

IAN BRUCE MITCHELL

Principal

- and -

IAN BRUCE MITCHELL

~~**STEPHEN JOHN MITCHELL**~~

Trustees

TRUST DEED ESTABLISHING

I. MITCHELL SUPERANNUATION FUND

Drawn By:

Hunt & Hunt
Solicitors
Central Plaza Two
66 Eagle Street
Brisbane 4000

Telephone: 231 2444
Facsimile: 221 4356

INDEX

CLAUSE	SUBJECT MATTER	PAGE
1	Establishment	2
2	Divisions	2
3	Covenants	2
 DIVISION A		
Management and Administration		
4	Interpretation – Definitions	2
5	Interpretation – General	7
6	General Provisions	8
7	Proper Law	9
8	Membership of Fund	9
9	Membership Notification Requirements	10
10	Meetings of Members	11
11	Fund Assets	12
12	Accumulation Account	13
13	Fund Records	16
14	Fund Trustee – Appointment, Vacancy and Removal	17
15	Trustee's Investment Powers	19
16	Trustee's Powers of Management	21
17	Duties and Liabilities of Trustee	17
18	Indemnity of Trustee	18
19	Remuneration of Trustee	24
20	Appointment of Actuary, Auditor and Managers	25
21	Actuarial Investigations	26
22	Contributions to Fund	26
23	Transfers to and from Other Approved Benefit Arrangements	27
24	Limitation on Benefits	28
25	Moneys Owing to Fund or an Employer	28
26	Forfeiture of Benefits	29
27	Pension Payment and Pension Account	30
28	Pension Payment Conditions	32
29	Commutation of Pension	33
30	Transfer in Specie	33
31	Payment of Benefits on Death	34
32	Payment of Benefits	34
33	Payment of Taxation	35
34	Policies of Assurance	36
35	Participating Employers	37
36	Other Superannuation Obligation	37
37	Termination of Employer's Contributions	37
38	Provision for Members on Termination on Contributions	38
39	Reconstruction or Amalgamation of an Employer	38
40	Variation of Trust Deed	39
41	Winding Up of Fund	40

DIVISION B

Payment of Contributions and Benefits

42	Application of Division	41
43	Membership Classification	41
44	Definitions	42
45	Contributions	42
46	Benefits Payable on Retirement	42
47	Disablement	43
48	Early Retirement from Employment	44
49	Payment on Death	45
50	Increases to Benefits	45
51	Retention of Benefit in Fund	45

THIS DEED is made on the date specified in Schedule A as the Date of Deed.

BETWEEN the person named and described in Schedule A as the Principal (the "Principal")

AND the person named and described in Schedule A as the Trustee (the "Trustee")

WHEREAS:

- A. It has been determined to establish a superannuation fund for the purpose of providing retiring allowances and other benefits for certain persons who shall be eligible to be Members of the Fund and who shall elect to participate in the Fund and obtain the benefits under it for themselves, in the event of their death for their Dependants, and for other approved ancillary purposes.
- B. The Trustee has agreed to act as Trustee of the Fund in accordance with the provisions of this Trust Deed.
- C. The Fund is established and maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment or in other circumstances acceptable to the Commissioner or for the Dependants of Members in the event of the death of a Member.

NOW THIS DEED WITNESSES:

ESTABLISHMENT AND PURPOSE OF FUND

1. (a) Establishment

The Principal establishes a fund (the "Fund") which is known by the name described in Schedule A and which commences on the Date of Establishment of the Fund specified in Schedule A.

1. (b) Purpose

The primary purpose of the Fund is to provide the Benefits determined in accordance with this Deed as Old Age Pensions.

DIVISIONS

2. This Deed is divided into Division A and Division B. Division A shall govern the management and administration of the Fund and Division B shall govern the amount of the Contributions payable to and the Benefits payable from the Fund.

COVENANTS

3. The Principal covenants with the Trustee, and the Trustee for itself, its successors and assigns covenants with the Principal, mutually to perform and observe the covenants, trusts, and conditions of this Deed so far as the same are or ought to be observed by each of them respectively.

- DIVISION A -

MANAGEMENT AND ADMINISTRATION

4. INTERPRETATION - DEFINITIONS

In this Deed unless the context otherwise requires:

"A" Class Accumulation Account" means the Accumulation Account of a Member for the period that person was a Member of the "A" Class;

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in Clause 12;

"Actuary" means the actuary (if any) for the time being appointed pursuant to this Deed;

"Administration Manager" means a person appointed as Administration Manager of the Fund in accordance with sub-clause 20(b);

"Annuity" means an eligible annuity as defined in Section 27A(1) of the Tax Act;

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or fail to comply with the Relevant Requirements;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying ADF pursuant to the Tax Act;

"Approved Trustee" means a trustee which is approved by the Commissioner under Section 92 of the SIS Act;

"Auditor" means the auditor for the time being appointed pursuant to this Deed;

"B" Class Accumulation Account means the Accumulation Account of a Member for the period that person was a Member of the "B" Class;

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Pensioner and a Member who is entitled to receive a Benefit in his or her capacity as a Dependant of another Member but which shall not include a person who is a Member at that time;

"Benefit" means any amount which is payable by the Trustee out of the Fund pursuant to this Deed to or in respect of a Member;

"Benefit Entitlement" means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;

"C" Class Accumulation Account means the Accumulation Account of a Member for the period that person was a Member of the "C" Class;

"Class" means Membership Class;

"Commissioner" means, as the case requires, the Commissioner of Taxation, the Insurance and Superannuation Commissioner or such other regulatory body having responsibility for administration of the Relevant Requirements;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a Complying Superannuation Fund pursuant to the Relevant Requirements;

"Condition of Release" has the meaning ascribed to that expression in Regulation 6.01 of the SIS Regulations.

"Constitutional Corporation" has the same meaning as contained in Section 10 of the SIS Act;

"Contributions" means gross payments to the Fund by Members and Employers in accordance with the provisions of this Deed prior to the withdrawal of any Taxation payable in respect of those Contributions;

"Deed" means these presents and any authorised alterations, additions, amendments, modifications or variations to it;

"Dependant" in relation to a Member or former Member means:

- (i) the Spouse of a former Member or the widow or widower of a deceased Member; or
- (ii) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as the child of the Member; or
- (iii) any other person who, in the opinion of the Trustee, was substantially dependent on the Member at the relevant time;

"Directors" means the directors or board of management for the time being of the Trustee or any Employer, as the case requires, and "Director" has a corresponding meaning;

"Eligible Company" means a Constitutional Corporation the issued capital of which is held in such manner (if any) as shall be required to comply with the Relevant Requirements provided that during such period as the Fund is a Representative Fund (unless otherwise acceptable to the Commissioner) the composition of the Board of Directors is in accordance with the provisions of the Relevant Requirements and the Articles of Association of the Company specify that the decisions of the Directors shall be carried by not less than a two-thirds majority of the Directors with no casting vote being given to the Chairman of the Company;

"Eligible Person" means any person who is engaged in Part-Time Gainful Employment or Full-Time Gainful Employment or is otherwise authorised to have Contributions paid into the Fund on their behalf under the Relevant Requirements;

"Eligible Rollover Fund" has the same meaning as is contained in Section 242 of the SIS Act;

"Eligible Termination Payment" has the same meaning as contained in Section 27A of the Tax Act;

"Employee" means a person in the employment of an Employer;

"Employer" means any person, firm or corporation who employs a Member who is admitted by the Trustee pursuant to Clause 35 to make Contributions to the Fund on behalf of a Member and in relation to an Employee or Member means the Employer of such Employee or Member;

"Employer Representative" has the same meaning as contained in Section 10 of the SIS Act;

"Equalisation Account" means the account established pursuant to sub-clause 12(e);

"Financial Year" means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

"Forfeiture Account" means the account established pursuant to sub-clause 26(c);

"Full-Time Gainful Employment" in relation to a Member means a Member who is Gainfully Employed on a full-time basis within the meaning of the Relevant Requirements;

"Fund" means the Fund established by this Deed the name of which is set out in Schedule A;

"Fund Earning Rate" means the earning rate for the Fund (which may be negative) determined pursuant to paragraph (iii) of sub-clause 12(d) after taking into account such provisions or reserves for future contingencies as the Trustee shall consider reasonable;

"Fund Year" means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee from time to time may determine;

"Gainful Employment" in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Requirements;

"Independent Director" has the same meaning as is contained in Section 10 of the SIS Act;

"Independent Trustee" has the same meaning as is contained in Section 10 of the SIS Act;

"Individual Trustee" means an individual person who is one of the Trustees;

"Insurer" means any insurer with whom the Trustee effects a Policy or Policies in accordance with Clause 34;

"Investment Manager" means a person appointed as an Investment Manager of the Fund in accordance with sub-clause 20(c);

"Member" means an Eligible Person that has been accepted as a Member of the Fund pursuant to Clause 8 of this Deed (which expression shall where appropriate, include the Principal) and who has not ceased to be a Member pursuant to sub-clause 8(f) and "Membership" shall mean Membership of the Fund;

"Member's Contributions" means the amounts contributed pursuant to Clause 45 or deemed to have been contributed by a Member pursuant to paragraph (iii) of sub-clause 23(e);

"Member Representative" has the same meaning as is contained in Section 10 of The SIS Act;

"Member's Vested Contributions" means those Contributions, plus Net Earnings, which are required to be vested in the Member by the Relevant Requirements reduced by:

- (i) the cost of effecting any Policy on behalf of a Member where the Trustee determines that the premium should be wholly or partially debited against Member's Vested Contributions in accordance with sub-clause 34(c); or
- (ii) any costs debited against Member's Vested Contributions in accordance with sub-clause 19(a);

"Membership Class" means the Class or Classes of Membership of a Member as determined pursuant to Clause 43;

"Nominated Dependant" means a person nominated by a Member as the Nominated Dependant;

"Normal Retirement Age" means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Commissioner or the Relevant Requirements and as the Trustee with the consent of the Employer of that Member shall determine;

"Old Age Pensions" has the same meaning as is contained in Section 10 of the SIS Act;

"Participating Employer" means any employer that by agreement with the Trustee is admitted to participation in the Fund pursuant to Clause 35;

"Part-Time Gainful Employment" in relation to a Member means a Member who is employed for at least 520 hours per annum or a Member who fulfils any such other requirements as may be specified under the Relevant Requirements;

"Pension" means a Benefit payable at a yearly rate by instalments out of the Accumulation Account or the Pension Account of a Member or Beneficiary whether such instalments be equal or unequal;

"Pensioner" means a Member who is entitled to receive or is in receipt of the Benefits payable to the Member as a Pension in accordance with Sub-clause 27(a) and shall include a Reversionary Beneficiary in receipt of a Pension;

"Pension Account" means the account established in respect of a Pensioner in accordance with Sub-clause 27(b);

"Pension Provider" means a company which is authorised to provide lifetime Annuities or fixed term Annuities under the Relevant Requirements;

"Policy" means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that Benefits shall be payable to the Trustee on the death or disablement of a Member;

"Preserved Payment" means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved under the Relevant Requirements;

"Preserved Payment Benefit" means a Benefit arising from a Preserved Payment or any other amount which is included in a Member's preserved benefits under the Relevant Requirements;

"Principal" means the Principal named in Schedule A;

"Regulated Fund" has the same meaning as is contained in Section 19 of the SIS Act;

"Relative", in relation to a Member or former Member means any of the following, namely:

- (i) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member; and
- (ii) the Spouse of any person specified in paragraph (i);

"Relevant Requirements" means any requirements under the Occupational Superannuation Standards Act 1987, the Occupational Superannuation Standards Regulations, the SIS Act which the Trustee or the Deed must comply with to avoid a contravention of such Acts or Regulations or in order for the Fund to qualify for concessional Taxation treatment as a Complying Superannuation Fund;

"Representative Fund" means a Fund which has a Representative Membership;

"Representative Membership" means 200 Members if being determined prior to 1 July 1995 and if being determined after 30 June 1995 means 5 Members;

"Restricted Non-Preserved Benefit" in respect of a Member means an amount determined in accordance with Regulation 6.08 of the SIS Regulations.

