



**Superannuation Trust Deed**

**Establishing the**

***Berenyi Super Fund***

**18 June 2007**

**Margaret Berenyi & Tereza Berenyi**

**("TRUSTEE")**

PERPETUAL TRUSTEE COMPANY LIMITED  
(ABN 42 000 001 007)  
Business Address:  
Level 12, 123 Pitt Street  
Sydney NSW 2000

## **SUPERANNUATION FUND TRUST DEED**

**This Deed Poll** is made on the 18 June 2007

By Margaret Berenyi of 138 Padstow Road, Eight Mile Plains, QLD 4113 ("Trustee") and Tereza Berenyi of 138 Padstow Road, Eight Mile Plains, QLD 4113("Trustee").

### **RECITALS:**

- A. The Trustee has resolved to establish an indefinitely continuing superannuation fund ("Fund") to provide retirement and other benefits for the Members of the Fund.
- B. The Trustee has agreed to act as the first Trustee of the Fund.

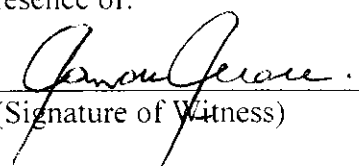
### **OPERATIVE PROVISIONS:**


- 1. The Fund is to be known as the Berenyi Super Fund.
- 2. The Fund will commence on the date of this Deed Poll.
- 3. This Deed Poll includes the rules ("Rules") attached to this Deed Poll.
- 4. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
- 5. This Deed Poll may be amended in the manner set out in the Rules.
- 6. Unless otherwise defined in this Deed Poll, an expression that is defined in the Trust Deed or the Superannuation Law has the same meaning in this Deed Poll. The Recitals form part of this Deed Poll.
- 7. The Member and the Trustee are bound by the terms of the Trust Deed as amended by the Deed Poll.

EXECUTED as a Deed

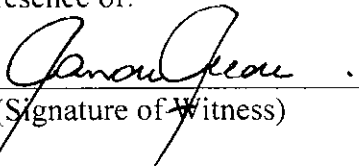
SIGNED SEALED AND DELIVERED

by Margaret Berenyi  
in the presence of:

 )  
(Signature of Witness)

  
(Signature of Trustee)

by Tereza Berenyi  
in the presence of:

 )  
(Signature of Witness)

X T. Berenyi  
(Signature of Trustee)

## **Attachment 1**

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## RULES

### 1. DEFINITIONS AND INTERPRETATION

#### **Definitions**

1.1 Unless the contrary intention appears:

**Accumulated Credit** means the balance of the Contribution Account of a Member.

**Application Form** means the form specified by the Trustee from time to time to be included with a person's application to participate in the Fund.

**Binding Nomination** means a nomination by a Member in accordance with which the Trustee is required to pay a Death Benefit under rule 4.2 and the Binding Nomination Rules.

**Binding Nomination Rules** means the rules adopted by the Trustee pursuant to rule 5.8.

**Child** includes an adopted child, a step-child or an ex-nuptial child.

**Complying Pension Account** means the account kept for a Member under rule 8.7.

**Constitutional Corporation** has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

**Contribution Account** means the account kept for a Member under rule 8.6.

**Death Benefit** means a benefit payable under rule 4.2.

**Deed** means the deed establishing the Fund.

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person whom the Trustee believes is, or was at the date of death, dependent on the Member.

**Eligible Person** means a person able to become a member of the Fund in accordance with the Superannuation Law, and may include a Non-Member Spouse.

**Employee** means:

- (a) a full-time or part-time permanent employee of an Employer;
- (b) if the Employer is a company - a director of the company;
- (c) any other person nominated by an Employer.

**Employer** means the Employer by which an Employee is employed or nominated.

**Financial Year** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Flagging Order** has the same meaning as in the Family Law Act 1975.

**Flag Lifting Agreement** has the same meaning as in the Family Law Act 1975.

**Fund** means the superannuation fund as constituted by the Deed and the Rules.

**Fund Secretary** means a person appointed under rule 10.9.

**Gainfully Employed Person** means a person who is employed or engaged for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages.

**Investment Portfolio** means a separate part of the Fund maintained under rule 8.9.

**Investment Strategy** means the investment strategy of the Fund in accordance with rule 9.10

**Member** means a person who has been admitted to membership under rule 2.4 and has not ceased to be a Member under rule 2.10.

**Non-Member Spouse** has the same meaning as in the Family Law Act 1975.

**Payment Flag** has the same meaning as in the Family Law Act 1975.

**Payment Split** has the same meaning as in the Family Law Act 1975.

**Privacy Act** means the Privacy Act 1988.

**Required Payment Date** means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

**Reserve Account** means an account kept under rule 8.13.

**Rules** means the rules forming part of the Deed.

**Service** in relation to a Member who is:

- (a) an Employee means the most recent continuous service of a Member as an Employee and includes:
  - (i) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme sponsored by the Employer; and
  - (ii) any other period declared by the Employer to be Service; or
- (b) not an Employee means the most recent continuous period in which a Member was a Gainfully Employed Person other than as an Employee.

**Shortfall Component** has the same meaning as in the Superannuation Guarantee (Administration) Act 1992.

**Split** means the division of a Member's interest in the Fund pursuant to a Flag Lifting Agreement, a Splitting Order or a Superannuation Agreement.

**Splitting Order** has the same meaning as in the Family Law Act 1975.

**Spouse** includes a person who, although not legally married to a Member, lives (or lived at the time of the Member's death) with the Member on a bona fide domestic basis as the husband or wife of the Member.

