

**THE  
TRUST DEED  
FOR  
OLBERTZ SUPERANNUATION  
FUND**

**DATED: 13 February 1997**

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DIVISIONS

This Deed is divided into division A and division B.

Division A shall govern the management and administration of the Fund and Division B shall govern the amount of the Benefits paid out of the Fund.

COVENANT

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

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DIVISION A - MANAGEMENT AND ADMINISTRATION

4. INTERPRETATION - DEFINITIONS

4.1 Unless the context otherwise requires the following shall have the meanings designated:

"Acceptable Percentage" means:

- (a) for an Excluded Fund - 40%; and
- (b) otherwise - 0%

"Accumulation Account" means the account established on behalf of each Member as described in Clause 9;

"Act" means the Income Tax Assessment Act, 1936, the Superannuation Industry (Supervision) Act 1993 or, where relevant, the Occupational Superannuation Standards Act 1987;

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

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

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

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

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time but does not include a person who is a Member at that time;

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

"Business Real Property" of a person means any freehold or leasehold interest in real property which issued wholly and exclusively in the person's business;

"Class" means Membership Class;

"Commissioner" means the Commissioner of Taxation or the Insurance and Superannuation Commissioner or such other regulatory body as shall have responsibility for the administration of occupational superannuation in Australia from time to time;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a complying superannuation fund pursuant to the Act;

"Constitutional Corporation" means a constitutional corporation as that expression is defined in the Superannuation Industry (Supervision) Act, 1993;

"Contributions" means payments to the Fund by Members and Employers in accordance with the provisions of this Deed;

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

"Dependant" in relation to a former Member means:

- (a) the Spouse of a former Member or the widow or widower of a deceased Member; or

(b) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; or

(c) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time;

"Director" means the directors or board of management for the time being of an Employer or, as the case requires, of the Trustee.

"Employee" means a person in the employment of an Employer and who is:-

(a) a Director of that Employer; or

(b) classified by his Employer as a permanent employee for the purposes of this Deed;

and includes any person on Special Leave;

"Employer" means the Principal Employer or any Participating Employer and in relation to an Employee or Member means the Employer of such Employee or Member;

"Excluded Fund" means the Fund if it has fewer than 5 members;

"Equalisation Account" means an account established in accordance with the provisions of clause 26.5;

"Final Average Salary" means the average Salary of the Member over his last three years of Service with the Employer;

"Fund Earning Rate" means the fund earning rate defined in clause 10.3;

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

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

"Income Account" means an account established in accordance with clause 10;

"Independent Director" means, in relation to a corporate trustee of the Fund, a Director of the Corporate Trustee who:-

(a) is not a member of the Fund;

(b) is neither an Employer of the Fund nor an associate of such Employer;

(c) is neither an Employee of an Employer of the Fund nor an Employee of an associate of such an Employer;

(d) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more Members;

(e) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer;

"Listed Security" means:

(a) a share; or

(b) a unit; or

- (c) a bond or debenture; or
- (d) a right or option; or
- (e) any other security

listed for quotation in the official list of a stock exchange in Australia.

"Member" means an Employee who has been accepted by the Trustee as a member of the Fund and has not ceased to be a Member pursuant to clause 20.4;

"Member's Contributions" means the amounts contributed under clause 44 or deemed to have been contributed by a Member under clause 22.6 (reduced, if the Trustee so determines and if acceptable to the Commissioner, by the cost of providing solely death or disablement cover effected in respect of the Member and by any applicable costs or charges incurred under clause 15.2 or 21.6);

"Membership Class" means the Class or Classes of Membership of a Member in accordance with clause 43;

"Membership Period" in relation to a Member means the continuous period expressed in years and any portion of a year that the Member has been a member of "D", "E" or "F" Class (except where his Membership Period is reduced under clause 21.2 as a result of the Member taking Special Leave) and shall include any additional Membership Period granted pursuant to the provisions of clause 20.2 together with such further additional Membership Period as the Trustee may determine. In the circumstances of retirement by a Member as a result of Total and Permanent Disablement "Membership Period" means the Membership Period the Member would have achieved if he had remained a Member until his Normal Retirement Age;

"Member's Vested Contributions" means:

- (a) Member's Contributions together with Net Earnings compounded annually on those Contributions; and
- (b) those Contributions made by an Employer on behalf of a Member which are required by the Commissioner to be vested in the member together with earnings as required by the Commissioner;

"Net Earnings" means earnings (which may be negative) allocated on a particular amount under clause 10 and the Fund Earning Rate adjusted in accordance with Clause 11, if applicable or in accordance with clause 9.4 as appropriate;

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

"Normal Retirement Age" means the age of 65 years for both males and females or such other age as is acceptable to or required by the Commissioner and as the Trustee with the consent of the Employer may determine;

"Normal Retirement Factor" means 3.75% (or such other percentage as is nominated by the Employer to the Trustee in respect of a particular Member) multiplied by the Member's Membership Period but subject to a maximum of 75% or such other maximum as is permitted by the Commissioner;

"Old Age Pension" has the same meaning as in paragraph 51(xxiii) of the Constitution of Australia;

"Participating Employer" means any employer that by agreement with the Principal Employer and the Trustee is admitted to participation in the Fund under clause 36.1;

"Pension" means a Benefit payable at a yearly rate by instalments;

"Pensioner" means a person receiving a Pension;

"Period to Retirement" means the period to the Member's Normal Retirement Date less the Member's Membership Period;

"Policy" means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member the expression shall mean the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of these risks;

"Prescribed Standards" means the standards applicable to the operation of the Fund as set out in Divisions 2.3, 2.4, 2.5, 2.6, 2.7, 4.2, 5.3, 6.2, 9.6, 9.7, 10.3, 13.1, 13.2 and Parts 7 and 11 of the Regulations;

"Preserved Payment" means a payment made to the Fund by an Employer or by transfer from another fund which is to be preserved as provided in this Deed as a result of:

- (a) it being a Productivity Payment;
- (b) its being otherwise required by the Commissioner or government legislation or regulation to be preserved; or
- (c) an agreement between the Employer and the Member with respect to the provision of superannuation benefits;

"Preserved Payment Benefit" means a Benefit arising from a Preserved Payment;

"Principal Employer" means the Principal Employer named in this Deed or any Employer carrying on business in succession to or in amalgamation with the Principal Employer which elects to assume by deed the obligations of the Principal Employer under this Deed in accordance with clause 39;

"Productivity Payment" means a payment made to the Fund or a Payment made by transfer from another fund or the reclassification of part or all of an existing Benefit of a Member by the Trustee with the consent of the Employer which payment or reclassification takes place pursuant to or as a result of:

- (a) a Superannuation Agreement that has been made or ratified by a tribunal in accordance with the Commission's superannuation principles as defined in Section 82AAS of the Act; or
- (b) an agreement that:
  - (i) is a Superannuation Agreement that has not been ratified by a tribunal; and
  - (ii) was entered into in connection with and, in the opinion of the Commissioner, is identical or nearly identical to, another Superannuation Agreement that:
    - A. has been made or ratified by a tribunal in accordance with the Commissioner's superannuation principles as defined in Section 82AAS of the Act; and
    - B. relates to persons engaged in the same industry as the industry in which the Member is engaged;

"Productivity Payment Benefit" means a Benefit arising from a Productivity Payment;

"Qualifying Eligible Termination Payment" has the meaning ascribed in Section 27A(12) of the Act;

"Regulations" means the regulations under SIS;

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

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that former Member or of his or her spouse; and
- (b) the spouse of any person specified in paragraph (a);

"Retires from his Employment" means actual retirement by a Member from employment with the Employer or retirement as defined by the Commissioner for the payment of Benefits;

"Rollover Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances acceptable to the Commissioner to or from any one or more of the following:-

- (a) an Approved Deposit Fund;
- (b) a superannuation arrangement described in clause 22;
- (c) an authorised organisation for the purchase of an Annuity;

"Salary" in relation to any Member means an amount advised by his Employer to the Trustee as the yearly rate of remuneration of that Member for the purpose of determining Benefit payments and Contributions under this Deed including director's fees and recurrent payments for shift work, commissions, allowances which are acceptable to the Commissioner, bonuses and payments of a like nature but excluding, unless the Principal Employer otherwise directs, any overtime, special grants or similar amounts;

"Secretary" means the secretary of the Fund appointed pursuant to this Deed;

"Service" means the period or periods measured in years to the nearest one-twelfth of a year during which a Member was employed by the Employer;

"SIS" means Superannuation Industry (Supervision) Act, 1993;

"Special Leave" means any period of temporary absence of a Member from his employment (other than as a normal condition of employment) with or without pay and given with the approval of his Employer, provided that the Member has not resigned nor been dismissed by the Employer;

"spouse" in the definition of "Dependant" means:

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member includes a widow or widower PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the spouse, and, if more than one person is so to be the spouse, the Trustee shall determine the proportions in which a Benefit payable to the spouse is to be divided between them;

"Superannuation Agreement" means an agreement, award, determination or order that requires the making of superannuation contributions as defined in Section 82AAS of the Act in relation to

persons engaged in a particular industry;

"Taxation" includes income tax, capital gains tax, tax on eligible termination payment, payroll tax, land tax, stamp duty and any other taxes or duties;

"Total and Permanent Disablement" means:

- (a) physical or mental incapacity of such a degree that in the opinion of the Trustee, after considering a certificate or certificates signed by two registered medical practitioners, the Member is incapable of continuing to engage in his current employment with an Employer; or
- (b) if the Trustee so determines, total and permanent disablement as defined in any Policy effected in respect of the Member; and

"Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the trustee or trustees for the time being of the Fund whether original, additional or substituted.

## 5. GENERAL PROVISIONS

### 5.1 Employers Powers not prejudiced

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

### 5.2 Exercise of Employers and Trustees Rights

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

5.2.1 where the Employer or Trustee (or both) is a Constitutional Corporation, by resolution of its directors, or by any person or persons having the written authorisation of such directors to so act on their behalf; or

5.2.2 where the Employer consists of individuals, by a majority of such individuals.

### 5.3 Work Related Claims

Nothing in this Deed shall in any way affect the right of a Member or his personal representative to claim damages or compensation under common law or under any workers compensation legislation or any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of his employment with the Employer.

### 5.4 Prescribed Standards

The Trustee must ensure that the Prescribed Standards applicable to the operation of the Fund are complied with at all times.

## 6. APPLICABLE LAW

This Deed shall be governed by and construed and take effect in accordance with the laws of the



State in which this Deed is executed. The Employer, the Trustee, the Members and Beneficiaries shall accept the jurisdiction of those laws in the adjudication of any dispute with respect to the construction of this Deed.

## 7. COMPLAINTS PROCEDURE

7.1 This clause does not apply to an Excluded Fund.

7.2 Beneficiaries under this Deed shall have the right to make enquiries into all complaints about the operation of the fund in writing and either delivered directly or sent by pre-paid mail to the Trustee at its registered office.

7.3 Within 90 days of the receipt of the enquiry or complaint, the Trustee must properly consider the matter and advise the Beneficiary of its decision. The advice shall be in writing and shall be sent by pre-paid mail to the Beneficiary at the address specified in the enquiry or complaint.

7.4 For the purposes of this clause, any written communication delivered directly shall be deemed received upon delivery and any communication sent by pre-paid mail shall be deemed to be received 2 business days after its posting.

## 8. FUND ASSETS

8.1 The gross assets of the Fund shall consist of all the cash, investments and other property at any time held by or on account of the Trustee upon the trusts set out in this Deed and established and maintained by:-

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

8.1.2 Member Contributions - such Contributions as the Members shall make to the Fund at any time;

8.1.3 Employer Contributions - such Contributions as an Employer shall make to the Fund at any time;

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

8.1.5 profits - any profits (net of losses) and other benefits arising from any investment and the accumulation of those profits and benefits;

8.1.6 policy- the proceeds of any Policy held by the Fund; and

8.1.7 Rollover Payments - monies, investments and other property transferred to the Fund as a Rollover Payment.

## 9. ACCUMULATION ACCOUNT

### 9.1 Separate Member Accounts

The Trustee shall establish an Accumulation Account in respect of each Member for each Class of which he is a member.

