

# Certificate of Registration of a Company

This is to certify that

**N AND F SUPERANNUATION PTY. LTD.**

**Australian Company Number 605 945 720**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in New South Wales.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the twentieth day of May 2015.**



**ASIC**

Australian Securities & Investments Commission

Issued by the  
Australian Securities and Investments Commission  
on this twentieth day of May, 2015.

A handwritten signature in black ink, appearing to read 'G. Medcraft'.

Greg Medcraft  
Chairman

CERTIFICATE

**N and F Superannuation Pty. Ltd.**

**Company Registration Package, Part 2**

Prepared for **Brett Eagles**  
Matter name **Art of joinery**  
Prepared by **Brett Eagles**  
Date downloaded **15 May, 2015 10:56 AM**

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**What to do next**

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**Sign the documents and notify the ATO**

Congratulations. Your company is registered.

Now you need to arrange for the enclosed documents to be signed. Then you need:

- to give each shareholder their Share Certificate.
- arrange for the Notice of Appointment of Public Officer to be sent to the Australian Taxation Office (ATO).
- store the other documents (and copies of the Share Certificates and Notice of Appointment of Public Officer) in the company register.

The company's Constitution is in a separate document. You need to arrange for it to be signed. Then you need to give copies of it to each director and each shareholder and store the original in the company register.

**Questions or further information**

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If you have any questions, you can call Cleardocs on 1300 307 343.

**Cleardocs** will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.

# N and F Superannuation Pty. Ltd.

34 Park Ave  
Coffs Harbour, NSW, 2450 Australia  
(ACN 605 945 720)

## Minutes of a Meeting of Directors

<b>Place</b>	Mcgraths Hill
<b>Date</b>	20 May 2015
<b>Time</b>	11:00
<b>Persons present</b>	Nestor Porley Fiona Porley

### Chair

- 1 Nestor Porley took the chair with the approval of the meeting.

### Notice of meeting

- 2 The meeting **noted** that the requirements for notice of the meeting had been satisfied, and that the directors had approved the holding of the meeting at the date and time specified.

### Company registered

- 3 The meeting **noted** that N and F Superannuation Pty. Ltd. was registered under the *Corporations Act* and is deemed to have been registered in NSW on 20/05/2015. A copy of the Certificate of Registration is attached to these minutes.

### Directors

- 4 The meeting **noted** that the following persons had been appointed in accordance with the Application for Registration of the Company signed by the applicant and dated 20 May 2015 as the first directors of the company.

Nestor Porley

Fiona Porley

### Secretary

- 5 The meeting **resolved** to appoint the following person as secretary of the company, and to receive and record the signed Consent to act as Secretary.

Nestor Porley

### **Public officer**

- 6 The meeting **resolved** to appoint Nestor Porley as public officer of the company, and to receive and record the signed Consent to act as Public Officer and to notify the Deputy Commissioner of Taxation of the appointment.

### **Managing director**

- 7 The meeting **resolved** to appoint Nestor Porley as managing director of the company, subject to a contract of employment to be drawn up by solicitors on the instructions of Nestor Porley.

### **Registered office**

- 8 In accordance with the notification to the Australian Securities and Investments Commission, the meeting **resolved** that, as from the date of registration of the company, the registered office of the company is:

34 Park Ave  
Coffs Harbour, NSW 2450  
Australia

### **Shareholders**

- 9 The meeting **noted** that the following, in accordance with the Application for Registration of the company signed by the applicant and lodged on 20/05/2015 are the first members of the company. Their shares are deemed to have been allotted on the date of registration.

Nestor Porley  
Fiona Porley

- 10 The meeting **resolved**:
- to record the names of the members in the Register of Members in accordance with the *Corporations Act*;
  - to prepare numbered Share Certificates in the name of each member recording the number and type of shares allotted to that member; and
  - to execute each Share Certificate in accordance with section 127(1) of the *Corporations Act*.

### **Register of option holders**

- 11 The meeting **resolved** to establish, and keep up to date, a register of option holders in accordance with sections 168(1)(b) of the *Corporations Act*.

### **Register of debenture holders**

- 12 The meeting **resolved** to establish, and keep up to date, a register of debenture holders in accordance with sections 168(1)(c) of the *Corporations Act*.

### **Financial records**

- 13 The meeting **resolved** to do everything necessary to establish, and keep up to date, the financial records of the company, as required by the *Corporations Act*.

### **Common seal**

- 14 The meeting **resolved** not to adopt a common seal.

### **Bank account**

- 15 The meeting **resolved** to approve and open the bank accounts and to appoint the signatories in accordance with the terms of the bank account mandate forms.

### **Records**

- 16 **Resolved** to notify the relevant authorities and update the company's records in relation to the business transacted at the meeting.

### **Closure**

- 17 The chair declared the meeting closed.

**Signed on 20 May 2015 as a true record of the meeting:**



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Nestor Porley

## Share Certificate for Ordinary Shares

<b>Certificate number</b>	1		
<b>Company name</b>	N and F Superannuation Pty. Ltd.	<b>ACN</b>	605 945 720
	The company is registered under the <i>Corporations Act 2001 (Cth)</i>		
<b>Registered office</b>	34 Park Ave Coffs Harbour, NSW 2450		

This certifies that (subject to the company's Constitution) Nestor Porley of 9 Rain Ridge Rd Kurrajong Heights, NSW 2756 is the registered holder of 1 **Ordinary** share.

This is share number 1.

The total number of shares under this certificate is 1.

Issued on 20 May 2015.

Signed by



Signature of director  
Nestor Porley



Signature of director  
Fiona Porley

## Share Certificate for Ordinary Shares

<b>Certificate number</b>	2		
<b>Company name</b>	N and F Superannuation Pty. Ltd.	<b>ACN</b>	605 945 720
	The company is registered under the <i>Corporations Act 2001 (Cth)</i>		
<b>Registered office</b>	34 Park Ave Coffs Harbour, NSW 2450		

This certifies that (subject to the company's Constitution) Fiona Porley of 9 Rain Ridge Rd kurrajong Heights, NSW 2756 is the registered holder of 1 **Ordinary** share.

This is share number 2.

The total number of shares under this certificate is 1.

Issued on 20 May 2015.

Signed by



Signature of director

Nestor Porley



Signature of director

Fiona Porley

## Consent to act as Public Officer

9 Rain Ridge Rd  
Kurrajong Heights, NSW 2756  
Australia

To the directors

**N and F Superannuation Pty. Ltd.**

**ACN** 605 945 720

**Registered office** 34 Park Ave  
Coffs Harbour, NSW 2450

I consent to act as public officer of N and F Superannuation Pty. Ltd. with effect from the date of this consent.

