

Superannuation Trust Deed

Lockwood Pension Fund

Date: 24th JUNE 1997

Colin Nicholas Fisher and Christine Pamela Fisher

Trustees

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DEED made at *Sydney* the *24th* day of *JUNE* 1997



BY **COLIN NICHOLAS FISHER** and **CHRISTINE PAMELA FISHER** both of 23 Lochville Street, Wahroonga, New South Wales (the "Trustees")

WHEREAS

- A. The Trustees wish to establish a superannuation trust fund to provide superannuation benefits for employees and for self employed persons who become members of the fund.
- B. The Trustees have agreed to act as the first trustees of the fund constituted by this trust deed.

THIS DEED WITNESSES

1. THE FUND

1.1 Name of the Fund

The trust fund constituted by this Trust Deed shall be called the Lockwood Pension Fund (hereinafter called the "Fund").

1.2 Objects of the Fund

The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Trust Deed who shall hold the same on trust for the objects and the purposes of this Trust Deed.

1.3 Purpose of Paying Old-Age Pensions

From the date on which the Fund becomes a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th), if the Trustee is not a Constitutional Corporation, the primary purpose of the Fund shall be the payment of old-age pensions in accordance with the requirements of these Rules.

2. PROPER LAW

This Trust Deed shall in all respects be governed and construed in accordance with the law of New South Wales.

3. DATE OF COMMENCEMENT

The Fund was constituted on the day and year mentioned above.

4. THE TRUSTEE

The expression the "Trustee" means Colin Nicholas Fisher and Christine Pamela Fisher and shall include such other replacement or additional trustees as have been appointed hereunder.

5. INTERPRETATION

5.1 General

- (a) This Trust Deed shall be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated herein to the extent that they impose requirements on the Trustee or are required by the Act to be so incorporated but this Trust Deed shall not be so read or construed and no such provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by Rule 32 to vary, add to or rescind the provisions of this Trust Deed. Where there is any inconsistency between a provision in this Trust Deed and a provision in the Act or regulations which is so incorporated, the latter shall prevail over the former.
- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Trust Deed and such invalid Rule or part thereof shall be deemed to have been deleted from this Trust Deed.
- (c) Headings are for convenience only and shall not affect the interpretation of the Trust Deed.
- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.

5.2 Definitions

In this Trust Deed, unless the context otherwise requires:

"Act" means the Superannuation Industry (Supervision) Act, 1993 (C'th) and regulations, declarations or orders made or issued thereunder or any replacement or additional legislation in respect of the regulation of superannuation funds. Any reference in this Trust Deed to the provisions or requirements of the Act includes provisions or requirements which must be complied with in order to obtain the maximum taxation concessions available in respect of superannuation.

"Beneficiary" has the meaning attributed to it in the Act.

"Category" means the category of membership in the Fund of an Employer Sponsored Member which is selected by the Member's Employer and specified in:

- (a) the form of application for membership that is completed in accordance with the requirements of Rule 6; or
- (b) an application by the Member for a transfer in category of membership

which is accepted by the Trustee and the Member's Employer; or

- (c) a notice given to the Member by the Trustee or by the Member's Employer.

"Commissioner" means the Insurance and Superannuation Commissioner or any person who is appointed by an Act of Parliament to supervise the conduct of superannuation funds.

"Constitutional Corporation" has the meaning attributed to it in the Act.

"Dependant" means the spouse (including de facto spouse), widow, widower or children of a Member or any other person who, in the opinion of the Trustee, was dependent on the Member at the relevant date or who, in the opinion of the Trustee, the Member had a legal or moral obligation to support at the relevant date.

"Employed" means employed by an employer.

"Employee" means a person in the employ of an Employer and includes any person who is a director of an Employer which is a company and any person in respect of whom an Employer wishes to make a contribution to the Fund in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act.

"Employer" means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the employer of that person at the relevant time.

"Employer Representative" has the meaning attributed to it in Rule 21.5.

"Employer's Contribution Account" has the meaning attributed to it in Rule 11.1.

"Employer Sponsored Member" means a Member whose Employer is contributing to the Fund at the relevant time.

"Full-Time Basis" means a Member who is employed or self-employed on a full-time basis within the meaning of the Act.

"Guarantee Act" means the Superannuation Guarantee Charge Act, 1992 (C'th), as amended from time to time.

"Member" means either an Employer Sponsored Member or a Non-Employer Sponsored Member who the Trustee has admitted as a member of the Fund. A person shall cease to be a Member when the whole of that person's benefit entitlement under the Trust Deed has been paid or when the Member dies.

"Member Representative" has the meaning attributed to it in Rule 21.5.

"Member's Accounts" means the Member's Employer's Contribution Account, the Member's Contribution Account and the Member's Vested Employer's Contribution Account.

"Member's Benefit" in respect of a Member is the net amount standing to his or her

credit in the Employer's Contribution Account, the Member's Contribution Account and the Vested Employer's Contribution Account plus the value (if any) at that time of any policy of insurance owned by the Trustee on the life of that Member or paid for out of that Member's Employer's Contribution Account, Member's Contribution Account or Vested Employer's Contribution Account.

"Member's Contribution Account" has the meaning attributed to it in Rule 11.1.

"Non-Employer Sponsored Member" means a Member who is not, at the relevant time, an employee or whose employer (if any) is not contributing to the Fund.

"Participating Employer" means an Employer who has been admitted by the Trustee pursuant to Rule 36 to be a participant in the Fund.

"Part-Time Basis" means a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Act, but who is not employed or self-employed on a Full-Time Basis.

"Permanently Disabled" and "Permanent Disablement" means:

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or
- (ii) where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,

provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such a benefit.

"Preserved Benefit" means any benefit (or part thereof) which is required by the Act, to be preserved for the Member in the Fund or in another fund until the Member has retired from the workforce and attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Act.

"Prospective Member" has the same meaning as that attributed to that expression in the Act.

"Reserve Account" has the meaning attributed to it in Rule 11.1;

"Retiring Age" means the age of 65 years or such other age, being not less than 55, as the Trustee and the Member agree on as being the retiring age for that Member.

"Rules" mean the provisions of this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

"Self-Employed" refers to a Member who is self-employed in a business, trade, profession, vocation, calling or occupation for at least 10 hours a week or such other

number of hours as are prescribed under the Act.

"Trust Deed" means this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

"Vested Benefit" means any part of the Member's Benefit which is required by the Act to be treated as the minimum benefit vested in and payable to a Member on termination of the Member's employment (subject to any preservation requirements).

"Vested Employer's Contribution Account" has the meaning attributed to it in Rule 11.1.

6. ADMISSION OF MEMBERS

6.1 Selection and Admission of Members

Persons who wish to become Members may apply for membership by completing the form of application in:

- (a) Appendix "A" for Employer Sponsored Members; or
- (b) Appendix "B" for Non-Employer Sponsored Members, or

or such other form of application as the Trustee decides upon.

