

Deed of Variation of Mansfield Family Super

(Self Managed Superannuation Fund)

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SKB:EDW:COAS0006_180006530_007.DOCX



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Reference Schedule

Name of Fund: Mansfield Family Super

Date of Original Trust Deed: 1 February, 2017

Date of this Deed of Variation: 9 March 2018

Trustees:

- (1) Mark Damien Mansfield of 3 Montys Place, North Mackay QLD 4740
- (2) Kathryn Gayle Mansfield of 3 Montys Place, North Mackay QLD 4740

Members:

- (1) Mark Damien Mansfield of 3 Montys Place, North Mackay QLD 4740
- (2) Kathryn Gayle Mansfield of 3 Montys Place, North Mackay QLD 4740

Deed of Variation of Mansfield Family Super

This Deed is made on the date specified in the Reference Schedule

Parties: Mark Damien Mansfield of 3 Montys Place , North Mackay QLD 4740 ("Trustee")

And: Kathryn Gayle Mansfield of 3 Montys Place , North Mackay QLD 4740
("Trustee")

Whereas:

- A. The Trustee is the trustee of Mansfield Family Super (the "Fund") pursuant to a Deed made on 1 February, 2017 (the "Trust Deed").
- B. Pursuant to clause 25.2 of the Trust Deed, the Trustee has the power to amend the terms of the Trust Deed.
- C. The Trustee wishes to vary the Trust Deed so as to update it to comply with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Superannuation Industry (Supervision) Regulations 1994 (Cth) as amended.

The Trustee hereby varies the terms of the Trust Deed as follows:

1. Deletion of Clauses

The Trust Deed shall be varied by deleting all the existing governing rules in the Trust Deed.

2. Insertion of Clauses

The Trust Deed shall be varied by inserting all the clauses, rules and Schedules contained in Annexure "A" to this Deed of Variation.

3. Limits on Amendments

Notwithstanding anything contained in this Deed of Variation, this Deed does not and will not:

- 3.1. Vary the purpose of the Fund;
- 3.2. Reduce the accrued benefits of the Members;
- 3.3. Contravene any provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth) or the Superannuation Industry (Supervision) Regulations 1994 (Cth).

4. Notice to Members

As soon as practicable, the Trustees will advise the Members of the Fund of the nature and purpose of the amendment and the effect (if any) on their entitlements.

5. Effective Date

This variation is to take effect as at the date of this Deed.

Annexure "A"

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Operative Part:

1. Interpretation

1.1. Definitions

The Definitions appear in Schedule 1 to this Deed.

1.2. Prescribed Law to Prevail

This 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 a 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.

1.3. Interpretation Rules

In this Deed, unless the context requires otherwise:

- (a) Terminology used in this Deed which is not otherwise defined in this Deed has the same meaning as under the Prescribed Law;
- (b) A reference to a word includes the singular and the plural of the word and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A term which refers to a natural person includes a company, a partnership, an association, a corporation, a body corporate or a joint venture;
- (e) Headings are included for convenience only and do not affect interpretation;
- (f) A reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (g) Includes, means includes without limitation;
- (h) A reference to a part, clause, part, annexure, exhibit or schedule is a reference to an item of that type in or to this Deed;
- (i) A reference to this Deed includes any annexure and any schedule (if any) to this Deed;

- (j) A reference to a statute or statutory provision includes but is not limited to a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;
- (k) A covenant or an agreement between more than one person binds them jointly and severally;
- (l) A reference to any legislation (including subordinate legislation) in this Deed shall include any amendments, variations or new legislation replacing the legislation from time to time;
- (m) Any reference to "State" includes a reference to "Territory"; and
- (n) If any term or provision of the Deed is unenforceable or inconsistent with the Prescribed Law then it shall be severed from the Deed or read down but so as to maintain all other terms of this Deed so far as it is possible to do so.

2. Basic Rules for Self Managed Superannuation Funds

2.1. Conditions of an SMSF

This Fund shall be established and at all times operated and maintained as a Self-Managed Superannuation Fund under the Prescribed Law.

2.2. Sole Purpose

It is a requirement of this Deed that:

- (a) The trustee of the Fund must be a Constitutional Corporation; or
- (b) Where the trustee is a natural person or persons, that the sole or primary purpose of this Fund is to provide Old Age Pensions to its Members.

2.3. Sub-Plans

The Trustee may, for any objective it considers reasonable and prudent, break up the Fund into one or multiple sub-plans provided that no Member's Benefits or entitlements are reduced without informed, written consent being given from the Member.

The Trustee must maintain the Memberships, Contributions, Assets and Liabilities in the sub-plan for payment of Benefits separately from the remainder of the Fund.

3. Membership

3.1. Additional Members

- (a) Application by Additional Members

The Trustee may at anytime admit additional person/s as Members to the Fund provided that:

- (i) Each of the Applicants have completed and submitted a Membership Application; and

- (ii) By accepting the new member, it would not cause the maximum number of members for a compliant SMSF permitted by the Act to be exceeded.

