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**THE DAYLESFORD SUPERANNUATION FUND**

**TRUST DEED**

**Stephen Hilton Abbott  
Elaine Emily Abbott  
("Trustee")**

**Abbott & Associates Pty Ltd  
ACN 009 298 542  
("Principal Employer")**

**Stephen Hilton Abbott  
Elaine Emily Abbott  
("Members")**

***Chris Hogan & Co.***  
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**TRUST DEED**

Made on

**10<sup>th</sup> OCTOBER**

1995

Between: **Stephen Hilton Abbott and Elaine Emily Abbott ("Trustee")**And: **Abbott & Associates Pty Ltd ACN 009 298 542 ("Principal Employer")**And: **Stephen Hilton Abbott and Elaine Emily Abbott ("Members")****Recitals:**

- A. The Trustee and Principal Employer wish to establish a superannuation fund known as **The Daylesford Superannuation Fund ("Fund")** to provide superannuation and other benefits for the members of the Fund.
- B. **Stephen Hilton Abbott and Elaine Emily Abbott** are the first members.

**Operative provisions:**

1. The Fund is to be known as the **The Daylesford Superannuation Fund**.
2. This deed includes the rules attached to it ("**Rules**").
3. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
4. This deed may be amended in the manner set out in the Rules.
5. The Members' Category is A.

Executed as a deed



THE COMMON SEAL of Abbott & Associates Pty Ltd is affixed in accordance with its articles of association in the presence of:

*[Signature]*  
Signature of authorised person

**DIRECTOR**  
Office held

**STEPHEN HILTON ABBOTT**  
Name of Signatory (block letters)

*[Signature]*  
Signature of authorised person

**DIRECTOR**  
Office held

**SAY ANDERSON ROBERTS**  
Name of Signatory (block letters)

SIGNED by Stephen Hilton Abbott in the presence of:

*[Signature]*  
Signature of witness

**7 CLARA ROAD HAMILTON HILL**  
Address of witness

**TRACEY SHORTTE**  
Name of witness (BLOCK LETTERS)

*[Signature]*  
Signature of Stephen Hilton Abbott

SIGNED by Elaine Emily Abbott in the presence of:

*[Signature]*  
Signature of witness

**16 Pimsett St Ararat Vic**  
Address of witness

**B W JENNINGS**  
Name of witness (BLOCK LETTERS)

*[Signature]*  
Signature of Elaine Emily Abbott

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## 1 INTERPRETATION

Unless the contrary intention appears:

- A reference to the Deed or the Rules or any other document includes any variation or replacement.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- The singular includes the plural and vice versa.
- A power to appoint includes a power to vary or cancel the appointment.
- When the word **including** introduces a list of items, it does not exclude a reference to other items of the same class.
- A reference to a person includes a firm, a body corporate, an unincorporated association or any authority.

**Account Balance** means the aggregate balance of all Member Accounts of a Member.

**Associated Employer** means anyone who is an Associated Employer for the time being under rule 7.

**Award** means an industrial agreement or award made after 30 June 1986 or any other arrangement which the Employer and the Trustee agree should be treated as an Award.

**Category** in relation to a Member means the category of membership to which the Member is admitted or transferred.

**Child** includes an adopted child, a step-child or an ex-nuptial child.

**Constitutional Corporation** has the same meaning as in the Superannuation Industry (Supervision) Act.

**Crediting Rate** means a rate declared under rule 9.14 or 9.15.

**Deed** means the deed establishing the Fund.

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person the Trustee believes is, or was at the date of death, dependent on the Member.

**Employee** means any employee of an Employer or any other person the Employer nominates.

**Employer** means the Principal Employer or any Associated Employer and in relation to any particular Member the Employer in whose Service that Member is engaged.

**Fund** means the superannuation fund constituted by the Deed and the Rules.

**Government Requirements** means any requirements under any law relating to superannuation funds:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

**Member** means anyone whom the Trustee has admitted to membership and who is still entitled to benefits from the Fund.

**Member Account** means an account kept for a Member under rule 9.8.

**Principal Employer** means the Principal Employer for the time being under rule 7.

**Rules** means these rules.

**Salary** means a Member's annual rate of ordinary salary or wages for services performed for the Employer, and includes director's fees but excludes commissions, overtime and other special payments. However, the Principal Employer may establish some other basis for determining the Salary of a Member.