### 9.2 Credits

The following amounts shall be credited to the appropriate Accumulation Account of the Member

according to the class to which the amounts relate:-

- 9..2.1 any amount paid into the Fund in respect of the Member as a Rollover Payment;
- 9..2.2 any Contributions made by the Member, less any Taxation, costs or charges deducted from such Contributions made under clause 9.6;
- 9..2.3 any Contributions made in respect of the Member by an Employer, less any Taxation, costs or charges deducted from such Contributions under clause 9.6;
- 9..2.4 proceeds of any Policy or Annuity effected by the Trustee in respect of the Member;
- 9..2.5 such positive earnings as are determined by the Trustee in accordance with clause 10, 11 or 9.4;
- 9..2.6 such forfeited amounts as are allocated to but not paid directly to the Member pursuant clause 26.3 or 26.4.

### 9.3 Debits

The following amounts shall be debited the appropriate Accumulation Account of the Member according to the class to which the amounts relate:-

- 9..3.1 any amount paid out of the Fund in respect of the Member as a Rollover Payment;
- 9..3.2 any other Benefit payment made to or in respect of the Member;
- 9..3.3 the costs of any Policy or Annuity effected by the Trustee in respect of the Member;
- 9..3.4 such negative earnings as shall be determined by the Trustee in accordance with clause 10, 11 or 9.4;
- 9..3.5 such amount as is forfeited under clause 25, 26.1 or 26.2;
- 9..3.6 such proportion of any amount payable by way of Taxation in respect of Contributions to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Rollover Payment, as the Trustee may determine.

### 9.4 Specific Investment

9.4.1 The Trustee may invest separately in respect of any Member or Class of Members of the Fund or in respect of different Classes of Members as determined by the Trustee at any time.

9.4.2 The Trustee shall record on whose behalf such specific investments are made for the purposes of making up a Members Accumulation Account for each Class.

9.4.3 Where such specific investments are undertaken the income and profit (less losses) arising from that investment and any costs or charges applicable to it which are incurred under clause 15.2 or 21.6 and any Taxation which is payable or may become payable in respect of such specific investments shall not be allocated to the Income Account. That income and profits (less losses) applicable to any particular Accumulation Account shall be allocated directly to that Accumulation Account, which shall also be debited directly with the appropriate proportion of any costs or charges applicable to any investment, which are incurred under clause 15.2 or 21.6 and any Taxation which is payable or may become payable in respect of that specific investment.

### 9.5 Preserved Payment Benefits

Despite anything to the contrary in this Deed, any amount representing a Preserved Payment

Benefit may at the discretion of the Trustee or at the request of a Member be transferred at any time to a Members "G" class Accumulation Account.

#### 9.6 Taxation, Costs and Charges

Despite anything to the contrary in this Deed, any amount payable by way of Taxation in respect of a Contribution and any costs or charges incurred under clause 15.2 or 21.6, or an appropriate proportion of those costs or charges, may at the discretion of the Trustee be deducted from the appropriate Contribution or be debited directly to the appropriate Accumulation Account.

#### 10. INCOME ACCOUNT

10.1 The Trustee shall establish an Income Account for the Fund to which shall be credited, subject to clause 9.4, all income and profits of the Fund each year and credits arising out of adjustments under clause 11.1 and profits of the Fund shall include any surplus arising from a valuation made under clause 12.

10.2 The Income Account shall be debited, subject to clause 9.4, with the following:-

10.2.1 any loss sustained on the disposal of any investments of the Fund;

10.2.2 any costs or charges incurred under clause 15.2 or 21.6 which are not debited to an Accumulation Account or deducted from Contributions under clause 9.6;

10.2.3 any debits arising out of adjustments made under clause 10.2.5;

10.2.4 any deficiency arising from a valuation made under clause 12;

10.2.5 such proportion of any amount payable or which may become payable by way of Taxation in respect of the Contributions and the income and profits of the Fund as the Trustee may determine to be equitable.

10.3 Following the debiting of the Income Account under clause 10.2, at the end of each Fund Year, the Trustee shall determine at its discretion the earning rate, which may be negative, for the Fund after taking into account any adjustments under clause 10.4 and such provision or reserve for future contingencies as the Trustee may consider reasonable (referred to in this clause as the "Fund Earning Rate"). The Trustee shall, when required by the Commissioner, notify the Member of the basis of the calculation of the Fund Earning Rate. The Trustee shall then allocate to each Accumulation Account the earnings due calculated equitably in accordance with the Fund Earning Rate.

10.4 The amount distributed as the earnings of the Fund under clause 10.3 shall be allocated to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account at the beginning of the Fund Year in respect of the distribution being made, and with appropriate adjustments being made for amounts credited or debited to the Accumulation Account since that date.

10.5 Any amount remaining in the Income Account after distribution of earnings under clause 10.4 shall be transferred to the Equalisation Account established under clause 26.5.

10.6 In the event that the Trustee is required to pay out a Benefit during the course of a Fund Year and is required to establish a Fund Earning Rate in respect of a portion of a Fund Year, such Fund Earning Rate for that period shall be determined by the Trustee on a basis which it considers equitable. The Trustee shall when required by the Commission notify the Member of the basis of the calculation of such Fund Earning Rate.

#### 11. ADJUSTMENT

In determining the amount of the Member's Vested Contributions and the amount standing to credit of a Member's Accumulation Account at the time a Benefit is calculated or becomes payable, the Trustee shall make an adjustment up to the date of payment reflecting the Fund Earning Rate then applying as it shall consider equitable and the Income Account shall be debited or credited accordingly.

## 12. VALUATION

At the end of each Fund Year or at such other time as the Trustee considers appropriate, which includes the time of the payment of a Benefit to a Member, the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it considers equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

## 13. FUND RECORDS

### 13.1 Receipt and Payment of Monies

All monies of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank, building society or similar body as determined by the Trustee, or into a trust account of a solicitor, accountant or investment manager appointed under this Deed.

### 13.2 Issue of Receipts

A receipt given on behalf of the Fund by the Trustee or by the Secretary or by any other person who may be authorised by the Trustee in writing to receive any money of the Fund shall be a sufficient discharge to the person by or for whom the monies are paid.

### 13.3 Records and Accounts

The Trustee shall:-

13.3.1 keep an account of all money received for and disbursed from the Fund and of all dealings in connection with it;

13.3.2 collect and pay promptly into the bank account of the Fund all monies due to the Fund;

13.3.3 keep appropriate records and accounts in proper order and make suitable arrangements for their custody and for the custody of documents relating to the investments of the Fund as the Commissioner shall require, including but not limited to:-

- (i) reports to Members;
- (ii) minutes of meeting of Directors;
- (iii) records of changes of the Trustee, as they occur;
- (iv) written consents of directors constituting the Board of Directors of the Trustee, for a period of 10 years, and for a period of 5 years (or such other period as may be specified as any time under SIS) the following accounting records;
- (v) a statement of financial position;
- (vi) an operating statement; and
- (vii) those accounts and statements specified in clause 8.02(3) of the Regulations,

and these accounting records must be signed by at least 2 Directors of the Trustee and submitted for audit by an approved auditor under clause 1.04(2)(b) of the Regulations; and

13.3.4 prepare an annual balance sheet of the Fund as at the end of the Fund Year, together with a statement of income and expenditure for that Fund Year.

#### 13.4 Audit

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

#### 13.5 Trust Deed

A copy of this Deed shall be made available for inspection by any Member on request of that Member and it shall be sufficient for the purposes of this clause to make a copy of the Trust Deed available to the Member for inspection at a time and place specified either verbally or in writing by the Trustee.

#### 13.6 Information for Trustee

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

#### 13.7 Disclosure and Reporting Requirements

The Trustee shall provide in writing to Members and former Members of the Fund and to the Commissioner, when required, such information in relation to the conduct of the Fund and Benefits payable from the Fund as shall be required by the Commissioner at any time, and in particular shall give to the Commissioner within the period prescribed in the Regulations after each year of income:

13.7.1 a return in the form prescribed by the Regulations containing such information relating to the Fund as is required in that form in respect of that year of income;

13.7.2 a certificate by the Trustee, in prescribed form, relating to that year of income for the Fund; and

13.7.3 the certificate of the Auditor of the Fund relating to that year of income,

or such other additional or substitutional (or both) information as may be required by the Commissioner under SIS from time to time.

#### 13.8 Notify Commission

13.8.1 The Trustee must within 3 business days after becoming aware of the occurrence of an event having significant adverse effect on the financial position of the Fund, give written notice to the Commissioner setting out the particulars of the event.

13.8.2 For the purpose of this clause an event has a significant adverse effect on the financial position of the Fund if as a result of the event the Trustee may not be able at a time before the next annual report by the Trustee to the Beneficiaries, to make payments to Beneficiaries as and when the obligation to make those payments arises.

#### 14. TRUSTEE - VACANCY, APPOINTMENT, REMOVAL AND REPRESENTATION

14.1 Fund Vested in Trustee

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

14.2 Sole Purpose Test

The Trustee must ensure that the Fund is maintained solely:-

14.2.1 for one or more of the following purposes (the "core purposes"):-

- (a) the provision of Benefits for each Member of the Fund on or after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before or after the Member joined the Fund);
- (b) the provision of Benefits for each Member of the Fund on or after the Member's attainment of an age not less than the age specified in the Regulations;
- (c) the provision of Benefits for each Member of the Fund on or after whichever is the earlier of the events to occur as specified in (a) and (b) of this clause;
- (d) the provision of Benefits in respect of each Member of the Fund on or after the Member's death, if:-
  - A. the death occurred before the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged;
  - B. the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (e) the provision of Benefits in respect of each Member and/or after the Member's death, if:-
  - A. the death occurred before the Member attained the age prescribed for the purpose of clause 14.2.1(b); and
  - B. the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both; or

14.2.2 for one or more of the core purposes and for one or more of the following purposes ("the ancillary purpose" ("the ancillary purposes")):-

- (a) the provision of Benefits for each Member on or after the termination of the Member's employment with the Employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member;
- (b) the provision of Benefits for each Member on or after the Member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged and the cessation is on account of ill-health (whether physical or mental);
- (c) the provision of Benefits in respect of each Member of the Fund on or after the Member's death, if:-
  - A. the death occurred after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before or after the Member joined the Fund); and

- B. the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (d) the provision of Benefits in respect of each Member on or after the Member's death, if:-
  - A. the death occurred after the Member attained the age prescribed for the purposes of clause 14.2.1(b); and
  - B. the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (e) the provision of such other benefits as the Commissioner approves in writing.

#### 14..3 Trustee Criteria

14..3.1 The appointment, removal and composition of the Trustee of the Fund shall be governed by the criteria specified in this Deed or such other criteria rules and regulations as may be set down by the Commissioner or made under SIS at any time.

14..3.2 The Employer, where permitted under SIS, may obtain approval in writing from the Commissioner for a different basis of appointment, removal and composition of the Trustee of the Fund and in the event of that written approval being adopted by the Employer by resolution, such basis shall apply to the Fund in the place of this clause.

#### 14..4 Eligibility for Trustee

14..4.1 The Trustee shall be:

- (i) a Constitutional Corporation, the Directors of which shall consist (as to one half their number) of persons nominated by or representing the Members and (as to one half their number) persons nominated by or representing the Employer; or
- (ii) a group of individuals of which one half shall consist of individuals nominated by or representing the Members of the Fund and of which one half shall consist of individuals nominated by or representing the Employer;
- (iii) such other trustee as shall be approved by the Commissioner.

14..4.2 The composition of the Board of Directors of the Constitutional Corporation appointed as Trustee shall comply with the equal representation requirements of SIS.

14..4.3 An independent Director shall be appointed to the Board at the request of either the Employer representatives or the Member representative on the Board of Directors.

14..4.4 The independent Director shall not be entitled to any second or casting vote with respect to any decisions or resolutions of the Board of Directors of the Trustee.

