

DEED OF ACKNOWLEDGMENT & CONFIRMATION

**POLICE ASSOCIATION OF NEW SOUTH WALES
A.B.N. 86 047 021 267**

AND

**NEW SOUTH WALES POLICE LEGACY LIMITED
A.C.N. 051 341 087**

**BROWN
WRIGHT
STEIN**

BROWN WRIGHT STEIN

Lawyers

Level 6, 179 Elizabeth Street Sydney NSW 2000 Australia

Tel (02) 9394 1010 Fax (02) 9394 1011

www.bwslawyers.com.au

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Ref.: RLV/GDS/039760

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THIS DEED is made the 29th day of September 2014

BETWEEN: POLICE ASSOCIATION OF NEW SOUTH WALES A.B.N. 86 047 021
267 of Level 4, 154 Elizabeth Street, Sydney in the State of New South Wales
(the "Association")

AND: NEW SOUTH WALES POLICE LEGACY LIMITED A.C.N. 051 341
087 of Suite 2A, Level 1, 154 Elizabeth Street, Sydney in the State of New
South Wales
(the "NSW Police Legacy")

RECITALS:

- A. The rules of the Association registered under the *Industrial Relations Act 1996* ("Rules") provides for a Death Benefit Scheme ("**Death Benefit Scheme**").
- B. On 3 August 1993, a declaration of trust ("**Trust**") was made between the Association as settlor and NSW Police Legacy as the trustee, for the trustee to administer all payments made from the funds of the Association for the benefit of dependent children under its Death Benefit Scheme on the terms set out in the deed of settlement ("**1993 Trust Deed**").
- C. On 19 July 2002, a document was entered into between the Association as settlor and the NSW Police Legacy as trustee ("**2002 Document**").
- D. On 20 November 2007, a document titled Deed of Variation of Trust was entered into purporting to vary the 2002 Document ("**2007 Document**").
- E. The Association and the NSW Police Legacy wish to enter into this deed to:
- (i) record the understanding and arrangements made between each of them in respect of the 1993 Trust Deed, the 2002 Document and 2007 Document; and
 - (ii) record the terms of the Trust in one consolidated document by setting out at the Schedule the terms of the Trust created by the 1993 Trust deed and of which terms were further clarified in the 2002 Document and 2007 Document, for the ease of reference of its beneficiaries and their caregivers and legal guardians.



NOW THIS DEED WITNESSES:

1. DEFINITIONS AND INTERPRETATION

1.1 Interpretation

In this deed unless the context otherwise indicates:

- (a) references to any party to this deed shall include the executors administrators successors and permitted assigns of that party;
- (b) references to a clause or schedule or other annexure shall be construed as references to a clause of or schedule or annexure to this deed and references to this deed shall include its schedules and any annexures;
- (c) references to (or to any specified provision of) this deed or another deed or document shall be construed as references to (that provision of) this deed or that other deed or document as amended or substituted with the deed of the relevant parties and in force at any relevant time;
- (d) references to any statute, ordinance or other law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
- (e) words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (f) where any word or phrase is given a defined meaning in this deed, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (g) headings included in this deed are for convenience only and shall be disregarded in the construction of this deed;
- (h) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. ACKNOWLEDGEMENT & CONFIRMATION

(1) Each of the Association and Trustee note that:

(a) the second and third recitals of the 1993 Trust Deed refer to:

"...dependant children (under the age of 18 years) of deceased financial ordinary members of the Association under its Death Benefit Scheme"

(b) the second and third recitals of the 2002 Document refer to:

"...dependant children (under the age of 18 years) of ordinary/life members following the death of the legal spouse of that ordinary /life member of the Association under its Death Benefit Scheme"

(c) apart from the references in the recitals as set out in paragraph (a) and (b) above, the 1993 Trust Deed and the 2002 Document are on substantially the same or identical terms.

(2) The Association notes that pursuant to the Rules of the Association, the Association has the discretion to make payments from the funds of the Association to eligible beneficiaries under its Death Benefit Scheme, such beneficiaries which may include:

(a) surviving dependent child under 18 years of age, of any ordinary member; and

(b) surviving dependant child under 18 years of age, of any legal spouse of any ordinary member.

