS)** has the same meaning given to that term in the Superannuation Law.

**Tribunal** means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993 (Cth)*.

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted who are appointed in accordance with clause 9 of this Deed.

**Unclaimed Benefits** means those Benefits described as Unclaimed Money in sections 12 and 14 of the Superannuation (Unclaimed Money and Lost Members ) Act and the unclaimed superannuation benefits of former temporary residents under Part 3A of the Superannuation (Unclaimed Money and Lost Members ) Act.

**Unrestricted Non Preserved Amount** means an amount including a roll-over payment payable to or in respect of a Member which is not required to be Preserved or at the time of payment is no longer required to be Preserved under the Superannuation Law and is an Unrestricted Non Preserved Benefit as that term is defined in the SIS Regulations.

**Untaxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Vested Benefit** means any Benefit that has vested to the benefit of a Member or Beneficiary in accordance with the Superannuation Law.

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### 3 Interpretation

In this deed, headings are inserted for convenience only and do not affect the interpretation of this deed and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this deed, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;



- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a party includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a firm and a trust;
- (i) if any dispute arises as to the interpretation of any of the provisions of this deed or as to the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in the deed) the decision of the Trustee is final and binding;
- (j) all monetary amounts are in Australian dollars, unless otherwise stated, and a reference to payment means payment in Australian dollars; and
- (k) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

### **3.2 Severability**

If any provision of this deed is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this deed without affecting the validity or enforceability of the remaining provisions of this deed.

### **3.3 Fund subject to Superannuation Law at all times**

- (a) The provisions contained in this deed are at all times subject to the Superannuation Law and are deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Tax treatment or to satisfy any other requirements of the Statutory Authority.
- (b) In the event that there is an inconsistency between the deed and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency.

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## **4 Other provisions to note**

### **4.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this deed, may be fully and effectively exercised, made, done or performed by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if allowed by the Superannuation Law, by a majority of persons holding the office of Trustee,

despite any direct or personal interest the Trustee (or, where the Trustee is a Constitutional Corporation, any director or shareholder of the Trustee) may have in whatsoever capacity in

the exercise of the powers, rights, decisions, discretions, appointments or other authorisations or that the Trustee (or director or shareholder of the Trustee) may benefit either directly or indirectly from such exercise and provided that any requirements of the Superannuation Law are satisfied.

#### **4.2 Benefits secured**

The rights of the Members or their Dependants who receive Benefits payable under this deed are secured within the meaning of the Superannuation Law.

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### **5 Governing law and jurisdiction**

#### **5.1 Governing law**

This agreement is governed by the laws in force in the State or Territory specified in Schedule 1.

#### **5.2 Jurisdiction**

The Trustee, Members, Beneficiaries and Employers submit to the exclusive jurisdiction of courts of the State or Territory specified in Schedule 1 and any courts that may hear appeals from those courts about any proceedings in connection with this deed.

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### **6 Dispute resolution**

#### **6.1 Enquiries and complaints mechanism**

The Trustee must ensure that there are arrangements in place to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

#### **6.2 Trustee to implement decision**

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a court or tribunal, the Trustee must ensure that it implements any decision of a court or tribunal as required by that court or tribunal.

## Part 2 - The Fund

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### **7 Structure of the Fund**

#### **7.1 Fund vested in Trustee**

The Fund is at all times to be vested in the Trustee and must be managed by the Trustee on the terms and conditions contained in this deed and subject to the trusts, powers, authorities and discretions contained in this deed.

#### **7.2 Class of Members**

The Trustee has the power to create any additional class or classes of Membership with those rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

#### **7.3 Composition of the Fund**

The gross assets of the Fund consist of all cash, investments and other property for the time being held and received by or on account of the Trustee on the trusts of this deed.



## Part 3 - Trustees

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### 8 Covenants

The Trustee must perform and observe the covenants, trusts, conditions and obligations of this deed as and to the extent they are included in the deed or deemed to be included in the deed by the Superannuation Law.

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### 9 Appointment and change of Trustee

#### 9.1 Purpose of Fund

Subject to the Superannuation Law:

- (a) the Trustee must at all times be a Constitutional Corporation; or
- (b) as otherwise permitted under the Superannuation Law and where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old age pensions as that term is defined in section 51(xxiii) of the *Commonwealth of Australia Constitution Act*.