14..4.5 A Trustee shall not be appointed under clause 14.4.1 (ii) unless this Deed is varied in accordance with the provisions of clause 40 to provide that the Fund shall be maintained for the sole purpose of providing Old Age Pensions.

#### 14..5 Appointment of Trustee

The Principal Employer shall, subject to the other provisions of this clause, determine which Constitutional Corporation shall act as the Trustee and that Constitutional Corporation until replaced in accordance with the terms of this Deed, shall be the Trustee.

#### 14..6 Member Directors

14..6.1 This clause does not apply in the event that the Fund is an Excluded Fund.

14..6.2 The Members of the Fund shall when necessary nominate for appointment a person or persons to represent Members as a Director or Directors on the Board of Directors of the Trustee.

14..6.3 The Trustee shall advise the Members of the need to appoint representative Directors to the Board of Directors of the Trustee and the Members shall, within 14 days in receipt of that advice, provide the Trustee with the full name of each such Member representative. The Board of Directors of the Trustee shall then meet as soon as possible and attend to the appointment of those nominated representatives as Directors of the Trustee.

14..6.4 Any person nominated and appointed under clause 14.5.2 shall hold office as Director until:

- (i) the Trustee is notified in writing by the Members that the nomination as Member representative has been withdrawn at a meeting of the Members held for that purpose; or
- (ii) any of the following occurs;
  - (a) death;
  - (b) mental or physical incapacity;
  - (c) retirement;
  - (d) termination of employment with the Employer;
  - (e) being convicted of an offence under law in force within the Commonwealth of Australia where that offence involves dishonest conduct;
  - (f) being subject to a civil penalty order under SIS or under Corporations Law;
  - (g) becoming insolvent under administration;
  - (h) the Trustee becomes a "disqualified person" as that term is defined in Section 120 of SIS;
- (i) it appears to the Commissioner that conduct has been, is being or is proposed to be engaged in by the Trustee which may result in the financial position of the Fund becoming unsatisfactory;
- (j) any approval given to the Trustee under S28 of SIS is withdrawn by the Commissioner; or
- (k) the happening of any one or more of the prescribed circumstances set out in clause 4.06 of the Regulations.

#### 14..7 Employer Directors

14..7.1 The Employer shall whenever necessary appoint a person or persons to represent the Employer as a Director or Directors on the Board of Directors of the Trustee.

14..7.2 The Trustee shall advise the Principal Employer of the need to appoint representative Directors to the Board of the Trustee and the Principal Employer shall as soon as possible provide the Trustee with the full name of each such Employer representative. The Board of Directors of the Trustee shall then meet as soon as is possible to accept the appointment of those nominated representatives as Directors of the Trustee.

14..7.3 Any person nominated and appointed under clause 14.7.2 shall, subject to clause 14.11 hold office as Director until:-

- (a) the Trustee is notified in writing by the Principal Employer that the nomination as Employer representative has been withdrawn by the Principal Employer; or
- (b) the person is disqualified from acting as a Director of a Constitutional Corporation, by reason of the operation of SIS, Corporations Law or any other law relating to the qualifi-



cation of Directors; or

- (c) the person resigns his office as Director of the Trustee by notice in writing to the Employer; or
- (d) the person dies.

#### 14..8 Appointment of Member Representatives

Upon determination by the Members of the person or persons who shall represent them or cease to represent them in accordance with clause 14.6 such decision shall be notified to the existing Trustee (if any) and the Principal Employer within seven days of the appointment or removal of the relevant person, and the Trustee shall take such steps as are necessary to appoint or remove the person to or from the relevant position.

#### 14..9 Appointment and Removal of Employer Representatives

The Employer shall determine which person or persons will represent or cease to represent the Employer in accordance with clause 14.7 and such decision shall be notified to the existing Trustee (if any) and the representatives of the Members within 7 days of the appointment or removal of the relevant person and the Trustee shall take such steps as are necessary to appoint or remove the person to or from the relevant position.

#### 14..10 Independent Director of the Trustees for Fund

14..10.1 Where an additional independent Director is required on the Board of Directors of the Trustee at the request of either the Employer representatives or the Member representatives, such additional independent Director shall be nominated by those Directors representing the Members or the Employer as the case may be and shall be appointed to the Board.

14..10.2 Where any such independent Director is appointed under clause 14.10.1, that Director shall not be entitled to a second or casting vote at any meeting of the Board of Directors of the Trustee.

14..10.3 An independent Director may be removed from office on the occurrence of any of the following:-

- (a) the Directors responsible for his appointment withdraw his mandate to act as independent Director; or
- (b) the independent Director suffers any of the following:-
  - (1) death;
  - (2) mental or physical incapacity;
  - (3) becoming a "disqualified person" as that term is defined in Section 120(1) of SIS; or
- (c) the Trustee is suspended or removed under Section 133 of SIS; or
- (d) the happening of any one or more of the prescribed circumstances set out in clause 4.07 of the Regulations."

#### 14..11 Change of Trustee

The Trustee shall cease to act as the Trustee of the Fund if the Trustee resigns from that office by notice in writing given to the Members or to the Principal Employer, or if the Trustee is disqualified from holding office by operation of SIS.

#### 14..12 Continuity of Office

Any trustee acting as the Trustee shall, on ceasing to be the Trustee, do everything necessary to vest the Fund in the new Trustee and shall deliver all records and other books to the new Trustee.

#### 14..13 Office of Trustee

14..13.1 The office of Trustee shall be filled at all times and in the event of a vacancy occurring a new Trustee shall be appointed within 60 days of the vacancy occurring.

14..13.2 If for any reason there is no Trustee of the fund at any time the Employer shall undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee.

#### 14..14 Covenants of Trustee

14..14.1 The Trustee specifically covenants as follows:-

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with the property of another for whom the person felt morally bound to provide;
- (c) to ensure that the duties and powers of the Trustee are performed and exercised in the best interests of the Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets of an Employer (or an associate of that Employer);
- (e) not to enter into any contract or do anything else that would prevent the Trustee from or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including but not limited to the following:-
  - (i) the risk involved in making, holding and releasing, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund, to formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and

- (h) to allow a Beneficiary access to any prescribed information or any prescribed documents.

14.14.2 An investment strategy will be in accordance with clause 14.14.1(f) even if it provides for a specified Beneficiary or a specified class of Beneficiaries to give directions to the Trustee, where:-

- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund;
- (b) the directions are given after the Trustee has previously given to the Beneficiary or the class of specified Beneficiaries a choice of two or more investment strategies from which the Beneficiary, or class of Beneficiaries, may choose a strategy or combination of strategies and the Beneficiary or each member of the class of Beneficiaries is given the investment objectives of each of the strategies and all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies, and the Beneficiary, or each member of the class of Beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed. The Trustee should clearly identify to the Beneficiary, or to each member of the class of Beneficiaries, when giving to him, her or them a choice of two or more investment strategies, the strategy the Trustee will adopt if no direction is given.

## 15. TRUSTEE'S POWERS OF MANAGEMENT

### 15.1 Additional Powers

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

15.1.1 to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;

15.1.2 to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;

15.1.3 to borrow money and to secure the repayment of that money with or without security which the Trustee may deem advisable in order to secure temporary finance where:-

- (i) the purpose of the borrowing is to enable the Trustee to make a payment to a Beneficiary which the Trustee is required to make by law or by this Deed and which, apart from the borrowing, the Trustee would not then be able to make; and
- (ii) the period of the borrowing does not exceed 90 days; and
- (iii) the total amount to be borrowed does not exceed ten (10) percent of the value of the assets of the Fund,

but this sub-clause will not prohibit the Trustee from borrowing money if the purpose of the borrowing is to enable the Trustee to cover the settlement of a transaction for the acquisition of any of -

- bonds, debentures, stocks, bills of exchange or other securities;
- shares in a company;
- units in a unit trust;

- futures contracts;
- forward contracts;
- interest rates swap contracts;
- currency swap contracts;
- forward exchange rate contracts;
- forward interest rate contracts;
- a right or option in respect of such a security, share, unit, contract or policy;
- any similar financial instrument;
- foreign exchange currency; and

both at the time the relevant investment decision was made it was likely that the borrowing would not be needed and the borrowing is not taken, under a written determination made by the Commissioner, to be exempt from the provisions of SIS governing this sub-clause; and the period of the borrowing does not exceed 7 days; and if the borrowing were to take place the total amount borrowed by the Trustee would not exceed 10% of the value of the assets of the Fund;

15.1.4 to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, reinsurance company or superannuation fund;

15.1.5 to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by an Employer where there exists the possibility of transfers of Employees to the Fund; and

15.1.6 to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;

15.1.7 to retain the services of and to appoint professional or other advisers in relation to the management, administration or investment of the Fund and to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund including the fees of the advisers and the remuneration of persons appointed under this Deed and to revoke any such appointment, but if the Trustee enters into an agreement with an investment manager under which money of the Fund will be placed under the control of the investment manager, the Trustee must ensure that agreement enables the Trustee to require the investment manager to provide appropriate information, upon request by the Trustee:

- (i) to inform the Trustee as to the making of and return on investments made by the investment manager; and
- (ii) to enable the Trustee to assess the capability of the investment manager to manage the investments of the Fund;

and the Trustee must request that information whenever it is necessary or reasonable to do so.

Where the Trustee entered into an agreement with an investment manager prior to December 1, 1993 and that agreement does not contain a provision which enables the Trustee to obtain the type of information referred to in this sub-clause, then the Trustee must as soon as possible seek to have the agreement amended to contain such a provision. Where the investment manager refuses to allow the amendment, the Trustee shall terminate the agreement despite any provision

to the contrary in it;

15..1.8 to indemnify or undertake to indemnify any person company government or institution in respect of any claims matters or things relating to the fund or to the rights of members, former members or beneficiaries in respect of the Fund;

15..1.9 generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed,

PROVIDED THAT in the exercise of its powers, given by law or by this clause, the Trustee shall not be subject to any direction or directions from any other person, except in the following circumstances:-

- a direction given by a court;
- a direction given by the Commissioner;
- a direction given by a Beneficiary or a group of Beneficiaries that relates to Benefits payable to that Beneficiary or to that group;
- a direction given by a Beneficiary or a group of Beneficiaries relating to an investment strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund and those directions are given in those circumstances stated in clause 4.02 of the Regulations;
- a direction given by the Employer or any associate of the Employer in those circumstances stated in clause 4.03 of the Regulations; or
- a direction given by the Superannuation Complaints Tribunal.

#### 15..2 Remuneration of Trustee and Independent Director

15..2.1 The Trustee shall not be entitled to charge professional fees incurred in respect of the provision of its services as Trustee of the Fund.

15..2.2 The independent Director shall be entitled to such remuneration as the Trustee and the Employer may agree from time to time.

#### 15.3 Indemnity of Trustee

15..3.1 The Trustee shall be indemnified out of the Fund against all liabilities incurred by it in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it under this Deed or at law and shall have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity.

15..3.2 This indemnity shall extend to any payments made to any person whom the Trustee believes in good faith to be entitled to such payment although it may be subsequently found that the person was not in fact so entitled.

15..3.3 No Trustee shall be liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on its part.

15..3.4 The indemnity given as a consequence of this clause shall not operate so as to exempt the Trustee from or indemnify the Trustee against:-

- (a) liability for breach of trust where the Trustee fails to act honestly;

- (b) liability where the Trustee recklessly fails to exercise the degree of care and diligence required or reasonably expected of the Trustee in respect of any matter affecting the Fund; or
- (c) liability for monetary penalty under a civil penalty order pursuant to SIS.

15.3.5 Nothing in this Deed shall operate so as to prohibit the Trustee from seeking advice from any person in respect of any matter relating to the performance of the Trustee's duties or the exercise of the Trustee's powers and the Trustee shall be indemnified out of the assets of the Fund in respect of the reasonable cost of obtaining such advice.

15.3.6 The indemnity given under this clause shall extend to the Directors of the Trustee on the same terms as the indemnity given to the Trustee and shall operate despite Section 241 of the Corporations Law.

#### 15.4 Confidentiality of Information

The Trustee, the Principal Employer and every other Employer shall regard as strictly confidential (so far as shall be practicable) all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed or anything relating or incidental to it.