(3) The Association, as settlor of the Trust, confirms that:

(a) the intention of the Association at the time of settlement of the Trust was to set up a trust fund of which monies paid under the Death Benefit Scheme for beneficiaries under 18 years of age could be administered by NSW Police Legacy as trustee under the terms of that trust;

- (b) the intention of the Association in entering into the 2002 Document was to record the understanding between the Association and the NSW Police Legacy that the class of beneficiaries of the Trust at the time of settlement of that trust was to include as beneficiaries both:
 - (i) surviving dependent child under 18 years of age, of any ordinary member; and
 - (ii) surviving dependant child under 18 years of age, of any legal spouse of any ordinary member;
 - (c) it was not the intention of the Association in entering into the 2002 Document to create a new trust fund separate from the Trust.
- (4) The NSW Police Legacy, as trustee of the Trust, confirms its understanding that:
- (a) the intention of the Association at the time of settlement of the Trust was to set up a trust fund of which monies paid under the Death Benefit Scheme for beneficiaries under 18 years of age could be administered by NSW Police Legacy as trustee under the terms of that trust;
 - (b) the intention of the Association in entering into the 2002 Document was to record the understanding between the Association and the NSW Police Legacy that the class of beneficiaries of the Trust at the time of settlement of the Trust was to include as beneficiaries both:
 - (i) surviving dependent child under 18 years of age, of any ordinary member; and
 - (ii) surviving dependant child under 18 years of age, of any legal spouse of any ordinary member;
 - (c) it was not the intention of the Association in entering into the 2002 Document to create a new trust fund separate from the Trust.

3. MANAGEMENT OF THE TRUST

Each of the Association as settlor of the Trust and the NSW Police Legacy as trustee of the Trust confirms its understanding that the 2007 Document:

- (1) does not vary or amend the terms of the 1993 Trust Deed creating the Trust;
- (2) merely acknowledges and describes the method by which the trustee may manage the funds of the Trust;
- (3) affirms the trustee's statutory and equitable rights as to an implied indemnity of the trustee to discharge any liability for taxation out of the funds of the Trust.

4. TERMS OF DEATH BENEFIT SCHEME TRUST

- (1) Each of the Association as settlor of the Trust and the NSW Police Legacy as trustee of the Trust wishes to record in one consolidated document the terms of the Trust created by the 1993 Trust Deed, and of which terms were further clarified in the 2002 Document and 2007 Document, for the ease of reference of its beneficiaries and their caregivers and legal guardians.
- (2) Each of the Association as settlor of the Trust and the NSW Police Legacy as trustee of the Trust confirms that the terms of the Trust as set out in the Schedule:
 - (i) replicate the terms of the Trust created by the 1993 Trust Deed; and
 - (ii) incorporates the understanding of the Association and the NSW Police Legacy as set out in the 2002 Document; and
 - (iii) incorporates the understanding of the Association and the NSW Police Legacy as set out in the 2007 Document.

5. GENERAL

- (1) This deed is governed by the law in force in New South Wales.
- (2) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.

- (3) Without preventing any other mode of service, any document in an action including, without limitation, any writ of summons or other originating process or any third or other party notice may be served on a party by being delivered to or left for that party at its address for service of notices under clause (4).
- (4) A notice, approval, consent or other communication in connection with this deed:
 - (a) must be in writing unless expressly specified otherwise; and
 - (b) must be left at or sent by prepaid ordinary post to the address of the addressee which is specified on page 1 of this deed in the case of the parties to this deed.
- (5) Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- (6) A letter is taken to be received on the third day after posting.
- (7) Any present or future legislation which operates to vary an obligation or right, power or remedy of a person in connection with this deed is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
- (8) A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise. In considering requests for its approval or consent a party must act with reasonable expedition.
- (9) A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
- (10) A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

- (11) This deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

EXECUTED by the parties as a deed:

EXECUTED by)
POLICE ASSOCIATION OF NEW)
SOUTH WALES)
A.B.N. 86 047 021 267)
pursuant to Section 127 of the)
Corporations Act, 2001)
in the presence of:)



President

SCOTT WEBER

Print name

Executive member

PATRICK GROOVER

Print name

EXECUTED by)
NEW SOUTH WALES POLICE)
LEGACY LIMITED)
A.C.N. 051 341 087)
pursuant to Section 127 of the)
Corporations Act, 2001)
in the presence of:)

