

# **TRUST DEED**

## **Walters Family SUPERANNUATION FUND**

Drawn By:

**ROBERT J MAGGS**

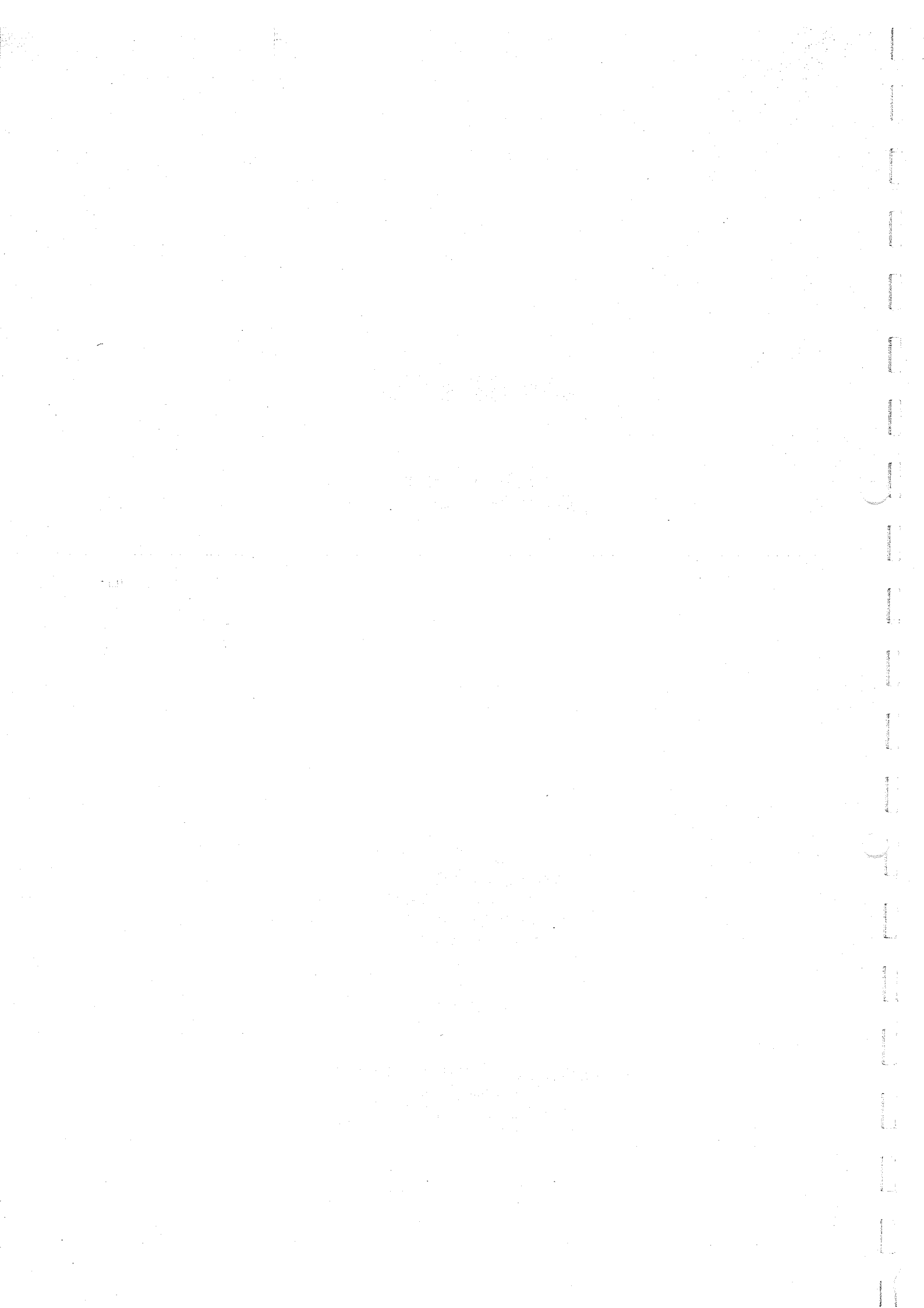
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BRIGHTON QLD 4017

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Solicitors For:

**SELF-MANAGED SUPER PTY LTD**

10 Vaughan Street  
MT GRAVATT QLD 4122  
Ph. (07) 3343 1170



8.07.96.  
**THIS TRUST DEED is made the 1st July 1996**

**BETWEEN:**                    **DARRYL FRANCIS WALTERS**  
                                      and **BEVERLEY FAYE WALTERS**  
                                      both of 51 Blue Grass Crescent, EIGHT MILE PLAINS QLD  
                                      **(The Trustees)**

**AND:**                            **WALTERS CONSULTING ENGINEERS PTY LTD**  
                                      (ACN 073 528 462), a company duly incorporated in the state of  
                                      Queensland and having its registered office at 15 Lisburn Street,  
                                      **EAST BRISBANE QLD**  
                                      **(The Employer)**

**WHEREAS:-**

- A.    The Employer has decided to establish an indefinitely continuing Fund to be known as the **WALTERS FAMILY SUPERANNUATION FUND** (hereinafter called "The Fund").
- B.    The Trustees have agreed to act as the first Trustees of the Fund.

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

- 1.    The Fund shall come into operation on the **1st July 1996**, subject to execution of this Deed by the relevant parties.
- 2.    'The Clauses and Rules' mean the Clauses and Rules attached hereto as amended from time to time as therein provided.
- 3.    'The Clauses and Rules' contained therein shall have the same force and effect as if set out in the body of this deed.
- 4.    This Trust Deed and 'The Clauses and Rules' shall in all respects be governed and construed in accordance with the law of the state of Queensland.
- 5.    The assets of the Fund shall be vested in the Trustees upon Trust to apply the same, in the manner set forth in 'The Clauses and Rules'.
- 6.    The Trustees shall administer the Fund according to 'The Clauses and Rules'.
- 7.    This Deed may from time to time be amended by the Trustees in the manner provided in 'The Clauses and Rules'.

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**AS WITNESS** the execution by the parties hereto on the day and year first herein before written.

**SIGNED, SEALED AND DELIVERED** by the said:

**DARRYL FRANCIS WALTERS**  
(as Trustee) and

**BEVERLEY FAYE WALTERS**  
(as Trustee)

*[Handwritten signature of Darryl Francis Walters]*

*B. F. Walters*

in the presence of:

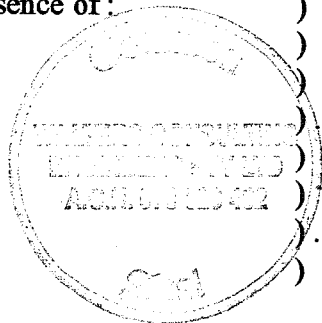
*[Handwritten signature of John Neville Lutton]*  
(Name of Witness)

*[Handwritten signature of John Neville Lutton]*

THE COMMON SEAL of the said  
**WALTERS CONSULTING ENGINEERS PTY LTD**  
(ACN 073528 462) was hereunto affixed in accordance with  
its Articles of Association in the presence of:

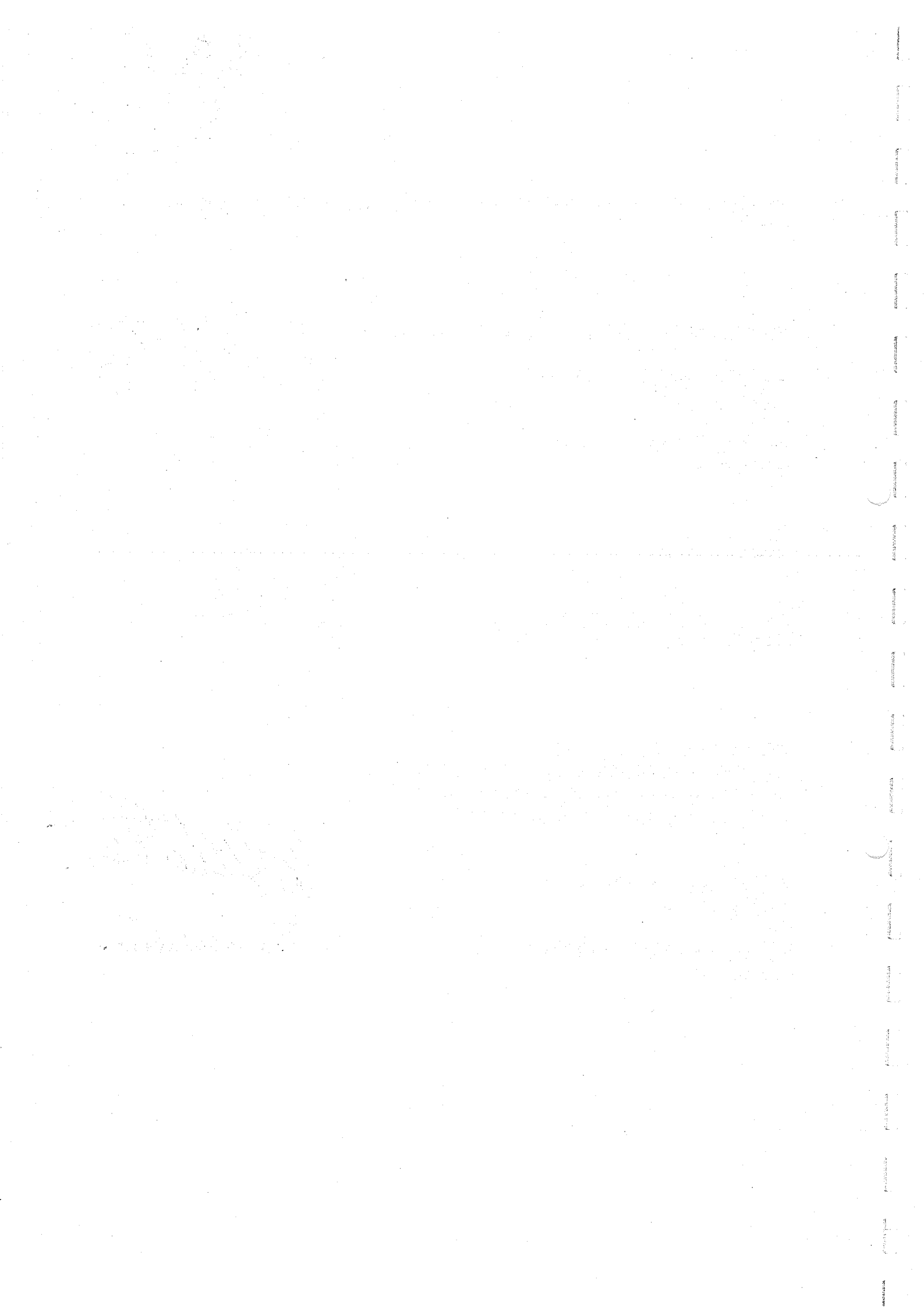
**DARRYL FRANCIS WALTERS**  
(as Director) and