Upon acceptance of the application by the Trustee, the person making the application is bound by this Trust Deed in all respects as if he or she were an original party to this Trust Deed.

6.2 Applicants to Provide Information

All applicants for membership of the Fund shall provide the Trustee with such information that the Trustee may require, including proof of their correct age.

6.3 Deemed Membership

- (a) The Trustee may accept an Employee selected by an Employer as a Member without requiring the Employee to complete a membership application form in accordance with Rule 6.1, if the Employer has made an application for membership on behalf of the Employee and has provided the Trustee with such information that the Trustee may require, including the name, address and age of the Employee.
- (b) Where the Employee is being admitted to membership so that the Employer can comply with its superannuation obligations under the industrial award or industrial agreement which governs the terms and conditions of the Employee's employment by that Employer, the Employee shall, after 14 days employment by the Employer (or such other period specified in the award or agreement) become a Member, provided the Employer complies with the requirements of paragraph (a).
- (c) Upon acceptance of such an Employee as a Member, the Employee is

bound by this Trust Deed in all respects as if he or she were an original party to this Trust Deed. The Trustee shall, as soon as practicable, advise the Member in writing that he or she has been accepted as a Member and provide to the Member such other information as is required by the Act.

7. CONTRIBUTIONS BY AN EMPLOYER

7.1 Employer Contributions

- (a) An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it, in its absolute and uncontrolled discretion, determines. The maximum contribution made in any period shall not exceed the maximum permitted under the Act.
- (b) Where the contributions are being made pursuant to an industrial award or agreement, the Employer shall contribute in respect of each Member affected by such award or agreement such amount or percentage of remuneration as is determined by the relevant award or agreement.
- (c) Employer contributions shall be credited to the Employer's Contribution Accounts or Vested Employer's Contribution Accounts as is appropriate.

7.2 Trustee to be Advised

At the time of making such contributions, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member, and whether the contributions are made:

- (a) pursuant to an industrial award or agreement; and/or
- (b) in lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.

7.3 Deemed Payment to Trustee

Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

7.4 Refusal to Accept Contributions

The Trustee shall refuse to accept contributions in respect of a Member where:

- (a) the contribution is being made by a person other than a person permitted by the Act to contribute to the Fund; or
- (b) the acceptance of the contributions is contrary to the requirements of the Act.

7.5 Refusal of Contribution after Age 65

The Trustee shall, in the circumstances required by the Act, refuse to accept a contribution by or in respect of a Member who has attained age 65.

7.6 Leave of Absence

If an Employer Sponsored Member is granted leave of absence (other than annual leave or long service leave) by the Employer for any reason, the Member shall remain a Member for the period of leave, unless the Trustee otherwise determines. No contribution shall be made in respect of that Member during the period that the Member is on such leave unless the Employer determines otherwise and so advises the Trustee.

8. CONTRIBUTIONS BY MEMBERS

8.1 Member Contributions

- (a) Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee provided that the maximum contribution made in any period shall not exceed the maximum permitted under the Act.
- (b) Unless otherwise allowed by the Act, the Trustee shall refuse to accept any such contribution during any period that a Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment.
- (c) The Employer may, if authorised by the Member, deduct such contributions from the Member's Salary and remit them to the Trustee within 28 days of the end of the calendar month in which they were deducted.

8.2 Employer to Advise Trustee

At the time of paying the Members' contribution to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.

8.3 Deemed Payment to Trustee

Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

8.4 Payment on Behalf of a Member

The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member and shall be credited to the Member's Vested Employer's Contribution Account.

8.5 No Enquiry

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Rule 8.1 from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

8.6 Refusal to Accept Contributions

The Trustee shall refuse to accept contributions from Members in the circumstances stated in Rules 7.4, 7.5 and 7.6.

9. INVESTMENTS

9.1 Investment Power

Subject to the provisions of the Act and provided investments are made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.

9.2 Types of Investments

Without limiting the generality of Rule 9.1, the Trustee may invest either directly or indirectly in:

- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) subject to the in-house assets rules in the Act, on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion determines;
- (d) shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- (e) units or sub-units of any unit trust;
- (f) bills of exchange and other negotiable instruments.

9.3 Variation of Investments

The Trustee shall have power to vary, transpose and replace such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.

9.4 **Restrictions on Dealings with Members or Relatives**

- (a) The Trustee shall not acquire assets from Members or relatives of Members except in the circumstances permitted under the Act.
- (b) The Trustee shall not lend any part of the moneys or assets of the Fund to Members or relatives of Members or give any financial assistance to Members or relatives of Members.

9.5 **Particular Investments for Particular Members**

The Trustee may hold particular investments solely for particular Members or categories of Members and shall identify such investments and the Member or category or categories of Members for whom they are held, in the records of the Fund. The earnings on such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and taxation and expenses payable in respect of such investments shall be debited to the relevant Members' accounts. In offering the Members the facility for them to choose their own investments, the Trustee shall comply with the requirements of the Act.

9.6 **Investment Choice**

- (a) The Trustee may offer a Member a choice of two or more investment strategies from which the member may choose a strategy or combination of strategies for the investment of that part of the trust fund which represents the Member's Benefit. This process shall be referred to as "**investment choice**".
- (b) The Trustee shall hold particular investments solely for a Member or group of Members, in accordance with the investment strategy chosen by the Member or Members, as the case may be.
- (c) A Member and the Trustee may agree to the Member changing his or her investment choice.
- (d) The costs and expenses associated with a Member changing his or her investment choice shall be debited to the relevant Member's Accounts.
- (e) The earnings on the investments held by the Trustee as a result of the Member's investment choice shall be credited to the relevant Member's Accounts. Taxation and expenses payable in respect of these investments shall be debited to the relevant Member's Accounts.
- (f) The Trustee shall comply with the requirements of the Act in offering investment choice to a Member.

9.7 **Investment Strategy**

The Trustee shall, from time to time, formulate and give effect to an investment strategy in accordance with the requirements of the Act.

9.8 Agreement with Investment Manager

If the Trustee appoints or has appointed a company as an investment manager for the Fund or any part of it, the agreement with the investment manager must be in writing and contain provisions which comply with the Act.

9.9 Charge over Assets

The Trustee shall not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed in the Act.

9.10 Custodians

The Trustee may appoint custodians to hold assets of the Fund on behalf of the Trustee.

10. POLICIES OF INSURANCE AND ANNUITIES

10.1 Investment in Life Policies and Annuities

- (a) The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- (b) The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- (c) The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

10.2 Payment of Premiums and Application of Proceeds

The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Member's Accounts in such proportion as is agreed upon by the Trustee and the Employer or the Member and, in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall be credited to the Member's Accounts in the same proportion as premiums for such policies were paid from those accounts.

