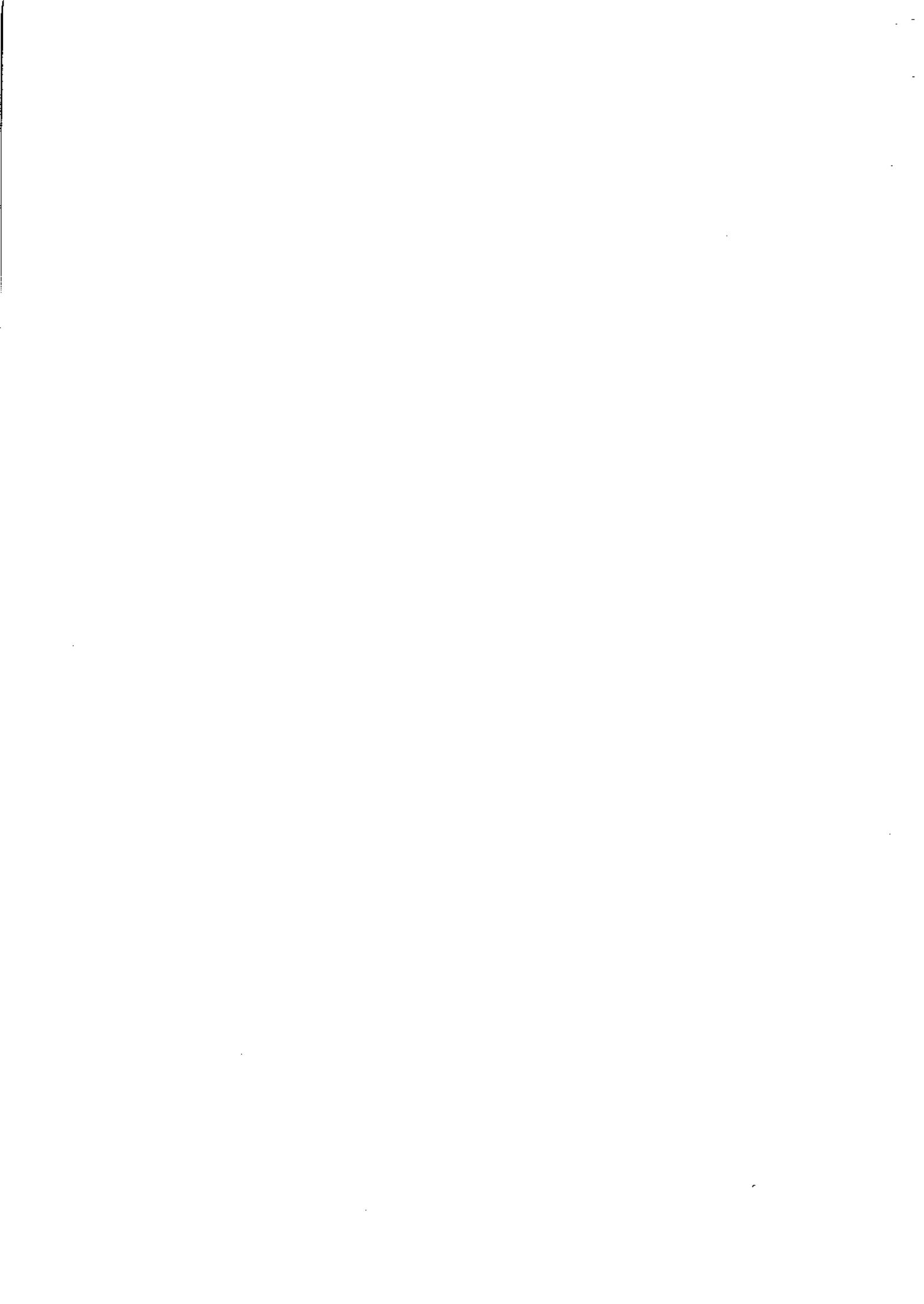


**DEED OF AMENDMENT**  
**OF**  
**KELLY GREEN & CO. SUPER**  
**FUND NO.1.**

Drawn By:  
**BARWICKS LAWYERS**  
Level 5, 141 Queen Street  
Brisbane Qld 4000  
Phone (07) 238-8888

Solicitors For:

**PRO-SUPER PTY. LTD.**  
614 Stanley Street,  
Woolloongabba Qld 4102  
Phone 1-800-641-146



**THIS DEED OF AMENDMENT is made the 3rd MARCH, 1995**

**BY:** C.K.G. WELDING PTY LTD  
A.C.N. 010-057-744  
of 4/457 UPPER EDWARD STREET, BRISBANE QLD 4000  
(The 'Trustee')

**QLD STAMP DUTY - BNE**  
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**AND:** C.K.G. WELDING PTY LTD  
A.C.N. 010-057-744  
of 4/457 UPPER EDWARD STREET, BRISBANE QLD 4000  
(The 'Principal Employer')

**WHEREAS:-**

- A. The Trustee is the duly appointed trustee of the KELLY GREEN & CO. SUPER FUND NO.1. (the 'Fund').
- B. The Fund commenced on 15th MAY, 1992 by deed executed on that day (the 'Deed').
- C. Pursuant to Clause C12.1 of the governing rules of the Fund (the 'Governing Rules'), the Trustee has the power to amend the Fund's Deed and its Governing Rules for the purposes specified in that provision (the 'Amendment Provision').
- D. The Trustee of the Fund wishes to amend the Fund's Deed and Governing Rules to ensure that the Fund complies with the scheme introduced in the Superannuation Industry (Supervision) Act 1993 and Regulations.

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

1. The Governing Rules contained in Clause C1.1 to Schedule "B" shall be deleted and shall be replaced with the Rules contained in Part 1 to Part 15, inclusive, which are annexed to this Deed of Amendment.
2. The Fund's Deed is amended by inserting the following clause as clause 1:-  
  
'The Trustee of the Fund must always be a Constitutional Corporation.'
3. Should any one or more of the provisions of this Deed of Amendment inserted by clause 1, above, be construed, in whole or in part, to be beyond the powers contained in the Governing Rules of the Fund, this Deed of Amendment shall be interpreted and shall take effect in accordance with the following rules of construction, in the following order:-

117-1147-1110  
117-1147-1111  
117-1147-1112  
117-1147-1113

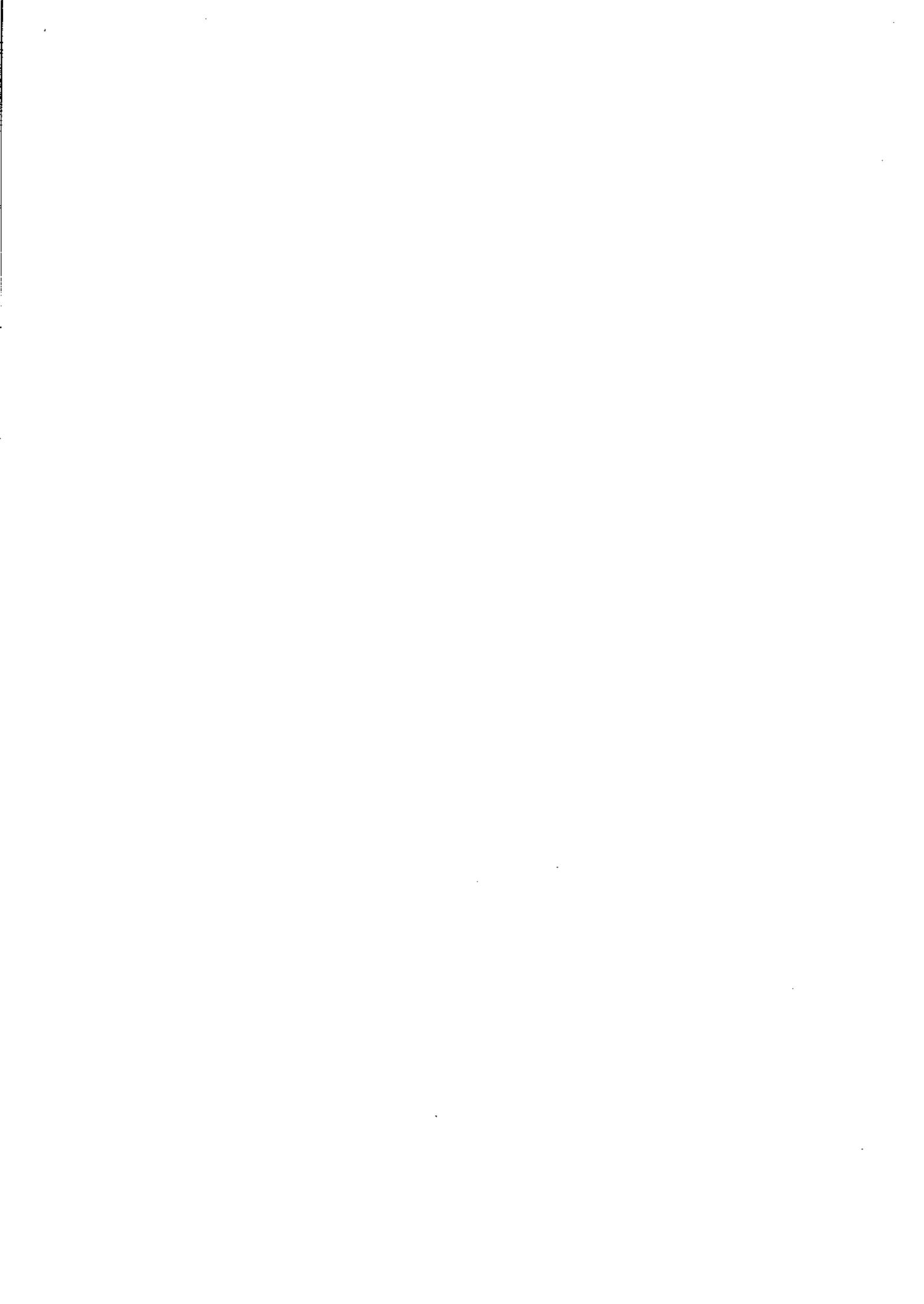
- 3.1 To the extent that any one or more of the provisions of this Deed of Amendment are able, allowed, or required to take effect pursuant to a provision of the Superannuation Industry (Supervision) Act 1993 or Regulations made for the purposes of that statutory enactment, they will so take effect.
- 3.2 To the extent that:
- (a) any one or more of the provisions of this Deed of Amendment are not able, allowed, or required to take effect pursuant to a provision of the Superannuation Industry (Supervision) Act 1993 or regulations made for the purposes of that statutory enactment; and
  - (b) the Amendment Provision is capable of amendment to enable or allow any one or more of the provisions of this Deed of Amendment to take effect,

the Amendment Provision is amended by deletion to the extent that:

- (i) it is necessary to remove that or those restrictions upon the validity of the amendments, or any part of them, made pursuant to clause 1 of this Deed of Amendment; and
- (ii) the deletion of part or all of the Amendment Provision does not effect a re-settlement of the Fund,

and amendments made by clause 1 are deemed to have occurred after the deletions referred to in this sub-clause.

- 3.3 This Deed of Amendment shall not take effect, to the extent that:
- (a) any one or more of the provisions of this Deed of Amendment are not able, allowed, or required to take effect pursuant to a provision of the Superannuation Industry (Supervision) Act 1993 or any regulations made for the purposes of that statutory enactment; and
  - (b) the Amendment Provision is not capable of amendment to enable or allow any one or more of the provisions of this Deed of Amendment to take effect.
4. For the purposes of this Deed, the following Rules shall constitute the governing rules of the Fund:—



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## RULES

### 1. INTERPRETATION

#### 1.1 DEFINITIONS

"**Abridged Financial Information**" has the meaning given by Regulation 2.29(4) of the Regulations.

