

J. Muffat 17/8/93

Commissioner of Stamp Duties  
Queensland

This TRUST DEED is made the Twenty-ninth day of June, 1993

BETWEEN

Broadmoor Holdings Pty. Ltd. trading as Ipswich Wholesale  
Meats ACN 010 140 717

a company duly registered in the State of Queensland and  
having its registered office at Queen Street, Cleveland in the  
State of Queensland

(hereinafter called "the Employer") OF THE ONE PART and

Christopher William Harvey of 365 Redland Bay Road, Thornlands  
and Terrence Paul Zernike of Pine Mountain Road, Borrallan

(hereinafter called "the Trustees") OF THE OTHER PART

W H E R E A S:

1. The Employer has decided to establish an indefinitely continuing Fund to be known as the  
**Broadmoor Holdings Pty. Ltd. Superannuation Fund No. 1**  
(hereinafter called "the Fund")
2. The Trustees have agreed to act as the first Trustees of  
the Fund.

NOW THIS DEED WITNESSETH

- A. The Fund shall come into operation on the Twenty-ninth  
day of June, 1993 ("the Commencement Date")
- B. The Rules mean the Rules attached hereto as amended from  
time to time as therein provided.
- C. The Rules and the provisions and conditions contained  
therein shall have the same force and effect as if set  
out in the body of this Deed.

- D. The Trustees shall administer the Fund according to the Rules.
  
- E. This Deed may from time to time be amended by the Trustees with the agreement of the Employer and the Insurance and Superannuation Commission by supplementary deed or deeds or by oral resolution.
  
- F. The provisions of this Deed shall be interpreted according to the laws of the State of Queensland.

THE PROVISIONS HEREINBEFORE REFERRED TO

1. DATE OF THIS TRUST DEED: 29th June, 1993
  
2. EMPLOYER: Broadmoor Holdings Pty. Ltd.  
trading as Ipswich Wholesale  
Meats ACN 010 140 717  
  
OF: 144 Warwick Road  
YAMANTO QLD 4305
  
3. TRUSTEE OR TRUSTEES (Referred to in this Trust Deed and  
the Rules and Schedules as "the Trustee")  
  
Christopher William Harvey  
  
OF: 365 Redland Bay Road  
THORNLANDS QLD 4164  
  
AND: Terrence Paul Zernike  
  
OF: Pine Mountain Road  
BORRALLAN QLD 4306
  
4. NAME OF FUND: Broadmoor Holdings Pty. Ltd.  
Superannuation Fund No. 1
  
5. COMMENCEMENT DATE: 29th June, 1993

AS WITNESS the execution by the parties hereto on the day and year first hereinbefore written.

THE COMMON SEAL of

Broadmoor Holdings Pty. Ltd.  
ACN 010 140 717



(as Employer) was hereunto  
affixed in the presence of:

Terrence Paul Zernike  
(Director)

Christopher William Harvey  
(Director/Secretary)

SIGNED SEALED AND DELIVERED  
(as Trustee)

by the said Christopher William Harvey  
in the presence of:

*Ronit*

SIGNED SEALED AND DELIVERED  
(as Trustee)

by the said Terrence Paul Zernike  
in the presence of:

*Ronit*

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Definition & Interpretations

- 1.0 In this Deed and its Schedules unless there is something in the subject or context inconsistent with the following definitions:
- 1.1 "Actuary" means a Fellow or an Accredited member of the Institute of Actuaries of Australia who from time to time is appointed by the Trustee.
- 1.2 "Auditor" has the same meaning as that ascribed to the term "Approved Auditor" by the Regulations.
- 1.3 Beneficiary means a person not being a member to whom a benefit is payable under this Deed.
- 1.4 "Benefit" means any amount paid or payable by the Trustee out of the Fund pursuant to the Deed to or in respect of a Member or Beneficiary.
- 1.5 "Contributions" means payments to the Fund by Members and Employers pursuant to the Deed and in relation to a member shall have the meaning given to the word by the Regulations.
- 1.6 "Deed" means these presents including the schedules and any alteration, additions, amendments and modifications to them.
- 1.7 "Dependant" has the meaning assigned to that term by the Standards Act.
- 1.8 "Employee" means any person in receipt of salary and wages as defined in Section 221A of the Tax Act and any person in receipt of prescribed payments as defined by Division 3A of Part VI of the Tax Act where an Industrial Award imposes a liability on the payer of those prescribed payments to make a contribution to a Superannuation Fund in respect of the recipient of those payments and that liability is sought to be satisfied through contributions to this fund.
- 1.9 "Employer" means a person who has applied in writing to the Trustees and has been accepted by them as an Employer under the Deed. In relation to any Member the word "Employer" means the person (if any) in relation to that Member who is for the time being a source of that Member's Salary either in whole or in part.
- 1.10 "Employers Contribution Account" and "Members Accumulation Account" means the accounts described in Clause 14 hereof.

- 1.11 "Executive Members" means those members admitted pursuant to paragraph (a) of sub-clause 2.1 who are nominated by their Employer as Executive Members.
- 1.12 "Highest Average Salary" or "HAS" has the same meaning as that applicable to the term under Regulation 4A and 4B (1) of the Regulations.
- 1.13 "Industrial Award" has the same meaning as that ascribed to the term "prescribed agreement or award" by the Regulations.
- 1.14 "Member" means any person who has been admitted to membership of the Fund in accordance with these Rules and includes except for the purposes of sub-clause 14.12 those persons who whilst no longer an employee of an Employer or self employed continue to have an interest under the terms of this Deed whether contingent or otherwise.
- 1.15 "Non-Executive Members" means those Members admitted pursuant to paragraph (a) of sub-clause 2.1 who at the relevant time are not Executive Members.
- 1.16 "Normal Retirement Date" means the Member's sixty-fifth birthday or such lower age as the Trustees determine having due regard to the requirements which may exist from time to time under the Standards Act.
- 1.17 "Pension" means a Benefit payable at a yearly rate by instalments, whether or not such instalments are paid at intervals of less than 12 months and "Pensioner" means a person receiving a Pension.
- 1.18 "Plan Membership" means all periods of service concurrent with completed membership of the Fund, plus, in the case of a Member who has transferred a benefit from another Superannuation Fund and is entitled to benefits under Schedule 1, a period of notional past service determined by the actuary as being equitable in respect of any amounts so transferred to this Fund.
- 1.19 "Regulations" means Regulations promulgated from time to time under the Standards Act.
- 1.20 "Salary" has the meaning applicable to that term under regulation 4A of the Regulations.
- 1.21 "Self Employed" means the engagement by a person in a business, trade, professional vocation, calling or occupation otherwise than as an Employee as defined above.



- 1.22 "Service" means the period of periods measured in years to the nearest 1/12th of a year during which a person has been an Employee.
- 1.23 "Service Whilst a Member" means all periods of service concurrent with Membership of the Fund up to a Member's Normal Retirement Date and includes any additional period measured in years to the nearest 1/12th of a year which are deemed to be service whilst a Member following agreement to such effect between the Employer, Member and Trustees.
- 1.24 "Standards Act" means the Occupational Superannuation Standards Act 1987 as amended or any re-enactment or statutory modification thereof.
- 1.25 "Tax Act" means the Income Tax Assessment Act 1936, as amended or any re-enactment or statutory modification thereof.
- 1.26 "Total Disablement" when used in connection with the term "Insurance Policy" means Total Disablement as defined in that policy provided that such definition is expressed in terms that depend to some degree on physical injury or the forming of a judgement as to the relevant persons future income earning potential.
- 1.27 "Total and Permanent Disablement" prior to the Member attaining the age of 55 years shall be deemed to have occurred when the Trustee receives certificates from two registered Medical Practitioners that in the opinion of those Medical Practitioners the member is unlikely ever to be able to work again in a job or occupation for which the Member is reasonably qualified by education training or experience.
- 1.28 "Total and Permanent Disablement" after the Member has attained the age of 55 years shall be deemed to have occurred if the Trustees form an identical opinion to that required of the Medical Practitioners under sub-clause 1.27 or alternatively if a Member is covered under an Insurance Policy for Total Disablement if a benefit becomes payable under that Insurance Policy.
- 1.29 "Temporary Disablement" means the inability of a member through physical or mental incapacity to carry out the income producing activities carried on by that person immediately prior to the occurrence of the incapacity.

The Trustees shall in their absolute discretion determine when such incapacity has occurred and may in reaching such a decision have regard to such Medical advice as they see fit.