(b) Eligible Members

The Trustee may admit as a Member, any person who is or has at any time been an Employee or a Child of a Member and/or any other person acceptable to the Trustee and Regulator. In determining whether an Applicant is acceptable, the Trustee may request in writing such information as the Trustee thinks necessary for this purpose. If the Applicant fails to provide the requested information, then the Trustee may decline to accept the Applicant as a Member of the Fund.

(c) Trustee May Refuse Members

The Trustee may, for any reason and in its sole discretion, refuse to accept a Membership Application received.

(d) Additional Member who is a Minor

A Minor's parent or guardian may make application for the Minor to become a Member of the Fund by completing a Membership Application on behalf of the Minor. The parent or guardian of the minor shall make all decisions regarding the Minor's membership in the Fund until the Minor reaches the age of eighteen (18) years. Once the Minor reaches the age of eighteen (18) years then the Minor will become a Trustee of the Fund.

(e) Additional Member to Consent to be Trustee

Unless the Member's LPR is acting in compliance with the Prescribed Law, each Applicant must consent to becoming a Trustee of the Fund or in the case of a Corporate Trustee, a Director unless the Applicant is disqualified from acting as Trustee.

(f) Bound by Deed

Each Applicant of the Fund who completes and submits a Membership Application to the Trustee is deemed to be bound by the provisions of this Deed (as if the Applicant was an initial Member under this Deed).

(g) Comply with SMSF Rules

When admitting new Members to the Fund, the Trustee must ensure that it does not offend the rules for SMSF as set out in clause 2.

(h) Commencement of Membership

The Applicant's commencement as a Member of the Fund shall be such date as specified by the Trustee or if no date is specified and provided the Application has not been rejected by the Trustee/s, shall be seven (7) days from the date which the Applicant submitted his or her Membership Application to the Trustee. The Applicant will become a Trustee of the Fund on the same date as the Applicant becomes a Member of the Fund.

(i) Conditions on Membership

The Trustee may impose such conditions on the Applicant's membership and may alter the conditions at anytime.

3.2. Member Disclosure

A Member must immediately notify the Trustee if:

- (a) The Member becomes an Employee of another Member who is not a Relative of the Member;
- (b) The Member's circumstances have changed such that the Member is disqualified from acting as Trustee.

If the Trustee receives notice of either of the above events, then the Trustee must ensure that the Member ceases to be a Member of Fund within six (6) months of the event having occurred.

3.3. Classes of Members

The Trustee may split the Members into different classes as it deems appropriate and attach different conditions, criteria, Benefits and entitlements to each class provided that the split does not cause any Member's Benefits or entitlements to be reduced without consent.

3.4. Ceasing of Membership

A person will cease to be a Member of the Fund upon any of the following events:

- (a) The Member's death; or
- (b) The Member ceasing to be Trustee of the Fund or in the case of a Corporate Trustee, ceasing to be a Director unless the Prescribed Law does not require the ceasing of membership in that instance (for example, where the Member has lost capacity); or
- (c) When Benefits payable to or for the Member cease to be payable; or
- (d) When the whole of the Member's Benefits are paid to the Member or to an Approved Arrangement in favour of the Member; or
- (e) The Prescribed Law deems or require that the membership must cease.

4. Accounts

4.1. Trustees' General Ability

Subject to complying with the Prescribed Law, the Trustee/s may from time to time, as they deem fit, establish and maintain accounts and/or reserves and develop processes for managing same, as appropriate for the benefit of the Members.

The Trustee must formulate and give effect to a strategy for the prudential management of any reserves consistent with the Investment Strategy and its capacity to discharge liabilities as and when they fall due.

4.2. Accumulation Account

- (a) Establish Accumulation Account

The Trustee must establish an Accumulation Account for each new Member of the Fund.

(b) Credits to Accumulation Account

The Trustee must credit to a Member's Accumulation Account:

- (i) All Contributions made by, for, or in respect of a Member;
- (ii) All Contributions allocated to the Member's Accumulation Account from the Non-Compulsory Contributions Reserve;
- (iii) All Benefits and entitlements which are rolled-over or transferred to the Fund in respect of a Member pursuant to this Deed;
- (iv) All income which is allocated to the Member's Accumulation Account, earned from investments of the Fund or in respect of a sub-plan (where a Member is a member of a sub-plan);
- (v) Any amount allocated to the Member's Accumulation Account by the Trustee from any reserves held by the Fund or sub-plan (where the Member is a member of a sub-plan);
- (vi) The proceeds of any insurance policy or annuity effected by the Trustee for a Member or a Beneficiary which the Trustee deems appropriate to credit to the Member's Accumulation Account;
- (vii) Any refunds of overpaid tax, levies or other charges together with interest accrued on such sums (if any) in circumstances where the tax, levies or other charges were directly deducted from the Contributions made by, for or in respect of a member; and
- (viii) Any other amount that the Trustee thinks appropriate to credit to the Member's Accumulation Account.