#### 15.5 Trustee Discretion

15.5.1 The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion the exercise of which shall be final and binding PROVIDED that the Trustee shall not discriminate against any person on the grounds of that person's sex or marital status in such a manner as to infringe any law of the Commonwealth or of a State or Territory in respect of discrimination.

15.5.2 Under this Deed a discretion may be exercised by a person other than the Trustee, only if:-

- (a) the consent of the Trustee is given to the exercise of that discretion; and
- (b) the exercise of the discretion relates to contributions to be made by the Employer; or
- (c) the exercise of the discretion relates solely to a decision to terminate the Fund; or
- (d) the discretion is exercised in those circumstances set out in clause 4.04 of the Regulations.

This sub-clause does not apply to an Excluded Fund.

### 16. APPOINTMENT OF ACTUARY, AUDITOR AND SECRETARY

#### 16.1 Appointment

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

16.1.1 An Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of actuaries of which at least one member or director (as the case requires) is such a Fellow;

16.1.2 An Auditor who is both appropriately qualified and is independent according to the criteria specified by the Commissioner or the Regulations made under SIS from time to time.

#### 16.2 Secretary

In addition, the Trustee may at any time appoint a person to be the Secretary on such conditions as it determines and may appoint such other officers as it considers desirable for the proper management of the Fund.

### 16.3 Removal

The Trustee may remove from office any person appointed under this clause.

### 16.4 Employment

Any person appointed as a full-time officer under this clause may, if the Trustee so recommends and the Principal Employer agrees, be deemed, for the purposes of this Deed, to be employed by the Principal Employer.

## 17. ACTUARIAL INVESTIGATIONS

### 17.1 Report

In the event that an Actuary has been appointed the Trustee may cause the Actuary to make an actuarial investigation of the Fund and to report in writing on the results of his investigation and on the state and sufficiency of the Fund at a date not more than 3 years after the date on which this Deed is deemed to come into effect and after that time at intervals not exceeding 3 years. In undertaking this investigation the Actuary shall have regard to the present and future liabilities of the Fund and will make such recommendations as he sees fit in relation to the Fund.

### 17.2 Information to be supplied to Actuary

The Trustee and the Employer shall give the Actuary the information he may reasonably require for the purposes of his investigation.

### 17.3 Actuary's reports to Principal Employer

The Trustee shall send a copy of each report furnished by the Actuary to the Principal Employer.

### 17.4 Not bound to Act on Advice

Both the Principal Employer and the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but they shall be under no obligation to be bound by or act upon the advice so provided.

## 18. VARIATION IN BENEFITS

### 18.1 Actuary's Report

Where the report by the Actuary in accordance with clause 17 discloses that the Fund is more than or less than sufficient to provide the Benefits under this Deed or where the Trustee is of the view that the Fund is more than or less than sufficient to provide the Benefits under this Deed, the Trustee may, after obtaining the advice of the Actuary and the consent of the Principal Employer and in a manner which is in the opinion of the Trustee equitable to all persons concerned, make changes to:-

18.1.1 the Contributions payable by the Employer or by any one or more of them;

18.1.2 the Contributions payable by Members or by any section or Class of Members; or

18.1.3 the amount of the Benefits or any particular section or class of Benefits, including Benefits in the course of payment, either to Members or Beneficiaries generally or to any section or Class of Members or Beneficiaries.

## 18.2 Compulsory Superannuation

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

## 19. TRUSTEE'S POWERS OF INVESTMENT AND SALE

### 19.1 Authorised Investments

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amount authorised by this Deed shall be invested as soon as practicable by and under the control and in the name of the Trustee in any of the following investments:

19.1.1 any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;

19.1.2 any first mortgage on freehold property situated in Australia or elsewhere even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;

19.1.3 on deposit with or on loan to any bank, building society, credit co-operative or other financial institution on the normal terms and conditions of their borrowings;

19.1.4 on deposit with or on loan to any Employer or any other person or organisation with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable despite that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;

19.1.5 the purchase or acquisition in any way of shares or stock of any class or description or of any type of bond, mortgage debenture, note, option or other like security in or of any Employer, building society or company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock are fully or partly paid up and whether secured or unsecured, registered or unregistered;

19.1.6 any Policy or Annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or arising otherwise;

19.1.7 the purchase or acquisition of any real or personal property or any interest in property (despite that such property may be acquired or purchased for the profit which may be expected whether from resale or otherwise or that such property or interest in property is not producing income at the date it is acquired or purchased) and the improvement or extension of that property, provided the acquisition may be from a Member or a relative of a Member only where the asset the subject of the acquisition:-

- (i) is Business Real Property or a Listed Security of the Member or relative;
- (ii) is acquired at market value; and
- (iii) where it is a Business Real Property asset it (after acquisition) together with any other Business Real Property acquired from a Member or a relative since the commencement of SIS, would represent no more than the Acceptable Percentage of the total value of the assets of the Fund;



19..1.8 the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;

19..1.9 the discounting of loans, mortgages, contracts, hire purchase agreements or leases; or

19..1.10 any other investments which the Trustee considers appropriate and which are acceptable to the Commissioner,

PROVIDED THAT the Trustee is not authorised to make a loan or give any other financial assistance using the resources of the Fund to any Member or a relative of a Member for any reason whatever AND PROVIDED FURTHER that no investment undertaken shall be in contravention of the investment criteria, including the in-house asset rules, specified by the Commissioner or by legislation or regulation at any time, and shall at all times be on an arm's length basis.

## 19..2 Underwriting

The Trustee may underwrite or sub-underwrite the issue of any investments authorised by this Deed.

## 19..3 Power to sell and vary investments

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

## 20. MEMBERSHIP OF FUND

### 20..1 Nomination

The Employer shall nominate such persons who are defined as Employees under clause 3 as it shall in its absolute discretion determine for membership of the Fund. Such nomination shall be made to the Trustee in writing and shall be accompanied by a completed application for membership in the form of Schedule A or in such other form as the Trustee shall at any time determine.

### 20..2 Admission

20..2.1 Upon receipt of the nomination from the Employer and a completed application for membership in the appropriate form the Trustee may determine to admit the applicant to membership of the Fund.

20..2.2 The Member shall be deemed to have joined on a date determined by the Trustee or, if the Trustee makes no such determination, the date of the completed application for membership.

20..2.3 Subject to any other conditions which may be applied under this Deed, the Trustee, after obtaining the advice of the Actuary (if any) may impose conditions on an applicant's admission and his rights and duties as a Member including conditions on the classification of the Member into a Membership Class or Classes and may limit and impose conditions upon Benefits as it sees fit. The Trustee, after obtaining the advice of the Actuary (if any) and subject to the provisions of clause 43, may remove or vary at any time all or any of the conditions.

20..2.4 As soon as practicable after the admission of a person as a Member of the Fund, the Trustee shall give to the Member a written statement containing such details as the Commissioner shall require.

### 20..3 Members and Beneficiaries to provide information

20.3.1 Every Member and Beneficiary when requested by the Trustee shall furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund, and shall submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.

20.3.2 If a Member or a Beneficiary fails to comply with the provisions of this clause, the Trustee may suspend the payment of any Contributions in respect of that Member or withhold any Benefit in respect of that Member or the Beneficiary until he does comply.

20.3.3 If a Member or a Beneficiary furnishes information required under this Deed, affecting or likely to affect the Benefits payable to or in respect of the Member or Beneficiary, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may in its absolute discretion alter the Benefits to amounts that would have applied had full and accurate information been supplied.

#### 20.4 Cessation of Membership

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

20.4.1 the date upon which payment of all his Benefits is made to him;

20.4.2 the completion of a Rollover Payment by the Trustee in respect of all his Benefits;

20.4.3 90 days after his resignation dismissal or retirement from the service of the Employer;

his death;

20.4.5 the commencement of the payment to him of a Pension or the purchase for him of an Annuity;

20.4.6 the provisions of clause 26 or clause 38 operating to terminate his membership,

PROVIDED THAT where a Policy providing disablement benefits has been effected in respect of a Member he shall remain a Member for such period (if any) following resignation, dismissal or retirement as the Employer shall determine.

#### 20.5 Meetings of Members

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

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

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

20.5.3 The Trustee may at any time convene a meeting of Members by notice in writing.

20.5.4 Every notice of meeting shall:-

(a) be posted or given at least 10 days before the meeting;

(b) advise the place and time of the meeting;

(c) advise the Member that he may appoint a proxy to vote on his behalf at the meeting PROVIDED THAT he lodges the proxy with the Trustee not later than 24 hours before

the meeting;

- (d) be accompanied by a form of proxy approved by the Trustee;
- (e) set out the matters including any resolutions to be considered at the meeting.

20..5.5 Every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at his last known address and when so posted the notice shall be deemed to have been given 3 days after the date of posting.

20..5.6 The Trustee shall appoint a Chairman of the meeting and shall make such regulations concerning the conduct of the meeting or meetings as it may decide.

20..5.7 Subject to clause 20.5.6, a quorum for the meeting shall be 10 Members present in person or by proxy or 25% of the Members of the Fund whichever is the lesser PROVIDED THAT if a quorum is not present within 30 minutes of the time appointed for the meeting the Chairman of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

20..5.8 Each Member shall be entitled to one vote with the Chairman being given a casting vote in the event of an equality of votes.

## 21. CONTRIBUTIONS TO FUND

### 21..1 Members' Contributions

Unless the Principal Employer otherwise determines or the law does not so allow, the Contributions payable by a Member shall be deducted by his Employer from each Salary payment and shall be paid by the Employer to the Fund, or as directed by the Trustee, but in any event within 28 days of the end of the month in which the deductions were made, PROVIDED THAT if no such deduction is made the Member shall pay his Contributions as and when he receives each Salary payment.

### 21..2 Contributions during Special Leave

In the event of a Member taking Special Leave, the Trustee shall consult with the Employer regarding the payment of Contributions by and in respect of the Member during the Special Leave and then shall advise the Member in writing of the conditions which will apply in respect of Benefits and Contributions both during and after the period of Special Leave.

### 21..3 Employer's Contributions

The Trustee shall, subject to the approval but not the direction of the Principal Employer, determine the Contributions payable by each Employer in respect of Members of all classes on and from:

- (a) the date at which this Deed is deemed to come into effect;
- (b) the date the Member joins the Fund;
- (c) the date of any change in the Members' Class;
- (d) the date of each actuarial investigation (if any);
- (e) such other date as the Trustee may decide, and the Trustee may consult the Actuary in respect of the making of such determination and likewise the Contributions payable by an

Employer on its becoming a Participating Employer shall be so determined.

21.3.2 The Contributions payable by an Employer shall be paid to the Trustee at least once each year in such manner and at such times as shall be agreed upon between the Trustee and the particular Employer.

#### 21.4 Designation of Class Entitlement

Where an Employer makes a Contribution in respect of a Member and the Member is a member of more than one Membership Class in accordance with clause 43 the Employer shall designate in relation to which Membership Class or Classes the Contribution is being made on behalf of that Member and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts applicable to that Class or those Membership Classes.

#### 21.5 Interest on Contributions

The Trustee may require an Employer to pay interest on any of its Contributions which are in arrears or may require the Employer or Member, as appropriate, to pay interest on any Member's Contributions which are in arrears at a rate determined by the Trustee.

#### 21.6 Administration Costs

All costs, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation or winding up of the Fund, shall be borne and paid by the Trustee of the Fund and the Trustee shall indemnify the Employer in respect of any costs which are properly incurred by the Employer in connection with these expenses of the Fund PROVIDED that the Trustee is authorised to accept Contributions in respect of the costs of the conduct of the Fund from the Principal Employer.

### 22. TRANSFERS TO AND FROM OTHER FUNDS

#### 22.1 Transfers to other funds

Where a Member joins or is eligible to join any other Complying Superannuation Fund conducted as a concessional fund pursuant to the relevant sections of the Act (called the "Other Fund") and the Member requests that the whole or a part of his entitlement in the Fund be transferred to the Other Fund the Trustee, with the approval of the Employer, may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount (called the "Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Member in the Fund at the time of the request for the transfer as the Member has requested be transferred and the Trustee may at its discretion obtain the advice of the Actuary in the computation of same.