My personal details are as follows:

<b>Full name</b>	Nestor Porley
<b>Former given names and family names (if any)</b>	
<b>Usual residential address</b>	9 Rain Ridge Rd Kurrajong Heights, NSW 2756 Australia
<b>Occupation</b>	Cabinet maker
<b>Date of birth</b>	04-11-1963
<b>Place of birth</b>	Colonia

Signature: \_\_\_\_\_

  
Nestor Porley

Date: 20/05/2015

## N and F Superannuation Pty. Ltd.

34 Park Ave  
Coffs Harbour, NSW 2450  
(ACN 605 945 720)  
Issued on 20 May 2015

Deputy Commissioner of Taxation  
Australian Taxation Office  
PO Box 3373  
Penrith NSW 2740

Dear Deputy Commissioner:

### Notice of appointment of public officer

In accordance with section 252 of the *Income Tax Assessment Act 1936*, we give notice that Nestor Porley whose date of birth was 04-11-1963 was appointed public officer of N and F Superannuation Pty. Ltd., ACN 605 945 720 on 20 May 2015.

The registered address and address of service of the company is:

34 Park Ave  
Coffs Harbour, NSW 2450

Yours faithfully,

Signed on behalf of N and F Superannuation Pty. Ltd.:

Signature: \_\_\_\_\_  
Director

Signed by the public officer:

Signature:  \_\_\_\_\_  
Nestor Porley

# N and F Superannuation Pty. Ltd.

ACN 605 945 720

## Register of Members

Register of shares issued to, and transferred by, a shareholder (based on Register of Shares allotted and Register of Shares transferred) (Section 169 *Corporations Act 2001*).

**Name of shareholder, and ACN if applicable:** Nestor Porley

**Address:** 9 Rain Ridge Rd Kurrajong Heights, NSW 2756

Date	Allotment or transfer	Class of share	Certificate number	Serial numbers (from and to)	Shares acquired	Shares transferred	Balance held	Amount paid per share	Amount unpaid per share
20/05/2015	Allotment	Ordinary	1	1 to 1	1	-		1.00	0.00

# N and F Superannuation Pty. Ltd.

ACN 605 945 720

## Register of Members

Register of shares issued to, and transferred by, a shareholder (based on Register of Shares allotted and Register of Shares transferred) (Section 169 *Corporations Act 2001*).

**Name of shareholder, and ACN if applicable:** Fiona Porley

**Address:** 9 Rain Ridge Rd kurrajong Heights, NSW 2756

Date	Allotment or transfer	Class of share	Certificate number	Serial numbers (from and to)	Shares acquired	Shares transferred	Balance held	Amount paid per share	Amount unpaid per share
20/05/2015	Allotment	Ordinary	2	2 to 2	1	-		1.00	0.00





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- a contribution that is not permitted by superannuation law;
- a contribution or shortfall component the acceptance of which would prevent the fund from qualifying as a complying superannuation fund; and
- an employer contribution or shortfall component which the regulator lawfully directs the trustee not to accept.

#### **Breach of clause headed 'Contributions etc not accepted'**

52 If the trustee becomes aware that a contribution or shortfall component has been accepted in breach of clause 51, the trustee must refund the amount within any time specified by, and only as permitted by, superannuation law. However, the trustee may deduct each of the following from that amount:

- any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
- reasonable administration charges; and
- any other amount the trustee considers appropriate, acting reasonably.

The trustee may reduce the benefits of the member to those which the member would have had if the contribution or shortfall component had not been accepted.

#### **Other contributions not accepted**

53 The trustee may refuse to accept:

- a contribution that the trustee has determined not to accept because the trustee has not been informed of the relevant member's tax file number;
- excess contributions.

#### **Permissible actions if excess contributions accepted**

54 If excess contributions are made to the fund by or in respect of a member, then the trustee may:

- release funds to the member if the trustee has received a member release authority;
- release funds to the Commissioner of Taxation where the trustee has received an ATO release authority; and
- release funds in any other circumstances, and to such persons, as is permitted under superannuation law.

#### **Allocation of contributions**

55 If the trustee receives a contribution in a month, the trustee must allocate the contribution to the relevant member of the fund:

- within 28 days after the end of the month, or any other period as required by

superannuation law (**relevant period**); or

- if it is not reasonably practicable to allocate the contribution to the relevant member of the fund within the relevant period – within any longer period as is reasonable in the circumstances.

### **Reduction of contributions by employer**

56 An employer who is under an obligation to make contributions in respect of a member may, with the trustee's consent, reduce the amount of those contributions to the extent that it becomes required to make contributions in respect of that member to another fund of which the member is also a member.

### **Tax on contributions and shortfall components**

57 Either the trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the member's accumulation account.

### **Surcharge**

58 The trustee must make provision for any surcharge or other amount that is payable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and related legislation, and must deduct the amount from the relevant contributions.

### **Termination of employer's contributions**

59 A participating employer ceases being a participating employer and may cease making contributions to the fund if any of the following occurs to the employer:

- an administrator, receiver, receiver and manager, controller or similar officer is appointed to the employer (or its property) or a resolution is passed to appoint such an officer;
- an order is made to appoint a liquidator or provisional liquidator of the employer;
- the employer, being a corporation, gives the trustee a written notice that it is, or under applicable legislation the employer is taken to be, unable to pay its debts as and when they fall due;
- the employer, being an individual, commits an act of bankruptcy or becomes insolvent;
- the employer gives the trustee written notice that it is permanently terminating its contributions to the fund.

### **Effect of termination on member's contributions**

60 A member whose participating employer has ceased to make contributions under this deed under the previous clause may not make any contributions without the trustee's consent.

## **No termination on transfer of business to another employer**

- 61 If a participating employer amalgamates with another participating employer or disposes of its business to another participating employer, members who were employees of the former participating employer are deemed for the purposes of this deed to have become employees of the latter participating employer, which may then make contributions in respect of them.

## **E Investment**

### **Authorised investments**

- 62 The trustee must invest any assets of the fund that are not required for payment of benefits or other amounts under this deed. The trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- 62.1 Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia.
  - 62.2 Securities in any company incorporated anywhere, whether carrying on business in Australia or not.
  - 62.3 Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, or other registered financial institution.
  - 62.4 Real or personal property, including an improvement to that property.
  - 62.5 Units (including sub-units) in a unit trust established or situated anywhere in the world by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant.
  - 62.6 Futures, options or any other synthetic investment.
  - 62.7 Hedging, swapping or any similar arrangement, even though it is not linked to any property of the fund.
  - 62.8 Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the trustee thinks reasonable. The fact that the trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant.
  - 62.9 A policy or annuity with an insurer, whether by proposal or purchase.
  - 62.10 Instalment warrants or receipts.
  - 62.11 By way of a limited recourse borrowing arrangement in accordance with clause 142.
  - 62.12 Any other investment allowed by superannuation law that the trustee thinks appropriate.

### **Forbidden investments**

- 63 The trustee must not invest in any investment that is forbidden by superannuation law. The trustee must not make an investment in the form of a loan or other financial assistance to a member or a relative of a member.

### **Strategy**

- 64 The trustee must formulate one or more investment strategies for the fund in accordance with superannuation law. The trustee must inform members and beneficiaries of the strategies adopted by the trustee. The trustee may review and change a strategy at any time. The trustee must continually monitor the strategies to ensure that they remain appropriate.

