

## **THE PRISON OFFICERS FUNERAL BENEFIT FUND RULES**

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# THE PRISON OFFICERS FUNERAL BENEFIT FUND RULES

## 1 Objects

- 1.1 The Western Australian Prison Officers Union (“WAPOU”) has resolved to establish a fund to be known as the Prison Officers Funeral Benefit Fund (“POFBF”) for the sole purpose of providing financial assistance to members and their families following death of a member or their spouse.

## 2 Defined terms and interpretation

### 2.1 Defined terms

In these rules unless the context otherwise requires, the words and expressions set out below have the following meanings:

‘**Asset**’ means any asset that the Committee holds for the purposes of the Fund.

‘**Beneficiary**’ includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member.

‘**Benefit Nomination**’ means a direction which is a direction as to payment of the Member’s Funeral Benefit upon death of the Member.

‘**Child**’ in relation to a Beneficiary, includes a step child, an adopted child or an ex-nuptial child.

‘**Committee**’ means the Committee for the time being administering the Fund.

‘**Dependant**’ in relation to a Beneficiary, includes:

- (a) the Beneficiary’s Spouse or Child;
- (b) any other person who, in the Committee’s opinion, is or was at the relevant time dependant on the Beneficiary;
- (c) any other person who, in the opinion of the Committee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- (d) any person who is a dependant including any person with whom, in the Committee’s opinion, the Member or former Member at the relevant time has an Interdependency Relationship.

‘**Fund**’ means the fund established in accordance with these Rules.

‘**Funeral Benefit**’ means a benefit payable on a Member’s or their spouse’s death as referred to in clause 12.

‘**Gainful Employment**’ means employment or self employment for gain or reward in any business, trade, profession, vocation, calling or occupation.

**‘Liabilities’** means all liabilities whatsoever of the Fund, and includes any provisions the Committee makes in connection with such liabilities.

**‘Member’** means a person who has been admitted as a member of the Fund in accordance with clause 10.2 and who has not ceased to be a Member in accordance with clause 10.8.

**‘Retired’** means ceasing to be gainfully employed in circumstances where the person has turned 60 years of age or where all of the following apply:

- (a) the person is at least 55 years of age;
- (b) the person is not gainfully employed; and
- (c) the Committee is reasonably satisfied that the person intends never to again become gainfully employed for more than 15 hours a week.

**‘Rule’** means a provision of these Rules.

**‘Rules’** means these Rules including the Schedules being the governing rules of the Fund as amended from time to time.

**‘Schedule’** means a schedule to these Rules.

**‘Spouse’** in relation to a person, includes another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as husband, wife or same sex partner.

**‘Union’** means the Western Australian Prison Officers Union.

## 2.2 Interpretation

In these Rules unless the contrary intention appears or can reasonably be implied from the context:

- (a) a reference to these Rules or any other instrument includes any variation or replacement of them;
- (b) a reference to a statute or other law includes regulations and other instruments (**‘subordinate instrument’**) made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;
- (c) the singular includes the plural and vice versa;
- (d) terms such as ‘including’, ‘for example’ and similar expressions or words are not words or expressions of limitation;
- (e) a reference to a person:
  - (i) includes a body corporate, any other entity recognized at law, a partnership and any other group or organization of persons;

- (ii) includes the Crown in right of the Commonwealth of Australia and any other entity recognized as a legal person at law;
- (iii) includes a person's legal personal representatives, successors and assigns; and
- (f) a reference to 'interest', 'earnings' or 'investment returns' or any such similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns';
- (g) 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;
- (h) headings are inserted for convenience of reference only and are not to be taken into account in interpreting these Rules;
- (i) a reference to any thing (including any amount) is reference to the whole or any part of it;
- (j) a reference to a group of persons is a reference to any one or more of them; and
- (k) the Schedules form part of these Rules.

## **Constitution of Fund and Administration**

### **3 The Fund**

#### **3.1 Assets**

The Fund comprises all Assets held by the Committee at any time in accordance with these Rules.

#### **3.2 Name**

The name of the Fund is the Prison Officers Funeral Benefit Fund. The Committee may change the name or promote the Fund under a different name without the necessity of amending these Rules.