- 1.30 "Trustees" means the Trustee or Trustees for the time being of the Fund whether original, substituted or additional.
- 1.31 "The Commissioner" means the Insurance and Superannuation Commissioner.
- 1.32 The headings of the Clauses and Rules of this Deed are for convenience only and shall not affect the interpretation thereof.
- 1.33 This Deed shall be deemed to include as part of its terms any Standards set out in the Regulations which pursuant to Section 7(2)(n) of the Standards Act and the Regulations are required to be included in the Deed and to the extent that any standards so incorporated are inconsistent with other provisions of the Deed those standards shall have effect to the extent of such inconsistency.
- 1.34 Words importing the singular number include the plural and vice versa and words importing the masculine, feminine or neuter gender include all genders as the case may require.
- 1.35 The meaning of any word or phrase used in the Deed shall to the extent that it is not defined by the other provisions of this clause have the same meaning as that word or phrase has for the purposes of the Standards Act and Regulations. The meaning of any such word or phrase shall be determined by the corresponding meaning in the Standards Act and Regulations at the time at which that meaning is required to be ascertained.
- 1.36 Without limiting the generality of sub-clause 1.35 the following terms shall have the same meanings as are applicable to those terms under the Regulations:

employed part time  
 employed full time  
 Employer Financed Benefits  
 Relevant arrangement or agreement  
 Net Earnings  
 Member Financed Benefits  
 Temporary Finance  
 Defined Benefits Fund  
 Pension & Annuity Standards

### Membership

- 2.1 The Membership of the Fund shall comprise and be categorised as follows:-

- (a) Employees other than those Employees specified in sub-clause (d) invited by their Employer to participate in the Fund.
  - (b) Self Employed persons who apply in writing to the Trustees.
  - (c) Persons who at the time of making written application to the Trustees for admittance are employed by a person who is not an Employer pursuant to this Deed, and
  - (d) Employees invited by their Employer to participate in the Fund pursuant to the provisions of an Industrial Award applying to those Employees.
- 2.2 All applications to join the Fund shall be in writing in a form approved by the Trustees for admission to membership of the Fund.
- 2.3 Persons becoming Members of the Fund in the various circumstances set out in sub-clause 2.1 hereof shall only be eligible for the provision of Benefits under the Schedules to this Deed as follows:
- (a) For persons becoming members pursuant to paragraph (a) of sub-clause 2.1 - under either Schedules 1 or 2 as nominated by their Employer.
  - (b) For persons becoming Members pursuant to paragraphs (b) and (c) of sub-clause 2.1 - under Schedule 2.
  - (c) For persons becoming Members pursuant to paragraph (d) of sub-clause 2.1 - under Schedule 3.
- 2.4 Nothing in this clause shall be construed so as to prevent a person being a member of the Fund pursuant to any two or more of the paragraphs of sub-clause 2.1 at any one time.
- 2.5 On approval of the application by the Trustees the person making the application shall become a member of the Fund. Each Member by his application shall be deemed to have assented to and have consented to be bound by the provisions of the rules.
- 2.6 Subject to this Deed in relation to those persons becoming Members of the Fund pursuant to paragraph (a) of sub-clause 2.1 their Employer may at any time alter their classification as Executive or Non-Executive or the application of Schedules 1 or 2 to their Membership.

- 2.7 For the purpose of ascertaining whether benefits provided under Schedules 1 and 2 are to be provided in a Lump Sum or Pension form the following persons shall specify the form of Benefit at the time application for Membership is made.

In case of Members admitted pursuant to:

- (a) Paragraph (a) and (d) of sub-clause 2.1 - the Employer.
- (b) Paragraph (b) and (c) of sub-clause 2.1 - the Member.

The persons so specifying the form of Benefit may alter that form at any time subject to:

- (c) In all cases - the provisions of this Deed, and
- (d) In the case of Members admitted pursuant to paragraph (d) of sub-clause 2.1, the proposed alteration being in conformity with the Industrial Award which relates to Membership.

- 2.8 Where the provisions of sub-clause 2.6 have been applied to alter the Schedule applicable to a member the relevant member shall for the purpose of clause 2 and Schedules 1 and 2 be deemed to have been admitted to the Fund pursuant to an application for membership at the time the relevant alteration took place.

### Contribution

- 3.1 Subject to sub-clause 3.4 to 3.8 Contributions to the Fund shall:

- (a) Where an Industrial Award is applicable - be such amount as it provided for under the Award, or

- (b) In any other case, be such amount:

- (i) In a case where Clause 2.1(a) is applicable:

- as the Employer with the agreement of the Trustee in relation to his own contributions from time to time determines and/or

- as the Member with the agreement of the Employer and Trustee in relation to his own Contributions, from time to time determines

- (ii) In a case where Clause 2.1 (b) or (c) is applicable:

- as the Member and Trustee agree upon.

- 3.2 In relation to contributions made by a Member pursuant to clause 3.1(b)(i) the Employer shall deduct the Member's Contributions from his salary, wages, fees or other emoluments either by weekly, monthly or other periodical deductions as may be agreed upon between the Employer and the Member. All contributions made by Members as aforesaid shall be credited to the Member's Accumulation Account of that Member.
- 3.3 The contributions payable shall be paid into the Fund in such manner and at such times as is agreed upon between the relevant parties provided that any payments with the agreement of the Trustee direct to any Investment Manager, Life Insurance Company, or other like body shall be deemed to be both payment to the Trustees and payment by the Trustees to such body.
- 3.4 Notwithstanding the admission of a person as a member the Trustees shall not commence accepting contributions in relation to that member unless the member is employed part time or full time or unless the contributions are made by the employer in relation to a member admitted under sub-clause 2.1 (d) and are made pursuant to an Industrial Award.
- 3.5 Contributions shall not be accepted in relation to any member after a time where:
- (a) The member has retired from the workforce, or
  - (b) The member has ceased for a continuous period of two years to be employed either part time or full time. Whichever occurs first.
- The restriction contained in paragraphs (a) & (b) above shall not apply where contributions are made by an employer pursuant to the terms of an Industrial Award.
- 3.6 The Fund shall not accept deductible contributions during a year of income that exceeds the maximum deductible contributions applicable to the Fund under the Regulations either in relation to the members as a whole or to a particular member as appropriate.
- 3.7 Subject to sub-clause 3.8 contributions in respect of benefits for a member shall not be accepted by the Trustees after that member has reached 65 years of age.
- 3.8 Sub-clause 3.7 shall not prevent contributions:
- (a) made pursuant to an Industrial Award, or

- (b) Deductible Contributions made after a person has reached the age of 65 and before the date at which that person reaches the age of 70 where that person was a least 60 years old on 1st July, 1990.

The Fund

- 4.1 The Fund shall consist of all the cash investments and other property including real and personal for the time being held by or on account of the Trustee upon the Trust of the Deed and Rules and shall be established and maintained by:
- (i) Contributions made in accordance with Clause 3.
  - (ii) Interest and dividends arising from any investment.
  - (iii) Profits and other benefits arising from any investments, and
  - (iv) Moneys, investments and other property transferred to the Fund from any other Superannuation arrangements.
- 4.2 In applying the provisions of this Deed reference to the Fund shall be deemed to be reference to separate funds comprising those amounts referred to in paragraphs (i), (ii), (iii) and (iv) of sub-clause 4.1 which relate to:
- (a) The Categories of Membership provided for in paragraphs (b) and (c) of sub-clause 2.1.
  - (b) Each Employer with Employees admitted to Membership pursuant to paragraph (a) of sub-clause 2.1 who elects that this paragraph shall apply to those of his Employees admitted to Membership pursuant to paragraph (d) of sub-clause 2.1.
  - (c) Each Employer with Employees admitted to Membership pursuant to paragraph (d) of sub-clause 2.1 who elects that this paragraph shall apply to those of his Employees admitted to Membership pursuant to paragraph (d) of sub-clause 2.1.
  - (d) Where no election pursuant to paragraph (b) of this sub-clause is made the Category of Membership provided for in paragraph (a) of sub-clause 2.1.
  - (e) Where no election pursuant to paragraph (c) of this sub-clause is made the category of Membership provided for in paragraph (d) of sub-clause 2.1.

- 4.3 The elections referred to in sub-clause 4.2 shall be made in writing and shall be delivered to the Trustee on or before the time at which the Employer is accepted under the Deed.
- 4.4 Where in relation to a particular member and pursuant to sub-clause 2.7 the Form of Benefit stipulated at the time an application for Membership is made is altered the following steps may at their discretion be undertaken by the Trustees.
- (a) Assets which in the opinion of the Trustees are of a sufficient current market value to offset the present value of the benefits receivable by the Member shall be identified.
  - (b) Those assets shall constitute a separate Fund for the benefit of the relevant member and shall be held on the terms of a Trust identical in all respects with the provisions of this Deed and Rules.
  - (c) The Fund which prior to the application of this sub-clause was partly or wholly comprised of those assets shall after the transfer of those assets to the Fund referred to in paragraph (b) be relieved of any further liability under the Deed and Rules applying to it in relation to the relevant member.
- 4.5 For the purposes of sub-clause 4.4 the Benefits receivable by a member shall take account of all Benefits which may be receivable in the future by the Member or his dependants and which may or may not depend on any contingency.