(c) Deductions from Accumulation Account

The Trustee must debit from a Member's Accumulation Account, where necessary:

- (i) Such proportion as the Trustee deems appropriate of:
 - (A) The expenses associated with setting up, operating, and winding up the Fund;
 - (B) Any administrative costs associated with the setting up, operating, and winding up of the Fund;
 - (C) The premiums of any group insurance policies taken out by the Trustee for a number of or class of Members and/or Beneficiaries;
 - (D) Any tax payable in respect of any income derived by the Fund and credited to the Member's Accumulation Account;
- (ii) Any taxation assessed on the Member's Contributions, payment of Benefits to the Member or Member's Beneficiaries or as a consequence of a rollover, commutation or transfer which are required to be taken directly from a Member's Contributions;

- (iii) Any amounts required to be paid to the Regulator as a consequence of a Member failing to provide the Member's Tax File Number;
- (iv) Any amounts required to be paid by the Fund for overpayment of the Government Co-Contribution;
- (v) Any amount rolled-over or transferred out of the Fund in respect of a Member;
- (vi) The costs of any annuity or premiums on any policy of insurance effected for a Member by the Trustee;
- (vii) Any amount allocated to a Pension Account of a Beneficiary; and
- (viii) An amount to be allocated and credited to another Member's Accumulation Account pursuant to a Contributions-Split accepted by the Trustee;
- (ix) Any other amount that the Trustee thinks appropriate to debit from the Member's Accumulation Account.

Where a Trustee has discretion to determine what proportion of amounts should be debited from a Member's Accumulation Account, the Trustee must exercise that discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of debits from a Member's Accumulation Account. The Trustee's decision as to the allocation of amounts to be debited shall be final.

4.3. Pension Account

(a) Credits to Pension Account

If the Trustee decides to pay a Pension to a Member or Beneficiary, the Trustee must transfer or allocate amounts/assets to one or multiple Pension Accounts established in order to pay the pension, up to the Transfer Balance Cap where applicable.

(b) Debits to Pension Account

All expenses incurred in establishing or administering a Pension Account including taxes, levies or other outgoings associated with the Pension Account may be deducted from the Pension Account balance.

4.4. Accounts for Non-Member Spouses

(a) Family Court Orders

If an order is made under the *Family Law Act* with respect to any Member's Superannuation Interest, the Trustee may be required to:

- (i) Establish and maintain a new Accumulation Account for a Non-Member Spouse;
- (ii) Transfer or rollover a Non-Member Spouse's Superannuation Interest to another Approved Fund;
- (iii) Split with the Non-Member Spouse, the sum standing to the credit of a Member's Accumulation Account;

- (iv) Classify or categorise part of a Member's Superannuation Interest which is to be paid to a Non-Member Spouse;
- (v) Notify the Members and the Non-Member Spouse of any orders requiring a Payment Split.

(b) Costs

The Trustee may deduct any costs of complying with the order from the Non-Spouse's Interest including any costs incurred through the Trustee seeking professional advice.

4.5. Non-Compulsory Contributions Reserve

(a) Non-Mandated Contributions

The Trustee may establish a Non-Compulsory Contributions Reserve for the Fund or for each sub-plan (where there are sub-plans within the Fund) to which the Trustee may credit all Non-Mandated Contributions.

(b) Allocation of Funds from Non-Compulsory Contributions Reserves

Upon any amounts being received into the Non-Compulsory Contributions Reserve, the Trustee must, in the Trustee's discretion, either:

- (i) Use the reserve for the Fund's activities; or
- (ii) Within twenty-eight (28) days after the end of the month (or if not reasonably practicable, such longer period as is reasonable in the circumstances), allocate the amounts to the Members' Accumulation Accounts in such proportions as the Trustee shall determine.

(c) Direct Allocation from Non-Compulsory Contributions Reserves to Accumulation Accounts

Notwithstanding the above, nothing in this clause shall prevent the Trustee from allocating and crediting any Non-Mandated Contributions received directly to the Members' Accumulation Accounts (rather than to the Non-Compulsory Contributions Reserve).

4.6. Income Reserve

(a) Credit Income to Income Reserve

Subject to the Prescribed Law, the Trustee may credit:

- (i) Any income earned by the Fund or by a sub-plan (where a sub-plan exists in the Fund) through investments; and
- (ii) Any proceeds of an insurance policy that the Trustee decides not to credit immediately to the Members' Accumulation Accounts or Pension Reserves;

to an Income Reserve.

(b) Application of Income Reserves

The Trustee, in its discretion, may use the Income Reserves for such purposes of the Fund as the Trustee deems fit including (but not limited) to smoothing out investment earnings being allocated to Member's Accumulations Accounts and partially or fully satisfying any debts owing by the Fund.

(c) Allocation of Income Reserve to Accumulation Accounts

The Trustee may allocate part or all of the remaining Income Reserve:

- (i) Where the income is earned by the Fund's investments - to the Member's Accumulation Accounts; or
- (ii) Where the income is earned by the Fund attributable to investments for a sub-plan - to the Accumulation Accounts of Members of the sub-plan;

in such proportions as the Trustee, in its sole discretion, may decide.

(d) Exercise of Discretion

The Trustee must exercise its discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of Income Reserves to a Member's Accumulation Account. The Trustee's decision as to the proportion of Income Reserves allocated to Member's Accumulation Accounts shall be final.

(e) Tax from Income Reserve

The Trustee must ensure payment is made of any tax assessable in respect of income earned by the Fund and deduct any taxation assessed from the Income Reserves or the Member's Accumulation Accounts as is required.