**Service** means the most recent continuous paid service of a Member while engaged by any Employer and includes:

- (a) any break in Service which the Employer and the Trustee consider to be temporary; and
- (b) any other period which the Principal Employer and the Trustee consider to be Service.

**Shortfall Component** has the same meaning as in the Superannuation Guarantee (Administration) Act.

**Spouse** includes a person who, although not legally married to a Member, lives (or lived at the time of the Member's death) with the Member on a bona fide domestic basis as the Member's husband or wife.

**Superannuation Guarantee Charge** means a charge or tax imposed on employers for not making certain superannuation contributions or providing certain superannuation benefits.

**Superannuation Holding Accounts Reserve** means the reserve established by section 8 of the Small Superannuation Accounts act.

**Tax** includes any duty or government impost.

**Trustee** means the Trustee for the time being under rule 8.

## **2 MEMBERSHIP**

### **Admission**

- 2.1 An Employee may apply to the Trustee for admission as a Member.
- 2.2 An Employer may direct the Trustee to admit its Employee as a Member.
- 2.3 The Trustee may reject an application by an Employee or a direction by an Employer.
- 2.4 Before admitting an Employee as a Member, the Trustee may require:
- (a) the Employee to be examined by a registered medical practitioner approved by the Trustee; or
  - (b) the Employer or the Employee (or both) to give the Trustee any document or information it considers relevant to the administration of the Fund; or
  - (c) the Employer or the Employee (or both) to enter into a written agreement with the Trustee, imposing special conditions in respect of the Employee's membership; or
  - (d) any combination of (a), (b) and (c).
- 2.5 If the Trustee admits an Employee as a Member, membership is taken to have commenced:
- (a) when the Trustee approves the Employee's application; or
  - (b) when the Employer directs under rule 2.2.
- 2.6 However, the Trustee, Employer and Member may agree that membership is taken to have commenced earlier.

### **Categories**

- 2.7 If the Trustee admits an Employee as a Member, the Member's Category is the Category which the Employer directs or, if none, Category B.
- 2.8 The Trustee must change a Member's Category if the Employer directs, but the change must not:
- (a) increase the Member's obligation to contribute; or
  - (b) reduce the Member's benefit entitlement

unless that is consistent with Government Requirements.

The Trustee must give the Member written notice of the change, but if the Trustee accidentally fails to give the notice, the alteration is still effective.

**Terms**

- 2.9 Each Member is bound by these rules.
- 2.10 The Trustee is the Member's attorney to do anything the Trustee considers appropriate to administer the Fund.

**Membership ends**

- 2.11 A Member's membership of the Fund ends when the Member is no longer entitled to benefits from the Fund.

**3 TRANSFERS****Transfer in**

- 3.1 The Trustee may:
- (a) accept a transfer of assets to the Fund in respect of a Member, and
  - (b) provide benefits in respect of the Member

on terms which the Trustee agrees with the Principal Employer and in a manner which complies with Government Requirements.

**Transfer out**

- 3.2 The Trustee may transfer assets to another superannuation fund or eligible rollover fund in respect of a Member up to the Member's Account Balance and with or without the Member's consent. However, the transfer must:
- (a) be made on terms which the Trustee agrees with the Principal Employer; and
  - (b) comply with Government Requirements.

- 3.3 The Trustee is not responsible for the manner in which the Trustee of the other fund deals with the amount transferred.

- 3.4 If the Member's total Account Balance is transferred, the Member is no longer entitled to benefits from the Fund.

**4 CONTRIBUTIONS****Members**

- 4.1 A Member must contribute to the Fund, until the Member leaves Service, at the rate agreed between the Trustee, Employer and Member.
- 4.2 However, a Member need not contribute to the Fund during a period included in Service under (a) or (b) of the definition in rule 1.