#### Investments

- 5.1 Moneys belonging to the Fund and not required immediately for the payment of Benefits or other amounts authorised by the Deed and Rules may be invested by the Trustees in or upon any investments of any kind (not limited to investments authorised by law for the investment of trust funds) as the Trustees in their absolute discretion shall think fit provided:
- (i) that in no circumstances shall the powers contained in this Clause permit loans to be made to Members either directly or by means of arrangements being entered into for lending money to members in the exercise of a general power of investment of assets of the Fund, and

- (ii) that all investments other than an investment in an in-house asset within the meaning of Regulation 16A of the Regulations shall be made on an arms length basis.

Without limiting the generality of the foregoing, Investments may be made in the following specific areas.

- (a) The Trustees may invest moneys not immediately required for any other purpose in deposits with interest with any bank or with any person, firm or corporation (including an Employer) carrying on Business in the Commonwealth of Australia or elsewhere.
- (b) In shares or stock (whether fully or partly paid) and in debentures, bonds, options, unsecured notes or other securities of any Company, Corporation or Financial Institution (including the Employer) carrying on Business within the Commonwealth of Australia or elsewhere in the world or of any Foreign Government.
- (c) In any investment in which by the Laws of the State of Queensland or any State or Territory of the Commonwealth of Australia, Trustees are authorised to invest (whether on a contributory basis or otherwise).
- (d) In the purchase of land of any tenure, freehold or leasehold, improved or unimproved and lend upon the mortgage of land of any tenure, freehold or leasehold, improved or unimproved (whether on a contributory basis or otherwise).
- (e) In units or sub-units of any fixed or flexible unit trust.
- (f) In the acquisition from any person or Company or to effect with any Life Insurance Company a policy of life, endowment, terms, accident, sickness or disability Insurance of such kind as Trustees in their absolute unfettered discretion may determine, and the Trustees shall have the power to pay the premiums and duty on any such policy and also to surrender or deal in any way with such policy.
- (g) In the sale of the whole or any part of the investments representing the Fund at any time or times for such price or prices and on such terms as the Trustees may think fit and the Trustees shall have the power to invest the proceeds of any sale or sales in any manner hereby authorised.



- (h) In setting aside out of the Fund from time to time such sum or sums of money as may in the Trustees opinion be sufficient to meet any debt or obligation due or accruing.
- (i) In the payment of calls on shares or stock forming part 6 of the Fund and charge the same to the Fund and to accept transfers of shares or securities.
- (j) To assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other securities modifying any rights privileges or interest in relation to the Fund and to agree to and concur in any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any Company in which any such shares, stock or debentures forming the whole of any part of the Fund for the time being may be invested or agree to or concur in any re-arrangement of its capital or its re-construction or any arrangement made or proposed to be made by it for any purpose whatsoever with any other Company or Companies, person or persons whereby any such shares, stocks, debentures or other securities are substituted or given for other shares, stocks, debentures whether in or of the same Company, or otherwise AND for any such purpose to deposit, surrender, apply for or exchange all relevant documents of title and at the cost of the Fund to pay any contribution or incur any necessary expenses in connection with any such scheme or arrangement and generally to manage or deal with the property forming the Fund as fully as if the Trustees beneficially owned the same.
- (k) In entering into any contract or transaction or arrangement in respect of acceptance, endorsement or discounting Bills of Exchange or otherwise deal in any way with the Fund or part thereof.
- (l) In varying or transposing any investments into or for any other investment or investments of any nature and kind hereby authorised and to vary the terms of any document or security.
- (m) In applying any part of the Fund in improving or developing any property forming part of the Fund or in erecting, extending, improving or rebuilding any buildings upon any land forming part of the Fund and to make all such repairs and maintenance as it in its absolute discretion may think fit.

- (n) In purchase, taking on hire purchase, or on hire or in exchange or by any means whatsoever, acquiring or becoming possessed of any real property whatsoever or any personal property whatsoever or any estate, right, title and/or interest in respect of the same and to improve, develop, sell, alienate, mortgage, transfer, lease, sub-lease, let, hire or in any other manner dispose or deal or turn to account such property or rights or any of them or any part thereof whether by public or private treaty.
  - (o) In investing in the assets held by the Trustees of any Superannuation Fund or funds established or managed by any Company in Australia or elsewhere.
  - (p) In investing in any futures contract approved by the Trustees at the Sydney Futures Exchange Limited or such other futures market or exchange as may be approved by the Trustees.
  - (q) In investing in any form of investment determined by the Trustees with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled dealing with his own property may do.
- 5.2 Any investments may be held in such names including the name of a nominee (whether an individual or a body corporate) as the Trustees shall from time to time determine.
- 5.3 The Trustees may value the whole or any part of the assets of the Fund in such a manner as they shall determine whenever in their opinion it is necessary or desirable to do so.
- 5.4 Notwithstanding the powers contained in sub-clause 5.1 the Trustee shall ensure that:
- (a) In the case of a fund established after 11th March, 1985, the cost of the in-house assets of the Fund do not exceed at any time during a year of income 10% of the cost of all the assets of the fund, or
  - (b) In the case of a fund established before 12th March, 1985, the cost of the in-house assets of the fund do not exceed at any time during a year of income:

- (i) before the year of income commencing on 1st July, 1994
  - (a) the cost of the in-house assets of the fund as at 11th March, 1985, or
  - (b) 10% of the cost of all the assets of the fund,
 whichever is the greater, or
- (ii) For other years of income - 10% of the cost of all assets of the Fund.

5.5 The cost of assets referred to in sub-clause 5.4 shall be determined by reference to the provisions of Regulations 16A of the Regulations dealing with that subject.

#### Transfer, Preservation and Portability of Benefits

- 6.1 Notwithstanding any provision to the contrary contained in this Deed where a Member becomes entitled to the payment of a Benefit he may request that that Benefit be preserved for him in the Fund to such later date as he may from time to time specify subject to such a specification not constituting a breach of the Regulations.
- 6.2 Should a Benefit be preserved in accordance with sub-clause 6.1 where the Member was:-
  - (a) subject to Schedule 1, and
  - (b) entitled to the payment of the Benefit in the form of a Pension.

Then the Trustee shall obtain advice from the Actuary on the lump sum value of the Benefit preserved and that lump sum value shall be credited to a Member's Accumulation Account for that Member and be subject from that time to payment in accordance with Schedule 2 hereof.

- 6.3 The following Benefits being Benefits of \$500 or more shall be subject to preservation in accordance with sub-clause 6.4 hereof.
  - (a) The total amount of Benefits other than Death and Disability Benefits arising from contributions pursuant to an Industrial Award for a Member in relation to his Membership under paragraph (d) of sub-clause 2.1.

- (b) Amounts transferred to the Fund for a member which in whole or in part are subject to the preservation requirements of the Regulations.
- (c) The amount of any new employer financed benefits or any improvement in employer financed benefits vested in that member and arising from any relevant arrangement or agreement within the meaning of Regulation 10 of the Regulations.
- (d) Member Financed Benefits resulting from contributions made after 13th March, 1989, during any period in which the member did not have employer support in the Fund within the meaning attached to that term by Regulation 9 of the Regulations.
- (e) Member Financed Benefits arising from Contributions made by a recognised member to an eligible scheme within the meaning attached to those terms by Regulation 3(i) of the Regulations, and
- (f) Benefits arising from a Fund the governing Rules of which were approved by the Commissioner, or under the Tax Act where that Fund was of a kind referred to in Section 23FB of the Tax Act as in force immediately before 18th December, 1987.

6.4 Benefits required to be preserved shall be dealt with in the manner stipulated in paragraph (h) of this sub-clause until the occurrence of any of the following events set out in paragraphs (a) to (g) of this sub-clause.

- (a) The retirement of the member before attaining the age of 55 years where the benefit paid to that member is in the form of a non-commutable pension or annuity payable for a term at least equal to the life of the relevant member.
- (b) The member has retired from the workforce and is at least 55 years of age at the time the Benefit is paid.
- (c) The member has retired from the workforce before reaching 55 years of age as a result of the Total and Permanent Disablement of the member.
- (d) The death of the Member.
- (e) The permanent departure of the member from Australia.

- (f) The payment of a Benefit in accordance with the application schedule.
  - (g) Such other circumstances as the Commissioner approves, or
  - (h) The transference or retention of the benefit pursuant to sub-clauses 6.1 or 6.6.
- 6.5 Subject to clause 6.7 Benefits not subject to preservation by retention within the Fund may be paid to:
- (a) a Superannuation Fund as defined in Section 3(1) of the Standards Act, or
  - (b) an approved deposit fund, or
  - (c) a deferred annuity which cannot be surrendered or assigned within the meaning of sub-regulation 11(2) of the Regulations before the person attains the age of 55 years and which does not provide for the payment of Benefits inconsistent with the restrictions contained in clause 6.4.
- 6.6 The payments referred to in sub-clause 6.6(a) and (b) shall not be made unless the Trustee is satisfied that the relevant fund is required to preserve any benefits so transferred in accordance with the Standards relating to Preservation contained in the Regulations.
- 6.7 Subject to paragraph (b) of sub-clause 6.3 where an Employee who has been admitted to the Fund was a Member of any other Superannuation Fund or approved Deposit Fund and there is paid to the Trustees for the credit of the Fund an amount from such previous Fund, the Trustees shall provide the Member with additional or accrued benefits in such a manner as it shall determine.
- 6.8 The provisions of sub-clauses 6.6 and 6.7 shall, in addition to having application to Benefits not subject to preservation by retention within the Fund, apply to a member's interest in the Fund prior to the existence of a right to payment of a Benefit where the Member and Trustee reach agreement to that effect.

