

## 18.2. In-House Assets

**Rule:** *The Trustee and Investment Manager must ensure that at no time, the Fund holds a level of In-House Assets which exceeds five percent (5%) of the total assets of the Fund (based on market value).*

Some exemptions to the In-House Asset rule (noting that the list is not exhaustive) includes:

- (a) **Existing investments at 11 August 1999** - investments and leases with Related Parties in place at 11 August, 1999 are not subject to the In-House Asset rules. The assets are not counted as In-House Assets unless they were already classified as In-House Assets under the previous definition. However, the Fund cannot make additional investments in such investments.
- (b) **Investments 11 August 1999 - 23 December 1999** - investments and leases with Related Parties that occurred between 11 August 1999 and 23 December 1999 were not counted as In-House Assets until 1 July 2001.
- (c) **Particular Investments post 11 August 1999** - the following investments made after 11 August 1999 are not subject to the In-House Assets rules:
  - (i) If the Fund had partly paid shares or units at 11 August 1999 then it may make further payments on those shares or units after that date provided the payments are made before 30 June, 2009;
  - (ii) If a Fund had an investment in a Related Party (entity) at 11 August, 1999, then it can reinvest its earning from that Related Party back in the Related Party before 30 June, 2009;
  - (iii) If the Fund had an investment in a Related Party (entity) at 11 August, 1999, then it could make further payments following that date provided that the investments do not surpass the level of the debt in the entity and are made no later than 30 June, 2009.

## 18.3. Financially assisting Related Parties

**Rule:** *The Trustee must ensure that no Loans or financial assistance are or have been given from the Fund have been given to a Member or a Relative of a Member (or for their benefit through a third party).*

A Trustee or an Investment Manager of the Fund must not lend money from the Fund or give any other financial assistance using the resources of the Fund to a Member or a Member's Relative or for their benefit through a third party.

## 18.4. Acquiring Assets from Related Parties

**Rule:** *The Trustee and Investment Manager of the Fund must ensure that no asset (other than money) has been acquired or will be intentionally acquired from a Related Party save for where an exemption applies.*

Exemptions to the prohibition include where the assets are acquired at market value and:

- (a) The asset is a Listed Security;
- (b) The asset is Business Real Property;

- (c) The asset is acquired under a merger between superannuation funds;
- (d) The Regulator has made a written document that the asset is a kind that may be acquired by the fund or by a class of funds.
- (e) The asset is an In-House Asset and its acquisition would not result in Fund's total level of In-House Assets exceeding five percent (5%) of the Fund's total assets or an asset that is particularly excluded from being an In-House Asset.

**Prohibited Avoidance Schemes:** A person must not enter into, commence or carry out a Scheme with the intention that that Scheme would result in the acquisition of an asset by the Trustee or the Investment Manager from a person that has a connection (either directly or indirectly through one or more interposed companies, partnerships or trusts) with a Related Party of the Fund.

### 18.5. Borrowing and Charging Assets

**Rule:** *The Trustee and Investment Manager must ensure that the Fund has not and does not borrow money, maintain an existing borrowing and/or charge its assets unless otherwise permitted by the Prescribed Law.*

Some of the limited circumstances in which borrowings are permitted include:

- (a) For a period not exceeding ninety (90) days to satisfy benefit payments due to Members or Beneficiaries provided that the borrowing does not exceed ten percent (10%) of the Fund's total assets;
- (b) Short-term borrowings for a period not exceeding seven (7) days to cover settlement of security transactions including:
  - (i) Bonds, debentures, stock, bills of exchange or other securities;
  - (ii) Shares in a company;
  - (iii) Units in a unit trust;
  - (iv) Futures contracts;
  - (v) Forward contracts;
  - (vi) Interest rates swap contracts;
  - (vii) Currency swap contracts;
  - (viii) Forward exchange rate contracts;
  - (ix) Forward interest rate contracts;
  - (x) A right or option in respect of such a security, share, unit, contract or policy;
  - (xi) Any similar financial instrument;
  - (xii) Foreign currency;

provided that the borrowing does not exceed ten percent (10%) of the Fund's total



assets and at the time the relevant investment decision was made, it was likely that the borrowing would not be needed;

- (c) For a period not exceeding ninety (90) days where the purpose of the borrowing is to enable the Trustee to make a payment of surcharge or advance instalment which the Trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (Cth) and which, apart from the borrowing, the Trustee would not be able to make provided that the borrowing does not exceed ten percent (10%) of the Fund's total assets;
- (d) Certain instalment warrant arrangements which satisfy s 67(4A) of the Act and the Prescribed Law;

**Charging Assets for Derivatives:** A Trustee may give a charge over, or in relation to an asset of the Fund if:

- (a) The charge is given in relation to a Derivatives Contract entered into by or on behalf of the Trustee or by a broker on instructions or account of the Trustee; and
- (b) The charge is given in order to comply with the rules of an Approved Body that requires the performance of obligations in relation to the Derivatives Contract to be secured; and
- (c) The Fund has in place a derivatives risk statement that sets out:
  - (i) Policies for the use of Derivatives that include an analysis of the risks associated with the use of Derivatives within the Investment Strategy of the Fund; and
  - (ii) Restrictions and controls on the use of Derivatives that take into consideration the expertise of staff; and
  - (iii) Compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and staff management procedures); and
- (d) The investment to which the charge relates is made in accordance with the derivatives risk statement.