- 4.3 A Member may make other contributions if the Trustee agrees.
- 4.4 Unless the Member and Employer agree otherwise, the Employer must deduct the Member's contributions from the Member's remuneration. The Employer must pay deducted contributions to the Trustee as and when the Employer and Trustee agree.

### **Employers**

- 4.5 An Employer must contribute to the Fund in respect of a Member at the following rate until the Member leaves Service:

<b>Category</b>	<b>Percentage of Salary</b>
A	As agreed between the Trustee, Employer and Member.
B	As the Employer determines.

- 4.6 An Employer may, if the Trustee agrees, make other contributions.
- 4.7 An Employer may also direct the Trustee how to account for other contributions.
- 4.8 An Employer may, by written notice to a Member and the Trustee, change its contribution rate in respect of future contributions for the Member. If the Employer's contribution rate is reduced, the Member may then cease contributions. However, the Employer and the Member must pay any contributions due up to the date of change.

### **SGC shortfalls and SHAR transfers**

- 4.9 The Trustee may accept as a contribution for a Member:
- (a) a Shortfall Component; or
  - (b) an amount held in the Superannuation Holdings Accounts Reserve
- which is transferred to the Fund for the Member.

### **Acceptance of contributions**

- 4.10 The Trustee may:
- (a) accept contributions for a Member from a person who is neither the Member nor an Employer;
  - (b) at its discretion, refuse to accept all or part of a contribution.
- 4.11 The Trustee must not accept contributions contrary to Government Requirements. However, if it does, and if Government Requirements permit, the Trustee:
- (a) must repay the contributions to the contributor; but

- (b) may first make deductions for any liabilities or expenses incurred (and provisions for liabilities and expenses) in relation to the contributions.

### **Award and SGC obligations**

4.12 If an Employer makes contributions to the Fund for a Member to satisfy an Award, but the contributions do not satisfy the Award then, if Government Requirements permit and the Employer agrees, the Trustee must transfer the contributions to another fund that satisfies the Award.

4.13 If an Employer must:

- (a) make contributions to another fund for a Member in relation to a period because of an Award; or
- (b) pay Superannuation Guarantee Charge for a Member in relation to a period

then the Employer need not contribute to the Fund for the Member in relation to that period to the extent of the obligations in (a) and (b).

## **5 BENEFITS - ENTITLEMENT**

### **Leaving Service**

5.1 If a Member leaves Service (at any time and for any reason except death) the Trustee must pay the Member a benefit equal to the Member's Account Balance.

### **Death**

5.2 If a Member dies while in Service, the Trustee must pay a benefit equal to the Member's Account Balance to any or all of the Member's Dependents and legal personal representative in proportions the Trustee decides.

5.3 However, if there is no Dependant or legal personal representative then, if Government Requirements permit, the Trustee may pay the benefit to any other people in proportions the Trustee decides.

5.4 A Member may give the Trustee written notices from time to time indicating how the Member wishes the Trustee to distribute the benefit under rules 5.2 and 5.3. The Trustee may take the last notice into account when distributing the benefit, but is not bound by the notice.

### **Required payment age**

5.5 If Government Requirements require the Trustee to pay or start paying a benefit at a particular time, the Trustee must pay the Member a benefit equal to the Member's Account Balance.

**Request - age 65**

- 5.6 If a Member is in Service at or after age 65 and requests payment, the Trustee must pay the Member a benefit equal to the Member's Account Balance.

**Request - rollover amounts**

- 5.7 If a Member in Service requests payment of a benefit and the payment complies with Government Requirements, the Trustee may pay the benefit to the extent that it is attributable to another benefit transferred to the Fund.

**Financial incapacity**

- 5.8 If the Trustee believes a person entitled to a benefit cannot manage the person's financial affairs, the Trustee may pay the benefit to another person to be used for the first person's advantage. The Trustee is not responsible for the application of the benefit by the payee. However, the payment must comply with Government Requirements.