### Forfeiture of Benefits

- 7.1 Benefits to which a member may be entitled or which may become vested in that Member or his dependants or Legal Personal representative other than those depending on the occurrence of some future event shall be forfeited:
- (i) If the person otherwise entitled thereto:
    - (a) assigns, alienates or charges or attempts to assign, alienate or charge such Benefits or part thereto.
    - (b) becomes bankrupt or insolvent, or assigns his estate or enters into an arrangement pursuant to the Bankruptcy Act 1966 for the benefit of his creditors, or
  - (ii) If the Trustees are unable after due enquiry to locate or identify the person entitled to the relevant Benefits. Benefits foregone shall be dealt with in accordance with Clause 8 hereof.

### Application of Benefits Foregone

- 8.1 The Trustees may at their sole discretion apply Benefits forfeited by Members or benefits the right to receive which have otherwise ceased within a period concluding at the expiration of six months from the end of the year of income in which the forfeiture or cessation of rights occurred.
- (a) To provide Benefits that other Members or their Dependants have a right to receive from the Fund, or to provide additional Benefits for other Members or their Dependants on a basis that the Commissioner is satisfied is reasonable having regard to all circumstances, or
  - (b) For other purposes that are approved by the Commissioner.

### Trustees Exercise of Powers

- 9.1 For any Fund as defined in Clause 4 which has less than 200 members the powers set out in Clause 12 shall be exercised by the Trustees at all times while the membership of that Fund is less than 200.
- 9.2 It shall be a condition precedent for the application of sub-clause 9.1 that the Trustees shall be appointed following the procedure stipulated in Regulation 15(i)(a)(ii) of the Regulations.

- 9.3 For the purposes of sub-clause 9.2 the Members making application to join the Fund on or about the same time as their Employer is admitted under the Deed shall in their application specify their consent or otherwise to the Trustee so acting.
- 9.4 If a fund has at any time a Membership of 200 or more it shall within 90 days and whilst that Membership is 200 or more comply with sub-clauses 9.5 to 9.6.
- 9.5 Where a Fund has 200 or more Members the Trustees powers shall be delegated to and exercised by a Management Board which shall comprise equal numbers of Member representatives and Employer representatives. The Trustee shall determine the number of persons who shall comprise each management Board and the process to be applied for choosing Member and Employer representatives.
- 9.6 A decision by a Management Board referred to under Clause 9.5 shall require a majority of not less than two-thirds of the total number of members of the Board.
- 9.7 The functioning of a Management Board shall cease during any period in which the Membership of a Fund is less than 200.
- 9.8 Vacancies in a Management Board shall be filled in accordance with the Regulations.
- 9.9 The terms of nomination of Member representatives and Employer representatives shall specify the circumstances in which vacancies will occur on the Management Board.

#### Trustees Removals and Appointment

- 10.1 The position of Trustee shall become vacant if:
- (i) In the case of a Company:
    - (a) A winding up order is issued pursuant to the Corporations Law of Queensland, or
    - (b) Pursuant to a resolution of its Board of Directors it resigns from office.
  - (ii) In the case of a natural person if he:
    - (a) Becomes bankrupt, or
    - (b) Enters into an arrangements under Part X of the Bankruptcy Act 1966, or

(c) Resigns from his office by notice in writing, or

(d) Dies.

(iii) In any case if the conditions determined at the time of its nomination are met or if no such conditions were determined if all members of the Fund agree to remove the relevant Trustee from that position.

10.2 Should the position of Trustee become vacant a new Trustee shall be appointed following agreement between the Members of the Fund (or a trade union or other organisation representing the interests of those members) and the Employer or Employers of those Members in a manner which is consistent with the Regulations providing standards relating to Trustees.

#### Trustees and Management Board Meeting

11.1 Where a Company is the sole Trustee:

(a) Subject to the regulations any question of discretion (including the powers, authorities and discretions vested in the Trustee generally and by this Deed and Rules) shall be decided or exercised in accordance with a resolution of the Directors passed at a meeting of the Directors of the Company.

(b) A resolution in writing signed by all the Directors shall have the same effect and validity as a resolution of the Directors passed at a duly convened meeting.

11.2 Where there is more than one Trustee:

(a) Subject to the provisions of the Regulations the Trustees may meet together for the despatch of, adjourn and otherwise regulate their meetings as they think fit.

(b) A Resolution in writing signed by all the Trustees shall have the same effect and validity as a Resolution of the Trustees passed at a duly convened meeting.

#### Powers of Trustees

12.1 Subject to sub-clause 12.2 in addition to the powers which they may by law have and which are otherwise granted to them by this Deed the Trustees shall have full power including, but not being limited to, the right:



- (a) To commence, carry on, defend or abandon any legal proceedings relating to the Fund or to the rights of Members.
  - (b) To insure or re-insure any risks, contingencies or liabilities of the Fund.
  - (c) To retain the services of professional advisers, whether persons, firms or Companies, or employ or delegate powers to persons in relation to the management, administration or investment of the Fund, to delegate to such professional advisers or employ such persons as they see fit from time to time and to determine and pay out of the Fund fees or salaries payable to such professional advisers or employees.
  - (d) To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund.
  - (e) To determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents and to open accounts with financial institutions and retain with such institutions such money as they deem advisable.
  - (f) To determine, authorise and arrange payment of benefits out of the Fund to persons so entitled.
  - (g) To acquire and dispose of property which is an investment permissible under clause 5.1 hereof on such terms and conditions as it shall think fit.
  - (h) Generally to all acts and things as they may consider necessary or expedient for the administration maintenance and preservation of the Fund and in performance of their obligations as Trustees of the Fund.
- 12.2 Notwithstanding sub-clause 12.1 the Trustees shall not borrow or maintain an existing borrowing, of money, whether by way of a secured or unsecured loan otherwise than to secure temporary finance.
- 12.3 Sub-clause 12.2 shall not be applicable in relation to money borrowed in the circumstances described in paragraph (a) and until the arrangements referred to in paragraph (b) are made:
- (a) The Trustee borrowed money on or before 11th June, 1986

- (b) Prior to 30th June, 1995 the Trustee made arrangements such that the provisions of clause 12.2 would after the making of those arrangements be complied with.

#### Indemnity of Trustees

- 13.1 The Trustees shall be indemnified against all liabilities incurred by them in connection with any act done or omitted in good faith in the administration of the Fund and shall have a lien on the Fund for such indemnity. The Trustees shall not be liable for any act or default done or omitted in good faith in the administration of the Fund or for any loss or expense incurred by the Fund in connection with the investment of the Fund or for any other loss, damage or misfortune whatever except where due to their own wilful act or defaults.
- 13.2 No Trustee shall be liable for the neglect or default of any person of whose services he avails himself nor for allowing assets of the Fund or documents securing those assets to remain in the control of any person for any length of time nor shall a Trustee be liable for any loss incurred by the Fund resulting from the investment of assets at less than full security.

#### Trustees Accounts and Records

- 14.1 The Trustees shall keep a complete record of all matters essential to the administration and working of the Fund.
- 14.2 The Trustees shall cause proper records to be kept and enter into a book or other records provided for the purpose, all their resolutions and proceedings. They shall also keep a register of Members of the Fund showing their full names and addresses.
- 1.43 In respect of a Member receiving benefits under Schedules 2 and 3 the Trustees shall keep the following accounts:-
- (a) A Member's Accumulation Account, and
  - (b) If appropriate, an Employer's Contribution Account.
- 14.4 A Member's Accumulation Account shall record the following:-

- (a) Accounts credited to a Member in consequence of a change in the Schedule applicable to the provision of his Benefits and determined by the Trustees and if appropriate in their opinion as advised by the Actuary.
- (b) Contributions made by the Member pursuant to clause 3.1.
- (c) Interest on the balance of the account at such rate as the Trustees may periodically determine being a rate which is appropriate to the net earning rate of the Fund from time to time after taking into account possible or actual fluctuations in earnings.
- (d) Insurance premiums paid in respect of the Member.
- (e) The payment of Benefits referable to such account.
- (f) Such other matters as the Trustees may from time to time deem appropriate.

14.5 An Employer's Contribution Account shall record the following:

- (a) Contributions made by an Employer for a Member pursuant to an agreement of the type referred to in clause 3.1 hereof.
- (b) Interest determined as in sub-clause 14.4(c) above calculated by reference to the balance of the Employer's Contribution Account.
- (c) The payment of Benefits referable to such Account.
- (d) Insurance premiums paid in respect of the Member or his dependants and which the Employer and Member have agreed should be debited to the Employer's Contribution Account.
- (e) Such other matters as the Trustee may from time to time deem appropriate.