## **19. Meeting of Trustees**

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### **19.1. How to Convene a Meeting**

- (a) Notice Requirement

Any Trustee or in the case of a Corporate Trustee, any Director, may convene a meeting of the Trustees by providing thirty (30) days written notice to each of the other Trustees or to the other Director/s of a Corporate Trustee of the time, venue and agenda proposed for the meeting.

- (b) Notice Can Be Waived

A meeting may be convened by giving notice shorter than thirty (30) days where all Trustees or Directors agree to waive the thirty (30) day notice requirement.

- (c) Circular Resolution

The Trustees may pass a resolution without a Trustee meeting being held if all the Trustees entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(d) Meeting During Business Hours

Unless otherwise agreed, a meeting must only be scheduled to occur during Business Hours.

## 19.2. Quorum

(a) Sole Director

In the case of a sole Director Corporate Trustee, a quorum for a Trustee's Meeting shall be one.

(b) Multiple Trustees/Directors

Where there is more than one Trustee or Directors of a Corporate Trustee, a quorum for a Trustee's Meeting shall be all the Trustees and/or Directors (or their proxy) as the case may be. If all the Trustees and/or Directors (or their nominated Proxy) are not present at the meeting within twenty (20) minutes of its scheduled time for commencement, the meeting shall automatically be adjourned for five (5) business days, to be held at the same time and venue as previously advised. A quorum for an adjourned meeting shall be the same as for the original meeting.

(c) Electronic Attendance

A Trustee or Director may attend a meeting by telephone, SKYPE, video link or other instantaneous electronic form of communication.

(d) Appointment of Proxy

A Trustee or Director ("Principal") may appoint a Proxy to attend at a meeting on behalf of the Trustee or Director provided the following conditions are satisfied:

- (i) The Proxy must present to the meeting a written authority signed by the Principal for the purposes of a particular meeting.
- (ii) A Proxy may only be appointed for one (1) meeting at a time - a Principal may not appoint a Proxy for an indefinite period of time in a single authority or for a number of meetings. The Principal may though, by further authority, appoint the same Proxy for a subsequent meeting.
- (iii) The Proxy must act in the best interests of the Principal who appointed the Proxy, voting only in accordance with the directions of the Principal.
- (iv) The Chairperson of a meeting must allow the Proxy an opportunity to read and table any statement in writing from the Principal, but the Proxy (unless a Trustee or Director) shall not be otherwise entitled to participate in any discussion in the meeting.

## 19.3. Appointment of a Chairman

Prior to commencing discussion of matters on a meeting agenda, the Trustees and/or Directors must nominate a Chairman to conduct the meeting. The Chairman must manage the meeting using a fair and



reasonable approach and administer the agenda items.

#### **19.4. Frequency of Meetings**

The Trustees and/or Directors must meet at least every six (6) calendar months to consider:

- (a) The current Investment Strategy and performance of the Fund's investments;
- (b) The accounts of the Fund;
- (c) Reporting and taxation requirements;
- (d) Any other matters requiring attention, decision or discussion.

### **20. Meetings of Members**

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#### **20.1. How to Convene a Meeting**

- (a) Notice Requirement

Any Trustee or in the case of a Corporate Trustee, any Director may convene a meeting of the Members by providing thirty (30) days written notice to each of the Members of the time, venue and agenda proposed for the meeting.

- (b) Notice Can Be Waived

A meeting may be convened by giving notice shorter than thirty (30) days where all Members agree to waive the thirty (30) day notice this requirement.

- (c) Circular Resolution

The members may pass a resolution without a Members' meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

- (d) Meeting During Business Hours

Unless otherwise agreed, a meeting must only be scheduled to occur during Business Hours.

#### **20.2. Quorum**

- (a) Sole Member

In the case of an individual Member, a quorum for a Member's Meeting shall be one.

- (b) Multiple Members

Where there is more than one Member, a quorum for a Member's Meeting shall be all the Members (or their Proxy) as the case may be. If all the Members (or their Proxy) are not present at the meeting within twenty (20) minutes of its scheduled time for commencement, the meeting shall automatically be adjourned for five (5) business days, to be held at the same time and venue as previously advised. A quorum for an adjourned meeting shall be the same as for the original meeting.

(c) Electronic Attendance

A Member may attend a meeting by telephone, SKYPE, video link or other instantaneous electronic form of communication.

(d) Appointment of Proxy

A Member ("Principal") may appoint a Proxy to attend at a meeting on behalf of the Member provided the following conditions are satisfied:

- (i) The Proxy must present to the meeting a written authority signed by the Principal for the purposes of a particular meeting.
- (ii) A Proxy may only be appointed for one (1) meeting at a time - a Principal may not appoint a Proxy for an indefinite period of time in a single authority or for a number of meetings. The Principal may though, by further authority, appoint the same Proxy for a subsequent meeting.
- (iii) The Proxy must act in the best interests of the Principal who appointed the Proxy, voting only in accordance with the directions of the Principal.
- (iv) The Chairperson of a meeting must allow the Proxy an opportunity to read and table any statement in writing from the Principal, but the Proxy (unless a Member) shall not be otherwise entitled to participate in any discussion in the meeting.

### **20.3. Appointment of a Chairman**

Prior to commencing to discuss matters on a meeting agenda, the Trustees and/or Directors must nominate a Chairman to conduct the meeting. The Chairman must manage the meeting using a fair and reasonable approach and administer the agenda items.