11. RECORDS, ACCOUNTS AND AUDITING

11.1 Records

The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund including:

- (a) a **minute book** in which proceedings and resolutions of the Trustee are

recorded which shall be retained for 10 years or for such other period required by the Act;

(b) an **Employer's Contribution Account** for each Employer Sponsored Member (or, where 2 or more Employers contribute in respect of a Member, an account for that Member in respect of each Employer) in which is recorded:

- (i) contributions to the Fund by the Employer in respect of that Member pursuant to Rule 7.1;
- (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 12.1 and 12.2;
- (iii) forfeited benefits credited to such account pursuant to Rule 15;
- (iv) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 10.2;
- (v) the proceeds of policies of insurance credited to such account pursuant to Rule 10.2;
- (vi) amounts credited to such account pursuant to Rule 33;
- (vii) amounts debited to such account to pay taxation and expenses;
- (viii) amounts which are not required to meet taxation liabilities and which are credited to the account pursuant to Rule 11.1(e);
- (ix) other amounts which are credited to the account pursuant to Rule 11.1(e);

(c) a **Member's Contribution Account** for each Member in which is recorded:

- (i) contributions by that Member pursuant to Rule 8.1;
- (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 12.1 and 12.2;
- (iii) amounts transferred from the Reserve Account pursuant to Rule 11.1(e);
- (iv) forfeited benefits credited to the account pursuant to Rule 15;
- (v) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 10.2;
- (vi) the proceeds of policies of insurance credited to such account pursuant to Rule 10.2;

- (vii) amounts credited to such account pursuant to Rule 33;
 - (viii) amounts debited to such account to pay taxation and expenses;
- (d) a **Vested Employer's Contribution Account** for each Member in which is recorded:
- (i) contributions made by the Employer in respect of that Member pursuant to an industrial award or agreement or in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act;
 - (ii) contributions made by the Employer in respect of that Member pursuant to Rule 8.4 plus such other Employer contributions which the Employer advises the Trustee that it requires to be fully vested in the Member;
 - (iii) amounts transferred from the Reserve Account pursuant to Rule 11.1(e);
 - (iv) forfeited benefits credited to the account pursuant to Rule 15;
 - (v) profits or losses of the Fund credited or debited to such account pursuant to Rules 12.1 and 12.2;
 - (vi) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 10.2;
 - (vii) the proceeds of policies of insurance credited to such account pursuant to Rule 10.2;
 - (viii) amounts credited to such account pursuant to Rule 33;
 - (ix) amounts debited to such account to pay taxation and expenses;
- (e) a **Reserve Account** to which shall be credited profits in accordance with Rules 12.1 and 12.2, forfeited benefits in accordance with Rule 15 and amounts set aside by the Trustee to pay taxation and to which shall be debited taxation paid, such of the expenses of the Fund as the Trustee determines to debit to this account, forfeited benefits applied in accordance with Rule 15 and amounts which the Trustee determines from time to time to transfer to the Members' Accounts on such basis as the Trustee determines to be equitable. The amount in the Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up of the Fund.

11.2 Auditor

The Trustee shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the relevant requirements of the

the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.

- (c) The Trustee may, in its absolute discretion, credit to the Reserve Account such proportion as it determines of the amount that would otherwise be credited to the Employer's Contribution Accounts.

12.3 Interim Earning Rate

The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 12.1 or 12.2 to the date on which the benefit is being paid.

12.4 Requirements of the Act

Notwithstanding Rules 12.1, 12.2 and 12.3, the Trustee shall only credit an amount to a Member's Account if to do so would not breach the requirements of the Act.

13. EXCESSIVE BENEFITS

If, at any time, in the opinion of the Trustee, a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustee, in its absolute discretion, may decline to accept any further contributions for the benefit of that Member.

14. FORFEITURE OF BENEFITS

A Member or former Member shall cease to be presently or presumptively or contingently entitled to the Member's Benefit at the discretion of the Trustee if:

- (a) in its opinion, the Member has attempted to assign, alienate, charge or encumber all or part of his or her Member's Benefit;
- (b) the Member is declared mentally ill or becomes liable to have his or her affairs dealt with under the laws relating to mental health; or
- (c) subject to Rule 34.4, the Member's whereabouts cannot be traced by the Trustee for a period of 3 years after making reasonable enquiries.

15. APPLICATION OF FORFEITED BENEFITS

15.1 For the Benefit of the Member

Where Rule 14 applies, the Trustee shall apply the amount so forfeited that stood to the credit of the Member's Contribution Account and Member's Vested Employer's Contribution Account and any other Vested Benefit for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines.

15.2 Relief of Hardship

In order to relieve hardship only, the Trustee may, in its absolute discretion, apply the amount that stood to the credit of the Member's Employer's Contribution Account, which is forfeited by reason of the operation of Rule 14, for the maintenance or support of the Member or such of the Member's Dependants as the Trustee, in its discretion, determines and such application of the Member's Benefit shall be a discharge to the Trustee for the payment thereof.

15.3 Credit to Reserve Account

The amount of any forfeited benefit in the Fund by reason of the operation of Rule 14 and the benefit payment Rules which is not applied in accordance with Rules 15.1 and 15.2 shall be credited to the Reserve Account and shall be applied within 6 months after the end of each financial year or within such other period which is permitted under the Act:

- (a) to the provision of the benefits that other Members or their Dependants have rights to receive from the Fund; or
- (b) to the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all the circumstances; or
- (c) for any other purpose approved in writing by the Commissioner; or
- (d) in such other manner that is permitted or required under the Act.

15.4 Payment to Employer

If the Trustee decides to pay the amount of any forfeited benefit to an Employer, not being a payment reimbursing the Employer for expenses incurred on behalf of the Fund, the Trustee shall, if required by the Act, give the Members written notice of the proposed payment not less than 3 months before the day when the payment is proposed to be made to the Employer.

15.5 Unclaimed Money

The Trustee shall comply with the requirements of the Act in relation to payment of unclaimed money.

16. COMMON LAW RIGHTS OF MEMBERS

16.1 Compensation or Damages Claim

The provisions of this Trust Deed shall not in any way affect the right of a Member or the Member's personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law if the Member is injured or dies as a result of an event arising out of and in the course of his or her employment.

16.2 **Work-Related Claims**

The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

17. **MEMBER'S RIGHTS TO BENEFITS AND STATEMENTS**

- (a) A Member shall have no right to or interest in his or her Member's Benefit except as provided in this Trust Deed.
- (b) The rights of the Members and their Dependants to receive benefits from the Fund shall be those set out in this Trust Deed.
- (c) The Trustee shall provide to the Members and Prospective Members, or cause the Members or Prospective Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Act, including prescribed information on request and information concerning significant events. The Trustee shall retain for so long as they are relevant and, in any event, for at least 10 years or for such further period as is required by the Act, copies of the form of all reports given to the Members.
- (d) If the Trustee causes someone else to provide a Member or Prospective Member with such a statement, notice, document or with such information, the Trustee shall, if required by the Act, obtain from that person a written declaration stating that the person has provided the statement, notice, document or information, as the case may be, to the Member or Prospective Member.

18. **RIGHTS OF EMPLOYERS**

18.1 **Notices and Statements to Employers**

The Trustee shall provide the Employers with such notices, statements and other information as are required by the Act and shall provide an Employer, on request, with a copy of this Trust Deed.