#### **3.3 Single Fund**

Nothing in these Rules is to be taken as establishing a separate fund in respect of any part of the Fund. Where the Committee is liable to pay amounts in respect of Beneficiaries then that liability relates to all Assets of the Fund and is not limited to the Assets attributable to any particular member's contributions or other part of the Fund.

### **4 Committee**

#### **4.1 The persons who hold office as the State Executive of the Union from time to time are appointed as the Committee with effect from the date of these Rules.**

4.2 The Secretary of the Union shall chair all meetings of the Committee.

#### 4.3 Transfer of Assets

If a Committee Member's office terminates, it must:

- (a) provide to any Committee Member all records, information and other property relating to the Fund in its control; and
- (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Committee Member.

### 5 Committee powers, discretions and duties

#### 5.1 Powers

The Committee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development or promotion of the Fund;
- (b) may regulate and conduct Committee meetings as it considers appropriate;
- (c) has, in addition to the powers conferred by these Rules, all the powers conferred on a trustee by statute or general law; and
- (d) has the power to establish and implement from time to time and as it thinks fit, business rules relating to matters to be done or effected under these Rules with full power to amend, repeal and vary the same. Such business rules must be consistent with the provision of these Rules.

#### 5.2 Example of powers

Without limiting clause 5.1, and in addition to any powers described elsewhere in these Rules the Committee has power:

- (a) to appoint agents and delegates on terms it thinks appropriate;
- (b) to make any arrangements it consider appropriate in respect of Tax, including:
  - (i) allocation of actual or expected Tax benefits or liabilities between Beneficiaries on any basis that it considers appropriate;
  - (ii) deduction of amounts in respect of Tax or expected Tax that it consider appropriate and retention of such amounts in the Fund pending payment to the relevant authority;
  - (iii) re-calculation of Tax in respect of a Beneficiary or former Beneficiary and making any arrangements that it considers appropriate in connection with any such re-calculation; and

- (iv) transfer of Tax liabilities;
- (c) to attribute Liabilities between Beneficiaries on such basis as it considers appropriate;
- (d) to require Beneficiaries or Members to provide any information that the Committee reasonably requires to carry out its powers or duties;
- (e) to meet and pay all Liabilities out of the Fund;
- (f) to obtain indemnity insurance in respect of liabilities incurred by the Committee arising out of, or in connection with, performance of duties and exercise of powers relating to the Fund;
- (g) to make business rules relating to:
  - (i) minimum amounts for contributions, transfers of amounts into the Fund;
  - (ii) rounding off of contributions, transfers and benefit payments;
  - (iii) default arrangements;
  - (iv) the calling of any Member meetings and procedures for those meetings; and
  - (v) any other matters whatsoever relating to maintenance, management, operation or development of the Fund.

Different business rules may be applied to different Beneficiaries and Members.

Specific business rules may be taken to qualify general provisions of these Rules.

- (h) to establish and operate any accounts and sub-accounts as it considers appropriate;
- (i) to generally act in accordance or consistently with any relevant Family Law requirement and to do such acts matters and things as are necessary to achieve compliance with same and the Family Law legislation; and
- (j) to act on any evidence or presumptions that it considers appropriate.

### 5.3 Discretions

The Committee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under these Rules;
- (b) may exercise any of the Committee's powers at any time;

- (c) may refrain from exercising any of the Committee's powers from time to time or at all;
- (d) may exercise a power even if the Committee or any of the Committee Members have an interest that may be affected by the exercise of that power;
- (e) may, where it has power to do or decide something under these Rules, do that thing or make the decision, and vary any such act or decision, at any time;
- (f) is not obliged, where it exercises a discretion under these Rules, to provide reasons for the way in which it has exercised the discretion unless the law requires otherwise; and
- (g) may exercise a power even if the Committee or any of the Committee Members has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Committee or any Member are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.

#### 5.4 Policies

Subject to the Act, the Committee has power without limiting any other provision of these Rules to enter or acquire, including by way of assignment, a Policy or Policies in connection with any benefit to be paid from the Fund, including any Policy relating to life. Any such Policy may be made on terms and conditions that the Committee considers appropriate.

#### 5.5 Committee Decisions

All resolutions and decisions of the Committee shall be decided by simple majority of those Committee members present and voting. In the event of equality of votes, the Chair shall have a casting vote.

