
Deed Poll of Variation AvWrap Retirement Service

IOOF Investment Management Limited ABN 53 006 695 021

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Date: 1 JUNE 2021

This deed poll is made by:

- 1 IOOF Investment Management Limited (ABN 53 006 695 021) as trustee of the AvWrap Retirement Service of Level 6, 161 Collins Street, Melbourne, Victoria 3000 (Trustee).
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Background

- A The superannuation fund initially called the Avenue Superannuation Fund was established by Trust Deed dated 2006, whose name was later changed to AWrap Retirement Service (**Fund**) by deed of amendment.
 - B The Trustee is the current trustee of the Fund.
 - C The Trust Deed for the Fund has been amended by deeds of amendment dated 1 July 2007, 15 August 2014 and 17 June 2015.
 - D Clause 15.1 of the Trust Deed provides that the Trustee may vary the Trust Deed, provided it complies with the conditions in that Clause in the Trust Deed.
 - E The Trustee wishes to amend the Trust Deed to:
 - (i) expressly allow the Trustee to accept lapsing Binding Nominations for Post 1 April 2021 Members;
 - (ii) expressly allow the Trustee to accept Non-Binding Nominations for Post 1 April 2021 Members;
 - (iii) amend the process for making and amending a Binding Direction for Post 1 April 2021 Members;
 - (iv) expressly allow for electronic communications between the Trustee, Members and Employers; and
 - (v) amend the maximum administration fee that may be charged by the Trustee from 2% to 3% per annum and remove the ability to charge certain fixed fees.
 - F The Trustee is satisfied that the amendments set out in this deed poll are permitted by Clause 15.1 of the Trust Deed.
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2 Defined terms and interpretation

2.1 Defined Terms

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is not defined in the Dictionary but is defined in the Trust Deed, has the meaning given to it in that Trust Deed.

2.2 Interpretation

Clause 2 in Schedule 1 sets out rules of interpretation for this deed poll.

3 Amendment of Trust Deed

3.1 Amendment

- (a) On the date of this deed poll (**Effective Date**) and in accordance with Clause 15.1 of the Trust Deed, the Trust Deed is amended as set out in this Clause 3.1.
- (b) Clause 1.1 of the Trust Deed is amended as follows:
 - (i) The following definition is inserted after the definition of "Actuary":

Address includes a:

 - (a) *postal address; and*
 - (b) *email address."*
 - (ii) The definition of "Benefit Direction" is replaced with the following definition:

Benefit Direction in respect of a Beneficiary, means a notice received by the Trustee from the Beneficiary which:

 - (a) *is in a form required by or acceptable to the Trustee;*
 - (b) *has effect from the date the notice is received or deemed received by the Trustee;*
 - (c) *directs the Trustee, on the death of the Beneficiary, to pay a pension to a Reversionary Beneficiary of the Beneficiary; and*
 - (d) *where the Benefit related to a Pre-1 April 2021 Member, was given to the Trustee by the Beneficiary prior to the Beneficiary commencing to receive a pension from the Fund."*
 - (iii) The following definition is inserted after the definition of "Benefit Direction":

Binding Nomination means a notice received by the Trustee from the Beneficiary which:

 - (a) *is in a form required by or acceptable to the Trustee;*
 - (b) *requires the Trustee to pay all or part of the Member's Death Benefit to persons nominated in the Nomination when the Member dies and at the date of death the nominees are Dependants or legal personal representatives of the Member; and*
 - (c) *complies with the Relevant Law and any conditions specified by the Trustee from time to time."*
 - (iv) The following definition is inserted after the definition of "Binding Nomination":

Business Day means a day on which banks are open for business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday.
 - (iv) The definition of "Child" is replaced with the following definition:

“Child in relation to a Member or Beneficiary at any time, means a child of that Member or Beneficiary at the relevant time (and in respect of a deceased Member, at the date of their death) and includes:

- (a) the issue of the Member or of a Spouse of the Member;*
- (b) a legally adopted child;*
- (c) an ex-nuptial child; and*
- (d) posthumous natural child.*

- (v) The definition of “Dependant” is replaced with the following definition:

“Dependant in relation to a Member or Beneficiary at any time (and in respect of a deceased Member or Beneficiary, at the date of their death) includes:

- (a) a Spouse;*
- (b) a Child;*
- (c) a person who in the opinion of the Trustee is or was at the relevant time wholly or partially dependent on the Member or Beneficiary for maintenance and support; and*
- (d) any other person who is taken to be a dependant under the Relevant Law.*

- (vi) The following definition is inserted after the definition of “MIML”:

“Nomination means a Benefit Direction, Binding Nomination or Non-lapsing Nomination, as the context requires.”