**Excessive benefits**

- 5.9 If the Trustee believes that:
- (a) a Member's benefit will be excessive for the purposes of the Income Tax Assessment Act; or
  - (b) payment of a benefit will result in the Trustee or an Employer contravening a law relating to corporations

the Trustee may, if Government Requirements permit:

- (i) reduce the contributions payable for the Member; or
- (ii) transfer an amount from a Member Account of the Member to the Member Account of any other Member or Members; or
- (iii) reduce the benefit to the extent necessary to avoid (a) or (b); or
- (iv) apply a combination of (i), (ii) and (iii)

as it considers appropriate.

However, the Trustee need not investigate whether (a) or (b) applies to a benefit.

**No assignments**

- 5.10 The Trustee must not recognise any assignment or charge of a benefit, or any other interest in the Fund, which is contrary to Government Requirements.

**Interest on benefits**

- 5.11 The Trustee must credit or debit interest at the Crediting Rate to a benefit paid after the date it becomes payable.

**Deductions for Tax**

- 5.12 The Trustee must comply with Government Requirements regarding deductions of Tax from benefits and other payments from the Fund.

**Trustee's discharge**

- 5.13 The Trustee's only obligation in respect of a benefit is to pay it in good faith to or on behalf of a person the Trustee believes is entitled to the benefit. Otherwise, the Trustee is completely discharged by that payment.

**Forfeited benefits**

- 5.14 A Member forfeits the part of a benefit not attributable to Member contributions if:

- (a) the Member purports to assign, alienate or charge; or
- (b) any other event occurs which results in another person becoming entitled to

all or part of the benefit. However, this rule has no effect to the extent that it is inconsistent with Government Requirements or the Bankruptcy Act.

- 5.15 The Trustee must, if Government Requirements permit, apply a forfeited benefit for the Member and the Member's Dependants in proportions which the Trustee decides.

**6 BENEFITS - PAYMENT****Allocated pension**

- 6.1 The Fund's primary purpose is to provide old-age pensions. The Trustee must pay a benefit as a pension on terms which the Trustee and Member agree, as to the level and frequency of payment. However, the level of the pension must be within the maximum and minimum levels prescribed by Government Requirements and the Trustee must pay the pension at least annually.
- 6.2 A pension entitlement must not be transferred or used as security for a borrowing unless Government Requirements permit.
- 6.3 The Trustee must debit pension payments to the Member Accounts of the Member.
- 6.4 The Member may elect to commute all or part of the pension (up to the Member's Account Balance) by notifying the Trustee in writing.
- 6.5 The Trustee must comply with the Member's election if it approves the election and the election complies with Government Requirements.

6.6 If the Member dies while entitled to the pension, the Trustee must pay a lump sum benefit under rule 5.2 or 5.3 as if the Member had died while in Service.

6.7 The pension commences when the Trustee and Member agree (but no later than required by Government Requirements) and ends when the Member's Account Balance is nil.

### **Lump sum**

6.8 If a person entitled to a benefit requests, the Trustee may pay the benefit as a lump sum.

### **Rollover or annuity**

6.9 A person entitled to a benefit may direct the Trustee to:

- (a) pay all or part of the benefit to another fund; or
- (b) apply all or part of the benefit to purchase an annuity in the name of the person or, if the person is a Member, in the name of the Member or one or more of the Member's Dependants.

6.10 The Trustee must comply with the direction if the payment complies with Government Requirements.

### **Compulsory rollover**

6.11 The Trustee may, if Government Requirements permit, pay all or part of a benefit to another fund without the consent of the person entitled to the benefit.

### **Benefits in specie**

6.12 If a person entitled to a benefit requests, the Trustee may pay all or part of the benefit by transferring assets to the person or the person's nominee. The transfer must comply with Government Requirements.

### **Deferral and preservation**

6.13 If a person entitled to a benefit requests, the Trustee may defer payment of all or part of the benefit. The deferral must comply with Government Requirements.

6.14 If Government Requirements require part of a benefit to be preserved, the Trustee must:

- (a) keep that part in the Fund until Government Requirements permit it to be paid; or
- (b) with the Member's written consent (if required by Government Requirements) pay that part to another fund which the Trustee believes will comply with Government Requirements regarding preservation of benefits.