"**Accumulation Account**", in relation to a Member of the Fund, means the account established and maintained under rule 9.1 of this Deed;

"**Act**" means the Superannuation Industry (Supervision) Act 1993, as amended from time to time.

"**Actuary**" means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

"**Adopted Child**", in relation to a person, means a person adopted by the first-mentioned person:

- (a) under the law of a State or Territory relating to the adoption of children; or
- (b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or Territory;

"**Annuity**" includes a benefit provided by a life insurance company or a registered organisation, if the benefit is taken, under the Regulations, to be an annuity for the purposes of the Act;

"**Approved Auditor**" means a person included in a class of persons specified in the Regulations, but does not include a person in respect of whom a disqualification order is in force under Section 131 of the Act.

"**Approved Bank**" means:

- (a) a body corporate authorised under Part II of the Banking Act 1959 to carry on banking business in Australia; or
- (b) the Commonwealth Bank of Australia, the Commonwealth Savings Bank of Australia or the Commonwealth Development Bank of Australia; or
- (c) a State Bank;

**"Approved Deposit Fund"** means a fund that:

- (a) is an indefinitely continuing fund;
- (b) is maintained by an Approved Trustee solely for Approved Purposes; and
- (c) has approved rules;

**"Approved Guarantee"** means a guarantee given by an Approved Bank by or on behalf of the Commonwealth, a State or a Territory;

**"Approved Purposes"**, in relation to the Fund, means the purposes of:

- (a) receiving on deposit:
  - (i) amounts that will be taken by Section 27D of the Income Tax Assessment Act 1936, as amended, to be expended out of Eligible Termination Payments within the meaning of that Section; and
  - (ii) amounts paid under Part 24 of the Act; and
  - (iii) amounts paid under Section 65 of the Superannuation Guarantee (Administration) Act 1992; and
- (b) dealing with such amounts, in accordance with the rules of the Fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the Fund; and
- (c) subject to any contrary requirement in the Standards from time to time applicable to the Fund under Section 32 of the Act, paying to Beneficiaries in accordance with the covenant referred to in Section 53 of the Act, or to the legal personal representatives of Beneficiaries, amounts deposited with the Fund together with accumulated earnings on those amounts;

**"Approved Trustee"** means a Constitutional Corporation in relation to which an approval under Section 26 of the Act is in force;

**"Associate"** has the meaning given by Section 12 of the Act;

**"Beneficiary"**, in relation to the Fund or to another fund, scheme or trust, means a person (whether described in the governing rules as a member, depositor or otherwise) who has a beneficial interest in the Fund, or a fund, scheme or trust;

**"Child"**, in relation to a person, includes an Adopted Child, a step-child or an ex-nuptial child of the person;

"**Civil Penalty Provision**" has the meaning given by the Act.

"**Commissioner**" means the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commissioner Act 1987, or a person for the time being acting as Insurance and Superannuation Commissioner under that statutory enactment;

"**Complying Superannuation Fund**", in relation to a Superannuation Fund, has the meaning given by Section 267(1) of the Income Tax Assessment Act 1936, as amended.

"**Constitutional Corporation**" means a body corporate that is:

- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution);

"**Corporate Trustee**", in relation to the Fund, means a body corporate that is a Trustee of the Fund;

"**Corporations Law**" means the Corporations Law set out in the Corporations Act 1989;

"**Court**" means any court, when exercising jurisdiction under the Act;

"**Custodian**", in relation to the Fund, means a person (other than the Trustee of the Fund) who, under a contract with the Trustee or an Investment Manager of the Fund, performs custodial functions in relation to any of the assets of the Fund;

"**Deed**" means the Deed and Rules constituting the Fund and any amendments, modifications, additions or deletions thereto;

"**Dependant**", in relation to a person, includes the spouse and any Child of the person;

"**Designated Beneficiaries**", in relation to a Member of the Fund, means any Dependant or Dependants of the Member specified as a Designated Beneficiary to the Trustee in such form as the Trustee may approve from time to time and, in the absence of an approved form, in a manner otherwise acceptable to the Trustee;

"**Director**", in relation to a body corporate, has the same meaning as in the Corporations Law;

**"Eligibility Age"**, in relation to an age pension, means:

- (a) in the case of a man, 65 years or, if another age is prescribed by the Regulations in place of 65 years, the age so prescribed; or
- (b) in the case of a woman, 60 years or, if another age is prescribed by the Regulations in place of 60 years, the age so prescribed;

**"Eligible Person"** means any person who is Gainfully Employed in a Year of Income, other than an Employee in respect of whom an Employer is making or intends to make contributions to this or any other Superannuation Fund in Australia in respect of that Year of Income;

**"Eligible Termination Payment"** has the meaning as in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act 1936, as amended.

**"Employee"** has its natural meaning and includes:

- (a) a member of an executive body of a body corporate (whether described as Directors or otherwise);
- (b) a person working under a contract that is wholly or principally for the labour of that person;
- (c) a member of the Parliament of the Commonwealth, or of a State;
- (d) a member of the Legislative Assembly of a Territory;
- (e) a member of a local government council;
- (f) a person who is paid to provide services in connection with the performance or presentation of, or the making of any film, tape or disc of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical, or other personal skills;

**"Employer"** has its natural meaning and includes:

- (a) in relation to a member of an executive body of a body corporate (whether described as Directors or otherwise), the body corporate;
- (b) in relation to a person working under a contract that is wholly or principally for the labour of that person, the other party to the contract;
- (c) in relation to a member of the Parliament of the Commonwealth, or of a State, the Commonwealth or the State;

- (d) in relation to a member of the Legislative Assembly of a Territory, that Territory;
- (e) in relation to a member of a local government council, that local government council;
- (f) in relation to a person who is paid to provide services in connection with the performance or presentation of, or the making of any film, tape or disc of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical, or other personal skills, the person liable to make the payment to the first-mentioned person;

**"Employer Representative"**, in relation to a group of Trustees of the Fund, a policy committee of the Fund or the board of Directors of a Corporate Trustee of the Fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the Employer or Employers of the Members of the Fund; or
- (b) an organisation representing the interests of that Employer or those Employers;

**"Employer Sponsor"** means an Employer who:

- (a) contributes to the Fund; or
- (b) would, apart from a temporary cessation of contributions, contribute to the Fund, for the benefit of:
  - (c) a Member of the Fund who is an Employee of:
    - (i) the Employer; or
    - (ii) an Associate of the Employer; or
  - (d) the Dependants of such a Member in the event of the death of the Member;

**"Excluded Approved Deposit Fund"** means an Approved Deposit Fund:

- (a) in which there is only one beneficiary; and
- (b) that satisfies such other conditions (if any) as are specified in the Regulations;

**"Excluded Fund"** means the Fund at any time when there are fewer than 5 Members of the Fund;

**"Executive Officer"**, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body;

"**Full-time**", in relation to being Gainfully Employed, means Gainfully Employed for at least 30 hours each week;

"**Fund**" means the Superannuation Fund created upon the execution of this Deed;

"**Gainfully Employed**" or "**Gainful Employment**" means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

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

- (a) is not a Member of the Fund; and
- (b) is neither an Employer Sponsor of the Fund nor an Associate of such an Employer Sponsor; and
- (c) is neither an Employee of an Employer Sponsor of the Fund nor an Employee of an Associate of such an Employer Sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation representing the interests of one or more Members of the Fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer Sponsors of the Fund;

"**Independent Trustee**", in relation to the Fund, means a Trustee of the Fund who:

- (a) is not a Member of the Fund; and
- (b) is neither an Employer Sponsor of the Fund nor an Associate of such an Employer Sponsor; and
- (c) is neither an Employee of an Employer Sponsor of the Fund nor an Employee of an Associate of such an Employer Sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation representing the interests of one or more Members of the Fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer Sponsors of the Fund;

"**Indexed**" or "**Indexation**" have the meanings given in the Act.

"**Individual Trustee**", in relation to the Fund, means a natural person who is a Trustee of the Fund;

**"Insolvent Under Administration"** means a person who:

- (a) under the Bankruptcy Act 1966 or the law of an external Territory or the law of a foreign country, is a bankrupt in respect of a bankruptcy from which the person has not been discharged;

and includes:

- (b) a person any of whose property is subject to control under Section 150 or 188 of the Bankruptcy Act 1966 or a corresponding provision of the law of an external Territory or the law of a foreign country; or
- (c) a person who has, at any time during the preceding 3 years, executed a deed of assignment or a deed of arrangement under, or whose creditors have, within the preceding 3 years, accepted a composition under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or the law of a foreign country;

**"Investment"** means any mode of application of money for the purpose of gaining interest, income or profit;

**"Investment Manager"** means a person appointed by the Trustee of the Fund to invest money of the Fund;

**"In-house Asset"**, in relation to an asset of the Fund, has the meaning given in Part 8 of the Act.

**"Legal Disability"** means a person:

- (a) under age 18;
- (b) who is an intellectually disabled citizen, within the meaning of the Intellectually Disabled Citizens Act 1985; or
- (c) who is suffering from a mental illness, within the meaning of the Mental Health Services Act 1974;

**"Market Value"**, in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;

- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale;

"**Member**" means any person who becomes a member of the Fund in accordance with sub-rule 2.4.1 of this Deed, and includes former Employees or retired persons who continue to have rights or contingent rights to benefits under this Deed.

"**Member Representative**", in relation to a group of Trustees of the Fund, a policy committee of the Fund or the board of Directors of a Corporate Trustee of the Fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the Members of the Fund; or
- (b) a trade union, or other organisation, representing the interests of those Members;

"**Normal Retirement Date**", in relation to a Member of the Fund, means the earlier of the date on which a Member attains the age 65, or ceases to be Gainfully Employed for the purposes of the Act and Regulations, but, in any case, no earlier than the date on which the Member attains age 55.

"**Old-age Pensions**" shall have the same meaning as that expression is used in paragraph 51(xxiii) of the Constitution;

"**Part-time**", in relation to being Gainfully Employed, means Gainfully Employed for at least 10 hours, and less than 30 hours, each week;

"**Pension**", except in the expression "Old-age Pension", includes a benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of the Act;

"**Policy Committee**", in relation to the Fund, means a board, committee or other body that:

- (a) advises the Trustee of the Fund about such matters as are specified in the Regulations; and
- (b) is established by or under this Deed;

"**Premises**" includes a structure, building, aircraft, vehicle or vessel, any land or place (whether enclosed or built on or not) and any part of a structure, building, aircraft, vehicle or vessel, or part of any such land or place;

"**Public Offer Superannuation Fund**" has the meaning given in Section 18 of the Act;

"**Regulated Document**", in relation to a Public Offer Superannuation Fund, means a document:

- (a) issued, or authorised to be issued, by the Trustee of the Fund; and
- (b) that the Trustee knows, or ought reasonably to know (having regard to the Trustee's abilities, experience, qualifications and other attributes), may influence a person's decision:
  - (i) whether to apply to have a superannuation interest in the Fund issued to a person; or
  - (ii) whether to apply to become an Employer Sponsor of the Fund;

"**Regulated Superannuation Fund**", in relation to a Superannuation Fund means a Superannuation Fund:

- (a) which has a trustee;
- (b) in respect of which either of the following applies:
  - (i) the trustee of the fund is a Constitutional Corporation pursuant to a requirement contained in the deed or governing rules;
  - (ii) the deed or governing rules provide that the sole or primary purpose of the fund is the provision of Old-age Pensions;
- (c) the trustee or trustees of which have given to the Commissioner a written notice, in the form approved by the Commissioner for the purpose, signed by the trustee or each trustee:
  - (i) in the case of a trustee which is a body corporate, under its common or official seal; or
  - (ii) in the case of a natural person - by him or her,

electing that the Act is to apply to the Fund.