- (vii) The following definition is inserted after the definition of “Nomination”:

“Non-Binding Nomination has the meaning given to it in Clause 6.3.9.

- (viii) The following definition is inserted after the definition of “Personal Representative”:

*“**Post-1 April 2021 Member** means:*

- (a) a Member that first became a Member on or after 1 April 2021 or*
- (b) a Member that the Trustee has determined to be a Post-1 April 2021 Member.”*

- (ix) The following definition is inserted after the definition of “Post-1 April 2021 Member”:

*“**Pre-1 April 2021 Member** means a Member that first became a Member before 1 April 2021 unless the Trustee has determined that the Member be a Post-1 April 2021 Member.”*

- (x) The following definition is inserted after the definition of “Retrenchment”:

“Reversionary Beneficiary means, in respect of a Member or Beneficiary, provided the person is eligible to receive a Member’s Death Benefit under Relevant Law, a Spouse or a Child of that Member or Beneficiary.”

- (xi) The definition of "Spouse" is replaced with the following definition:

"Spouse in relation to a Member or Beneficiary at any time, means a Spouse of that Member or Beneficiary at the relevant time (and in respect of a deceased Member or Beneficiary, at the date of their death) and includes a:

- (a) person who is legally married to the Member or Beneficiary;*
- (b) de facto spouse (whether of the same or a different sex) of the Member or Beneficiary who in the opinion of the Trustee lives with the Member on a bona fide domestic basis in a relationship as a couple; and*
- (c) person who is a "spouse" of the Member or Beneficiary within the meaning of SIS.*

- (d) Clause 6.3 is amended by:

- (i) changing the title to Clause 6.3 to "**6.3 Death Benefits – Pre-1 April 2021 Members**"; and

- (ii) inserting the following Clause before Clause 6.3.1:

"6.3.1A Where the relevant Member is a Pre-1 April 2021 Member, subject to Relevant Law, the Death Benefit provisions set out in Clauses 6.3.1 to 6.3.9 apply to that Member or Beneficiary."

- (e) The following Clause is inserted after Clause 6.3 of the Trust Deed

"6.3A Death Benefits – Post-1 April 2021 Members

6.3A.1 Where the relevant Member is a Post-1 April 2021 Member the Death Benefit provisions set out in Clauses 6.3A.2 to 6.3A.14 apply to that Member or Beneficiary.

6.3A.2 The interest in the Fund of a Member ceases immediately on his or her death and the Trustee must pay the Death Benefit in accordance with this Clause 6.3A.

6.3A.3 Subject to the Relevant Law and the remainder of this Clause 6.3A, the Trustee must pay or apply the Death Benefit as follows:

- (a) if it holds a Benefit Direction, to the Reversionary Beneficiary nominated in the Benefit Direction to receive a pension in accordance with the terms of the Benefit Direction;*
- (b) if it holds a Binding Nomination, to the Dependants or legal personal representatives of the Member or Beneficiary in accordance with the terms of the Binding Nomination;*
- (c) if it holds a Non-lapsing Nomination, in accordance with the terms of the Non-lapsing Nomination.*

6.3A.4 A Member or Beneficiary may give to the Trustee a notice which is intended by the Member or Beneficiary to be a Non-lapsing Nomination.

6.3A.5 If a Member or Beneficiary gives a notice to the Trustee under Clause 6.3A.4 and the Trustee is satisfied that the notice is an exercise of discretion by the Member or Beneficiary, the Trustee may consent to the exercise of that

discretion (which includes giving of the notice) on any grounds that the Trustee considers appropriate.

6.3A.6 *To the extent that a Member or Beneficiary has provided a Nomination to the Trustee in respect of a Death Benefit, Clause 6.3A.3 applies to the exclusion of any other discretion or power that the Trustee has with respect to distribution of the Death Benefit (or relevant part of the Death Benefit).*

6.3A.7 *If a Nomination, or a payment made or applied by the Trustee under that Nomination:*

(a) *does not comply with the Relevant Law; or*

(b) *under the Relevant Law the nomination ceases to be binding,*

it will be treated as a Non-Binding Nomination under Clause 6.3A.10 and Clause 6.3A.11 will apply in respect of the Death Benefit.