**Superannuation Agreement** has the same meaning as in the Family Law Act 1975.

**Superannuation Authority** means the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, Australian Taxation Office or any other governmental authority or authorities responsible for administering the laws or any other rules governing the prudential supervision or promotion of superannuation funds or the availability of income tax concessions to superannuation funds.

**Superannuation Law** means any requirements under the Superannuation Industry (Supervision) Act, the Superannuation Entities (Taxation) Act, the Superannuation (Resolution of Complaints) Act, the Superannuation Guarantee (Administration) Act, the Family Law Act 1975, the Corporations Act 2001, the Social Security Act 1991 or any other law in relation to superannuation funds, or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or

- (c) which the Fund must satisfy to qualify for the most favourable social security treatment available to members of superannuation funds.

It includes any proposed requirements which the Trustee believes will have retrospective effect.

**Tax** means a Commonwealth, State, Territory or local government impost and includes (but is not limited to) income taxes, capital gains taxes, surcharges, duties, levies, rates and goods and services tax.

**Tax Act** means the Commonwealth Income Tax Assessment Act.

**Termination Date** means:

- (a) the date specified in the notice referred to in rule 13.1(a);
  - (b) 30 days after the date specified in the notice given under rule 10.2(a);
  - (c) 30 days after the date of the notice given under rule 10.2(b);
  - (d) at the expiration of the 30 day period referred to in rule 13.1(c),
- as applicable.

**Trustee** means the trustee of the Fund at any time.

## Interpretation

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) **amend** includes delete or replace;
- (f) **including** when introducing a list of items does not exclude a reference to other items of the same class;

- (g) **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (h) **tax** includes any duty or government impost.

## **Primary Purpose**

- 1.3 The primary purpose of the Fund is the provision of old age pensions.

## **2. ELIGIBILITY AND MEMBERSHIP**

### **Eligibility**

- 2.1 Any Eligible Person may make application on an Application Form to participate in the Fund.
- 2.2 The Fund may not have more than four Members at any one time unless the Trustee otherwise determines.

### **Membership**

- 2.3 Before admitting an Eligible Person as a Member, the Trustee may require the person to
  - (a) provide information which the Trustee considers relevant to the administration of the Fund, and
  - (b) select an investment strategy in accordance with the Fund investment strategy from time to time.
- 2.4 A person becomes a Member on the date when the Trustee has approved the person's application.

If permitted by Superannuation Law, the Trustee and the Member may agree that the Member is to be regarded as having become a Member on an earlier date.

- 2.5 The Trustee may reject an application.
- 2.6 Each Member is bound by the Deed and Rules.

### **Transfer to Fund**

- 2.7 The Trustee may make arrangements it considers appropriate with:
  - (a) a Member; or

- (b) any current or previous employer of the Member; or
- (c) the trustees of any superannuation fund or approved deposit fund of which the Member is, or has been, a member; or
- (d) the issuer of an annuity held by the Member, or
- (e) any other person permitted by Superannuation Law or the Tax Act;

to transfer assets to the Fund and to provide benefits in respect of the Member, which may be calculated in a different manner than set out in the Rules. The arrangement must comply with Superannuation Law.

## **Transfer from Fund**

2.8 If a Member is, or is eligible to be, a member of another superannuation fund or approved deposit fund, or a Member's interest or benefit becomes subject to a Split, the Trustee may transfer assets to the other fund. However:

- (a) the transfer must comply with Superannuation Law; and
- (b) the Trustee must not transfer more than the Member's Accumulated Credit or more than is requested by the Member or the Non-Member Spouse, as the context requires.

2.9 If the transfer satisfies the Member's entitlement to any benefit in respect of the amount transferred the Trustee may declare that it satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustee of the other fund deals with the amount transferred.

## **Membership Ceases**

2.10 A person ceases to be a Member when:

- (a) all benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made under rule 2.8 in satisfaction of all the Member's entitlement to benefits; or
- (c) all the Member's entitlement to benefits is terminated.

## **3. CONTRIBUTIONS**

### **Member Contributions**

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- 3.1 A Member may contribute any amount, at any rate, as the Member and Trustee agree.
- 3.2 Unless the Member and the Employer agree otherwise, the Employer may deduct the Member's contributions from the Member's remuneration. The Employer must pay the contributions to the Trustee:
- (a) in the manner and at the times agreed between the Employer and the Trustee; and
  - (b) within any time limit imposed by law.

### **Employer Contributions**

- 3.3 The Employer may contribute any amount or at any rate as the Employer, Member and Trustee agree.

### **General**

- 3.4 The Trustee may refuse to accept all or part of a contribution from a person without giving any reason.
- 3.5 The Trustee must not accept contributions in the Fund contrary to Superannuation Law.
- 3.6 If the Trustee finds that it has received contributions which cannot be accepted into the Fund, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for insurance effected or expenses incurred in relation to the contributions.

### **Shortfall Component**

- 3.7 The Trustee may accept a Shortfall Component as a contribution in respect of a Member.

## **4. BENEFIT ENTITLEMENT**

### **Retirement**

- 4.1 A Member who has attained age 65 or other age prescribed for payment of retirement benefits under Superannuation Law but who remains in Service on or after that age and requests payment of his or her benefit is entitled to a benefit equal to the Accumulated Credit.

### **Death**

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- 4.2 On the death of a Member the Trustee must pay a benefit equal to the Accumulated Credit.