"Retires from Gainful Employment" means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Relevant Requirements for the payment of Benefits;

"Reversionary Beneficiary" means a Dependant nominated by a Pensioner and, in default of a nomination by the Pensioner, a Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Pensioner;

"Roll Over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances which satisfy the Relevant Requirements to or from any Approved Benefit Arrangement and shall include an Eligible Termination Payment by an Employer in consequence of the termination of the employment of a Member;

"SIS Act" means the Superannuation Industry (Supervision) Act 1993 and any regulations pursuant to it;

"SIS Regulations" means the Regulations made under the SIS Act from time to time;

"Small Fund" means a fund which is not a Representative Fund;

"Spouse" in the definition of "Dependant" and "Relative" means:

- (i) a person legally married to a Member at any time; or
- (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them;

"Tax Act" means the Income Tax Assessment Act (1936) and any regulations pursuant to it;

"Taxation" includes income tax, capital gains tax, tax on Eligible Termination Payments, payroll tax, land tax, stamp duty and any other taxes or duties paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary;

"Total and Permanent Disablement" means:

- (i) the definition contained in any Policy effected by the Trustee with an Insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or

- (ii) if there is no Policy containing such a term effected in respect of a Member then Total and Permanent Disablement in relation to a Member means physical or mental incapacity of such a degree that two registered medical practitioners have certified that in their opinion the Member is incapable of engaging in any Gainful Employment for which the Member is reasonably qualified by education, training or experience,

and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted appointed in accordance with Clause 14 of this Deed;

"Vested Benefit" means any part of the Benefit of a Member arising from Contributions to the Fund or earnings of the Fund or arising from a Roll Over Payment to the Fund which is required by the Relevant Requirements to be vested in a Member.

5. INTERPRETATION - GENERAL

(a) Plural and gender of words

In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender and words importing the singular number shall include the plural number and vice versa.

(b) Headings to Clauses

The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

(c) Defined words

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

(d) Statutory enactments

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

(e) Fund Subject to Relevant Requirements

This Deed shall be read and construed on the basis that the provisions of the Relevant Requirements are incorporated in the Deed to the extent they are required to be incorporated in order for the Fund to be a Complying Superannuation Fund and the Trustee may do or refuse to do anything which may be necessary in order to comply with the Relevant Requirements notwithstanding that such action or refusal may be in conflict with any provisions of this Deed.

(f) Requirements of Commissioner

Any references to any requirements, consents or approvals being required to be given by the Commissioner or for the purposes of satisfying the Relevant Requirements shall mean requirements, consents or approvals of the Commissioner or under the Relevant Requirements in order to enable the Fund to obtain concessional Taxation treatment.

(g) Rights of Members

The provisions of this Deed shall not in any way affect the right of a Member or the personal representative of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

(h) Other Division subject to Division A

The provisions of Division B shall, unless the context otherwise requires, be subject to the provisions of Division A.

(i) Severability

The covenants, undertakings and conditions contained in this Deed and every part thereof shall be severable. If any covenant, undertaking or condition on its true interpretation is found to be unlawful, void or unenforceable that covenant, undertaking or condition shall be read down to the extent as may be necessary to ensure that it does not infringe any law or is not otherwise void or unenforceable and as may be reasonable in the circumstances so as to give it a valid operation of a partial character. If the infringing covenant, undertaking or condition cannot be so read down it shall be deemed to be deleted from this Deed as if it had never been incorporated herein.

6. GENERAL PROVISIONS

(a) Employer's powers not prejudiced

Nothing in this Deed shall affect the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit under the Fund shall not be grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

(b) Exercise of Employer's and Trustee's rights

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on an Employer or the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of an Employer or Trustee:

- (i) where an Employer or Trustee is a company then by resolution of its Directors or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (ii) where the Trustee consists of Individual Trustees then by unanimous resolution of those persons or at a meeting of such persons where decisions are to be made by a majority of such persons holding the office of Trustee **PROVIDED THAT** during such time as the Fund is a Representative Fund such majority must be at least two-thirds of the number of such persons holding the office of Trustee; or
- (iii) where an Employer consists of individuals then by a majority of such individuals.

(c) Exercise of Discretions

Notwithstanding anything herein to the contrary:-

- (i) in exercising its powers under this Deed the Trustee shall not be subject to the direction of any other person except where the Relevant Requirements permit a person to give directions to the Trustee. If (but for the provisions of this sub-clause) any provisions of this Deed would permit a person to give a direction to the Trustee in circumstances other than those permitted by the Relevant Requirements, the Trustee is expressly authorised to disregard any such direction;

- (ii) if a discretion under this Deed may be exercised by a person other than the Trustee then such discretion shall not be exercised without the consent of the Trustee except in circumstances permitted under the Relevant Requirements.

7. PROPER LAW

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the Deed is executed.

8. MEMBERSHIP OF FUND

(a) Application for Membership

- (i) The Trustee shall invite such Eligible Persons as it shall in its absolute discretion determine to become Members of the Fund. The Trustee shall require such persons to complete an application for Membership in the form of Schedule B annexed to this Deed or in such other form as the Trustee shall from time to time determine.
- (ii) Notwithstanding the provisions of paragraph (i) above, where a completed application for Membership is not provided by an Eligible Person who is an Employee, the payment of a Contribution by an Employer in respect of an Employee shall be deemed to constitute the receipt of an application for Membership of the Fund in respect of that Employee.

(b) Admission to Membership

- (i) Upon actual or deemed receipt of an application for Membership the Trustee may determine to admit the applicant to Membership of the Fund.
- (ii) The Member shall be deemed to have joined the Fund on a date determined by the Trustee or, where the Trustee makes no such determination, on the date the completed application for Membership is received or deemed to have been received.
- (iii) Subject to any other conditions which may be applied pursuant to the provisions of this Deed, the Trustee may impose such conditions on an applicant's admission and the rights and duties of the applicant as a Member as it shall determine and may limit and impose such conditions upon Benefits as it sees fit and the Trustee may remove or vary all or any of the aforesaid conditions at any time.
- (iv) Upon admission to Membership of the Fund the Member shall be bound by this Trust Deed in all respects as if the Member were an original party to the Deed.

(c) Members and Beneficiaries to Provide Information

Each applicant for Membership and any Beneficiary shall when requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund, and shall submit to medical examinations as required by the Trustee by a registered medical practitioner who is acceptable to the Trustee.

Where a Member or Beneficiary fails to comply with the provisions of this Clause the Trustee may suspend the collection of any Contributions in respect of that Member or withhold any Benefits in respect of that Member or Beneficiary or impose such other conditions on the continued Membership of that Member or on the Beneficiary as the Trustee shall deem appropriate.

(d) Incorrect or Misleading Information

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

(e) Information re Age

A Member shall inform the Trustee as soon as practicable after the Member ceases Part-Time Gainful Employment or Full-Time Gainful Employment after age 65 years.

(f) Cessation of Membership

A person shall cease to be a Member of the Fund upon the earliest to occur of the following:

- (i) the date upon which payment of all the Member's Benefits is made to the Member or an Approved Benefit Arrangement on behalf of the Member;
- (ii) the death of the Member;
- (iii) the commencement of the payment to the Member of a Pension or the purchase for the Member of an Annuity;
- (iv) such date as the Trustee shall reasonably determine,

PROVIDED THAT where a Policy providing disablement benefits has been effected in respect of the Member that Member shall remain a Member for such period following resignation, dismissal or retirement from Gainful Employment as the Trustee shall determine.

9. MEMBERSHIP NOTIFICATION REQUIREMENTS

(a) Notice to New Members

As soon as practicable before the admission of a person as a Member of the Fund, the Trustee shall give to such prospective Member a written statement containing information and details relating to the Fund in accordance with the Relevant Requirements.

(b) Disclosure and Reporting Requirements

The Trustee shall provide to Members, former Members, Beneficiaries and the Commissioner on an annual basis and on other occasions as shall be required by the Relevant Requirements information in writing in relation to:

- (i) the conduct of the Fund;
- (ii) the rights and entitlements of Members of the Fund;
- (iii) the Taxation and complying status of the Fund;
- (iv) the Contributions made or owing to the Fund;
- (v) Benefit entitlements and payments from the Fund;
- (vi) advisers to the Fund;
- (vii) the trust deed for the Fund;
- (viii) the accounts of the Fund;
- (ix) the report of the Actuary of the Fund (if any); and

such other matters as shall be required by the Relevant Requirements from time to time.

(c) Notice to Former Member

As soon as practicable after a person ceases to be a Member of the Fund, the Trustee shall give to such former Member or the legal personal representatives of the former Member a written statement containing such information and details relating to the Benefit of the former Member as is required to be provided by the Relevant Requirements.

(d) Disclosure Limitation

No Member or Dependant of a Member shall be entitled to obtain information in respect of any details of the operation of the Fund or on any matter which may relate to the conduct of the Fund which in the opinion of the Trustee would be inappropriate to disclose other than as is provided for by this clause.

(e) Benefits Secured

The rights of the Members and their Dependents to receive Benefits payable pursuant to this Deed shall be fully secured within the meaning of the Relevant Requirements.

(f) Access to Prescribed Information

The Trustee shall allow all Members and Beneficiaries to have access to any information or documents which are prescribed under the Relevant Requirements.

10. MEETINGS OF MEMBERS

The following provisions shall apply in relation to meetings of Members of the Fund:

(a) Notice

to call a meeting of Members shall require a notice to be served on the Trustee signed by 20 Members or at least one-half of the number of Members in the Fund whichever is the lesser which notice shall request a meeting of Members;

(b) Meeting Date

the Trustee shall convene a meeting of Members within 14 days of receiving the request and shall send a notice of meeting to each Member specifying that a meeting will be held within 14 days of that notice being issued;

(c) Trustee Convening Meeting

the Trustee may at any time convene a meeting of Members by notice in writing;

(d) Contents of Notice

every notice of meeting shall:

- (i) be posted or given at least 10 days before the meeting;
- (ii) advise the place and time of the meeting;
- (iii) advise the Member that a proxy may be appointed to vote on behalf of the Member at the meeting PROVIDED THAT the Member lodges the form of proxy with the Trustee not later than 24 hours before the meeting;
- (iv) set out the matters including any resolutions to be considered at the meeting;

(e) **Deemed Service**

every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at the last known address of the Member and when so posted the notice shall be deemed to have been given 3 days after the date of posting;

(f) **Chairperson**

the Members present at the meeting shall appoint a chairperson of the meeting who may make such regulations concerning the conduct of the meeting as he or she may decide. If the Members do not appoint a chairperson the Trustee may appoint a person to act as chairperson provided that the appointment is in accordance with the Relevant Requirements;

(g) **Quorum**

a quorum for the meeting shall be 10 Members present in person or at least 25% of the Members of the Fund whichever is the lesser **PROVIDED THAT** if a quorum is not present within 30 minutes of the time appointed for the meeting the chairperson of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting;

(h) **Voting**

each Member shall be entitled to one vote with the chairperson being given a casting vote in the event of an equality of votes.