### **20.4. Member's Resolutions**

The Trustee must use all reasonable endeavours to comply with any resolutions passed by the Member in their majority in a meeting subject to this Deed and the Prescribed Law.

### **20.5. Frequency of Meetings**

A Member's meeting must be held where:

- (a) The Trustee receives a written request for a Member's Meeting signed by at least 50% of the Members; or
- (b) The Trustee considers it needed or desirable; or
- (c) A complaint or query under clause 21 is not dealt with to the satisfaction of any Member after given careful and proper consideration by the Trustee and/or Director/s.

## **21. Complaints or Queries**

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If a complaint or query is raised by a Member during a Member's meeting or provided to the Trustee in writing, then Trustee must, within three (3) months of receiving the complaint or query, give careful and proper consideration to the complaint or query and take any necessary action and correspond with the



Members as the Trustee deems appropriate.

If however, a complaint or query is not resolved to the satisfaction of a Member, then a Member's Meeting must be convened in order to attempt to resolve the complaint or query.

## **22. Provisions Relating to Family Law**

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### **22.1. Disclosure of Information Pursuant to Family Law Orders**

Where a Member's Superannuation Interest becomes the subject of a Payment Split or other agreement, order or restriction under the *Family Law Act 1975* (Cth), then the Trustee is required to disclose information in accordance with the Prescribed Law to the Member and the Non-Member Spouse.

The Trustee may levy reasonable charges against the Superannuation Interest of a Non-Member Spouse for provision of such information, including the costs of obtaining professional advice regarding any requirements under this clause.

### **22.2. Payment Splits**

#### **(a) Adjustment, Payment or Transfer**

If the Trustee receives a properly served splitting agreement or court order under Part VIIIB of the *Family Law Act 1975* (Cth) and complying with the Prescribed Law, then the Trustee may:

- (i) Adjust the Benefits and entitlements of the Member whose Superannuation Interest is the subject of the agreement or order to the extent permitted by the Prescribed Law, in such manner and at such times as the Trustee may determine; and
- (ii) Make a payment or transfer to the Non-Member Spouse.

#### **(b) Imposition of Rules**

Subject to the Prescribed Law, the Trustee may make rules from time to time dealing with the valuation and timing for calculation of Benefits and entitlements (including adjustments) of a Non-Member Spouse and any other matters relating to the Payment Split or the benefit and entitlement of a Non-Member Spouse.

#### **(c) Deferred Payment Splits**

If required by the Prescribed Law or otherwise considered appropriate, the Trustee may defer giving effect to a Payment Split. In such circumstances, the Trustee must:

- (i) Record that the agreement or court order exists; and
- (ii) Keep a record of the Benefit and entitlement of the Non-Member Spouse.

### **22.3. Flagging Agreements/Orders**

If the Trustee receives a validly served flagging agreement or court order under Part VIIIB of the *Family Law Act 1975* (Cth) and complying with the Prescribed Law, then the Trustee must:

#### **22.1. Record that the agreement or court order exists; and**

22.2. Postpone making payment of the Benefit to or in respect of the Member whose Superannuation Interest is the subject of the agreement or order until the agreement or court order is lifted.

#### **22.4. Membership of Non-Member Spouse**

Where Family Law proceedings render a Member's Superannuation Interest the subject of a splitting order, the Trustee must treat the Non-Member Spouse as a Member for the purposes of clause 5 and the Restricted Investments Rules.

However, the Trustee may refuse to admit a Non-Member Spouse as a Member of the Fund provided the Trustee acts in accordance with the Prescribed Law.

### **23. Administration of the Fund**

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#### **23.1. Payment of Supervisory Levy**

The Trustee must pay to the Australian Taxation Office (or to such other entity as otherwise required by the Prescribed Law) the supervisory levy each year when due.

#### **23.2. Debt Collection**

The Trustee must ensure that any money owing to the Fund is promptly collected or recovered.

#### **23.3. Keep Books and Accounts**

The Trustee shall keep complete current and accurate books of account for the Fund describing:

- (a) The assets comprising the Fund from time to time;
- (b) The income derived by the Fund;
- (c) All receipts and expenditures on account of the Fund;
- (d) All classes of income;
- (e) A statement of the Fund's financial position;
- (f) The operating statement of the Fund;
- (g) All benefits and entitlements of individual Members in the Fund separated into categories of Minimum Benefits, Preserved Benefits, Restricted Non-Preserved Benefits and Unrestricted Non-Preserved Benefits;
- (h) The benefits and entitlements to which a Beneficiary or Member is entitled but has not yet been paid;
- (i) Any transaction that a Trustee has entered into; and
- (j) Any other information that is required by the Prescribed Law or the Trustee considers necessary or desirable.

#### **23.4. Life Assurance**

If the Fund is a fund from which the Benefits to be paid to each individual Member are wholly determined



by reference to policies of life assurance at the end of a Year of Income, then the Trustee must prepare:

- (a) A statement of the policies of life assurance that are in place at the end of the year of income; and
- (b) A statement as to whether those policies have been fully maintained as directed by the relevant insurers; and
- (c) A statement of which identifies the insurers; and
- (d) The amounts contributed by Employers and Members; and
- (e) A statement detailing the sum of premiums paid on the policies; and
- (f) The expenses incurred by the Fund, other than sums covered as premiums.