#### 22.2 Application of Transferred Amount

The Trustee may require that a former Member be entitled to such rights in the Other Fund as it shall agree with the trustee of the Other Fund are just and equitable and, in particular, may require that such portion only of the Transferred Amount as it shall determine is to be regarded in the Other Fund as being attributable to Contributions by the former Member.

#### 22.3 Benefits cease

The Benefits of a Member in respect of whom a Transferred Amount is paid under this clause shall be reduced by the amount of the Transferred Amount and the receipt of the Transferred Amount by the proper officer of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect of such amount and, except as provided in clause 22.2, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

#### 22.4 Preserved Payment Transfers

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund the Trustee shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Payment Benefit must be preserved in one or more of the following ways:

22..4.1 in the superannuation fund the Member is leaving until his retirement from Gainful Employment at or after age 55;

22..4.2 in another superannuation fund which preserves benefits until his retirement from Gainful Employment at or after age 55;

22..4.3 in an Approved Deposit Fund which is required to preserve the Benefits until his retirement from Gainful Employment at or after age 55;

22..4.4 in an Annuity under which Benefits are precluded from being paid out to the Member prior to his retirement from Gainful Employment at or after age 55 except where such Annuity is in the form of a non-commutable pension payable for life which commences at such time as is acceptable to the Commissioner,

or that it may be released or be paid to the Member in other circumstances acceptable to the Commissioner.

#### 22..5 Transfer from other Funds

22..5.1 Where a Member is or was a member of or is or was the beneficiary under any other superannuation arrangement including an Approved Deposit Fund or Annuity the Trustee may by resolution take over or acquire by transfer or otherwise from the trustee of the other superannuation arrangement or Approved Deposit Fund or Annuity the whole or any part of the assets of such superannuation arrangement with the intent of preserving the rights entitlements and interests of any of the existing members of such superannuation arrangement at the time of takeover or acquisition.

22..5.2 The Trustee shall hold those assets as part of the Fund and reflect such rights entitlements and interests in the particular Member's Accumulation Account as it shall determine and, if the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date he became a member of the original fund from which the benefit was transferred PROVIDED that where such a transfer:-

- (a) takes place from a Fund administered under former Section 23FB or former paragraph 23(ja) of the Act such assets shall be preserved in accordance with the requirements of those former sections, as appropriate; or
- (b) incorporates an amount which was paid to the Fund for the credit of the Member as a Preserved Payment the assets representing such amount shall be preserved until the retirement of the Member from Gainful Employment at or after the age of 55 years or until other circumstances acceptable to the Commissioner arise.

#### 22..6 Determination of Member Contributions

On any transfer under clause 22.5, the amount of any entitlement for an individual member of any such superannuation arrangement for the purposes of determining the Member's Contribution under clause 44.2 shall be such amount as the trustee of the superannuation arrangement from which the Member transferred certifies as having been contributed by that Member or deemed to have been contributed by that Member for the purposes of the Act or failing a certification by that trustee shall be such amount as the trustee of such superannuation arrangement

considers to be fairly attributable to the contributions of that Member to such superannuation arrangement together with accrued earnings PROVIDED that the amounts deemed to be contributions of that Member are for the purpose of determining the Member's Benefits and the remainder (if any) shall be deemed to have been contributed by the Employer of such Member in respect of him.

### 23. STATUTORY BENEFIT SCHEME

Where a scheme having government support or recognition whether in the Commonwealth of Australia or any State or Territory or any other place with which the activities of the Employer are or may for the time being be concerned (called the "Statutory Scheme") provides, or will provide, Members, their dependents or Beneficiaries with benefits which in the sole opinion of the Trustee are of a similar nature to any Benefit provided under this Deed, the Trustee, with the consent of the Principal Employer and after seeking the advice of the Actuary, may alter or vary in any way the provisions of this Deed which in the sole discretion of the Trustee corresponds to the provisions of the Statutory Scheme but subject always to clause 40.

### 24. EXCESSIVE BENEFITS

#### 24..1 Amounts Limited

Despite anything to the contrary contained in this Deed, while it remains a requirement of the Commissioner, Benefits payable to Members under this Deed shall be limited to amounts which are not excessive for the purposes of the reasonable benefits limits applied by the Commissioner after taking into account such Benefits which the Member has already received, is currently entitled to receive or may receive from an Employer or from any other superannuation arrangements (including Approved Deposit Funds and Annuities) as the Trustee considers applicable, and as the Commissioner shall require.

#### 24..2 Reduce Contributions

If at any time:

24..2.1 the Benefit payable to a Member is aggregated with applicable Benefits which the Member has already received, is currently entitled to receive or may receive from an Employer or under any other superannuation arrangement Approved Deposit Fund or Annuity is or if the amount held in the Equalisation Account is in the reasonable opinion of the Trustee likely to be excessive in amount having regard to the criteria applied by the Commissioner; or

24..2.2 the Commissioner shall advise the Trustee in writing that he is satisfied that the Benefits payable to a Member or the Benefits his dependants have a right to receive from the Fund are excessive in amount and in writing specifies the sum which will reduce the amount of the Benefit which the Member or his dependants have a right to receive from the Fund to a sum which is not excessive in amount,

the Employer and/or Member shall reduce the Contributions payable to the Trustee on behalf of that Member or his dependants by such amount as the Trustee in its absolute discretion shall determine or (in the case of a notice such as is referred to in clause 24.2.2) as the Commissioner shall specify as necessary in order to reduce the Benefit payable to or in respect of that Member either alone or if aggregated with any benefits payable under any other superannuation arrangement to an amount which is not or is not likely to be excessive in the opinion of the Commissioner and in making such reduction the Trustee may in its discretion:

- (a) require the amount of Contributions being paid in respect of a Member firstly by his Employer or secondly by the Member to be reduced to such an extent and in such manner as the Trustee in its absolute discretion shall determine; and/or
- (b) prohibit the Employer and/or Member from making any further Contributions in respect of

the Member.

#### 24.3 Payment of Excess Benefits

24.3.1 In this clause the expression "Excess Benefits" means the amount by which a Benefit or the Equalisation Account is excessive for the purposes of this clause.

24.3.2 If the Commissioner permits the payment of Excess Benefits to Members without jeopardising the complying status of the Fund, the Trustee may pay to the Member or his dependants the Excess Benefits, subject to clause 33.1.

#### 25. MONEYS OWING TO FUND OR AN EMPLOYER

Where a Member at the time ceases to be an Employee and owes any moneys to the Fund or to an Employer (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) or if the Member has committed any fraud upon an Employer or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to the Employer, the Member shall be deemed to have forfeited his right to receive a sum equivalent to the moneys owing to the Fund or the Employer (as the case may be) from that part of the Benefit payable which does not represent Member's Vested Contributions or a Preserved Payment Benefit and the Trustee shall:

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

if the moneys are owed to the Employer, retain them in the Fund or pay them to the Employer or as the Employer directs.

#### 26. FORFEITURE OF BENEFITS

##### 26.1 Conditions of Forfeiture

Any Member, former Member or after his death, any of his Dependants or his personal representatives:

26.1.1 who assigns or charges or attempts to assign or charge any Benefit;

26.1.2 whose Benefits whether by his own act, operation of law, an order of any court or otherwise (other than as a result of bankruptcy) become payable to or vested in any other person, company, government or other public authority;

26.1.3 who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs;

26.1.4 who in the opinion of the Principal Employer and the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct;

26.1.5 who is a former Member who cannot (subject to reasonable enquiries having been made) be located and whose Dependants cannot be located by the Trustee during a period of 2 years after a payment was last made to him by his Employer or by the Trustee,

shall forfeit entitlement to all his Benefits and, in the case of a Member, he shall cease to be a Member of the Fund.

##### 26.2 Accumulation Account Residue

Any Member or former Member who has been paid all Benefits which the Trustee considers should be paid to him under the provisions of this Deed, and who still has a residual amount standing to the credit of his Accumulation Account shall forfeit such amount and such amount

shall be dealt with as a forfeited Benefit.

### 26..3 Application of Certain Forfeited Benefits

The Trustee shall hold upon trust and pay or apply any Benefits which have been forfeited and which represent a Member's Vested Contributions or Productivity Payment Benefits to or for the benefit of the former Member or Beneficiary (as the case requires) or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may at any time in its absolute discretion determine PROVIDED that where the former Member remains in the employment of the Employer any payments so made shall be limited to the relief of hardship of the former Member or of his Dependants.

### 26..4 Application of Remaining Forfeited Benefits

The Trustee shall subject to clause 26.3 and to clause 25 hold upon trust and pay or apply any Benefits which have been forfeited as follows:-

26..4.1 to or for the benefit of the former Member or Beneficiary (as the case requires) or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may at any time in its absolute discretion determine PROVIDED that where the former Member remains in the employment of the Employer any payments so made shall be limited to the relief of hardship of the former Member or of his Dependants; or

26..4.2 to or for the benefit of Members and former Members of the Fund who have rights to receive Benefits from the Fund or for their Dependants on a basis that the Trustee considers reasonable having regard to all the circumstances in which Benefits may be paid in lieu of Contributions which were otherwise payable by the Employer or the Member to the Fund; or

26..4.3 to a separate account to be called the Equalisation Account established under to clause 26.5; or

26..4.4 to repay to the Employer any amounts representing Contributions and accumulated earnings on those Contributions made in respect of a Member whose rights to receive Benefits under the Fund have ceased; or

26..4.5 for any purpose approved from time to time by the Commissioner.

### 26..5 Equalisation Account

26..5.1 The Trustee shall have power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any forfeited benefits held under clause 26.4 or any amounts remaining in the Income Account under clause 10.

26..5.2 While any funds are held in the Equalisation Account they shall not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Equalisation Account shall be credited to the Equalisation Account.

26..5.3 The Equalisation Account shall be used by the Trustee to stabilise the investment earnings of the Fund and to provide for such future contingencies as the Trustee considers reasonable and accordingly the Trustee shall have the discretion to deal with the assets of the Equalisation Account in accordance with the provisions of clauses 26.4.1, 26.4.2, 26.4.4 and 26.4.5 and in the payment of Taxation and payments made from the Equalisation Account can be made by the Trustee for any of the purposes specified in clauses 26.4.1, 26.4.2, 26.4.4 and 26.4.5 and for the payment of Taxation in respect of the Contributions and the income and profits of the Fund.

### 26..6 Distribution to Employers



26.6.1 If on the winding up of the Fund there remains no person entitled to any forfeited Benefits which are held in the Equalisation Account after the Trustee has dealt with them under this clause then any residual amount shall be apportioned amongst the Employers in such proportions as shall be determined by the Trustee as being equitable.

26.6.2 If at any other time the Trustee in its discretion deems it appropriate to pay any amounts out of the Fund to the Employer or Employers, the following procedure must be observed:-

- (a) The Directors of the Trustee by resolution declare their intention to make the distribution to the Employer;
- (b) At the time the resolution of intention is passed, the Board of Directors of the Trustee complied with the equal representation requirements of SIS;
- (c) Prior to the passing of the resolution of intention, the Trustee has obtained a certificate from the Actuary stating that following payout the Fund will remain in a satisfactory financial position;
- (d) The Trustee is satisfied that the payment of the amount is reasonable having regard to the interests of the Employer and the Beneficiaries of the Fund;
- (e) Following the passing of the resolution of intention by the Directors of the Trustee, the Trustee gives 3 months written notice to all Members of the Fund:-
  - (i) stating the intention to pay the amount to the Employer;
  - (ii) stating that the Actuary had given its certificate under 26.6.2(c); and
  - (iii) setting out the particulars of any changes, if any, which will be required following payment;
- (f) Following the expiration of the 3 month notice period, the Directors of the Trustee pass a resolution authorising the payment to the Employer; and
- (g) Any other requirements as may at the time be made under the Regulations.

The Trustee may then make the payment out of the Fund to the Employer.