18.2 **Employer's Right to Terminate Employment**

Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise terminate the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a director.

19. **ENQUIRIES AND COMPLAINTS**

- (a) If the Act requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
 - (i) a person referred to in Rule 19(b) has the right to make an enquiry or a complaint of the kind specified in that Rule in

relation to that person; and

- (ii) an enquiry or complaint so made will be properly considered and dealt with within 90 days after it was made.
- (b) the persons who can make enquiries or complaints pursuant to this Rule 19 are:
- (i) a Beneficiary or a former Beneficiary may make an enquiry into, or a complaint about, the operation and management of the Fund in relation to that person; and
 - (ii) the executor or administrator of the estate of a former Beneficiary may make an enquiry into, or complaint about, the operation or management of the Fund in relation to the former Beneficiary; and
 - (iii) without limiting the generality of Rules 19(b)(i) or 19(b)(ii), any person may make an enquiry into, or complaint about, a decision of the Trustee that relates to the payment of a death benefit if:
 - A. the person has an interest in the death benefit; or
 - B. the person claims to be, or to be entitled to death benefits through, a person referred to in Rule 19(b)(iii)A.

20. REQUEST BY EMPLOYERS OR MEMBERS FOR AN AUDIT

The Trustee shall, whenever requested to do so by the majority of the Employers or a majority of the Non-Employer Sponsored Members, appoint auditors approved by the Employers or a majority of the Non-Employer Sponsored Members (as the case may be) to report on the affairs of the Fund and such report shall be produced to the Employers or the Non-Employer Sponsored Members (as the case may be).

21. TRUSTEE: APPOINTMENT AND REMOVAL

21.1 Eligibility for Appointment as a Trustee

- (a) Unless, under Rule 1.3, the primary purpose of the Fund is the provision of old-age pensions (within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900), the Trustee must be a Constitutional Corporation with effect from the date on which the Fund becomes a regulated superannuation fund within the meaning of the Act.
- (b) If the Act requires it, the board of Trustees or directors of a corporate Trustee shall consist of an equal number of Employer Representatives and Member Representatives elected in accordance with the procedure set out in Rules 21.5 and 21.6.
- (c) If the Trustee is appointed under the alternative agreed representation rule within the meaning of the Act, the Trustee shall be a company that meets

the requirements of the Act.

21.2 Ceasing to Act as Trustee

A Trustee, or a director of a corporate Trustee where the director is appointed pursuant to Rule 21.5 or 21.10, shall cease to be a Trustee or a director of a corporate Trustee if:

- (a) the person resigns from the office of Trustee or director; or
- (b) the person dies; or
- (c) the person becomes bankrupt or has, within the preceding 3 years, made an assignment to or an arrangement or composition with his or her creditors under Part X of the Bankruptcy Act, 1966 (C'th) or any replacement legislation; or
- (d) the person is declared mentally ill or becomes liable to have his or her affairs dealt with under the laws relating to mental health; or
- (e) the Trustee or director (as the case may be) is disqualified from being a trustee of a superannuation fund by the operation of an Act of Parliament.

Where, under this Rule or Rules 21.6, 21.8 or 21.10, a director of a corporate Trustee is required to cease to be a director, the directors of the Trustee shall use their best endeavours to terminate that person's directorship.

If the Trustee is a company it shall cease to be the Trustee if a resolution is passed or a petition is presented for its winding up or liquidation or a receiver of its assets is appointed.

21.3 Employers or Members may Remove a Trustee or Trustees

Unless there is an equal number of Employer Representatives and Member Representatives appointed pursuant to Rule 21.5, a majority of the Participating Employers or, if there are no Participating Employers, a majority of the Members may, by resolution or in writing, remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or additional Trustee.

21.4 Trustee Company Placed into Receivership

If a company is, at the time of being placed in receivership or liquidation, the sole Trustee of the Fund, the receiver or liquidator shall have the power by deed to appoint a replacement Trustee or Trustees. If the receiver or liquidator fails to appoint a replacement Trustee within 60 days after a vacancy occurs, a majority of the Participating Employers or a majority of the Members shall have the power by deed to appoint a replacement Trustee.

21.5 Member Representatives and Employer Representatives

If the Act so requires, or if the Participating Employer decides or, if there is more than one Participating Employer, a majority of the Employers decide at any time that

there should be Trustees, or directors of the Trustee, representing the Members (in which case they shall advise the existing Trustees in writing), there shall be, in addition to any independent Trustee appointed pursuant to Rule 21.10, a total number of Trustees, or directors of a corporate Trustee, of 4, or another even number determined by the Participating Employer or Employers, one-half of whom shall be nominated by the Participating Employer or Employers (the "Employer Representatives") and one-half of whom shall be elected by the Members ("Member Representatives"). The Member Representatives shall be elected either by means of a poll conducted in accordance with Rule 21.6(e) or, in the discretion of the Trustee, at a meeting called in accordance with Rule 21.6(a) in respect of the appointment and removal of Member Trustees. The Employer and Member Representatives shall be appointed for a fixed term of 3 years, or for such other term, the length of which shall be determined by agreement between the Trustee and the Participating Employer or Employers prior to the calling of the election of Member Representatives.

21.6 **Member Representatives: Appointment and Removal**

- (a) A meeting of Members shall be called by the Trustee in accordance with Rule 21.6(b) in relation to the election or removal of Member Representatives or for any other purposes.
- (b) A meeting of Members shall be called as follows:
 - (i) The Trustee shall circulate a notice of the meeting to the Members by either handing to each Member personally or by sending to the Member at the business address of the Member last known to the Trustee, notice of the meeting provided that accidental or unintentional failure to notify any Member shall not invalidate any meeting of Members.
 - (ii) A meeting of Members shall not be held prior to the expiration of 3 weeks from the date of giving or mailing the notice of the proposed meeting.
 - (iii) The notice given to Members shall stipulate the time and place of such meeting, the reason for calling it and provide an agenda for the meeting.
 - (iv) A meeting may be held at two or more locations determined by the Trustee.
- (c) Where the purpose of the meeting is to elect one or more Member Representatives:
 - (i) The Trustee shall appoint a returning officer.
 - (ii) The notice of the meeting shall call for nominations to fill any office of Member Representative and state the date by which such nominations must be received by the returning officer.
 - (iii) Any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer

and seconder of such Member and be forwarded to the returning officer no later than 4 days before the appointed day of the meeting.