"**Regulations**" means the Superannuation Industry (Supervision) Regulations, as amended from time to time.

"**Relevant Person**", in relation to the Fund, means:

- (a) if the Trustee or an Investment Manager of the Fund is or includes a natural person - that natural person;

- (b) if the Trustee or an Investment Manager of the Fund is or includes a body corporate - a responsible officer of that body corporate;
- (c) an Auditor of the Fund; or
- (d) an Actuary of the Fund;

**"Responsible Officer"**, in relation to a body corporate, means:

- (a) a Director of that body corporate;
- (b) a secretary of that body corporate; or
- (c) an Executive Officer of that body corporate;

**"Service"**, in relation to a person, means Gainful Employment, as an Employee, or otherwise, either on a Full-time or Part-time basis.

**"Spouse"**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person;

**"Standard Employer Sponsor"** means, an Employer Sponsor of the Fund who contributes, or would contribute, wholly or partly pursuant to an arrangement between the Employer Sponsor and the Trustee of the Fund;

**"Superannuation Complaints Tribunal"** means the Superannuation Complaints Tribunal established by the Superannuation (Resolution of Complaints) Act 1993;

**"Superannuation Fund"** means:

- (a) a fund that:
  - (i) is an indefinitely continuing fund; and
  - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme;

**"Total and Temporary Disablement"** in relation to a Member, means the continuous disability of a Member due to physical or mental disability, bodily injury, illness, disease or infirmity rendering a Member totally and temporarily unable to perform his or her duties to his or her Employer and not incurred or inflicted for the purpose of obtaining a benefit from the Fund. Every question of Total and Temporary Disablement shall be decided by the Trustees after consideration of medical evidence and their decision shall be conclusive and binding upon all persons concerned.

"**Trustee**", in relation to the Fund, means the first Trustee or Trustees of the Fund and any Trustee or Trustees for the time being and from time to time, whether original, additional, surviving, alternate or substituted and whether a natural person or persons, a body or bodies corporate or otherwise, or one or more classes of them severally;

"**Taxation Commissioner**" means the Commissioner of Taxation appointed pursuant to the Taxation Administration Act 1953 or a person for the time being acting as Taxation Commissioner under that statutory enactment;

"**Year of Income**", in relation to the Fund, means the period from 1 July of a calendar year to 30 June of the following calendar year, unless any other period applicable to the Fund is, for the purposes of the Income Tax Assessment Act 1936, as amended, a year of income of the Fund.

## 1.2 INTERPRETATION

This Deed is comprised of a number of Parts, each of which contains a number of rules and, where applicable, sub-rules, paragraphs, sub-paragraphs and sub-sub-paragraphs.

In the interpretation of this Deed, unless the context requires otherwise:

- (a) the singular shall include the plural and vice versa;
- (b) words importing the masculine, the feminine or the neuter gender shall be read as importing such gender as the case may require;
- (c) references to any statutory enactments shall mean and be construed as references to the said enactments and regulations as amended, modified and re-enacted from time to time;
- (d) a requirement to give a person notice in writing shall be satisfied by posting the notice to that person's last known address;
- (e) references to writing includes any means of representing or reproducing words, figures, drawings or symbols in a visible, tangible form, in English;
- (f) references to months means calendar months;
- (g) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (h) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Deed;

- (i) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (j) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (k) words and phrases not defined shall have the meaning, if any, ascribed in the Act or in other relevant legislation or statutory enactment.

## **2. ELIGIBILITY AND MEMBERSHIP**

### **2.1 ELIGIBILITY**

Any Employee or Eligible Person shall be entitled to apply to become a Member of the Fund.

### **2.2 APPLICATION REQUIREMENTS**

#### **2.2.1 PROSPECTIVE MEMBERS TO APPLY**

An Employee or Eligible Person seeking to become a Member of the Fund will apply to the Trustee for membership in the approved form.

### **2.3 CATEGORIES AND SUB-PLANS**

#### **2.3.1 CREATION AND MAINTENANCE OF CATEGORIES**

The Trustee may, as and when it considers appropriate, divide the Members and beneficiaries of the Fund into different categories, for any purposes which it considers appropriate. The benefits and entitlements of each category, and the criteria for admission into each category shall be determined by the Trustee in its absolute discretion, provided that the benefits and entitlements of any Members or beneficiaries affected are not reduced.

### **2.3.2 CREATION AND MAINTENANCE OF SUB-PLANS**

The Trustee may, as and when it considers appropriate, divide the Fund into one or more sub-plans, for any purposes which it considers appropriate. The membership, contributions, assets, and liabilities for payment of benefits and entitlements or otherwise, in respect of each sub-plan shall be maintained discretely from the rest of the Fund. The criteria for admission into each sub-plan shall be determined by the Trustee in its absolute discretion, provided that the benefits and entitlements of any Members or beneficiaries admitted to a sub-plan are not reduced.

## **2.4 ADMISSION OF MEMBERS**

### **2.4.1 ADMISSION AT TRUSTEE'S DISCRETION**

Subject to the requirements concerning eligibility, the Trustee shall admit Members to the Fund at its absolute and unfettered discretion.

### **2.4.2 BY APPLICATION MEMBER TO BE BOUND BY DEED**

By making application for and being admitted as a Member of the Fund, the prospective Member is deemed to have agreed to be bound by the provisions of this Deed.

### **2.4.3 FORM OF APPLICATION FOR MEMBERSHIP**

Any form of application approved by the Trustee for the purposes of admission of prospective Members to membership of the Fund shall contain a statement in the following form:

"I.....apply to become a member of .....Superannuation Fund on the terms and conditions specified in the trust deed for the time being governing the Fund."

## **3. MEMBER INFORMATION**

### **3.1 MEMBER INFORMATION - ALL FUNDS**

#### **3.1.1 INFORMATION TO PROSPECTIVE MEMBERS**

As soon as practicable and, in any event, within 3 months of the admission of a Member to the Fund, the Trustee shall give and provide to the new Member all notices, materials and other information which are required to be given from time to time and any additional information which the Trustee may, in its absolute discretion, determine. As a minimum, the Trustee shall provide the new Member with the following:

- (a) where the Fund is not an Excluded Superannuation Fund:
- (i) the contact details of the Fund;
  - (ii) a summary of the main features of the Fund or, if the new Member is to become a member of a sub-plan, of that sub-plan;
  - (iii) in respect of financial benefits to which the new Member will or may become entitled, a statement concerning such of those benefits that the Trustee reasonably believes the new Member would reasonably need to be informed about;
  - (iv) information concerning the circumstances in which the benefits mentioned in the preceding paragraph would become payable;
  - (v) the manner of calculating the benefits referred to in paragraph (iii) of this sub-rule;
  - (vi) a summary of the inquiries and complaints procedures as set out in Part 11 of this Deed;
  - (vii) notification of the existence and a summary of the functions of the Superannuation Complaints Tribunal;
  - (viii) a copy of the latest Report to Members by the Trustee of the Fund and notice of any material changes from the content of that Report to Members; and
  - (ix) a summary of the time at which and the manner in which fees charges, expenses and administrative or other operational costs are attributed to Members and, if they constitute fixed amounts or percentages, those amounts or percentages;
- (b) in the case where the Fund is an Excluded Superannuation Fund, all information which the Trustee reasonably believes that a new Member would reasonably require for the purpose of understanding:
- (i) the main features of the Fund or, if the new Member is a member of a sub-plan, of that sub-plan;
  - (ii) the management and financial condition of the Fund and of the relevant sub-plan (if any); and
  - (iii) the investment performance of the Fund or, if the new Member is a member of a sub-plan, of that sub-plan.

### **3.1.2 TIME FOR PROVIDING INFORMATION TO MEMBERS WHO ARE EMPLOYEES**

In the case where a prospective Member is eligible for membership of the Fund by virtue of being an Employee of an Employer Sponsor of the Fund, it is sufficient if the notices, materials and other information required to be provided to prospective Members pursuant to sub-rule 3.1.1 are given as soon as practicable after the admission of the Member to membership of the Fund.

### **3.1.3 CONFIRMATION FROM PROSPECTIVE MEMBERS**

In all cases where notices, material and other information is required to be provided to prospective Members or to new Members of the Fund under sub-rules 3.1.1(a)(i) and (ii), and sub-rules 3.1.1(b)(i) and (ii), the Trustee shall obtain from the prospective Member a written declaration that he or she has been given those notices, materials and other information.

### **3.1.4 INFORMATION NEED NOT BE PROVIDED IN MORE THAN ONE DOCUMENT**

Where the Trustee is required to provide any information to a new Member and is also required to provide, or has, in fact, provided to the new or prospective Member the same information in another notice, material or document, the Trustee shall be deemed to have satisfied its obligations in respect of the providing that information.

### **3.1.5 INFORMATION ON REQUEST - ALL FUNDS**

Within 1 month of receiving a request from a person specified in this sub-rule, the Trustee of the Fund must give to that person, or make available for inspection at a suitable place during normal business hours by that person, information that the person requires, as follows:-

- (a) If the person is a person who is, or was within the preceding 12 months, a Member of the Fund, or is otherwise a beneficiary of the Fund, information for the purposes of:
  - (i) understanding any benefit entitlements that the person may have, has, or used to have;
  - (ii) understanding the main features of the Fund or, where the Member is a member of a sub- plan, of that sub-plan;
  - (iii) making an informed judgment about the management and financial condition of the Fund or, where the Member is a member of a sub- plan, of that sub-plan;
  - (iv) making an informed judgment about the investment performance of the Fund or, where the Member is a member of a sub-plan, of that sub-plan;

- (v) understanding the particular investments of the Fund or, where the Member is a member of a sub-plan, of that sub-plan.
- (b) If the person is an Employer Sponsor, information for the purposes of:
    - (i) understanding the kinds of benefits to which that person's Employees are entitled or will or may become entitled, and the main features of the Fund or, where that person's Employees are or are to be members of one or more sub-plans, of that or those sub-plans;
    - (ii) making an informed judgment about the management and financial condition of the Fund or, where that person's Employees are or are to be members of one or more sub-plans, of that or those sub-plans;
    - (iii) making an informed judgment about the investment performance of the Fund or, where that person's Employees are or are to be members of one or more sub-plans, of that or those sub-plans;
    - (iv) a matter related to the Superannuation Guarantee (Administration) Act 1992.
  - (c) If the person is, or was within the preceding 12 months, a Member of the Fund, or is otherwise a beneficiary of the Fund and the Fund has 5 or more Members, a copy of:
    - (i) the governing rules of the Fund;
    - (ii) audited accounts of the Fund, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
    - (iii) in the case where the Fund is a Regulated Superannuation Fund, the most recent information given to Members in accordance with sub-rule 3.2.2.

### **3.1.6 INFORMATION NOT TO BE DISCLOSED ON REQUEST**

Nothing in this Part shall require (or by implication authorise) the disclosure of:

- (a) internal working documents of the Fund;
- (b) information or documents that would disclose, or tend to disclose:
  - (i) personal information of another person if, in the circumstances, the disclosure would be unreasonable; or
  - (ii) trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure; or

- (c) information or documents in relation to which the Fund owes to another person a duty of non-disclosure.