### **6 Limitation of liability**

#### 6.1 Limitation

Subject to clause 6.2 no Committee or Committee Member will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason. This limitation applies where or not the loss or detriment arises from an act or omission on the part of the Committee, Member or officer.

#### 6.2 Exceptions

Clause 6.1 does not apply:

- (a) to the extent that the loss or detriment is due to the Committee/Committee Member's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Committee Member was required to exercise;

- (b) where the limitation expressed in clause 6.1 would not otherwise be enforceable at law.

## **7 Indemnity**

### **7.1 Indemnity**

The Committee and its Members and officers are entitled, to the maximum extent permitted by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Committee's powers and discretions under these Rules.

### **7.2 Payment and reimbursement**

Subject to the Act, the Committee and its officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in clause 7.1; and
- (b) to meet all Liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with these Rules.

To this end, to the maximum extent permitted by law, the committee and its officers have, and may exercise, a lien over the Fund.

## **8 Investment**

### **8.1 General**

- (a) Subject to the Act, the Committee may invest the Assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the Assets.
- (b) Without limiting clause 8.1(a) the Committee has power:
  - (i) to vary, substitute, charge or otherwise deal with Assets in any manner;
  - (ii) to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property;
  - (iii) to sell any Asset by private sale or public auction, for cash or on terms or in any other way or subject to any other terms that the Committee considers appropriate;
  - (iv) to allow any Asset to be held in the Committee's name or that of any other person acceptable to the Committee;
  - (v) to exercise any power whatsoever in connection with any Asset;
  - (vi) to make a loan or give financial assistance to the Union;



- (vii) to borrow or raise money and secure the repayment of that money in any manner and on any terms and conditions and at the rate of interest it considers appropriate.

## **9 Records, audit and information**

9.1 The Committee must:

- (a) keep records and accounts for the Fund;
- (b) prepare financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund;
- (e) provide information to Beneficiaries, prospective Members and Members; and
- (f) present its financial reports to the Annual General Meeting of the Union.

9.2 The financial year for the Fund's auditing, records and financial statements shall be the calendar year from 1 January to 31 December.

## **Rights and Entitlements**

### **10 Membership**

10.1 Eligibility and Participation in Different Capacities

The Committee may set eligibility conditions for membership of the Fund.

10.2 Automatic Membership

- (a) Any person who is a financial member of the Union shall automatically become a member of the Fund.
- (b) A person who has been a member of the Union for not less than seven years and then ceases to be a member of the Union may continue as a Member of the Fund if he or she has Retired without making further contributions.

10.3 Timing

A person's membership will commence from the date he or she becomes a financial member of the Union.

10.4 Rules

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Rules.

10.5 Member's attorney

Each Member irrevocably appoints the Committee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Committee reasonably considers appropriate for the purposes of administering the Fund.

10.6 Termination of Beneficiary's interest

- (a) A person ceases to be a Beneficiary when:
  - (i) all benefits to which the Beneficiary has become entitled under these Rules have been paid;
  - (ii) the Beneficiary dies; or
  - (iii) the Beneficiary's entitlement to benefits is otherwise terminated.

10.7 Beneficiaries' interests and liabilities

- (a) No beneficiary has any interest in any particular Asset of the Fund. Beneficiaries must not:
  - (i) Interfere with the exercise of the Committee's powers; and
  - (ii) Assert any right in respect of any Asset or part of an Asset.
- (b) The liability of Beneficiaries in connection with the Fund is limited as described below:
  - (i) The Committee's right of indemnity and the right of recourse of any creditor is limited to the Fund's Assets; and
  - (ii) Beneficiaries are not liable (in their capacity as Beneficiaries):
    - A to indemnify the Committee in respect of any deficiency in the Fund; or
    - B in connection with claims by any of the Committee's creditors relating to the Fund.
- (c) The rights of Beneficiaries to receive benefits are those set out in these Rules.

10.8 Termination - circumstances

- (a) A Member's participation in the Fund terminates if:
  - (i) the Member ceases to be a member of the Union (subject to clause 10.2(b));
  - (ii) the Member fails to pay a contribution when due (subject to clause 10.2(b));

(iii) the Committee otherwise decides that the Member's participation should terminate.