11. FUND ASSETS

The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall include:

(a) **Transfers**

the amount, if any, standing or transferred to the credit of the Fund at or after the date from which this Deed comes into effect;

(b) **Member Contributions**

such Contributions (if any) as the Members shall make to the Fund at any time;

(c) **Employer Contributions**

such Contributions as an Employer makes to the Fund at any time;

(d) **Earnings**

interest, dividends and distributions of income arising from any investment and the accumulation of that income;

(e) **Profits**

profits and other benefits arising from any investment and the accumulation of those profits;

(f) **Policy**

the proceeds (including bonuses) of any Policy held by the Fund; and

(g) **Roll Over Payments**

moneys, investments and other property transferred to the Fund as a Roll Over Payment.

12. ACCUMULATION ACCOUNT

(a) Separate Member Accounts

The Trustee shall establish an Accumulation Account in respect of each Member or Beneficiary for each Class which is applicable.

(b) Credits

The following amounts shall be credited to the appropriate Accumulation Account according to the Class to which they relate:

- (i) any amount paid into the Fund in respect of the Member as a Roll Over Payment which the Trustee considers it appropriate to credit;
- (ii) any Contributions made by the Member;
- (iii) any Contributions made in respect of the Member or Beneficiary by an Employer;
- (iv) the proceeds of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (v) such positive earnings as are determined by the Trustee and transferred from the Income Account;
- (vi) such forfeited amounts as are allocated to but not paid directly to the Member or Beneficiary pursuant to sub-clause 26(d);
- (vii) any amounts transferred from the Pension Account of a Member or Beneficiary;
- (viii) such other amounts as the Trustee shall from time to time determine.

(c) Debits

The following amounts shall be debited to the appropriate Accumulation Account according to the Class to which they relate:

- (i) any amount paid out of the Fund in respect of the Member or Beneficiary as a Roll Over Payment which the Trustee considers it appropriate to credit;
- (ii) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (iii) the costs of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary subject to paragraph (d)(ii)D below;
- (iv) such proportion of any amount payable by way of Taxation in respect of Contributions to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (v) such of the costs, charges and expenses incurred pursuant to Clause 19 or an appropriate portion thereof as the Trustee may determine;
- (vi) the amount of any lien exercised pursuant to Clauses 18 or 25;
- (vii) such amount as is forfeited pursuant to sub-clauses 26(a), 26(b) or 31(b);
- (viii) such negative earnings as shall be determined by the Trustee in accordance with sub-clauses (d), (f) or (g) below;

- (ix) any moneys paid in respect of the Trustee indemnity set out in Clause 18;
- (x) such other amounts as the Trustee shall from time to time determine **PROVIDED THAT** the debiting of such amounts is permitted by the Relevant Requirements.

(d) **Income Account**

- (i) The Trustee shall establish an Income Account for the Fund to which shall, subject to sub-clause (g) below, be credited the following:
 - A. all income and profits of the Fund each year;
 - B. credits arising out of adjustments pursuant to sub-clause (f) below;
 - C. any amount transferred from the Equalisation Account pursuant to sub-clause (e) below;
 - D. the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Accumulation Account or a Pension Account;

and profits of the Fund shall include any surplus arising from a valuation undertaken at any time during the year in accordance with sub-clause (h) below.
- (ii) The Income Account shall, subject to sub-clause (g) below, be debited with the following:
 - A. any loss sustained on the disposal of any investments of the Fund;
 - B. any costs or charges incurred pursuant to Clause 19 which are not debited to an Accumulation Account;
 - C. any debits arising out of adjustments pursuant to sub-clause (f) below;
 - D. the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Accumulation Account;
 - E. any deficiency arising from a valuation undertaken in accordance with sub-clause (h) below;
 - F. any amount payable or which may become payable by way of Taxation in respect of the Contributions and the income and profits of the Fund which are not debited to an Accumulation Account as the Trustee determines to be equitable;
 - G. any income transferred to the Income Equalisation Account;
- (iii) Following the debiting of the Income Account as specified in paragraph (d)(ii) above, at the end of each Fund Year the Trustee shall determine the Fund Earning Rate and shall then calculate the amount due for distribution.
- (iv) Subject to sub-clause 12(g), the amount distributed as the earnings of the Fund pursuant to paragraph (d)(iii) above shall be allocated to each Accumulation Account and Pension Account in proportion to the amount standing to the credit of that Accumulation Account or Pension Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Accumulation Account or Pension Account since that date.

- (v) Any amount remaining in the Income Account after distribution of earnings pursuant to paragraph (d)(iv) above shall be transferred to the Equalisation Account established pursuant to sub-clause (e) below.
- (vi) In the event that the Trustee is required to establish a Fund Earning Rate in respect of a portion of a Fund Year then such Fund Earning Rate for that period shall be determined by the Trustee in accordance with the Relevant Requirements on a basis which the Trustee considers to be equitable. The Trustee shall when required by the Commissioner or the Relevant Requirements notify the Member of the basis of the calculation of the interim Fund Earning Rate.

(e) Equalisation Account

The Trustee shall have power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account pursuant to sub-clause (d) above.

Whilst any moneys are held in the Equalisation Account they shall not form part of any Accumulation Account or Pension Account and any income derived by the Fund on the moneys held in the Equalisation Account shall be credited back to the Equalisation Account.

The Trustee shall formulate and give effect to a strategy for the prudential management of any moneys or assets held in the equalisation account, consistent with the investment strategy of the Fund and the capacity of the Fund to discharge the liabilities of the Fund (actual or contingent) as they fall due.

Unless the Trustee formulates a contrary strategy the Equalisation Account is to be used by the Trustee to stabilise the investment earnings of the Fund in accordance with its reserving policy to provide for such future contingencies as the Trustee shall determine and the Trustee shall have the discretion to deal with the assets of the Equalisation Account as it shall see fit in the supplementation of the Fund Earning Rate and the Trustee shall additionally have power to debit the Equalisation Account with any Taxation payable in respect of any income derived by the Fund.

(f) Adjustment

In determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated or becomes payable, the Trustee shall make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as it shall at its discretion consider equitable and in accordance with the Relevant Requirements and the Income Account shall be debited or credited accordingly.

(g) Specific Investments

- (i) In the event that the Trustee undertakes to invest separately in respect of certain Members or Beneficiaries in accordance with sub-clause 15(e) the Trustee shall record on whose behalf such specific investments are made for the purposes of determining allocation to Accumulation Accounts and Pension Accounts.
- (ii) The income and profits (less losses) arising from such specific investments and any costs or charges applicable to such specific investments which are incurred pursuant to sub-clause 15(e) and any Taxation which is payable or may become payable in respect of such specific investments shall not be allocated to the Income Account. The income and profits (less losses) arising from such specific investments applicable to any particular Accumulation Account or Pension Account shall be allocated directly to that Accumulation Account or Pension Account which shall also be debited directly with the appropriate proportion of any costs or charges applicable to such investments and any Taxation which is payable or may become payable in respect of such specific investments.

(h) Valuation

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Commissioner or the Relevant Requirements shall require (including but without limiting the generality of the foregoing at the time of the payment of a Benefit to a Member) the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

13. FUND RECORDS

(a) Receipt and payment of moneys

All moneys of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank, friendly society, building society or similar body as determined from time to time by the Trustee or to the credit of an Insurer for the payment of premiums or into the trust account of a Solicitor, Accountant or Investment Manager appointed pursuant to this Deed.

(b) Issue of receipts

A receipt given on behalf of the Fund by the Trustee or by the secretary (if any) of the Fund or by the Secretary or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be a sufficient discharge to the person by whom the moneys are paid.

(c) Records and accounts to be kept

The Trustee shall:

- (i) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection with such moneys;
- (ii) collect, and pay promptly into an authorised account of the Fund or otherwise deal with all moneys from time to time due to the Fund;
- (iii) keep appropriate minutes of meetings of the Trustee or directors of a Corporate Trustee (at which matters effecting the Fund are considered) records, books and accounts and other records and documents in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments of the Fund as required by the Relevant Requirements and retain such records, books, accounts and documents for a period of at least ten(10) years or such other time as required by the Relevant Requirements; and
- (iv) prepare an annual balance sheet of the Fund as at the end of the Fund Year, together with a statement of income and expenditure for that Fund Year.

(d) Audit

Each annual balance sheet and statement as referred to above and other accounts, books and relevant records shall be audited by the Auditor annually or at such other time or times as shall be required by the Commissioner or the Relevant Requirements. If the Auditor is satisfied that the annual return prepared for the Fund for that particular year of income is in accordance with the Relevant Requirements, an audit certificate shall be executed by the Auditor in the form prescribed and which shall then be lodged in accordance with the Relevant Requirements.

(e) Trust Deed

A copy of this Deed shall be made available for inspection by any Member on the request of that Member and unless otherwise required by the Relevant Requirements it shall be sufficient for the purposes of this sub-clause to make a copy of this Deed available to the Member for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

(f) Information for Trustee

When requested by the Trustee an Employer shall give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer pursuant to this Deed and shall not be required to verify that information.

(g) Disclosure and Reporting Requirements

The Trustee shall provide to Employers, Members and former Members of the Fund and the Commissioner such information, reports and returns in relation to the affairs, operations and conduct of the Fund, the investments of the Fund, Contributions made to the Fund and Benefits payable from the Fund and such other information as shall be required by the Commissioner or the Relevant Requirements from time to time.

14. FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL

(a) Fund vested in Trustee

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

(b) Trustee Criteria

The appointment, removal and composition of the Trustee of the Fund shall be governed by the criteria specified in this Deed unless the Relevant Requirements otherwise provide in which case those requirements shall prevail.

(c) Eligibility for Trustee

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

- (i) the Trustee specified in this Deed;
- (ii) an Approved Trustee (if permitted by the Relevant Requirements);
- (iii) an Independent Trustee (if permitted by the Relevant Requirement);
- (iv) another Eligible Company;
- (v) Individual Trustees appointed in accordance with the Relevant Requirements and, where required by the Relevant Requirements, consisting of equal numbers of Employer and Member Representatives;
- (v) a Trustee as shall be approved by the Commissioner or who satisfies or is permissible under the Relevant Requirements,

(d) Small Fund becoming Representative Fund

Within 90 days of the Fund becoming a Representative Fund the Members and Employers shall take such action as is necessary to ensure that an Eligible Company or individual trustees consisting of equal Member Representatives and Employer Representatives (with or without an Independent Trustee) are appointed **PROVIDED THAT**, if the Relevant Requirements permit, the Trustee may be an Approved Trustee

PROVIDED THAT if this sub-clause is not complied with within the 90 day period then the Trustee at that time shall determine whether there shall be a change of Trustee in accordance with the requirements for trustee representation specified by the Relevant Requirements and shall be empowered to act upon such determination.