### **23.5. Keep Records**

- (a) Keep for Five Years

For a period of five (5) years, the Trustee must retain the following records:

- (i) Accurate and accessible accounting records that explain the transactions and financial position of the Fund; and
- (ii) An annual operating statement; and
- (iii) an annual statement of the Fund's financial position.

- (b) Keep for Ten Years

For a period of ten (10) years, the Trustee must retain the following records:

- (i) Minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed); and
- (ii) Records of all changes of Trustees; and
- (iii) Trustee declarations recognising obligations and responsibilities for any Trustee, or Director of a Corporate Trustee, appointed after 30 June, 2007; and
- (iv) Member's written consent to be appointed as Trustee; and
- (v) Copies of all reports provided to Members;
- (vi) Copies of annual returns lodged with the Regulator.

### **23.6. Annual Reporting**

Promptly after the close of each Financial Year (and before the due date for lodgement) the Trustee shall prepare and lodge with the Regulator:

- (a) An annual return in the Approved Form containing such information as is required by the Regulator;

- (b) If necessary, a Member Contributions Statement in the Approved Form containing such information as is required by the Regulator;
- (c) A copy of the Auditor's Certificate;
- (d) A brief explanation of any audit qualification and/or other contravention of the Prescribed Law that occurred during the Year of Income which is detailed in or otherwise evident from the report prepared by an independent Approved Auditor; and
- (e) An income tax return for the Year of Income with the Australian Taxation Office in the Approved Form containing any information required.

### **23.7. Audits**

The Trustee must appoint an Auditor for the Fund and ensure that the Fund's books, accounts and records are audited annually as required by the Prescribed Law.

### **23.8. Limited Liability of Trustee**

No Person acting as Trustee or as a Director of a Corporate Trustee shall be responsible for:

- (a) Any loss or damage occasioned to the Fund or any part thereof or to any person by the exercise of any discretion or power hereby or by law conferred on the Trustee or by any alleged failure to exercise any such discretion or power; or
- (b) Any breach of duty or trust whatsoever;

unless the same shall be proved to have been:

- (c) Committed unlawfully; or
- (d) Made or omitted in conscious and fraudulent bad faith by that Trustee; or
- (e) Caused through the Trustee acting recklessly (whether intentionally or negligently) and failing to exercise a reasonable standard of care required.

### **23.9. Breach by One Trustee**

Where there is more than one Trustee or Director, no Trustee or Director shall be bound to take proceedings against the other Trustee/s or Director/s for any alleged breach of Trust.

### **23.10. Trustee's Right of Indemnity**

To the extent permitted by the Prescribed Law, the Trustee, the Director/s (in the case of a Corporate Trustee), Investment Manager and Custodian ("Indemnified Persons") shall be entitled to be indemnified out of the assets for the time being comprising the Fund against liabilities incurred in the execution or attempted execution or as a consequence of the failure to exercise any of the authorities, powers and discretions hereof or by virtue of being involved in the activities of the Fund. In this regard, the Trustee holds a lien over the assets of the Fund.

However, the right of indemnity shall be lost where:

- (a) The Trustee commits a breach of trust by:



- (i) Acting dishonestly or fraudulently in any matter concerning the fund;
  - (ii) Intentionally or recklessly failing to exercise the required degree of care and diligence; or
- (b) A monetary penalty is incurred by any of the Indemnified Persons under criminal or civil penalty provision.

### **23.11. Trustee to be Reimbursed for Expenses**

If the Trustee necessarily or reasonably incurs any expenses through the exercise of the Trustee's role as Trustee, then the Trustee shall be entitled to be reimbursed for such expenses on presentation of proof of the expense (ie receipt). By way of clarification, this clause does not allow a Trustee to charge any fee or receive any remuneration for performance of its services as Trustee.

### **23.12. Confidential Information**

#### **(a) Member/Beneficiary Privacy**

The Trustee is not permitted to provide any Member with any information concerning the personal details of another Member or Beneficiary or details of another Member's Superannuation Interest in the Fund unless such Member or Beneficiary has given written consent to the Trustee to release such information.

#### **(b) Fund Privacy**

The Trustee must keep all matters relating to the accounts, dealings and activities of the Fund confidential except:

- (i) Where the Trustee is required to report to the Regulator or otherwise under the Prescribed Law regarding the accounts and activities of the Fund; or
- (ii) Where the Trustee is require or deems it necessary or desirable to provide information to all Beneficiaries of the Fund; or
- (iii) Where information is reasonably required by a third party (e.g. Regulator, Employer-Sponsor, bank or insurer) for the purposes of administering the Fund or engaging in the Fund's activities.

## **24. Winding Up**

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### **24.1. Trustee's Election to Wind Up**

The Trustee may elect to wind up the Fund if:

- (a) The Trustee resolves to wind up the Fund - on the date of the resolution;
- (b) There are no Members or Beneficiaries remaining of the Fund and the Trustee considers that it is unlikely that any new Members will join the Fund - on the date elected by the Trustee.

### **24.2. Other Terminating Circumstances**

The trusts created by this Deed will end if:

- (a) The Trustee has knowledge that the Fund is insolvent - on the day the Regulator gives permission to the Trustee to wind-up the Fund;
- (b) The Members unanimously resolve to wind-up the Fund - on the day when all the Benefits and entitlements are paid, rolled over or transferred from the Fund so that the Fund is void of assets and all memberships have been terminated;
- (c) The Prescribed Law does not exclude the operation of the Rule Against Perpetuities - the last day of the seventy-ninth (79<sup>th</sup>) year after the execution of the Deed.