### **3.1.7 INFORMATION TO TERMINATED MEMBER - ALL FUNDS**

A Member whose membership has been terminated shall receive, within 1 month of the Trustee becoming aware of the Member ceasing to be a Member, the information required to be provided by sub-rule 3.2.1, insofar as that sub-rule requires information to be provided to the Member (called a "Report to Terminating Member") and, should a Member's membership be terminated in circumstances other than those specified in that sub-rule, the Member shall receive a Report to Members or a Report to Members - Excluded Fund (whichever is applicable) made from the end of the last preceding Year of Income to the date of the Member's membership being terminated.

## **3.2 MEMBER INFORMATION - 5 OR MORE MEMBER FUNDS**

### **3.2.1 ANNUAL INFORMATION TO MEMBERS**

Where the Fund has 5 or more Members at the end of a Year of Income, the Trustee shall provide, within 6 months after the end of each such Year of Income, to each person who was a Member on the last day of that Year of Income, the following information (a "Report to Members") in relation to each Member:

- (a) the amount of the Member's contributions during the Year of Income;
- (b) the amount of benefits and entitlements rolled over or otherwise transferred into the Fund during the Year of Income;
- (c) the amount of withdrawals during the Year of Income;
- (d) the amount of fees, charges and other expenses deducted by the Fund during the Year of Income from the amounts held in any accounts in respect of the Member;
- (e) the amount of any allotment of Employer contributions during the Year of Income;
- (f) the rate of allotment of net earnings during the Year of Income;
- (g) the amount of bonuses that have accrued at the end of the Year of Income;
- (h) the amount of the sum assured in respect of the life of that Member;
- (i) the amount payable in the event of the Member's death:
  - (i) at the end of the Year of Income; or

- (ii) on the first date of the next Year of Income, or the method by which that amount is worked out;
- (k) details, including the amount or method of working out, of other financial benefits that the Trustee reasonably believes the Member would reasonably expect to be informed about; and
- (l) if the Trustee is aware of contributions that are due and payable but have not been paid to the Fund at, or shortly before, the date of issue of the Report to Member, details of the amount of those contributions and of action that the Trustee has taken, or proposes to take, to have the contributions paid.

### 3.2.2 ADDITIONAL ANNUAL INFORMATION TO MEMBERS

In addition to the Report to Members, the Trustee shall provide, within 6 months after the end of each Year of Income (unless any of the information concerned is not applicable to the Member or, where the information takes the form of numerical data, that data is a nil amount), to each person who was a Member on the last day of that Year of Income, the following information:

- (a) the contact details of the Fund;
- (b) in respect of the Fund, or where the Member is a member of a sub-plan, in respect of that sub-plan, a description of:
  - (i) the investment strategy of the Fund Trustee, having regard to the requirements of paragraph (f) in sub- rule 8.3.1; and
  - (ii) the investment objectives;
- (c) a statement to the effect that other information is available on request;
- (d) details (in summary form) of arrangements that the Fund has for dealing with inquiries and of the complaints handling procedures set out in Part 11 of this Deed;
- (e) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;
- (f) in respect of the Fund, or where the Member is a member of a sub-plan, in respect of that sub-plan, the names of the Investment Managers appointed by the Trustee to the Fund, or to the sub-plan;
- (g) in the case of a Standard Employer Sponsored Fund:
  - (i) if the Trustee of the Fund is a body corporate, the name of that body corporate and the names of all its Directors during the whole or any part of the Year of Income and, in respect of each of those Directors, details of how

and by whom they were appointed;

- (ii) if the Trustees of the Fund are individuals, the names of the Trustees of the fund during the whole or any part of the Year of Income and, in respect of each of those Trustees, details of how and by whom they were appointed;
- (h) in the case of a Fund other than a Fund mentioned in paragraph (g):
- (i) the name of each corporate Trustee of the Fund during the relevant Year of Income; and
  - (ii) in respect of the relevant policy committee, if any, details of the committee, including the names of the committee members as at the end of that Year of Income and, in respect of each of the members, details of how and by whom they were appointed;
- (i) a statement as to whether any indemnity insurance has been taken out by the Trustee;
- (j) either:
- (i) the audited Fund accounts, the auditor's report and, if there is a relevant sub-plan, Abridged Financial Information relating to that sub-plan;
  - (ii) each of the following:
    - (A) Abridged Financial Information relating to the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan;
    - (B) information as to when the audited Fund accounts and the auditor's report will be sent to Members or will be available to Members on request, as the case may be;
- (k) in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, a statement of assets as at the end of:
- (i) the relevant reporting period; and
  - (ii) the immediately preceding reporting period, that includes all information that the Trustee reasonably believes a Member would reasonably need to understand the asset allocation at those times;
- (l) details of:
- (i) each investment that has a value in excess of 5% of the total assets of the Fund or, where the Member is a member of a sub-plan, of that sub-plan; and

- (ii) each combination of investments that the Trustee knows or ought reasonably to know are invested in, directly or indirectly, a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the Fund or, where the Member is a member of a sub-plan, of that sub-plan;
- (m) in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, the actual or notional rate of net earnings in the most recent Years of Income that, in total constitute a period of at least 3 years;
- (n) if the Fund maintains reserves, in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, details of movements of reserves during the most recent Years of Income that, in total, constitute a period of at least 3 years;
- (o) if the net earnings of the Fund are allotted to Members' accounts, in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, the manner in which the allotment is made;
- (p) if the Fund maintains reserves, in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, a description of the management strategy of the Trustee in relation to the reserves, having regard to the requirements of paragraph (g) in sub-rule 8.3.1;
- (q) in respect of the Fund or, where the Member is a member of a sub-plan, in respect of that sub-plan, a statement (in outline terms) of:
  - (i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to Members (including details of points at which, or occasions on which, they are levied or deducted);
  - (ii) where the fees, charges, expenses and administrative or other operational costs are predetermined fixed amounts or percentages, those amounts or percentages;
  - (iii) where sub-paragraph (ii) does not apply, a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;
- (r) details of any penalties imposed under the Act on the Trustee.

### **3.2.3 EXCEPTION TO ADDITIONAL ANNUAL INFORMATION REQUIREMENTS**

Paragraphs (j), (k) and (l) of sub-rule 3.2.2 shall not apply to the Fund in any Year of Income in which benefits or entitlements payable to each individual Member are wholly determined by reference to policies of life assurance.

### 3.2.4 INFORMATION REQUIREMENTS - SIGNIFICANT EVENTS

A significant event shall have occurred where:

- (a) the governing rules of the Fund are changed such that there would be an adverse effect:
  - (i) on a Member's accumulated benefits;
  - (ii) on the benefits to which a Member may become entitled;
  - (iii) for the Member on the circumstances in which those benefits would become payable;
  - (iv) for the Member on the manner in which those benefits would be calculated; or
  - (v) on the security of the Member's benefits;
- (b) the Member's membership is transferred to a different category or to a different fund; or
- (c) in any other circumstances, an event has occurred in relation to the Fund that the Trustee reasonably believes the Member would reasonably expect to be informed of,

and the Trustee of the Fund must then provide to all affected Members information, including contact details of the Fund, which the Trustee reasonably believes an affected Member would reasonably need:

- (a) where there is a nature or purpose to the event, to understand the nature or purpose; and
- (b) to make an informed judgement about the effect (generally and in respect of the Member's current and future entitlements) of the event.

### 3.2.5 TIME FOR GIVING INFORMATION - SIGNIFICANT EVENTS

Where the Trustee is required to give information under sub-rule 3.2.4, the time for giving that information is:

- (a) before the expected occurrence, or as soon as practicable after the occurrence, of the significant event and, in any case, within 3 months after the occurrence of the event; or
- (b) if the Trustee reasonably believes that the event is not adverse to the Member's interests and accordingly the Member would not be expected to be concerned about

the delay in receiving the information, the information is given no later than 12 months after the occurrence of the event.

### **3.2.6 TIME FOR GIVING INFORMATION - SIGNIFICANT EVENTS CAUSED BY DECISION OF TRUSTEE**

Notwithstanding the provisions of sub-rule 3.2.4, where the significant event constitutes either a decision of the Trustee, or the winding-up or termination of the Fund, and the Members affected would reasonably expect to be informed of the event before it occurs, the Trustee must give the information to the Member as soon as practicable after it becomes reasonable for the Trustees to expect that the significant event will happen (except that the information need not be given more than 3 months before the expected date of the event).

### **3.2.7 INFORMATION REQUIREMENTS - RECEIPT OF NOTICE OF NON-COMPLIANCE**

Should the Trustee of the Fund with 5 or more Members receive a notice of non-compliance issued under Section 40 of the Act, the Trustee must provide information to the Member in respect of that non-compliance which consists of:

- (a) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice;
- (b) a statement of the effect on the Fund of the issue of the notice (including details of the effect on the Fund's taxation position);
- (c) details of what action the Trustee has taken, or proposes to take, to have the Fund become a complying fund; and
- (d) any information concerning the non-compliance that the Commissioner requires to be given for the purposes of Regulation 2.36 of the Regulations.

## **3.3 MEMBER INFORMATION - EXCLUDED FUND**

### **3.3.1 ANNUAL INFORMATION TO ALL MEMBERS**

Where the Fund is an Excluded Fund, the Trustee shall provide, within 6 months after the end of each Year of Income, to each person who was a Member on the last day of that Year of Income, the following information as a minimum (a "Report to Members - Excluded Fund"):

- (a) the contact details of the Fund;
- (b) the amount of the Member's withdrawal benefit at the start of each reporting period;

- (c) the amount of the Member's withdrawal benefit at the end of the reporting period and the method by which it was calculated; and
- (d) the amount of the Member's withdrawal benefit at the end of the reporting period that must be preserved.

### **3.4 MEMBER INFORMATION - OTHER MATTERS**

#### **3.4.1 EXCEPTIONS TO ANNUAL REQUIREMENTS OF REPORTING TO MEMBERS**

The Trustee of the Fund need not give a Report to Members or a Report to Members - Excluded Fund to a Member who:

- (a) in relation to any period is a life pensioner of the Fund;
- (b) is a pensioner of the Fund and has requested that the Report to Members or Report to Members -Excluded Fund not be provided; or
- (c) has had their Membership terminated prior to the issue of the Report to Members or Report to Members -Excluded Fund and has received or will receive from the Trustee a Report to Terminated Member.

## **4. CONTRIBUTIONS**

### **4.1 ACCEPTANCE OF CONTRIBUTIONS**

Upon becoming a Regulated Superannuation Fund, subject to Subdivision 13.1.2 of the Regulations, the Fund may accept contributions that are made by or in respect of a Member who is under age 65 only if:

- (a) the contributions are Mandated Employer Contributions; or
- (b) the contributions are not Mandated Employer Contributions and the Member:
  - (i) has, at any time in the period of 7 years immediately preceding the date of acceptance, engaged in Full-time or Part-time Gainful Employment; or
  - (ii) ceased Full-time or Part-time Gainful Employment because of ill-health (whether physical or mental) that, at the date of acceptance, prevents the Member from engaging in employment of the kind that the Member was engaged in at the onset of the ill-health,

and, additionally, the Trustee may accept contributions by or in respect of a Member if the Trustee is reasonably satisfied that the contributions are in respect of a period during

which, under this sub-rule, the Fund may accept the contributions by or in respect of that Member, even though the contributions are actually made after that period, and, apart from this sub-rule, the Trustee may at its absolute and unfettered discretion accept contributions in other circumstances acceptable to the Commissioner.