(e) Appointment of Trustee

The majority of Members shall, subject to the other provisions of this Clause, determine who shall act as the Trustee.

(f) Change of Trustee

A person shall immediately cease to act as a Trustee of the Fund:

- (i) if it is appointed as an Independent Trustee and it ceases to be an Independent Trustee;
- (ii) if it is appointed as an Approved Trustee and ceases to be an Approved Trustee;
- (iii) if a resignation by notice in writing as a Trustee of the Fund is given to the Members;
- (iv) if the Trustee is disqualified from holding office by operation of law; or
- (v) if it is wound up or placed in receivership; or
- (vi) if a majority of Employers and a majority of Members resolve to terminate the appointment of the Trustee;
- (vii) if the Trustee is a natural person and he or she dies.

(g) Continuity of Office

Any person who acts as a Trustee shall on ceasing to be a Trustee pursuant to this Clause do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

(h) Office of Trustee

The office of Trustee shall be filled at all times and in the event of a vacancy occurring (other than in the case of an Independent Trustee who is not the sole Trustee of the Fund) a new Trustee shall be appointed within 60 days of such vacancy occurring in accordance with the provisions of this Deed.

(i) Numbers of Trustees

Where the Trustees are Individual Trustees there shall be such numbers of persons as shall be agreed between the Trustee and the Members but in the absence of any such agreement the number of Trustees shall not be less than two.

(j) Member may be Director of Trustee

No Individual Trustee or Director, officer or employee of a Corporate Trustee shall by virtue of their office or of powers being delegated by the Trustee to them be disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

(k) Member Representation Requirement

In the event that the Relevant Requirements require the Fund to have Member Representatives at any time the Trustee and any Employers shall forthwith take such steps as shall be necessary to implement appropriate procedures for nomination and selection of Member Representatives and ensure that the Trustee meets all the appropriate representation criteria and requirements as set out in the Relevant Requirements.

(l) Confirmation of Discharge of Retiring Trustee

Notwithstanding any rule of law or legislative provisions to the contrary a person who retires or is removed as Trustee or a co-Trustee of the Fund in accordance with the provisions of this Deed shall be discharged from the trusts contained in this Deed as from the date of such retirement or removal provided that after such retirement or removal there is at least one individual or corporate trustee.

(m) Consents of Directors and Trustees

Notwithstanding anything herein to the contrary no person shall be appointed as a Trustee or director of a Trustee unless the person has consented in writing to the appointment.

15. TRUSTEE'S INVESTMENT POWERS

(a) Investment Policy and Strategy

The Trustee shall formulate the investment strategy of the Fund from time to time and shall determine a policy to give effect to the strategy. The statement of the investment strategy and any investment policy for the Fund shall incorporate at least those matters which are necessary in order for the Fund to comply with the Relevant Requirements.

(b) Authorised Investments

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment policy and strategy of the Fund as determined in accordance with sub-clause (a) above in any of the following investments:

- (i)** any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (ii)** the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (iii)** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;
- (iv)** on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (v)** any Policy or Annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (vi)** the purchase, acquisition or leasing of any real or personal property (or any interest therein) and the improvement or extension of that property;

- (vii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (viii) any other investments which the Trustee considers appropriate and which satisfy the Relevant Requirements,

PROVIDED THAT the Trustee is not authorised to make a loan or give any other financial assistance using resources of the Fund to any Member of the Fund or any relative of a Member for any reason whatsoever and **PROVIDED FURTHER THAT** the Trustee shall use its best endeavours to ensure that no investment undertaken shall be in contravention of the investment criteria specified by the Relevant Requirements or otherwise in breach of the Relevant Requirements.

(c) Power to Sell and Vary Investments

The Trustee shall have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

(d) Interest of Trustee in Investment

- (i) Subject to sub-clause (ii), the Trustee and any Director shall have the power and is authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (ii) The Trustee and any Director shall disclose details of the interest in an investment to which sub-clause (i) applies in the manner prescribed under the Corporations Law and the Relevant Requirements.

(e) Specific Investments

- (i) The Trustee may undertake to invest separately in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different Classes for certain Members or Beneficiaries **PROVIDED THAT** any such investment is undertaken within the investment strategy formulated by the Trustee.
- (ii) Upon a Member being admitted to Membership of the Fund or at any time whilst a Member or Beneficiary remains a Member or Beneficiary of the Fund, that person may complete an application requesting the Trustee to make a specific investment (specific investment authority) which will authorise the Trustee to make a specific investment in accordance with that request of all or any part of the Accumulation Account or the Pension Account of the Member or Beneficiary.
- (iii) The specific investment authority shall set out full details of the investment sought to be made on behalf of the Member or Beneficiary together with any terms and conditions upon which the Member or Beneficiary may wish to have the specific investment made.
- (iv) The Trustee may approve or reject the request made in the specific investment authority, and upon accepting or rejecting the specific investment authority, it shall inform the Member or Beneficiary of its decision in relation to same, and the Member or Beneficiary acknowledges and agrees that the Trustee at all times retains the overriding discretion to accept or reject any investment sought by a specific investment authority.
- (v) In the event that the Trustee rejects the specific investment authority or imposes conditions upon the acceptance of the investment requested in the specific investment authority, the Member or Beneficiary may modify or resubmit the specific investment authority, and the provisions of paragraph (iv) above and this paragraph shall apply to any proposal which is so resubmitted.

- (vi) A Member or Beneficiary may at any time provide to the Trustee in such form as the Trustee shall determine any proposals for a variation of the investments set out in any specific investment authority (variation request) and the Trustee may approve or reject any such variation request at its discretion.
- (vii) In the event that the Trustee determines to reject the variation request then the provisions of paragraphs (iv) and (v) shall apply mutatis mutandis to such rejected proposal and in the event that the Trustee approves any such variation request, the specific investment authority held by the Trustee shall be deemed to be varied accordingly.

16. TRUSTEE'S POWERS OF MANAGEMENT

(a) Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee shall have the following powers:

- (i) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (ii) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (iii) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT the Trustee shall not borrow money where this would constitute a contravention of the Relevant Requirements;
- (iv) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (v) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (vi) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- (vii) to retain the services of and to appoint professional or other advisers in relation to the management or administration of the Fund and to pay the fee or remuneration for any professional or other advisers so appointed;
- (viii) to pay and advance out of the Fund all costs, expenses and outgoings including Taxation of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (ix) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- (x) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;

- (xi) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (xii) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 18;
- (xiii) to permit any asset of the Fund to be held or registered in the name of any nominee of the Trustee (subject to any restrictions in the Relevant Requirements) or to deposit securities belonging to or related to the Fund with a bank or other lending institution; and
- (xiv) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

(b) Exercise of Trustee Powers

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Fund.

(c) Trustee Discretion

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding **PROVIDED THAT** the Trustee shall not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

17. DUTIES AND LIABILITIES OF TRUSTEE

(a) Trustee Covenants

The Trustee covenants that:

- (i) it will act honestly in all matters concerning the Fund;
- (ii) in relation to all matters affecting the Fund it will exercise the same degree of care skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom he or she felt morally bound to provide;
- (iii) it will ensure its duties and powers are performed and exercised in the best interests of the Members and Beneficiaries;
- (iv) it will keep the assets of the Fund separate from assets held personally by the Trustee or which are the property of any Employer;
- (v) it will not enter into any contract or do anything which would prevent or hinder the Trustee in properly performing or exercising its functions or powers.

(b) Limitation on Trustee's Liability

Neither the Trustee nor any of its Directors or officers shall be liable for anything done or omitted to be done in relation to the Fund except in the case of dishonesty, fraud or other wilful neglect on its part. Without limiting the generality of this exemption from liability the Trustee shall not incur any liability for:

(i) **Loss**

any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;

(ii) **Default**

any act or default of any former Trustee or any Director or officer of a former Trustee or of any Member;

(iii) **Default of Agent**

the neglect or default of any agent employed in good faith by the Trustee;

(iv) **Bona Fide Acts**

any act or acts done or omitted to be done which the Trustee believed to be in conformity with any decisions of the Trustee;

(v) **Mistake**

any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

(c) **Member inquiries and complaints**

If required by the Relevant Requirements, the Trustee shall establish and take all reasonable steps to ensure that, at all times, there are in force arrangements under which Members and Beneficiaries may make inquiries and complaints in relation to such matters as may be required under the Relevant Requirements and that such inquiries and complaints will be dealt with within the time period required by the Relevant Requirements.

18. INDEMNITY OF TRUSTEE

(a) **Indemnity and Lien**

The Trustee and where applicable its Directors and members of committees formed by the Trustee shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them pursuant to this Deed or at law and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purposes of this indemnity **PROVIDED HOWEVER** that the exercise of any lien shall not contravene the Relevant Requirements.

(b) **Payments in Good Faith**

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

(c) **Opinion or Advice**

This indemnity shall extend to the circumstances where the Trustee or its Directors acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

(d) Failure to Carry Out Agreement

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

19. REMUNERATION OF TRUSTEE

(a) Costs and Disbursements

The Trustee shall be entitled to charge professional fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Fund which fees may be charged for both new Members and existing Members of the Fund in respect of:

- (i) Contributions made to the Fund;
- (ii) income earned by the Fund;
- (iii) revaluation of assets of the Fund; and
- (iv) Roll Over Payments received by the Fund,

which fees, costs and disbursements will be debited to the Income Account or directly to the Accumulation Account or Pension Account of a Member as determined by the Trustee which fees, costs and disbursements may reduce the Member's Vested Contributions.

(b) Fees Determined Annually

The fees charged (if any) by the Trustee shall be determined at the commencement of each Fund Year. Prior notice of any changes which are intended to be made to the fees chargeable shall be provided by the Trustee to the Members and any Employers.

(c) Reimbursement

The Trustee shall be entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (ii) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
- (iii) all and any Taxation paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (iv) all fees, wages and expenses of any barrister, solicitor, accountant, actuary, fund manager, Administration Manager, Investment Manager, agent, consultant or expert from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (v) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund;
- (vi) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;

- (vii) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.

20. APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS

(a) Actuary and Auditor

The Trustee shall if necessary appoint a person or firm to the following offices on such conditions as it shall determine:

- (i) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (ii) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Requirements.

(b) Administration Manager

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administration Manager of the Fund to carry out some or all of the administration of the Fund which appointment shall be made on such terms and conditions as the Trustee considers appropriate.

(c) Investment Manager

- (i) The Trustee shall have power to appoint in writing one or more companies (or individuals where not prohibited by the Relevant Requirements) to act as Investment Manager for the Fund for such period and on such terms and conditions as the Trustee shall determine.
- (ii) The Trustee shall delegate to each Investment Manager such powers discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee shall determine PROVIDED THAT the Investment Manager undertakes in writing to hold the investments of the Fund together with income from those investments in trust for and on behalf of the Trustee.
- (iii) Notwithstanding anything herein to the contrary, the terms on which any Investment Manager is appointed from time to time shall include such provisions as may be required by the Relevant Requirements.