- (iv) If, 3 days before the appointed day of the meeting, there have been no nominations, the meeting shall be adjourned for a period of 4 weeks and fresh notice to Members shall be given in accordance with the provisions of this Rule.
 - (v) if there is a nominee or nominees but the number of nominees does not exceed the number of vacancies in the office of Member Representative, the meeting shall be cancelled and the nominees shall be declared by the returning officer to be elected.
- (d) The following procedures shall apply at a meeting of Members and to the election of Member Representatives by means of a meeting:
- (i) The Trustee shall appoint the chairman of the meeting.
 - (ii) A quorum shall consist of one-third of the Members present either in person or represented by proxy provided that if the meeting is being held at more than one location, there shall be a quorum if one-third of the Members are present either in person or represented by proxy at the various locations but a Member shall not be entitled to attend the meeting or be represented by proxy at more than one location.
 - (iii) Questions to be decided at the meeting shall be decided by simple majority of the Members present and voting.
 - (iv) Where a purpose of the meeting is the election of one or more Member Representatives, the chairman shall distribute to each Member present at the meeting a ballot paper listing in alphabetical order the names of Members nominated as Member Representatives.
 - (v) The Members present at the meeting or represented by proxy may record one vote for each vacancy in the office of Member Representatives.
 - (vi) The Member who receives the greatest number of votes shall become a Member Representative.
 - (vii) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.
 - (viii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative or Representatives

shall appoint the other Member Representatives by deed.

- (ix) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
 - (x) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (e) Where the Trustee determines that an election of Member Representatives is to be conducted by a poll, the following procedure shall apply:
- (i) The Trustee shall appoint a returning officer and the Trustee shall circulate a notice to the Members by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to send a notice to a Member shall not invalidate the poll. The notice shall call for nominations to fill any vacancy/ies in the office of Member Representative, state the date by which such nominations must be received by the returning officer and state that any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer and seconder of such Member.
 - (ii) If no nominations have been received by the returning officer by the date referred to in sub-paragraph (i), the Trustee shall circulate a fresh notice in accordance with the provisions of this Rule.
 - (iii) After the date for receipt of nominations has passed, if the number of nominees does not exceed the number of vacancies in the office of Member Representative, the nominees shall be declared by the returning officer to be elected.
 - (iv) After the date for receipt of nominations has passed, if there has been more nominees than there are vacancies in the office of Member Representative, the Trustee shall distribute a ballot paper to each Member by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to distribute a ballot paper to a Member shall not invalidate the poll. The ballot paper shall list in alphabetical order the names of Members nominated for election as Member Representatives. A note shall be included on the ballot paper requesting the Members to record one vote for each vacancy in the office of Member Representative and specifying the date by which the ballot paper must be returned to the returning officer.
 - (v) The Member who receives the greatest number of votes shall

become a Member Representative.

- (vi) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.
 - (vii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative or Representatives shall appoint the other Member Representatives by deed.
 - (viii) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
 - (ix) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (f) Any Member Representative may be removed by resolution of Members passed at a meeting of Members convened by the Trustee on receiving a written request by 4 Members to do so and conducted in accordance with the provisions of this Rule.
- (g) A Member Representative shall cease to be a Trustee or a director of a corporate Trustee on the earlier of:
- (i) the day on which the person ceases to be a Member; or
 - (ii) the day on which the person ceases to be an Employee; or
 - (iii) the happening of any of the events referred to in Rule 21.2; or
 - (iv) the day that a resolution is passed, in accordance with paragraph (f) of this Rule 21.6, to remove the Member Representative; or
 - (v) the day on which the Member Representative's term as Trustee or director expires.

21.7 Member Representatives, Casual Vacancies

- (a) Where there is a casual vacancy in the office of a Member Representative, the Trustee can, in its absolute discretion, decide not to require another election of Member Representatives but rather to ask the person who received the next greatest number of votes at the last election, but who was unelected, if he or she is willing to accept appointment as a Member Representative. If that person accepts that appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the

Trustee.

- (b) If the person who is asked to accept appointment as a Member Representative in accordance with paragraph (a) of this Rule refuses to accept the appointment, the Trustee shall ask, in turn, the persons who received the next greatest number of votes at the last election whether they are willing to accept appointment as a Member Representative. If any of them accept the appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the Trustee. If none of the persons who received votes at the last election are willing to accept appointment as a Member Representative, a fresh election shall be conducted in accordance with Rule 21.6.
- (c) The Trustee shall advise the Members of the name of the Member Representative who is appointed as a Trustee or a director of the Trustee as a result of there being a casual vacancy in the office of a Member Representative.

21.8 Employer Representatives

Employer Representatives may be appointed to office and removed from office by the Participating Employers. If the Trustee is a company, the directors shall use their best endeavours to appoint the Employer Representatives as directors of the Trustee pursuant to the articles of association of the Trustee.

21.9 Existing Trustee to Resign

If an equal number of Member Representatives and Employer Representatives are appointed as Trustees in accordance with Rule 21.6, the existing Trustees shall resign with effect from the date the appointment of the Employer Representatives and Member Representatives takes effect, unless they have been appointed as Employer or Member Representative Trustees. If they fail to resign, they shall be removed as Trustees by the Participating Employers.

21.10 Independent Trustee

If either the Employer Representatives or the Member Representatives advise the remaining Trustees, or the remaining directors of a corporate Trustee, that they require the appointment of an independent Trustee, or an independent director of a corporate Trustee, the Trustee or Trustees shall appoint as a Trustee, or as a director of a corporate Trustee, a person that the Trustee or directors of a corporate Trustee regard as being independent of the Employers and the Members and their representatives. An independent Trustee or director of a corporate Trustee so appointed may be removed from office by a resolution of the Trustees or the directors of a corporate trustee. The person shall cease to be a Trustee if he or she resigns by giving notice to the other Trustees or shall cease to be a director of a corporate Trustee, if he or she resigns by giving notice to the corporate Trustee, or on the happening of any of the events referred to in paragraphs (b), (c), (d) or (e) of Rule 21.2.

21.11 Vacancies

Any vacancy in the office of a Trustee, or a director of a corporate Trustee, shall, where such vacancy is required to be filled, be filled within 60 days (or such other number of days as is provided for in the Act) of the date on which the vacancy occurred provided that the failure to fill a vacancy shall not invalidate any subsequent appointment.

21.12 Consent to Act as Trustee or Director

A person shall only be appointed as a Trustee or as a director of a corporate Trustee if that person consents in writing to the appointment. Each written consent shall be retained by the Trustee for 10 years or for such other period required by the Act.

21.13 Records of Changes in Trustees or Directors

The Trustee shall maintain a record of changes in Trustees or directors of a corporate Trustee for 10 years or for such other period required by the Act.

22. POWERS OF TRUSTEE

The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:

- (a) to pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Fund expenses incurred in:
 - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
 - (ii) having the accounts of the Fund audited;
 - (iii) having taxation returns and Government returns prepared; and
 - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (d) to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on such terms and conditions as the Trustee, in its absolute discretion, determines and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the

administration of the Fund and pay out of the Fund the fees payable to such advisers;

- (f) to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee determines;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee determines;
- (i) to borrow any sum of money for the purposes permitted by the Act and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) to elect that the Fund become a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (k) to act on a direction given by a Court, the Commissioner or the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);
- (l) to comply with covenants of trustees imposed by the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (m) to do those things permitted or required by the Act; and
- (n) generally to do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed.