### **24.3. Process for Winding-Up**

Once the Trustee has an intention to wind-up the Fund or becomes aware that the Fund is to be wound up pursuant to the above sub-clauses then the Trustee must:

- (a) Ensure that the Regulator together with each Member, Beneficiary, Employer-Sponsor, Standard Employer-Sponsor and other Interested Party of the Fund are given reasonable notice of the Trustee's intention to wind-up the Fund;
- (b) Lodge a final taxation return and regulatory return;
- (c) Ensure that all taxation and reporting obligations have been satisfied;
- (d) Pay out any outstanding liabilities owing by the Fund including any taxation or supervisory levies outstanding;
- (e) Deduct from the assets of the Fund the costs (whether known or anticipated) of winding up the Fund;
- (f) Distribute the balance assets of the Fund to the Members and Beneficiaries; and
- (g) Attend to any other matters that the Trustee considers reasonable and necessary in winding up the Fund.

At all times during the process of winding up the Fund, the Trustee must comply with the Prescribed Law.

## **25. General Matters**

### **25.1. Interpretation of the Deed**

The Deed will be interpreted and governed in accordance with the Prescribed Law. To the extent of any inconsistency between the provisions of this Deed and the Prescribed Law, the Prescribed Law shall prevail. By way of clarification, if the interpretation of or the inclusion of any clause (or part thereof) in this Deed or the exercise of any power by the Trustee pursuant to any clause means that the Fund will become non-complying SMSF then such clause (or part thereof) shall be:

- (a) Given the interpretation which ensures that the arrangement does comply with the Prescribed Law; or
- (b) If it is not possible to give the clause (or part thereof) an interpretation to ensure compliance with the Prescribed Law then such clause (or part thereof) shall be severed from this Deed without invalidating or affecting the remaining clauses of this Deed in which case the Trustee must seek to amend the Deed by including a clause so that it



complies with the Prescribed Law and yet strives to give effect to the intent behind the clause or part of the clause that was severed from this Deed.

## **25.2. Variation**

The Trustee may:

- 25.1. At any time and from time to time by supplementary Deed or by resolution revoke, add to or vary all or any of the provisions hereof or trusts hereinbefore limited or the trusts limited by any variation or alteration or addition made thereto from time to time; and
- 25.2. May by the same or any other Deed or Deeds, or by resolution declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof the trusts whereof shall have been so revoked added to or varied;

provided that the revocation, addition or variation of the provisions must not:

- (a) Be inconsistent with the Act, Regulations or Prescribed Law generally;
- (b) Alter the purpose or objects of the Fund;
- (c) Render the Fund to be a non-complying SMSF;
- (d) Result in a reduction to any of the Members' rights, Benefits or entitlements unless the Members have given informed, written consent to the reduction or unless the variation is necessary to comply with the Prescribed Law;
- (e) Result in a Binding Death Nomination or Non-Lapsing Binding Death Nomination being invalid unless the change is required by the Prescribed Law.

## **25.3. Access to the Deed**

All Members to the Fund must be provided with access to and/or a copy of this Deed if requested to the Trustee in writing.

## **25.4. Effect of Changes in Prescribed Law**

Notwithstanding the provisions in this Deed, the Trustee is permitted and authorized to act only in accordance with the Prescribed Law as amended or varied from time to time (or any other law, rule, direction or requirement to enable the Fund to become or remain a complying SMSF). If there are any changes to the Prescribed Law that results in the Trustee doing anything that is permitted by this Deed rendering the Fund a non-complying SMSF then the Trustee is prohibited from doing that thing. If there are any changes to the Prescribed Law that permit a Trustee from doing anything that is not permitted by this Deed then the Trustee has the power to do that thing provided it does not render the Fund a non-complying SMSF.

## **25.5. Jurisdiction**

This Deed is made under the laws of the State of Queensland and the rights of all parties and the construction and effect of each and every provision hereof shall be subject to such laws and the situs of this trust and of all the beneficial interests therein shall be deemed to be that State.

## **25.6. Notices**

### **(a) How a Notice May be Given**

A notice may be given by the Trustee to any Member, Beneficiary or other Trustee either personally or by sending it by post to him at his registered address or (if he has no registered address within the Commonwealth of Australia) to the address (if any) within the Commonwealth of Australia supplied by him to the Trustee for the giving of notice to him.

### **(b) By Post**

Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying and posting an envelope containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post.

### **(c) By Facsimile and Email**

If the Trustee shall so determine a notice may be given by means of a facsimile and/or email and service of such notice shall be deemed to be effected if the facsimile or email is properly transmitted and to have been effected at the time at which in the ordinary course the facsimile or email would be received.

### **(d) Form of Signature**

The signature to any notice to be given by the Trustee may be written or printed or stamped and the signature may be that of one or more of the Trustee or of any Director or secretary of a Corporate Trustee.

## **25.7. Undefined Terminology**

Terminology used in this Deed which is not otherwise defined in this Deed has the same meaning as under the Prescribed Law unless the context otherwise requires.

## **25.8. Summaries**

Any summaries or commentary included throughout this Deed is for the ease of the reader only and are designed to reflect certain provisions (or parts of provisions) of the Prescribed Law (particularly the Act and the Regulations). If any of the summaries or commentary in this Deed are or become inconsistent with the Prescribed Law as amended or varied from time to time, then the Prescribed Law shall prevail.