26.6.3 Clause 26.6.2 does not apply to any loans to or investments in the Employer or any related body corporate as approved by the Trustee.

## 27. CONVERSION OF LUMP SUM TO PENSION

### 27.1 Application to Convert

On the written application of a Member the Trustee may pay to the Member from the Fund a Pension in accordance with the provisions of clauses 53 and 54, in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member under this Deed.

### 27.2 Amount of Pension

The cost of any Pension payable under this clause shall be determined by the Trustee after obtaining the advice of the Actuary, who, unless otherwise directed by the Trustee, shall make due allowance in his calculations for the expenses of the future management of the Pension payments.

### 27.3 Trustee Decision Final

The decision of the Trustee as to whether or not any Pension shall be paid or provided shall be final and binding.

#### 27.4 Purchase of Annuity

If permitted by the Commissioner, the Trustee may pay any Pension under this clause by purchasing any Annuity of a kind permitted by the Commissioner in the name of the Member or his Dependents from such financial or other institution as the Commissioner may permit, on such terms as the Commissioner may require.

### 28. PENSION PAYMENT CONDITIONS

#### 28.1 Method of Payment

Where any Benefit under the Fund is payable in the form of a Pension, the Pension shall be payable in such manner and on such conditions as the Trustee shall determine, and shall be payable by instalments which may be equal or unequal and on such dates as the Trustee determines after consultation with the person to whom the Pension is payable on such conditions as the Trustee shall determine, and the Commissioner shall allow.

#### 28.2 Limited by Accumulation Accounts Balance

All or a part of a Pension payable to or in respect of a Member shall (except to the extent that it has been provided by the purchase of an Annuity) be payable from his Accumulation Account, and where so payable it shall be payable only to the extent that such Accumulation Account will permit. If all of the former Members or Beneficiaries to whom such Pension is payable die while there is still an amount standing to the credit of the appropriate Accumulation Account, the balance of that Accumulation Account shall be dealt with in accordance with clause 31 but where this is unacceptable to the Commissioner, the Benefits shall be dealt with in accordance with clause 26.4.

### 29. COMMUTATION OF PENSION

#### 29.1 Conditions of Commutation

On the written application of a Member or Beneficiary the Trustee shall commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to a Member, former Member or Beneficiary, as applicable, PROVIDED THAT:-

29.1.1 the commutation of the Benefit is in circumstances acceptable to the Commissioner;

29.1.2 the amount of the commuted Benefit including the value of any remaining Pension shall be subject to the provisions of clause 24;

29.1.3 any amount in excess of the amount specified in clause 24 shall be dealt with in accordance with the provisions of that clause or as otherwise required by the Commissioner; and

29.1.4 where any amount remains in the Fund after all Members' entitlements have been paid out the amount so remaining shall be dealt with in accordance with clause 26.4 as a forfeited Benefit,

PROVIDED FURTHER that in the opinion of the Trustee the commutation would not be to the disadvantage of the Fund, the Employer, Members or Beneficiaries.

#### 29.2 Actuary to Determine Benefit

29.2.1 The Trustee after obtaining the advice of the Actuary shall determine the amount of the lump sum payable in respect of the Pension being commuted.

29.2.2 The Trustee may instruct the Actuary in furnishing his advice to regard the state of health of the person receiving or to receive the Pension being partially or wholly commuted as being unaffected by any significant impairment and to make such other assumptions as it determines in its absolute discretion and it may act upon the advice so obtained.

### 30. TRANSFER IN SPECIE

#### 30.1 Transfer of Policy

Where a Member and/or his Dependants are entitled to be paid or the Trustee in its discretion hereunder determines to pay to him or them the whole or any part of the Member's Vested Contributions and the same includes any interest in a Policy of any kind on the life of the Member the Trustee may in its absolute discretion and in lieu of surrendering such Policy assign it to such Member or to his Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of the Policy as at the date of assignment shall be debited as a payment to the Member in the assessment of his entitlement as reflected by the Member's Accumulation Account, and neither the Trustee nor the Employer shall be liable to pay any premiums becoming due and owing under the Policy as from the date of such assignment.

#### 30.2 Transfer of Investments

The Trustee may with the consent of a 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 PROVIDED that the Trustee is satisfied that such transfer will not cause the Fund to fail to satisfy the requirements of a Complying Superannuation Fund.

#### 30.3 No Beneficial Interest

Despite any other provision of this Deed, no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to this Deed.

### 31. PAYMENT OF BENEFITS ON DEATH

#### 31.1 Benefit payable on the death of a Member leaving Dependants

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

#### 31.2 Benefit payable on the death of a Member leaving no Dependants

Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependants, the Trustee shall pay the Benefit to his legal personal representative, or if there is no legal personal representative, pay or apply the Benefit to or for the benefit of such Relatives of the former Member as appear to the Trustee to be entitled to share in his estate, provided that if there be no such Relatives, the Benefit shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with clause 26.4.

### 32. PAYMENT TO OTHERS ON BEHALF OF BENEFICIARIES

32..1 When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary.

32..2 The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

### 33. TAX ON BENEFITS PAYABLE AND ON CONTRIBUTIONS

#### 33..1 Tax on Benefits

33..1.1 The Trustee, or with the agreement of the Trustees, an insurance company or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary under this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it and shall pay the Taxation to the relevant authorities within the required time for payment.

33..1.2 The Member or Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation PROVIDED that if as a result of a Member electing to make a Qualifying Eligible Termination Payment a refund of Taxation paid by the Trustee is paid to the Trustee by the Australian Taxation Office, the Trustee shall pay the full amount of such refund to the payee of the Qualifying Eligible Termination Payment.

#### 33..2 Tax on Contributions

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

### 34. PAYMENT OF BENEFITS

#### 34.1 Address for Benefits

34..1.1 Benefits are payable at the principal office for the time being of the Principal Employer in the State, Territory or Country in which the Member ceased to be a Member or otherwise as may be determined by the Trustee.

34..1.2 The Trustee may forward Benefits to the postal address or bank account of the Beneficiary last notified or to such other place as the Trustee shall determine.

#### 34..2 Notification of Address

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

34..2.1 his place of residence and its full postal address; and

34..2.2 the bank account (if any) to which he requests that the Benefit be paid.

#### 34..3 Receipt for Benefits

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt

and release in the form required by the Trustee.

#### 34.4 Unclaimed Moneys

34.4.1 Should the Trustee, after due enquiry, be unable to locate a person entitled to a Benefit under the Fund, the amount of that Benefit as determined by the Trustee shall be deemed unclaimed moneys.

34.4.2 Within 28 days of the end of each half year period, the Trustee shall prepare and give to the Commissioner a statement of all unclaimed moneys in the Fund (in a form approved by the Commissioner) as at the date of that half year period.

34.4.3 The Trustee shall pay to the Commissioner all unclaimed moneys in the Fund as shown on the statement at the time the statement is given.

34.4.4 Where the Trustee follows the procedure detailed in this clause, the Trustee shall be discharged from all liability relating to the unclaimed moneys remitted as required.

#### 35. ROLLOVER PAYMENTS

35.1 Where a Member or former Member wishes to effect a Rollover Payment in respect of all or any of his entitlement in the Fund he shall make a request to the Trustee in writing nominating the institution to which the payment is to be made, and the amount to be applied as the Rollover Payment. The Member or former Member shall additionally complete and execute a Rollover Payment notification or such other documents as shall be required to enable the Rollover Payment to be effected and for it to be recorded by the Commissioner PROVIDED that in circumstances acceptable to the Commissioner the Trustee may effect a Rollover Payment without the consent of the Member or former Member.

35.2 Where:

- (a) the Trustee determines that a Benefit (other than a Pension) is immediately payable to or on behalf of a Member; and
- (b) a period of 90 days has elapsed since the Benefit became payable; and
- (c) the Benefit has not been paid,

the Trustee may pay the Benefit to a rollover fund which has been declared by the Commissioner to be an eligible rollover fund.

35.3 Where:-

- (a) sub-clauses (a), (b) and (c) of clause 35.2 apply; and
- (b) the Trustee is satisfied that at least 2 consecutive prescribed reports to Members have not been received by the Member,

the Trustee must pay the Benefit to an eligible rollover fund.

35.4 (a) When a Member becomes a member of the Fund, the Trustee shall provide a written notice setting out the circumstances in which a Benefit may be paid to an eligible rollover fund pursuant to clauses 35.2 and 35.3; and

- (b) At least once in each year, the Trustee shall give such written notice to all Members.

#### 36. PARTICIPATING EMPLOYERS

36..1 In the event that any company, person or group of persons trading in partnership:-

36..2 makes application to the Trustee to be admitted to make Contributions to the Fund as a Participating Employer; and

36..3 the Principal Employer and the Trustee consent to the admission of the Participating Employer,

then such company, person or group of persons shall become a Participating Employer subject to the terms, conditions and provisions of this Deed and shall:-

- (a) execute this Deed in the space provided in Schedule B; or
- (b) execute a deed on terms acceptable to the Trustee,

and the Trustee shall enter details of the Participating Employer in Schedule B which shall be conclusive evidence of the due admission of the Participating Employer to the Fund.

### 37. TERMINATION OF EMPLOYER'S CONTRIBUTION

#### 37..1 Termination of Employer's Contribution

An Employer's Contributions shall terminate and the Employer shall cease to be an Employer for the purposes of the Fund on the date that:

37..1.1 a deed of appointment placing the Employer in receivership is executed by the appointor of the receiver;

37..1.2 a resolution of the Members or an order of a Court places the Employer in liquidation;

37..1.3 the Employer voluntarily terminates its Contributions by notice in writing to the Trustee; or

37..1.4 the Employer fails to make a Contribution to the Fund for a period of 24 consecutive months and the Trustee considers the Employer to have terminated its Contributions to the Fund.

#### 37..2 Exercise of Powers of the Principal Employer

If the Principal Employer terminates its Contributions under clause 37.1, the powers and discretions vested in the Principal Employer under this Deed shall terminate and shall be exercisable by such of the Participating Employers as the Trustee shall determine or, in the absence of any such determination, by the Trustee.

#### 37..3 Transfer of Participating Employer's Business

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

#### 37..4 Member's Contributions terminated

No contributions shall be made by a Member where the Employer has terminated its Contributions in respect of that Member under clause 37.1.

#### 37..5 Employees not to be admitted

No Employees of an Employer shall be admitted as Members where the Employer's Contributions in respect of its Members have been terminated.

37..6 Transfer to another Fund

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

38. PROVISION FOR MEMBERS FOLLOWING TERMINATION OF CONTRIBUTIONS

38..1 Cessation of Membership

38..1.1 Subject to clauses 37 and 39, the Members employed as at the date referred to in clause 37.1 by an Employer to which that clause applies shall cease to be Members as at that date and the Trustee shall hold in the Fund in respect of each such Member (called the "Ex-Member") the amount standing to the credit of that Member's Accumulation Account (called the "Appropriated Benefit") subject to clause 24.1.

38..1.2 For this purpose, the Trustee may make a valuation of all or such of the assets of the Fund as it may decide and may obtain the advice of the Actuary regarding the determination of the appropriate amount.

38..2 Provision for Ex-Member

The Trustee shall deal with the Ex-Member's Appropriated Benefit in any of the following ways as may be decided by the Trustee in its absolute discretion, but subject to the conditions applying to transfers in clause 22:

38..2.1 where an Ex-Member is a member of any other superannuation arrangement, and so requests, by transfer of all or part of the Appropriated Benefit to the trustee of that arrangement;

38..2.2 by applying all or part of the Appropriated Benefit to provide benefits in respect of the Ex-Member which, in the opinion of the Trustee, are of a similar type to those provided by this Deed in respect of him;

38..2.3 By paying the Appropriated Benefit or the balance of the Appropriate Benefit to the Ex-Member on his ceasing to be an Employee or to the persons referred to in clause 31, on his death.

38..3 No further claims against the Fund

An Ex-Member in respect of whom an Appropriated Benefit has been determined under clause 38.1 shall have no right to resort to or claim against the Fund otherwise than in respect of his Appropriated Benefit.