23. TRUSTEE: EXERCISING DISCRETIONS AND ANTI-DISCRIMINATION LAW

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities, provided however that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory law, that is applicable to the Fund, in respect of discrimination.

24. LIABILITY OF TRUSTEE, DIRECTORS AND MEMBERS

24.1 Liability of Trustee and Directors

The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee.

24.2 Members' Liability

Each of the Members (other than in their capacities as Trustees or directors of a corporate Trustee) shall not be liable for any action taken or omitted in administering the Fund.

25. TRUSTEE'S AND DIRECTORS' INDEMNITY

The Trustee, and each of the directors of a corporate Trustee shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 24.1 and shall have a lien on the Fund for such indemnity. The Trustee and the directors of a corporate Trustee shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

26. TRUSTEE'S MEETINGS

26.1 Individuals

- (a) Where the Trustees are individual persons, they may meet together to dispose of business concerned with the administration of the Fund, determine a quorum, adjourn the meetings and otherwise regulate their meetings as they see fit. Two-thirds of the Trustees shall be a quorum unless there is only one Trustee in which case a quorum shall be that Trustee.
- (b) A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustees by this Trust Deed.
- (c) The Trustees may elect a chairman of each meeting.
- (d) A resolution of the Trustees shall be valid and binding if two-thirds of the total number of Trustees have voted in favour of it.
- (e) The Trustees shall keep minutes of their resolutions and proceedings in a book provided for that purpose.
- (f) A resolution in writing, signed by two-thirds of the Trustees, shall have the same effect and validity as a resolution of the Trustees passed at a duly convened meeting.

26.2 Directors

Where the Trustee is a company, the meetings of the directors shall, subject to meeting the requirements of the Act, be governed by the articles of association of the company.

27. SIGNING OF DOCUMENTS BY TRUSTEES

Where there are 2 or more individual persons acting as Trustees, any one of the Trustees is hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

28. REMUNERATION OF TRUSTEE

The Trustee shall not be entitled to be paid or retain out of the Fund any remuneration.

29. REMUNERATION OF PROFESSIONAL PERSONS

Any person who is an accountant, actuary, solicitor, barrister or other professional person and is also a Trustee or a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that the person would make had he or she not been a Trustee or a director of a company acting as Trustee.

30. TRUSTEE AS MEMBER'S ATTORNEY

Each Member hereby irrevocably appoints the Trustee as his or her attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.

31. AVAILABILITY OF TRUST DEED

- (a) A copy of this Trust Deed shall be kept by the Trustee and be available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Member of the Fund or who is a Beneficiary of the Fund.
- (b) If required by the Act, the Trustee shall, upon the written request of a person who is, or was within the preceding 12 months, a Member of the Fund or who is a Beneficiary of the Fund, provide that person with a copy of this Trust Deed.

32. VARIATION OF TRUST DEED

32.1 Variation of Trust Deed

The Trustee may, at any time and from time to time, either by deed executed by the Trustee or by oral resolution, vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of:

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable to a Member, before the date of the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this Rule, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required to enable the Fund to comply with the Act;
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction.

32.2 Notification to Members

As soon as practicable after a provision of the Trust Deed is varied, added to or rescinded, the Trustee shall give to a Member whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Act, written advice that complies with the Act and which explains the nature and purpose of the variation, addition or rescission and the effect of the variation, addition or rescission on the Member's entitlements or rights.

33. TRANSFER OF BENEFIT FROM ANOTHER FUND

33.1 Transfer from Another Fund

Where a Member requests that an amount standing to his or her credit or a policy of insurance in another superannuation fund or in an approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Contribution Account provided that if the said amount or policy is being transferred from a superannuation fund conducted by or contributed to by an Employer or an associate of an Employer, the amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account and/or the Member's Vested Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account and/or the member's vested employer's contribution account (or the equivalent thereof) in the previous superannuation fund, or on such other basis as the Trustee and the Member agree on.

33.2 Preserved Benefits

If any part of the benefit or the value of the policy which is transferred is a Preserved Benefit, the benefit and accretions thereto shall not, notwithstanding any other provisions in this Trust Deed, be paid prior to the Member retiring from the workforce and attaining the age of 55 (or such other age prescribed in the Act as

being the preservation age for that Member) except in the event of the Member's death or Permanent Disablement or in such other circumstances as may be allowed under the Act.

34. TRANSFER OF BENEFIT TO ANOTHER FUND AND PURCHASE OF ANNUITY

34.1 Transfer to Another Fund

Subject to Rule 34.3, the Trustee may, on receiving the written request of a Member unless the transfer is to a successor fund within the meaning of the Act, transfer the whole or part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or, provided termination of employment has occurred, transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act. The receipt of the trustee of such fund shall be a complete discharge to the Trustee in respect of any liability to that Member and persons claiming through that Member in relation to the amount so transferred. The Trustee may deduct from the amount to be transferred the amount of any taxation that is calculated by the Trustee to be payable in respect of the Member's Benefit.

34.2 Purchase of Annuity

The Trustee may, on receiving the written request of a Member, apply any part of a benefit that the Member is entitled to be paid, in payment of the consideration for an annuity.

34.3 Preserved Benefits

A transfer of any Preserved Benefit pursuant to Rule 34.1 shall only be made if it is a condition of such transfer that the amount of any Preserved Benefit transferred shall not be paid from the transferee fund prior to the Member retiring from the workforce and attaining age 55 (or such other age prescribed in the Act as being the preservation age for that Member) except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted under the Act and if it is a condition of such transfer that the Preserved Benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions.

34.4 Transfer to Eligible Roll-over Fund

Where a period of 90 days has elapsed since a benefit (other than a pension) became payable under these Rules and the benefit has not been paid, the Trustee must, if required by the Act, pay the benefit to an eligible roll-over fund, as defined in the Act. The Trustee must, if required by the Act, also make such payment where the Trustee is satisfied that two reports to Members (that are required to be given under the Act) have not been received by the Member to whom the benefit has become payable. However, if the benefit payable is less than \$500 (or another amount prescribed in the Act) the Trustee may treat the benefit as unclaimed money and pay it to the Commissioner in accordance with the Act.

35. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

36. ADMISSION OF PARTICIPATING EMPLOYERS TO FUND

The Trustee may admit a Participating Employer as a contributor to and a participant in the Fund on completion of Appendix "C" or such other form of application as the Trustee decides upon. A Participating Employer so admitted shall be bound by the provisions of this Trust Deed in the same way the Participating Employer would be if it had been an original party to the Trust Deed.

37. WITHDRAWAL OF PARTICIPATING EMPLOYERS FROM FUND

- (a) A Participating Employer shall cease to be a contributor to and a participant in the Fund:
 - (i) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be a Participating Employer; or
 - (ii) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.
- (b) Employees of a Participating Employer that has ceased to be a participant in the Fund shall continue to be Members until such time as their employment is terminated and their benefits have been paid in accordance with these Rules. No benefit shall be paid to such Members during the period that their employment by the Participating Employer continues unless such payment is permitted by the Act or unless the consent of the Commissioner has been obtained in writing.
- (c) The Trustee can, if it so determines, accept contributions from Employees of an Employer that has ceased to be a participant in the Fund as Non-Employer Sponsored Members.