## Schedule 1 - Deed Particulars

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Name of Trust: Sedgies Retirement Fund

Date of Deed:

Trustee/s: (1) Sedgies Retirement Pty Ltd ACN 602 819 296 of  
c/- Coastal Accounting Service, Shop 4, 73 Broad  
Street, Sarina QLD 4737

Member/s: (1) Bevan James Sedgman of 14 W.E. Owen  
Crescent, Sarina Beach QLD 4737  
(2) Helena Mary Rose Sedgman of 14 W.E. Owen  
Crescent, Sarina Beach QLD 4737

## Schedule 2 - Sample Membership Application

### Sedgies Retirement Fund MEMBERSHIP APPLICATION FORM

To the Trustees of the  
Sedgies Retirement Fund

#### Member Details

Name:

Address:

Date of Birth:

Occupation:

Date Employment:

Commenced:

Salary:

Telephone:

Fax:

\*Tax File Number:

#### Employer Details

Name of Employer:

Address:

#### Member's Application, Acknowledgement and Authorisation

1. I hereby apply to become a Member of the Sedgies Retirement Fund.
2. I acknowledge receipt of a current Product Disclosure Statement in respect of the Fund, supplied prior to or with this Application;
3. I understand that my Membership is subject to the Deed and agree to be bound by the terms and conditions in the Deed.
4. I understand my rights and the terms and conditions of the Trust Deed including benefit payable to Members and the rights of dependants.
5. \* For the purposes of section 299F of the *Superannuation Industry (Supervision) Act 1993* (Cth), I understand that the Trustee must request that I provide my Tax File Number. I acknowledge that I am under no obligation to supply my Tax File Number but that failure to do so may result in tax being deducted from my account at the top marginal rate.

Dated this            day of            2014

Signed: \_\_\_\_\_  
[Member's Name]



## Schedule 3 - Sample Employer - Sponsor Application

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### Sedgies Retirement Fund MEMBERSHIP APPLICATION FORM

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To the Trustees of the  
Sedgies Retirement Fund

#### Employer Details

Name:  
Address:

"Respective  
Employee":

#### Employer's Application, Acknowledgement and Authorisation

1. I/We have apply to participate in the Fund and to contribute in respect of the Respective Employee.
2. I/We acknowledge receipt of a current Product Disclosure Statement in respect of the Fund, supplied with or prior to this Application.
3. I/We agree to observe and comply with all obligations placed on an Employer under the Trust Deed as varied from time to time and to be bound by the terms of the Deed as if I/we was/were a party thereto;
4. I understand that written approval by the Trustee or acceptance of a Contribution by me/us to the Fund, will be deemed to constitute acceptance of this application.

Dated this            day of            2014

Signed: \_\_\_\_\_  
[Employer's Name]

## Schedule 4 - Sample Preferential Death Benefit Nomination

### Sedgies Retirement Fund PREFERENTIAL DEATH BENEFIT NOMINATION

To the Trustees of the  
Sedgies Retirement Fund

#### Member Details

Name:  
Address:

Date of Birth:

#### Important Information for Member

A Preferential Death Nomination is not binding upon the Trustee. That is, the Trustee may take your Preferential Death Nomination into account when deciding who to pay your benefits to on your death, however the Trustee has complete discretion as to which of your dependants and/or Legal Personal Representative may receive the benefit and in what portions.

It is not essential to complete a Preferential Death Nomination, but it enables you to express your wishes to the Trustee. If you wish to make a death nomination that is binding upon the Trustee, then you should consider making a Binding Death Nomination or Non-Lapsing Binding Death Nomination.

In a Preferential Death Nomination, you can nominate a "dependant" or your legal personal representative to receive the death benefit. If you nominate your legal personal representative, it is important that you have a will and keep it up to date, as if the trustee, in its discretion, determines to pay part or all of your death benefit to your estate, then it will be dealt with by your will (or in the absence of a Will, by the law of intestacy).

Under superannuation law "dependant" includes any spouse, any child, any other person who the trustee considers was dependant on you for maintenance or support at the date of your death and any person who is in an "interdependent relationship" with you.

You may be defined as being in an interdependent relationship with someone if you share a close personal relationship, live together, one or each of you provides the other with financial support and one or each of you provides the other with domestic support and personal care.

Two people may also have an interdependency relationship (whether or not related by family) if they have a close personal relationship, but other requirements for interdependency are not met because either or both of them suffer from a physical, intellectual or psychiatric disability.

When you fill in your form, you must do the following:

1. Complete all sections of the form;
2. Ensure the beneficiaries are dependants or your legal personal representative;
3. Ensure that a benefit allocation between your beneficiaries adds up to 100%; and
4. Ensure you sign and date the form.



If you fail to complete all sections of the form, then the Trustee may disregard your nomination.

You are advised to seek further information and legal advice as to the manner and consequences of the request prior to it being made.

### Action Required

- ☐ I wish to make a new Preferential Death Nomination;
- ☐ I wish to amend my existing Preferential Death Nomination;
- ☐ I wish to cancel my Preferential Death Nomination.