(d) Custodian

The Trustee shall have power to appoint one or more companies (or individuals where not prohibited by the Relevant Requirements) to act as a custodian for the Fund for such period and on such terms and conditions as the Trustee shall determine and may delegate and confer upon such custodian such powers discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature or relating to the custody of any part of the assets of the Fund as the Trustee shall determine provided that such appointment and the terms and conditions of the appointment are in accordance with the requirements of the Relevant Requirements.

(e) Consultants and Officers

In addition, the Trustee from time to time may appoint such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

(f) Removal

The Trustee may remove from office any person appointed pursuant to this Clause.

21. ACTUARIAL INVESTIGATIONS

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or to act upon the advice so provided.

22. CONTRIBUTIONS TO FUND

(a) Determination of Contributions

A Member or (if applicable) an Employer shall contribute to the Fund in respect of each Member such amount and in such manner and at such times as each of them shall in their absolute and uncontrolled discretion determine.

(b) Designation of Class Entitlements

Where a Member makes a Contribution, or where an Employer makes a Contribution in respect of a Member, and the Member is a Member of more than one Membership Class the Member or the Employer shall designate in relation to that particular Contribution (or in respect of all future Contributions) which Membership Class or Classes each Contribution is being made to and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts applicable to that Class or those Membership Classes.

(c) Contributions in Cash or Assets

Any Contributions made by a Member or an Employer shall be made to the Trustee within the Fund Year or within such further period as the Relevant Requirements may allow in respect of which it is paid either in cash or by transfer of an asset or assets **PROVIDED THAT** the assets transferred must be authorised investments as set out in sub-clause 15(b) of this Deed.

(d) No Obligation to Contribute

In the absence of any agreement to the contrary neither a Member nor an Employer shall be under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member of the Fund notwithstanding a Contribution is not made in respect of that Member in respect of any Fund Year.

(e) Limitation on Acceptance of Contributions

The Trustee shall not accept any Contribution to the Fund by or in respect of a Member where the acceptance of that Contribution will (or may in the reasonable opinion of the Trustee) constitute a contravention of the Relevant Requirements.

(f) Ineligible Contributions

If the Trustee shall at any time ascertain that Contributions have been accepted from a Member in breach of the provisions of sub-clause (e) above, the Trustee shall refund such Contributions, less any charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contributions, and reasonable administration expenses and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution had not been made.

**23. TRANSFERS TO AND FROM OTHER
APPROVED BENEFIT ARRANGEMENTS**

(a) Transfers to Approved Benefit Arrangements

Where a Member joins or is eligible to join any Approved Benefit Arrangement (the "Other Fund") and the Member requests that the whole or a part of the entitlement of the Member in the Fund be transferred to the Other Fund or if the Trustee is otherwise permitted to transfer the entitlement of the Member to the Other Fund the Trustee may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount (the "Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Member in the Fund at the time of the request for the transfer as the Trustee has determined be transferred.

(b) Effect and Method of Transfer Out

- (i) The receipt of the Transferred Amount by the proper officer of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect of the Transferred Amount and the Trustee shall have no responsibility to see to the application of the Transferred Amount.
- (ii) Upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause all of the rights and interests of that Member or Beneficiary under this Deed (and all of the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the Transferred Amount shall be entirely extinguished.

(c) Roll Over

Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of the entitlement of the Member in the Fund, the Member shall:

- (i) make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment or the percentage of the Member's Accumulation Account or Pension Account to be applied as the Roll Over Payment; and
- (ii) complete and execute a notification of the Roll Over Payment or such other documentation as shall be required by the Tax Act to enable the Roll Over Payment to be effected to the Approved Benefit Arrangement in accordance with the Relevant Requirements.

(d) Preserved Payment Transfers

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund the Trustee shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Requirements.

(e) Transfers from Approved Benefit Arrangements

- (i) Where a Member is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of any of the existing members of such Approved Benefit Arrangement at the time of takeover or acquisition.

- (ii) The Trustee shall hold any such amounts transferred in accordance with paragraph (i) above as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit was transferred.
- (iii) On any transfer from an Approved Benefit Arrangement in accordance with this sub-clause, the amount of the transfer which represents Members' Contributions for the purposes of determining the Member's Contribution under Clause 45 shall be such amount as the trustee of the Approved Benefit Arrangement from which the Member has transferred certifies as having been contributed by that Member or deemed to have been contributed by that Member for the purposes of the Relevant Requirements or failing a certification by that trustee shall be such amount as the trustee of such Approved Benefit Arrangement considers to be fairly attributable to the contributions of that Member to such Approved Benefit Arrangement together with accrued earnings to the date of transfer to the Fund.

(f) Overriding Conditions on Portability

Notwithstanding anything expressed or implied to the contrary in this Deed:

- (i) no payment or transfer shall be accepted from or made to another Approved Benefit Arrangement pursuant to any provision of this Deed if, in the opinion of the Trustee, to do so would cause the Fund to be in breach of any of the Relevant Requirements regarding the provision, portability or preservation of Benefits; and
- (ii) in relation to any payment or transfer which is accepted or made pursuant to this Deed, the Trustee:
 - A. shall impose such conditions as it considers necessary in order to ensure compliance with any of the Relevant Requirements;
 - B. may impose such other conditions as it thinks fit.

(g) Transfers to Eligible Rollover Fund

Notwithstanding anything herein to the contrary the Trustee may, and if required by the Relevant Requirements, shall transfer the entitlement of a Member or Beneficiary to an Eligible Rollover Fund in circumstances where such a transfer is permitted or required under the Relevant Requirements.

24. LIMITATION ON BENEFITS

Notwithstanding any other provision of this Deed the Trustee shall not pay out any Benefits to Members, the Dependents of Members or Beneficiaries where such payment would cause the Fund to breach any of the Relevant Requirements or be likely to cause the Fund to become a non-complying fund.

25. MONEYS OWING TO FUND OR AN EMPLOYER

Where a Member owes any moneys to the Fund or to any Employer (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) or if the Member has committed any fraud upon an Employer or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to an Employer, the Trustee may debit the Accumulation Account of the Member for a sum equivalent to the said moneys owing from that part of the Benefit of the Member which would otherwise be payable and which does not represent Member's Vested Contributions or a Preserved Payment Benefit and the Trustee shall:

(a) Fund

if the said moneys are owed to the Fund, retain them in the Fund; or

(b) Employer

if the said moneys are owed to an Employer, retain those moneys in the Fund or pay them to that Employer or as that Employer directs,

PROVIDED HOWEVER that the exercise of the lien by the Trustee in this manner is permitted by the Relevant Requirements.

26. FORFEITURE OF BENEFITS

(a) Conditions of Forfeiture

Any Member or Beneficiary or after the death of a Member, any of the Dependants of the Member or the legal personal representative of the Member:

- (i) who assigns or charges or attempts to assign or charge any Benefit Entitlement;
- (ii) whose interest in any Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise become payable to or vested in any other person, company, government or other public authority;
- (iii) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or, in the opinion of the Trustee, the Member is incapable of managing the Member's affairs;
- (iv) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct,

shall forfeit entitlement to any Benefit Entitlement held in the Fund at that time by that person.

(b) Accumulation Account Residue

Any Member, former Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of their Accumulation Account shall forfeit such amount and such amount shall be dealt with as a forfeited Benefit.

(c) Forfeiture Account

The Trustee shall have power at any time to establish a Forfeiture Account of the Fund and shall transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the provisions of sub-clauses (a) and (b) above.

Whilst any moneys are held in the Forfeiture Account they shall not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Forfeiture Account shall be credited back to the Forfeiture Account.

The Forfeiture Account shall be applied in accordance with the remaining provisions of this Clause.

(d) Application of Forfeited Benefits

The Trustee shall subject to Clause 25 hold upon trust and pay or apply any Benefits which have been forfeited and are held in the Forfeiture Account in any one or more of the following ways:

- (i) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (ii) to the trustee of the estate of the former Member;
- (iii) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (iv) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (v) for the provision to other Members of the Fund or their Dependants of additional Benefits on a basis that does not breach the Relevant Requirements and is reasonable having regard to all the circumstances;
- (vi) payment to such of the Employers of the Member or former Member (if any) as the Trustee in its absolute discretion considers appropriate **PROVIDED THAT** all procedures required by the Relevant Requirements have been complied with before any such payment is made;
- (vii) for any other purpose approved in writing by the Commissioner,

PROVIDED THAT where a Member remains in the employment of an Employer any payments made to that Member shall be limited to the relief of hardship of the Member or of the Dependants of the Member and **PROVIDED FURTHER THAT** the Trustee shall only apply forfeited Benefits in such manner and at such time as is in accordance with the Relevant Requirements.

(e) Severability

If any part of this Clause should be construed as illegal or invalid the legality and validity of the remaining parts of this Clause shall not be affected and the illegal or invalid part shall be deemed to be deleted.

27. PENSION PAYMENT AND PENSION ACCOUNT

(a) Benefits Payable as to Pensions

Except as may otherwise be permitted under the Relevant Requirements all Benefits payable to a Member or former Member shall be paid as a pension which shall comply with the Relevant Requirements **PROVIDED THAT** if the Trustee is not a Pension Provider or is not otherwise permitted to provide the Benefit to the Member or Former Member under this Deed or the Relevant Requirements, the Trustee shall either transfer the Benefit of the relevant Member to an Approved Benefit Arrangement which is a Pension Provider or apply the amount of the Benefit to purchase an Annuity for or in respect of the Member or former Member from a Pension Provider.

(b) Establishment of Pension Account

Subject to any restrictions in the Relevant Requirements, where the Trustee determines to pay all or any part of the Benefit to the Member as a Pension, the Trustee may establish a Pension Account in respect of the Member to which account the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

(c) Operation of Pension Account

- (i) The following amounts shall be credited to the Pension Account of a Pensioner:
- A. any amount transferred into the account under sub-clause (b) above;
 - B. any amount paid into the Fund in respect of a Pensioner as a Roll Over Payment which the Trustee considers it appropriate to credit;
 - C. the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - D. such earnings of the Fund ascertained in accordance with sub-clauses 12(d) and 12(g) as the Trustee shall determine to be equitable;
 - E. any credit arising out of any adjustments made in accordance with sub-clause 12(f).
- (ii) The following amounts are to be debited to the Pension Account of a Pensioner:
- A. any amount transferred out of the Fund in respect of a Pensioner as a Roll Over Payment which the Trustee considers it appropriate to debit;
 - B. any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - C. the costs of any Policy effected by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with sub-clause 12(c);
 - D. such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll Over Payment as the Trustee shall determine;
 - E. such of the costs, charges and expenses incurred in accordance with Clause 19 as the Trustee shall determine to be equitable;
 - F. such of the amount paid in respect of the Trustee indemnity set out in Clause 18 as the Trustee shall determine to be equitable;
 - G. a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine to be equitable;
 - H. such negative earnings of the Fund ascertained in accordance with sub-clause 12(d) and 12(g) as the Trustee shall determine to be equitable;
 - I. any amount transferred to the Accumulation Account of a Beneficiary;
 - J. such other amounts as the Trustee shall from time to time determine.