38.4 Disposal of Residual Assets

If there remains no person entitled to a payment of an Appropriated Benefit from the Fund, any residual assets then remaining shall be dealt with under clause 26.6.

38..5 Transfer to another Fund

Where a Participating Employer terminates its Contributions to this Fund and commences to make Contributions to another fund or funds to which a concessional rate of income tax applies pursuant to the Act, in relation to such of its Employees who are or were Members at the date of such termination, Contributions shall be deemed not to have terminated.

39. RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER

39..1 If an Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another Employer, or if it disposes of all or any of its undertaking, the Trustee may:-

39..1.1 enter into a deed of adoption with its successors as an Employer with the object of carrying on the Fund under this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or

39..1.2 transfer some or all of the assets of the Fund representing the assets applicable to Members who were Employees of the former Employer to a Complying Superannuation Fund conducted by a new Employer in accordance with and subject to clause 22 in respect of some or all Members or former Members; or

39..1.3 continue to operate the Fund for the benefit of any Members still employed by the former Employer; or

39..1.4 deal with the Fund in accordance with clause 38.

#### 40. VARIATION OF TRUST DEED

The provisions of this Deed may be added to, amended, altered, modified or varied (called "Variation") by the Trustee with the consent of the Principal Employer on the following basis:-

##### 40..1 Resolution or Deed

The Variation shall be:

40..1.1 by oral declaration or written resolution of the Trustee and the Principal Employer, and a certified copy of minutes of a meeting of the Trustee and of the Principal Employer confirming any such oral declaration or a certified copy of any such written resolution shall be furnished to the Commissioner if required by the Commissioner; or

40..1.2 by deed executed by the Trustee and the Principal Employer and a copy of such deed shall be forwarded to the Commissioner if required by the Commissioner.

##### 40..2 Notice

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

##### 40..3 Limitation on Variation

No Variation shall have the effect of:-

40..3.1 reducing or adversely affecting the rights of any Member in relation to an accrued Benefit or the amount of any accrued Benefit payable to any Member or Beneficiary in the Fund without either the written consent of those members of the Fund who are required to consent by the Commissioner or the written approval of the Commissioner; or

40..3.2 subject to clause 40.3.3, effecting a change of the Trustee unless any new trustee is a Constitutional Corporation; or

40..3.3 allowing individuals to be appointed as Trustee unless this Deed is simultaneously amended to provide that the Fund shall be maintained for the sole purpose of providing Old Age Pensions.



40.4 Additional Limitation on Variation

In addition to the provisions of clause 40.3 this Deed shall not be added to, amended, altered, modified or varied unless:-

40.4.1 the Trustee has consented to the Variation; or

40.4.2 the Variation relates to the contributions that an Employer will, after the Variation, be required or permitted to pay to the Fund; or

40.4.3 the Variation relates solely to the termination of the Fund; or

40.4.4 the circumstances in which the Variation is made as set out in clause 4.05 of the Regulations; or

40.4.5 the Variation is made solely for the purpose of conferring on the Trustee the power to consent to any Variation.

41. TERMS IMPLIED BY ACT

Such of the provisions of the Act or the Regulations (or of any statute, regulation or enactment from time to time) as are required to be included in the trust deeds or rules of superannuation funds in order for them to be concessionally taxed as complying funds are deemed to be included in this deed but only so far as they do not conflict with any express provision of this Deed and unless the Trustee by resolution elects that any provision otherwise deemed to be included shall not be so included.

DIVISION B

MEMBERS' CONTRIBUTIONS AND BENEFITS

42. APPLICATION OF DIVISION

The Benefits available under Division B shall, subject to the provisions of clause 24, apply to Employees who have been nominated to join the Fund by an Employer and who have made application as may be required to the Trustee and who have been admitted as Members of the Fund by the Trustee.

43. MEMBERSHIP CLASSIFICATION

43.1 Classes of Membership

Despite anything to the contrary contained in this Deed there shall be seven classes of membership of the Fund which shall be designated:

- "A" Membership Class
- "B" Membership Class
- "C" Membership Class
- "D" Membership Class
- "E" Membership Class
- "F" Membership Class
- "G" Membership Class

43.2 Original Class

All Members upon joining the Fund shall become "A" Class Members (the "Original Class") unless otherwise nominated by the Employer when a nomination for Membership is made under clause 20.1 and shall remain members of the Original Class unless and until the Trustee makes a written nomination for a Member to become a member of an additional or alternative Class and the Trustee obtains a written consent from the Employer to the nomination of the Member to an additional or alternative Class when the Member shall become a member of the Class into which he is nominated PROVIDED that the Member shall also remain a member of the Original Class unless the Trustee nominates otherwise.

43.3 Reclassification

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

43.4 Transfer of Accumulation Account

Upon the reclassification of a Member as a member of another Class the Trustee may with the consent of the Employer transfer all or any of the Member's other Accumulation Accounts to the new Membership Class subject to the proviso in clause 43.3.

43.5 Designation of Class

If a Member is reclassified to another Membership Class and that Member remains a member of more than one Class then at the time at which any Contribution to the Fund is made by the Employer it shall designate the class to which the Contribution is attributable in accordance with

clause 21.4 and in the event that the Employer makes no such designation the Trustee at its discretion shall make such designation PROVIDED that any Productivity Payment is to be automatically designated a Contribution attributable to the "G" Membership Class.

43.6 Nomination at discretion of Trustee and Employer

The Trustee and the Employer shall have absolute and unfettered discretion as to the making of a nomination and the granting of a consent to a Member to become a Member of a different Class or more than one Class, and neither the Trustee nor the Employer shall be required to give any reasons for any such decision.

44. CONTRIBUTIONS PAYABLE BY MEMBERS

44.1 Rate of Contributions

All Members may make Contributions up to such amount as may be advised by the Trustee to the Members from time to time. Contributions shall normally cease from a Member at the Normal Retirement Age.

44.2 Take Over Amounts

Member's Contributions for the purposes of this clause shall include any amounts taken over from other superannuation arrangements which are so designated under clause 22.6.

45. BENEFITS PAYABLE ON RETIREMENT

45.1 Lump Sum Classes

Where an "A" Class Member or a "B" Class Member or a "C" Class Member retires from his employment at or after the Normal Retirement Age such Member shall be entitled to be paid a lump sum Benefit equal to the amounts standing to the credit of his Accumulation Account or Accounts applicable to the relevant Class or Classes as at the date of his retirement.

45.2 Pension Classes

Where a "D" Class Member or an "E" Class Member or an "F" Class Member retires from his employment at or after the Normal Retirement Age the Trustee shall pay a Pension to such Member which shall, subject to clause 53, be for an annual amount determined by multiplying the Member's Normal Retirement Factor by the Member's Final Average Salary.

45.3 "G" Class Membership

Where a "G" Class Member retires from his employment at or after the Normal Retirement Age such Member shall be paid a lump sum Benefit equal to the full amount standing to the credit of his "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to retirement to take a Pension in which case his "G" Class Benefit will be paid in accordance with clause 28.

46. DISABLEMENT

46.1 Total and Permanent Disablement

In the event that a Member of any Class while he is employed by the Employer (and has not been dismissed or resigned from such employment) shall become in the opinion of the Trustee Totally and Permanently Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee:

46.1.1 in respect of a Member's "A" Class Accumulation Account a lump sum Benefit equal to

the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "A" Class Accumulation Account;
- (b) the proceeds of any Policy effected in relation to his "A" Class Accumulation Account and which are received as a result of the Total and Permanent Disablement of the Member; and
- (c) such further portion of the balance of the Member's "A" Class Accumulation Account as the Trustee shall determine.

46..1.2 in respect of a Member's "B" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "B" Class Accumulation Account;
- (b) an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of payment (not including the proceeds of any Policy received as a result of the Total and Permanent Disablement of the Member) such percentage being determined by the length of time such Member has been a Member of the Fund. The percentage of the balance of the Member's "B" Class Accumulation Account to be paid to the Member is as set out in the second column of Schedule C of this Deed opposite the number of years specified in the first column of Schedule C as the number of years for which the Member has been a Member of the Fund as at the date of his Total and Permanent Disablement;
- (c) the proceeds of any Policy effected in relation to his "B" Class Accumulation Account and which are received as a result of the Total and Permanent Disablement of the Member; and
- (d) such further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee shall determine.

46..1.3 for a "C" Class Member, the full amount standing to the credit of the Member's "C" Class Accumulation Account as at the date of his payment.

46..1.4 for a "D" Class, "E" Class or "F" Class Member of the Fund a Pension which shall, subject to clause 53, be for an annual amount determined by the Trustee and for the purposes of clause 53 the entitlement of the Member shall be the total of the following:-

- (a) In respect of the Member's "D" Class Accumulation Account
  - (i) the Member's Vested Contributions in relation to his "D" Class Accumulation Account;
  - (ii) the proceeds of any Policy effected in relation to his "D" Class Accumulation Account which are received as a result of the Total and Permanent Disablement of the Member; and
  - (iii) such further portion of the balance of the Member's "D" Class Accumulation Account as Trustee shall determine.
- (b) In respect of the Member's "E" Class Accumulation Account
  - (i) the Member's Vested Contributions in relation to his "E" Class Accumulation Account;
  - (ii) an amount equivalent to a percentage of the balance of the Member's "E" Class Accumulation Account as at the date of his payment (not including the proceeds of any Policy received as a result of the Total and Permanent Disablement of the Member) such percentage being determined by the length of time such Member has been a Member of

the Fund. The percentage of the balance of the Member's "E" Class Accumulation Account to be taken into account for the value of the Pension payable to the Member is as set out in the second column of Schedule C opposite the number of years specified in the first column of Schedule C as the number of years for which the Member has been a Member of the Fund as at the date of his Total and Permanent Disablement;

- (iii) the proceeds of any Policy effected in relation to his "E" Class Accumulation Account which are received as a result of the Total and Permanent Disablement of the Member; and
  - (iv) such further portion of the balance of the Member's "E" Class Accumulation Account as the Trustee shall determine.
- (c) In respect of the Members "F" Class Accumulation Account the full amount standing to the credit of the Member's "F" Class Accumulation Account as at the date of his payment.

46..1.5 for a "G" Class Member a lump sum Benefit equal to the full amount standing to the credit of his "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to retirement as a result of Total and Permanent Disablement to take a Pension in which case his Benefit will be paid in accordance with clause 28.

#### 46..2 Temporary Total Disablement

In the event that a Member of any Class while he is employed by the Employer (and has not been dismissed or resigned from such employment) shall become in the opinion of the Trustee totally disabled as defined in this clause and a Policy has been effected by the Trustee in respect of the Member or Members which covers such total disablement then the following provisions of this clause shall apply:-

46..2.1 A Member will be recognised as having become totally disabled (but not Totally and Permanently Disabled) if:-

- (a) he is disabled as a result of illness, accident or injury which commences at or prior to his attaining the age of 65 years or his Normal Retirement Age (whichever is the earlier); and
- (b) as a result of the illness, accident or injury the Member has been continuously absent from his employment with the Employer for the eligibility period contained in any Policy effected in respect of the Member; and
- (c) the Trustee after consultation with the Insurance Company is satisfied that the Member is disabled within the meaning of the definition of temporary total disablement agreed upon by the Trustee and the Insurance Company; and
- (d) the Trustee expects the Member's disablement to be temporary.

46..2.2 The Member shall be paid (to the extent acceptable to the Commissioner) an income Benefit of an amount equal to the amount payable as a result of the Member's total disablement under the Policy arranged between the Trustee and the insurance company and advised to the Member at the time the Employee became a Member or at the time the Policy was effected in the manner specified in the Policy.

46..2.3 Payment of Contributions to the Fund by the Member (if any) may be suspended during such time as any income Benefit is payable.

46..2.4 The Member will continue to be a Member of the Fund during the period he is totally disabled and for the eligibility period of absence caused by his total disablement and the aggregate of the said periods will for the purpose of the Fund be deemed to be included in the Member's years as a Member of the Fund and in the Member's Membership Period.

46.2.5 The income Benefit under this clause will cease to be payable in accordance with the conditions applicable to the Policy.