### **Leaving Service and Other Benefits**

- 4.3 A Member who leaves Service in circumstances other than those described in rules 4.1 and 4.2, or who is entitled to a benefit in accordance with Superannuation Law, is entitled to a benefit equal to the Accumulated Credit.

### **Voluntary Deferral**

- 4.4 A Member who is entitled to a benefit may ask the Trustee to defer payment of all or part of it. The Trustee may comply with the request if Superannuation Law permits.

### **Preservation**

- 4.5 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit, then the Trustee must:
- (a) pay that part of the benefit under rule 5.1, 5.3 or 5.4 to a fund or organisation which also preserves it under Superannuation Law; or
  - (b) retain it in the Fund until it may be paid under Superannuation Law.

### **Retained Benefits**

- 4.6 Any part of a benefit retained under rule 4.4 or 4.5 remains credited to the appropriate Contribution Account pending any transfers made pursuant to the Superannuation Law until payment and the Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the Contribution Account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit as if it were a Death Benefit.

### **Required Payment Date**

- 4.7 If a Member remains in Service but reaches the Required Payment Date, the Trustee must pay the Member the Accumulated Credit or apply it to provide an annuity or pension under rule 5.1, 5.2 or 5.3.

### **Trustee Determinations**

- 4.8 A benefit is only payable if the Rules permit it.
- 4.9 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

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## **Assignments**

- 4.10 The Trustee is not bound to recognise any purported assignment or charge of a benefit, other than under the Family Law Act 1975.

## **Interest**

- 4.11 The Trustee may credit or debit interest at a rate it considers appropriate to a benefit which is paid after the date it becomes payable. However, the Trustee is not required to do so.

## **Corporations Law**

- 4.12 The Trustee must not pay a benefit to the extent that the payment results in the Trustee or an Employer contravening any law relating to corporations.

## **Forfeiture of Benefits**

- 4.13 Subject to Superannuation Law part or all of a Member's Contribution Account and/or Complying Pension Account may be forfeited:
- (a) if the Member has purported to assign, alienate or charge or any other event occurs which results in another person becoming entitled to all or part of the benefit. This rule has no effect on a Member's bankruptcy to the extent that its operation would be contrary to the Bankruptcy Act 1966;
  - (b) upon the death of a member who had been receiving a pension payable in accordance with rule 7; and
  - (c) upon a Member, who had been receiving a pension payable in accordance with rule 7, commuting that pension.
- 4.14 The Trustee must apply a forfeited benefit for one or more of the Members or the Members' Dependents or to a Reserve Account as the Trustee considers appropriate and Superannuation Law permits.

## **Family Law Act Splits**

- 4.15 In giving effect to a Split, the Trustee must reduce:
- (a) the amount in the Member's Contribution Account; or
  - (b) any benefit payable to the Member from the Fund.

- 4.16 Subject to Superannuation Law, the manner and basis of the reduction in rule 4.15 (including the apportionment of actual or anticipated costs, charges and expenses between the Member and the Non-Member Spouse) is as determined by the Trustee.
- 4.17 In giving effect to rule 4.15:
- (a) the Trustee will reduce the Member's interest or benefits from the underlying Investment Portfolios or assets of the Fund in such manner and in such proportions as it considers appropriate;
  - (b) the Trustee will not reduce the interest or benefits payable in respect of any other Member.
- 4.18 If, at the time a benefit becomes payable in respect of a Member Spouse, a Payment Flag or Flagging Order applies to the interest, the Trustee will defer payment of the benefit until the Payment Flag or Flagging Order is lifted, unless the payment is to a successor fund (as defined in Superannuation Law).

## **5. PAYMENT OF BENEFITS**

### **Purchase of Annuity**

- 5.1 If a Member entitled to a benefit asks the Trustee to apply all or part of it to purchase an annuity in the name of the Member, or of the Member and one or more Dependants, and the purchase complies with Superannuation Law, then the Trustee must comply with the request.

### **Payment of Pension**

- 5.2 If a Member entitled to a benefit asks the Trustee to apply all or part of it to provide a pension from the Fund, then the Trustee may comply with the request. A pension under this rule must be provided according to the rules set out in rule 6 or rule 7.

### **Payment to Other Fund**

- 5.3 If a person entitled to a benefit asks the Trustee in writing to pay all or part of it to another fund, and the payment complies with Superannuation Law, the Trustee must comply with the request.
- 5.4 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it if Superannuation Law permits.

### **Unclaimed Benefits**

5.5 The Trustee must comply with Superannuation Law in relation to benefits which Superannuation Law:

- (a) treats as unclaimed money; or
- (b) requires to be transferred to another fund.

## **Death Benefits**

5.6 On the death of a Member, where there is a Binding Nomination in respect of the deceased, the Trustee will, subject to Superannuation Law and the Binding Nomination Rules, pay the Death Benefit in accordance with the Binding Nomination and the Binding Nomination Rules.

5.7 On the death of a Member where there is no Binding Nomination in respect of the deceased, the Trustee will pay the Death Benefit in accordance with Superannuation Law to one or more of the former Member's Dependants or the legal personal representative of the Member or any other person to whom payment of the Death Benefit is permitted under Superannuation Law. The Death Benefit will be paid in the manner and in such proportions as the Trustee determines. Despite any nomination by a Member of a preferred Dependant the Trustee's discretion concerning the distribution of a Death Benefit will not be limited.

5.8 The Trustee may adopt rules governing the operation of Binding Nominations for the purpose of rule 5.6. The Binding Nomination Rules will be as described in Schedule A to these Rules.