14.6 The accounts produced in relation to the Funds governed by this Deed shall be audited by a registered company Auditor as provided for in the Regulations.

14.7 The audit shall be conducted at a time and the Auditor shall report in a manner consistent with the Regulations.

14.8 In relation to any Fund constituted by this Deed which is a Defined Benefit Fund the Trustee shall cause an Actuarial investigation of the Fund to be undertaken before the time applicable to the Fund specified in the following paragraphs.

(a) For Funds which were operating as at 22nd December, 1987,

(i) If an Actuarial Investigation had been undertaken after 22nd December, 1985 and before 22nd December, 1987, within the period ending at the expiration of three years from the date on which that Actuarial Investigation was made.

(ii) In any other case

- where the relevant Fund was in operation on 1st January, 1986 an Actuarial Investigation must be made by 1st January, 1989.

- where the relevant Fund commenced operations between 1st January, 1986 and 22nd December, 1987 an Actuarial Investigation must be made within three years of the date on which the Fund commenced operation.

(ba) Where a Fund was not operating as at 22nd December, 1987 an Actuarial Investigation shall be made within three years from the date on which the Fund commenced operation.

(b) Actuarial Investigations shall be made within a period of three years commencing at the time the last Actuarial Investigation was made.

(c) An Actuarial Investigation pursuant to paragraphs (a), (ba) & (b) of this Clause shall not be required if the relevant Fund is not a defined Benefit Fund at the expiration of the three year periods referred to in those paragraphs.

(d) Where an Actuarial Investigation is made pursuant to this Clause the report made as a result of that Investigation shall be given to the Trustee within twelve months from the day on which such Investigation is made.

The report in addition to any matter to which the Actuary wishes to refer shall contain the information specified by the Regulations.

- 14.9 Subject to sub-clause 14.10 the Trustee shall as soon as practicable after the end of a year of income give to each member a written statement setting out the matters specified in the Regulations.
- 14.10 The Trustees may in substitution for the statement referred to in sub-clause 14.9 provide a statement containing corresponding particulars to those required by that sub-clause by reference to a period of twelve months beginning on a day in the relevant year of income.
- 14.11 Should the Trustee exercise the power contained in sub-clause 14.10 the Trustee must in relation to each subsequent year of income provide a statement containing corresponding particulars to those required by sub-clause 14.9 by reference to the appropriate twelve month period following on from that period referred to in sub-clause 14.10.
- 14.12 Where a person ceases to be a member of a Fund the Trustee shall as soon as practicable after that cessation give that person a written statement setting out the matters required to be specified by the Regulations.
- 14.13 A person becoming a member of the Fund shall receive a written statement as soon as practicable after becoming a Member containing details of the kinds of Benefits provided to Members, the conditions relating to those Benefits and the method of determining entitlements.
- 14.14 The Trustee on the request of a member shall be required not more than once in each year of income to give to the member a copy of or extracts from:
- (a) The latest Actuarial Investigation
  - (b) Such Auditors reports as are specified in the request, and
  - (c) Such returns certificates and notices referred to in Sections 12 and 13 of the Standards Act as are specified in the request.
- 14.15 If a member becomes entitled to a benefit after the end of the latest period in respect of which Interest has been allocated pursuant to sub-clauses 14.4(c) and 14.5(b) the benefit must include a reasonable share of the estimated net earnings of the Fund for the period between that latest period and the time at which the Benefit payment is made or commences to be paid.

14.16 In applying sub-clause 14.15 the Trustee must have regard to the following factors in estimating net earnings for a period:

- (a) The factors taken into account in the latest calculation of the net earnings of the Fund for the purposes of allotting those net earnings to members.
- (b) The likely returns on the investments of the Fund for the period subsequent to that referred to in paragraph (a) and
- (c) Any other factors likely to influence the net earnings of the fund during the period referred to in paragraph (b).

14.17 An estimate made by the Trustee pursuant to sub-clause 14.15 remains in force unless the Trustee makes another estimate in relation to the period or any part of it in accordance with the provisions of this clause and while in force applies to members of the fund who become entitled to benefits in the period.

#### Trustees Compensation

15.1 The Trustees shall be entitled to be reimbursed from the Fund for any reasonable expenses incurred in the administration of the Fund and shall be entitled to be remunerated for their services.

#### Amendment of Deeds and Rules

16.1 Subject to the Regulations the Trustees may at any time by Supplemental Deed, Minute, Resolution or Oral Resolution repeal and replace or amend alter or add to any or all of the provisions of the Trust Deed or these Rules provided that no amendment shall be made that would have the effect of reducing the Benefits that have accrued or become payable to a member unless:

- (a) The reduction is required because of and does not exceed the value of any tax payable on Fund income and contributions.
- (b) The reduction is required only to enable the Fund to comply with Standards prescribed by the Regulations.
- (c) The member approves in writing of the reduction, or

(d) The Commissioner approves in writing of the reduction.

16.2 No amendment to the Deed or Rules which reduces the amount of a benefit that is or may become payable to a member in relation to a period before the amendment is authorised pursuant to sub-clause 16.1 unless any of paragraphs (a) to (d) of that sub-clause would be applicable.

16.3 The Trustees shall as soon as practicable notify in writing each Member of each such amendment alteration or addition explaining the nature and purpose of the change and the effect (if any) of the alteration on the entitlements of the member but the failure to give such notification shall not prejudice or invalidate any variation under this Rule.

#### Termination of Fund

17.1 The Funds as specified in paragraph (b) of sub-clause 4.2 shall be wound up on the happening of any of the following events:

- (a) The expiry of one month's notice to the Trustees and each Member by the Employer that it has decided to cease permanently contributing to the Fund
- (b) If the Employer is a Company - if an Order is made or an effective Resolution is passed for the winding up of the Employer, other than for the purpose of amalgamation or reconstruction or if the Employer for any reason ceases to carry on business
- (c) If the Employer is a Partnership or Sole Trader - if the Partnership is dissolved or the business of the Employer in any way ceases to exist, other than for the purpose of succession or reconstruction, or
- (d) If the Trustees are of the opinion that it would be in the best interest of Members to do so.
- (e) In the case of Members subject to Schedule 1 and subject to paragraph (a) of this sub-clause, the Trustees may if they consider it would be in the interests of Members, instead of closing the Fund make arrangements for the continuation of the Fund and the reduction of Benefits to which Members would otherwise be entitled, in any equitable manner as determined by the Trustees following advice from the Actuary and having regard to the provisions of the Regulations

- (f) The provisions of paragraph (d) of this sub-clause shall also be applicable to the Fund specified in paragraph (d) of sub-clause 4.2.
- 17.2 The Funds specified in paragraph (a) of sub-clause 4.2 shall be wound up if:
- (a) A majority of Members make such request in writing, or
  - (c) If the Trustees are of the opinion that it would be in the best interests of the Member to do so.
- 17.3 The Fund specified in paragraphs (c) and (e) of sub-clause 4.2 shall be wound up if:
- (a) The provisions of the Industrial Award governing that Fund so provide, or
  - (b) Subject to any inconsistency with paragraph (a) of this sub-clause (in which case the provisions of the said paragraph (a) shall prevail to the extent of any inconsistency). In the case of funds specified in sub-clause 4.2(c) - if any of the events specified in paragraphs (a) to (e) of sub-clause 17.1 occur and in the case of funds specified in sub-clause 4.2(e) if the Trustees are of the opinion that it would be in the best interests of members to do so.
- 17.4 If the provisions of sub-clause 17.1 are applicable, the distribution of the relevant Fund's assets shall occur in the following priority:
- Firstly, in the payment of Benefits which Members or their Dependants become entitled to before the commencement of the winding up:
- Secondly, in the provision of Benefits to Members employed by the Employer as at the commencement of the winding up of the Fund and not otherwise entitled to a Benefit of an amount equal to the Benefit the Member would have received had he left the service of the Employer immediately prior to the commencement of the winding up of the Fund.
- Thirdly, such amounts if any determined by the Trustees shall be transferred to the Employer or Employers in such proportions as determined to be fair and equitable by the Trustees after receiving advice from the Actuary.



Any assets not applied pursuant to this sub-clause may at the discretion of the Trustees be applied for the benefit of such persons then living who before the commencement of the winding up of the Fund were or had been employed by the Employer.

- 17.5 If the provisions of sub-clause 17.2 are applicable the Fund assets shall be distributed in accordance with Schedule 2 or pursuant to sub-clauses 6.1 to 6.8 and for those purposes the relevant members shall be deemed to be entitled to the Benefits to be distributed.
- 17.6 If the provisions of sub-clause 17.3 are applicable the Fund assets shall be distributed amongst the Members in accordance with Schedule 3, or pursuant to sub-clauses 6.1 to 6.8 and for those purposes the relevant members shall be deemed to be entitled to the Benefit to be distributed.