**BEVERLEY FAYE WALTERS**  
(as Director)



*[Handwritten signature of Darryl Francis Walters]*

*B. F. Walters*



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## 1. DEFINITIONS AND INTERPRETATIONS

- 1.0 In this Deed and its Schedules the words and phrases detailed below have the meanings given unless there is something inconsistent with those meanings in the subject or context in which they appear.
- 1.1 **"Actuary"** means a Fellow or an Accredited member of the Institute of Actuaries of Australia who from time to time is appointed by the Trustee.
- 1.2 **"Auditor"** has the same meaning as that ascribed to the term "Approved Auditor" by the Act.
- 1.3 **"Beneficiary"** means a person who has a beneficial interest in a Fund constituted by this Deed.
- 1.4 **"Benefit"** means any amount paid or payable by the Trustee out of the Fund pursuant to the Deed to or in respect of a Beneficiary.
- 1.5 **"Contributions"** means payments to the Fund by Members and Employers pursuant to the Deed.
- 1.6 **"Deed"** means these presents including the Schedules and any alteration, additions, amendments and modifications to them.
- 1.7 **"Dependant"** has the meaning assigned to that term by the SIS Act.
- 1.8 **"Employee"** has the meaning assigned to that term by the SIS Act.
- 1.9 **"Employer"** means a person defined as an employer by the SIS Act who has applied in writing to the Trustees and has been accepted by them as an Employer under the Deed. In relation to any Member the word "Employer" means the person (if any) in relation to that Member who is for that time being a source of that Members income either in whole or in part.
- 1.10 **"Employers Contribution Account"** and **"Members Accumulation Account"** means the accounts described in Clause 16 hereof.
- 1.11 **"Executive Members"** means those members admitted pursuant to paragraph (a) of sub-clause 2.1 who are nominated by their Employer as Executive Members.
- 1.12 **"Industrial Award"** means an agreement or award certified or made by an Industrial Authority on or after 01/07/1986.

- 1.13 **“Member”** means any person who has been admitted to membership of the Fund in accordance with this Deed and includes those persons who whilst no longer an employee of an Employer or self employed continue to have an interest under the terms of this Deed whether contingent or otherwise.
- 1.14 **“Non Executive Members”** means those Members admitted pursuant to paragraph (a) of sub-clause 2.1 who at the relevant time are not Executive Members.
- 1.15 **“Normal Retirement Date”** means the Members Sixty-fifth birthday or such lower age as the Trustees determine having due regard to requirements which may exist from time to time under the SIS Act.
- 1.16 **“Pension”** has the meaning assigned by the SIS Act. **“Pensioner”** means the person receiving the pension.
- 1.17 **“Plan Membership”** means all periods of service concurrent with completed membership of the Fund, plus, in the case of a Member who has transferred a benefit from another Superannuation Fund and is entitled to benefits under Schedule 1, a period of notional past service determined by the Actuary and agreed by the Trustee as being equitable in respect of any amount so transferred to this Fund.
- 1.18 **“Regulations”** means Regulations promulgated from time to time under the SIS Act.
- 1.19 **“Salary”** has the meaning applicable to that term under Regulation 4A of the Regulations made under the Occupational Superannuation Standards Act as in Force on June 30, 1993.
- 1.20 **“Self Employed”** means the engagement by a person in a business, trade, professional vocation, calling or occupation otherwise than as an Employee as defined above, and includes any person who has, at any time in the period of two years immediately preceding the date of making application for membership, engaged in full-time or part-time gainful employment.
- 1.21 **“Service”** means the period or periods measured in years to the nearest 1/12th of a year during which a person has been an Employee.
- 1.22 **“Service Whilst a Member”** means all periods of service concurrent with Membership of the Fund up to a Member’s Normal Retirement Date and includes any additional period measured in years to the nearest 1/12th of a year which are deemed to be service whilst a Member following agreement to such effect between the Employer, Member and Trustees.

- 1.23 **“SIS Act” or “Act”** means the Superannuation Industry Supervision Act 1993 as amended or any re-enactment or statutory modification thereof.
- 1.24 **“Tax Act”** means the Income Tax Assessment Act 1936, as amended or any re-enactment or statutory modification thereof.
- 1.25 **“Total Disablement”** when used in connection with the term Insurance Policy means Total Disablement as defined in that policy provided that such definition is expressed in terms that depend to some degree on physical injury or the forming of a judgement as to the relevant persons future income earning potential.
- 1.26 **“Total and Permanent Disablement”** shall be deemed to have occurred when the Trustee is satisfied that due to ill health (whether physical or mental) the member is unlikely ever to engage again in gainful employment for which the Member is reasonably qualified by education training or experience.
- 1.27 **“Temporary Disablement”** means ill health (whether physical or mental) which has caused the Member to cease to be gainfully employed but which does not constitute total and permanent disablement. The Trustees shall in their absolute discretion determine when such incapacity has occurred and may in reaching such a decision have regard to such Medical advice as they see fit.
- 1.28 **“Trustees”** means the Trustee or Trustees for the time being of the Fund whether original, substituted or additional.
- 1.29 **“The Commissioner”** means the Insurance and Superannuation Commissioner.
- 1.30 The Headings of the Clauses and Rules of this Deed are for convenience only and shall not affect the interpretation thereof.
- 1.31 Words importing the singular number include the plural and vice versa and words importing the masculine, feminine gender include all genders as the case may require.
- 1.32 The meaning of any word or phrase used in the Deed shall to the extent that it is not defined by the other provisions of this Clause have the same meaning as that word or phrase has for the purposes of the SIS Act and Regulations. The meaning of any such word or phrase shall be determined by the corresponding meaning in the SIS Act and Regulation at the time at which that meaning is required to be ascertained.
- 1.33 Without limiting the generality of sub-clause 1.32 the following terms shall have the same meanings as are applicable to those terms under the Act and Regulations:

Excluded Superannuation Fund  
 Investment  
 Public Offer Superannuation Fund  
 Approved Trustee  
 Employer Representative  
 Employer Sponsor  
 Independent Director  
 Independent Trustee  
 Member Representative  
 Policy Committee  
 Standard Employer Sponsor  
 Standard Employer Sponsored Fund  
 Standard Employer Sponsored Member  
 Superannuation Fund

- 1.34 Sub Clause 2.9 shall have general application to the interpretation of the provisions of this Deed as if all the words "Where the provisions of this clause permit" were omitted and the words "Where any provision of this Deed permits" were substituted.

## **2. MEMBERSHIP**

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

- (a) Employees other than those Employees specified in sub-clause (d) invited by their Employer to participate in the Fund.
- (b) Self Employer persons who apply in writing to the Trustees.
- (c) Persons who at the time of making written application to the Trustees for admittance are employed by a person who is not an Employer pursuant to this Deed, and,
- (d) Employees invited by their Employer to participate in the Fund pursuant to the provisions of an Industrial Award applying to those Employees.

- 2.2 All applications to join the Fund shall be in writing in a form approved by the Trustees for admission to membership of the Fund.

- 2.3 Persons becoming Members of the Fund in the various circumstances set out in sub-clause 2.1 hereof shall only be eligible for the provision of Benefits under the Schedules to this Deed as follows:

- (a) For persons becoming Members pursuant to paragraph (a) of sub-clause 2.1 - under either Schedules 1 or 2 as nominated by their Employer.