### **Power to deal with investments**

- 65 The trustee may sell, transfer or vary any investment at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of members and beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

### **Investment choice by members**

- 66 The trustee may decide to allow one or more members or beneficiaries to choose between investment strategies. If the trustee does this, the trustee must establish a range of possible investment strategies, and may designate particular assets for those strategies. The trustee must provide the members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the member or beneficiary to choose between them on an informed basis. The trustee must also provide them with information concerning their rights under this deed.

### **Member or beneficiary may choose strategy**

- 67 A member or beneficiary who has been offered investment choice by the trustee may choose one or more of the strategies prepared by the trustee by completing any documents the trustee requires. On having done so, the member or beneficiary may direct the trustee to invest any part of the fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.

### **Member or beneficiary may not choose particular investments within strategy**

- 68 A member or beneficiary who has directed the trustee to invest any part of the fund that is held for that person in accordance with those strategies may not direct the trustee to invest in any particular investment. However, the member or beneficiary may request the trustee to develop an investment specific strategy and to make it available to that member or beneficiary. The trustee may accept or reject the request.

### **Chosen strategies to be monitored**

- 69 The trustee may continually monitor any strategies adopted by members or beneficiaries for investment choice to ensure that they remain appropriate for the members or beneficiaries to whom they are available.

### **Sub-accounts etc for investment choice**

- 70 If a member adopts a strategy for investment choice, the trustee may do each of the following:
- 70.1 Establish a sub-account of the income account in respect of that strategy.
  - 70.2 Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself.
  - 70.3 Allocate earnings attributable to that strategy to the member's or beneficiary's accumulation account or pension account in a way that the trustee thinks equitable.
  - 70.4 Determine a fund earning rate for that sub-account.

### **Power to deal with investment choice investments**

- 71 The trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of the relevant members or beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

## **F Benefits: general**

### **Limit on payment of preserved payment benefits**

- 72 The trustee must not pay out to a member or a dependant of a member any preserved payment benefit that superannuation law does not allow the trustee to pay out.

### **When payment of preserved payment benefits allowed**

- 73 The trustee may pay a member or, if applicable, a dependant of a member, a preserved payment benefit in any of the following circumstances:
- 73.1 The member reaches the relevant preservation age and takes a transition to retirement pension in accordance with Part G.
  - 73.2 The member retires from gainful employment on or after reaching the relevant preservation age.
  - 73.3 The member becomes totally and permanently disabled.
  - 73.4 The member becomes totally and temporarily disabled.
  - 73.5 The member reaches age 65.
  - 73.6 The member dies.
  - 73.7 Any other circumstance allowed by superannuation law.

### **Payment of non-preserved amount**

- 74 With the trustee's consent, a member may withdraw any part of the non-preserved amount in the member's accumulation account. The member must apply to the trustee in writing for the withdrawal in a form acceptable to the trustee. The trustee may set a minimum withdrawal amount by notifying the members of the fund.

### **Vesting and compulsory payment**

- 75 A member's benefit entitlement will vest in accordance with superannuation law. The trustee must cash or commence to cash a member's benefit entitlement as soon as practicable after the member dies or the entitlement has vested. If a lump sum is payable, the trustee may pay it in several stages: an initial payment and then subsequent payments.

### **Possible addition to entitlement when member ceases to be member**

- 76 If a member ceases to be a member of the fund, the trustee may pay an amount that the trustee thinks appropriate from the equalisation account (if any) into the member's accumulation account.

### **Anti-detriment payments (section 295-485 of the *Income Assessment Act 1997*)**

- 77 Where the trustee is to make a payment because a member has died (a **death benefit**), the trustee may pass on to the recipient of that payment any benefit that would accrue to the fund if a deduction were allowed under section 295-485 of the *Income Tax Assessment Act 1997*.

### **Trustee may retain benefit in fund**

- 78 If a member or beneficiary requests it, the trustee may retain any part of a benefit in the fund. The trustee may do so until one of the following occurs:

- 78.1 The member or beneficiary decides otherwise.
- 78.2 The member or beneficiary dies.
- 78.3 The amount has to be paid under this deed or superannuation law.
- 78.4 The trustee decides otherwise.

Subject to Part H, the payment the trustee then makes must be the amount standing to the credit of the member's or beneficiary's accumulation and pension account at that time.

### **Transfer of insurance policy**

- 79 If a member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the trustee may assign that policy to the member or beneficiary, or to any of the dependants of the member the trustee thinks fit. The trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the trustee nor an employer is liable for any further payment of premiums in relation to the policy.

### **Information to be provided to trustee**

80 On written request by the trustee, an applicant, member or beneficiary must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.

If an applicant, member or beneficiary fails to do so, the trustee may suspend collection of contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the trustee thinks fit.

### **Trustee may adjust benefits for wrong information**

81 The trustee may adjust any benefit payable to or in respect of a member if an applicant, member or beneficiary has supplied false or misleading information to the trustee, or has deliberately withheld information from the trustee, that affects or is likely to affect benefits payable to or in respect of that member.

## **G Pensions: general**

### **Trustee's power to pay pension**

82 When any part of a benefit becomes payable to a member under this deed or in accordance with superannuation law, the trustee has a discretion to decide whether to pay one or more pensions to the member or to use the benefit payable to acquire one or more annuities in the name of the member. The pensions or annuities may be of any type permitted by superannuation law (including, without limitation, an account-based pension) and will be in substitution for the relevant part of any lump sum benefit that was payable to the member for the amounts credited to the member's pension account as a transfer of a roll over payment under clause 88.2.

### **Member or beneficiary may choose type of pension**

83 The relevant member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund. The pension must be paid in accordance with the requirements of the superannuation law.

### **Actuarial certificate**

84 The trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the trustee decides to pay, unless either section 295-390 (or any other provision) of the *Income Tax Assessment Act 1997* (Cth) provides otherwise in which case the trustee has a discretion as to whether to obtain an actuarial certificate.

### **Funding pension through annuity**

85 The trustee may fund a person's pension by purchasing an annuity payable to the trustee.

### **Trustee may allocate benefit between 2 or more spouses**

- 86 If there are 2 or more spouses of a member, the trustee may decide in what proportion each is entitled to a benefit payable under this deed to the member's spouse.

### **Trustee must establish pension account**

- 87 If the trustee decides to pay a pension to a person in accordance with this deed, the trustee must establish a pension account in the name of that person.

### **Credits to pension account**

- 88 The trustee may credit each of the following amounts to the person's pension account, subject to superannuation law:
- 88.1 The amount the trustee believes necessary to fund the pension.
  - 88.2 The amount paid into the fund in respect of the pensioner as a transfer or roll over payment which the trustee thinks it appropriate to credit to that account.
  - 88.3 Earnings of the fund which the trustee thinks it appropriate to credit to that account.
  - 88.4 A shortfall component paid in respect of the pensioner.
  - 88.5 Contributions lawfully paid in respect of the relevant member.
  - 88.6 Adjustment credits made in accordance with clause 38.
  - 88.7 The proceeds of an annuity or insurance policy effected by the trustee in respect of the pensioner which the trustee thinks it appropriate to credit to the account.
  - 88.8 Financial assistance under part 23 of the SIS Act which the trustee thinks it appropriate to credit to the account.
  - 88.9 Any other amount the trustee thinks it appropriate to credit to the account.