## **Transfer of Assets**

5.9 At the request of a person entitled to a benefit the Trustee may, in accordance with Superannuation Law pay the benefit by transferring assets of equivalent value to the person or the person's nominee.

## **Trustee's Discharge**

5.10 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

## **Financial Incapacity**

5.11 If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her own financial affairs, and Superannuation Law permits, the Trustee may:

- (a) pay the benefit to another person to be used for the advantage of the person entitled to it; and

- (b) accept the other person's receipt as a good discharge.

The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

## **Tax**

- 5.12 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for Tax.

## **Unrestricted Benefits**

- 5.13 The Trustee may pay a benefit to a Member who has not left Service where:

- (a) the Member requests payment; and
- (b) Superannuation Law permits.

## **General**

- 5.14 The Trustee must pay all benefits in a form consistent with Superannuation Law.

## **6. PENSION BENEFITS**

### **Allocated Pensions**

- 6.1 Where this rule applies, the Trustee must pay a Member an allocated pension:
- (a) commencing on the date agreed between the Trustee and the Member which must be not later than necessary to comply with Superannuation Law; and
  - (b) terminating when the Member's Accumulated Credit has been exhausted.

### **Frequency of Payment**

- 6.2 The Trustee must pay the pension to a Member at the times agreed by the Member and the Trustee when the benefit first becomes payable from the Fund in accordance with Superannuation Law.
- 6.3 A Member may change the frequency of the pension payments if:
- (a) the change is approved by the Trustee; and
  - (b) is in a form approved by the Trustee.

- 6.4 If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension annually.
- 6.5 For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year, unless the Superannuation Law does not require a payment to be made in a Financial Year.

### **Selecting Pension Level**

- 6.6 For each Financial Year (or part of a Financial Year), the pension payments to a Member must be in accordance with the rules set out in Superannuation Law for pension benefits of the kind provided by the Fund.
- 6.7 At any time during a Financial Year a Member may select the level of pension payments for that Financial Year within the limits in rule 6.6. The selection must be in a manner approved by the Trustee.

### **Default Pension Level**

- 6.8 If at any time during a Financial Year no selection has been made for that year under rule 6.7 and a pension was being paid in the previous Financial Year, the Trustee must, subject to rule 6.15, continue to pay a pension at the level prevailing at the end of the previous Financial Year. However, the Trustee may adjust the level up to the minimum or down to the maximum so as to comply with rule 6.6.
- 6.9 If, at the time a benefit first becomes payable from the Fund, the Member has not made a selection under rule 6.7, the Trustee must, subject to rule 6.15, pay a pension at the minimum level required under rule 6.6.

### **Commutation**

- 6.10 A Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee. A commutation may only be made as permitted by the Superannuation Law.
- 6.11 On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the Accumulated Credit of the Member.
- 6.12 On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested by the Member up to the amount of the Member's Accumulated Credit.

### **Compulsory Commutation**

- 6.13 If Superannuation Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.

## **Miscellaneous**

6.14 Where the Trustee pays a pension under rule 6 or rule 7 then:

- (a) the Trustee must continue to adjust the Member's Contribution Account under rule 8; and
- (b) on the Member's death, rules 5.6 and 5.7 apply; and
- (c) the capital value of the pension and the income from it must not be used as security for a borrowing unless Superannuation Law permits; and
- (d) the pension must not be transferred to another person unless permitted by Superannuation Law.

## **Family Law Act matters**

6.15 Where the Trustee pays a pension under rule 6 or rule 7, the Trustee may adjust the frequency and level of pension payments to a Member as is required to give effect to a Split, or as otherwise required by Superannuation Law.

## **7. COMPLYING PENSIONS**

### **Pensions**

- 7.1 Where this rule applies, notwithstanding any allocated pensions payable under rule 6, the Trustee must pay a pension of any kind permitted under Superannuation Law including complying, fixed term, lifetime and life expectancy pensions provided such pensions are paid in accordance with the provisions of Superannuation Law.
- 7.2 The provisions of Superannuation Law, to the extent that they govern the regulation of the pensions described in rule 7.1 are deemed to be incorporated into these rules.

### **Commutations**

- 7.3 Rule 6.13 applies to the pensions payable under rule 7.1.
- 7.4 The Trustee may commute the whole or part of the pensions payable under rule 7.1 but only as permitted under Superannuation Law.

### **Maintenance of Pension Accounts**

7.5 Where the Trustee pays a pension under rule 7 then:

{ENW00134:4}

- (a) the Trustee must continue to adjust the Member's Complying Pension Account under rule 8;
- (b) On the Member's death any amounts contained in the Member's Complying Pension Account will be treated as a forfeited benefit and rules 4.13 and 4.14 apply instead of rule 5.2;
- (c) The capital value of the pension and the income from it must not be used as security for a borrowing unless Superannuation Law permits; and
- (d) The pension must not be transferred to another person unless Superannuation Law permits.

## **8. RECORDS AND ACCOUNTS**

### **Records**

8.1 The Trustee must keep records for the Fund;

- (a) of the matters; and
- (b) for the period; and
- (c) in the manner,

prescribed by Superannuation Law.

### **Accounts and Audit**

8.2 The Trustee must appoint an auditor who satisfies Superannuation Law.

8.3 For each Financial Year the Trustee must prepare any financial statements for the Fund which comply with Superannuation Law.

8.4 The Trustee must ensure that, for each Financial Year, the auditor:

- (a) audits the accounts and records of the Fund; and
- (b) reports in writing to the Trustee,

within the time specified by Superannuation Law.