- (b) For persons becoming Members pursuant to paragraphs (b) and (c) of sub-clause 2.1 - under Schedule 2.
  - (c) For persons becoming Members pursuant to paragraphs (d) of sub-clause 2.1 - under Schedule 3.
- 2.4 Nothing in this clause shall be construed so as to prevent a person being a member of the Fund pursuant to any two or more of the paragraphs of sub-clause 2.1 at any one time.
- 2.5 On approval of the application by the Trustees the person making the application shall become a member of the Fund. Each member by his application shall be deemed to have assented to and have consented to be bound by the provisions of the Rules.
- 2.6 Subject to this Deed in relation to those persons becoming Members of the Fund pursuant to paragraph (a) of sub-clause 2.1 their Employer may, subject to Trustees consent, at any time alter their classification as Executive or Non-Executive or the application of Schedules 1 or 2 to their Membership.
- 2.7 For the purpose of ascertaining whether benefits provided under Schedules 1 and 2 are to be provided in a Lump Sum or Pension form the following persons shall specify the form of Benefit at the time application for Membership is made.

In case of Members admitted pursuant to:

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

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

- (c) In all cases - the provisions of this Deed, and
  - (d) In the case of Members admitted pursuant to paragraph (d) of sub-clause 2.1, the proposed alteration being in conformity with the Industrial Award which relates to Membership.
- 2.8 Where the provisions of sub-clause 2.6 have been applied to alter the Schedule applicable to a Member the relevant Member shall for the purpose of clause 2 and Schedules 1 and 2 be deemed to have been admitted to the Fund pursuant to and application for membership at the time the relevant alteration took place.

- 2.9 Where the provisions of this Clause permit a discretion to be exercised by a person other than the Trustee such discretion shall be read as being subject to such restraints on its exercise as would prevent it being treated as void pursuant to the Act.

### **3. CONTRIBUTIONS**

#### **3.1 Contributions to the Fund shall:**

- (a) Where an Industrial Award is applicable - be such amount as is provided for under the Award, or
- (b) In any other case, be such amount:
- (i) In a case where paragraph 2.1 (a) is applicable:
    - as the Employer in relation to his own contributions from time to time determines and/or
    - as the Member with the agreement of the Employer and Trustee in relation to his own Contributions, from time to time determines.
  - (ii) In a case where paragraph 2.1 (b) or (c) is applicable.
    - as the Member and Trustee agree upon, and
- (c) May in relation to contributions made by an Employer pursuant to paragraph 3.1 (b) (i) be made either under an arrangement between
- (i) The Employer and Trustees
  - (ii) The Employer and the relevant Member

- 3.2 In relation to contributions made by a Member pursuant to paragraph 3.1(b) the Employer shall deduct the Member's Contributions from his salary, wages, fees or other emoluments either by weekly, monthly, or other periodical deductions as may be agreed upon between the Employer and the Member. All contributions made by the Members as aforesaid shall be credited to the Member's Accumulation Account of that Member.

- 3.3 The contribution payable shall be paid into the Fund in such manner and at such times as is agreed upon between the relevant parties provided that any payments made with the agreement of the Trustees direct to any Investment manager, Life

Insurance Company or other like body shall be deemed to be both payment to the Trustees and payment by the Trustees to such body.

- 3.4 The provisions of this Clause shall be subject to any notice provided by the Commissioner pursuant to the Act directing the Trustees not to accept any contributions made to the Fund by an employer - sponsor. Should a contribution be accepted in contravention to such a notice the contribution shall be refunded as provided for in the Act.
- 3.5 Should a Fund constituted by this Deed be a Public Offer Entity the Trustee shall only issue a Superannuation Interest at a price which is fair and reasonable as between the person to whom the Superannuation Interest is proposed to be issued and the other Beneficiaries of the Fund.
- 3.6 Where a Public Offer Entity receives money in respect of an application for the issue of a Superannuation Interest which is not issued immediately after the receipt of the said money the Trustee must hold and deal with the money on trust for the applicant in the manner specified on the Regulations.
- 3.7 Should the Minister grant Financial Assistance to the fund under the Act the Trustee shall subject to any conditions attaching to such assistance pursuant to the Act treat such sums as contributions made pursuant to this Clause and account for such contributions in a manner which is fair and equitable as between the Employer Sponsors and Beneficiaries under the Deed.
- 3.8 The Trustee may decline to accept contributions in any case or grant any accrual of benefits for a member of a Defined Benefit Fund if such action would constitute a breach of Section 34 of the Act.

#### **4. REDEMPTION OF INTEREST**

- 4.1 This Clause applies in relation to the issuing of a Superannuation Interest if the following conditions are met,
- (a) The Interest is in a Public Offer Entity.
  - (b) The Interest is the first such interest to be issued to the applicant pursuant to a particular application , and
  - (c) The applicant does not hold the interest as a Standard Employer Sponsored Member of an Employer Sponsored Fund.
- 4.2 An applicant shall be entitled within 14 days after the issuing of the Superannuation Interest to give written notice to the Trustee requesting the redemption of the interest.

- 4.3 The Trustees shall redeem the interest as soon as practicable after receiving the request at a price calculated in accordance with sub-clauses 4.4 to 4.6.
- 4.4 The price payable on redemption shall be equal to the issue price less the tax deduction amount.
- 4.5 The issue price is the amount a person would have to pay at the time of redemption for the issue of an interest identical to that being redeemed.
- 4.6 The tax reduction amount is the tax the Trustee has paid or is or may become liable to pay because of the issue of the interest to the applicant.

## **5. THE FUND**

- 5.1 The Fund shall consist of all the cash investments and other property including real and personal for the time being held by or on account of the Trustees of the Deed and Rules and shall be established and maintained by:
- (i) Contributions made in accordance with Clause 3.
  - (ii) Interest and dividends arising from any investment.
  - (iii) Profits and other benefits arising from any investments, and
  - (iv) Monies, investments and other property transferred to the Fund from any other Superannuation Entities.
- 5.2 In applying the provisions of this Deed reference to the Fund shall be deemed to be reference to separate funds comprising those amounts referred to in paragraphs (i), (ii), (iii) and (iv) of the sub-clause 5.1 which relates to:
- (a) The Categories of Membership provided for in paragraphs (b) and (c) of sub-clause 2.1.
  - (b) Each Employer with Employees admitted to Membership pursuant to paragraph (a) of sub-clause 2.1 who elects that this paragraph shall apply to those of his Employees admitted to Membership pursuant to paragraph (a) of sub-clause 2.1
  - (c) Each Employer with Employees admitted to Membership pursuant to paragraph (d) of sub-clause 2.1 who elects that this paragraph shall apply to those of his Employees admitted to Membership pursuant to paragraph (d) of sub-clause 2.1.



- (d) Where no election pursuant to paragraph (b) of this sub-clause is made the category of Membership provided for in paragraph (a) of sub-clause 2.1.
  - (e) Where no election pursuant to paragraph (c) of this sub-clause is made the Category of Membership provided for in paragraph (d) of sub-clause 2.1.
- 5.3 The elections referred to in sub-clause 5.2 shall be made in writing and shall be delivered to the Trustee on or before the time at which the Employer is accepted under the Deed.
- 5.4 Where in relation to a particular Member and pursuant to sub-clause 2.7 the Form of Benefit stipulated at the time an application for Membership is altered the following steps may at their discretion be undertaken by the Trustees.
- (a) Assets which in the opinion of the Trustees are of a sufficient current market value to offset the present value of the benefits receivable by the Member shall be identified.
  - (b) Those assets shall constitute a separate Fund for the benefit of the relevant member and shall be held on the terms of a Trust identical in all respects with the provisions of this Deed and Rules.
  - (c) The Fund which prior to the application of this sub-clause was partly or wholly comprised of those shall after the transfer of those assets to the Fund referred to in paragraph (b) be relieved of any further liability under the Deed and Rules applying to it in relation to the relevant member.
- 5.5 For the purposes of sub-clause 5.4 the Benefits receivable by a member shall take account of all Benefits which may be receivable in the future by the Member or his Dependants and which may or may not depend on any contingency.

## **6. TRUSTEES COVENANTS**

6.1 The Trustees covenants are as follows:

- (a) To act honestly in all matters concerning the entity;
- (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;

- (c) to ensure that the Trustees duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the entity separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;
- (e) not to enter into any contact, 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) subject to sub-clause 6.3 to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the entity including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the entity's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the entity'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 entity's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the entity to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the entity - to formulate and to give effect to a strategy for their prudential management, consistent with the entity's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary access to any information or any documents prescribed by the Regulations.

6.2 A covenant referred to in paragraph 6.1 (e) does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.

- 6.3 A Beneficiary or class of Beneficiary may give directions to the Trustee where;
- (a) the directions relate to the strategy to be followed by the Trustees in relation to the investment of a particular asset or assets of the Fund, and
  - (b) the directions are made in circumstances specified in the Regulations.
- 6.4 Where the Trustee is a company the covenants referred to in sub-clause 6.1 operate as a covenant by each of the Directors of Trustee Company to exercise reasonable degree of care and diligence for the purpose of ensuring the Trustees compliance with the said covenants.