4.7. Other Reserves

(a) Credits to Other Reserves

The Trustee may, if it desires, transfer or allocate amounts to one or multiple other reserves as the Trustee may establish from time to time.

(b) Debits to Other Reserves

All expenses incurred in establishing or administering any other reserve including taxes, levies or other outgoings associated with the reserve may be deducted from the reserve balance.

4.8. Transfer between Accounts or Reserves

The Trustee may transfer amounts between the Member's Accumulation Accounts, Income Reserves, Pension Account and other accounts and reserves as the Trustee thinks fit provided the Trustee does so in a just, reasonable and consistent fashion and does not infringe the Prescribed Law (particularly in respect of the Transfer Balance Cap).

5. Contributions

5.1. When Contributions May be Accepted

Unless a Prohibited Contribution, the Trustee may accept Contributions from any Member.

5.2. Trustee May Reject

The Trustee, in its sole discretion, may refuse to accept a Contribution from Member.

5.3. Prohibited Contribution

The Trustee must not accept a Contribution if:

- (a) To do so would breach the Prescribed Law;
- (b) Where the Member has not provided their Tax File Number;
- (c) It would cause the Member's relevant contribution cap to be exceeded;
- (d) It would cause the Fund to become non-complying;
- (e) The Trustee is directed not to accept the Contribution by the Regulator, a Court or Tribunal; or
- (f) It is In Specie and would cause a contravention of the Restricted Investment rules, unless an exemption applies under the Prescribed Law.

5.4. Carry Forward of Contributions

If permitted by, and subject to any conditions, under the Prescribed Law, a Member may 'carry forward' any unused amounts on their concessional contributions cap.

5.5. Government Co-Contributions

Subject to the Prescribed Law, the Trustee may accept Contributions received in respect of a Member under the Co-Contribution Act.

5.6. Contribution for Spouse or Child

The Trustee may accept Eligible Spouse Contributions or Child Contributions subject to the rules in Regulation 7.04.

5.7. Splitting-Contributions

The Trustee may accept Splitting-Contributions in accordance with clause 5.11.

5.8. Contributions from Employers

The Trustee may accept Contributions from any Employer, even if such Employer has not given written notice of their agreement to the terms and conditions in Deed.

5.9. Allocation of Funds

The Trustee must allocate Contributions received by, from or in respect of Members within twenty-eight (28) days after the end of the month or, if not reasonably practicable, within such longer period as is reasonable in the circumstances.

5.10. Return of Contributions

Where a Contribution is:

- (a) A Prohibited Contribution; or
- (b) An Excess Contribution; or
- (c) Has been rejected by the Trustee; then

the relevant Contribution (or part thereof) ("Return Contribution") must be returned to the person or entity who made the Contribution as soon as is practicable, provided that the Trustee may first deduct any taxation incurred/payable in respect of the Return Contribution and the costs and expenses associated with receiving and/or returning the Return Contribution.

Until such time as the Return Contribution has been returned/refunded/transferred back to the person or entity who made the Contribution, it shall be deemed to be held on a sub-trust for the particular Member it is intended to benefit.

5.11. Contribution-Splitting

- (a) Application to Trustee

A Member may apply to the Trustee to rollover, transfer or allot an amount of Benefits for the benefit of the Member's Spouse. An application to the Trustee may be made in the Approved Form (as at the date of this Deed - a 'Superannuation Contributions Splitting Application') or subject to the Prescribed Laws, as otherwise approved by the Trustee.

- (b) Contributions Able to be Split

The Trustee may only split Splittable Contributions in accordance with the Prescribed Law. The Member may apply for the rollover, transfer or allotment of the amount of Splittable Contributions made by or on behalf of the Member in:

- (i) The last financial year that ended before the application (ie. a Member can only request a contributions split from 1 July for Contributions made in the year up to the previous 30 June); or
- (ii) The financial year in which the application is made but only where the Member's entire Benefit is to be rolled-over or transferred in that year.

- (c) Trustee's Decision

A Trustee may decide whether it will accept or reject the Splitting Application.

Provided however that a Trustee may only accept a Member's Contribution-Splitting application if all of the following requirements are satisfied:

- (i) The application complies with the Prescribed Law;
- (ii) The Trustee has no reason to believe that the Receiving Spouse's Statement is untrue; and

- (iii) The application relates to an amount that is not more than the Maximum Splittable Amount for the Year.

The decision as to whether to accept a Member's Contribution Splitting application is at the sole discretion of the Trustee and the Trustee may accept an application subject to any terms and conditions it wishes to impose (subject to the Prescribed Law).

If the Trustee accepts a Member's Contribution Splitting application, then the Trustee must rollover, transfer or allot the amount within ninety (90) days of receiving the Benefit.

6. Payment of Benefits

6.1. Prescribed Law to Prevail

The Trustee may pay benefits to the Members or other entitled persons in accordance with the Prescribed Law. To the extent that any of the provisions of this Deed may be inconsistent with the Prescribed Law, the Prescribed Law shall prevail.

6.2. Cashing Restriction "Nil"

If the Cashing Restriction with respect to any of the Benefits above is "nil" then, then subject to any restrictions in this Deed and the Prescribed Law, the Benefits may be cashed as one or multiple Lump sums, one or multiple Pensions or a combination.