(d) Segregation of Pension Assets

In relation to each Pension payable out of the Fund to a Pensioner, the Trustee shall:

- (i) segregate or set apart the assets which represent the Pension Account of the Member or Reversionary Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and

- (ii) constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non-current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Requirements shall require.

28. PENSION PAYMENT CONDITIONS

(a) Method of Payment and Security

Where a Pension is payable from the Fund, the following conditions shall apply to the payment of the Pension:

- (i) the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;
- (ii) the Pension shall be paid at least annually;
- (iii) the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time **PROVIDED THAT** the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Relevant Requirements for the payment of a Pension;
- (iv) the Pension shall not be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Requirements;
- (v) the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing.

(b) Pension Account Limitation

Where a Pension is payable to or in respect of a Member or where the Trustee purchases an Annuity on behalf of a Member the total instalments of such Pension or the total purchase price of such Annuity shall, subject to Clause 24, not exceed the amount standing to the credit of a Member or Pensioner in the relevant Accumulation Account or Pension Account of the Member or Pensioner at the relevant time.

(c) Pension Increase

Any Pension payable from the Fund shall, if required by the Relevant Requirements and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases **PROVIDED HOWEVER** that any increase shall be at least the minimum required by the Relevant Requirements in respect of the type of Pension being paid.

(d) Reversionary Pension

After the death of a Pensioner who was at the time of death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may unless specifically requested to the contrary by the Reversionary Beneficiary pay to the Reversionary Beneficiary a Pension which amount shall not exceed an amount calculated in accordance with the Relevant Requirements.

(e) Death of Pensioner

In the event of the death of a Pensioner whilst there is still an amount outstanding to the credit of the Pension Account of the Pensioner and where no Reversionary Beneficiary has been nominated the balance of such Pension Account shall be dealt with in accordance with the provisions of Clause 31 hereof **PROVIDED HOWEVER** that in the event that such an application is not in accordance with the Relevant Requirements the balance of such Pension Account shall be dealt with in accordance with sub-clause 26(c) as though it were a forfeited benefit or otherwise as permitted by the Relevant Requirements.

29. COMMUTATION OF PENSION

(a) Conditions of Commutation

On the written application of a Pensioner or Reversionary Beneficiary the Trustee shall commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable **PROVIDED THAT:**

- (i) the commutation of the Pension is permitted by the Relevant Requirements;
- (ii) the amount of the commuted Benefit including the value of any remaining Pension payable shall be subject to the provisions of Clause 24;
- (iii) where any amount remains in the Fund after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out then the amount so remaining shall be dealt with in accordance with sub-clause 26(d) as though it were a forfeited benefit; and
- (iv) the commutation would not be to the disadvantage of the Fund, the Employers, the remaining Members, Pensioners or Reversionary Beneficiaries.

(b) Payment of Lump Sum Benefit

The Trustee shall pay the amount of the lump sum Benefit in respect of the Pension being commuted in accordance with the provisions of Division B of this Deed.

(c) Adjustment of Pension following the Commutation

Following the commutation of a part of a Pension the Trustee shall reduce the total amount of the instalments of any Pension payable to the Pensioner by such amount as it considers appropriate.

30. TRANSFER IN SPECIE

(a) Transfer of Policy

Where a Member and/or the Dependants are entitled to be paid a Benefit or the Trustee in its discretion determines to pay a Benefit to the Member or the Dependants of the Member and the same includes any interest in a Policy of any kind on the life of the Member then, if permitted by the Relevant Requirements the Trustee may in its absolute discretion and in lieu of surrendering such Policy assign the same to such Member or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of such Policy as at the date of assignment shall be debited as a payment to the Member in the assessment of any entitlement as reflected by the Member's Accumulation Account, and neither the Trustee nor an Employer shall be liable to pay any further premiums which may become due and owing under the Policy as from the date of such assignment.

(b) Transfer of Investments

If permitted by the Relevant Requirement the Trustee may with the consent of a Member or the Dependants of a Member to whom a Benefit is payable transfer investments of the Fund of equivalent value to such Member or Dependant in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed **PROVIDED HOWEVER** that the Trustee is satisfied that such transfer is permitted by the Relevant Requirements.

(c) No Beneficial Interest

With the exception of the provisions of this Clause and sub-clause 12(g), no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst such asset or assets remain subject to the provisions of this Deed.

31. PAYMENT OF BENEFITS ON DEATH

(a) Benefit payable on the death of a Member leaving Dependants

Where this Deed provides for the payment of a Benefit on the death of a Member, former Member or Beneficiary leaving Dependants, the Trustee may pay or apply the Benefit to or for the benefit of the Nominated Dependant of the former Member but in the event that there is no Nominated Dependant or the Trustee considers in its absolute discretion that it is inappropriate or inequitable to pay the Benefit to any Nominated Dependant the Trustee shall pay or apply the Benefit to or for the benefit of such one or more of the former Member's Dependants in the manner, at the times, and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine.

(b) Benefit payable on the death of a Member leaving no Dependants

Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependants, the Trustee shall pay the Benefit to the legal personal representative of the Member or former Member, or if there is no legal personal representative, pay or apply the Benefit to or for the benefit of such Relatives of the former Member as appear to the Trustee to be entitled to share in the estate of the Member or former Member **PROVIDED THAT** if there be no such Relatives, and subject to complying with the Relevant Requirements in relation to Members' Vested Benefits, the Benefit shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with Clause 26.

32. PAYMENT OF BENEFITS

(a) Address for Benefits

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member.

The Trustee may forward the Benefits to the postal address or bank account of the Beneficiary last notified to the Trustee or to such other place as the Trustee shall determine.

(b) Notification of Address

Every Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary, shall (except where no further Benefit is payable from the Fund) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address at any time of:

- (i) the place of residence of the Beneficiary and the full postal address of that residence; and
- (ii) the bank account (if any) to which the Beneficiary requests that the Benefit be paid.

(c) Receipt for Benefits

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in the form from time to time required by the Trustee.

(d) Proofs

Any person appearing, purporting or claiming to be qualified or entitled to any Benefit from the Fund shall on request produce to the Trustee such evidence and do all such acts and execute all such documents as the Trustee may reasonably require.

Whenever it shall be necessary for the Trustee to decide questions of fact it may act upon such proofs or presumptions as it may deem satisfactory notwithstanding that they are not strictly legal proofs or legal presumptions.

(e) No Personal Claim

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member shall be entitled to require payment of that Member's interest in the Fund except as may be provided in the Deed.

(f) Payment to Others on Behalf of Beneficiaries

When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

(g) Restrictions on Payment of Benefits

- (i) Benefits may be paid when and to the extent that the Trustee is permitted to pay them under the Relevant Requirements and must be paid when and to the extent that the Trustee is required to pay them under the Relevant Requirements;
- (ii) A Member shall only be entitled to the Member's Preserved Payment Benefits or Restricted Non-Preserved Benefits if the Member has satisfied a Condition of Release;
- (iii) Subject to the foregoing provisions of this clause and the Relevant Requirements, benefits may be cashed in any one or more of the following ways:

 - one or more lump sums;
 - one or more pensions;
 - the purchase of one or more annuities.

33. PAYMENT OF TAXATION

(a) Tax on Benefits

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

The Member or Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation.

(b) Tax on Contributions

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution prior to the Contribution being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution a reference to the crediting of the Contribution to an Accumulation Account shall mean the crediting of the net Contribution after the deduction of such Taxation.

(c) Payment to Relevant Authority

The Trustee shall pay all Taxation which is due and payable by the Fund, and which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act to the relevant authorities within the required time for payment.

34. POLICIES OF ASSURANCE

(a) Trustee to effect Policy

The Trustee exercising its investment power contained in Clause 15 may effect separate Policies and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another.

(b) No Responsibility

The Trustee shall not be responsible or liable to the Member, the Member's legal personal representative or the Dependants of the Member should the Trustee determine not to exercise the power and effect such Policy **PROVIDED THAT** the Member may request the Trustee to effect such separate Policies and may further specify the type of Policy to be effected (including the quantum of cover required) in which case the Trustee may effect such a Policy subject to the Trustee being able to obtain such a Policy on the life of the Member and the Trustee believing that effecting the Policy is in the best interests of the Member, the Dependants of the Member and the Fund.

(c) Premiums for Policy

The premiums for any Policy effected may be debited to the Income Account or directly to the Accumulation Account of the Member in respect of whom the Policy is effected or alternatively in such proportions amongst other Members as the Trustee considers to be equitable which premiums may be debited against the Member's Vested Contributions.

(d) Limitations on Policy

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it shall determine.

(e) Endowment or Whole of Life Policy

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Vested Contributions of the Member shall mean in relation to those Contributions and any net earnings which would but for this sub-clause be applicable to them, the surrender value of such endowment or whole of life Policy.

(f) Unallocated Policies

Notwithstanding anything herein to the contrary, if the Trustee resolves at any time prior to effecting a Policy or paying any premium on a Policy in respect of a Member that the proceeds from such Policy shall not be credited to the Accumulation Account for that Member then, unless the Trustee has revoked such resolution, any proceeds received under or in respect of that Policy shall be credited to the Income Account upon receipt.

35. PARTICIPATING EMPLOYERS

In the event that any company, person or group of persons trading in partnership:

(a) Application

makes application to the Trustee to be admitted or is invited by the Trustee in its capacity as an Employer to make Contributions to the Fund as a Participating Employer on behalf of Members or persons who wish to become Members; and

(b) Consent

the Trustee consents to the admission of the Participating Employer; and

(c) Acceptance

the company, person or group of persons makes a Contribution to the Fund for or in respect of a Member;

then such company, person or group of persons shall become a Participating Employer subject to the terms and conditions of this Deed and any special conditions agreed between the Trustee and the Participating Employer PROVIDED THAT the Trustee may, as a condition of admitting the Participating Employer, require that the Participating Employer execute a Deed on terms acceptable to the Trustee or, execute this Deed in the space provided in Schedule C.

36. OTHER SUPERANNUATION OBLIGATION

Subject to Clause 39, where at any time an obligation, whether compulsory or otherwise, is imposed upon an Employer to make contributions to a superannuation fund providing retirement, death or disablement benefits in respect of Members of the Fund then the Employer may, with the consent of the Trustee, reduce its Contributions to the Fund by the amount of the contribution being made to the other fund in respect of those Members (who are members of the other fund) and the Employer may consult the Actuary in respect of the amount of the reduction in Contributions to be made to the Fund.

37. TERMINATION OF EMPLOYER'S CONTRIBUTIONS

(a) Circumstances of Cessation on Insolvency

Subject to Clause 39, where an Employer has been admitted to make Contributions to the Fund pursuant to Clause 35, its Contributions to the Fund shall terminate and the Employer shall cease to be an Employer for the purposes of the Fund on the date that:

- (i)** a deed of appointment placing the Employer in receivership is executed by the appointor of that receiver;
- (ii)** a resolution of its members or an order of a Court places the Employer in liquidation; or
- (iii)** the Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

(b) Transfer of Participating Employer's Business

If a Participating Employer (the "Former Employer") is amalgamated with or disposes of its undertaking to another Participating Employer (the "New Employer") Contributions shall be deemed not to have terminated and Membership shall be deemed not to have terminated and the Members who are Employees of the Former Employer shall become Employees and Members with the New Employer and the New Employer may make future Contributions in respect of those Members.