## **5. MATTERS RELATING TO BENEFITS AND ENTITLEMENTS**

### **5.1 ENTITLEMENT TO BENEFITS AND ENTITLEMENTS**

#### **5.1.1 NORMAL RETIREMENT BENEFIT**

A Member who retires from Service at his or her Normal Retirement Date shall be entitled to receive a Normal Retirement Benefit.

#### **5.1.2 POSTPONED RETIREMENT BENEFIT**

A Member who retires from Service after his or her Normal Retirement Date shall be entitled to receive a Postponed Retirement Benefit.

#### **5.1.3 TOTAL AND PERMANENT DISABLEMENT BENEFIT**

A Member who retires from Service because of Total and Permanent Disablement shall be entitled to receive a Total and Permanent Disablement Benefit.

#### **5.1.4 DEATH BENEFIT**

Upon the death of:

- (a) a Member, a Death Benefit shall become payable and shall be paid in accordance with sub-rule 5.2.4; or
- (b) a former Member who is in receipt of a pension from the Fund, a Death Benefit, reduced by an amount determined by the Trustee as representing benefits or entitlements previously paid or applied in respect of the Member or that Member's Dependents, shall become payable and shall be paid in accordance with sub-rule 5.2.4.

#### **5.1.5 TOTAL AND TEMPORARY DISABLEMENT BENEFIT**

Upon the Total and Temporary Disablement of a Member, the Member shall be entitled to receive a Total and Temporary Disablement Benefit.

### 5.1.6 SPOUSE'S PENSION

If a Member dies while in receipt of a Pension from the Fund, the Member's Spouse will be entitled to receive a Spouse's Pension and the amount of that Pension shall be limited to an amount not exceeding the amount calculated in accordance with the Act and Regulations. A person shall, unless the Trustee otherwise determines, be entitled to a Spouse's Pension only if the person married the Member before the Member retired from Service.

### 5.1.7 OTHER TERMINATION OF SERVICE

A Member who ceases to be a Member of the Fund, otherwise than by the death of that Member, and who is not entitled to a:

- (a) Normal Retirement Benefit;
- (b) Postponed Retirement Benefit; or
- (c) Total and Permanent Disablement Benefit,

shall be entitled to:

- (d) receive the amount standing to the credit of his or her Member's Accumulation Account, subject to the restrictions imposed by sub-rules 5.4.1 to 5.5.2; or
- (e) have the amount standing to the credit of his or her Member's Accumulation Account transferred to another Regulated Superannuation Fund or Approved Deposit Fund, in accordance with Part 6 of this Deed.

### 5.1.8 EARLY RELEASE OF BENEFITS

Upon a Member's circumstances being such as to constitute grounds for early release of some or all of that Member's benefits and entitlements, in accordance with the exercise of the Commissioner's discretion, the Trustee shall, upon receiving a written request from the Member and advice from the Commissioner, release such benefits and entitlements to the Member, in such amounts and as directed by the Commissioner, net of any taxes or reasonable charges applicable to the release of those benefits and entitlements, from time to time.

## 5.2 DETERMINATION OF BENEFITS AND ENTITLEMENTS

### 5.2.1 NORMAL RETIREMENT BENEFIT

A Member's "Normal Retirement Benefit" shall be a Pension, the amount of such Pension being determined by the Trustee, having regard to:

- (a) the balance of the Member's Accumulation Account at the Member's Normal Retirement Date;
  - (b) the period over which and the terms upon which the Pension is to be payable;
  - (c) the expected investment earnings of the Fund which are anticipated to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
  - (d) the costs of investing assets of the Fund, operation and, where applicable, termination of the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, which are anticipated to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
  - (e) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member or the Member's beneficiaries;
  - (f) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations, from time to time; and
  - (g) any total or partial commutation in accordance with sub-rule 5.3.1,
- and shall:
- (i) be calculated so as to produce a nil balance in the Member's Accumulation Account after the terms under which the Pension is to be paid are met; and
  - (ii) in any event, cease to be payable when the balance in the Member's Accumulation Account is nil.

### 5.2.2 POSTPONED RETIREMENT BENEFIT

A Member's "Postponed Retirement Benefit" shall be a Pension, the amount of such Pension being determined by the Trustee, having regard to:

- (a) the balance of the Member's Accumulation Account at the date on which the Member retires;
- (b) the period over which and the terms on which the Pension is to be payable;
- (c) the expected investment earnings of the Fund projected to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
- (d) the costs of the investing, operating and, where applicable, terminating the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, projected to be attributable to the reducing balance of the

Member's Accumulation Account, from time to time;

- (e) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member or the Member's beneficiaries;
- (f) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations, from time to time; and
- (g) any total or partial commutation of the Pension, in accordance with sub-rule 5.3.1, and shall:
  - (i) be calculated so as to produce a nil balance in the Member's Accumulation Account after the terms under which the Pension is to be paid are met; and
  - (ii) in any event, cease to be payable when the balance in the Member's Accumulation Account is nil.

### 5.2.3 TOTAL AND PERMANENT DISABLEMENT BENEFIT

A Member's "**Total and Permanent Disablement Benefit**" shall be an amount equal to:

- (a) the proceeds of insurance on the Member effected by the Trustee and payable in the circumstances of the Member's Total and Permanent Disablement; and
- (b) the amount standing to the credit of the Member's Accumulation Account, net of any taxes or reasonable charges determined by the Trustee to be applicable to the payment of such benefits, from time to time.

### 5.2.4 DEATH BENEFIT

A Member's "**Death Benefit**" shall be an amount equal to:

- (a) the proceeds of insurance on the Member effected by the Trustee and payable in the circumstances of the Member's death; and
- (b) the amount standing to the credit of the Member's Accumulation Account at the time of payment, net of any taxes or reasonable charges determined by the Trustee to be applicable to the payment of such benefits, from time to time,

less:

- (c) the amount necessary to meet any obligations with respect to a Spouse's Pension or other payments required to be met from the Member's benefits and entitlements,

and shall be payable in such amounts and to such of the following persons as the Trustee reasonably considers to be appropriate in the circumstances:-

- (i) The Member's Designated Beneficiary.
- (ii) The Member's present Spouse.
- (iii) One or more of the Member's past Spouses.
- (iv) One or more of the Member's natural or adopted children, grandchildren or great-grandchildren.
- (v) The Member's personal legal representative.
- (vi) As the Member has directed the Trustee, in writing.

### 5.2.5 TOTAL AND TEMPORARY DISABLEMENT

A Member's "**Total and Temporary Disablement Benefit**" shall, subject to any additional or lesser requirements or restrictions imposed by the Commissioner on the payment of total and temporary disablement benefits, from time to time, be a periodic income supplement determined by the Trustee as being:

- (a) where the Member is still receiving some pay from his or her Employer and:
  - (i) the Member's pre-disablement rate of pay does not exceed \$ 35,000 per annum, indexed from October 1988, an amount which:
    - (A) is equal to or less than 75% of the Member's pre-disablement rate of pay; and
    - (B) in any event, does not, when combined with the pay received from his or her Employer, result in total payments from those sources exceeding 100% of the Member's pre- disablement rate of pay; or
  - (ii) the Member's pre-disablement rate of pay exceeds \$35,000 per annum, indexed from October 1988, an amount which is equal to or less than the maximum amount payable to the Member, in accordance with the Member's reasonable benefits limit, in a pension form, were the Member to retire at age 65, but such that the amount:
    - (A) is equal to or less than 75% of the maximum amount payable in pension form; and
    - (B) in any event, does not, when combined with the pay received from his or her Employer, result in total payments from those sources exceeding 100% of the Member's pre- disablement rate of pay; or
- (b) where the Member is not receiving any pay from his or her Employer and:

- (i) the Member's pre-disablement rate of pay does not exceed \$35,000 per annum, indexed from October 1988, an amount which is equal to or less than 75% of the Member's pre-disablement rate of pay; or
- (ii) the Member's pre-disablement rate of pay exceeds \$35,000 per annum, indexed from October 1988, an amount which is equal to or less than the maximum amount payable to the Member, in accordance with the Member's reasonable benefits limit, in a Pension form, were the Member to retire at age 65, but such that, it does not exceed 75% of the Member's pre-disablement rate of pay,

but in any event shall not exceed an amount equal to the total of the Member's Accumulation Account and any policy of insurance effected by the Trustee for the purpose of providing Total and Temporary Disablement benefits in respect of the Member.

### **5.3 OPTION TO COMMUTE PENSIONS TO LUMP SUMS**

#### **5.3.1 CIRCUMSTANCES OF COMMUTATION**

In the case of any amounts to be paid, payable or having commenced to be paid from the Fund as a Pension, annuity or income stream, other than a Total and Temporary Disablement Benefit, the person or persons entitled to receive those amounts may, by written request addressed to the Trustee, commute the said amounts, or any part or parts thereof, to a lump sum, equivalent to the balance remaining in the Member's Accumulation Account in relation to which the said amount or amounts are being paid, less any taxes and other reasonable charges which the Trustee considers are reasonably applicable to the commutation of the said amounts and to the payment of a lump sum, from time to time.

#### **5.3.2 DISCHARGE OF PART OR ALL LIABILITY ON COMMUTATION**

Where a person commutes part or all of a Pension, annuity or income stream in accordance with sub-rule 5.3.1:

- (a) if the commutation represents a partial commutation only, the Trustee shall discount the Pension, annuity or income stream to which the person is entitled, to the extent which the Trustee considers reasonably necessary to take account of the commutation, and the Fund and the Trustee shall then be discharged and relieved of any further liability in respect of the amount of the discount; or
- (b) if the commutation represents a commutation of the whole of the Pension, annuity or income stream, the Fund and the Trustee shall then be discharged and relieved of any further liability in respect of that Pension, annuity or income stream.

### 5.3.3 PAYMENT OF BENEFITS IN RESPECT OF MINORS AND OTHERS UNDER LEGAL DISABILITIES

Where any beneficiary of the Fund is under a Legal Disability, the Trustee shall be entitled to:

- (a) pay or apply the benefits or entitlements of the beneficiary; or
- (b) pay the benefits and entitlements of the beneficiary to another person for the sole purpose of that person paying or applying the benefits or entitlements of the beneficiary,

for or on behalf of the beneficiary or the beneficiary's Dependants and such payment shall constitute a discharge of the Fund and the Trustee with respect to such payment, and the Trustee shall not being concerned nor liable to see to the application of those benefits or entitlements after the time of their payment.

### 5.4 LEGISLATIVE RESTRICTIONS ON PAYMENT OF BENEFITS AND ENTITLEMENTS

Each sub-rule contained in this rule shall be read and construed as being subject to any amendments, modifications, re-enactments, or substitutions of the Act and Regulations, from time to time, which:

- (a) reduce the restrictions placed upon payments of benefits and entitlements in accordance with this rule; or
- (b) increase the restrictions placed upon payments of benefits and entitlements in accordance with this rule.