(b) In this event the Committee will decide the date on which the termination will take effect ("**Termination Date**").

#### 10.9 Termination – effects

If a Member's participation terminates, then unless the Committee otherwise agrees, the following provisions will apply:

(a) no further contributions may be accepted from that Member or the relevant Members and any arrears due to the Termination Date must be paid;

(b) any benefits payable on or before the Termination Date will be paid.

### 11 Contributions

11.1 Subject to clause 10.2(b) Members are required to contribute an amount determined by an AGM of the Union to the Fund, such amount to be no less than \$1.00 fortnightly.

11.2 The Committee may in its absolute discretion exempt a Member from the requirement to make contributions temporarily or permanently and may extend the time for making contributions.

#### 11.4 Powers

(a) the Committee may accept contributions from:

(i) Members;

(ii) Employers;

(iii) a Spouse of a member or prospective Member.

### 12 Benefits: General Provisions

#### 12.1 Circumstances

Subject to the Rules, benefits are payable in the following circumstances:

(a) if the Member has died; or

(b) if the Member's spouse has died and the Member's membership is pursuant to clause 10.2(a).

## 12.2 Conditions and evidence

The Committee may impose any reasonable conditions regarding payment of a benefit. For example, it may require Beneficiaries to produce evidence of entitlement in the form of a Statutory Declaration, doctor's certificate, death certificate or Grant of Probate.

## 12.3 Method

Benefits may be paid by any method that the Committee considers appropriate.

## 12.4 General

### (a) Benefits:

- (i) may be paid in any form and in any circumstances;
- (ii) will, except where the Rules otherwise provide, be paid in lump sum form;
- (iii) will generally be paid as soon as practicable. However the Committee may, where it considers it appropriate, arrange for payments to be delayed for a reasonable period determined by the Committee.

## 12.5 Amount

Except where these Rules provide otherwise or the Committee otherwise determines, the amount of any benefit will be an amount not exceeding \$.....

## 12.6 Beneficiary

- (a) A Funeral Benefit to which this clause applies must, subject to the remaining provisions of this clause be paid in proportions decided by the Committee to one or more of the following:
  - (i) one or more of the Member's Dependants; and
  - (ii) the Member's legal personal representative.
- (b) If after making enquiries that it considers reasonable the Committee cannot locate any Dependants or the legal personal representative, the benefit may be paid to any other person that the Committee chooses or in any other manner.
- (c) For the purposes of this clause 12.6, the following provisions apply:
  - (i) Members may give the Committee a Funeral Benefit Nomination;
  - (ii) Members may vary Funeral Benefit Nominations at any time;

- (iii) Funeral Benefit Nominations made after the date of commencement of these Rules must be in the form included in the Schedule;
  - (iv) the Committee may disregard a Funeral Benefit Nomination if it does not comply with any formal requirements set by the Committee; and
- (d) The Committee will treat a Funeral Benefit Nomination made in accordance with the form contained in the Schedule or any other form acceptable to the Committee including nominations made prior to the commencement of these Rules as a non-binding direction and nomination and may effect payments in accordance with the Funeral Benefit Nomination, provided it is current and valid at the date of the Member's death.

#### 12.7 Bankruptcy and assignments

- (a) A Beneficiary's interest under this Deed will be forfeited if:
- (i) a Beneficiary attempts to assign, alienate or charge all or part of their interest under these Rules; or
  - (ii) any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of these Rules).
- (b) The amount representing any interest that is forfeited in accordance with this clause may be applied in proportions decided by the Committee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Committee considers appropriate.

#### 12.8 Minor Beneficiaries or those without legal capacity

If:

- (a) a Beneficiary is a minor;
- (b) the Committee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Committee otherwise considers it appropriate for any reason,

the Committee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Committee in respect of that benefit. The Committee may impose any terms on such a payment that it considers appropriate.

## 12.9 Discharge

The Committee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Committee has no obligation to see how the payment is applied.

## 12.10 Deductions

Subject to the Act, the Committee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment. (This is not intended to restrict the Committee from deducting fees or recovering such amounts in any other way if permitted by the Act or law).