8.5 The Trustee must give to the Employer a copy of the financial statements and auditor's report.

## **Contribution Accounts**

8.6 The Trustee must record in each Contribution Account:

- (a) all contributions made by or for, the Member;
- (b) amounts transferred under rule 2.7 which the Trustee decides to credit to the account;
- (c) life insurance premiums which the Trustee decides to debit to the account;
- (d) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
- (e) amounts debited to the account for Tax or other expenses;
- (f) amounts credited or debited to the account for earnings or losses of the Fund;
- (g) amounts paid as benefits under rule 5 from the account;
- (h) amounts transferred to other funds under rule 2.8 from the account;
- (i) amounts paid as pensions under rule 6 from the account;
- (j) amounts paid under rule 11;
- (k) amounts paid as forfeited benefits or transferred out of the account according to the rules applicable to forfeited benefits;
- (l) amounts paid from or transferred to reserves in accordance with rule 8.13; and
- (m) amounts which the Trustee is required to credit or debit to the account as the result of a Split.

## **Complying Pension Accounts**

8.7 The Trustee must record in each Complying Pension Account:

- (a) all contributions made by or for, the Member;
- (b) amounts transferred under rule 2.7 which the Trustee decides to credit to the account;
- (c) amounts debited to the account for Tax or other expenses;
- (d) amounts credited or debited to the account for earnings or losses of the Fund;



- (e) amounts paid as benefits under rule 5 from the account;
- (f) amounts transferred to other funds under rule 2.8 from the account;
- (g) amounts paid as pensions under rule 8 from the account;
- (h) amounts paid under rule 11;
- (i) amounts paid as forfeited benefits or transferred out of the account according to the rules applicable to forfeited benefits;
- (j) amounts paid from or transferred to reserves in accordance with rule 8.13; and
- (k) amounts which the Trustee is required to credit or debit to the account as the result of a Split.

## **Tax and Expenses**

8.8 The Trustee may debit to Contribution Accounts:

- (a) Tax incurred by the Trustee;
- (b) expenses of the Fund;
- (c) fees and administration expenses of the Trustee;
- (d) provisions for (a), (b) and (c),

in proportions which the Trustee considers fair and which are consistent with Superannuation Law.

## **Investment Portfolios**

8.9 The Trustee may maintain the Fund in separate parts called Investment Portfolios. For any Investment Portfolio the Trustee must select the assets which comprise the Investment Portfolio.

8.10 The Trustee may transfer assets between different Investment Portfolios.

8.11 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.

8.12 The Trustee may make rules on when and how Members may give directions to apply:

- (a) future contributions; or

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- (b) existing balances in Contribution Accounts.

to Investment Portfolios. The rules must be consistent with Superannuation Law.

## **Reserve Account**

- 8.13 The Trustee may operate a Reserve Account or multiple Reserve Accounts in a manner that is consistent with Superannuation Law.

## **9. ASSETS, INVESTMENTS, BORROWINGS**

### **Assets**

- 9.1 The assets of the Fund consist of:

- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
- (b) investments that the Trustee makes and all income on those investments.

- 9.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Rules.

### **Investments**

- 9.3 The Trustee may, subject to Rule 9.10, invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled to the money, including:

- (a) in investments authorised by the law relating to investment of trust funds;
- (b) in policies of life insurance;
- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, stocks, notes, options, debentures or other securities;
- (g) in options, hedging contracts, futures contracts and other financial instruments.

- 9.4 If Superannuation Law permits, the Trustee may:

- (a) mix investments with investments of other people or trusts; and

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(b) vary, replace, encumber and deal with the investments.

as if it were dealing with its own property.

9.5 The Trustee must invest in a manner which complies with Superannuation Law.

9.6 The Trustee may only make a loan or give financial assistance to a person if that complies with Superannuation Law.

9.7 The Trustee may appoint nominees to hold investments. The appointment must comply with Superannuation Law.

### **Borrowing**

9.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit. The Trustee may only do so to the extent that Superannuation Law permits.

### **Member Direction**

9.9 The Trustee may, subject to the other provisions of this Deed and of the Superannuation Law, accept and act upon a direction from a Member in respect of the investments in which the Contribution Account of the Member is invested.

### **Investment Strategy**

- 9.10 (a) the Trustee shall adopt and carry out an Investment Strategy for the Fund which complies with Superannuation Law.
- (b) the Investment Strategy may provide for separate member strategies in respect of the interests of individual Members or groups of Members.
- (c) the Investment Strategy shall be reviewed and may be altered or replaced at any time and from time to time as the Trustee considers appropriate.

## **10. TRUSTEE**

### **Nature**

10.1 The Trustee may be a Constitutional Corporation or one or more natural persons as allowed by Superannuation Law.

## **Removal**

10.2 The Trustee ceases to be the Trustee when:

- (a) a written notice to that effect specifying the date of cessation and signed by all of the Members is served on the Trustee; or
- (b) the Trustee retires after having given each Member 30 days' written notice to that effect; or
- (c) Superannuation Law requires.

## **Appointment**

10.3 If the Trustee is removed or retires under rule 10.2, it must use reasonable endeavours to appoint a replacement trustee.

If:

- (a) a replacement trustee is not appointed by the Trustee within 30 days of the date:
  - (i) specified in the notice given under rule 10.2(a); or
  - (ii) the notice given under rule 10.2(b); or
- (b) for any other reason the Fund does not have a trustee for a period of 30 days, then the Fund will be terminated in accordance with rule 13.

10.4 The appointment or retirement of a Trustee must:

- (a) be by notice in writing to all of the Members;
- (b) comply with Superannuation Law; and
- (c) be in writing.