(c) Cessation of Membership

Where an Employer has terminated its Contributions in accordance with sub-clause (a) above the Trustee shall continue to hold the interests of the Member and shall deal with those interests in accordance with the provisions of this Deed.

(d) Contributions by Members

Where an Employer of a Member has terminated its Contributions in respect of that Member pursuant to sub-clause 37(a) the Member may, with the consent of the Trustee, continue to make Contributions to the Fund.

(e) Transfer to another Fund

Where an Employer terminates its contributions to this Fund and commences to make contributions to another Complying Superannuation Fund, in relation to such of its Employees who are or were Members at the date of such termination, Contributions shall be deemed not to have terminated and Membership shall be deemed not to have terminated.

38. PROVISION FOR MEMBERS ON TERMINATION OF CONTRIBUTIONS

(a) Benefit Held for Members

In the event that Contributions by an Employer cease in the circumstances described in sub-clause 37(a) then the Trustee shall continue to hold all Benefits or pay out Benefits to Members, Beneficiaries or Dependants in accordance with the existing provisions of the Deed.

(b) Residual Assets

If following the payment by the Trustee of all Benefits due to be paid to Members, Beneficiaries or Dependants in accordance with sub-clause (a) above, there remains residual assets in the Fund, the Trustee shall deal with these residual assets pursuant to the provisions of sub-clause 26(d).

39. RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER

If an Employer is reconstructed, goes into liquidation for the purpose of reconstruction or is merged or amalgamated with another employer the Trustee may:

(a) Deed of Adoption

enter into a deed of adoption with its successor as an Employer with the object of carrying on a Complying Superannuation Fund either pursuant to this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or

(b) Transfer Assets

transfer some or all of the assets of the Fund representing the assets applicable to Members who were Employees of the former Employer to a Complying Superannuation Fund conducted by a new employer in accordance with and subject to the provisions of Clause 23 in respect of some or all Members or former Members; or

(c) **Continue Fund**

continue to operate the Fund for the benefit of any Members still employed by the former Employer; or

(d) **Other**

deal with the Fund in accordance with the provisions of Clause 38.

40. VARIATION OF TRUST DEED

The provisions of this Deed may be added to, amended, altered, modified, rescinded or varied (the "Variation") from time to time by the Trustee which Variation may be prospective or retrospective and which shall be effected on the following basis:

(a) **Resolution or Deed**

The Variation shall be:

- (i) by oral declaration or written resolution of the Trustee and a certified copy of minutes of a meeting of the Trustee confirming any such oral declaration or a certified copy of any such written resolution shall be furnished to the Commissioner if required by the Relevant Requirements; or
- (ii) by Deed executed by the Trustee and a copy of such Deed shall be forwarded to the Commissioner if required by the Relevant Requirements.

(b) **Notice**

On any Variation being effected the Trustee shall as soon as practicable afterwards advise the Members of the Fund of the nature and purpose of the Variation and the effect (if any) on their entitlements.

(c) **Variation shall not reduce Benefits**

No Variation shall have the effect of:

- (i) reducing the accrued Benefit calculated on the basis of Contributions to the Fund and earnings on those Contributions that have accrued or become payable before the Variation; or
- (ii) reducing the amount of a Benefit other than a Benefit referred to in paragraph (i) above that is or may become payable in relation to a period before the date of the Variation,

unless:

- A. the reduction is required because of, and does not exceed the value of any Taxation payable on the taxable income of the Fund; or
- B. the reduction is required only to enable the Fund to comply with the Relevant Requirements; or
- C. each Member so affected consents in writing to the reduction; or
- D. the Commissioner consents in writing to the reduction.

(d) **Limitation on Variations**

If at any time the Fund is a Regulated Fund this Deed shall not be amended in any way which is prohibited or invalidated by the Relevant Requirements.

(e) Trustee May Elect to be Subject to Relevant Requirements

Notwithstanding anything herein to the contrary if in order for the Fund to be a Complying Superannuation Fund the Trustee must make or give any election that the Fund and this Deed will thereafter be subject to the Relevant Requirements, then the powers and discretions vested in the Trustee shall be deemed to include the power to make or give such an election notwithstanding that such election will or may result in the terms of the Deed being varied at the time of the election or at any time in the future pursuant to the Relevant Requirements and in a manner other than as set out in this Clause.

41. WINDING UP OF FUND

(a) Election to Terminate

The Trustee may elect to wind up the Fund at a certain date (the "Termination Date") in the following circumstances:

- (i) the circumstances set out in sub-clause 37(a) above; or
- (ii) if there are no further Members remaining in the Fund; or
- (iii) the Trustee otherwise determines for any reason that the Fund should be wound up.

(b) Procedure on Winding Up of Fund

Where the Fund is to be wound up the Trustee shall:

- (i) give written notice to each Employer and Member that the Fund is to terminate on the Termination Date;
- (ii) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with sub-clause (c) below, after deducting from the assets of the Fund the costs of administering and winding up the Fund.

(c) Exhaustion of Fund

Subject to sub-clause 32(g), the Trustee shall pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (i) Benefits to which Members, former Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
- (ii) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate;
- (iii) payment to such of the Employers of Members or former Members (if any) as have made Contributions to the Fund as the Trustee in its absolute discretion considers appropriate PROVIDED THAT all procedures required by the Relevant Requirements have been complied with prior to any such payment being made.

(d) Duration of Fund

The trusts constituted by this Deed shall, unless previously terminated in accordance with the provisions of this Deed, endure during the life of the survivor of all of the lineal descendants of His Late Majesty King George V living at the date of this Deed and for twenty-one (21) years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts established under this Deed.

- DIVISION B -

PAYMENT OF CONTRIBUTIONS AND BENEFITS

42. APPLICATION OF DIVISION

The Benefits available under Division B shall apply to Members who have been admitted as Members of the Fund by the Trustee in accordance with Clause 8.

43. MEMBERSHIP CLASSIFICATION

(a) Classes of Membership

There shall be three classes of Membership of the Fund which shall be designated:

"A" Membership Class
"B" Membership Class
"C" Membership Class

PROVIDED HOWEVER that the Trustee shall have the power to create such other Membership Classes with such rights and entitlements as the Trustee shall decide.

(b) Original Self-Employed Person and Employee Class

All Members who have joined the Fund as persons who are self-employed or persons who are unsupported by an Employer, within the meaning of the Tax Act, or persons otherwise nominated by their Employer and accepted by the Trustee shall become "A" Class Members and shall remain "A" Class Members unless and until the Trustee makes a written nomination for a Member to become a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated **PROVIDED HOWEVER** that the Member shall also remain an "A" Class Member unless the Trustee nominates otherwise and the Member consents in writing to the Trustee's nomination.

(c) Other Employer Nominated Classes

All Members who have become Members as a result of being employed by an Employer which is admitted to make Contributions to the Fund pursuant to Clause 35 and who are not otherwise admitted as "A" Class Members under sub-clause (b) above shall become either "B" Class Members or "C" Class Members and shall remain Members of such Class unless and until otherwise nominated by the Trustee with the consent of their Employer to become a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated **PROVIDED HOWEVER** that the Member shall also remain a Member of the "B" or "C" Class, as appropriate, unless the Trustee nominates otherwise.

(d) Reclassification

A Member shall be capable of reclassification to any other Class at any time **PROVIDED THAT** any Benefits forming part of the Member's Accumulation Account which have been vested in that Member during such time as that Member was a Member of another Class shall be retained as an entitlement of the Member to the extent that the entitlement was vested in the Member at the time the Member became a Member of the other Membership Class when such reclassification took place.

(e) Transfer of Accumulation Account

Upon the reclassification of a Member as a Member of another Class the Trustee may, with the consent of the Member and, where applicable the Employer, transfer all or any of the Member's other Accumulation Accounts to the new Membership Class subject to the proviso contained in sub-clause (d) above.

(f) Designation of Class

If a Member is reclassified to another Membership Class and that Member remains a Member of more than one Class then, at the time at which any Contribution to the Fund is made by the Member or the Employer, the Member or the Employer making the Contribution shall designate the Class to which the Contribution is attributable and may further designate that all future Contributions shall be credited to that Class **PROVIDED THAT** in the event that the Member or the Employer makes no such designation the Trustee at its discretion shall make such designation.

(g) Nomination at discretion of Trustee

The Trustee shall have absolute and unfettered discretion as to the making of a nomination and the granting of a consent to a Member to become a Member of a different Class or more than one Class, and the Trustee shall not be required to give any reasons for its decision.

44. DEFINITIONS

For the purposes of this Division the following expression shall have the following meaning:

"Normal Retirement Age" means the age of 65 years for both males and females or such other age as is acceptable to the Commissioner or required by the Relevant Requirements and as the Trustee with the consent of the Member or (if applicable) the Employer shall determine.

45. CONTRIBUTIONS

A Member, or the Employer of a Member, may make contributions to the Fund in accordance with Clause 22 provided that the Trustee agrees to accept the Contribution.

For purposes of this Clause, Member Contributions shall include amounts taken over from other Approved Benefit Arrangements which are so designated pursuant to sub-clause 23(e).

46. BENEFITS PAYABLE ON RETIREMENT

(a) Pension Payment

Where a Member of any Class:

- (i) who is a self-employed person retires from Gainful Employment at or after the age of 55 years;
- (ii) retires from employment with an Employer at or after Normal Retirement Age;
- (iii) reaches the age of 65 years; or
- (iv) fulfils the Relevant Requirements for the payment of Benefits notwithstanding that the Member continues in employment,

then the Member's Benefit shall be the amount standing to the credit of the Accumulation Accounts of the Member as at the date on which the relevant event occurs which shall be applied to provide a Pension or purchase an Annuity for the Member in accordance with the provisions of Clauses 27 and 28 and subject to the Relevant Requirements.

(b) Commutation of Benefit

Where a Member of any Class is eligible for payment of a Benefit in accordance with sub-clause (a) above and wishes to have the Benefit payable as a Lump Sum, the Member may commute the Benefit to a lump sum as provided in clause 29.

47. DISABLEMENT

(a) Total and Permanent Disablement

In the event that a Member of any Class shall become in the opinion of the Trustee Totally and Permanently Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be entitled to a Benefit determined as follows which shall be applied to provide a Pension or purchase an Annuity for the Member in accordance with the provisions of clauses 27 and 28 and subject to the Relevant Requirements.

(i) "A" Class Membership

The full amount standing to the credit of the Member's "A" Class Accumulation Account.