6.15 If part of a benefit is kept in the Fund and the Member dies before it is paid, the Trustee must pay it under rule 5.2 or 5.3 as if the Member had died in Service.

**Unclaimed benefits**

- 6.16 The Trustee must comply with Government Requirements as to unclaimed benefits and the transfer of benefits.

**Payment to others**

- 6.17 If the person entitled to part or all of a benefit consents, the Trustee may pay it to another person. However, the payment must be permitted by Government Requirements.

**7 EMPLOYERS****Principal Employer**

- 7.1 The Trustee and the Principal Employer may at any time appoint a new Principal Employer by written agreement with the appointee.
- 7.2 If the Trustee believes the Principal Employer is about to be wound up, the Trustee must appoint a new Principal Employer by written agreement with the appointee.

**Associated Employers**

- 7.3 The Trustee must admit a person as an Associated Employer if the person applies in writing and the Principal Employer directs.
- 7.4 Each Associated Employer is bound by the Rules.
- 7.5 A person ceases to be an Associated Employer when:
- (a) the Associated Employer notifies the Trustee and Principal Employer in writing; or
  - (b) the Principal Employer notifies the Associated Employer and Trustee in writing that the Associated Employer must stop making contributions; or
  - (c) the Associated Employer has no Employees who are Members.
- 7.6 When a person ceases to be an Associated Employer:
- (a) the Associated Employer and its Employees must immediately pay to the Trustee any contributions then due;
  - (b) the Trustee must pay all benefits then payable in respect of the Associated Employer's Employees; and
  - (c) the Trustee must transfer the Account Balances of all the Associated Employer's Employees and any share of the Fund's reserves agreed between the Principal Employer, Associated Employer and Trustee to:
    - (i) a fund which the Associated Employer and Trustee select; or
    - (ii) if they do not select within 60 days, a fund which the Trustee selects

in a manner consistent with Government Requirements.

- 7.7 To the extent that payment under rule 7.6 is inconsistent with Government Requirements, the Trustee must comply with rule 3.2 as if the Associated Employer's Employees were still in Service.

### **Employer's rights**

- 7.8 The Deed and Rules do not prejudice any rights of an Employer relating to termination of employment.
- 7.9 An Employer may exercise any of its powers or discretions under the Deed and Rules in its own interest, without regard for the interests of others.

## **8 TRUSTEE**

### **Nature and number**

- 8.1 The Trustee must be either a sole Constitutional Corporation or (if Government Requirements permit) one or more individuals.

### **Retirement**

- 8.2 The Trustee may retire if the Trustee gives prior written notice to the Principal Employer.
- 8.3 The Trustee must retire when Government Requirements so require.
- 8.4 The Principal Employer and Trustee (if any) must make a written appointment of a new Trustee. The appointment must comply with Government Requirements.
- 8.5 The retiring Trustee must vest all the Fund's property in the new Trustee or its custodian.

### **Vacancy on Trustee's board**

- 8.6 The Trustee must ensure that any vacancy on its board of directors is filled as and when required by Government Requirements.

### **Powers**

- 8.7 The Trustee may do anything it considers appropriate to administer the Fund and to comply with Government Requirements. However, the Trustee must administer the Fund in a manner consistent with Government Requirements.
- 8.8 In dealing with Members and Employers, the Trustee may treat any communication as given by a Member or Employer if it purports to have been given by or on behalf of the Member or Employer.

### **Delegation**

- 8.9 The Trustee may delegate any of its powers, duties and discretions to anyone if the delegation complies with Government Requirements.

### **Administrators and investment managers**

- 8.10 In particular, the Trustee may appoint anyone to administer the Fund or to manage the Fund's investments or to perform both functions. However, the appointment must be written and must comply with Government Requirements.

### **Discretions**

- 8.11 The Trustee is completely unrestricted in the exercise of its powers and discretions.
- 8.12 The Trustee and any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.

### **No remuneration**

- 8.13 The Trustee may not receive any remuneration from the Fund.