## 7. INVESTMENTS

- 7.1 Monies belonging to the Fund and not required immediately for the payment of Benefits or other amounts authorised by the Deed and Rules may be invested by the Trustees in or upon any investments of any kind (not limited to investments authorised by law for the investment of trust funds) as the Trustees subject to sub-clause 6.3 in their absolute discretion shall think it fit provided;
- (i) A loan must not be made to, or Financial Assistance using the Funds resources must not be given to a Member or relative unless
    - the Fund was established before December 16, 1985, and
    - prior to that date the Trustees had express power to lend or were not expressly prohibited and did in fact lend to members, and
  - (ii) that all investments other than an investment in an in-house asset shall be made on arms length basis.

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

- (a) The Trustees may invest monies not immediately required for any other purpose in deposits with interest with any bank or with any person, firm or corporation (including an Employer) carrying on business in the Commonwealth of Australia or elsewhere.
- (b) In shares or stock (whether fully or partly paid) and in debentures, bonds, options, unsecured notes or other securities of any Company, Corporation or Financial Institution (including the Employer) carrying on business within the Commonwealth of Australia or elsewhere in the world or of any Foreign Government.

- (c) in any investment in which by the Laws of the State of Queensland or any State or Territory of the Commonwealth of Australia, Trustees are authorised to invest (whether on a contributory basis or otherwise),
- (d) in the purchase of land of any tenure, freehold or leasehold, improved or unimproved and lend upon the mortgage of land of any tenure, freehold or leasehold, improved or unimproved (whether on a contributory basis or otherwise),
- (e) in units or sub-units of any fixed or flexible unit trust,
- (f) in the acquisition from any person or Company or to effect with any Life Insurance Company a policy of life, endowment, term, accident, sickness or disability Insurance of such kind as Trustees in their absolute discretion may determine, and the Trustees shall have the power to pay the premiums and duty on any such policy and also to surrender or deal in any way with such policy,
- (g) in the sale of the whole or any part of the investments representing the Fund at any time or times for such price or prices and on such terms as the Trustees may think fit and the Trustees shall have the power to invest the proceeds of any sale or sales in any manner hereby authorised,
- (h) in setting aside out of the Fund from time to time such sum or sums of money as may in the Trustees opinion be sufficient to meet any debt or obligation due or accruing,
- (i) in the payment of calls on shares or stock forming part of the Fund and to accept transfers of shares or securities,
- (j) to assent to and concur in any arrangement, sale, transfer or exchange of any shares, stocks, debentures or other securities modifying any rights privileges or interest in relation to the Fund and to agree to and concur in any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any Company in which any such shares, stock or debentures forming the whole or any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose whatsoever with any other Company or Companies, person or persons whereby any such shares, stock, debentures or other securities are substituted or given for other shares, stocks, debentures whether in or of the

same Company, or otherwise AND for any such purpose to deposit, surrender, apply for or exchange all relevant documents of title and at the cost of the Fund to pay any contribution or incur any necessary expense in connection with any such scheme or arrangement and generally to manage or deal with the property forming the Fund as fully as if the Trustees beneficially owned the same.

- (k) In entering into any contract or transaction or arrangement in respect of acceptance, endorsement or discounting Bills of Exchange or otherwise deal in any way with the Fund or part thereof.
- (l) In varying or transposing any investments into or for any other investment or investments of any nature and kind hereby authorised and to vary the terms of any document or security.
- (m) In applying any part of the fund in improving or developing any property forming part of the Fund or in erecting, extending, improving or rebuilding any buildings upon any land forming part of the Fund and to make all such repairs and maintenance as it in its absolute discretion may think fit.
- (n) In purchase, taking on hire purchase, or on hire or in exchange or by any means whatsoever, acquiring or becoming possessed of any real property whatsoever or any personal property whatsoever or any estate, right, title and/or interest in respect of the same and to improve, develop, sell, alienate, mortgage, charge transfer, lease, sub-lease, let, hire or in any other manner dispose or deal or turn to account such property or rights or any of them or any part thereof whether by public or private treaty.
- (o) In investing in the assets held by the Trustees of any Superannuation Fund or funds established or managed by any Company in Australia or elsewhere.
- (p) In investing in any futures contract approved by the Trustee at the Sydney Futures Exchange Limited or such other futures market or exchange as may be approved by the Trustee.
- (q) In investing in any form of investment determined by the Trustees with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all aspects as a person absolutely and beneficially entitled dealing with his own property may do.

- 7.2 Subject to sub-clause 6.1 (Trustees Covenants) any investments may be held in such names including the name of a nominee (whether an individual or a body corporate) as the Trustees shall from time to time determine.
- 7.3 The Trustees may value the whole or any part of the assets of the Fund in such a manner as they shall determine whenever in their opinion it is necessary or desirable to do so.

## **8. TRANSFER, PRESERVATION AND PORTABILITY OF BENEFITS**

- 8.1 Notwithstanding any provision to the contrary contained in this Deed where a Member becomes entitled to the payment of a Benefit he may request that that Benefit be preserved for him in the Fund to such later date as he may from time to time specify provided that the Trustee shall not be required to accept such a specification if to do so would constitute a breach of Section 34 of the Act.
- 8.2 Should a Benefit be preserved in accordance with sub-clause 8.1 where the Member was:
- (a) subject to Schedule 1, and
  - (b) entitled to the payment of the Benefit in the form of a Pension, then the Trustee shall obtain advice from the Actuary on the lump sum value of the Benefit preserved and that lump sum value shall be credited to a Member's Accumulation Account for that Member and be subject from that time to payment in accordance with Schedule 2 hereof.
- 8.3 Benefits not subject to preservation by retention within the Fund may, at the discretion of the Trustee, be paid to any person or entity on behalf of the relevant Beneficiary and without limiting the generality of the above power such person or entities shall include any Superannuation Fund Approved Deposit Fund or entity which issues annuities.
- 8.4 In sub-clause 8.3 the term Benefits shall include Beneficial Interests in the Fund whether presently payable or not and in the case of Benefits which are not presently payable shall be such amount and as the Trustee considers to be fair and equitable in the relevant circumstances.
- 8.5 Prior to making a payment referred to in sub-clause 8.3 the Trustee may seek and obtain the written consent of the Member to the proposed transfer or may undertake the steps necessary so that any fund to which such payments are made is a Successor Fund.

**8.6 If**

- (a) the Fund is a Standard Employer Sponsored Fund;
- (b) the Trustee determines that a Benefit other than a Pension is immediately payable;
- (c) the relevant Member is or was a standard employer sponsored Member of the Fund;
- (d) 90 days has elapsed since the Benefit became payable or July 1, 1994 whichever is the later, and;
- (e) the Benefit has not been paid;

the Trustee may pay the Benefit to an eligible roll-over Fund.

**8.7** Subject to sub-clause 8.8 if sub-clause 8.6 applies and the Trustees are satisfied that at least two consecutive reports to members prescribed by the regulations have not been received then the Trustees must pay the Benefit to an eligible roll-over fund.

**8.8** Where sub-clause 8.7 would apart from this sub-clause have application the Trustees may deal with the benefit as if it were unclaimed money and by following the procedure set down in the Act for the treatment of such sums provided that this sub-clause shall at the discretion of the Trustee not apply where the Benefit is less than the minimum prescribed in the Regulations in relation to the preservation and portability of benefits.

**8.9** Where an Employee who has been admitted to the Fund was a Member of any other Superannuation Fund or approved Deposit Fund and there is paid to the Trustees for the credit of the Fund an amount from such previous Fund, the Trustees shall provide the Member with additional or accrued benefits in such a manner as it shall determine.

## **9. ASSIGNMENTS AND CHARGES**

**9.1** The Trustees of the Fund shall have an absolute discretion as to whether they recognise, encourage or sanction an assignment of a Superannuation Interest of a member or beneficiary.

**9.2** The Trustees of the Fund shall have an absolute discretion as to whether they recognise, encourage or sanction a charge over or in relation to a Minimum Benefit or Preserved Benefit of a member or beneficiary or a non-commutable income stream.

## **10. TRUSTEES EQUAL REPRESENTATION RULES**

**10.1** On the constitution of a Standard Employer Sponsored Fund pursuant to this deed the appointment of the Trustee at that time may take place on terms that satisfy the Equal Representation Rules contained in part 9 of the Act.

**10.2** The Trustees for the time being may establish rules

- (a)** setting out a procedure for appointing member representatives, and
- (b)** ensuring that member representatives so appointed can only be removed by the same procedure by which they were appointed except in the event of circumstances prescribed in the Act.

Such rules as in force from time to time shall be deemed to be incorporated in the Deed and shall have effect accordingly.