(ii) "B" Class Membership

In respect of a Member's "B" Class Accumulation Account Benefit equal to the total of the following amounts:

- A. Member's Vested Benefit;
- B. such further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

(iii) "C" Class Membership

In respect of a Member's "C" Class Accumulation Account a Benefit equal to the total of the following amounts:

- A. the Member's Vested Benefit;
- B. an amount equivalent to a percentage of the balance of the Member's "C" Class Accumulation Account such amount being the higher amount represented by the percentage options set out in Schedule D attached to this Deed;
- C. such further portion of the balance of the Member's "C" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

(iv) Commutation of Benefit

Where a Member is eligible for payment of a Benefit in accordance with paragraphs (i), (ii) or (iii) above and wishes to have the Benefit payable as a lump sum, the Member may commute the Benefit to a lump sum as provided in clause 29.

(b) Temporary Total Disablement

(i) A Member will be recognised as having become totally disabled (but not Totally and Permanently Disabled) by the Trustee if:

- A. the Member is disabled as a result of illness, accident or injury which commences at or prior to the Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier); and
- B. as a result of the said illness, accident or injury the Member has been continuously absent from the Member's business, trade, profession, vocation, calling, occupation or employment for the eligibility period contained in any Policy effected in respect of the Member; and
- C. the Trustee has effected a Policy with the Insurer to cover total disablement; and

- D. the Trustee after consultation with the Insurer is satisfied that the Member is disabled within the meaning of the definition of temporary total disablement agreed upon by the Trustee and the Insurer; and
 - E. the Trustee expects the Member's disablement to be temporary.
- (ii) In the event that the Trustee receives an income Benefit under a Policy effected in respect of temporary total disablement of the Member then the Member shall be paid (to the extent permitted by the Relevant Requirements) an income Benefit of an amount equal to the amount payable to the Trustee as a result of the temporary total disablement of the Member under the Policy and in the manner specified in the Policy.
 - (iii) Payment of Contributions to the Fund by the Member (if any) will be suspended during such time as any income Benefit is payable.
 - (iv) The Member will continue to be a Member of the Fund during the period that the Member is temporarily totally disabled and for the eligibility period as is specified in the Policy in respect of the temporary total disablement and the aggregate of those periods will for the purpose of the Fund be deemed to be included in the Member's period of Membership of the Fund.
 - (v) The income Benefit under this Clause will cease to be payable in accordance with the conditions applicable to the Policy.

48. EARLY RETIREMENT FROM GAINFUL EMPLOYMENT

In the event of a Member of any "B" or "C" Class ceasing to be an Employee of an Employer prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, or if an "A" Class Member retires from Gainful Employment for any reason other than death or Total and Permanent Disablement the Member shall be entitled to a Benefit determined as follows:-

(a) "A" Class Membership

The full amount standing to the credit of the Member's "A" Class Accumulation Account.

(b) "B" Class Membership

In respect of a Member's "B" Class Accumulation Account a Benefit equal to the total of the following amounts:

- (i) the Member's Vested Benefit;
- (ii) such further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

(c) "C" Class Membership

In respect of a Member's "C" Class Accumulation Account a Benefit equal to the total of the following amounts:

- (i) the Member's Vested Benefit;
- (ii) an amount equivalent to a percentage of the balance of the Member's "C" Class Accumulation Account such amount being the higher amount represented by the percentage options set out in Schedule D attached to this Deed;
- (iii) such further portion of the balance of the Member's "C" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

(d) Commutation of Benefit

Where a Member is eligible for payment of a Benefit in accordance with sub-clauses (a), (b) or (c) above and wishes to have the Benefit payable as a Lump Sum, the Member may commute the Benefit to a lump sum as provided in Clause 29.

49. PAYMENT ON DEATH

On the death of a Member of any Class whilst still a Member the Benefit of the Member shall, subject to Clause 24, be dealt with by the Trustee in accordance with the provisions of Clause 31 and shall be determined as follows:

(a) "A" Class Membership

The full amount standing to the credit of the Member's "A" Class Accumulation Account.

(b) "B" Class Membership

In respect of a Member's "B" Class Accumulation Account a Benefit equal to the total of the following amounts:

- (i) the Member's Vested Benefit;
- (ii) such further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

(c) "C" Class Membership

In respect of a Member's "C" Class Accumulation Account a Benefit equal to the total of the following amounts:

- (i) the Member's Vested Benefit;
- (ii) an amount equivalent to a percentage of the balance of the Member's "C" Class Accumulation Account such amount being the higher amount represented by the percentage options set out in Schedule D attached to this Deed;
- (iii) such further portion of the balance of the Member's "C" Class Accumulation Account as the Trustee shall in its absolute discretion determine.

50. INCREASES TO BENEFITS

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may take into account the Member's interest in the Equalisation Account (if any) in determining whether any amount should be transferred from the Equalisation Account to the Member's Accumulation Account for purposes of the determination of a Benefit.

51. RETENTION OF BENEFIT IN FUND

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable under this Division in the Fund until:

(a) Request

the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

(b) Death

the Member dies in which event it will be paid in accordance with Clause 31;

(c) **Retirement**

the provisions of the Relevant Requirements require the payment of the Benefit; or

(d) **Discretion**


the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account or Accounts as at the date of payment **PROVIDED HOWEVER** that all Benefits must be paid in accordance with the Relevant Requirements.

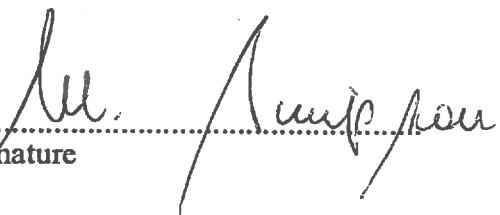
IN WITNESS WHEREOF the parties have executed this Deed on the date set out in Schedule A.

PRINCIPAL

SIGNED SEALED AND DELIVERED by
IAN BRUCE MITCHELL


.....

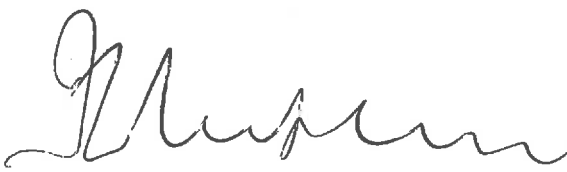
In the presence of:
Margaret
M. SIMPSON
.....
Witness (Print Name Clearly)


.....
Signature

TRUSTEE

SIGNED SEALED AND DELIVERED by

IAN BRUCE MITCHELL

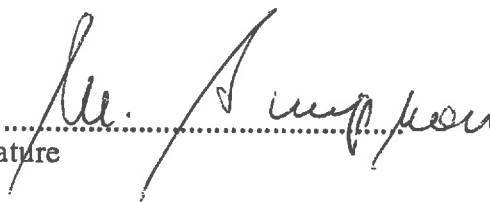

.....

and

STEPHEN JOHN MITCHELL


.....

In the presence of:
Margaret
M. SIMPSON
.....
Witness (Print Name Clearly)


.....
Signature

SCHEDULE A

DATE OF DEED:

4th August 1995

PRINCIPAL:

IAN BRUCE MITCHELL

ADDRESS:

88 KENSINGTON TERRACE, TOOWONG

TRUSTEES:

IAN BRUCE MITCHELL

ADDRESS:

88 KENSINGTON TERRACE, TOOWONG

STEPHEN JOHN MITCHELL

22 FLORENCE STREET, BRIGHTON

NAME OF FUND:

I. MITCHELL SUPERANNUATION FUND

**DATE OF
ESTABLISHMENT
OF FUND:**

7th August 1995

SCHEDULE B
APPLICATION FOR MEMBERSHIP
CONFIDENTIAL

TO: THE TRUSTEE

I. MITCHELL SUPERANNUATION FUND

I, the undersigned person, being eligible hereby apply for admission to Membership of the Fund. I agree and undertake as follows:

- (a) I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
- (b) I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of Division B of the Deed concerning Benefits payable.
- (c) I consent to the Trustee acting as Trustee(s) of the Fund.
- (d) I will notify the Trustee if at anytime I cease to be Gainfully Employed as defined in the Deed.
- (e) I declare that at the time I was given this application for Membership I was also given advice in writing about the benefits to which I would be entitled on joining the Fund, the method of determining that entitlement and the conditions relating to those Benefits.
- (f) I declare that to the extent that I have completed the attachments the information contained is accurate in every respect.
- (g) I declare that I have been provided with a copy of the latest report to Members together with details of the rate of allotment of net earnings to the Fund to the class of membership to which I would belong upon joining the Fund.

Date...../...../.....

.....
Member's Signature

1. PERSONAL DETAILS

Name: Surname:..... Given Names:.....
Address:
Occupation: Date of Birth:/...../.....
Home Phone: ()..... Gender M/F

2. NOMINATED DEPENDANT(S)

I nominate the undermentioned persons as my Nominated Dependants:

SURNAME	GIVEN NAMES	RELATIONSHIP TO MEMBER	% OF TOTAL BENEFIT
.....
.....
.....
.....
.....

ATTACHMENTS

PART 1

DETAILS OF AMOUNTS (NOT BEING ROLL OVERS) RECEIVED FROM SUPERANNUATION FUNDS, PENSION FUNDS, APPROVED DEPOSIT FUNDS, ROLL OVER ANNUITIES AND EMPLOYERS AFTER 15 FEBRUARY 1990.

Amount received in hand \$

Date Received:/...../.....

The name of Employer, Superannuation Fund, Approved Deposit Fund, Deferred Annuity, that made the payment.

Name:

PART 2

FOR ANY PLANS, FUNDS OR ANNUITIES LISTED IN PART 1 PLEASE COMPLETE DETAILS

- | | | |
|----|--|-------------------|
| 1. | (a) Was the Plan, Fund or Annuity Employment Related | YES/NO |
| | (b) Was the Plan, Fund or Annuity a personal arrangement | YES/NO |
| | (c) What date did you join? |/...../..... |

- | | <u>YEAR</u> | <u>AMOUNT</u> |
|----|--|---------------|
| 2. | | |
| | | \$..... |
| | List details of any undeducted contributions made after 30 June 1983 being contributions made by you and not claimed for income tax purposes in the amount received in Part 1. | |

PLEASE ATTACH A SCHEDULE OF ADDITIONAL INFORMATION WHERE ROOM IS INSUFFICIENT.

SCHEDULE C

**PARTICIPATING EMPLOYERS ADMITTED TO FUND
PURSUANT TO CLAUSE 35**

NAME OF PARTICIPATING EMPLOYERS	DATE OF ADMISSION	EXECUTION OF PARTICIPATING EMPLOYERS
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...../...../.....

SCHEDULE D

PERCENTAGE VESTING SCHEDULE

OPTION 1

OPTION 2

OR

No. of Years Completed as a Member of the Fund		Percentage Balance of Member's Accumulation Account	No. of Years Completed as an Employee of Employer		Percentage Balance of Member's Accumulation Account
at least	less than	%	at least	less than	%
0	1	0	0	1	0
1	2	10	1	2	10
2	3	20	2	3	20
3	4	30	3	4	30
4	5	40	4	5	40
5	6	50	5	6	50
6	7	60	6	7	60
7	8	70	7	8	70
8	9	80	8	9	80
9	10	90	9	10	90
10	11	100	10	11	100
11	12	100	11	12	100
12	13	100	12	13	100
13	14	100	13	14	100
14	15	100	14	15	100
15	16	100	15	16	100
16	17	100	16	17	100
17	18	100	17	18	100
18	19	100	18	19	100
19	20	100	19	20	100