47. LEAVING SERVICE

47.1 In the event of a Member of any Class ceasing to be employed by the Employer prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Trustee shall, subject to clauses 37 and 39, pay to the Member the following amounts:-

47.1.1 in respect of a Member's "A" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "A" Class Accumulation Account; and
- (b) such further portion of the balance of the Member's "A" Class Accumulation Account as the Trustee shall determine.

47.1.2 in respect of a Member's "B" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "B" Class Accumulation Account;
- (b) an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of his payment such percentage being determined by the length of time such Member has been a Member of the Fund. The percentage of the balance of the Member's "B" Class Accumulation Account to be paid to the Member is as set out in the second column of Schedule C of this Deed opposite the number of years specified in the first column of Schedule C as the number of years for which the Member has been a Member of the Fund as at the date of his ceasing to be employed by the Employer; and
- (c) such further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee shall determine.

47.1.3 for a "C" Class Member the full amount standing to the credit of the Member's "C" Class Accumulation Account as at the date of his payment.

47.1.4 for a "D" Class, "E" Class or "F" Class Member of the Fund a Pension which shall, subject to clause 53, be for an annual amount determined by the Trustee and for the purposes of clause 53 the entitlement of the Member shall be the total of the following:-

- (a) In respect of the Member's "D" Class Accumulation Account
  - (i) the Member's Vested Contributions in relation to his "D" Class Accumulation Account; and
  - (ii) such further portion of the balance of the Member's "D" Class Accumulation Account as Trustee shall determine.
- (b) In respect of the Member's "E" Class Accumulation Account
  - (i) the Member's Vested Contributions in relation to his "E" Class Accumulation Account;
  - (ii) subject to Clause 53 an amount equivalent to a percentage of the balance of the Member's "E" Class Accumulation Account as at the date of his payment such percentage being determined by the length of time such Member has been a Member of the Fund. The percentage of the balance of the Member's "E" Class Accumulation Account to be

taken into account for the value of the Pension payable to the Member is as set out in the second column of Schedule C opposite the number of years specified in the first column of Schedule C as the number of years for which the Member has been a Member of the Fund as at the date of his ceasing to be employed by the Employer; and

(ii) such further portion of the balance of the Member's "E" Class Accumulation Account as the Trustee shall determine.

(c) In respect of the Members "F" Class Accumulation Account the full amount standing to the credit of the Member's "F" Class Accumulation Account as at the date of his payment;

47..1.5 for a "G" Class Member a lump sum Benefit equal to the full amount standing to the credit of his "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to cessation of employment to take a Pension Benefit in which case his Benefit will be paid in accordance with clause 28.

#### 48. PRESERVED PAYMENT BENEFITS

##### 48..1 Payment Limitation

Despite anything to the contrary in clauses 26, 38, 45, 46 and 47, no Preserved Payment Benefit shall be paid to a Member or his Dependants until retirement of the Member from Gainful Employment at or after age 55, his earlier death or in other circumstances and in a form acceptable to the Commissioner.

##### 48..2 Preservation of Benefit

Any Preserved Payment Benefits held by the Trustee which are unable to be paid out to the Member may, at the discretion of the Trustee, either be dealt with in accordance with clause 22.4 or be retained in the Fund subject to the provisions of clause 48.1 and clause 56.

#### 49. PAYMENT ON DEATH

49..1 On the death of a Member of any Class while he is still a Member prior to the Normal Retirement Age the Trustee shall, subject to clause 24, pay in accordance with the provisions of clause 31 the following amounts:-

49..1.1 in respect of a Member's "A" and "D" Class Accumulation Accounts a lump sum Benefit equal to the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "A" and "D" Class Accumulation Accounts;
- (b) the proceeds of any Policy effected in relation to his "A" and "D" Class Accumulation Accounts and which are received as a result of the death of the Member; and
- (c) such further portion of the balance of the Member's "A" Class or "D" Class Accumulation Account as the Trustee shall determine.

49..1.2 in respect of a Member's "B" Class and "E" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (a) the Member's Vested Contributions in relation to his "B" Class and "E" Class Accumulation Account;
- (b) an amount equal to a percentage of the balance of the Member's "B" Class and "E" Class Accumulation Account as at the date of payment (not including the proceeds of any Policy received as a result of the death of the Member) such percentage being determined by the length of time such Member has been a Member of the fund. The percent-

age of the balance of the Member's "B" Class and "E" Class Accumulation Account to be paid to the Member is as set out in the second column of Schedule C of this Deed opposite the number of years specified in the second column of Schedule C of the Deed opposite the number of years specified in the first column of Schedule C as the years for which the Member has been a Member of the Fund as at the date of his death;

- (c) the proceeds of any Policy effected in relation to his "B" Class and "E" Class Accumulation Account and which are received as a result of the death of the Member; and
- (d) such further portion of the balance of the Member's "B" Class or "E" Class Accumulation Account as the Trustee shall determine.

for a "C" Class Member or an "F" Class Member or a "G" Class Member of the Fund a lump sum Benefit equal to the full amounts standing to the credit of the Member's "C" Class, "F" Class and "G" Class Accumulation Account as at the date of payment.

#### 50. COMMUTATION OF PENSION BENEFITS ON DEATH

50.1 On the death of a former Member of any Class or a Beneficiary who is at the time of his death still in receipt of a Pension the Trustee may subject to its acceptability to the Commissioner pay to the Dependants of the former Member or to the estate of the Member in such proportions as it shall in its absolute discretion determine the balance of the Member's Accumulation Account which has not been paid out by way of a Pension during his lifetime.

#### 51. ASSURANCE

##### 51.1 Power to effect Policy

In addition to any other power in this Deed to effect a Policy the Trustee may insure or acquire life cover on the lives of any Member or Members for the provision of Benefits to be payable to the Trustee on the death or disablement of the relevant Member or Members (and the term "Policy" shall include a Policy for or including such life cover). In the event of such death or disablement the Trustee shall credit the Accumulation Account of the Member or former Member with the full amount of the proceeds received under the Policy.

##### 51.2 Endowment or Whole of Life Policy

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life policy, "Member's Vested Contributions" shall mean in relation to those Contributions and any Net Earnings which would but for this clause be applicable to those contributions, the surrender value of such endowment or whole of life policy.

#### 52. INCREASES TO BENEFITS

52.1 In circumstances where a Member ceases to be employed by an Employer otherwise than in accordance with clause 47 the Trustee shall take into account the Member's interest in the Equalisation Account (if any) and shall take the advice of the Actuary in determining whether any amount should be transferred from the Equalisation Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

#### 53. AMOUNTS OF INSTALMENTS OF PENSION

##### 53.1 Total of Member Accumulation Account

Despite anything to the contrary in this Division where the Benefit payable in respect of a Member is payable in the form of a Pension, or where the Trustee purchases an Annuity on behalf of a Member, the instalments of such Pension or the purchase price of such Annuity shall, subject to clauses 24 and 52, be equal to such amount as the Trustee considers appropriate



taking into account the amount standing to the credit of such Member's Accumulation Account (or the amount represented by the proportion of such Accumulation Account to which the Member is entitled, if less), and subject to the minimum and maximum income limits specified in the Act.

53..2 Pension Increase

Any Pension payable under clauses 45, 46 and 47 shall if required by the Commissioner be increased in the course of payment by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED THAT the amount of such increase expressed as a percentage shall not exceed for the corresponding period the percentage increase in the Consumer Price Index (All Groups) weighted average of eight capital cities (as published by the Australian Bureau of Statistics), or in the event that the Consumer Price Index (All Groups) weighted average of eight capital cities ceases to be published, such other measure of cost of living increases as the Trustee, after seeking the advice of the Actuary, considers appropriate.

54. DEPENDANT PENSION ON DEATH OF PENSIONER

On the death of a former Member of any Class who is at the time of his death still in receipt of a Pension the Trustee may unless specifically requested to the contrary by the spouse of the former Member pay a Pension not exceeding 85% of the Pension being paid to the former Member as at the date of his death or such other amount as shall be acceptable to the Commissioner.

55. PERSONS TO WHOM BENEFITS ARE PAYABLE

55..1 Subject to the provisions of this Deed, the Trustee shall pay the Benefits as follows:-

55..1.1 where the Benefit or balance of the Benefit is payable following the death of the Member or former Member the payment shall, subject to clause 55.1.4 be made in accordance clause 31;

55..1.2 where the Benefit or balance of the Benefit is payable as a Rollover Payment it shall be made in accordance with this Deed to the trustee of the other fund or arrangement;

55.1.3 where the Benefit or balance of the Benefit is payable following the disablement of a Member the payment shall be made to the Member or alternatively, in the event of the death of the Member, to the Dependants of the Member, but in any event no such payment shall be made until such time as the Member leaves the service of the Employer other than a payment under clause 46.2;

55..1.4 where the Benefit or balance of the Benefit is payable as a reversionary Pension it shall be paid in accordance with clause 54;

55..1.5 in all other cases the Benefit shall be paid to the Member.

56. RETENTION OF BENEFIT IN FUND

At the request of a Member or Beneficiary the Trustee may at its absolute discretion retain all or part of any Benefit payable under this Division in the Fund until:

56..1 the former Member or Beneficiary entitled requests that it be paid to him;

56..2 the Member dies, in which event it will be paid in accordance with clause 55.1.1;

56..3 the attainment by the Member of the age of 65 years or his Normal Retirement Age whichever is earlier; or

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

whichever shall first occur, and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account or Accounts as at the date of payment.

**SCHEDULE A**

**APPLICATION FOR MEMBERSHIP**

Confidential

TO: The Trustee  
[Name of Superannuation Fund]

I, being eligible, apply for admission to membership of the Fund.

I agreed and undertake as follows:-

- (a) I will be bound by the trust deed governing the Fund as it is or may be varied at any time;
- (b) I will make a full disclosure in writing of any benefits I have received, may receive or may be entitled to receive from any other superannuation fund, approved deposit fund or rollover annuity.
- (c) I understand the terms and conditions of the trust deed and particularly the terms and conditions of Division B concerning benefits payable and I acknowledge I have been informed of my rights and the rights of my dependants under the deed.
- (d) I consent to the Trustee acting as trustee of the Fund.

I declare the rights held by me and the amounts received by me from any superannuation fund, pension fund, approved deposit fund, annuity or employer are set out in the attachment to this application.

Dated the                    day of

SIGNATURE:

COMMENCEMENT DATE OF EMPLOYMENT:

NAME:

ADDRESS:

DATE OF BIRTH:

OCCUPATION:

NOMINATED DEPENDANT(S)

I nominate the following persons as my Nominated Dependants:-

SURNAME(S)	GIVEN NAMES (S)	RELATIONSHIP	% OF TOTAL BENEFIT
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**SCHEDULE B**

PARTICIPATING EMPLOYERS ADMITTED TO THE FUND UNDER CLAUSE 36

NAME OF PARTICIPATING EMPLOYER	DATE OF ADMISSION	EXECUTION OF PARTICIPATING EMPLOYER OR TRUSTEE
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**SCHEDULE C**

**PERCENTAGE VESTING SCHEDULE**

Number of years completed as a Member of the Fund		Percentage of the balance of Member's Accumulation Account payable to Member
at least	less than	
0	2	100
2	4	100
4	6	100
6	8	100
8	10	100
10	12	100
12	14	100
14	16	100
16	18	100
18	20	100
20	22	100
22	24	100
24	26	100
26	28	100
28	30	100
30	32	100
32	34	100
34	36	100
36	38	100
38	40	100
40 and over		100

EXECUTED by the parties as follows:

GIVEN under the Common Seal of

JOROCO PTY LTD

"Principal Employer "

A.C.N : 060 702 203

in accordance with its Articles of Association  
and delivered

  
WOLFGANG WALTER OLBERTZ

  
KAY OLBERTZ

GIVEN under the Common Seal of

JOROCO PTY LTD

"Trustee"

A.C.N : 060 702 203

in accordance with its Articles of Association  
and delivered

  
WOLFGANG WALTER OLBERTZ

  
KAY OLBERTZ