

CHANGES TO FUND RULE 45**45 FUND TRUSTEE AND DIRECTORS - APPOINTMENT, VACANCY AND REMOVAL****(a) Definitions**

For the purposes of this Rule, the following words and phrases shall have the meanings ascribed:

Assembly Directors means the persons appointed as directors in accordance with clause 45(g) to be employer representatives within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth), who remain in office.

Eligible Company means a company appointed by the Assembly to act as the Trustee of the Fund, and which:

- (i) has an equal number of Member Directors and Assembly Directors which satisfy the requirements of member representation under the Relevant Law and the constitution of the Eligible Company; and
- (ii) may also include a person appointed as an Independent Director provided that if required by the Relevant Law, an Eligible Company must include in its constitution a requirement that decisions of the directors shall be made by not less than a two thirds majority of the total number of directors with no casting vote being given to the chairperson of the Eligible Company nor to any Independent Director; or
- (iii) is approved by the Regulator to act as Trustee under the Relevant Law.

Independent Director has the same meaning as in the Relevant Law.

Member Directors means the persons appointed as directors in accordance with clause 45(f) to be member representatives within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth), who remain in office.

Trustee Board means the board of directors of the Trustee.

(b) Eligibility for Trustee

The Trustee of the Fund shall be one or more of the following:

- (i) Benefund Ltd;
- (ii) an Eligible Company;
- (iii) a Constitutional Corporation.

(c) Appointment of Trustee

Subject to the Relevant Law, the Assembly shall determine who shall be appointed (but not removed) to act as the Trustee of the Fund in accordance with these Rules.

(d) Change of Trustee

- (i) A Trustee shall immediately cease to act as Trustee of the Fund:
 - (A) if being a corporation it is placed in receivership or in liquidation;
 - (B) if the Trustee is disqualified from holding office as a Trustee by operation of the Relevant Law or is removed or suspended from office under the Relevant Law;
 - (C) if the Trustee resigns as a Trustee of the Fund by notice in writing to the Assembly.
- (ii) On ceasing to be Trustee, the Trustee must do everything necessary to vest the Fund in the remaining or new Trustee and must deliver all records and other books to the remaining or new Trustee.
- (iii) The office of Trustee must be filled at all times and in the event of a vacancy occurring, a new Trustee must be appointed in accordance with the provisions of these Rules within 90 days of such vacancy occurring.
- (iv) If for any reason there is no Trustee of the Fund at any time, subject to the Relevant Law the Assembly must undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions of these Rules and the Relevant Law.

- (e) **Trustee Composition**
- (i) The composition of the Trustee Board must comply with the Trustee Constitution.
 - (ii) The Trustee must determine whether the Trustee Board will comprise 6, 8 or 10 directors, aside from any Independent Director appointed in accordance with these Rules. Unless and until the Trustee determines otherwise, the Trustee Board will comprise 8 directors as well as any Independent Director appointed in accordance with these Rules.
 - (iii) The Trustee must only determine that the number of directors on the Trustee Board will be reduced if, on the date that determination becomes effective:
 - (A) no change will be required for the Trustee Board to meet the new Trustee Board composition requirements;
 - (B) only additional appointments will be required for the Trustee Board to meet the new Trustee Board composition requirements; or
 - (C) the Trustee has also approved procedures consistent with the Relevant Law to remove directors in order to achieve the reduced Trustee Board size.
 - (iv) The nomination, appointment and removal of the members of the Trustee Board shall be governed by the Trustee Constitution, these Rules and any additional procedures adopted by the Trustee, except that to the extent of any inconsistency with the Relevant Law, the Relevant Law shall prevail.
- (f) **Member Directors**
- (i) The number of Member Directors must be half the total number of directors, aside from any Independent Director.
 - (ii) Member Directors shall be chosen by the Assembly from nominations of persons eligible under the Trustee Constitution and the Relevant Law to be appointed as Member Directors submitted from the Synods of Queensland, New South Wales and ACT, South Australia, and Western Australia.
 - (iii) The procedure for nominating and choosing Member Directors (including to fill a casual vacancy) shall be determined (and may be amended from time to time) by the Trustee and approved by the Assembly and must not contravene any requirements of the Relevant Law. When nominations are required to be submitted by a Synod, that Synod shall provide at least one and no more than 2 nomination[s] to Assembly for a Member Director. The Trustee must ensure that the procedures are published in a way that ensures Members of the Fund will become aware of the procedures for the appointment of Member Directors.
 - (iv) The term of office for a Member Director:
 - (A) appointed before 2 September 2013 shall expire on a date determined by the Trustee Board on 2 September 2013;
 - (B) appointed on or after 2 September 2013 shall be four years, commencing on the 1 January immediately prior to or immediately following the date of appointment, whichever is consistent with the procedures for appointment of Member Directors,unless they cease to hold office sooner in accordance with these Rules. A person appointed to fill a Member Director vacancy that comes into existence for reasons other than the expiry of the replaced Member Director's term of office will hold office for the remainder of the term for which the replaced Member Director was appointed.
 - (v) The Trustee shall take all such steps as are necessary to appoint a person chosen as a Member Director in accordance with this clause 45(f) to a position as a director of the Trustee.
- (g) **Assembly Directors**
- (i) The number of Assembly Directors must be half the total number of directors, aside from any Independent Director.
 - (ii) When there is any vacancy for a position as an Assembly Director, the Synod of Victoria and Tasmania must submit to Assembly nominations of

