**Entity:** [name] Superannuation Fund

**RE:** [name of Widely Held Trust]

**Date:** [date]

For the purpose of the In House Asset rules, a Widely Held Trust is defined in Section 71(1A) as:

***(a)*** *a unit trust in which entities have fixed entitlements to all income and capital of the trust; and*

***(b)*** *it is not a trust in which fewer than 20 entities between them have:*

***(i)*** *fixed entitlements to 75% or more of the income of the trust; or*

***(ii)*** *fixed entitlements to 75% or more of the capital of the trust.*

*For this purpose, an entity and the Part* [*8*](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) *associates of the entity are taken to be a single entity.*

NB: discussion on who is a ‘Part 8 Associate’ can be found in Sections 70B, 70C, 70D & 70E of the SIS Act (see attached).

I / We understand the definition of ‘Widely Held Trusts’ (above) and the definition of Part 8 Associates and declare that the [name of Trust] meets this definition.

I / We accept that InFocus Audits will rely on this declaration for the purpose of their audit, and therefore indemnify them from any action or liability that may arise if this Declaration is proven to be false or incorrect.

**Signed:**

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[Name]

[Position]

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| |  |  |  |  | | --- | --- | --- | --- | | |  | | --- | | **History**  Subdiv B inserted by No 199 of 1999. |      |  |  | | --- | --- | | **SECTION 70B**  **70B** **PART 8 ASSOCIATES OF INDIVIDUALS** |  |   For the purposes of this Part, each of the following is a ***Part 8 associate*** of an individual (the ***primary entity***), whether or not the primary entity is in the capacity of trustee:  **(a)** a relative of the primary entity;  **(b)** if the primary entity is a member of a superannuation fund with fewer than 5 members:  **(i)** each other member of the fund; and  **(ii)** if the fund is a single member self managed superannuation fund whose trustee is a company - each director of that company; and  **(iii)** if the fund is a single member self managed superannuation fund whose trustees are individuals - those individuals;  **(c)** a partner of the primary entity or a partnership in which the primary entity is a partner;  **(d)** if a partner of the primary entity is an individual - the spouse or a child of that individual;  **(e)** a trustee of a trust (in the capacity of trustee of that trust), where the primary entity controls the trust;  **(f)** a company that is sufficiently influenced by, or in which a majority voting interest is held by:  **(i)** the primary entity; or  **(ii)** another entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of the primary entity because of another paragraph of this section or because of another application of this paragraph; or  **(iii)** 2 or more entities covered by the preceding subparagraphs | | |
| **SECTION 70C**  **70C** **PART 8 ASSOCIATES OF COMPANIES** |  |

For the purposes of this Part, each of the following is a ***Part 8 associate*** of a company (the ***primary entity***), whether or not the primary entity is in the capacity of trustee:

**(a)** a partner of the primary entity or a partnership in which the primary entity is a partner;

**(b)** if a partner of the primary entity is an individual - the spouse or a child of that individual;

**(c)** a trustee of a trust (in the capacity of trustee of that trust), where the primary entity controls the trust;

**(d)** another entity (in this paragraph called the ***controlling entity***) where the primary entity is sufficiently influenced by, or a majority voting interest in the primary entity is held by:

**(i)** the controlling entity; or

**(ii)** another entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of the controlling entity because of section [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B) or [70D](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70D'#70D), another paragraph of this section or another application of this paragraph; or

**(iii)** 2 or more entities covered by the preceding subparagraphs;

**(e)** another company (in this paragraph called the ***controlled company***) where the controlled company is sufficiently influenced by, or where a majority voting interest in the controlled company is held by:

**(i)** the primary entity; or

**(ii)** another entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of the primary entity because of another paragraph of this section or because of another application of this paragraph; or

**(iii)** 2 or more entities covered by the preceding subparagraphs;

**(f)** if a third entity is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of the primary entity because of paragraph (d) of this subsection - an entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of that third entity because of section [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B) or [70D](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70D'#70D) or because of another paragraph of this section.

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| **SECTION 70D**  **70D** **PART 8 ASSOCIATES OF PARTNERSHIPS** |  |

For the purposes of this Part, each of the following is a ***Part 8 associate*** of a partnership (the ***primary entity***):

**(a)** a partner in the partnership;

**(b)** if a partner in the partnership is an individual - any entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of that individual because of section [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B);

**(c)** if a partner in the partnership is a company - any entity that is a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of that company because of section [70C](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70C'#70C)

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| **SECTION 70E** **MEANINGS OF TERMS USED IN SECTIONS 70B, 70C AND 70D** |  |

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| **70E(1)** **Sufficient influence/majority voting interest.** |  |

For the purposes of sections [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B), [70C](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70C'#70C) and [70D](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70D'#70D):

**(a)** a company is sufficiently influenced by an entity or entities if the company, or a majority of its directors, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and

**(b)** an entity or entities hold a majority voting interest in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

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| **70E(2)** **Control of trust.** |  |

For the purposes of sections [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B), [70C](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70C'#70C) and [70D](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70D'#70D), an entity ***controls*** a trust if:

**(a)** a group in relation to the entity has a fixed entitlement to more than 50% of the capital or income of the trust; or

**(b)** the trustee of the trust, or a majority of the trustees of the trust, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a group in relation to the entity (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); or

**(c)** a group in relation to the entity is able to remove or appoint the trustee, or a majority of the trustees, of the trust.

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| **70E(3)** **Group in relation to an entity.** |  |

For the purposes of subsection (2):

***group*** , in relation to an entity, means:

**(a)** the entity acting alone; or

**(b)** a Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associate of the entity acting alone; or

**(c)** the entity and one or more Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associates of the entity acting together; or

**(d)** 2 or more Part [8](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/Pt8'#Pt8) associates of the entity acting together.

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| **70E(4)** **Definitions.** |  |

For the purposes of sections [70B](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70B'#70B), [70C](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70C'#70C) and [70D](http://law.ato.gov.au/atolaw/view.htm?locid='PAC/19930078/70D'#70D):

***company*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***partnership*** has the same meaning as in the *Income Tax Assessment Act 1997*.