### **Debits to pension account**

- 89 The trustee may debit each of the following amounts to the person's pension account, subject to superannuation law:
- 89.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
  - 89.2 The proportion that the trustee thinks equitable of any negative earnings of the fund determined in accordance with clauses 38, 70 or 90.
  - 89.3 The proportion of the loss on the disposal of investments of the fund that the trustee thinks equitable.
  - 89.4 Amounts transferred from the fund in respect of the pensioner as a transfer of a roll over payment which the trustee thinks it appropriate to debit to the account.
  - 89.5 Payments made to or in respect of the pensioner or a reversionary beneficiary under this deed.
  - 89.6 The cost of an insurance policy or annuity effected by the trustee in respect of the pensioner which are not debited from the member's accumulation account.

- 89.7 The proportion of an amount payable as taxation in respect of the earnings of the fund that are credited to the pensioner's account or arise from a roll over payment that the trustee thinks equitable.
- 89.8 The proportion of an amount paid in respect of an indemnity to the trustee or other person under this deed that the trustee thinks equitable.
- 89.9 The amount of a levy that the trustee thinks equitable.
- 89.10 An amount transferred to the accumulation account of a beneficiary.
- 89.11 Any other amount that the trustee thinks it appropriate to debit from the account.

### **Adjustment based on fund earning rate**

- 90 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the trustee must make an adjustment to the account that the trustee thinks equitable on the basis of the interim fund earning rate at that date. The adjustment must be made in respect of the period from the beginning of the current fund year to the relevant date. The income account must be credited or debited accordingly.

### **Segregation of assets and valuation**

- 91 The trustee may segregate from other assets those assets which are to fund the pension of a person under this deed. The trustee must value those assets as required by superannuation law. If they are insufficient or more than sufficient to fund the pension, the trustee must do anything that superannuation law requires. The trustee must obtain any certificate of adequacy that the trustee considers necessary in respect of those assets in order to comply with the Tax Act or superannuation law.

### **Pensions: residue in account**

- 92 On the death of a pensioner being paid a pension the trustee must, subject to superannuation law:
  - act in accordance with the terms on which the relevant pension is paid, including as to the payment of the pension to a reversionary beneficiary; and
  - then, if there is no reversionary beneficiary, or if there is any residue in the pension account for any other reason, pay that residue as a death benefit in accordance with Part H of this deed.

### **Trustee's right to commute pensions generally**

- 93 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustee may commute all or any part of a pension and apply the proceeds of that commutation in accordance with superannuation law, including by commuting it to a lump sum and paying it to the relevant person or his or her estate. The following general conditions apply in respect of all types of pension:
  - The commutation must be allowed by, and be in accordance with, superannuation law.
  - The commutation must not disadvantage the fund, an employer, a member or

pensioner.

If the trustee commutes only part of a pension, the trustee must then adjust the amount of the pension payable as required by superannuation law.

### **Qualification of pensions as asset test exempt income streams**

- 94 The trustee may decide that a pension should qualify as an asset test exempt income stream (as that term is defined by the *Social Security Act 1991*). If the trustee so decides:
- 94.1 the superannuation law prevails over the terms of this deed to the extent of any inconsistency;
  - 94.2 this deed is deemed to contain any provision that is required by superannuation law; and
  - 94.3 this deed is deemed not to contain any provision that is required to be excluded by superannuation law.

## **H Death, disability and retirement benefits**

### **Death benefit payments**

- 95 The trustee may pay the death benefit on the death of a current member of the fund. The trustee can do that under:
- 95.1 a death benefit agreement, clause 97;
  - 95.2 a binding death benefit notice, clause 99; or
  - 95.3 a non-binding death benefit notice, clause 100.
- 96 In the ways set out in this Part H, the trustee must pay the full amount standing to the credit of the accumulation account, and any pension account residue referred to in clause 92, either as a lump sum, or as one or more pensions or annuities, or both.

### **Death benefit agreement payment arrangements**

- 97 On the death of a member or beneficiary who has a death benefit agreement:
- 97.1 the death benefit agreement prevails over clause 99 and over any binding death benefit notice or non-binding nomination form;
  - 97.2 the trustee must pay, or apply, the relevant benefit in accordance with the rules set out in the death benefit agreement; and
  - 97.3 Part I of this deed applies to the payment of the relevant benefit.
- 98 A death benefit agreement need be executed only by the trustee and the relevant member or beneficiary. On execution, the terms of any death benefit agreement form part of this deed. They are to be read together with this deed and in accordance with the following rules:
- 98.1 a death benefit agreement replaces any previous death benefit agreement;

- 98.2 if there is a death benefit agreement, then any binding death benefit notice is to be treated as not in effect for the purposes of this deed and of regulation 6.17A(4) of the SIS Regulations (but see also clause 98.4 which can overrule this clause);
- 98.3 if there is any inconsistency between the death benefit agreement and the remaining provisions of this deed, then the terms of the death benefit agreement prevail to the extent of that inconsistency — except that clause 5 of this deed prevails over the agreement; and
- 98.4 if part of the death benefit agreement is invalid because it directs the trustee to pay part, or all, of the benefits to a person to whom those benefits may not be paid in accordance with superannuation law (**disallowed benefits**) then:
- clause 98.2 does not apply in respect of the disallowed benefits;
  - clauses 97 and 98.1 to 98.3 apply to any part of the death benefit agreement which remains valid (and to the payment of death benefits other than disallowed benefits); and
  - clauses 98.1 to 98.3 apply for the purpose of determining the disallowed benefits, and the disallowed benefits must be paid in accordance with the remainder of this Part H.

#### **Binding death benefit notice payment arrangements**

- 99 After the death of a member or beneficiary who has given the trustee a binding death benefit notice, the trustee must comply with that notice subject to clauses 97 and 98.

#### **Non-binding death benefit notice payment arrangements**

- 100 If after the death of a member or beneficiary, not all death benefits have been paid or applied in accordance with a death benefit agreement or binding death benefit notice, then the trustee must pay or apply the relevant benefit in the way the trustee thinks fit in accordance with the following rules:
- 100.1 If the member or beneficiary has left dependants, then the trustee must pay or apply the benefit to or for the benefit of any one or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary. The trustee may do so in any proportions the trustee thinks fit and may take into account a member's wishes contained in a non-binding nomination form.
- 100.2 If the member or beneficiary has not left any dependants but does have a legal personal representative, then the trustee must pay the benefit to the legal personal representatives of the member or beneficiary.
- 100.3 If the member or beneficiary has not left any dependants and has no legal personal representative, then the trustee may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustee may do so in any proportions the trustee thinks fit.
- 100.4 If the trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 100.1 to 100.3, then the trustee must treat the benefit as a forfeited benefit entitlement.