6.3A.8 *A Nomination will cease to be binding if the Member or Beneficiary revokes the Nomination or gives the Trustee a new Nomination of the same type, provided that with respect to a Non-lapsing Nomination, the Trustee is satisfied that:*

(a) *the Member or Beneficiary has given notice to the Trustee of the revocation of the Non-lapsing Nomination or the new Non-lapsing Nomination;*

(b) *the notice under Clause 6.3A.8(a) is an exercise of discretion by the Member or Beneficiary; and*

(c) *the Trustee consents to the exercise of that discretion (which consent may be withheld by the Trustee as it considers appropriate), and*

where the Trustee gives its consent under this Clause 6.3A.8, the Trustee must either:

(d) *accept the notice to the Trustee as a new Non-lapsing Nomination if the Trustee is satisfied the notice is a Non-lapsing Nomination; or*

(e) *accept a notice to the Trustee to revoke a current Non-lapsing Nomination.*

6.3A.9 *If a Nomination does not deal with the entirety of a Death Benefit payable in respect of the relevant Member or Beneficiary, Clause 6.3A.11 will apply in respect of any part of the Death Benefit not dealt with by the Nomination.*

6.3A.10 *A Member or Beneficiary may at any time make a non-binding nomination to the Trustee (**Non-Binding Nomination**) that:*

(a) *nominates a person or persons to receive the Member or Beneficiary's Death Benefit; and*

(b) *specifies the proportions and manner in which the Death Benefit is to be paid,*

in a manner acceptable to the Trustee. A Non-Binding Nomination is not binding on the Trustee, however the Trustee may consider a Non-Binding Nomination when exercising its discretion under Clause 6.3A.11.

6.3A.11 *Subject to this Clause 6.3A, a Member or Beneficiary's Death Benefit will be paid or applied by the Trustee to or for the benefit of one or more of the following persons:*

- (a) *the Member or Beneficiary's Dependants;*
- (b) *the Member or Beneficiary's legal personal representatives; or*
- (c) *in the circumstances permitted under the Relevant Law, any other individual or individuals determined by the Trustee,*

and, if more than one, in such proportions between them as the Trustee determines. The Trustee may determine in its absolute discretion the form and manner the Death Benefit will be paid or applied, and any conditions attaching to payment.

6.3A.12 *The interest in the Fund of a Beneficiary who is not a Member (Death Benefit Pensioner) ceases immediately on his or her death and the Trustee must pay or apply the Death Benefit as follows:*

- (a) *if the Trustee holds a Non-lapsing Nomination for the Death Benefit Pensioner, in accordance with Clause 6.3A.3(c); and*
- (b) *Clauses 6.3A.4 to 6.3A.9 and 6.3A.11 apply to the Death Benefit Pensioner's Death Benefit.*

6.3A.13 *The receipt of a Death Benefit by a Reversionary Beneficiary, Dependancy, Death Benefit Pensioner or legal personal representative in accordance with this Clause 6.3A will be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee will not be bound to see to the application of the amount.*

6.3A.14 *Without limiting the effect of Clauses 3.2 and 3.3, the Trustee is discharged from any liability to, or claim by, any person whatsoever in respect of a Member or Beneficiary's Death Benefit if:*

- (a) *the Trustee pays the Death Benefit in accordance with the Member or Beneficiary's Non-lapsing Nomination; or*
- (b) *the Trustee does not pay the Death Benefit in accordance with the Member or Beneficiary's Non-lapsing Nomination and the Trustee reasonably believes that the Non-lapsing Nomination was revoked by the Member or Beneficiary.*

(f) *Clauses 17.1 to 17.4 of the Trust Deed are replaced with the following Clauses:*

17.1 Notices to Members

Subject to the Relevant Law, notices or other communications about the Fund or a Division may be given by the Trustee to Members and former Members by:

- (a) *mail or electronically to the last Address provided to the Trustee by the Member or former Member or by a representative of a Member or former Member for the purpose of providing information about the Fund or a Division to the Member or former Member;*
- (b) *any other electronic delivery method acceptable to the Trustee; or*
- (c) *making the notice available on the Fund's website.*

17.2 Notices to Trustee

Subject to the Relevant Law, notices or other communications from a Member or former Member may be given to the Trustee:

- (a) *by mail to the registered office of the Trustee or the last Address provided to the Member or former Member by the Trustee or a responsible officer of the Trustee for the purposes of contacting the Trustee or providing notices;*
- (b) *by email to admin@hub24.com.au or the last Address provided to the Member or former Member by the Trustee or by a responsible officer of the Trustee for the purposes of contacting the Trustee or providing notices by email; or*
- (c) *by any other electronic delivery method acceptable to the Trustee.*

17.3 Notices to Employers

Subject to the Relevant Law, notices may be given to Employers by:

- (a) *mail or electronically to the last Address provided to the Trustee by the Employer or a representative of an Employer or the registered office or place of business of the Employer; or*
- (b) *any other electronic delivery method acceptable to the Trustee and agreed to by the Employer.*

17.4 General provisions

- (a) *"Without limiting any other means by which the sender may be able to prove that a Notice has been received by the addressee, a notice given under this Deed is deemed to be received:*

(i) if sent by post, on the 3^d day after the date of posting;

(ii) if sent by email, the earlier of:

(A) when the sender receives an automated message confirming delivery; or

(B) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

but if the delivery or receipt is on a day which is not a Business Day or is after 5:00 pm (addressee's time) it is deemed to be received at 9:00 am on the following Business Day.