#### 5.4.1 SUPPLEMENTARY DEFINITIONS

For the purposes of sub-rules 5.4.1 to 5.5.2, the following words (which are presented in logical, not alphabetical, order) have the following meanings:

"Changeover Day" means, in relation a Member of the Fund:

- (a) the day in the 1996 calendar year that the Trustee of the Fund decides is the changeover day for the purposes of Part 6 of the Regulations; or
- (b) if, before 1 July 1996, if the Trustee makes no such decision in relation to that Member, prior to 1 July 1996;

"Commencement Day" means, in relation to the Fund, after the Fund becomes a Regulated Superannuation Fund, the later of:

- (a) the first day of the 1994-95 Year of Income of the Fund; or
- (b) the day on which the Trustee makes an election to become a Regulated Superannuation Fund;

**"Member-financed Benefit"** means, in relation to a Member of a Regulated Superannuation Fund as at any time, benefits equal to the sum of:

- (a) the amount of the Member Contributions made to the Fund in relation to the Member to that time; and
- (b) the amount of the investment earnings on those contributions to that time,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) and (b) to that time;

**"Mandated Employer Contributions"** means, in relation to a Member of a Regulated Superannuation Fund, contributions by, or on behalf of, an Employer that are equal to the sum of:

- (a) the contributions made by, or on behalf of, the Employer to the Fund in relation to the Member, that:
  - (i) reduce the Employer's potential liability for the superannuation guarantee charge imposed by Section 5 of the Superannuation Guarantee Charge Act 1992; or
  - (ii) are payments of shortfall components under the Superannuation Guarantee (Administration) Act 1992; and
- (b) the contributions (other than contributions of the kind specified in paragraph (a)) made by, or on behalf of, the Employer to the Fund in relation to the Member in or towards satisfaction of the Employer's obligation to make contributions for the Member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

**"Mandated Employer-financed Benefit"** means, in relation to a Member of a Regulated Superannuation Fund at any time, benefits equal to the sum of:

- (a) the amount of the Mandated Employer Contributions made to the Fund in relation to the Member to that time; and
- (b) the amount of the investment earnings on those contributions to that time,

less the direct costs of establishing, operating and terminating the Fund and any

administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) and (b) to that time;

**"Minimum Benefit"** means, in relation to a Member of the Fund, an amount that is the sum of:

- (a) the Member-financed Benefits of the Member; and
- (b) the Mandated Employer-financed Benefits of the Member;

**"Condition of Release"** means, in relation to a Member, the satisfaction of a condition of release specified in Column 2 of Schedule 1 to the Regulations;

**"Cashing Restriction"** means, in relation to a Condition of Release, the corresponding cashing restriction specified in Column 3 of Schedule 1 to the Regulations;

**"Restricted Non-preserved Contributions"** means in relation to a Member of the Fund, the sum of:

- (a) where the amounts which formed the whole or any part of an Eligible Termination Payment, those amounts that are undeducted contributions within the meaning given by Sub-section 27A(1) and (7) of the Income Tax Assessment Act 1936, as amended; and
- (b) where there are any other amounts not included in paragraph (a), the whole or any part of Member Contributions made after 30 June 1983 in order to obtain superannuation benefits (within the meaning of the Income Tax Assessment Act 1936, as amended), in respect of which no tax deduction is allowable or has been allowed to the Member under that enactment,

less amounts, or any parts of the said sum, which:

- (c) were preserved contributions in satisfaction of the requirements of the Income Tax Assessment Act 1936, as amended, the O.S.S. Laws or the Superannuation Industry (Supervision) (Transitional Provisions) Regulations leading to income tax concessions;
- (d) have not met a Condition of Release; and
- (e) do not have a nil Cashing Restriction;

**"Unrestricted Non-preserved Contributions"** means, in relation to a Member of the Fund, the amounts which would otherwise be Restricted Non-preserved Contributions, or parts thereof, but for the fact that they:

- (a) have met a Condition of Release; and

(b) have nil Cashing Restriction;

**"Unrestricted Non-preserved Benefits"** means, in relation to a Member of the Fund, the sum of:

- (a) the total of the Member's Unrestricted Non-preserved Contributions; and
- (b) the amount of the investment earnings on those contributions to that time,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) and (b) to that time;

**"Preserved Benefits"** means, in relation to a Member of the Fund:

- (a) prior to the Changeover Day:
  - (i) the amount required to be preserved under the O.S.S. Laws up to the Commencement Day; and
  - (ii) on and after the Commencement Day and in respect of contributions and transfers in to the Fund made on and after that Day, as if the O.S.S. Laws continued to operate and references in the O.S.S. Laws to superannuation funds were references to Regulated Superannuation Funds, modified such that Member Contributions which are undeducted contributions for the purposes of those Laws do not form part of Preserved Benefits; and
- (b) on and after the Changeover Day, the total of all benefits and entitlements standing to the credit of the Member's Accumulation Account, less the sum of:
  - (i) Restricted Non-preserved Benefits; and
  - (ii) Unrestricted Non-preserved Benefits.

**"Pre-change Restricted Non-preserved Benefits"** means, in relation to a Member of the Fund, the total of all benefits or entitlements standing to the credit of the Member's Accumulation Account, less the sum of:

- (a) Preserved Benefits; and
- (b) Unrestricted Non-preserved Benefits, on the day immediately preceding the day the calculation is made and, in any event, not later than the day immediately preceding the Changeover Day;

**"Post-change Restricted Non-preserved Benefits"** means, in relation to a Member of the Fund, the total of:

- (a) the greater of:
  - (i) the indexed amount of the Member's Pre-change Restricted Non-preserved Benefits in the Fund that would be payable to the Member on the Changeover Day, if the Member resigned from Employment; or
  - (ii) the indexed amount of the Member's Pre-change Restricted Non-preserved Benefits in the Fund that would be payable to the Member on the Changeover Day, if the Member were retrenched from Employment; and
- (b) the indexed amount of any Restricted Non-preserved Benefits that are received from another Regulated Superannuation Fund on or after the Changeover Day, which are or have been subject to indexation in that fund;

**"Restricted Non-preserved Benefits"** means, in relation to a Member of the Fund:

- (a) prior to the Changeover Day, the Pre-change Restricted Non-preserved Benefits; and
- (b) on or after the Changeover Day, the Post-change Restricted Non-preserved Benefits;

#### **5.4.2 RESTRICTION ON METHOD OF BENEFIT PAYMENT**

Subject to the provisions of Division 6.2 of the Regulations, from time to time, a Member's benefits and entitlements in the Fund:

- (a) may only be paid by:
  - (i) being cashed in accordance with this Part; or
  - (ii) being rolled over or transferred in accordance with this Deed;
- (b) must not be paid except when, and to the extent, that the Fund is required or permitted to pay them in accordance with this Deed; and
- (c) must be paid when, and to the extent that, the Fund is required in accordance with this Deed.

#### **5.4.3 PAYMENT OF UNRESTRICTED NON-PRESERVED BENEFITS**

Subject to the provisions of this Deed, the whole or a part of a Member's Unrestricted Non-preserved Benefits may be cashed at any time in any one or more of the following forms:-

- (a) A lump sum or 2 or more lump sums.

- (b) A Pension or 2 or more Pensions.
- (c) The purchase of an annuity or 2 or more annuities.

#### **5.4.4 PAYMENT OF RESTRICTED NON-PRESERVED BENEFITS**

Subject to the provisions of this Deed, the whole or a part of a Member's Restricted Non-preserved Benefits may only be cashed on or after the satisfaction by the Member of a Condition of Release and must not exceed the sum of:

- (a) the Restricted Non-preserved Benefits of the Member that had accrued at the time when the Member satisfied the Condition of Release; and
- (b) any investment earnings accruing on those benefits from that time,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) and (b) to that time. The form in which Restricted Non-preserved Benefits may be cashed is:

- (a) the form, if any, specified in the Cashing Restriction for Restricted Non-preserved Benefits in relation to the relevant Condition of Release; or
- (b) if the Cashing Restriction is "Nil", any one or more of the following forms:-
  - (i) A lump sum or 2 or more lump sums.
  - (ii) A Pension or 2 or more Pensions.
  - (iii) The purchase of an annuity or 2 or more annuities.

#### **5.4.5 PAYMENT OF PRESERVED BENEFITS**

Subject to the provisions of this Deed, the whole or any part of a Member's Preserved Benefits may only be cashed on or after the satisfaction by the Member of a Condition of Release and must not exceed the sum of:

- (a) the Preserved Benefits of the Member that had accrued at the time when the Member satisfied the Condition of Release; and
- (b) any investment earnings accruing on those benefits from that time,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) and (b) to that time. The form in which Preserved Benefits may be cashed is:

- (a) the form, if any, specified in the Cashing Restriction for Preserved Benefits in relation to the relevant Condition of Release; or
- (b) if the Cashing Restriction is "Nil", any one or more of the following forms:-
  - (i) A lump sum or 2 or more lump sums.
  - (ii) A Pension or 2 or more Pensions.
  - (iii) The purchase of an annuity or 2 or more annuities.

#### **5.4.6 COMPULSORY PAYMENT OF BENEFITS**

A Member's benefits and entitlements in a Regulated Superannuation Fund must be cashed as soon as practicable after the occurrence of any of the following events:-

- (a) The Member:
  - (i) has attained age 65, but not age 70; and
  - (ii) is not Gainfully Employed on either a Full-time or Part-time basis.
- (b) The Member:
  - (i) has attained age 70; and
  - (ii) is not Gainfully Employed on a Full-time basis.
- (c) The Member dies.

#### **5.4.7 RESTRICTIONS ON PAYMENT METHOD WHERE COMPULSORY PAYMENT OF BENEFITS**

The form in which benefits and entitlements may be cashed under sub-rule 5.4.6 is any one of the following forms:-

- (a) A single lump sum.
- (b) A single Pension.
- (c) The purchase of a single annuity.

## 5.5 OTHER RESTRICTIONS ON PAYMENT OF BENEFITS

### 5.5.1 SUSPENSION AND TERMINATION OF BENEFITS

Subject to the provisions of this Deed and to the provisions of the Act and Regulations, from time to time, the benefits payable out of the Fund to or in respect of a beneficiary shall be suspended or terminated if the beneficiary otherwise entitled thereto:

- (a) owing to Legal Disability or for any reason requires care, treatment or control for his or her own good or in the public interest and is, in the opinion of the Trustee, for the time being incapable of managing himself or herself, or his or her affairs;
- (b) in the opinion of the Trustee, commits any fraud or is guilty of dishonesty, defalcation, willfully causing significant damage to the property of his or her Employer or other serious misconduct;
- (c) commits an act of bankruptcy leading to that person being declared bankrupt; or
- (d) either by his own act, operation of law, order of any court or tribunal, or otherwise has had such benefits or entitlements vested in or made payable to any other person, company, government or other public authority.

### 5.5.2 APPLICATION OF SUSPENDED BENEFITS

Where a beneficiary's benefits and entitlements have been suspended or terminated in accordance with sub-rule 5.5.1 and those benefits and entitlements or any part thereof have become at a time that, or do become payable whilst, the circumstances of the suspension or termination remain current, the Trustee may, in its absolute and unfettered discretion:

- (a) pay or apply the benefits or entitlements of the beneficiary; or
- (b) pay the benefits and entitlements of the beneficiary to another person for the sole purpose of that person paying or applying the benefits or entitlements of the beneficiary,

for or on behalf of the beneficiary or the beneficiary's Dependants and such payment shall constitute a discharge of the Fund and the Trustee, with respect to such payment, and the Trustee shall not being concerned nor liable to see to the application of those benefits or entitlements after the time of their payment.

## **6. TRANSFERS OF BENEFITS**

### **6.1 TRANSFERS IN**

#### **6.1.1 MEMBERS MAY REQUEST TRANSFER IN**

A Member may request that the Trustee accept a transfer into the Fund of any existing superannuation benefits or entitlements, including any eligible termination payments being held with another Regulated Superannuation Fund, Approved Deposit Fund or pooled superannuation trust.