#### 9.2 Self Managed Superannuation Funds and Approved Trustee Funds

- (a) Despite any provision in this clause 9, at any time while the Fund is a Self Managed Superannuation Fund, a person is not eligible to be:
  - (i) the Trustee; or
  - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless all of the provisions in this clause 9.2 are satisfied.
- (b) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
  - (i) a Constitutional Corporation where:
    - (A) the Member is the sole director of the Constitutional Corporation; or
    - (B) the Member is one of only two Directors of the Constitutional Corporation and the other Director is a Relative; or
    - (C) the Member is one of only two Directors of the Constitutional Corporation and the Member is not employed by the other Director; or
  - (ii) two Individual Trustees comprising the Member and another person who is either:
    - (A) a Relative of the Member; or
    - (B) not an Employer of the Member.
- (c) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:

- (i) a Constitutional Corporation where each Member is a Director of the Constitutional Corporation and each Director is a Member; or
- (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- (d) The requirements in clauses 9.2(b) and 9.2(c) are subject to any alternative tests or exceptions to the general rules outlined in those clauses contained in section 17A(3) of the SIS Act, or any other Superannuation Law.
- (e) For the purposes of clause 9.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
- (f) If the Fund has fewer than five Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or a RSE Licensee that is a Constitutional Corporation.

### **9.3 Appointment of Trustee**

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons to act as Trustee provided that the person or persons have given their written consent to the appointment and give any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
  - (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as their attorney under an enduring power of attorney,
 may exercise the particular Member's decision making power to appoint a Trustee on behalf of the Member.
- (c) Where a Member is under the age of 18 years, a parent or guardian of the particular Member is permitted to exercise that Member's power to appoint a Trustee.
- (d) Where the Fund has no remaining Members and where there is no other person who has the power to appoint a Trustee under this clause 9.3 on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has the power to appoint a Trustee.

### **9.4 Ceasing to act as Trustee**

A Trustee must immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, he or she dies or otherwise loses his or her legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;
- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;



- (d) if the Trustee resigns as Trustee of the Fund by notice in writing to a majority of the Members; or
- (e) subject to the Superannuation Law, if the person is removed from office by notice in writing given by no less than two thirds of the Members to the Trustee.

#### **9.5 Continuity of office**

Any person who acts as Trustee must, on ceasing to be Trustee under this clause 9, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must promptly deliver all records and other books to the remaining or new Trustee or Trustees.

#### **9.6 Quorum of Individual Trustees**

A quorum of Trustees is the number of Trustees for the time being or as required by the Superannuation Law.

#### **9.7 Remuneration of Trustee**

Unless permitted by the Superannuation Law, during any time that the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

#### **9.8 Confidentiality of information**

The Trustee and every Employer must, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this deed.

#### **9.9 Member may be Trustee**

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is, by virtue of their office or the powers delegated to them by the Trustee, disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

## Part 4 - Other persons in Fund

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### 10 Appointment and removal of other persons

#### 10.1 Appointment

Subject to the Superannuation Law and the law generally, the Trustee may appoint in writing one or more persons, as appropriate, as:

- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who must be a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (c) Administrator, who has power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who has powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund provided that person is not prohibited from acting under the Superannuation Law; and
- (f) any other consultants, officers or attorneys as may be desirable for the proper management and administration of the Fund.

#### 10.2 Removal

The Trustee may remove from office any person or company appointed to any position under this clause 10 and must remove such person or company when so required by the Superannuation Law.



# Part 5 - Powers of Trustees

## 11 Investment powers of Trustees

### 11.1 Investment strategy

The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances provided that such investment strategies are formulated and effected in accordance with the Superannuation Law.

### 11.2 Power of investment

Subject to the Superannuation Law, the Fund's investment strategy and to clause 11.3, the Trustee has power, at the Trustee's absolute discretion, to invest the whole or any part of the Fund's assets, as if the Trustee was the absolute owner and beneficially entitled to those assets, in investments with full power to vary, replace or otherwise deal with any investments as fully and effectively as a person absolutely and beneficially entitled to dealing with their own property, including:

- (a) in the acquisition by original subscription, purchase or otherwise of debentures, debenture stock (whether secured or unsecured), secured or unsecured notes or other loan instruments of any corporation wherever situated or incorporated and payable or repayable in any currency and whether bearing interest or not;
- (b) in the acquisition by original subscription, purchase or otherwise of shares or stocks, whether ordinary, preferred, deferred, redeemable or otherwise and whether involving liabilities or not, of any corporation wherever situated or incorporated and expressed in any currency;
- (c) in the purchase of, or at interest on the security of, shares, stocks, funds, securities, land or other investment or property of any nature and wherever situated (other than an investment of a wasting or speculative nature) and whether income producing or not, whether fully or partly paid up and whether involving liabilities or not, or in loans on personal credit, with or without security, as the Trustee, in the Trustee's absolute discretion, thinks fit and to the intent that the Trustee has the same power in all respects;
- (d) in the acquisition by original subscription, purchase or otherwise of interests or rights, whether partly paid or not and whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (e) in the acquisition by original subscription, purchase or otherwise of securities of any country, state or territory for any period;
- (f) in the acquisition by original subscription, purchase or otherwise of securities of any statutory or municipal body, wherever situated and for any period;
- (g) in the acquisition by original agreement, purchase or otherwise of options and rights to take up shares or stock, whether ordinary, preferred, deferred, redeemable or otherwise, whether partly or fully paid and whether involving liabilities or not, of any corporation wherever situated or incorporated or to take up interests or rights, whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (h) in the acquisition by original subscription, purchase or otherwise of units or sub-units of any unit trust;



- (i) in the acquisition by any means of land or interest in land of any tenure, improved or unimproved and wherever situated;
- (j) on loan to any person or deposit with any person, wherever situated, with or without security and for any period whatsoever;
- (k) on deposit with any Authorised Deposit Taking Institution for any period;
- (l) in erection of buildings or structures or the making of improvements on land with any tenure, whether improved or unimproved and wherever situated;
- (m) on any Policy or Annuity with an Insurer and any choses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment; and
- (n) in any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law.