6.3. Payment of Death Benefit

- (a) When Payable

As soon as is reasonably practicable after the death of a Member, the Trustee must determine and pay the Member's Death Benefit in accordance with this clause and the Prescribed Law.

- (b) Trustee's Discretion as to Recipient

Subject to any valid Reversionary Pension Nomination, Binding Death Benefit Nomination or Non-Binding Death Benefit Nomination by the deceased Member, the Trustee shall, in its sole discretion elect, having due regard to any wishes of the Member contained in a Preferential Death Nomination or an invalid or failed Reversionary Pension Nomination, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination:

- (i) Which of the following persons shall receive the Member's Death Benefit (noting that the Trustee may decide to pay the entire Death Benefit to only one of these persons) – the Member's Legal Personal Representative and the Member's Dependants;
- (ii) In what proportions the beneficiaries will receive the benefits; and
- (iii) How the benefits will be paid (form).

By way of clarity, if a Member has made a Reversionary Pension Nomination and either a Binding Death Benefit Nomination or Non-Binding Death Benefit Nomination which conflict (e.g. nominate different Beneficiaries or methods by which they are to take the Death Benefit), then the latest in time will prevail.

- (c) Notifying Death Benefit Beneficiary

If on a Member's death, the Death Benefit is payable to a person or persons other than the deceased Member's LPR, then the Trustee must notify such person or persons as to why the death benefits are payable to them, the sums payable and any conditions on which the sums are to be paid.

(d) Lost Death Benefit Beneficiary

If the Trustee, after exhausting all reasonable efforts, is unable to locate a Dependant to whom death benefits are payable, then the Trustee may, in its sole discretion, decide to pay such part of the death benefits as the lost Dependant was to receive to the deceased Member's LPR or other remaining Dependents. The Trustee shall not be liable or subject to any claim or action as a result of exercising this discretion, provided the Trustee has exhausted all reasonable efforts to locate the lost Dependant.

(e) Method of Payment

The Trustee may pay the Death Benefit in the form of a Lump sum, one or more Pensions (subject to clauses 7.2 and 7.3) or combination as the Trustee in its sole discretion thinks fit.

(f) Discharge of Trustee

The receipt of the Death Benefit (or any part of it) by a Dependant, LPR or other person discharges the Trustee from liability insofar as the Trustee is not responsible to see to its proper application.

6.4. Preferential Death Nomination

(a) Giving of Notice

At any time, a Member may provide the Trustee with a Preferential Death Nomination informing the Trustee of how the Member would prefer his or her Death Benefit to be paid but leaving the final decision as to whom the Death Benefit will be paid to the discretion of the Trustee.

(b) Trustee's Discretion

On the death of a Member who has provided a Preferential Death Nomination, the Trustee retains its discretion regarding payment of the Death Benefit (as in clause 6.3) but must make the eventual decision having given careful and due consideration to the Member's stated intention contained in the Preferential Death Nomination and all the other relevant circumstances.

This in no way restricts the Trustee's ability to make a decision as to the payment of the Death Benefit which departs from a Member's Preferential Death Nomination.

(c) Requirements

A Preferential Death Nomination must:

- (i) Be in writing; and
- (ii) Be signed and dated by the Member making the Preferential Death Nomination; and
- (iii) Be delivered to the Trustee; and

- (iv) Only list the Member's Legal Personal Representative or Dependants as potential nominees.

A Preferential Death Nomination does not have to be witnessed.

6.5. Binding Death Benefit Nomination

- (a) Giving of Notice

At any time, the Member may provide the Trustee with a Binding Death Benefit Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Binding Death Benefit Nomination at anytime by written notice to the Trustee.

- (b) When Trustee Bound

Unless the Binding Death Benefit Nomination is invalid, has lapsed, been revoked by the Member, is overturned by a Court or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Binding Death Benefit Nomination if the Trustee is aware that the paying the Death Benefit in accordance with the Binding Death Benefit Nomination would breach a Court Order.

- (c) Lapse

A Binding Death Benefit Nomination will lapse, if not renewed, three (3) years from the date it is made.

- (d) Requirements for Valid Notice

For a Binding Death Benefit Nomination to be valid:

- (i) It must be in writing; and
- (ii) It must be signed and dated by the Member making the Binding Death Benefit Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Binding Death Benefit Nomination; and
- (iii) It must contain sufficient detail to identify the Member making the Binding Death Benefit Nomination; and
- (iv) It must contain a declaration by the witnesses which is signed and dated, stating that the Binding Death Benefit Nomination was signed by the Member in their presence; and
- (v) It must be delivered to the Trustee; and
- (vi) Each nominee under the Binding Death Benefit Nomination must be a LPR or Dependancy of the Member making the Binding Death Benefit Nomination; and
- (vii) The allocation of the Death Benefit among the nominees must be clear; and
- (viii) It must not have lapsed.

A Member may also nominate successive beneficiaries (backups or alternative recipients), being either the Member's LPR or one or more of the Member's Dependants, to receive all of part of the Death Benefit in the event that the initial or subsequent nominations should fail.