#### **6.1.2 TRUSTEE TO CONSIDER REQUEST**

The Trustee shall consider a request made in accordance with the last preceding sub-rule and shall:

- (a) agree to accept a transfer into the Fund of the entire amount of the benefits or entitlements; or
- (b) agree to accept a transfer into the Fund of part of the benefits or entitlements; or
- (c) refuse to accept a transfer into the Fund of any part of the benefits or entitlements,

and in reaching such a decision, the Trustee shall have cause to consider the limits on benefits payable to the requesting Member, the balance of the Member's Accumulation Account before and after the proposed transfer in, the terms under which the benefits or entitlements the subject of the request are currently being held and any other matters which the Trustee considers relevant.

#### **6.1.3 RESTRICTIONS ON TRANSFERS IN**

The Trustee shall not agree to accept a transfer into the Fund of any benefits or entitlements which would cause or would be likely to cause the Fund to breach a Civil Penalty Provision or to commit an offence under the Act.

#### **6.1.4 TERMS ON WHICH TRANSFERS IN MAY BE ACCEPTED**

Where the Trustee accepts a transfer into the Fund of benefits or entitlements under this rule, such benefits or entitlements shall be maintained and shall only be payable:

- (a) in accordance with the terms of the trust deed or governing rules, if any, of the transferring entity at the date of transfer, as advised to the Trustee; or
- (b) on such other terms as are approved by the Commissioner.

## **6.2 TRANSFERS OUT**

### **6.2.1 MEMBER OR INTERESTED PERSON MAY REQUEST TRANSFER OUT**

A request that any benefits or entitlements accrued in the Member's Accumulation Account be transferred to another Regulated Superannuation Fund, Approved Deposit Fund, or other entity acceptable to the Commissioner for the purpose of receiving such benefits or entitlements may be received and considered by the Trustee from:

- (a) the Member; or
- (b) in the case of a Member's death or Total and Permanent Disablement, the person or persons otherwise entitled to receive a benefit or entitlement; or
- (c) the Member's personal legal representative.

### **6.2.2 TRUSTEE TO NOTIFY INTERESTED PARTIES OF CERTAIN REQUESTS**

Upon receiving a request to transfer benefits out of the Fund from a person mentioned in the last preceding rule, the Trustee shall give notice in writing of the proposed transfer to all other interested persons who at that time are entitled to make such a request.

### **6.2.3 TRUSTEE NOT TO TRANSFER IN THE FACE OF OBJECTIONS**

Should an interested person notified in accordance with the preceding sub-rule make objection and give reasons for the objection to the Trustee concerning the requested transfer out of the Fund, the Trustee shall not transfer these benefits and shall notify in writing the person or persons requesting the transfer of the objection and of the identity of the objector.

### **6.2.4 CONDITIONS TO BE MET FOR TRANSFERS OUT**

Where no person is required to be notified of a request for transfer, no objection has been received from an interested person within 7 days of giving notice, or the Trustee is satisfied that any objection received has been removed, the Trustee shall transfer the benefits or entitlements requested.

## **6.3 REQUIREMENTS UPON TRANSFERS AND PAYMENTS OF BENEFITS**

### **6.3.1 TRANSFERS OUT RESTRICTED**

Where a Member of the Fund requests that the Trustee transfer benefits or entitlements accrued in respect of that Member to another superannuation entity, the Trustee, before allowing any such transfer, shall be concerned to ensure that the entity accepting the benefits or entitlements is:

- (a) a Regulated Superannuation Fund; or
- (b) an Approved Deposit Fund,

and in this regard, it shall be sufficient for the Trustee to receive in writing from the entity accepting the benefits or entitlements confirmation in writing of its status.

### **6.3.2 DEDUCTIONS UPON TRANSFER OR PAYMENT OF BENEFITS**

Where payment of benefits or entitlements out of the Fund is to be made to the Member, at the Member's direction, to the Member's dependants, or otherwise the Trustee shall be concerned to ensure that calculations of all taxes, expenses, accrued and actual liabilities required to be deducted from the Member's Accumulation Account, and all income, gains and accretions required to be credited to the Member's Accumulation Account have been made prior to determining the amount of benefits or entitlements available for payment to the Member.

### **6.3.3 INFORMATION TO BE PROVIDED UPON TRANSFER OR PAYMENT OF BENEFITS**

At the time of:

- (a) paying benefits or entitlements at the direction of a Member;
- (b) transferring benefits or entitlements to another entity in accordance with this rule; or
- (c) any combination of the preceding paragraphs,

the Trustee shall provide to the entity, if any, accepting the benefits or entitlements and to the Member who has requested the transfer information in the prescribed form in relation to the total benefits or entitlements transferred and the amount of the benefits which consist of:

- (a) concessional components;
- (b) undeducted contributions;
- (c) in the case of an immediate annuity eligible termination payment, the non-qualifying component;
- (d) the excessive component;
- (e) the pre-July 83 component; and
- (f) the post-June 83 component,

as those terms are defined and described in Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act 1936, as amended.

#### **6.3.4 ADDITIONAL INFORMATION TO BE PROVIDED UPON TRANSFER OR PAYMENT OF BENEFITS**

In addition to the information contained in sub-rule 6.3.3, at the time of:

- (a) paying benefits or entitlements at the direction of a Member;
- (b) transferring benefits or entitlements to another entity in accordance with this rule;  
or
- (c) any combination of the preceding paragraphs,

the Trustee shall also provide:

- (a) to the Member, where the Member's membership is terminated by or at the time of payment, information concerning:
  - (i) the method of determining the Member's benefits or entitlements; and
  - (ii) if the Member ceases to be a Member otherwise than because of that Member's death:
    - (A) the amount of or the method of calculating the amount of the Member's Death Benefit on the day before termination of membership; and
    - (B) advice that the Member's Death Benefit may change as a result of that person ceasing to be a Member; and
    - (C) the name and address of the person or body that holds or held the death cover of the Member with whom contact can be made during officer hours to obtain more information about the Death Benefit; or
  - (iii) if the Member ceases to be a Member otherwise than because of that Member's death, disablement or retirement from the workforce, those matters in respect of which information is normally required to be provided to a Member annually, as described in Part 3 of this Deed and calculated from the beginning of the Fund's Year of Income to the time of payment of the benefits or entitlements; and
  - (iv) the Member's reasonable benefits multiple; and
- (b) to the entity, if any, to which the Member's benefits and entitlements or any part thereof are to be transferred, information concerning:

- (i) the amount of the benefits and entitlements which are preserved; and
- (ii) the amount of the benefits which are vested.

### **6.3.5 INFORMATION REQUIREMENTS UPON MEMBER'S DEATH**

Where payment of a Member's benefits or entitlements and the termination of a Member's membership occurs as a result of the death of a Member, the requirements in this rule for notices and information to be provided to a Member shall be read as requirements for notices and information to be provided to the Member's personal legal representative.

### **6.3.6 NOTIFICATION OF PERSONS ENTITLED UPON MEMBER'S DEATH**

Where the death of a Member results in benefits or entitlements being payable otherwise than to the Member's legal personal representative, whether because of the exercise of a discretion by the Trustee to pay benefits or entitlements to a Member's Designated Beneficiaries or otherwise, the Trustee shall notify each person to whom any benefits or entitlements are payable of the reasons why benefits or entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.

### **6.3.7 APPLICATION OF BENEFITS WHERE BENEFICIARIES UNABLE TO BE LOCATED**

Should the Trustee, after making all reasonable attempts, be unable to locate a person to whom any benefits or entitlements are payable in accordance with the preceding sub-rule, the Trustee shall have the discretion to pay that part of the benefits or entitlements of the Member otherwise payable to the person not able to be located, to the Member's legal personal representative, or to any one or more of the remaining Designated Beneficiaries, if any, in any proportions as the Trustee in its absolute discretion sees fit and neither the first-mentioned person, nor any other person shall have any claim or cause of action against the Trustee or the Fund as a result of the Trustee exercising its discretion in accordance with this sub-rule.

### **6.3.8 INFORMATION TO THE COMMISSIONER UPON PAYMENT OR TRANSFER OF BENEFITS**

Upon paying all or any benefits or entitlements out of the Fund, where the entire amount of those benefits or entitlements are not rolled over into a Regulated Superannuation Fund or an Approved Deposit Fund the Trustee shall, within the prescribed time, provide to the Taxation Commissioner, in the form prescribed by the regulations to the Income Tax Assessment Act 1936, information required by the Taxation Commissioner in relation to those benefits or entitlements and in relation to the recipients thereof.

**7. ADMISSION OF EMPLOYER SPONSORS****7.1 CONDITIONS FOR ACCEPTANCE OF EMPLOYER CONTRIBUTIONS**

The Trustee may only accept contributions from an Employer Sponsor or past Employer Sponsor of a Member of the Fund who is or was an Employee of that Employer Sponsor, and then only after the Employer Sponsor has accepted the terms and conditions of the Fund and of this Deed by acknowledging the same to the Trustee in writing.

**7.2 STATUS OF EMPLOYER SPONSOR TO BE DETERMINED**

An Employer from whom the Trustee may accept contributions in accordance with rule 7.1 shall be categorised as:

- (a) a Standard Employer Sponsor (who is also an Employer Sponsor for the purposes of this Deed); or
- (b) an Employer Sponsor,

depending upon the circumstances of admission of the Employer to the Fund.

**7.3 TERMS OF ADMISSION OF EMPLOYER SPONSOR**

Subject to the Employer Sponsor accepting the terms of this Deed in accordance with sub-rule 7.1, the Trustee and the Employer Sponsor may agree upon such further terms and conditions as they shall decide, and each acceptance and agreement shall contain and shall not derogate from an implied term that the Employer Sponsor shall pay all contributions payable in respect of Members to the Fund within 1 month from the date they are due.

**7.4 TERMINATION OF EMPLOYER SPONSOR**

Upon the Trustee becoming aware that an Employer Sponsor of one or more Members has ceased to be an Employer Sponsor of any Member, the Trustee shall take such steps as are necessary to record that Employer Sponsor's termination as an Employer Sponsor of the Fund.

## **8. TRUSTEE**

### **8.1 APPOINTMENT, RESIGNATION, DISMISSAL AND TERMINATION**

#### **8.1.1 APPOINTMENT OF TRUSTEE - STANDARD EMPLOYER SPONSORED FUND**

Subject to the representation rules contained in sub-rules 8.4.1 to 8.6.3 and to the other provisions of this Deed, where the Fund is a Standard Employer Sponsored Fund, the Standard Employer Sponsor shall have the sole right and entitlement to appoint one or more Trustees and, where the Trustee is a Constitutional Corporation, to appoint one or more Directors of the Trustee, to the Fund; but no Trustee or Director shall be appointed in pursuance of this sub-rule in the face a resolution objecting to the proposed appointee, passed by more than 75% of the Members of the Fund, in a meeting called for the purpose of voting on such a resolution.

#### **8.1.2 APPOINTMENT OF TRUSTEE - ALL OTHER FUNDS**

Subject to the representation rules contained in sub-rules 8.4.1 to 8.6.3 and to the other provisions of this Deed, where the Fund is not a Standard Employer Sponsored Fund, the Members, by resolution passed by more than 50% of them present in a meeting called, for the purpose of appointing a Trustee and, where the Trustee is a Constitutional Corporation, for the purpose of appointing one or more Directors of the Trustee, shall have the sole right and entitlement to appoint one or more Trustees or Directors of Trustees to the Fund.