### **Death of member or former member**

- 101 If a member or former member who has become entitled to a lump sum benefit dies before the payment is made, then the trustee must pay the amount in accordance with clauses 97 to 100.

### **Discharge of trustee**

- 102 If a dependant, legal personal representative, relative or other person receives any part of a benefit in accordance with clauses 97 to 101, then that discharges the trustee from liability in relation to the benefit. The trustee is not responsible for seeing how the benefit is applied.

### **Total and permanent disablement benefit**

- 103 The trustee must pay a benefit to a member whom the trustee believes to be totally and permanently disabled unless requested otherwise by the member. The benefit may be either of the following:
- A lump sum equal to the full amount standing to the credit of the accumulation account of the member; or
  - One or more pensions or annuities representing that amount.

### **Temporary total disablement benefit**

- 104 The trustee must pay a benefit to a member whom the trustee believes to be temporarily totally disabled unless requested otherwise by the member. The benefit must be in the form of a pension or annuity that represent the following amounts:
- In the case where the trustee is entitled to a benefit under an insurance policy in relation to the member's temporary total disablement, the amount payable to the trustee.
  - In any other case, the amount decided by the trustee, provided it does not reduce the minimum withdrawal benefit of the member under superannuation law.

The member is not entitled to commute any part of this benefit.

### **Period of payment: temporary total disablement**

- 105 The trustee must cease paying the benefit for temporary total disablement:
- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, when the trustee ceases to be entitled to that benefit.
  - In any other case, when the member ceases to be temporarily totally disabled, or reaches normal retirement age, or becomes entitled to another benefit under this deed or requests that the benefit ceases to be paid.

### **Method of payment: temporary total disablement**

- 106 The trustee must pay the benefit in respect of temporary total disablement in the following way:

- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, in the way the benefit is paid by the insurer.
- In any other case, in the way the trustee decides.

### **Member contributions may be suspended: temporary total disablement**

107 A member may suspend his or her contributions during a period while he or she is receiving a benefit in relation to temporary total disablement.

### **Membership not affected by temporary total disablement**

108 A member does not cease being a member because he or she is receiving a benefit in respect of temporary total disablement.

### **Retirement benefit**

109 The trustee may pay a member the retirement benefit at the member's request if either of the following applies:

- the member retires from employment on or after reaching normal retirement age; or
- the member becomes entitled under superannuation law to the payment of a benefit despite still being employed.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

### **Early retirement**

110 On request by a member, the trustee must pay a benefit to that member in each of the following cases:

- the member ceased to be employed before normal retirement age, but has reached the relevant preservation age.
- the member retired from an arrangement under which the member was gainfully employed and has reached 60 or another age prescribed by superannuation law.
- in any other case as permitted by superannuation law.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

## **I Payment of benefit**

### **Trustee must notify that benefit is payable**

- 111 The trustee must give notice that a benefit is payable to the following persons:
- If the benefit is payable to a member, to that member.
  - If the benefit is payable on the death of a member, to the nominated beneficiary, the reversionary beneficiary, the legal representatives of the member, known dependants of the member and any other person the trustee reasonably believes may have an entitlement or interest in the benefit.
  - In any other case, any persons the trustee reasonably believes may have an entitlement or interest in the benefit.

### **Method of notice**

- 112 The trustee must give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies the trustee that he or she is entitled to a benefit, the trustee must notify any persons to whom a notice was required to be sent under clause 111 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the trustee must pay the relevant part of the benefit to that person.

### **Claim out of time**

- 113 If a person makes a claim out of time to an entitlement to a benefit, the trustee is not bound to make any payment to that person.

### **Unclaimed benefit**

- 114 The trustee must give the Regulator a statement of any unclaimed benefits and must pay them to the Regulator as required by superannuation law.

### **Tax on benefit**

- 115 Either the trustee or an insurer or other appropriate body must deduct any tax that is payable in relation to a benefit before that benefit is paid.

### **Where benefit is payable**

- 116 A benefit is payable at the trustee's principal office, or at a substitute place the trustee notifies to the member or beneficiary.

### **Trustee may send benefit to person entitled**

- 117 The trustee may send a benefit to the postal address that the person entitled to it has last notified to the trustee, or to the bank account into which that person has asked the benefit to be paid, or to some other place the trustee decides on.

### **Notification of address etc**

- 118 A person to whom a benefit becomes payable must notify the trustee of his or her full residential address, and of any change in that address. He or she must also notify the trustee of a bank account into which he or she asks the benefit to be paid.

### **Receipt to be given**

- 119 On request by the trustee, a person to whom a benefit is paid must give the trustee a receipt and release for the payment in the form required by the trustee.

### **Person under legal disability**

- 120 If a person to whom the trustee is to pay any part of a benefit is under a legal disability, or the trustee believes that it would be in that person's best interests for the trustee not to make the payment to that person, the trustee may make the payment in any of the following ways as the trustee thinks fit:
- To or for the maintenance, education, advancement, support or benefit of the person on any conditions.
  - To, and for the benefit of, another person who appears to the trustee to be any of the following: the trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.

### **Discharge of trustee**

- 121 The receipt by a person of a payment in accordance with clause 120 discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

### **Transfer of assets**

- 122 With the consent of a member or beneficiary to whom a benefit is payable, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

## **J Forfeiture of benefit entitlements**

*Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.*

### **Forfeiture account**

- 123 The trustee may establish or maintain a forfeiture account into which the trustee must pay any amount forfeited under this deed. Money held in that account does not form part of an accumulation account. The trustee must credit any income from that money to the forfeiture account.

### **Circumstances of forfeiture**

124 All benefit entitlements of a person are forfeited in each the events in 124.1-124.6 — unless the trustee has determined otherwise within six months after the relevant event. The trustee's determination has effect from the date specified by the trustee which may be a date before the date of the event.

- 124.1 The person assigns or charges, or attempts to assign or charge a benefit entitlement, except in accordance with superannuation law.
- 124.2 The person's interest in a benefit entitlement becomes payable to or vested in another person or a government or public authority.
- 124.3 The person is or becomes insolvent or has committed or commits an act of bankruptcy.
- 124.4 The person is unable personally to receive or enjoy any part of the entitlement.
- 124.5 In the trustee's opinion, the person is incapable of managing his or her affairs.
- 124.6 In the trustee's opinion, the person is guilty of fraud or dishonesty.

This clause does not apply to the extent that it would be made ineffective by the *Bankruptcy Act 1966* or superannuation law.

### **Forfeiture of residue**

125 A person forfeits the residue in an accumulation account if the trustee is satisfied that the person has been paid all benefits that he or she is entitled to be paid under this deed.