**10.3** The Trustees, or Directors of a Trustee Company, may appoint an additional Independent Trustee or Director as the case requires in such a manner that the Equal Representation rules are complied with. Such additional Independent Trustee or Director may not exercise a casting vote in any proceedings of the Trustees or Board of the Trustee Company concerned.

**10.4** The Trustees for the time being may establish rules ensuring that any Trustee or Director appointed pursuant to sub-clause 10.3 can only be removed by the same procedure by which they were appointed except in the event of circumstances prescribed in the Act.

**10.5** The Trustees or in the case where a Company is Trustee its Board of Directors shall have the power at all times to do such acts or omit to do such acts as are necessary in order to comply with the Equal Representation rules of the Act.

**10.6** Without limiting the generality of sub-clause 10.5 such acts include:

- (a)** Filling a vacancy in the office of Trustee or Director;
- (b)** Obtaining the agreement of any or all the members or employers under the Deed to the appointment of Trustees;
- (c)** Ensuring that the Trustee of the Fund is independent and for those purposes an existing Trustee may resign and arrange for the appointment of such independent Trustee.
- (d)** Establishing policy committees and ensuring equal employer and employee representation on those committees.



- (e) Obtaining the approval of Commissioner to the approval of a Trustee.
- (f) Determining that functions of any policy committees created provided that those functions shall at a minimum be those provided for in the Regulations.

## **11. TRUSTEES REMOVAL AND APPOINTMENT**

### **11.1 The position of Trustee shall become vacant if:**

- (i) In the case of a company
  - (a) A winding up order is issued pursuant to the Corporations Law of a State or Territory, or
  - (b) Pursuant to a resolution of its Board of Directors it resigns from office,
- (ii) In the case of a natural person, not being a Member representative or additional independent Trustee where clause 10 is applicable, if he:
  - (a) Becomes bankrupt, or
  - (b) Enters into a Deed or arrangement or assignment under the Bankruptcy Act 1966, or
  - (c) Resigns from his office by notice in writing, or
  - (d) Dies
- (iii) Subject to clause 10, in any case if the conditions determined at the time of their nomination are met or if no such conditions were determined if all members of the Fund agree to remove the relevant Trustee from that position.

**11.2** Should no person be occupying the position of Trustee a new Trustee shall be appointed following agreement between the Members of the Fund (or a trade union or other organisation representing the interests of those members) and the Employer or Employees of those Members in a manner which is consistent with the Act and Regulations.

**11.3** A person shall not be appointed as Trustee or as a Director of a Company Trustee unless that person has consented in writing.

## **12. BENEFICIARY COMPLAINTS AND INFORMATION**

- 12.1 The Trustees may place in force arrangements under which beneficiaries have the right to make inquiries into or complaints about the operation or management of the Fund in relation to the beneficiary making inquiry or complaint. Such arrangements if any are to ensure that those inquiries or complaints are properly considered and dealt with within 90 days after they were made.
- 12.2 The Trustee shall have the power to provide such information to Members and Employer Sponsors (both prospective and existing) as will avoid the commission of an offence pursuant to Section 34 of the Act or a contravention of any other provision of the Act (for example Sections 157 and 158).

## **13. TRUSTEE MEETINGS**

### **13.1 Where a Company is the sole Trustee:**

- (a) Subject to the other provisions of the Deed any question of discretion (including the powers, authorities and discretions vested in the Trustee generally and by this Deed) shall be decided or exercised in accordance with a resolution of the Directors passed at a meeting of the Directors of the Company.
- (b) A resolution in writing signed by all the Directors shall have the same effect and validity as a resolution of the Directors passed at a duly convened meeting.

### **13.2 Where there is more than one Trustee:**

- (a) Subject to the other provisions of the Deed the Trustees may meet together for the despatch of, adjourn and otherwise regulate their meetings as they think fit.
- (b) A resolution in writing signed by all the Trustees shall have the same effect and validity as a Resolution of the Trustees passed at a duly convened meeting.

### **13.3 Without limiting the requirements in sub-clauses 13.1 and 13.2 the conduct of the meeting covered by those provisions is subject to the other provisions of this Deed in those cases where a Fund:**

- (a) Is not a Public Offer Superannuation Fund, and

- (b) The Trustees have complied with the equal representation rules by complying with the Basic Equal Representation Rules.

then a decision of the Trustees is of no effect if fewer than 2/3rds of the total number of Trustees or Directors (in the case of a Company Trustee) have voted for it.

#### **14. POWERS OF TRUSTEES**

14.1 In addition to the powers which they may by law have and which are otherwise granted to them by this Deed, the Trustee shall have full power that an individual would possess including, but not being limited to, the right:

- (a) to commence, carry on, defend or abandon any legal proceedings related to the Fund or to the rights of the Members;
- (b) to insure or re-insure any risks, contingencies or liabilities of the Fund;
- (c) to retain the service of professional advisors, whether persons, firms or companies, or employees, or delegate powers to a person in relation to the management, administration or investment of the Fund, to delegate such professional advisors or employ such persons as they see fit from time to time and to determine and pay out of the Fund's fees or salaries payable to such professional advisors or employees;
- (d) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (e) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents and to open accounts with Financial Institutions and retain with such institutions such money as they deem advisable;
- (f) to determine, authorise and arrange payments of benefits out of the Fund to persons so entitled;
- (g) to acquire or dispose of property which is an investment permissible under clause 7 hereof on such terms and conditions as it shall think fit;
- (h) generally to do all acts and things as they may consider necessary or expedient for the administration maintenance and preservation of the Fund and in performance of their obligations as Trustees of the Fund.

14.2 Subject to sub-clause 14.3 the provisions of this Deed shall be construed so as to prevent the Trustees being subject in the exercise of any of its powers to direction by any other person.

- 14.3 Sub-clause 14.2 shall not apply to any such direction permitted under the Act or Regulations.
- 14.4 Without limiting the generality of paragraph 14.1(h) the Trustees shall have the power to do or omit to do any act which should if done or omitted to be done constitute or result in
- (a) the breach of a Civil Penalty Provision
  - (b) an offence
  - (c) the liability of a Trustee to a Pecuniary Penalty or
  - (d) a breach of the regulations
- 14.5 To the extent that a provision of this Deed is inconsistent with the power contained in the sub-clause 14.4 that provision shall be invalid to the extent
- (a) of that inconsistency, and
  - (b) that it would otherwise prevent the operation of sub-clause 14.4
- 14.6 The Trustee of a Public Offer Entity may pay Commission and Brokerage in accordance with the requirements of the regulations.
- 15. INDEMNITY OF A TRUSTEE**
- 15.1 Subject to sub-clause 15.2 the Trustee shall be indemnified against all liabilities incurred by them in connection with any act done or omitted in the administration, or Investment of the Fund.
- 15.2 Sub-clause 15.1 shall not operate to indemnify the Trustee against a liability for Breach of Trust if the Trustee
- (a) fails to act honestly in a matter concerning the Fund or
  - (b) intentionally or recklessly fails to exercise in relation to a matter affecting the Fund the degree of care and diligence that was required.

Similarly sub-clause 15.1 shall not operate to indemnify the Trustee against a liability for a monetary penalty under a civil penalty order.

- 15.3 The director of a Company Trustee may be indemnified from the assets of the Fund in respect of a liability incurred while acting as a Director of the Trustee Company.
- 15.4 The limitations contained in sub-clause 15.2 shall apply with appropriate modifications to the indemnity provided for the sub-clause 15.3.

## **16. TRUSTEES ACCOUNTS AND RECORDS**

- 16.1 The Trustees shall keep a complete record of all matters essential to the administration and working of the Fund.
- 16.2 The Trustees shall cause proper records to be kept and enter to a book or other records provided for the purpose, all their resolutions and proceedings. They shall also keep a register of Members of the Fund showing their full names and addresses.
- 16.3 Without limiting the generality of sub-clause 16.2 the following records shall be kept for at least 10 years
- (a) if there are 2 or more individual Trustees; Minutes of all meetings of the Trustees at which matters affecting the Fund were considered,
  - (b) if there is one individual Trustee; a record of all decisions made by the Trustee in respect of matters affecting the Fund and,
  - (c) if there is a Company Trustee; Minutes of all meetings of Directors at which matters affecting the Fund were considered.
- 16.4 The Trustees may keep such accounting records and in such a manner as required by the Act and Regulations. Any records so prepared must be
- (a) retained for at least 5 years after the end of the year of income to which they relate
  - (b) kept in Australia and
  - (c) kept in English writing or in a form readily converted to such.
- 16.5 The Trustee may make such arrangements as are necessary to enable the audit of its records as required under the Act and Regulations.
- 16.6 In respect of a Member receiving benefits under Schedules 2 and 3 the Trustees shall keep the following accounts:

- (a) A member's Accumulation Account and
- (b) If appropriate, an Employer's Contribution Account.

16.7 A Member's Accumulation shall record the following:

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

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

- (a) Contributions made by an Employer for a Member pursuant to an agreement of the type referred to in sub-clause 3.1 hereof.
- (b) Interest determined as in paragraph 16.7(c) above calculated by reference to the balance of the Employer's Contribution Account.
- (c) The payment of Benefits referable to such account.
- (d) Insurance premiums paid in respect of the Member or his Dependants and which the Employer and Member have agreed should be debited to the Employer's Contribution Account.
- (e) Such other matters as the Trustee from time to time deem appropriate.