### **11.3 Power to hold investment in different names**

Any investment may be held in the names that the Trustee determines from time to time including the name of a nominee (whether individual or corporation).

### **11.4 Disclosure of Trustee's interest in investment**

The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed by the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **11.5 Specific investments**

Subject to clauses 11.1 and 11.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee determines in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes for certain Members or Beneficiaries.

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## **12 Trustee powers generally**

### **12.1 General powers**

Subject always to the Superannuation Law and without prejudice to the powers vested in the Trustee by this deed or otherwise, the Trustee has the following powers that may be exercised or not in the Trustee's absolute discretion:

- (a) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund;
- (b) to commence, carry on and defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this deed;
- (c) to carry on a business;

- (d) to refer any claims or demands by or against the Fund to arbitration and to observe and perform any awards arising from that arbitration;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts (or accounts with other Authorised Deposit Taking Institutions) and to retain on current or deposit account at any Authorised Deposit Taking Institution any money that it considers proper and to make procedures for the operation of such accounts including the signing and endorsing of cheques;
- (g) to enter into a leasing arrangement with any person, including:
  - (i) a finance lease;
  - (ii) an operating lease; or
  - (iii) a hire purchase agreement;
- (h) to determine who is entitled to sign receipts, acceptances, endorsements, release, contracts and documents on the Fund's behalf;
- (i) to pay Benefits out of the Fund to a Member or a Dependant;
- (j) to decide who are Dependents for the purposes of this deed;
- (k) in case of the mental or physical ill health or incapacity of any person entitled to Benefits, to pay or apply all Benefits or any part of those Benefits to, or for the benefit of, that person and the Dependents of that person without being responsible for seeing to the application of payments under this clause 12.1(k) or payments made in the exercise of any other power vested in the Trustee by this deed;
- (l) to indemnify, give any guarantee or to undertake to indemnify or give any guarantee to any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund provided that an indemnity or guarantee may only be provided to the extent that it is not limited by or contrary to the Superannuation Law;
- (m) to pay and advance out of the Fund all costs, expenses and outgoings (including Tax) of, and incidental to, the management and administration of the Fund;
- (n) to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (o) to take and act on the opinion of any legal practitioner, whether in relation to the interpretation of this deed or any other document or statute or as to the administration of the trusts declared under this deed, without being liable to any Member or his or her Dependents in respect of any act done by in accordance with that opinion;
- (p) to insure and keep insured as it thinks fit any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers) or the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (q) to insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;



- (r) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (s) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity will be in the name of the Trustee or, if the Trustee determines, in the name of the Member or former Member;
- (t) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (u) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (v) to accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in accordance with the Superannuation Law;
- (w) to borrow from any person, company, trust, government or institution on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law;
- (x) to give a charge over, or in relation to, an asset of the Fund on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law; and
- (y) to draw down any bill of exchange, promissory note or other negotiable instrument on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law.

## **12.2 Discretion of Trustee**

Subject to any exceptions in the Superannuation Law and despite any other provision in this deed, no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

## **12.3 Power of delegation**

The Trustee may delegate to any person, including where there is more than one Trustee, to any one or more of the Trustees, any of the powers, duties and discretions conferred on the Trustee under this deed, and execute any powers of attorney or other instruments necessary to effect such purpose, on such terms and conditions as the Trustee determines and the Trustee may vary, limit or revoke any such delegation provided that any such delegation must only be undertaken in accordance with the Superannuation Law.

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# **13 Liability and indemnification of Trustee**

## **13.1 Liability**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is not liable for:

- (a) any act, omission or mistake in connection with the exercise of its powers, duties or discretions vested by this deed or with the proper performance of its duties under this deed;



- (b) any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the money of the Fund is invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited;
- (d) any loss suffered as a result of relying on any professional advice or assistance; or
- (e) any other loss, damage or misfortune whatever,

except where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

### **13.2 Indemnity**

- (a) Subject to clause 13.2(b), the Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is indemnified and has, subject to the Superannuation Law, a lien on the Fund for its indemnity against all liabilities incurred by the Trustee or other relevant person through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this deed or in the proper performance of their duties under this Deed.
- (b) Where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of a civil order under the Superannuation Law, the indemnity in clause 13.2(a) does not apply.

### **13.3 Limitation of clause**

This clause 13 only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of indemnity would not be limited by or inoperative under the Superannuation Law.