10.5 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

## **Vacancy on Board**

10.6 A vacancy on the board of directors of the Trustee must be filled within any time and in the manner required by Superannuation Law.

## **Trustee's Powers**

10.7 The Trustee may do anything it considers appropriate to administer the Fund and comply with Superannuation Law, including:

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- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) compromising any claim;
- (e) giving any guarantee or indemnity;
- (f) insuring any risks;
- (g) acting as an underwriter;
- (h) making rules for rounding off contributions and benefits;
- (i) providing for and transferring liability for any tax;
- (j) electing to be bound by any legislation;
- (k) applying forfeited amounts to Contribution Accounts or Reserve Accounts;
- (l) applying amounts from Reserve Accounts to Contribution Accounts or otherwise as the trustee determines; and
- (m) purchasing, commencing or terminating the pensions referred to in rules 6 and 7.

## **Manager**

10.8 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must:

- (a) be in writing on terms which the Trustee considers appropriate; and
- (b) comply with Superannuation Law.

## **Fund Secretary**

10.9 The Trustee may appoint a Fund Secretary to the Fund.

## **Delegation**

10.10 The Trustee may delegate any of its powers, duties and discretions to any person.

## **Trustee's Liability**

10.11 The Trustee is only liable for its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

## **Trustee's Indemnity**

10.12 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) Superannuation Law prevents it.

10.13 A Member or Employer must indemnify the Trustee for:

- (a) any liability incurred; or
- (b) any overpayment made; or
- (c) any failure to provide for Tax,

as a result of the Trustee relying on information given to it by that Member or Employer.

10.14 The benefit of rules 10.11 to 10.13 also applies to:

- (a) any directors or employees of the Trustee or an Employer;
- (b) the Fund Secretary;
- (c) any other person nominated in writing by the Trustee;
- (d) a former Trustee or any person who previously fell within any of (a) to (c).

## **Employer Authorisation**

10.15 The Trustee may treat a written or oral authorisation given, or purported to be given, by a director of the Employer as a valid authorisation by the Employer.

## **Member Authorisation**

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

## **Trustee's Discretions**

10.17 The Trustee and any officer of the Trustee may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.

10.18 The Trustee is completely unrestricted in the exercise of its powers and discretions.

## **11. REMUNERATION OF TRUSTEE**

### **Trustee's Fees**

11.1 The Trustee may be remunerated for its role as trustee of the Fund from the assets of the Fund if permitted by Superannuation Law.

11.1A The Trustee is entitled to receive a fee in respect of each of the following:

- (a) a Payment Flag;
- (b) a Payment Split;
- (c) implementing a Flag Lifting Agreement that does not provide for a Payment Split;
- (d) an order terminating the operation of a Payment Flag;
- (e) an application made in accordance with Superannuation Law for information about a superannuation interest; or
- (f) any other thing done by the trustee in relation to a Flag Lifting Agreement, a Superannuation Agreement, a Flagging Order, a Splitting Order or any other order made in accordance with the Family Law Act 1975.

11.1B The Trustee may determine the level of any fee referred to in rule 11.1A in accordance with Superannuation Law.

11.1C The Trustee may debit or charge any fee referred to in rule 11.1A from a Member or Non-Member Spouse in accordance with Superannuation Law.

11.2 The Trustee must disclose to Fund members details of the remuneration received in accordance with the requirements of Superannuation Law.

11.3 The Trustee may realise assets of the Fund to enable its fees to be paid.

11.4 The fees payable to the Trustee under rule 11.1 are inclusive of GST.

11.5 Despite any other provision of these Rules, where the Trustee is satisfied that owing to changed economic circumstances (interpreted as set out below), it is reasonable to vary the fees and charges payable to the Trustee under rule 11.1 and rule 11.1A, the fees may be varied by a deed supplemental to these Rules by stipulating such other

percentage amount as the Trustee determines, and any variation of the fees must be notified by notice of variation despatched not more than three Business Days after the date of the notice to each member noted in the register on that day provided that any variation of the fees will not become effective prior to the expiration of reasonable notice (being not more than one month after the date of the notice of variation).

11.6 For the purposes of this clause:

**“GST”** means goods and services tax payable under the A New Tax System (Goods and Services Tax) Act 1999 and regulations.

**“changed economic circumstances”** includes, without limitation, any change in the rate of goods and services tax payable on the supply of the Trustee's services, or any amendment to the GST Law, including the *A New Tax System (Goods and Services Tax) Act 1999* and regulations.

## **12. ADMINISTRATION**

### **Expenses**

12.1 All the expenses in connection with the Fund or the administration of the Trustee are payable from the Fund.

### **Deed and Rules**

12.2 A Member may inspect a copy of the Deed and Rules at the Trustee's office during normal business hours.

### **Giving of Information**

12.3 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.

12.4 The Trustee may require a Member to have a medical examination.

12.5 The Trustee must give:

- (a) each Member;
- (b) each Employer;
- (c) the Superannuation Authority;
- (d) the trustee of any other fund to which a benefit is transferred;
- (e) any other person,



the information which must be given under Superannuation Law at a particular time.

## **Confidentiality**

- 12.6 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

## **Dispute Resolution**

- 12.7 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
  - (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

## **Tax File Numbers**

- 12.8 The Trustee may and, if Superannuation Law so requires, shall request that all Members provide it with their respective Tax File Numbers. Such Tax File Numbers shall be kept, and can only be disclosed or otherwise used, strictly in accordance with Superannuation Law, Tax Act and the Privacy Act.