### **Application of forfeiture account**

126 The trustee may pay or apply forfeited money held in the forfeiture account in any one or more of the following ways in accordance with superannuation law:

- 126.1 To or for the benefit of the relevant person or the dependants of the relevant member in any proportions the trustee decides on.
- 126.2 To the trustee of the relevant member's estate.
- 126.3 To or for the benefit of other members or their dependants who have rights to receive benefits under this deed.
- 126.4 To provide additional benefits to other members or their dependants in accordance with superannuation law.
- 126.5 To the equalisation account (if any).
- 126.6 To any employees of the member or former member the trustee thinks appropriate.
- 126.7 To any other person or entity the Regulator approves in writing.

### **Limit in relation to payments to member or dependants**

127 The trustee must not make a payment under clause 126 to a member who is still being employed by an employer, except for the purpose of relieving the hardship of that member or his or her dependants.

### **Possible adjustment to entitlements**

- 128 If the event that gave rise to forfeiture of an entitlement in respect of a member ceases to affect that member, the trustee may re-establish any rights in the member that the trustee thinks fit. They must not be greater than they were before the forfeiture.

## **K Provisions relating to the *Family Law Act***

### **Payment splits**

- 129 If the trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, then provided the agreement or court order has been properly served and subject to superannuation law, the trustee may:
- vary the relevant member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the trustee determines from time to time, to the extent permitted by superannuation law; and
  - make a payment to the non-member spouse or a transfer in respect of the non-member spouse in accordance with clause 133.

### **Rules for payment splits**

- 130 The trustee may as it determines from time to time subject to superannuation law, make rules dealing with:
- the valuation of a non-member spouse's benefit or benefit entitlement (including any adjustments);
  - the timing of the calculation of the non-member spouse's benefit or benefit entitlement;
  - other matters relating to the payment split or the non-member spouse's benefit or benefit entitlement.

### **Deferred payment splits**

- 131 If the trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the trustee must:
- record the existence of the agreement or court order; and
  - keep a record of the non-member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the trustee determines from time to time subject to superannuation law.

### **Flagging agreements**

- 132 If the trustee receives a flagging agreement or court order under Part VIII B of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustee must:
- record the existence of the agreement or court order; and

- defer payment of the benefit to or in respect of the relevant member until the agreement or court order is lifted.

### **Transfer of non-member spouse interests**

133 If the trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-member spouse under that agreement or order:

- the trustee must pay that amount to the non-member spouse – if the non-member asks for that payment in writing; or
- the trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-member spouse if the non-member asks for that transfer in writing.

Any payment amount under this clause must be in accordance with superannuation law. The receipt by the non-member spouse or the trustee of that other fund will sufficiently discharge the trustee of its liability in respect of that non-member spouse.

### **Refusal to admit as member**

134 Provided that the trustee acts in accordance with superannuation law, the trustee may refuse to admit a non-member spouse as a member of the fund.

## **L Trustee's powers**

### **All the powers of an individual**

135 The trustee has all the powers in relation to the assets of the fund that the trustee would have if the trustee were the legal and beneficial owner of those assets. It also has all the powers that a trustee has at law and the powers specifically conferred on the trustee by this deed.

### **Trustee's discretion**

136 The trustee has an absolute discretion in relation to exercising or not exercising any power under this deed or at law, and in relation to the way in which any power is exercised. The trustee's decision on such a matter is final and binding.

### **Delegation of power**

137 The trustee may delegate to another person, including one or more directors of the trustee, any power or duty on any terms the trustee thinks fit, including by appointing an attorney under a power of attorney. The trustee may alter or revoke any delegation including any power of attorney.

### **Trustee not subject to direction**

138 The trustee is not subject to direction in exercising any power under this deed or at law, except to the extent indicated under superannuation law.

### **Specific powers**

- 139 To exclude any possible doubt, the trustee has the power to do any of the following to the extent allowed by superannuation law:
- 139.1 To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the fund.
  - 139.2 To indemnify a person.
  - 139.3 To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities.
  - 139.4 To do anything the trustee considers necessary or desirable in connection with performing its obligations under this deed.

### **Limit on borrowing**

- 140 The trustee must not (except as provided by this deed in clause 142 and superannuation law):
- 140.1 borrow money; or
  - 140.2 maintain an existing borrowing of money.

### **Trustee may grant security over asset**

- 141 The trustee may, to the extent allowed by superannuation law, mortgage, pledge, charge, assign or otherwise provide as security, any asset of the fund for the purpose of the trustee borrowing or maintaining a borrowing of money including (without limitation) for the purpose of a "limited recourse borrowing arrangement" referred to in clause 142.3.

*Note: There are strict requirements which must be met for a borrowing, and any associated mortgaging or charging of assets, to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money or mortgages or charges its assets.*

### **When borrowing is allowed (including "limited recourse borrowing arrangements")**

- 142 The trustee may borrow or maintain a borrowing of money in any one or more of the following cases:
- 142.1 to enable the trustee to pay a surcharge or advance instalment which the trustee is required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* — as long as the borrowing complies with section 67(2A) of the SIS Act;
  - 142.2 to enable the trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act — as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
  - 142.3 under an arrangement (a "limited recourse borrowing arrangement") which the trustee enters, or has entered into, in which the money borrowed is, or has been,

used to acquire an asset that superannuation law allows the trustee to acquire — as long the borrowing complies with Part 7 of the SIS Act.

- 143 Clause 142 does not limit the circumstances in which the trustee may borrow or maintain a borrowing of money.

*Note: There are strict requirements which must be met for a borrowing to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money.*

#### **Trustee's power to effect insurance**

- 144 The trustee may arrange one or more insurance policies with one or more insurers to secure the benefit of a member. A policy may be a group policy or an individual policy.

#### **Trustee bound to exercise power in limited cases**

- 145 The trustee is not bound to arrange one or more insurance policies, except where the trustee has informed the member or beneficiary that the trustee will arrange a policy of a specified type and amount and the member or beneficiary has not asked the trustee in writing not to do so, or has withdrawn his or her request for the trustee to arrange that policy.

Even so, the trustee is not bound to arrange a policy that the trustee is unable to arrange.

#### **Inconsistent conditions in policy**

- 146 If an insurer will only insure a member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the member or beneficiary, the trustee may impose the policy conditions on that benefit despite the conditions stated in this deed.

#### **Powers not affected by conflict of interests**

- 147 The trustee may exercise any power under this deed or at law despite the fact that the trustee, or a director of the trustee, has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise. An indirect interest or benefit includes, without limitation, where the trustee, or a director of the trustee, obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unitholder or beneficiary of a third party with whom the trustee enters into a transaction or arrangement.

#### **Disclosure of conflict of interest**

- 148 The trustee and any director of the trustee must disclose conflict of interests of the type described in clause 147 in accordance with superannuation law.

#### **Trustee's power to effect transfer on written request**

- 149 On written request by a member or beneficiary, the trustee may transfer to the trustee of an approved benefit arrangement any part of the amount in the fund that represents the

member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:

- The member or beneficiary is eligible to join or has joined the arrangement.
- The trustee is satisfied that the transfer complies with superannuation law.
- The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 39.

### **Form and effect of transfer**

150 The member or beneficiary must complete and execute any documents required by the *Tax Act* for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.