(e) Trustee Must Supply Information

The Trustee must supply the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Binding Death Benefit Nomination. The Member should seek independent legal advice prior to making such a nomination.

6.6. Non-Lapsing Binding Death Benefit Nomination

(a) Giving of Notice

At any time, the Member may provide the Trustee with a Non-Lapsing Binding Death Benefit Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Non-Lapsing Binding Death Benefit Nomination at anytime by written notice to the Trustee.

(b) When Trustee Bound

Unless the Non-Lapsing Binding Death Benefit Nomination is invalid, has been revoked by the Member, has been overturned by a Court, or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Non-Lapsing Binding Death Benefit Nomination if the Trustee is aware that the paying of the Death Benefit in accordance with the Binding Death Benefit Nomination would breach a court order.

(c) Requirements for Valid Notice

For a Non-Lapsing Binding Death Benefit Nomination to be valid:

- (i) It must be in writing; and
- (ii) It must be signed and dated by the Member making the Non-Lapsing Binding Death Benefit Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Non-Lapsing Binding Death Benefit Nomination; and
- (iii) It must contain a declaration by the witnesses which is signed and dated, stating that the Non-Lapsing Binding Death Benefit Nomination was signed by the Member in their presence; and
- (iv) It must be delivered to the Trustee; and
- (v) It must be accepted by the Trustee (with such acceptance of a valid Non-Lapsing Binding Death Benefit Nomination not to be unreasonably withheld); and
- (vi) Each nominee under the Non-Lapsing Binding Death Benefit Nomination must be a LPR or Dependant of the Member making the Non-Lapsing Binding Death Benefit Nomination; and

- (vii) The allocation of the Non-Lapsing Death Benefit among the nominees must be clear; and
- (viii) It must state that the notice will not lapse by passing of time.

A Member may also nominate successive beneficiaries (backups or alternative recipients), being either the Member's LPR or one or more of the Member's Dependants, to receive all or part of the Death Benefit in the event that the initial or subsequent nominations should fail.

(d) **Trustee Must Supply Information**

The Trustee must supply the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Non-Lapsing Binding Death Benefit Nomination. The Member should seek independent legal advice prior to making such a nomination.

6.7. Automatic Revocation of Nomination

Any valid Preferential Death Nomination, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination by a Member is automatically revoked by a later Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination, regardless of whether or not the same type of nomination is made.

6.8. Suspended or Terminated Benefits

(a) **Circumstances Causing Suspension or Termination**

Subject to the Prescribed Law, a Beneficiary's Benefits payable out of the Fund will be suspended while or terminated if the Beneficiary:

- (i) Attempts to assign, alienate or charge all or part of their Benefit entitlement other than in accordance with the Prescribed Law;
- (ii) Has their Benefits or entitlements vested in or made payable to another person or a government or public authority;
- (iii) Commits an act of bankruptcy or is or becomes insolvent;
- (iv) In the Trustee's opinion, is incapable of managing his/her own affairs;
- (v) Has been found guilty of fraud or dishonesty;

(b) **Dealing with Suspended or Terminated Benefits**

If all or any part of a Beneficiary's Benefits become payable during a period when the Benefits have been suspended or terminated, then the Trustee may, in its ultimate discretion, pay or apply the Benefits to:

- (i) The Beneficiary; or
- (ii) A Pension for the sole objective of applying the Benefits for the Beneficiary or their Dependants;

on the basis that the payment or application of the Benefits will be an absolute discharge to the Trustee and the Fund. After the payment or application, the Trustee is not responsible to see to the proper application of the Benefits.

7. Payment of Pensions

7.1. Manner of Payment of Benefits

- (a) Although this Deed primarily contemplates payment of Pensions, the Trustee is not prevented from making lump sum payments of Benefits.
- (b) The Trustee may pay any Pension permitted by the Prescribed Law to its Members, having regard to any restrictions, terms or conditions imposed on the type of Pension by the Prescribed Law.

7.2. Reversionary Pension Nomination

A Member taking a Pension may make a Reversionary Pension Nomination when they commence a Pension from the Fund providing that upon the Member's death, the Pension is to continue to be paid to an eligible reversionary Beneficiary under the Prescribed Law.

7.3. Deceased Member's Pension to Spouse

If a Member dies during a period in which they were receiving a Pension from the Fund, then the Member's Spouse, on application to the Trustee, may request to have the Pension continued, but only if the person was the Member's Spouse before the Member retired. The continuing Pension must comply with the Prescribed Law.

7.4. Restriction on Death Benefit Pensions to Children

If the Member's Death Benefit is to be paid to a Dependant Child, then the Death Benefit may only be paid as a Pension if 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).

7.5. Actuarial Certificate

If required, the Trustee must obtain an Actuarial Certificate in relation to any Pension to be paid pursuant to the Prescribed Law.

8. Lump Sum Payments

The Trustee may, on written request, commute any amount or pay any Benefit (other than a Total or Temporary Disablement Benefit) as a lump sum in one or more instalments to a person who is entitled to receive a Pension from the Fund (other than a Transition to Retirement Pension) to the extent permitted by this Deed or the Prescribed Law.