#### Limitation of Benefits

- 18.1 Notwithstanding the provisions of the Deed and Rules the Trustees may in their absolute discretion commute the whole or part of a pension to a Lump Sum where the following conditions are met:
- (a) The Commissioner has determined under Section 15K(I) of the Act that the pension exceeds the reasonable benefit limits, and
  - (b) The Commissioner has requested the Trustees in writing to treat the pension as if it had been commuted to a lump sum to the extent of the amount specified.
- 18.2 Where a pension is commuted pursuant to sub-clause 18.1 the Trustees shall advise the Commissioner accordingly.

#### Determination of Pension

- 19.1 Notwithstanding any other provision of the Deed or Rules a Pension may be paid on such terms and in such amounts as are agreed between the member and trustee and without limiting the generality of the foregoing such terms may include terms which comply with the Pension and Annuity Standards of the Regulations.
- 19.2 Notwithstanding any other provision of the Deed and Rules a benefit may be paid as a Pension or Annuity at any time before a member reaches 55 years of age and following agreement between the Member and Trustee provided that the pension is paid.

- (a) on the occasion of the retirement of the Member
- (b) is payable for life, and
- (c) is non Commutable.

Transfer of Performance

- 20.1 In the case of a fund specified in either sub-clause 4.2(b) and/or (d) where the whole or substantially the whole of the assets of the Employer's business where the Employer is a company is hereafter acquired by another Company then the Trustees may elect to accept the performance by that other Company of the obligations of the Employer hereunder. Such acceptance by the Trustees shall discharge the Employer from any further obligations under this Deed to the extent that henceforth this Deed shall be read and construed as if such assignees Company were mentioned as the Employer herein.
- 20.2 In the case of a Fund specified in sub-clause 4.2(c) and/or (e) the provisions of sub-clause 20.1 shall apply subject to any inconsistency with the terms of the Industrial Award governing such Fund.

Employer's Right to Terminate Employment

- 21.1 Nothing in the Trust Deed or these Rules shall restrict the right of the Employer to dismiss any Employee or be used to increase damage in any action brought against the Employer in respect of such dismissal or affect the rights of a Member or his legal personal representative or other persons to claim damages or compensation at Common Law or under a Workers' Compensation Act or any other Statute in force governing compensation to a Member injured or dying from an accident arising out of or in the course of his employment with the Employer.

Payment of Benefits

- 22.1 In any case other than the provision of a Death Benefit where a Lump Sum Benefit becomes payable pursuant to these presents payment of that Benefit shall be made as soon as, in the opinion of the Trustees, it is practicable to do so, provided that in all cases payment of the Benefit shall be made within six months of the date of the event giving rise to the Benefit.

22.2 Any obligation of the Trustees to pay a Pension pursuant to these Rules may be fully and finally satisfied by the Trustees purchasing an annuity of a value certified by the Actuary to be equivalent to the relevant Pension from an organisation which conducts a business that consists in whole or in part of providing annuities.

22.3 Notwithstanding the requirements of the applicable schedule that a retirement benefit be payable on the termination of employment or the cessation of Self-Employment on or after the Normal Retirement Date such a Benefit shall be payable:

(a) When the relevant member reached 65 years of age if that member is not employed part time or full time when that age is reached, or

(b) When the relevant member reaches 70 years of age if that member is not employed part time when that age is reached.

22.4 Notwithstanding any requirements of the Deed or Rules to the contrary a member who is employed part-time or full time after reaching the Age of 65 may request the Trustees to provide a Retirement Benefit equivalent to that which would have been payable had the employment of the relevant member ceased at the time of making such a request.

The Trustees shall comply with such request and Benefit shall be payable in accordance with the provisions of the clause and the Deed.

22.5 The provisions of sub-clauses 22.3 and 22.4 shall not apply where:

(a) The Fund governed by this Deed was in operation before 18th December, 1987, and

(b) The relevant member reached the age of 65 prior to 1st July, 1990.

In such cases notwithstanding anything to the contrary contained in the Deed and Rules a benefit may be payable as if sub-clause 22.4 applied without the requirement that the relevant member be employed part-time or full-time at the time of making the relevant request.

Commutation

23.1 The Trustee shall at the request of any person entitled to a Benefit commute to a Lump Sum any Pension to which that person would otherwise be entitled pursuant to this Deed provided that in the case of a pension which does not meet the pension and annuity standards a factor no greater than that which would be applicable under Schedule 3 of the Regulations if the commencement day of the pension were the day on which it was commuted shall be used in determining the Lump Sum payable as a result of commutation.

Subject to the above requirements the commuted value of a Pension shall in all cases be determined by the Actuary.

Any person entitled to a Lump Sum Benefit may with the agreement of the Trustees substitute for the Lump Sum entitlement a Pension determined by the Actuary to be of equivalent value.

Alteration of Pension

24.1 Subject to any contrary Agreement reached pursuant to sub-clause 19 the Trustees may at any time vary the level of Pension being provided to Members or other persons to account for changes in the cost of living since the relevant Pensions commenced to be paid provided that:

- (a) In the case of Benefits provided pursuant to Schedule 1 such variations are sanctioned by the Actuary and do not in his opinion and in the opinion of the Trustees endanger the ability of the Fund to provide Benefits in the future to Members contingently entitled to those benefits.
- (b) In the case of Benefits provided pursuant to Schedule 2 such variations are sanctioned by the Actuary having regard to the amounts standing to the credit of the Member's Accumulation Account and if appropriate the Employer's Accumulation Account for that Member.
- (c) In the case of Benefits provided pursuant to Schedule 3 such variations are sanctioned by the Actuary and are consistent with the provisions of the relevant Industrial Award governing the provisions of such benefits.

Unexpired Benefits

- 25.1 Subject to any contrary Agreement reached pursuant to sub-clause 19 upon a Pension Benefit ceasing, the commuted value of the unexpired Pension shall be payable in a Lump Sum form. The commuted value of the unexpired Pension shall be calculated according to the following formula:

$$(1.05)^{\frac{120 - n}{12}} - 1 \times \text{Monthly payment}$$

.05

where "n" means the number of monthly pension instalments from the date on which the Pension commenced to be paid until the time at which the pension ceased being a number which shall not be greater than 120.

"Monthly payment" means - if the pension is paid by monthly instalments; the amount of the last Pension Instalment paid prior to that pension ceasing; or - if the pension is paid by instalments calculated by reference to an interval other than a month, the amount determined by the Trustees to be the equivalent pension instalment were such payments to be made at monthly intervals.

Payment of Benefits in Specie

- 26.1 The Trustees may with the agreement of the Member or Beneficiary to whom a benefit is payable transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable under the provisions of this Deed.

Miscellaneous

- 27.1 Except as provided in clause 17 the trusts constituted by this Deed shall continue during the life of the survivor of all the lineal descendants now living of His Late Majesty King George VI and twenty-one (21) years after the death of such survivor and such further period (if any) as may from time to time be permitted by law, provided always that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provide that the Rules against Perpetuities shall not apply.
- 27.2 Where the laws applicable to this Deed are the laws of the State of South Australia, the provisions of Section 35(b) of the Trustees Act 1936-1953 of that State are hereby expressly excluded from application to this Deed.

27.3 All Benefits payable pursuant to this Deed shall be made in an amount commensurate with any obligation which may be imposed by the Tax Act on the Trustees to deduct tax from such Benefits.

Minimum Benefits

28.1 Notwithstanding the provision of this Deed and the Schedules but subject to sub-clause 28.2 the minimum Benefit payable to a member or preserved or transferred as provided for in clause 6 shall be a lump sum or its equivalent as certified by the Actuary being the product of:

- (a) The sum of:
  - (i) Contributions made by the Member
  - (ii) Amounts transferred to the relevant Fund pursuant to sub-clause 6.8 to the extent that the preservation requirements of the Regulations apply to such amounts.
  - (iii) Employer contributions made in relation to benefits to be provided under Schedule 3, and
  - (iv) The amount of any new Employer-financed benefit or of any improvement in Employer-financed Benefits vested in a Member and arising from any relevant arrangement or agreement, and
- (b) (v) The net earnings of the Fund allotted to the member in accordance with the Deed referable to the sums set out in sub-paragraphs (i) to (iv) above less an amount equal to any administrative or other costs that are deducted from those amounts in accordance with the Deed but which are:
  - (A) Not otherwise deducted from those amounts
  - (B) Not otherwise deducted from Fund income for the purpose of determining the net earnings of the Fund, and
  - (C) Not otherwise debited to the Members Accumulation Account.

28.2 Where Benefits are provided under Schedule 1 the minimum Benefit for the purpose of this Clause shall be calculated in accordance with paragraph (c) of the definition of "Member Financed Benefits" in the Regulation.

28.3 The rights of members and their dependants to receive benefits from the Fund are as set out in the provisions of the Deed and Schedules. It is hereby declared that it is intended by the persons subject to this Deed that those rights are fully secured.