38. TERMINATION OF CONTRIBUTIONS

If all of the Participating Employers and all of the Members cease to make contributions to the Fund, the Fund shall continue to be administered by the Trustee until dissolved in accordance with Rule 39.

39. DISSOLUTION OF THE FUND

39.1 Dissolution of the Fund

When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund and shall, subject to the provisions of the Trust Deed, pay or transfer to the Members or former Members, benefits in accordance with the provisions of these Rules, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted

by Members and former Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with these Rules.

39.2 Amount Remaining in the Fund

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependants or the Participating Employers in such proportions as the Trustee determines.

39.3 Preserved Benefits

Notwithstanding anything contained in Rule 39.1, the Trustee shall not, in the case of a Preserved Benefit, pay or transfer the benefit to a Member, until the Member retires from the workforce and attains age 55 (or such other age prescribed in the Act as being the preservation age for that Member) except in the event of the Member's earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Act.

39.4 Perpetuity Period

The trusts constituted by this Trust Deed shall endure for such period as is allowed by law for the duration of the trusts hereby established.

PAYMENT OF BENEFITS

40. BENEFIT PAYABLE ON RETIREMENT OR ATTAINING AGE 65

40.1 Payment on Retirement or at Age 65 - Employer Sponsored Member

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid or commence to be paid to an Employer Sponsored Member who, having attained the Retiring Age, ceases to be an Employee. An Employer Sponsored Member's Benefit shall also be paid or commence to be paid to a Member on attaining age 65 if the Member continues to be employed by the Employer after attaining age 65 but the number of hours worked are insufficient for the Member to be considered to be employed on a Part-Time Basis. Notwithstanding Rules 40.3 and 40.4, a Member's Benefit shall be paid or commence to be paid to an Employer Sponsored Member who, having attained age 65, continues in employment but requests payment of the benefit.

40.2 Payment on Retirement or at Age 65 - Non-Employer Sponsored Member

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid or commence to be paid to a Non-Employer Sponsored Member who retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member or who retires from any gainful employment after attaining age 60. The Member's Benefit shall also be paid or commence to be paid to a Non-Employer Sponsored Member on attaining age 65 if the Member continues to be Employed or Self-Employed (whichever is applicable) after that age but the number of hours worked are insufficient for the Member to be considered to be

Employed or Self-Employed on a Part-Time Basis (whichever is applicable). Notwithstanding Rules 40.3 and 40.4, the Member's Benefit shall be paid or commence to be paid to a Non-Employer Sponsored Member who having attained age 65, continues to be Employed or Self-Employed but requests payment of the benefit.

40.3 Continuation of Employment on a Part-Time Basis after Age 65

If the Member is and continues to be Employed or Self-Employed on a Part-Time Basis after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when he or she requests payment or upon the Member attaining age 70 or if the number of hours that he or she works reduces below the level required to be Employed or Self-Employed on a Part-Time Basis, whichever occurs first.

40.4 Continuation of Employment on a Full-Time Basis after Age 65

If the Member is and continues to be Employed or Self-Employed on a Full-Time Basis after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when the Member requests payment or upon the Member ceasing to be Employed or Self-Employed on a Full-Time Basis. If the Member, after age 65, becomes Employed or Self-Employed on a Part-Time Basis after having ceased to be Employed or Self-Employed on a Full Time Basis, then Rule 40.3 shall apply.

40.5 Member to Inform Trustee

A Member shall inform the Trustee as soon as practicable after he or she ceases:

- (a) to be Employed on a Part-Time Basis after age 65; or
- (b) to be Employed on a Full-Time Basis after age 65; or
- (c) to be Self-Employed on a Part-Time Basis after age 65; or
- (d) to be Self-Employed on a Full-Time Basis after age 65.

40.6 Payment of Benefit by Pension

The benefit payable under this Rule 40 may, in the discretion of the Trustee, be paid by way of a pension in accordance with Rule 50. However, the benefit shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

40.7 Payment of Unclaimed Money to the Commissioner

The Trustee shall treat a benefit as unclaimed money and pay it to the Commissioner in accordance with the requirements of the Act if:

- (a) the benefit (other than a pension) has become payable under this Trust Deed; and

- (b) the person to whom the benefit is payable has reached the eligibility age for an age pension prescribed by the Act; and
- (c) the person to whom the benefit is payable has not applied to the Trustee to have the amount of the benefit paid to him or her; and
- (d) the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to find the person to whom the benefit is payable, is unable to do so.

41. BENEFIT PAYABLE ON DEATH

41.1 Benefit Payable on Death

If a Member dies before payment or commencement of payment of a benefit under Rule 40, the amount of the Member's Benefit shall be held by the Trustee on trust for the benefit of such one or more of the Member's Dependants in such shares and proportions as the Trustee, in its absolute discretion, determines. The Trustee shall take account of any nomination of beneficiaries made by the Member, but shall not be bound by it. The benefit payable shall, in the discretion of the Trustee, be paid by lump sum or pension or a combination of the two.

41.2 Payment to Legal Personal Representative

If the Trustee is unable to establish within 6 months after the Member's death that there are any Dependants, the Member's Benefit shall be paid to the Member's legal personal representative.

41.3 Payment other than to Dependant or Legal Personal Representative

If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may, if permitted by the Act, pay the benefit to a person or persons selected by the Trustee.

41.4 Forfeited Benefits

Subject to Rule 41.3, if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after the Member's death (or such longer period as the Trustee determines), the benefit payable hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 15.

42. BENEFIT PAYABLE ON DISABLEMENT

42.1 Benefit Payable on Disablement

Subject to the provisions of these Rules, if, before a benefit is paid or commences to be paid under Rule 40, the employment of an Employer Sponsored Member is terminated as a result of the Member being Permanently Disabled or if a Non-Employer Sponsored Member becomes Permanently Disabled, the Member's Benefit

shall be paid to the Member or, if the Member is unable to manage his or her own affairs, to such of the Member's Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

42.2 Proceeds of Temporary Disablement Insurance Policy

Subject to any limitations imposed by the Act, if, prior to a benefit becoming payable under Rule 42.1, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy shall be paid to the Member or, if the Member is unable to manage his or her own affairs, to such of the Member's Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

43. BENEFIT PAYABLE ON DISMISSAL

If an Employer Sponsored Member is dismissed from the employment of the Employer for misconduct involving fraud or dishonesty, the benefit payable to that Member shall, subject to the provisions of these Rules, be the amount of the Member's Contribution Account (if any) plus the amount of the Member's Vested Employer's Contribution Account (if any) plus any other Vested Benefit plus such additional part (if any) of the Employer's Contribution Account which the Trustee, in its absolute discretion, determines. Any Preserved Benefit shall be paid on the terms and conditions set out in Rule 45 in relation to such benefit.