16.9 The Trustee of the Fund may maintain reserves and without limiting the generality of this power may take account of the level of these reserves for the purposes of paragraphs 16.7(c) and (f) and paragraphs 16.8(b) and (e).

- 16.10 If a Member becomes entitled to a Benefit after the end of the latest period in respect of which Interest has been allocated pursuant to paragraphs 16.7(c) and 16.8 (b) the Benefit must include a reasonable share of the estimated net earnings of the Fund for the period of that latest period and the time at which the Benefit payment is made or commences to be paid.
- 16.11 In applying sub-clause 16.10 the Trustees must have regard to the following factors in estimating net earnings for a period.
- (a) The factors taken into account in the latest calculation of the net earning of the Fund for the purpose of allotting those net earnings to Members.
  - (b) The likely returns on the investments of the Fund for the period subsequent to that referred to in paragraph (a) and
  - (c) Any other factors likely to influence net earnings of the Fund during the period referred to paragraph (b).
- 16.12 An estimate made by the Trustees pursuant to sub-clause 16.10 remains in force unless the Trustee makes another estimate in relation to the period or any part of it in accordance with the provisions of this Clause and while in force applies to Members of the Fund who become entitled to Benefits in the period.
- 16.13 (a) The Trustees may with the agreement of a Member and subject to compliance with its covenants relating to Investment Strategy allocate assets of the Fund with a value up to the total credit in the Member's Accumulation Account and Employer Contribution Account for that member at the time of such allocation.
- (b) Any variation in the assets so allocated after that time may be made by the Trustee after consultation with the relevant Member.
  - (c) At any time subsequent to the allocation referred to in paragraph (a) interest credited to the Member's Accumulation Account or Employer's Contribution Account for that Member pursuant to this Clause shall be calculated pursuant to whichever is applicable of paragraphs (d) and (e) of this sub-clause.
  - (d) Where, at any time, the total of the allocations made pursuant to paragraphs (a) equals the total credit referred to, interest shall be calculated as if a reference to the net earning rate of the Fund were a reference to the net earning rate attributable to the allocated assets.
  - (e) Where paragraph (d) does not apply to the allocation made pursuant to paragraph (a), interest shall be calculated as if a reference to the net

earning rate of the Fund were a reference to a rate determined by the Trustee to be appropriate having regard to the net earning rate attributable to the allocated assets and the net earning rate attributable to the Fund assets excluding all assets of the Fund allocated pursuant to paragraph (a).

- (f) Where, at any time, a Member for whom interest is calculated pursuant to paragraph (d) has a total credit calculated pursuant to paragraph (a) in excess of the value of assets allocated in relation to him interest shall at any time after the occurrence of that event be calculated pursuant to paragraph (e) of this sub-clause.
- (g) Interest shall not continue to be calculated pursuant to paragraph (f) of this sub-clause for any period during which the conditions set out in paragraph (d) are met.

## **17. TRUSTEE'S COMPENSATION**

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

## **18. AMENDMENT OF DEED AND RULES**

- 18.1 The Trustees may at any time by Supplemental Deed, Minute, Resolution or Oral Resolution repeal and replace or amend, alter or add to any or all of the provisions of that Trust Deed or these Rules.
- 18.2 Sub-clause 18.1 does not authorise amendments in the case of a regulated Superannuation Fund constituted by this Deed if those amendments would have either of the following effects;
  - (a) that an Individual would be eligible to be appointed as Trustee unless the rules provide after the amendment that the Fund has as its sole or primary purpose the provision of old age pensions or
  - (b) that the role or primary purpose is not the provision of old age pensions unless the rules provide after the amendment that the Trustee must be a Constitutional Corporation.
- 18.3 In exercising their discretion pursuant to sub-clause 18.1 the Trustees may take into account whether a members right or claim to accrued benefits and the amount of those accrued benefits would be altered adversely so as to result in a breach of Section 34 of the Act.



## **19. PAYMENTS TO EMPLOYER SPONSORS**

- 19.1 The Trustees may if they consider such action to be fair and equitable as between the Employer Sponsor and Beneficiaries of a Fund make a payment not constituting an in house asset from the assets of the Fund to an Employer Sponsor or former Employer Sponsor of the Fund.
- 19.2 In making the payment described in sub-clause 19.1 the Trustees may take such action that does not involve a breach or contravention of the Act or Regulations and shall have the power to give any notices to Members such action implies.
- 19.3 Sub-clause 19.1 does not limit any payment by the Trustees to an Employer Sponsor by way of a reasonable amount for services rendered in connection with the management or operations of the Fund.
- 19.4 The term Employer Sponsor (which term shall include a former Employer Sponsor) in this clause shall include
- (a) if the Employer Sponsor is a Company - another Company that is related to that Employer Sponsor and
  - (b) if the Employer Sponsor is an individual - an associate of the Employer Sponsor.

## **20. TERMINATION OF FUND**

- 20.1 The Funds as specified in paragraph (b) of sub-clause 5.2 shall be wound up on the happening of any of the following events:
- (a) The expiry of one month's notice to the Trustees and each member by the Employer that it has decided to cease permanently contributing to the Fund;
  - (b) If the Employer is a Company - if an Order is made and effective Resolution is passed for the winding up the Employer, other than for the purpose of amalgamation or reconstruction or if the Employer for any reason ceases to carry on business;
  - (c) If the Employer is a Partnership or Sole Trader - if the Partnership is dissolved or the business of the Employer in any way ceases to exist, other than for the purpose of succession or reconstruction; or
  - (d) If the Trustees are of the opinion that it would be in the best interest of the Members to do so, and

- (e) in the case of Members subject to Schedule 1 and subject to paragraph (a) of this sub-clause, the Trustees may if they consider, it would be in the interests of Members instead of closing the Fund make arrangements for the continuation of the Fund and the reduction of Benefits to which Members would otherwise be entitled, in an equitable manner as determined by the Trustees following advice from the Actuary and having regard to the provisions of the Regulations;
  - (f) The provisions of paragraph (d) of this sub-clause shall also be applicable to the Fund specified in paragraph (d) of sub-clause 5.2.
- 20.2 The Funds specified in paragraph (a) of sub-clause 5.2 shall be wound up if:
  - (a) A majority of Members make such request in writing and the Trustees resolve to proceed with a winding up; or
  - (b) If the Trustees are of the opinion that it would be in the best interests of the Members to do so.
- 20.3 The Fund specified in paragraphs (c) and (e) of sub-clause 5.2 shall be wound up if:
  - (a) Provisions of the Industrial Award governing that Fund so provide, or
  - (b) Subject to any inconsistency with paragraph (a) of this sub-clause (in which case the provisions of the said paragraph (a) shall prevail to the extent of any inconsistency). In the case of funds specified in sub-clause 5.2(c) - if any of the events specified in paragraphs (a) to (e) in sub-clause 20.1 occur, and in the case of funds specified in sub-clause 5.2(e) if the Trustees are of the opinion that it would be in the best interests of Members to do so.
- 20.4 Any of the Funds specified in sub-clause 5.2 shall be wound up if the Commissioner should appoint an Acting Trustee and in writing formulates a scheme for the winding up or dissolution of the fund.
- 20.5 The Trustee may initiate winding up procedures in accordance with the requirements of the Regulations should the Fund;
  - (a) Be technically insolvent
  - (b) Fail to comply with the requirements of the Regulations during a period of Technical Insolvency and such failure would lead to a further requirement under the Regulations that the Fund be wound up

- (c) In the case of a Defined Benefits Fund if the Actuary is unable to certify the solvency of the Fund at the end of the period of Technical Insolvency or in the case of an Accumulation Fund if it is not solvent at the end of that period, or
  - (d) have been used to reduce or remove the Superannuation Guarantee Charge imposed under the Act referred to in sub-clause 20.6.
- 20.6 Sub-clause 20.5 does not apply to Funds which have never been used to reduce or remove the Superannuation Guarantee Charge imposed under the Superannuation Guarantee Charge Act 1992.
- 20.7 Any winding up procedures commenced under sub-clauses other than 20.5 shall if the Trustees so resolve be deemed to have been instituted under sub-clause 20.5.
- 20.8 Funds which are wound up pursuant to sub-clause 20.5 shall distribute their assets in the following order of priority;
  - (a) The payment of liabilities and costs associated with the administration of the winding up proceedings.
  - (b) The allocation of Benefit entitlements to individual members of an amount not less than that stipulated under the Regulations and
  - (c) To the extent that the assets are not entirely distributed in accordance with paragraphs 20.8 (a) and (b) in the priority set out in sub-clause 20.9.
- 20.9 In addition to its application in the circumstances described in paragraph 20.8 (c), 20.9 this sub-clause shall apply to the wind up of a Fund which proceeds under a sub-clause other than sub-clause 20.5
  - (a) If the provisions of sub-clause 20.1 are applicable, the distribution of the relevant Fund's assets shall occur in the following priority
    - (i) In the payment of the Funds expenses
    - (ii) In the payment of Benefits which Members or their dependants become entitled to before the commencement of the winding up
    - (iii) In the provision of Benefits to Members employed by the Employer as at the commencement of the winding up of the Fund and not otherwise entitled to a Benefit of an amount equal to the Benefit the Member would have received had he left the services of the

Employer immediately prior to the commencement of the winding up of the Fund; and

- (iv) Subject to the restrictions in this Deed on Payments to Employer Sponsors such amounts if any determined by the Trustees as fair and equitable shall be transferred to the Employer Sponsor or Employer Sponsors in such proportions as determined by the Trustees.