#### SCHEDULE 1

Benefits provided to Members under Schedule 1 shall be provided in the following circumstances:-

##### Death Benefits

1.1 On the death of a Member while still in the service of an Employer and before the Normal Retirement Date the Trustees shall subject to the other provisions of these Rules pay or apply the greater of the Member's equitable share of the Fund as determined by the Actuary and the proceeds of any policy or policies of life insurance taken out by the Trustees on the life of the Member to or for the benefit of such one or more dependants of the deceased Member and the legal Personal Representative of the deceased Member in such shares and proportions and in such manner as the Trustees determine PROVIDED THAT the Employer may request that an additional amount be provided and the Trustee shall accede to such a request subject to the Trustees forming an opinion that the provisions of such additional Benefit to a Member does not thereby endanger the Benefit secured to any other Member by the terms of the Deed.

1.2 The Trustees shall within six months of the death of a Member determine the Dependants to whom the Member's entitlement is to be paid and shall notify such Dependants in writing. If the Trustees are of the opinion that a Member has no Dependants at the time of his death and no determination and notification is made by the Trustees within such period of six months the Member's entitlement shall be transferred to the Member's Legal Personal Representative.

However, if no Grant of Probate or Letters of Administration shall have been made in respect of the Estate of such Member within two years from the date of his death, or such longer period as the Trustees shall determine, then the Member's entitlement shall be applied by the Trustees in accordance with Clause 7.

1.3 On the death of a Member after his Normal Retirement Date and before payment of a Late Retirement Benefit the then present value as determined by the Actuary of the late Retirement Benefit which would have been payable had the Member retired on the date of his death shall subject to clause 25.1 be paid or applied by the Trustees under the provisions of Rules 1.1 and 1.2.

- 1.4 Where a Member is not acceptable at standard rates under any insurance policy that the Trustees may effect for the purpose of re-insuring any part of his Death Benefit or Total and Permanent Disablement Benefit the amount of a Members Death Benefit or Total and Permanent Disablement Benefit may be reduced by such an amount as the Trustees consider appropriate after reference to the Actuary.

#### Retirement Benefits

- 2.1 On the retirement of a Member from the employment of the Employer on his Normal Retirement Date, the Member shall be entitled to a Pension calculated according to such formula as is stipulated by the Employer at the time of his admission under the Deed, provided that if no such stipulation is made, the following shall apply:

0.875 percent x HAS x Service whilst a Member in the case of non executive members and the maximum pension complying with Regulation 42C which does not result in a request to commute pursuant to Section 15S of the Act - in the case of executive members.

- 2.2 If a Member dies whilst in receipt of a benefit under rule 2.1 the commuted value of the unexpired Pension shall be dealt with as if it constituted a Death Benefit subject to the provisions of Rules 1.1 and 1.2.

#### Late Retirement Benefit

- 3.1 On the cessation of employment of a Member with an Employer after his Normal Retirement Date and for reasons other than the employee's death a Pension determined by the Actuary shall be payable which having regard to the Retirement Benefit provided for, the earning experience of the Fund, contributions made by or on behalf of the Employee since his Normal Retirement Date and such other factors as are considered relevant by him is considered by him to be equitable in the circumstances.
- 3.2 The provisions of Rule 2.2 shall apply to a Pension payable under Rule 3.1 as if the reference to Rule 2.1 were a reference to Rule 3.1.

#### Early Retirement Benefit

- 4.1 On the cessation of employment with the employer by a Member within ten (10) years of his Normal Retirement Date, and with the consent of the Employer an Early Retirement Benefit of a Pension determined by the Actuary to be equitable in the circumstances shall be payable to a Member PROVIDED THAT such a Pension shall not exceed an amount determined according to one of the following formulae:



- (a) In the case of an Executive Member -

The pension which would be payable pursuant to Rule 2.1 if the cessation of employment were deemed to have occurred as a result of the retirement of the employee after his normal retirement date.

- (b) In the case of a Non Executive Member -

Such formula as is stipulated by the Employer at the time of his admission under the Deed PROVIDED THAT if no such stipulation is made the following shall apply:

0.875 percent x HAS x Plan Membership x (1 - .025 x prospective future service to Normal Retiring age at the date of Early Retirement).

- 4.2 The provisions of Rule 2.2 shall apply to the payment of a Pension under Rule 4.1 as if the reference to Rule 2.1 were a reference to Rule 4.1.

Disablement Benefits

- 5.1 On a Member becoming totally and permanently disabled before receiving a Benefit on Early, Late or Normal Retirement a Benefit shall be provided to the Member equivalent to that which would have been paid had that Member did on the day on which he became totally and permanently disabled PROVIDED THAT in determining the amount of Benefit payable the deemed proceeds of any policy or policies of Life Insurance shall be excluded in calculating a Member's entitlement save and except to the extent that those policies provide for the payment of a Benefit on Total and Permanent Disablement.
- 5.2 On a member becoming Temporarily Disabled a Pension shall at the absolute discretion of the Trustees be payable. The said pension may be terminated at any time by the Trustees.
- 5.3 The pension payable pursuant to sub-rule 5.2 shall be such amount if any as determined by the Trustees and shall be determined having regard to the terms of any Insurance Policy which the Trustees hold relating to the said Temporary Disablement.
- M x S = TAB
- 5.4 Subject to sub-rule 5.5 the pension payable pursuant to sub-rule t.2 shall not exceed the amount calculated by applying the following formula:

where

"M" has the same meaning that that term bears in the definition of "pension reasonable benefit multiple" in Regulation 4A of the Regulations.

"S" means

- in the case of a member who is an employee immediately prior to the Disablement, the annualised rate of salary received by that member at the time of Disablement, and
- in the case of a member who is self-employed immediately prior to the Disablement, the amount would be that person's HAS if retirement had occurred at the date of disablement.

"TAB" means the maximum annualised Temporary Disability Benefit.

- 5.5 Where the Trustee is aware that an Employer has continued to pay salary to an Employee in spite of the fact that that employee is Temporarily Disabled the pension shall not exceed
- (a) the difference between the term "S" as defined in sub-rule 5.4 and the annualised salary continued to be paid by the Employer.
  - (b) the amount produced by applying sub-rule 5.4 (whichever is the lower).

#### Withdrawal Benefit

- 6.1 On the cessation of employment with the Employer of any Member in circumstances where no other Benefit is provided from the Fund to that Member or his dependants and/or Legal Personal Representatives one of the following benefits shall be payable from the Fund:

- (a) In the case of an Executive Member -

A lump sum amount equal to the amount certified as fair and equitable by the Actuary having regard to that Member's period of service with the Employer, salary as at the date of termination of employment and such other factors as are considered relevant by him, or

- (b) In the case of a Non Executive Member -

A Benefit payable by reference to such factors as may be stipulated by the Employer at the time of his admission under the Deed PROVIDED THAT if no such stipulation is made the following shall apply:

- (i) Where not more than 5 years of Plan Membership has been completed a Lump Sum payable on the cessation of employment with the Employer of an amount not less than the Member's own contribution together with interest at a rate appropriate to the net earnings of the Fund over the relevant period of Membership PROVIDED THAT the Benefit payable to a Non-Executive Member shall be increased at the direction of the Employer to an amount not exceeding the fair and equitable interest of the Member in the assets of the Fund as determined by the Actuary at the date of cessation of employment with the Employer, OR
- (ii) Subject to sub-clause 28.2 where more than five years service whilst a Member has been completed, a lump sum payable to the Member on reaching his Normal Retirement Date calculated according to the following formula:

0.875 percent x HAS x Plan Membership

$$\frac{x \text{ Plan Membership} \times (.05 \times \text{Plan Membership})}{B}$$

Where B = Plan Membership plus prospective service to the Member's Normal Retirement Age as at the date of cessation of Employment with the Employer.

PROVIDED THAT the Benefit payable to a Non-Executive Member shall be increased at the direction of the Employer to an amount not exceeding the fair and equitable interest of the Member in the assets of the Fund as at the date of cessation of employment with the employer as certified by the Actuary and PROVIDED FURTHER THAT if the Member should die before reaching his Normal Retirement Date, the Benefit shall be payable as soon as possible to such of the Member's dependants and in such proportions as the Trustees determine and shall equal the then current value of the Withdrawal Benefit which would have been payable on the Member reaching his Normal Retirement Date as certified by the Actuary and PROVIDED FURTHER THAT subject to the provisions of the Deed at any time at the Trustees absolute discretion the present value of a Non-Executive Member's Withdrawal

Benefit as determined by the Actuary, may be paid in lieu of the above Benefit. In the event of such a payment being made to or on behalf of the Member, the Trustees shall be released and discharged accordingly from any further liability in respect of such Member.