### **Trustee's power to transfer to successor fund**

151 The trustee may transfer to the trustee of an approved benefit arrangement that is a successor fund to the fund under superannuation law any part of the amount in the fund that represents a benefit entitlement. The consent of the member or beneficiary is not required. Nor is it necessary that the member already be a member of the successor fund.

### **Trustee's power to transfer to eligible roll over fund**

152 In accordance with superannuation law, the trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a member's or beneficiary's benefit entitlement. The trustee must do so if superannuation law requires it.

### **Transfer of assets**

153 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 151 or 152, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

### **The trustee's power to receive transfer**

154 The trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a member or beneficiary of the fund. The trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustee may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

## **M Administration of fund**

### **Dealing with money received**

- 155 The trustee must ensure that any money received by the fund is dealt with as soon as practicable in one of the following ways:
- Deposited to the credit of the fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the trustee.
  - Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the trustee for the purposes of the fund.
  - Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this deed.

### **Effect of receipts**

- 156 A receipt given by the trustee or the secretary of the fund or another person authorised by the trustee in writing to issue receipts is a sufficient discharge to the person by whom money is paid to the fund.

### **Employers to provide information to trustee**

- 157 On written request by the trustee, an employer must give the trustee any information which it has or can obtain that is, in the trustee's opinion, necessary or desirable for managing and administering the fund. The trustee may act on that information and is not required to verify it.

### **Compliance**

- 158 The trustee must comply with superannuation law and with any directions of the Regulator in relation to the fund.

### **Trustee may not charge fees**

- 159 The trustee must not charge any fees in relation to acting as trustee under this deed or performing any services in respect of the fund.

### **Trustee entitled to be reimbursed for expenses**

- 160 The trustee is entitled to be reimbursed from the fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as trustee under this deed.

### **Trustee to keep records and accounts**

- 161 The trustee must keep proper records and accounts of all money received by the fund and paid out by it, including adequate details of all dealings by the fund in connection with that money.

### **Trustee to collect money owing to the fund**

162 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

### **Trustee to keep records, accounts, books etc**

163 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

### **Documents to be prepared**

164 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:

- A statement of its financial position.
- An operating statement.
- Any other account or statement required by superannuation law.

### **Annual return**

165 The trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

### **Audit**

166 The trustee must arrange for the books, accounts and records of the fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

### **Disclosure requirements**

167 The trustee must ensure that information and documents are provided to each of the following persons if required by, and in accordance with the requirements of, superannuation law:

- employers.
- the Regulator.
- the actuary (if one is appointed).
- the auditor.
- any other person.

### **Availability of books and records**

168 The trustee must ensure that the books of the fund and information relating to it are available for inspection and copying, and that access is provided to premises where the

books and information are available to be inspected and copied, in accordance with superannuation law.

#### **Availability of deed and documents**

169 The trustee must ensure that this deed and any other documents (or copies of the deed and documents) are made available for inspection by a member, or by a beneficiary on the beneficiary's request, as required by superannuation law. It is sufficient if they are available for inspection at the trustee's office while that office is open.

#### **Appointment of auditor**

170 The trustee may appoint a suitably qualified person as auditor of the fund.

#### **Appointment of actuary**

171 The trustee may appoint as actuary of the fund:

- an actuary who is a Fellow of the Institute of Actuaries of Australia;
- a member of a firm or company of which at least one member or director is a Fellow of the Institute of Actuaries of Australia; or
- an auditor who is appropriately qualified and is independent according to criteria specified by superannuation law.

#### **Appointment of administration manager**

172 The trustee may appoint one or more suitably qualified persons to act as administration manager of the fund or a specified part of the fund.

#### **Appointment of investment manager**

173 The trustee may appoint one or more suitably qualified persons to act as investment manager of the fund or a specified part of the fund in accordance with superannuation law.

#### **Appointment of custodian**

174 The trustee may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund, including (without limitation) as part of a limited recourse borrowing arrangement referred to in clause 142.3.

#### **Superannuation law to be observed**

175 Any appointment by the trustee must be in accordance with superannuation law.

#### **Trustee may remove person from office**

176 The trustee may remove from office a person the trustee has appointed to an office.

### **Trustee not bound by advice**

177 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

### **Liability of the trustee is limited**

178 To the extent allowed by superannuation law, neither the trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:

- The person fails to act honestly.
- The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise.
- The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

### **Indemnity**

179 To the extent allowed by superannuation law, the trustee and each of its directors, officers and employees are entitled to an indemnity from the fund in all cases where the person is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

### **Other persons who may act**

180 Subject to superannuation law, the trustee may appoint the following persons to act as director of the trustee of the fund.

- the legal personal representative of a deceased member, from the date of the member's death until the member's death benefits begin to be paid;
- the legal personal representative of a member, while he or she holds an enduring power of attorney in respect of the member or while the member is under a legal disability;
- the legal personal representative, parent or guardian of a member who is a minor; or
- any other person if the superannuation law allows that person to be a director of the trustee and the fund would remain a self managed superannuation fund.

### **Appointment of members as trustee**

181 The trustee may appoint the members of the fund as trustees in place of the trustee by executing a deed to that effect. It may only do so if immediately afterwards it executes another deed which provides the mechanisms to enable the members of the fund to act as trustees.

### **Appointment of replacement corporate trustee**

182 The trustee may appoint as a replacement trustee a corporation of which the members of the fund are the only directors. The trustee must do everything necessary to vest the fund

in the replacement trustee and must deliver all records and other books to the replacement trustee.

### **Continuity of office**

- 183 When a person ceases to be a trustee or becomes a trustee, any other person acting as trustee must do everything necessary to vest the fund in the new or remaining trustees and must deliver all records and other books to the new or remaining trustees.

### **Appointment and resignation of trustee**

- 184 The trustee will determine who acts as trustee in accordance with this deed and superannuation law for the fund to continue as a self managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of trustee. The trustee may accept the trustee's resignation in writing for this purpose.
- The appointment or removal of a trustee must be in writing and must immediately be advised to any other trustee.
  - Where the trustee is unable or unwilling to determine who will act as trustee then the majority of members of the fund will determine who will act as trustee. If there are no members in the fund, the former members of the fund (or their legal personal representatives) will determine who acts as trustee of the fund.
  - To the extent permitted by law, these provisions apply to the exclusion of any statutory provisions relating to the appointment of new trustees, including statutory provisions which may otherwise require registration of the relevant deed or instrument.

## **N Miscellaneous**

### **Trustee may elect to wind up fund**

- 185 The trustee may elect to wind up the fund on a specified date in either of the following cases:

- 185.1 The trustee decides to wind up the fund.  
185.2 There are no longer any members of the fund.

The trustee must elect to wind up the fund on a specified date if the Regulator requires the fund to be wound up.

### **Notice of winding up**

- 186 The trustee must give notice to each participating employer and member that the fund is to be wound up on the specified date.