### Nomination

Upon my death, I ask that the Trustee of the Superannuation Fund considers exercising its discretion to distribute my benefits as follows:

Surname	Given Name	Date of Birth	Relationship	% Allocation
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Personal Representative	
				Total 100%

### Member's Declaration and Signature

I have read the Important Information set out above. I understand that:

1. On my death, the Trustee has absolute discretion as to which of my dependants and/or my Legal Personal Representative will receive all or part of my death benefit.
2. I may at any time revoke this nomination by completing a new form and submitting it to the trustee.
3. By signing this form I consent to the handling of my personal information;
4. It is my responsibility to ensure my nomination continues to reflect my wishes;
5. This form overrides any previous Preferential Death Benefit Nomination but will not override any previous Binding Death Nomination or Non-Lapsing Binding Death Nomination.

Signature of Member

Date

## Schedule 5 - Sample Binding/Non-Lapsing Binding Death Benefit Nomination

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### Sedgies Retirement Fund

### **BINDING DEATH BENEFIT NOMINATION/NON-LAPSING BINDING DEATH NOMINATION**

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To the Trustees of the  
Sedgies Retirement Fund

#### **Member Details**

Name:

Address:

Date of Birth:

#### **Important Information for Member**

Please read this section to ensure your nomination is valid. If this nomination is found to be invalid, then normal trustee discretion will apply in relation to the payment of your death benefit.

This Binding Death Nomination or Non-Lapsing Binding Death Nomination (as the case may be) is a legal instrument that "binds" the trustee of the Superannuation Fund to pay your death benefit to your nominated beneficiaries. A Binding Death Benefit Nomination or Non-Lapsing Binding Death Nomination allows you to have certainty about where your death benefit will be paid.

The key difference between a Binding Death Nomination and a Non-Lapsing Binding Death Nomination is that, as the name suggests, a Binding Death Nomination will lapse if not renewed every three (3) years whereas a Non-Lapsing Binding Death Nomination continues until otherwise cancelled or amended by the Member.

Providing this nomination is valid and, for a binding death nomination, is less than three (3) years old, then the trustee has no discretion in relation to whom your death benefit is to be paid.

On your death, if your nomination is found to be invalid, then the trustee will use its discretion to determine who your death benefit will be paid to. An invalid nomination may still be an important consideration for the trustee when determining the payment of your death benefit, however this does not ensure the benefit will be paid in the same way as a valid Binding Death Nomination or Non-Lapsing Binding Death Nomination.

You can nominate a "dependant" or your legal personal representative to receive the death benefit. If you nominate your legal personal representative, it is important that you have a will and keep it up to date as the trustee will pay that part of the death benefit directed to the personal representative to your estate to be dealt with in account with your Will (or in the absence of a Will - the laws of intestacy).

Under superannuation law "dependant" includes any spouse, any child, any other person who the trustee considers was dependant on you for maintenance or support at the date of your death and any person who is in an "interdependent relationship" with you.

You may be defined as being in an interdependent relationship with someone if you share a close personal relationship, live together, one or each of you provides the other with financial support and one or each of you provides the other with domestic support and personal care.



Two people may also have an interdependency relationship (whether or not related by family) if they have a close personal relationship, but other requirements for interdependency are not met because either or both of them suffer from a physical, intellectual or psychiatric disability.

When you fill in your form, you must do the following:

1. Complete all sections of the form;
2. Ensure the beneficiaries are dependants or your legal personal representative;
3. Ensure that a benefit allocation between your beneficiaries adds up to 100%; and
4. Ensure you sign and date the form in front of two (2) witnesses who must be over 18 years of age and not nominated as beneficiaries.

Your nomination may become invalid if:

1. For a Binding Death Nomination - your form was signed more than three (3) years before you die. You must complete a new form or amend or confirm your existing form at least every three (3) years; or
2. One of your beneficiaries dies before you.

It is important that, like a will, you keep your Binding Death Nomination up to date. The trustee of the Superannuation Fund cannot alter your properly made Binding Death Nomination or non-lapsing binding death nomination regardless of the consequences or circumstances which might arise subsequent to you making the nomination and so long as that nomination remains current.

Careful consideration should be given to the wording of the request to ensure that your intentions are clearly and legally binding and executable.

You are advised to seek further information and legal advice as to the manner and consequences of the request prior to it being made.

#### **Action Required**

- ☐ I wish to make a new Binding Death Nomination (acknowledging that the Binding Death Nomination will lapse if not renewed every three (3) years);
- ☐ I wish to amend my existing Binding Death Nomination;
- ☐ I wish to cancel my Binding Death Nomination.

**Or**

- ☐ I wish to make a new Non-Lapsing Binding Death Nomination;
- ☐ I wish to amend my existing Non-Lapsing Binding Death Nomination;
- ☐ I wish to cancel my Non-Lapsing Binding Death Nomination.

## Nomination

Upon my death, I direct the trustee of the Superannuation Fund to distribute my benefits as follows:

Surname	Given Name	Date of Birth	Relationship	% Allocation
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Personal Representative	
				Total 100%

## Member's Declaration and Signature

I have read the Important Information set out above. I understand that:

1. This nomination need be accepted by the trustee before it is binding on the trustee.
  2. *For a Binding Death Nomination* - Once accepted by the trustee this nomination will remain in effect for 3 years from the date it was first signed or last confirmed or amended.
- or
3. *For a Non-Lapsing Binding Death Nomination* - Once accepted by the Trustee, this nomination will remain in effect until such time as I change or cancel the nomination - it will not lapse by passing of time.
  4. I may at any time revoke this nomination by completing a new form and submitting it to the trustee.
  5. By signing this form I consent to the handling of my personal information;
  6. It is my responsibility to ensure my nomination remains valid and continues to reflect my wishes;
  7. This form overrides any previous death benefit nomination.