persons eligible under the Trustee Constitution and the Relevant Law to be appointed as Assembly Directors, up to a maximum of twice as many nominees as there are vacancies, and the Assembly shall appoint the Assembly Directors from the nominees referred to in this clause 45(g)(ii).

- (iii) The procedures for nominating and appointing an Assembly Director (including to fill a casual vacancy) shall be determined (and may be amended from time to time) by the Assembly with the approval of the Trustee and must not contravene any requirements of the Relevant Law.
- (iv) The term of office for an Assembly Director:
 - (A) appointed before 2 September 2013 shall expire on a date determined by the Trustee Board on 2 September 2013;
 - (B) appointed on or after 2 September 2013 shall be four years, commencing on the 1 January immediately prior to or immediately following the date of appointment, whichever is consistent with the procedures for appointment of Assembly Directors,unless they cease to hold office sooner in accordance with these Rules. A person appointed to fill an Assembly Director vacancy that comes into existence for reasons other than the expiry of the replaced Assembly Director's term of office will hold office for the remainder of the term for which the replaced Assembly Director was appointed.
- (v) If any additional steps are required to be taken to appoint the persons chosen in accordance with this clause 45(g) as an Assembly Director to a position as a director of the Trustee, the Trustee shall take all additional steps necessary.

(h) **Removal of Member Directors**

The Trustee may determine with the approval of the Assembly that a person appointed as a Member Director can be removed by the same procedure as that by which the Member Director was appointed. The Trustee must ensure the determination is published in a way that ensures members of the Fund will become aware of the procedure for removal of a Member Director.

(i) **Vacancy in Member Directors**

A person appointed as a Member Director shall immediately cease to be a Member Director when the Trustee Constitution specifies that the person ceases to be a Member Director.

(j) **Removal of Assembly Directors**

The Trustee may with the approval of the Assembly and subject to compliance with the Relevant Law determine (and amend from time to time) the procedure by which a person appointed as an Assembly Director can be removed from the position of Assembly Director.

(k) **Vacancy in Assembly Directors**

A person appointed as an Assembly Director shall immediately cease to be an Assembly Director when the Trustee Constitution specifies that the person ceases to be an Assembly Director.

(l) **Re-appointment as a director**

Subject to the Trustee Constitution and any procedures made in accordance with it relating to the nomination, appointment and removal of directors of the Trustee, a person is eligible for re-nomination and/or re-appointment on the expiry of their term of office.

(m) **Independent Director**

The Trustee may in accordance with the Trustee Constitution at any time appoint an Independent Director provided that there will only be one Independent Director at any time and provided further that the Independent Director is not entitled to a casting vote.

(n) **Removal of Independent Director**

The Trustee may determine with the approval of the Assembly that a person appointed as an Independent Director can be removed by the same procedure as that by which the Independent Director was appointed. The Trustee must ensure

the determination is published in a way that ensures members of the Fund will become aware of the procedure for removal of an Independent Director.

(o) **Vacancy in Independent Director**

A person appointed as an Independent Director shall immediately cease to be an Independent Director when the Trustee Constitution specifies that the person ceases to be an Independent Director.

(p) **Appointment and Removal of Alternate Directors**

(i) The Trustee may determine procedures regarding the appointment and removal of alternate directors that comply with the Relevant Law.

(ii) If procedures have been made under clause 45(p)(i), an alternate director may only be appointed or removed in accordance with those procedures and the Trustee Constitution. Otherwise, an alternate director may be appointed or removed in accordance with the Trustee Constitution.