44. BENEFIT PAYABLE TO AN EMPLOYER SPONSORED MEMBER ON TERMINATION OF EMPLOYMENT BEFORE RETIRING AGE

If the employment by the Employer of an Employer Sponsored Member is terminated before the Retiring Age otherwise than in the circumstances referred to in Rules 41, 42 or 43 and the Member's new employer does not make any contributions to the Fund on his or her behalf:

- (a) the amount of the Member's Contribution Account; plus
- (b) that part (if any) of the amount of the Member's Employer's Contribution Account calculated in accordance with the provisions of the Vesting Schedule in the relevant Appendix to this Trust Deed for that Member's Category of membership; plus
- (c) such additional part (if any) of the amount of the Member's Employer's Contribution Account which the Trustee, in its absolute discretion, determines, (with the balance of that Account to be applied in accordance with Rule 15 as a forfeited benefit); plus
- (d) the amount of the Member's Vested Employer's Contribution Account; plus
- (e) any other Vested Benefit not otherwise payable hereunder,

shall, if the Member has attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) and is retiring from the workforce, be paid to the Member. If the Member has not attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or, having

attained age 55, has not retired from the workforce, the Trustee shall pay or commence to pay the Member only that part of the benefit payable which is not a Preserved Benefit.

45. PAYMENT OF PRESERVED BENEFIT

If any part of the benefit payable under Rules 43 or 44 is a Preserved Benefit and if the Member has not attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or, having attained age 55, has not retired from the workforce, the Trustee shall:

- (a) retain the Member's Preserved Benefit in the Fund and pay such benefit plus earnings thereon to the Member after he or she retires from the workforce and attains age 55 (or such other age prescribed by the Act as being the preservation age for that Member) and requests that the benefit be paid to him or her, provided that the Trustee shall pay or commence to pay the Preserved Benefit no later than the attainment by the Member of the age of 65 years or on the termination of gainful employment of the Member after attaining age 60, or in such other circumstances as are permitted under the Act, or shall pay such benefits in accordance with Rules 41 or 42 in the event of the Member's earlier death or Permanent Disablement or shall pay such benefit to the Member if the Trustee is satisfied that the Member is leaving Australia to reside permanently overseas; or
- (b) if the Member requests that his or her Preserved Benefit be transferred to another superannuation fund or to an approved deposit fund, transfer the benefit in accordance with Rule 34 provided the Trustee is satisfied that the trust deed for the transferee fund contains restrictions similar to those in this Rule 45; or
- (c) in its discretion, pay the Preserved Benefit to the Member by a non-commutable pension or annuity for the life of the Member; or
- (d) if the Member so requests, apply the Preserved Benefit to purchase a deferred annuity to be held by the Trustee until the Member attains age 55 (or such other age prescribed in the Act as being the preservation age for that Member) and
 - (i) under which the first annuity payment is not to be made until on or after the Member attains age 55 (or such other age prescribed in the Act as being the preservation age for that Member) provided that the annuity instalments shall commence to be paid no later than the attainment by the Member of the age of 65 years or in such other circumstances as are permitted by the Act; and
 - (ii) which cannot be surrendered or assigned (except to make a payment in accordance with Rule 34) until the Member attains age 55 (or such other age prescribed in the Act as being the preservation age for that Member); and
 - (iii) which cannot be mortgaged or encumbered in any manner

50. PENSION CONDITIONS

50.1 Trustee's Discretion

Subject to Rule 49.1, where a benefit is payable under Rules 40, 42, 43 or 44 by way of pension, the Trustee shall, in its absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid, provided that the pension shall be paid at least annually and the annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act and the pension shall be paid on a basis that complies with the requirements of the Act.

50.2 Cessation of Payments

When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.

50.3 Commutation of Pension

The recipient of a pension under these Rules may commute the pension or part thereof to a lump sum payment on making written application to the Trustee provided the commutation complies with the requirements of the Act.

50.4 Benefit Payable to Spouse on Death of Member

- (a) On the death of a Member to whom a pension is being paid and who is survived by a spouse, the Trustee may determine to pay to the spouse until the spouse's death or, until the Member's Benefit is reduced to nil, if that occurs before the spouse's death, a pension of such amount as the deceased Member's spouse and the Trustee agree upon from time to time or, in the absence of such agreement, of such amounts and on such terms and conditions as the Trustee determines provided that if the pension has to be paid on some other basis for the Fund to comply with the Act, it shall be paid on that basis. The annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act.
- (b) A pension payable to a Member's spouse pursuant to this Rule 50.4 shall commence on the date of the Member's death.

50.5 Payment to Member's Dependants

- (a) In the event of the death of a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under Rule 50.4, or in the event of the death of a Member's spouse to whom a pension was payable under Rule 50.4, the balance of the Member's Benefit (if any) shall be paid in a lump sum to such of the Member's Dependants as the Trustee, in its absolute discretion, determines.
- (b) If payment of part or all of such benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the

manner stated in paragraph (d) of this Rule.

- (c) If the Trustee is unable to establish within 6 months of the death of a Member or the Member's spouse (if a pension was being paid to the Member's spouse) that there are any Dependents, the benefit payable under this Rule 50.5 shall, in the discretion of the Trustee, be paid to the Member's or the Member's spouse's legal personal representative but, if a grant of probate or letters of administration in respect of the estate of the deceased Member or the deceased Member's spouse is not made within 3 years of his or her death, (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this Rule.
- (d) A forfeited benefit shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 15.

50.6 No Assignment or Encumbrance

- (a) Pensions payable from the Fund shall not be assigned or otherwise transferred by the person in receipt thereof (except to the extent provided for in Rule 50.4) and shall not be mortgaged or encumbered in any manner whatsoever.
- (b) Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

50.7 Annuities

The Trustee may, in its absolute discretion, (including where an old-age pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Act.

50.8 Imputation Credits

The Trustee may, in its absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

51. BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP

The Trustee may, in its absolute discretion, pay part or all of the Member's Benefit to a Member who is not entitled to be paid a benefit under the balance of these Rules, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his or her benefit is not paid to the Member. Any such payment must first be approved by the Commissioner, if the Act so requires.

52. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

The Trustee may, in its absolute discretion, pay part or all of a Member's Benefit to a Member, or another person, in the circumstances provided for in the Act, notwithstanding the restrictions imposed by these Rules.

EXECUTED as a deed.

SIGNED SEALED AND DELIVERED by)
COLIN NICHOLAS FISHER in the) X..... *C. N. Fisher*.....
presence of:) (Signature)

X *[Signature]*.....
(Signature of Witness)

X *PAUL GRESHAM*.....
(Name of Witness in Full)

SIGNED SEALED AND DELIVERED by)
CHRISTINE PAMELA FISHER in the) X..... *C. P. Fisher*.....
presence of:) (Signature)

X *[Signature]*.....
(Signature of Witness)

X *PAUL GRESHAM*.....
(Name of Witness in Full)