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

- (b) If the provisions of sub-clause 20.2 are applicable the Fund assets shall be distributed in accordance with Schedule 2 or pursuant to sub-clauses 8.1 to 8.9 and for those purposes the relevant members shall be deemed to be entitled to the Benefits to be distributed.
- (c) If the provisions of sub-clause 20.3 are applicable the Fund assets shall be distributed amongst the Members in accordance with Schedule 3 or pursuant to sub-clause 8.1 to 8.9 and for those purposes the relevant members shall be deemed to be entitled to the Benefit to be distributed.

## **21. DETERMINATION OF PENSION**

- 21.1 Notwithstanding any other provision of the Deed or Rules but subject to sub-clause 14.4 a Pension may be paid on such terms and in such amounts as are agreed between the Member and Trustee.

## **22. TRANSFER OF PERFORMANCE**

- 22.1 In the case of a Fund specified in either paragraphs 5.2(b) and/or (d) where the whole or substantially the whole of the assets of the Employer's business where the Employer is a company is here after acquired by another company then the Trustees may elect to accept the performance by that other company of the obligations of the Employer hereunder. Such acceptance by the Trustees shall discharge the Employer from any further obligations under this Deed to the extent that henceforth this Deed shall be read and construed as if such assignee company were mentioned as the Employer hereunder.
- 22.2 In the case of a Fund specified in paragraphs 5.2(c) and/or (e) the provisions of sub-clause 22.1 shall apply subject to any inconsistency with the terms of the Industrial Award governing contributions to such Fund.

### **23. EMPLOYER'S RIGHT TO TERMINATE EMPLOYMENT**

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

### **24. PAYMENT OF BENEFITS**

- 24.1 The payment of any Benefit pursuant to this Deed shall be subject to the requirements of the Act relating to Unclaimed Money.
- 24.2 Notwithstanding anything to the contrary in this Deed the Trustees shall have the power to pay a benefit which is required or permitted to be paid under the Regulations. The form that such a benefit takes may be consistent with any stipulations contained in the Regulations.
- 24.3 During any period of Technical Insolvency the Trustee may determine not make a payment of a benefit from the Fund if such a payment would result in a breach of Section 34 of the Act.
- 24.4 In any case other than the provision of a Death Benefit where a Lump Sum Benefit becomes payable pursuant to these presents payment of that Benefit shall be made as soon as, in the opinion of the Trustees, it is practicable to do so, provided that in all cases payment of the Benefit shall be made within six months within the date of the event giving rise to the Benefit.
- 24.5 Any obligation of the Trustees to pay a Pension pursuant to these Rules may be fully and finally satisfied by the Trustees purchasing an annuity of a value certified by the Actuary to be equivalent to the relevant Pension from an organisation which conducts a business that consists in whole or part of providing annuities.

### **25. COMMUTATION**

- 25.1 The Trustees may at the request of any person entitled to a Benefit commute to a Lump Sum any Pension to which that would otherwise be entitled pursuant to this Deed.

Subject to the above requirements the commuted value of the Pension shall be determined by the Trustees after receiving advice from the Actuary. Any person entitled to a Lump Sum Benefit may with the agreement of the Trustees

substitute for the Lump Sum entitlement a Pension determined by the Trustees after receiving advice from the Actuary to be of equivalent value provided that should the entitlement to the Lump Sum Benefit arise on the Termination of gainful employment with an Employer who had or any of whose associates had at any time contributed to the Fund (being a regulated Fund) then a Pension may be paid by the Trustees on such terms as would enable the Trustees to avoid a breach of Section 34 of the Act.

## 26. ALTERATION OF PENSION

26.1 Subject to any contrary Agreement reached pursuant to Clause 21 of the Deed, the Trustees may at any time vary the level of Pension being provided to Members or other persons to account for changes in the cost of living since the relevant Pensions commenced to be paid provided that:

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

## 27. UNEXPIRED BENEFITS

27.1 Subject to any contrary Agreement reached pursuant to Clause 21 upon a Pension Benefit ceasing, the commuted value of the unexpired Pension shall be payable in a Lump Sum form. The Commuted value of the unexpired Pension shall be calculated according to the following formula.

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

.05

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

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

## **28. PAYMENT OF BENEFITS IN SPECIE**

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

## **29. MISCELLANEOUS**

- 29.1 Except as provided in Clause 20 the Trusts constituted by this Deed shall continue during the life of the survivor of all the lineal descendants now living of His Late Majesty King George VI and twenty-one (21) years after the death of such survivor and such further period (if any) as may from time to time be permitted by law, provided always that this provisions shall not apply where the laws of the State or Territory of Australia applicable to the Deed provide that the Rules against Perpetuities shall not apply.

- 29.2 Where the laws applicable to this Deed are the laws of the State of South Australia, the provisions of Section 35(b) of the Trustees Act 1936 - 1953 of that State are hereby expressly excluded from application to this Deed.

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

## **30. MINIMUM BENEFITS**

- 30.1 The provisions of this Clause are subject to Minimum Benefits being provided in accordance with any priorities applicable pursuant to Clause 20 as a result of the Fund being wound up.
- 30.2 The Trustees may decline to add amounts to Minimum Guaranteed Benefits under an Accumulation Fund during any period of Technical Insolvency if such action would constitute a Breach of Section 34 of the Act.
- 30.3 Notwithstanding any provision to the contrary in the Deed the Trustees may ensure that a Members Minimum Benefits in the Fund are maintained until the Benefits are

- (a) paid as Benefits of the Member or
- (b) rolled over or transferred as Benefits of the Member.

### **31. ELECTIONS**

- 31.1 The Trustees shall at all times have the power to make the election referred to in Section 19 (4) of the Act to become a regulated Fund. Until such an election is made the provisions of sub-clauses 1.34, 2.9 and 14.3 shall have no effect.
- 31.2 The Trustees of Standard Employer Sponsored Fund may elect that the Fund is to be treated as a Public Offer Superannuation Fund.
- 31.3 For the purposes of complying with Payment Standards contained in the Regulations the Trustees may decide on Changeover Day at a date which they determine is convenient.

### **32. DATE OF EFFECT**

- 32.1 The Provisions of this Deed shall have no effect until the time specified in sub-clause 32.3 if they constitute the governing rules of the Fund pursuant to an amendment of the governing rules of an existing Fund.
- 32.2 In the circumstances specified in sub-clause 32.1 the governing rules of the Fund at the time of any amending Deed shall be deemed to continue in effect until the time specified in sub-clause 32.3.
- 32.3 The time specified for the purposes of sub-clauses 32.1 and 32.2 is the time at which the Trustee makes the election referred to in sub-clause 31.1.

### **33. MODIFICATION OF PROVISIONS APPLYING TO EXCLUDED FUNDS**

- 33.1 The provisions of the clauses set out in sub-clause 33.2 shall have no effect whilst a Fund has 4 or less members.
- 33.2 The clauses referred to in sub-clause 33.1 are

Clause 10  
 Clause 13.3  
 Clause 19

provided that the reference to clause 19 shall only be of effect if the fund had 4 or less members throughout its existence.



## **34. REGULATED SUPERANNUATION FUND STATUS**

- 34.1 It is a condition precedent to the application of this clause that the Trustees of the Fund shall have made an election pursuant to sub-clause 31.1.
- 34.2 This Deed shall be construed so that it is a requirement at all times that either
- (a) The Trustee is a Constitutional Corporation or
  - (b) The sole or primary purpose of the Fund is the provision of old age Pensions.

## **SCHEDULE 1**

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

### **Death Benefits**

- 1.1 On the death of a Member while still in the service of an Employer and before the Normal Retirement Date the Trustees shall subject to the other provisions of these Rules pay or apply the greater of the Member's equitable share of the Fund as determined by the Actuary and the proceeds of any policy or policies of Life Insurance taken out by the Trustees on the life of the Member to or for the benefit of such one or more Dependants of the deceased member and the Legal Personal Representative of the deceased Member in such shares and proportions and in such manner as the Trustees determine PROVIDED THAT the employer may request that an additional amount be provided and the Trustees may accede to such a request subject to the Trustees forming an opinion that the provision of such additional Benefit to a member does not thereby endanger the Benefit secured to any other Member by the terms of the Deed.
- 1.2 The Trustees shall within six months of the death of a Member determine the Dependants to whom the Member's entitlement is to be paid and shall notify such Dependants in writing. If the Trustees are of the opinion that a Member has no Dependants at the time of his death and no determination and notification is made by the Trustees within such period of six months, the Member's entitlement shall be transferred to the Member's Legal Personal Representative.
- 1.3 On the death of a Member after his Normal Retirement Date and before Payment of a Late Retirement Benefit the then present value as determined by the Actuary of the Late Retirement Benefit which would have been payable had the

Member retired on the date of his death shall subject to clause 27 be paid or applied by the Trustee under the provisions of Rules 1.1 and 1.2.