Director

PAUL BARNFIELD

Print name

Secretary

ELIZABETH SVOBODA

Print name

Schedule

– Terms of Trust

BETWEEN NSW POLICE LEGACY LIMITED, Suite 3, Level 1, 154 Elizabeth Street, Sydney, in the State of New South Wales (hereinafter called “the Trustee”) of the one part,

AND THE POLICE ASSOCIATION OF NSW SOUTH WALES of Level 4, 154 Elizabeth Street, Sydney, in the State of New South Wales (herein call “the Association”) of the other part.

WHEREAS, under the Rules of the Association, the Executive is empowered (inter alia) to make payments from the funds of the Association under its 'Death Benefit Scheme', (herein after called the “Trust Funds”) to and for the benefit of dependent children (*under the age of 18 years*) of deceased financial ordinary members of the Association, and to dependent children (*under the age of 18 years*) of ordinary / life members following the death of the legal spouse of that ordinary / life member of the Association, in accordance with the formula set out therein, and the administration of such payments shall be at the discretion of the Executive whose decision is final and binding

AND WHEREAS under the Rules of New South Wales Police Legacy Ltd its objectives are to render personal and/or financial aid assistance and benefits (inter alia) for dependents of deceased members, and to take any gift of property (whether subject to any special trust or not) for any one or more of the objectives of New South Wales Police Legacy

AND WHEREAS, the Police Association has (in writing) requested the Trustee to administer all payments made from the funds of the Association to or for the benefit of dependent children (*under the age of 18 years*) of deceased financial ordinary members of the Association, and to dependent children (*under the age of 18 years*) of ordinary / life members following the death of the legal spouse of that ordinary / life member of the Association under its Death Benefit Scheme

AND WHEREAS, the Trustee has (in writing) agreed to administer all such payments (*called Trust Funds*) made to it by the Association to or for the benefit of such children upon the terms and conditions set out hereafter in the Declaration of Trust.

NOW IN CONSIDERATION OF THE PREMISES THIS DEED WITNESSES as follows: -

1. THE Trustee hereby declares that it will manage separately all and any Trust Funds for the benefit of a dependent child (*under the age of 18 years*) paid over to it by the Association pursuant to its Death Benefit Scheme and invest the same, at its discretion, in the manners authorised by law for the investment of such trust funds.
 - 1A. For the purposes of clause 1, the Trustee and the Police Association acknowledge and declare that:
 - (a) the Association may from time to time contribute funds to the Trustee for the Trustee to hold in trust for the Beneficiaries;
 - (b) the Trustee has agreed in writing to administer all payments made to it by the Association to or for the benefit of Beneficiaries;
 - (c) the Trustee is required to deposit all Funds in an account with a bank or financial institution chosen at the discretion of the Trustee.
 2. The Trustee declares that it will apply separately each of the Trust Fund payments made to it by the Association pursuant to the 'Death Benefit Scheme' to or for the benefit of each and every dependent child (under the age of 18 years) for the maintenance, education, welfare and/or advancement of such child.
 - 2A. For the purposes of Clause 2, the Trustee may deposit and continue to hold money on its own account and keep separate sub accounts in respect of the entitlements which the Trustee intends to set aside for Beneficiaries, but the Trustee shall not be compelled to do so. The Trustee is also empowered to open bank accounts for each separate sub account but the Trustee shall not be compelled to do so.
 3. The Trustee hereby declares that upon any such child attaining the age of 25 years it will thereupon, at its discretion, apply and hand over the whole of the outstanding balance of such Trust Funds held by it for the benefit of such child either directly to such child at that time, or if the circumstances then so warrant, continue with the

application of such Trust Funds for the benefit of such child as set out in paragraph 2 hereof.

4. The Trustee declares that it will charge for the administration of such Trust Funds a fee not exceeding 5% of the income annually arising therefrom and will also pay thereout any taxation assessments levied upon it by the Commissioner of Taxation in respect of such child's entitlement in such Trust Funds.
5. Should any distribution to a Beneficiary attract any tax, the Trustee is empowered to use the Funds held on trust for that Beneficiary to discharge any liability for taxation.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year hereinbefore written.