## **Other Matters**

## **13 Confidentiality**

### 13.1 Non-disclosure

The Committee will not disclose any confidential information regarding Beneficiaries or Members acquired in the course of acting as Committee to other parties, except in connection with Members' interests in the Fund.

### 13.2 Exceptions

This Clause 13.1 does not apply:

- (a) where the Committee may be legally compelled to, or penalised for, failure to disclose such information;
- (b) To disclosures made to Members or agents or delegates of the Committee in connection with the operation of the Fund; or
- (c) Where non-disclosure of the material may cause adverse tax consequences to the Fund.

## **14 Termination of the Fund**

### 14.1 General

- (a) The fund will be terminated upon the first to occur of the following:
  - (i) if the Committee's office becomes vacant and no new Committee is appointed within ninety (90) days;
  - (ii) if the Committee resolves to terminate the Fund in accordance with clause 14.2; or
- (b) Where clause 14.1(a) applies, references in clauses 14.3 and 14.4 to:
  - (i) The "Committee" refer to any entity appointed after the ninety (90) day period referred to in clause 14.1(a)(i); and

(ii) The “Closure Date” refer to the date of expire of the ninety (90) day period referred to in clause 14.1(a)(i).

(c) Where clause 14.1(a)(iii) applies, references in clause 14.3 and 14.4 to the “Closure Date” refer to the date on which the Fund terminates by law.

#### 14.2 Termination by Committee

The Committee may resolve to terminate the Fund at any time. If it decides to do so the following provisions will apply:

(a) the Members and Beneficiaries will be notified; and

(b) The Committee will determine a closure date (“Closure Date”).

#### 14.3 No further receipts

From the Closure Date no further contributions or transfers of amounts into the Fund may be accepted unless the Committee specifically agrees (except for payment of any contributions arrears due at that date).

#### 14.4 Application of Assets

Assets of the Fund will be applied in the following order on termination:

(a) to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;

(b) to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid;

(c) in relation to Beneficiaries for whom benefits have not become payable under paragraph (b) and subject to these Rules, to provide for a benefit equally; and

(d) to pay any amounts remaining to or for the benefit of one or more of the Members, former Members, Beneficiaries as the Committee considers appropriate.

### 15 Amendments

#### 15.1 Power

Subject to this clause 15, a General Meeting of the Union may amend any provision of these Rules (including this clause) at any time.

#### 15.2 Method

A notice convening the General Meeting shall specify the purpose of the meeting and shall include a copy of the proposed alterations, additions or amendments and reasons therefore.

An amendment must be made by a simple majority resolution of the General Meeting.

### 15.3 Effective date

An amendment made under this clause will take effect from a date specified by the General Meeting (whether before or after the date of the resolution) or if none is specified, from the date of the resolution.



**SCHEDULE**  
**FUNERAL DEATH BENEFIT NOMINATION FORM**

**Member details**

Name

---

Address

---

Date of birth

---

Occupation

---

Telephone

---

Fax

---

**Employer details**

Employer

---

Address

---

**Nomination of Dependants**

**Important Information for Completion**

1. This Nomination Notice is not binding. The Committee will take it into account in the event that benefit is paid from the Fund on your death. However, the Committee has complete discretion as to which of your Dependants and/or Legal Personal Representative may receive the benefit and in what proportions. If there are no Dependents or Legal Personal Representative, the benefit may be payable to any other person.
2. This Nomination Notice must be fully completed in accordance with the details below:
  - Ensure both pages of this Notice are completed.
  - The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative.

Your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death.

Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write "Legal Personal Representative" as the name of the Beneficiary.

3. If any of this information is not provided, then the Committee may have to disregard your nomination.
4. It is not compulsory to complete this Notice, but it enables you to convey your wishes to the Committee.

Name	Relationship to you	Proportion of benefit

My Estate (Legal Personal Representative)

**Member declaration**

I .....of ..... as a member of the Fund, request the Committee to pay my death benefit to the above persons in the proportions shown.

I understand that:

- in the event of my death, the Committee has complete discretion as to which of my dependents and/or estate will receive any death benefit payable.
- this Notice revokes and amends any previous notice supplied to the Committee of the Fund in regard to my nominated beneficiaries.

Signed ..... Dated .....