### **Payment etc on winding up**

- 187 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustee must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

### **Employment relationship not affected by this deed**

188 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

### **Legal rights of member not affected by this deed**

189 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

### **Variation**

190 Subject to clauses 191 to 193, the trustee may vary this deed either prospectively or retrospectively. The trustee may do so by oral declaration, written resolution or deed. If superannuation law requires it, the trustee must promptly give a certified copy of the resolution or a copy of the deed to the Regulator.

### **Limits on effect of variation**

191 If one or more death benefit agreements are in place under this deed, then any variation of the deed does not vary any death benefit agreement or clauses 97 or 98 – unless that variation expressly states that it does vary any one or more of those things. Instead, those agreements and clauses continue to apply in respect of the fund.

192 If one or more agreements or arrangements are in place in respect of the fund relating to payment of a pension, then any variation of the deed does not vary those agreements or arrangements – unless that variation expressly states that it does vary one or more of those things. Instead, those agreements and arrangements continue to apply in respect of the fund.

### **Limits on power to vary**

193 The trustee does not have power to vary this deed so as to do either of the following:

- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
- Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

However, this (the rule in the previous sentence with the 2 dot points) does not apply if the reduction is necessary to enable the fund to comply with superannuation law or if each affected member, or the Regulator, consents in writing to the reduction.

The trustee also does not have power to vary this deed in a way that would have either of the following effects:

- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
- unless the sole or primary purpose of the fund is to provide old age pensions to members, allowing any person except a corporation to be appointed trustee of the fund.

### **Notice of variation**

194 If superannuation law requires it, the trustee must inform members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The trustee must do so in accordance with superannuation law.

### **Dispute resolution**

195 If superannuation law requires it, the trustee must establish a system complying with that law for dealing with enquiries and complaints from members, beneficiaries and dependants.

### **Interpretation**

196 A reference in this deed to:

- a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and assigns of that person;
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
- a clause, schedule or appendix is reference to a clause, schedule or appendix in or to this deed;
- this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- the singular includes the plural and vice versa; and
- a gender includes the other gender.

**Proper law**

197 This deed is governed by the law of New South Wales. The parties consent to the exercise of jurisdiction by the courts of that place.

# **Superannuation Trust Deed for a Self- Managed Fund**

for

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## **N AND F PORLEY SUPERANNUATION FUND**

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Corporation one Pty Ltd  
34 Park Ave  
Coffs Harbour NSW 2450  
Tel: 0266536021  
Fax: 85690957  
[beagles@corporationone.com.au](mailto:beagles@corporationone.com.au)

Maddocks  
Level 6  
140 William Street  
Melbourne VIC 3000  
Tel: 1300 307 343  
(c/- Cleardocs)  
[info@maddocks.com.au](mailto:info@maddocks.com.au)  
[www.maddocks.com.au](http://www.maddocks.com.au)

# **N AND F PORLEY SUPERANNUATION FUND**

## **Schedule 1 to this deed**

### **Date deed established**

06 June 2015

### **Name and address and ACN of trustee**

N and F Superannuation Pty. Ltd., ACN 605945720  
34 Park Ave  
Coffs Harbour, NSW 2450

### **Name and address of members**

Nestor Porley  
9 Rain Ridge Rd  
Kurrajong Heights, NSW 2756

Fiona Porley  
9 Rain Ridge Rd  
kurrajong Heights, NSW 2756

### **Name of person establishing the fund (Principal)**

CORPORATION ONE ACN 124361039  
34 Park Ave  
Coffs Harbour, NSW 2450

*{The fields in all of the following schedules to this deed are left intentionally 'blank' as the schedules are to be used as 'pro-forma' documents if the fund wishes to add members etc. in the future. These schedules are to be bound in and form part of this Deed.}*

## Schedule 2 to this deed

[This schedule contains the form of an application to become a member. It may be required in the future if the fund wishes to add members. See clause 8 for further information.]

### Form of Application to become a Member

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

#### Part 1 Application and Undertakings

- I apply to become an [Either initial Or additional] member of this fund under the trust deed.
- I make each of the following undertakings:
  - [Either I am not in an employment relationship with another member. Or I am not in an employment relationship with another member who is not a relative of mine.]
  - I am not a disqualified person under superannuation law from being a [Either trustee Or director of the trustee] of the fund.
  - I will comply with the trust deed.
  - Upon request, I will fully disclose in writing any information required by the trustee in respect of my membership of the fund. This includes disclosing:
    - Any circumstance which may lead to my entering into an employment relationship with any other member of the fund who is not also a relative of mine.
    - That I may become disqualified under superannuation law from being a [Either trustee Or director of the trustee] of the fund.
    - Any information in relation to my medical condition.
  - I will act as a [Either trustee Or director of the trustee] of the fund.
  - I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
  - I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

I attach a completed ATO Individual Tax File Number Notification form.

Applicant name [Insert applicant's name]  
 Applicant address [Insert applicant's address]  
 Applicant occupation [Insert applicant's occupation]  
 Date of birth [Insert applicant's date of birth]  
 Applicant place of birth [Insert applicant's place of birth]

**Part 2: Death Benefit: Beneficiary Nomination**

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after your death to the person or persons you mentioned in this notice, being one or more dependants or your legal personal representative. *Or If death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on your death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on your death.

*[If the beneficiary is your legal personal representative only]* direct *[Either the trustees Or the directors of the trustee]* that my legal personal representative is to receive 100% of any death benefit that is payable if I die.

*[If the beneficiary is another person/s or both the member's legal personal representative and other person/s]* direct *[Either the trustees Or the directors of the trustee]* that the person[s] named in the following table *[are/is]* to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
<i>[Insert beneficiary's name. If this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert beneficiary's relationship to member or if this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert proportion of the death benefit to be paid to this beneficiary] %</i>
<i>[Add rows to table as required]</i>		

*[If death benefit nomination is to be binding (Please note, that this beneficiary direction is valid for only 3 years.)]*

Signed by the applicant: \_\_\_\_\_

Date: \_\_\_\_\_

[Insert member's name]

[If the death benefit is not binding]

Witness: \_\_\_\_\_ Name: \_\_\_\_\_

Or

If the death benefit is to be binding The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_ Witness name: \_\_\_\_\_

### First Notice: The types of death benefit arrangements and the order in which they take effect

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- **death benefit agreement** — which binds the trustee and which does not expire, see clauses 97 and 98;
- **binding death benefit notices or binding nomination forms** — which bind the trustee but which expire after 3 years or earlier if replaced or revoked; and
- **non-binding nomination forms** — which do not bind the trustee but which do not expire until replaced or revoked.

**Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.**

### What you need to consider

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

**Second Notice: Consistency of death benefit arrangements with pension terms**

It is important to consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be considered together.

For instance, if the pension terms require an automatic reversionary pension, then the death benefit nomination or death benefit agreement has no effect in relation to that pension. If the member wants to ensure all these arrangements – under pension terms, a death benefit nomination or death benefit agreement – are consistent, or to deliberately vary from one to the other, then careful drafting is required and the member should seek professional advice.

**Annexure A to Application to become a member**

***[Here you need to attach the Product Disclosure Statement from Schedule 6.]***