### **Liability**

- 8.14 The Trustee's liability is limited to its own dishonest acts or omissions and its own intentional or reckless failures to exercise the degree of care and diligence that it is required to exercise.

### **Indemnity**

- 8.15 The Trustee, former Trustees, and any of their directors or employees are indemnified in respect of any Tax, loss or expenditure which they incur in relation to the Fund or the administration of the Trustee or a former Trustee unless it results from the person's dishonesty or intentional or reckless failure to exercise the degree of care and diligence which the person was required to exercise.
- 8.16 Rule 8.15 does not apply to the extent that its application is inconsistent with Government Requirements.
- 8.17 A Member or Employer must indemnify the Trustee for any loss or liability which is incurred because (or partly because) the Trustee relies on information which the Member or Employer gives to the Trustee.

## **9 ADMINISTRATION**

### **Information to Trustee**

- 9.1 Every Employer, every Member and any other person who claims a benefit must give the Trustee any information or documents it reasonably requires to administer the Fund.
- 9.2 The Trustee may require a Member to be examined by a registered medical practitioner approved by the Trustee.



- 9.3 The Trustee must treat any information it acquires in relation to the Employers or in relation to Members and their Dependants as confidential and may use that information only in the administration of the Fund.

#### **Information to Members, Employers and others**

- 9.4 The Trustee must give information and documents to others as and when required by Government Requirements. For this purpose, the Principal Employer and Trustee may determine that a particular group of Members comprise a sub-plan.
- 9.5 The Trustee must give a copy of the Fund's annual accounts and the auditor's report to the Principal Employer.

#### **Notices**

- 9.6 Any written communication by or on behalf of the Trustee relating to the Fund is taken to be given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's address last known to the Trustee; or
  - (c) posted by ordinary post from within Australia to the person's address last known to the Trustee.

In the case of posting, the communication is taken to have been received on the second business day after the day it is posted.

#### **Records**

- 9.7 The Trustee must keep records for the Fund as and when required by Government Requirements.

#### **Member Accounts**

- 9.8 The Trustee must keep one or more Member Accounts for each Member to record:
- (a) contributions and other amounts received for the Member;
  - (b) earnings or losses in respect of those amounts; and
  - (c) a proportion of the Fund's Tax and expenses (and provisions for Tax and expenses) which complies with Government Requirements and which otherwise is a fair and reasonable proportion.

#### **Asset portfolios**

- 9.9 The Trustee may maintain separate asset portfolios to keep particular assets of the Fund.

- 9.10 To establish an asset portfolio, the Trustee must name it and specify the assets to be kept in it.
- 9.11 A Member may:
- (a) elect the asset portfolios to which (and the proportions in which) the Trustee allocates Member Account balances and future contributions for the Member;
  - (b) elect to switch asset portfolios, or proportions, or both.
- 9.12 The Trustee must comply with the Member's election if:
- (a) the Trustee approves the election; and
  - (b) the allocation or switch complies with Government Requirements.

### **Fund expenses**

- 9.13 The Trustee may pay from the Fund all expenses relating to the administration of the Fund or the Trustee unless an Employer pays them. If so, the Trustee must, if the Employer requires, reimburse the Employer from the Fund unless Government Requirements do not permit reimbursement.

### **Crediting Rates**

- 9.14 After each 30 June, the Trustee must declare a Crediting Rate for each asset portfolio (or if there are none, for the Fund) to be applied to all Member Accounts remaining when the Trustee makes the declaration.
- 9.15 Whenever it considers appropriate, the Trustee may declare interim Crediting Rates to be applied to a Member's Member Accounts, as at the date when a benefit or transfer becomes payable from them, for the period since the Fund's establishment or since a Crediting Rate was last applied.
- 9.16 The Trustee may apply a Crediting Rate to Member Accounts on the basis of daily, monthly or average balances.
- 9.17 When declaring Crediting Rates, the Trustee must take into account:
- (a) the realised and unrealised earnings or losses of asset portfolios (or if there are none, of the Fund), including realised and unrealised capital gains or losses;
  - (b) Tax and expenses which are not debited to Member Accounts;
  - (c) the level of the Fund's reserve accounts; and
  - (d) the appropriateness of averaging earnings, losses and expenses over several years.
- 9.18 The Trustee must not declare a Crediting Rate that takes any of the Fund's reserve accounts into debit.