## **Notices**

- 12.9 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post from within Australia to the person's last known address.
- 12.10 If the notice or communication is posted, it is taken to be received on the third business day after posting.

## **Power of Attorney**

- 12.11 Each Member irrevocably appoints the Trustee as the Member's attorney to do all things which the Trustee considers appropriate to administer the Fund.

## **Governing Law**

12.12 The Fund and the Deed and Rules are governed by the law in force in New South Wales.

## **13. TERMINATION OF THE FUND**

### **Events of Termination**

13.1 The Fund will be terminated if:

- (a) all of the Members give written notice to the Trustee that the Fund is to terminate at a date specified in the notice;
- (b) a replacement trustee is not appointed within 30 days of the Trustee being removed under rule 10.2(a) or the date of notice given by the Trustee under rule 10.2(b); or
- (c) for any reason the Fund does not have a trustee for a period of 30 days.

### **Notification**

13.2 The Trustee shall notify the Members of the termination of the Fund in accordance with Superannuation Law.

### **Contributions**

13.3 Any contributions in arrears at the Termination Date must be paid immediately.

13.4 The Trustee must not accept any other contributions after the Termination Date.

### **Application of Fund**

13.5 On termination, the Trustee must apply the Fund assets in this order of priority:

- (a) to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable;
- (b) to provide in respect of each Member:
  - (i) any benefit which became payable before the Termination Date; or
  - (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the Termination Date; and

- (c) to increase any benefits as the Trustee decides, including applying any amounts in the Reserve Account to increase the Contribution Accounts of Members.

## **Payment of Benefits**

- 13.6 A Member may not receive a benefit under rule 13.5 before Superannuation Law permits.
- 13.7 If a Member dies before receiving a benefit provided under rule 13.5, the Trustee must pay it as if it were a Death Benefit.

## **14. AMENDMENT OF DEED AND RULES**

### **Power to Amend**

- 14.1 The Trustee may, subject to the Superannuation Law, amend any of the provisions of the Deed or Rules including this rule 14.

### **Form of Amendment**

- 14.2 An amendment must be in writing.

### **Date of Effect**

- 14.3 An amendment may take effect from a date before or after the time it is made.

### **Limitation of Power**

- 14.4 No amendment may alter a benefit entitlement contrary to Superannuation Law.
- 14.5 No amendment may enable an individual to be appointed as Trustee unless Superannuation Law permits.

### **Notification**

- 14.6 The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with Superannuation Law. However, failure to notify does not invalidate the amendment.

## **15. SUPERANNUATION LAW**

### **Compliance Rule**

- 15.1 All the standards required by Superannuation Law to be included in the governing rules of superannuation funds form part of these Rules, whether or not they are explicitly stated in the Rules.
- 15.2 However, if:
- (a) a standard is no longer required to be included; or
  - (b) the Superannuation Authority, apparently acting within its powers, does not require it to be complied with,
- then that standard ceases to be included by this rule.
- 15.3 A standard included by rule 15.1 prevails over any other rule which is inconsistent with it.

### **Saving Provision**

- 15.4 If a provision of the Deed or Rules would otherwise be invalid in whole or part because it:
- (a) subjects the Trustee to direction by another person; or
  - (b) permits a person to exercise a discretion without the consent of the Trustee,
- then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

## **Schedule A**

**Rules for Binding Death Benefit Nominations adopted for**

***BERENYI SUPER FUND***

## **Rules for Binding Death Benefit Nominations**

Under the terms of the trust deed governing the Berenyi Super Fund, members may nominate dependants (and legal representatives) to receive the whole or a specified portion of the benefit payable in the event of the member's death. The trust deed also provides that the trustee may prescribe rules for the making of binding nominations and any other matter in respect of, or arising from, them.

The trustee has adopted these rules for that purpose. These rules may be amended by resolution of, or in writing by, the trustee at any time.

### **1. DEFINITIONS AND INTERPRETATION**

#### **Definitions**

**Binding Nomination** means the last effective Nomination Form made, confirmed or amended by a Nominating Member in accordance with these rules (as amended) which has not been revoked by the Member.

**Death Benefit** means a benefit payable in respect of a member on the member's death under the governing rules of the Fund.

**Default Provisions** means the provisions in the trust deed of the Fund governing the payment of Death Benefits where there is no current Binding Nomination.

**Eligible Nominated Beneficiary** means a person who is nominated to receive a portion of the Death Benefit in respect of a Nominating Member and who is eligible to receive a benefit under the Superannuation Law at the date of the Nominating Member's death.

**Nominated Person** means a person who is nominated to receive a portion of the Death Benefit in respect of the Nominating Member in a Nomination Form.

**Nominating Member** means the member of the Fund who makes a Binding Nomination.

**Nomination Form** means a form approved by the trustee which, if completed and lodged in accordance with these rules at the time the nomination form is completed, would constitute a Binding Nomination.

**Superannuation Law** means any requirements under the Superannuation Industry (Supervision) Act, the Superannuation Entities (Taxation) Act, the Superannuation (Resolution of Complaints) Act, the Superannuation Guarantee (Administration) Act or any other law in relation to superannuation funds, or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

It includes any proposed requirements which the Trustee believes will have retrospective effect.