9. Incoming Rollovers and Transfers

9.1. Trustee's Discretion to Accept or Reject

On a Member's request, the Trustee has the power (refer clause 14.23) to accept or reject, in full or part, a rollover or transfer of benefits or entitlements. In reaching such decision, the Trustee may have regard to:

- (a) The balance of the Member's Accumulation Account prior to and following the rollover or transfer;
- (b) Restrictions on payment of Benefits to the Member;
- (c) The existing conditions under which the Benefits or entitlements are being held;
- (d) Any other relevant matters.

9.2. Restrictions on Rollovers or Transfers

The Trustee must not accept any Benefits or entitlements for a Member that would result in a breach under this Deed or the Prescribed Law. The Trustee must preserve the Benefits and entitlements pursuant to this Deed and the Prescribed Law and only deal with or pay the Benefits pursuant to this Deed and the Prescribed Law.

9.3. Rolled-Over or Transferred Benefits Status

Any Benefits or entitlements which are rolled-over or transferred to the Fund shall retain their same status and nature as they had in the previous transferring/rolling-over entity.

10. Outgoing Rollovers or Transfers

10.1. When Benefits may be Transferred/Rolled-Over

Where permitted by the Prescribed Law, the Trustee may transfer or rollover all or part of a Member's or a Beneficiary's Benefits and entitlements to an Approved Arrangement.

10.2. Conditions

Unless otherwise required by the Prescribed Law or a Regulator, Court or Tribunal, the Trustee may refuse to complete a rollover request from a Member or Beneficiary unless the following requirements are met:

- (a) A written request to transfer or rollover a Member's Benefits and entitlements has been received from the Member or the Member's LPR; and
- (b) The proposed fund or entity to receive rollover or transfer is an Approved Arrangement; and
- (c) The rollover would not cause a breach of the Prescribed Laws or the Fund become non-compliant.

10.3. Member to Provide Necessary Information

Before the Trustee can process a Member's request to rollover or transfer Benefits and entitlements, the Member must provide to the Trustee such information as is required to be given in a 'Request to Transfer Whole Balance of Super Benefits Between Funds' form as contained in Schedule 2A or 2B (as applicable) of the Regulations or such other information as may be required under the Prescribed Law from time to time or by the Trustee.

By way of clarification, a request to rollover or transfer an amount that is the whole of the Member's Benefits and entitlements may be made by simply delivering a completed 'Request to Transfer Whole Balance of Super Benefits Between Funds' form to the Trustee.

10.4. Timing of the Rollover or Transfer

Unless otherwise required by the Prescribed Law or this Deed, the Trustee must ordinarily complete the rollover or transfer of a Member's Benefits and entitlements as soon as is practicably possible once all conditions are fulfilled, whilst acting in the best interests of the Members as a whole and considering factors such as the liquidity of the assets of the Fund and the Investment Strategy.

10.5. Rollover or Transfer of Non-Member Spouse's Superannuation Interest

On request given by a Non-Member Spouse, or by decision made by the Trustee in its sole discretion, the Trustee may rollover or transfer a Non-Member Spouse's Superannuation Interest provided that the Trustee complies with the requirements of this clause.

Prior to attending to a rollover or transfer of a Non-Member Spouse's Superannuation Interest, the Trustee may first deduct any costs and expenses incurred (or expected to be incurred) by the Fund in completing the rollover or transfer.

10.6. Discharge of Trustee

The receipt of an authorised person (or apparent authorised person) of the Approved Arrangement of the rollover/transfer of a Member's or Beneficiary's benefits shall be a good and sufficient discharge to the Trustee.

11. The Trustee

11.1. Appointment of Trustees

(a) New Trustee

The Members of the Fund may, by majority vote at a Member's Meeting appoint:

- (i) one or more individual trustees; or
- (ii) a Corporate Trustee;

provided that in no case shall the appointment of Trustee contravene the basic rules for a SMSF (as set out in Clause 2) to render the Fund non-compliant.

Where a Company is acting as Trustee of the Fund, the directorship must reflect the rules for a self managed superannuation fund under the Act.

(b) Written Consent

Each Trustee must provide a written consent to act as Trustee, or in the case of a Corporate Trustee, a written consent to act as Director of the Company. Upon providing a written consent, the Trustee (or director as the case may be) is deemed to be bound by the provisions of this Deed.

(c) Not Disqualified Person

Each Trustee or in the case of a Corporate Trustee, the Director/s, must provide a declaration stating that he or she or it is not a Disqualified Person.

(d) Declaration

Within twenty-one (21) days of appointment, the Trustee or in the case of Corporate Trustee, the Director/s, must sign a declaration in the Approved Form stating that he or she understands their duty as trustee of a SMSF. The Declaration must be retained for the later of ten (10) years from the date upon which they were appointed Trustee or Director, or for the period that the person holds office as Trustee or Director.

By way of clarity and to avoid any doubt though, if the Trustee or the Directors of a Corporate Trustee do not adhere to requirements in this subclause 11.1(d) then it shall not affect the validity of the Trustees' or Directors' appointment.

11.2. Vesting of Fund in Trustees

The entire Fund is vested in the Trustees who must manage the Fund in accordance with this Deed and the Prescribed Law. Subject to the provisions of this Deed, no other person or body has any legal or beneficial interest in the Fund.