- (b) *Notices or other communications must be in legible writing and in English."*

- (g) Paragraphs (a), (b) and (d) under the heading "CHARGES AND EXPENSES (Clause 10.2)" in Schedule 1 of the Trust Deed (**Deleted Paragraphs**) are removed and the remaining paragraphs under that heading are amended as follows:

(i) references to the Deleted Paragraphs are removed;

(ii) the numbering of the remaining paragraphs under the heading "CHARGES AND EXPENSES (Clause 10.2)" in Schedule 1 are updated to reflect that the Deleted Paragraphs have been deleted; and

- (iii) cross references to other paragraphs under the heading "CHARGES AND EXPENSES (Clause 10.2)" in Schedule 1 are amended to refer to the updated numbering.
- (h) Paragraph (c)(i) under the heading "CHARGES AND EXPENSES (Clause 10.2)" in Schedule 1 of the Trust Deed is replaced with the following:
 - (a) (i) *"Subject to any relevant restrictions under Relevant Law, an administration fee of up to 3% per annum of the balance of the Member's Accounts on the last Business Day of the financial year, calculated and payable monthly in arrears as at the last Business Day of the month, subject to a minimum of up to \$40.00 per month for each Member and each Beneficiary receiving an Allocated Pension or Term Allocated Pension, and deducted from the Member's Accounts within 15 Business Days of the calculation date."*

3.2 Effect of amendment

This deed poll does not, and is not intended to, affect the validity or enforceability of, or rescind or terminate the Trust Deed or any other document.

3.3 Amendment not to affect rights or obligations

Nothing in this deed poll:

- (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Trust Deed before the Effective Date; or
- (b) discharges, releases or otherwise affects any liability or obligation arising under or in connection with the Trust Deed before the Effective Date.

3.4 No resettlement or redeclaration

The Trustee confirms that it is not, by this deed poll:

- (a) resettling or redeclaring the Fund; or
- (b) effecting or causing the transfer, vesting or accruing of any property comprising the assets of the Trust to or in any person.

4 General

4.1 Governing law

This deed poll is governed by the laws of New South Wales.

4.2 Choice of jurisdiction

The Trustee irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales including, for the avoidance of doubt, the Federal Court of Australia sitting in New South Wales.

4.3 Invalidity

- (a) If a provision of this deed poll, or a right or remedy of a party under this deed poll is void or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent it is void or unenforceable;
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This Clause is not limited by any other provision of this deed in relation to severability, invalidity or unenforceability.

4.4 Cumulative rights

Except as expressly provided in this deed poll, the rights of a party under this deed poll are in addition to and do not exclude or limit any other rights or remedies provided by law.

4.5 Further assurances

The Trustee must, at its own expense, do all things reasonably necessary to give full effect to this deed poll and the matters contemplated by it.

Schedule 1 Dictionary

1 Dictionary

In this deed poll:

Business Day means a day on which banks are open for business in Melbourne, Victoria and excludes a Saturday, Sunday or public holiday.

Effective Date means the date of this deed poll.

Fund means the superannuation fund initially called the Avenue Superannuation Fund was established by trust deed dated 2006, whose name was later changed to AWrap Retirement Service.

Trust Deed means the trust deed for the Fund, as amended from time to time.

2 Interpretation

In this deed poll the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed poll;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (e) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) unless expressly provided otherwise, a Clause, term, party or schedule is a reference to a Clause or term of, or party or schedule to this deed poll;
 - (vi) this deed poll includes all schedules to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment or rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this deed poll includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and

- (ix) a monetary amount is in Australian dollars;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (g) in determining the time of day, where relevant to this deed poll, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a person receiving a notice is located; or
 - (ii) for any other purpose under this deed poll, the time of day in the place where the person required to perform an obligation is located; and
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed poll or any part of it.

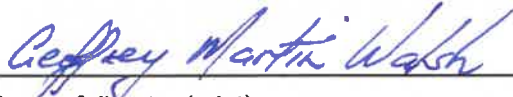
Execution page

Executed as a deed poll.

Signed, sealed and delivered by **IOOF
Investment Management Limited ABN 53 006
695 021** as trustee of the Fund in accordance
with section 127 of the *Corporations Act 2001*
(Cth):



Signature of director



Name of director (print)



Signature of director/secretary



Name of director/secretary (print)