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

### **Retirement Benefits**

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

0.875 percent x salary x service whilst a Member in the case of Non Executive Member and a pension which is not regarded as producing an excessive Benefit under the Tax Act on the assumption that it is the only Benefit that the particular Member has received - in the case of Executive Members.

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

### **Late Retirement Benefit**

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

### **Early Retirement Benefit**

- 4.1 On the cessation of employment with the employer by a Member within ten (10) years of his normal Retirement Date and with the consent of the Employer and the Trustee an Early Retirement Benefit of a Pension determined by the Actuary to be equitable in the circumstances shall be payable to a Member PROVIDED

THAT such a Pension shall not exceed an amount determined according to one of the following formulae:

(a) In the case of an Executive Member -

The Pension which would be payable pursuant to Rule 2.1 if the cessation of employment were deemed to have occurred as a result of the retirement of the employee after his Normal Retirement Date.

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

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

0.875 per cent x salary x Plan Membership x 1 - (.025 x prospective future service to Normal Retiring Age at the date of Early Retirement).

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

### Disablement Benefits

- 5.1 On a Member becoming totally and permanently disabled before receiving a Benefit on Early, Late or Normal Retirement a Benefit shall be provided to the Member equivalent to that which would have been paid had that member died on the day on which he became totally and permanently disabled PROVIDED THAT in determining the amount of Benefit payable the deemed proceeds of any policy or policies of Life Insurance shall be excluded in calculating a Member's entitlement save and except to the extent that those policies provide for the payment of a Benefit on Total and Permanent Disablement.
- 5.2 On a Member becoming Temporarily Disabled a Pension shall at the absolute discretion of the Trustees be payable. The said Pension may be terminated at any time by the Trustees.
- 5.3 The pension payable pursuant to sub-rule 5.2 shall be such amount if any as determined by the Trustees and shall be determined having regard to the terms of any Insurance Policy which the Trustees hold relating to the said Temporary Disablement.

### Withdrawal Benefit

- 6.1 On the cessation of employment with the Employer of any Member in circumstances where no other Benefit is provided from the Fund to that Member

or his Dependents and/or Legal Personal Representatives one of the following Benefits shall be payable from the Fund:

(a) In the case of an Executive Member -

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

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

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

(i) Where not more than 5 years of Plan Membership has been completed a Lump Sum payable on the cessation of employment with the Employer of an amount not less than the Member's own contributions together with interest at a rate appropriate to the net earnings of the Fund over the relevant period of Membership PROVIDED THAT the Benefit payable to a Non-Executive Member may in the Trustees discretion be increased at the request of the Employer to an amount not exceeding the fair and equitable interest of the Member if the assets of the Fund as determined by the Actuary at the date of cessation of employment with the Employer, OR

(ii) Where more than 5 years service whilst a Member has been completed, a lump sum payable to the Member on reaching his Normal Retirement Date calculated according to the following formula:

0.875 percent x salary x Plan Membership

$\frac{x \text{ Plan Membership} \times (0.5 \times \text{Plan Membership})}{B}$

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

PROVIDED THAT the Benefit payable to a Non-Executive Member shall be increased at the discretion of the Trustee on the

request of the Employer to an amount not exceeding the fair and equitable interest of the Member in the assets of the Fund as at the date of cessation of employment with the Employer as certified by

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

### **Form of Benefits**

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

### **SCHEDULE 2**

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

#### **Death Benefit**

- 7.1 Subject to Rule 7.3 on the death of:
- (a) a Member admitted pursuant to paragraph (a) of sub-clause 2.1 while still in the service of an Employer,
  - (b) a Member admitted pursuant to paragraph (b) of sub-clause 2.1 prior to his becoming entitled to any other Benefits payable under this Schedule, or

- (c) a Member admitted pursuant to paragraph (c) of sub-clause 2.1 prior to his becoming entitled to any other Benefit payable under this Schedule.

The Trustees shall subject to the other provisions of these Rules pay or apply the amount which would have been payable had the Member been entitled to a Withdrawal Benefit at the date of his Death plus the proceeds of any policy or policies of Life Insurance taken out by the Trustees on the life of the Member to or for the Benefit of such one or more Dependants of the deceased member and the Legal Personal Representative of the deceased Member and in such shares and proportions and in such manner, as the Trustees determine PROVIDED THAT in the case of a Member to whom paragraph (a) of this Rule applies the Employer may request that an additional amount be provided and the Trustees may agree to such a request subject to the Trustees forming an opinion that the provisions of such additional Benefit to a Member does not thereby endanger the Benefit secured to any other Member by the terms of this Deed.

- 7.2 The Trustees shall within six months of the death of a Member determine the Dependants to whom the Member's entitlement is to be paid and shall notify such Dependants in writing. If the Trustees are of the opinion that a Member has no Dependants at the time of his death and no determination and notification is made by the Trustees within such period of six months the Member's entitlement shall be transferred to the Member's Personal Legal Representative.
- 7.3 On the death of a Member on or after Normal Retirement Date but prior to any other Benefit becoming payable under the Deed there shall be substituted for the amount stipulated in Rule 7.1 an amount equal to the balance of the relevant Member's Employer's Contribution and Member's Accumulation Account as at the date of death.

## **Retirement Benefits**

- 8.1 On:
- (a) In the case of a Member referred to in Rule 7.1(a) - the termination of that Member's employment with the Employer on or after his Normal Retirement Date, or
- (b) In the case of a Member referred to in Rule 7.1(b) or (c) - the cessation of that Member's employment on or after his Normal Retirement Date or his ceasing to be self employed on or after his Normal Retirement Date - the Member shall be entitled to a lump sum equal to the amount standing

to the credit of his Employer's Contribution and Member's Accumulation Account.

### **Disablement Benefits**

- 9.1 On a Member becoming totally and permanently disabled before receiving a Benefit on Retirement a Benefit shall be provided to the Member equivalent to that which would have been paid had that Member died on the day on which the Trustees determined him to be totally and permanently disabled PROVIDED THAT in determining the amount of Benefit payable the deemed proceeds of any policy or policies of Life Insurance shall be excluded in calculating a Member's entitlement save and except to the extent that those policies provide for the payment of a Benefit on Total and Permanent Disablement.
- 9.2 On a Member becoming Temporarily Disabled a Pension shall at the absolute discretion of the Trustees be payable. The said pension may be terminated at any time by the Trustees.
- 9.3 The Pension payable pursuant to sub-rule 9.2 shall be such amount if any as determined by the Trustees and shall be determined having regard to the terms of any Insurance Policy which the Trustees hold relating to the said Temporary Disablement.

### **Withdrawal Benefit**

- 10.1 Subject to the provisions of the Deed in circumstances where no other Benefit is payable to a Member or his Dependents and/or Legal Personal Representative:
- (a) In the case of a Member admitted pursuant to paragraph (a) of sub-clause 2.1 - on the cessation of his employment with the Employer, or
  - (b) In the case of Members admitted pursuant to paragraphs (b) and (c) of sub-clause 2.1 - the cessation of that Member's employment or his ceasing to be self employed,
- then the following Benefits shall be payable;
- (c) In all cases other than those set out in paragraph (d) a Lump Sum equal to the Employer's Contribution and Member's Accumulation Accounts, or
  - (d) In the case of a Non-Executive Member admitted pursuant to paragraph (a) of sub-clause 2.1 a Benefit payable by reference to such factors as may be stipulated by the employer at the time of his admission under the Deed provided that no such stipulation shall result in the payment of a Benefit of an amount less than that provided for in Clause 30

**PROVIDED FURTHER THAT** subject to Clause 30 if no such stipulation is made the following shall apply:

(i) In the case of a Member -

Who has completed no more than five (5) years of Plan Membership, a Lump Sum payable on the cessation of employment with the Employer of an amount not less than the amount standing to the credit of his Member's Accumulation Account.

(ii) Subject to Sub-Rule 10.2 hereof -

In the case of a Member who has completed five (5) years Service whilst a Member an amount as in sub paragraph (i) of this paragraph plus an amount payable to the member on reaching his Normal Retirement Date or if the Member should not survive to that date, to his Dependants in such proportion as Trustees shall in their absolute discretion determine to equal to:

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

**PROVIDED THAT** the Benefit payable to a Member may be increased at the request of the Employer and with the agreement of the Trustees to an amount not exceeding the Employer Contribution Account in relation to that Member at the Time of Withdrawal.

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



## **FORM OF BENEFITS**

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

## **SCHEDULE 3**

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

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

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

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