**Reserves**

- 9.19 The Trustee must set up one or more reserve accounts to record provisions for Tax and expenses, earnings or losses of the Fund which are not recorded in Member Accounts and amounts no longer required to pay benefits for Members.
- 9.20 The Trustee may use amounts held in the Fund's reserve accounts for any purposes including:
- (a) paying Tax and expenses;
  - (b) averaging earnings, losses and expenses over several years;
  - (c) replacing contributions otherwise payable to the Fund;
  - (d) providing additional benefits; and
  - (e) paying amounts to Employers.

However, the Trustee may apply those amounts only as and when the Principal Employer approves and Government Requirements permit.

**Audit**

- 9.21 The Trustee must appoint an auditor (who meets Government Requirements) to audit the Fund's accounts and records and to give the Trustee a written report each year when Government Requirements so require.

**Inquiries and complaints**

- 9.22 If Government Requirements so require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into or complain about the operation or management of the Fund in relation to that person; and
  - (b) the inquiry or complaint will be considered and properly dealt with within 90 days after it is made.

**10 INVESTMENT****Powers**

- 10.1 The Trustee may invest the Fund in any manner, as if it were investing its own property.

**Custodian**

- 10.2 The Trustee may appoint a person to perform custodial functions in relation to any of the Fund's assets on terms the Trustee considers appropriate, if the appointment complies with Government Requirements.

**Restrictions**

- 10.3 The Trustee must comply with Government Requirements when investing the Fund's assets.
- 10.4 The Trustee must comply with Government Requirements in relation to:
- (a) making loans; and
  - (b) borrowing.
- 10.5 The Trustee may charge the Fund's assets only if Government Requirements permit.

**11 AMENDMENT****Power**

- 11.1 The Trustee and Principal Employer may by deed amend, delete or replace the Deed or Rules including rule 11.
- 11.2 An amendment may be retrospective.

**Restrictions**

- 11.3 An amendment may reduce a Member's accrued benefit only if Government Requirements permit.
- 11.4 An amendment may not permit an individual to be appointed Trustee unless Government Requirements permit.

**Notice**

- 11.5 If Government Requirements so require, the Trustee must notify Members of the nature, purpose and effect of an amendment. However, if the Trustee fails to notify Members, the amendment is still effective.

**12 WINDING UP**

- 12.1 The Trustee may, with the Principal Employer's consent, wind up the Fund.
- 12.2 The Trustee must wind up the Fund if:
- (a) the Principal Employer directs it to do so; or
  - (b) the Trustee believes the Principal Employer is about to be wound up; or
  - (c) there is no Principal Employer.

### **Notice to Employers and Members**

- 12.3 If the Fund is to be wound up, the Trustee must as soon as practicable notify each Employer and Member in writing. However, if the Trustee fails to notify any Employer or Member, the winding up is still effective.
- 12.4 As from the date of the Trustee's notice to Employers and Members, the Trustee must take reasonable steps to recover contributions then due, but must stop accepting other contributions.

### **Winding up procedure**

- 12.5 The Trustee must declare interim Crediting Rates for each asset portfolio (or if there are none, for the Fund) to be applied to Member Accounts as at the date of the notice to Employers and Members. The Trustee must then apply the Fund towards:
- (a) satisfying actual and contingent liabilities (except benefits); then
  - (b) providing pro rata for each Member in respect of the benefits then payable for the Member or, if a benefit is not then payable, a benefit equal to the Member's Account Balance; then
  - (c) increasing those benefits with the Principal Employer's consent; then
  - (d) paying Employers or others as agreed with the Principal Employer.
- 12.6 The Trustee must comply with rules 5.2, 5.3 and 6 regarding benefits payable for Members on winding up.

## **13 GOVERNING LAW**

The Deed and Rules are governed by the law of Western Australia.