Signature of Member

Date

*Your signature must be witnessed by two people, neither of whom is named as beneficiary.*

## Witnesses' Declaration and Signature

I, as a witness, declare that I am over 18 years and that this nomination was signed in my presence.

Signature of Witness 1

Signature of Witness 2

Date

Date

Full name of Witness 1

Full name of Witness 2



**Sedgies Retirement Fund**  
**TRUSTEE ACCEPTANCE OF BINDING DEATH BENEFIT NOMINATION/NON-**  
**LAPSING BINDING DEATH NOMINATION**

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**To the Member of the**  
Sedgies Retirement Fund  
**named below**

**Member Details**

Name:  
Address:

Date of Nomination

We, \_\_\_\_\_ and \_\_\_\_\_ being the Trustees of the Superannuation Fund hereby accept the Binding Death Nomination or Non-Lapsing Binding Death Nomination from you dated as above pursuant to the terms of the trust Deed establishing the Superannuation Fund.

Signature of Trustee

Date

Signature of Trustee

Date

## Schedule 6 - Guide to Pensions

### (A) Account-Based Pension

Account-Based Pensions must satisfy the requirements in the Prescribed Law (particularly Regulations 1.06(9A)(a) and Regulation 1.07D or as subsequently amended or replaced) including:

1. The amount supporting the Pension must be paid from a Pension Reserve established for the purpose of paying the Pension to the Member.
2. The Trustee must pay the Pensioner a Minimum Amount at least annually calculated in accordance with the Prescribed Law.
3. The Trustee is not required to make a minimum payment to the Member if the date of commencement of the Pension is 1 June in the Year of Income.
4. There is no restriction on the Maximum Amount that can be paid to a Pensioner annually.
5. Where the Pension commences after 1 July, the Minimum Payment amount for the 1st year is calculated proportionately to the number of days in the financial year, starting from the commencement day as follows:

$$\text{Minimum Payment} \times \frac{\text{remaining days in financial year}}{\text{total days in financial year}}$$

6. Once the Pension has commenced to be paid to a Member, the Trustee must not permit the capital supporting the Pension to be added to by way of Contribution or Roll-over.
7. The Pension can only be transferred if a Member dies, to one of the Member's Dependants. However, if a Member dies, the Pension cannot be transferred to a Child of the Member (but may be paid as a lump sum) unless the Child:
  - (a) Is under the age of eighteen (18); or
  - (b) Is aged between eighteen (18) years and twenty-five (25) years and either was financially dependant on the Member or has a disability under the *Disability Services Act 1986* (Cth).
8. The capital value of the Pension nor the income from it can be used as security for borrowing (e.g. loans).
9. Before the Trustee can commute a Pension, the Trustee must pay the Minimum Amount from the Pension before completing the commutation as follows:

**Pension Commenced After 19 September, 2007** - the amount paid must at least be the pro rata of the minimum annual payment amount and be paid from the Pension before the commutation. The minimum payment must occur in the financial year in which the commutation is to take place.

**Pension Commenced Same Year as Commuted** - the pro-rata minimum payment amount is calculated according to the number of days from the commencement of the Pension until the day it is commuted as follows:



**Minimum Payment x days from start of pension to day Pension commuted  
total days in financial year**

However, the Trustee does not have to make a minimum payment prior to the commutation where the commutation arises on the death of a Member or where the purpose of the commutation is to:

- (a) Pay a superannuation contributions surcharge liability;
- (b) Give effect to a Payment Split under the Family Law provisions; or
- (c) Give effect to a client's right to return a financial product under the Corporations Law provisions.

10. The Pension will cease when the balance of the Member's Pension Reserve is nil.

#### **(B) Transition to Retirement Pensions**

A newly created Transition to Retirement Pension (also known as a Workforce Pension) must meet the same requirements as set out for Account-Based Pensions in A) except that:

1. The Trustee is restricted to a maximum annual payment limit of 10% of Account Balance (or as otherwise provided for by the Prescribed Law from time to time) until the Member retires or attains the age of sixty-five (65); and
2. The Pension may be partially or fully commuted. However, if the Pension is commuted, the resulting Lump Sum amount cannot be paid unless:
  - (a) The Member has satisfied a Condition of Release which renders there 'Nil' Cashing Restriction on Preserved Benefits and Restricted Non-Preserved Benefits; or
  - (b) The purpose of the commutation is to:
    - (i) Pay a superannuation contributions surcharge liability;
    - (ii) Give effect to a Payment Split under the Family Law provisions; or
    - (iii) Cash a Member's unrestricted non-preserved benefit.

By way of clarification, the same requirements regarding minimum payment on commutation as for Account-Based Pensions in A) applies to Transition to Retirement Pensions.

**Executed as a Deed**

Executed by Sedgies Retirement Pty Ltd ACN 602 819  
296 as Trustee in accordance with Section 127 of the  
Corporations Act 2001 (Cth)

this 12th day of November, 2014

Bevan Sedgman  
Director

A. Sedgman  
Director/Secretary

Signed sealed and delivered by Bevan James  
Sedgman as Member this 12th day of  
November, 2014

Before me

Forbett  
Witness

Bevan Sedgman

Signed sealed and delivered by Helena Mary Rose  
Sedgman as Member this 12th day of  
November, 2014

Before me

Forbett  
Witness

A. Sedgman