#### Form of Benefits

- 7.0 Where a specification is made pursuant to sub-clause 2.7 to apply Schedule 1 to provide a Lump Sum Benefit the words "0.875 percent" where ever they appear in Rules 2.1, 3.1 and 4.1 shall be replaced by the words "13.125 percent" and references to pensions payable for executive members in all cases and non-executive members under Rule 3 shall be read as references to Lump Sums of such amount as the Trustees determine taking into account any advice from the Actuary which they may have received all References in Rules 2.1, 3.1 and 4.1 to Pensions shall be read as references to Lump Sums.

#### SCHEDULE 2

Benefits provided to Members under Schedule 2 shall be provided in the following circumstances:

##### Death Benefit

7.1 Subject to Rule 7.3 on the death of:

- (a) A Member admitted pursuant to paragraph (a) of sub-clause 2.1 while still in the service of an Employer
- (b) A Member admitted pursuant to paragraph (b) of sub-clause 2.1 prior to his becoming entitled to any other Benefit payable under this Schedule, or
- (c) A Member admitted pursuant to paragraph (c) of sub-clause 2.1 prior to his becoming entitled to any other Benefit payable under this Schedule.

The Trustees shall subject to the other provisions of these Rules pay or apply the amount which would have been payable had the Member been entitled to a Withdrawal Benefit at the date of his Death plus the proceeds of any policy or policies of life insurance taken out by the Trustees on the life of the Member to or for the Benefit of such one or more dependants of the deceased Member and the Legal Personal Representative of the deceased Member and in such shares and proportions and in such manner, as the Trustees determine PROVIDED

THAT in the case of a Member to whom paragraph (a) of this Rule applies the Employer may request that an additional amount be provided and the Trustees shall accede to such a request subject to the Trustees forming an opinion that the provisions of such additional Benefit to a Member does not thereby endanger the Benefit secured to any other Member by the term of the Deed.

- 7.2 The Trustees shall within six months of the death of a Member determine the Dependants to whom the Member's entitlement is to be paid and shall notify such Dependants in writing. If the Trustees are of the opinion that a Member has no Dependants at the time of his death and no determination and notification is made by the Trustees within such period of six months the Member's entitlement shall be transferred to the Member's Personal Legal Representative. However, if no Grant of Probate or Letters of Administration shall have been made in respect of the estate of such Members within two years from the date of his death, or such longer period as the Trustee shall determine, then the member's entitlement shall be applied by the Trustees in accordance with Clause 7.
- 7.3 On the death of a Member on or after Normal Retirement Date but prior to any other Benefit becoming payable under the Deed there shall be substituted for the amount stipulated in Rule 7.1 an amount equal to the balance of the relevant Member's Employer's Contributions and Member's Accumulation Accounts as at the date of death.

#### Retirement Benefits

8.1 On:

- (a) In the case of a Member referred to in rule 7.1(a) - the termination of that Member's Employment with the Employer on or after his Normal Retirement Date, or
- (b) In the case of a Member referred to in Rule 7.1(b) or (c) - the cessation of that Member's employment on or after his Normal Retirement Date or his ceasing to be self-employed on or after his Normal Retirement Date - the Member shall be entitled to a lump sum equal to the amount standing to the credit of his Employer's Contribution and Member's Accumulation Account.

Disablement Benefits

- 9.1 On a Member becoming totally and permanently disabled before receiving a Benefit on Retirement a Benefit shall be provided to the Member equivalent to that which would have been paid had that Member died on the day on which the Trustees determined him to be totally and permanently disabled PROVIDED THAT in determining the amount of Benefit payable the deemed proceeds of any policy or policies of life insurance shall be excluded in calculating a Member's entitlement save and except to the extent that those policies provide for the payment of a Benefit on Total and Permanent Disablement.
- 9.2 On a member becoming Temporarily Disabled a pension shall at the absolute discretion of the Trustees be payable. The said pension may be terminated at any time by the Trustees.
- 9.3 The pension payable pursuant to sub-rule 9.2 shall be such amount if any as determined by the Trustees and shall be determined having regard to the terms of any Insurance Policy which the Trustees hold relating to the said Temporary Disablement.
- 9.4 Subject to sub-rule 9.5 the pension payable pursuant to sub-rule 9.2 shall not exceed the amount calculated by applying the following formula:

$$M \times S = TAB$$

where

"M" has the same meaning that term bears in the definition of "pension reasonable benefit multiple" in Regulation 4A of the Regulations.

"S" means

- in the case of a Member who is an employee immediately prior to the Disablement, the annualised rate of salary received by that member at the time of Disablement, and
- in the case of a member who is self-employed immediately prior to the Disablement, the amount that would be that person's HAS if retirement had occurred at the date of disablement.

"TAB" means the maximum annualised Temporary Disability Benefit.

9.5 Where the Trustee is aware that an Employer has continued to pay salary to an Employee in spite of the fact that that employee is Temporarily Disabled the pension shall not exceed:

- (a) the difference between the term "S" as defined in sub-rule 5.4 and the annualised salary payable by the Employer, or
- (b) the amount produced by applying sub-rule 5.4 (whichever is the lower).

Withdrawal Benefit

10.1 Subject to the provisions of the Deed in circumstances where no other Benefit is payable to a Member or his Dependants and/or Legal Personal Representative:

- (a) In the case of a Member admitted pursuant to paragraph (a) of sub-clause 2.1 - on the cessation of his employment with the Employer, or
- (b) In the case of Members admitted pursuant to paragraphs (b) and (c) of sub-clause 2.1 - the cessation of that Member's employment or his ceasing to be self-employed then the following Benefits shall be payable.
- (c) In all cases other than those set out in paragraph (d) a Lump Sum equal to the Employer's Contribution and Member's Accumulation Accounts, or
- (d) In the case of a Member admitted pursuant to paragraph (a) of sub-clause 2.1 a Benefit payable by reference to such factors as may be stipulated by the Employer at the time of his admission under the Deed provided that no such stipulation shall result in the payment of a Benefit of an amount less than that provided for in clause 28 PROVIDED FURTHER THAT subject to clause 28 if no such stipulation is made the following shall apply:

- (i) In the case of a Member -

Who has completed not more than five years of Plan Membership, a Lump Sum payable on the cessation of employment with the Employer of an amount not less than the amount standing to the credit of his Member's Accumulation Account.

(ii) Subject to sub-rule 10.2 hereof -

In the case of a Member who has completed five years Service whilst a Member an amount as in paragraph (a) of the sub-clause plus an amount payable to the Member on reaching his Normal Retirement Date or if the Member should not survive on that date, to his Dependants in such proportions as the Trustees shall in their absolute discretion determine equal to:

(Employer's Contribution Account at time of Withdrawal) x (Service Whilst a Member - 5) x 1/35.

PROVIDED THAT the Benefit payable to a Member may be increased at the direction of the Employer to an amount not exceeding the Employer Contribution Account in relation to that member at the time of withdrawal.

10.2 In the case of a Member admitted pursuant to Rule 2.1 (a) and entitled to a Withdrawal Benefit payable at his Normal Retirement Date under Rule 10.1(d) if the Member should die before reaching his Normal Retirement Date, the Benefit payable shall equal the then current value of the Withdrawal Benefit which would have been payable on the Member reaching his Normal Retirement Date as certified by the Actuary and shall be payable as soon as possible to such of the Member's Dependants and in such proportions as the Trustees determine and PROVIDED FURTHER THAT subject to the discretion the present value of a Non-Executive Member's Withdrawal Benefit as determined by the Actuary, may be paid in lieu of the above Benefit. In the event of such a payment being made to or on behalf of a Member, the Trustees shall be released and discharged accordingly from any further liability in respect of such Member.

#### Form of Benefits

11.1 Where a specification is made pursuant to sub-clause 2.7 to apply Schedule 2 to provide a Pension Benefit references in Rule 8.1 to a Lump Sum shall be read as references to a Pension of such amount as is recommended by the Actuary having regard to the amount standing to the credit of the Employer's Contribution and Member's Accumulation Accounts the term and other features requested by the Member.



SCHEDULE 3

Subject to the Rules of this Schedule Benefits provided to Members under Schedule 3 shall be provided in circumstances identical to those set out in Schedule 2.

1. Notwithstanding any Rule to the contrary contained in this Schedule Benefits shall not be provided in a manner inconsistent with the provisions of the Industrial Award, covering the relevant member.

To the extent of any inconsistency the provisions of the Industrial Award shall be deemed to be incorporated in this Schedule and Benefit payable under this Schedule shall be made in accordance with the provisions of that Award.

2. For the purposes of applying the provisions of Schedule 2 to this Schedule a Member receiving Benefits under this Schedule shall receive Benefits identical to those which would have been received by a Member admitted pursuant to paragraph (c) of sub-clause 2.1.

REFERENCE: 12662

DATED: 29TH JUNE, 1993

BROADMOOR HOLDINGS PTY. LTD.  
SUPERANNUATION FUND NO. 1

SUPERANNUATION FUND TRUST DEED

Prepared on the instructions of  
MANAGED SUPERANNUATION SERVICES  
PTY LTD

for

BROADMOOR HOLDINGS PTY. LTD.  
ACN 010 140 717

by

Steindl Robertson McPherson  
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