## **2. MAKING AND CONFIRMING BINDING NOMINATIONS**

- 2.1 The trustee may prescribe the form and content of Nomination Forms.
- 2.2 In order for a completed Nomination Form to constitute a Binding Nomination it must:
  - (a) comply with all requirements prescribed by the SIS Regulations<sup>1</sup> and these rules for the making of binding death benefit nominations; and
  - (b) be delivered into the trustee's possession prior to the member's death.
- 2.3 For the purposes of these rules in order to constitute a Binding Nomination a Nomination Form must be witnessed by two persons who are not referred to in the Nomination Form.
- 2.4 2.4 The trustee will seek clarification from the Nominating Member where required by Superannuation Law.

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<sup>1</sup> SIS requires the following:

- (a) The Nomination Form must be signed and dated by the Nominating Member in the presence of 2 witnesses, being persons:
  - (i) each of whom has turned 18; and
  - (ii) neither of whom is a person mentioned in the notice.
- (b) The Nomination Form must contain a declaration, signed and dated by the witnesses stating that the notice was signed by the member in their presence.
- (c) The trustee must provide the member with information that the trustee reasonably believes the member reasonably needs to understand the rights of the member in respect of binding nominations.
- (d) Each of the persons mentioned in the Nomination must be a legal personal representative or dependant of the Nominating Member.
- (e) The proportion of the benefit to be paid to each of the persons must be certain or readily ascertainable.

- 2.5 The trustee may (but is not required to) ask the Nominating Member to confirm that a Nominated Person is an Eligible Nominated Beneficiary.
- 2.6 Eligibility is determined at the date of death. The fact that a Nominated Person is not an Eligible Nominated Beneficiary at the date the Nomination Form is made or the date the trustee receives the Nomination Form will not affect the nomination of that person or the validity of the Nomination Form.
- 2.7 The trustee may require proof that a Nomination Form was actually made by the person by whom it purports to have been made.
- 2.8 A Nominating Member may confirm an existing Binding Nomination prior to its ceasing to have effect by giving to the trustee a notice to that effect signed and dated by the Nominating Member.

### **3. EVENTS AFFECTING AND EXISTING NOMINATION**

- 3.1 A Binding Nomination will cease to have any effect:
  - (a) In circumstances prescribed by Superannuation Law;
  - (b) If the Nominating Member marries or remarries since the Binding Nomination was made;
  - (c) If the Nominating Member divorces since the Binding Nomination was made.



#### **4. ADJUSTMENTS AND VARIATIONS TO BINDING NOMINATIONS**

4.1 In the event of:

- (a) the death of any Nominated Person prior to the death of the Nominating Member; or
- (b) the Nominated Person not being an Eligible Nominated Beneficiary at the date of the Nominating Member's death; or
- (c) the Nominated Person waiving their rights to receive any benefit,

then the benefit that is specified to be paid to the Nominated Person under the Nomination Form will be distributed equally amongst the surviving Eligible Nominated Beneficiaries (if any). If there are no surviving Eligible Nominated Beneficiaries the Death Benefit will be paid in accordance with the Default Provisions.

4.2 In the event of the death of any Eligible Nominated Beneficiary after the death of the Nominating Member, the benefit that is specified to be paid to the Eligible Nominated Beneficiary pursuant to the Binding Nomination will be distributed to the legal personal representative of the Eligible Nominated Beneficiary.

4.3 In the event that the sum of the benefits to be distributed amongst the surviving Eligible Nominated Beneficiaries is other than 100% of the Death Benefit, and the trustee has not clarified the matter prior to the death of the Nominating Member, the proportions specified will be adjusted so that the sum of the proportions is 100% with the adjustments being proportional to the initial distributions calculated to one decimal point.

*For example:*

$$A = 60\%$$

$$B = 40\%$$

$$C = 30\%$$

*The proportional adjustments would be worked out as follows:*

$$A = 60\%/130\% = 46.2\%$$

$$B = 40\%/130\% = 30.7\%$$

$$C = 30\%/130\% = 23.1\%$$

- 4.4 In the event that a Binding Nomination contains Eligible Nominated Beneficiaries but does not specify any proportion of the Death Benefit to be distributed to any of them, and the trustee has not clarified the matter prior to the death of the Nominating Member, the Death Benefit will be distributed equally amongst all of the Eligible Nominated Beneficiaries.
- 4.5 In the event that a Binding Nomination contains Eligible Nominated Beneficiaries and specifies a proportion of the Death Benefit to be distributed in respect of some but not all of them, and the trustee has not clarified the matter prior to the Nominating Member's death, then:
- (d) If the sum of the proportions that are specified is less than 100% - the difference between (1) the sum of the proportions specified and (2) 100% will be distributed equally amongst the Eligible Nominated Beneficiaries in respect of whom no distribution is specified;
  - (e) If the sum of the proportions that are specified is equal to 100% - the Eligible Nominated Beneficiaries in respect of whom no distribution is specified will not be entitled to receive any portion of the Death Benefit.

## **5. NEW BINDING NOMINATIONS AND AMENDMENTS TO EXISTING BINDING NOMINATIONS**

- 5.1 If the trustee receives a Nomination Form which constitutes a Binding Nomination for a Member the most recent Binding Nomination takes effect immediately and all previous Binding Nominations cease to have any further effect from that time. Where the most recent Nomination Form does not constitute a Binding Nomination the previous Binding Nomination ceases to have effect immediately and any benefit that becomes payable before any Binding Nomination is made by the member will be paid in accordance with the Default Provisions.
- 5.2 Binding Nominations may only be amended or revoked by the Nominating Member by written notice to the trustee signed by the member and witnessed by persons eligible to witness Binding Nominations under rule 2<sup>2</sup>.

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<sup>2</sup> See SIS Regulation 6.17A(5) (b).

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