11.3. Multiple Trustees

Where there is more than one (1) Trustee, then the Trustees must exercise their duties, powers and responsibilities jointly and are jointly and severally liable for all acts.

11.4. Removal, Dismissal or Suspension of Trustee

(a) Individual

An individual Trustee or Director (in the case of Corporate Trustee) ceases to be Trustee of the Fund or Director of the Corporate Trustee, as relevant, if the person:

- (i) Becomes a Disqualified Person;
- (ii) Dies;
- (iii) Becomes incapable of managing his/her affairs; or
- (iv) Suffers an Insolvency Event.

(b) Company

A Corporate Trustee ceases to be Trustee of the Fund if the Company:

- (i) Becomes a Disqualified Person;

- (ii) Is otherwise disqualified from office as Trustee;
- (iii) Is de-registered or otherwise lacks full capacity;
- (iv) Suffers an Insolvency Event.

(c) By Regulator

The Regulator may also dismiss or suspend a Trustee under Part 17 of the Act.

(d) By Members

The Members may, by majority vote at general meeting, resolve to dismiss/remove a Trustee. The Trustee must then be provided with written notice of the dismissal.

(e) Vesting of Fund

The continuing Trustee/s must take steps to vest the Fund in the continuing Trustees and the outgoing Trustee must deliver up to the continuing Trustee/s all records and other books in his or her or its possession.

11.5. Retirement/Resignation of Trustee

(a) Notice of Retirement/Resignation

The Trustee or Director/s (in the case of a Corporate Trustee) may at any time, by notice in writing to the Members of the Fund, retire or resign as Trustee or Director of a Corporate Trustee of the Fund as the case may be.

(b) Vesting of Fund

The continuing Trustee/s must take steps to vest the Fund in the continuing Trustees and the outgoing Trustee must deliver up to the continuing Trustee/s all records and other books in his/her or its possession.

11.6. Actions after Retirement/Removal of Trustee/Director or Ceasing to be a Member

When a Trustee or Director is removed, dismissed or suspended, the following steps must be taken:

- (a) The Member may need to seek to have one or more new Trustee/s or in the case of a Corporate Trustee, Director/s, appointed on its behalf to ensure compliance with the Act;
- (b) If no alternative trustee is appointed in place of the respective Member who the Trustee/Director represented, then the Member may need to cease being a Member of the Fund to ensure the SMSF does not become non-compliant;
- (c) If a person ceases to become a Member, then:
 - (i) They must immediately resign as Trustee or Director (as the case may be), *unless* the Member is acting as Trustee or Director for and on behalf of another Member in compliance with the Prescribed Law (e.g. as a LPR, attorney or as a second individual trustee, where a sole member fund);

- (ii) If the trustee is a Corporate Trustee, transfer the shares in the Company for the issue price to the other remaining shareholders or their nominee.
- (d) Each Member irrevocably makes nominates constitutes and appoints the Trustee and the Trustee's nominee or nominees from time to time jointly and each of them severally to be the true and lawful attorney and attorneys of the Member for the Member and in the Member's name and as the Member's act and deed if and when the said attorney or attorneys shall think fit for the purpose of giving full effect to the intentions of this clause 11 including any appointment or resignation of a Trustee or Director or ceasing to become a Member, to ensure that the Fund does not become non-compliant. The Member hereby ratifies confirms and agrees to ratify and confirm whatsoever the said attorney or attorneys shall do or purport to do by virtue of this subclause.

11.7. Discharge of Retiring/Removed Trustee

Where a trustee retires, resigns, ceases or is removed, the members shall not be obliged to appoint a new trustee in place of the trustee that has retired, resigned, ceased to act or been removed provided:

- (a) There is at least one commencing or continuing individual or corporate trustee; and
- (b) The Fund has the appropriate trustee structure to comply with the Prescribed Law and ensure the Fund remains a compliant self-managed superannuation fund.

Where the above conditions are satisfied, the trustee that has retired, resigned, ceased to act or been removed shall be discharged from the trusts contained in this Deed as from the date of retirement, resignation, ceasing or removal despite any legislative requirement or rule of law to the contrary.

12. Trustee Disclosure

12.1. Product Disclosure Statement

The Trustee shall decide whether or not it is appropriate and necessary to provide a Product Disclosure Statement pursuant to section 1012B of the *Corporations Act*. Pursuant to section 1012D(2A) of the *Corporations Act*, the Trustee does not have give a Product Disclosure Statement if:

- (a) The financial product is an interest in a SMSF; and
- (b) The Trustee believes on reasonable grounds that the Member has received, or has and knows that they have access to all of the information that the Product Disclosure Statement would be required to contain ("Relevant Information").

If the Trustee considers that there is an obligation to give a Product Disclosure Statement, then the Trustee must comply with Part 7.9 of the *Corporations Act* regarding the preparation, content and delivery of the Product Disclosure Statement.

12.2. Disclosure under Prescribed Law

The Trustee of the Fund must ensure that the Interested Parties are provided with such information, records, reports, disclosure, accounts or documents as the Prescribed Law requires and in the manner the Prescribed Law requires.