#### **8.1.3 ACCEPTANCE OF TRUSTEESHIP OR DIRECTORSHIP TO BE IN WRITING**

Any form of acceptance of Trusteeship and Directorship, in the case where the Fund is a Constitutional Corporation, shall be in writing and shall contain a statement in the following form:-

"I.....accept the appointment as Trustee/Director of the Trustee, of..... Superannuation Fund and in doing so, accept the terms, conditions, duties and obligations specified in the trust deed for the time being governing the Fund."

#### **8.1.4 ACCEPTANCE NOT IN WRITING NOT INVALID**

The acceptance and appointment to office of a Trustee and, where the Trustee is a Constitutional Corporation, of a Director of the Trustee, shall not be invalidated because it is not in writing, but any acceptance of appointment to office in a form other than that specified by sub-rule 8.1.3 shall be deemed to be on the same terms and conditions as set out in that sub-rule.

**8.1.5 TRUSTEE MAY RESIGN**

The Trustee of the Fund may resign from the office of Trustee at any time, by giving 1 month's notice in writing:

- (a) in the case where the Fund is a Standard Employer Sponsored Fund, to the Standard Employer Sponsor; or
- (b) in the case where the Fund is not a Standard Employer Sponsored Fund, to the Members of the Fund,

and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee.

**8.1.6 TRUSTEE MAY BE DISMISSED**

The Trustee of the Fund may be dismissed from the office of Trustee at any time, by notice in writing given:

- (a) in the case where the Fund is a Standard Employer Sponsored Fund, by the Standard Employer Sponsor; or
- (b) in the case where the Fund is not a Standard Employer Sponsored Fund, by any one of the Members, after a resolution to dismiss the Trustee, passed by more than 75% of the Members of the Fund, in a meeting called for the purpose of voting on such a resolution,

and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee.

**8.1.7 REMOVAL OF TRUSTEE - OTHER CIRCUMSTANCES**

A Trustee of the Fund shall cease to be a Trustee of the Fund (and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee, if any) upon the happening of any one or more of the following events:-

- (a) Where a Trustee of the Fund is an individual, that individual:
  - (i) dies;
  - (ii) becomes incapable of dealing with his or her own affairs;

- (iii) is convicted of an offence of dishonesty or otherwise becomes disqualified from office by operation of law;
  - (iv) commits an act of bankruptcy or threatens to call any meeting with a view to entering into a composition or agreement with creditors;
  - (v) makes an assignment to or enters into a composition with his or her creditors, or seeks the protection of any statute for relief from creditors;
  - (vi) any floating security given in favour of any security holder becomes fixed in respect of the whole or part of the person's assets; or
  - (vi) where the person's appointment as Trustee is referable to the representation rules or Independent Trustee requirements, that person's circumstances become such that they no longer meet the representative or independence criteria of those rules or requirements, as the case may be.
- (b) Where a Trustee of the Fund is a corporation, that corporation:
- (i) has an application made, resolution passed or an order made for the liquidation or winding up of the corporation (except for the purposes of amalgamation or reconstruction);
  - (ii) is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;
  - (iii) is struck off, de-registered or otherwise ceases to exist or to have full capacity;
  - (iv) has a receiver or official manager appointed to the whole or any part of its undertaking;
  - (v) becomes disqualified from office by operation of law; or
  - (vi) where the corporation's appointment as Trustee is referable to the Independent Trustee requirements, that corporation's circumstances become such that it no longer meet the independence criteria of those requirements.

## **8.2 GENERAL MATTERS**

### **8.2.1 DIRECTORS OF CORPORATE TRUSTEE TO BE BOUND BY THIS DEED**

Where a Constitutional Corporation is, or is to be, appointed Trustee of the Fund, the each of its Directors and officers shall, by the corporation's appointment as Trustee, or, where a person is not a Director or an officer of the corporation at the time of its appointment as Trustee, at the time at which that person becomes a Director or officer,

shall be deemed, as a condition of that appointment, to agree to be bound by the provisions of this Deed.

### **8.2.2 TRUSTEE MAY BE A MEMBER**

Where a Trustee is an individual, that person is not, by their status as a Member, excluded or otherwise restricted from being appointed as Trustee and may vote as a Member in all circumstances in which Members are entitled to vote, including resolutions for the appointment or dismissal of that person as Trustee.

### **8.2.3 EMPLOYER SPONSOR MAY BE TRUSTEE**

Subject to the provisions of this Deed, an Employer Sponsor of the Fund may be appointed and, where applicable, may appoint itself as Trustee of the Fund.

## **8.3 COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS**

### **8.3.1 TRUSTEE'S COVENANTS**

By accepting the appointment to the office of Trustee, the Trustee covenants as follows:

- (a) to act honestly in all matter concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of 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 Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of a Standard Employer Sponsor, or an Associate of a Standard Employer Sponsor of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:

- (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
- (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any prescribed information or any prescribed documents.

### **8.3.2 TRUSTEE MAY ENGAGE OR AUTHORISE OTHERS**

A covenant referred to in sub-rule 8.3.1 does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.

### **8.3.3 MATTERS TO BE CONSIDERED IN FORMULATING INVESTMENT STRATEGY FOR 5 OR MORE MEMBERS FUNDS**

In formulating 1 or more investment strategies for the purposes of sub-rule 8.3.1, the Trustee shall ensure that each strategy formulated has regard to all circumstances of the Fund or sub- plan (as the case may be), including in particular:

- (a) the risk involved in making, holding and realising, and the likely return from, the investments, having regard to the Fund's or sub-plan's (as the case may be) objectives and expected cash flow requirements;
- (b) the composition of the investments as a whole, including the extent to which they are diverse or involve exposure of the Fund or sub-plan (as the case may be) to risks from inadequate diversification;
- (c) the liquidity of the investments, having regard to the Fund's or sub-plan's (as the case may be) expected cashflow requirements; and
- (d) the ability of the Fund or sub-plan (as the case may be) to discharge its existing and prospective liabilities.

### 8.3.4 BENEFICIARIES MAY DIRECT TRUSTEE ON INVESTMENT STRATEGY

An investment strategy is taken to be in accordance with sub-rule 8.3.1 even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the Trustee, where:

- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
- (b) the directions are given in circumstances where:
  - (i) the Trustee gives to the beneficiary, or to each member of a class of beneficiaries, a choice of 2 or more investment strategies from which the beneficiary, or class of beneficiaries, may choose a strategy or combination of strategies;
  - (ii) the beneficiary, or each member of the class of beneficiaries, is given:
    - (A) the investment objectives of each of the strategies mentioned in sub-paragraph (i); and
    - (B) all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies;
  - (iii) the beneficiary, or each member of the class of beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed;
  - (iv) the Trustee clearly identifies, when the beneficiary, or each member of the class of beneficiaries, is given a choice of 2 or more investment strategies, the strategy the Trustee will adopt if no direction is given;
  - (v) the direction from the beneficiary, or each member of the class of beneficiaries, to the Trustee is given after compliance with the above sub-paragraphs and the direction specifies:
    - (A) which of the strategies or which combination of strategies referred to in sub-paragraph (i) is to be followed in relation to investments of the beneficiary's, or class of beneficiaries', interest in the Fund; and
    - (B) any other matters applicable to the choice offered in accordance with the above sub- paragraphs; and
  - (vi) any other matters prescribed, from time to time, by the Regulations for the purposes of Sub-section 54(4) of the Act.

### 8.3.5 POWERS OF TRUSTEE

Subject to the provisions of the Act and Regulations, but without prejudice to the powers vested in the Trustee and, where the Trustee is a Constitutional Corporation, in the Directors and officers of the Trustee, by this Deed, the Trustee shall have the powers of a natural person and, without limiting the generality thereof, shall have the power:

- (a) to purchase acquire, hold, rent, lease, license, sell or otherwise dispose of investments in any property, rights or privileges which the Trustee is authorised by law to acquire or dispose of, on such terms and conditions as it shall think fit;
- (b) to appoint and at its discretion, to remove or suspend, the Auditor, or any accountants, custodians, managers, secretaries, clerks, agents and other servants or consultants, and may appoint any of them for permanent, temporary or special services and may determine the scope and extent of their powers and duties, on such terms as to their remuneration, salaries or emoluments as the Trustee, from time to time, thinks fit;
- (c) to institute, conduct, defend, compound, compromise or abandon any legal or other proceedings by or against the Fund or its officers or otherwise, concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands made by or against the Fund;
- (d) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands against the Fund and to pay expenses as it considers properly relate to the Fund, including any income tax liability which may attach to income of the Fund or contributions made to it;
- (e) to open accounts and to retain on current or deposit account at any bank or financial institution, such moneys as it considers proper and to make regulations for the operation of those accounts, including the signing and endorsement of cheques in connection with them;
- (f) to borrow moneys, incur liabilities or pledge the assets of the Fund as security, but only to the extent allowed or allowable in accordance with the Act and Regulations, from time to time;
- (g) to purchase annuities, Pensions and income streams, and to effect policies of insurance or assurance on Members for the purpose of providing benefits pursuant to this Deed;
- (h) to revalue the assets of the Fund, from time to time, at its discretion and to allocate the revaluation amount to the Members and beneficiaries of the Fund in a manner consistent with the terms of this Deed;

- (i) to determine who shall be entitled to sign, on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents;
- (j) to pay benefits and entitlements out of the Fund to persons entitled to them;
- (k) to decide, as and when required, who are Dependants for the purposes of this Deed;
- (l) in the case of mental or physical ill-health or incapacity of a person entitled, to pay or apply such benefits or entitlements, or any part of them, at its discretion to or for the benefit of that person and the Dependants of that person or any of them as the case may be without being responsible for seeing to the application of payments under this Deed or payments made in the exercise of any other powers vested in the Trustee by this Deed;
- (m) to enter into any negotiations and contracts, to rescind and vary all contracts, to execute any deeds, and to do all or any things in the name of and on behalf of the Fund as it may consider expedient for or in relation to any of the matters referred to in this Deed or otherwise for the purposes of the Fund; and
- (n) to enter into an agreement with a Member or an Employer Sponsor varying the benefits or entitlements, of the contributions otherwise payable in respect of those Members, in any manner which it thinks fit, subject to the terms of this Deed and to the consent of affected Members and Employer Sponsors.

### 8.3.6 RESTRICTIONS ON INVESTMENT POWERS OF TRUSTEE

The Trustee or, where the Trustee is a Constitutional Corporation, its Directors and officers, and any Custodian of assets or Investment Manager appointed by the Trustee may, subject to the provisions of this Deed and to the provisions of the Act and Regulations, from time to time, invest in such corporeal or incorporeal property, rights, currency, or other things of value, but shall not make any investments and, to the extent necessary, shall divest the Fund of investments, in order that:

- (a) where the Fund was established on or after 12 March 1985, the historical cost of In-house Assets of the Fund do not exceed, at any time during the Years of Income prior to the 1998-1999 Year of Income of the Fund, 10% of the historical cost of the total assets of the Fund;
- (b) where the Fund was established before 12 March 1985, the historical cost of In-house Assets of the Fund do not exceed:
  - (i) at any time during the Years of Income prior to the 1995-1996 Year of Income the greater of:
    - (A) either:
      - (1) 70% of the percentage of the historical cost of the total assets of the

Fund at 11 March 1985; or

(II) the actual percentage of the historical cost of the total assets of the Fund at 11 March 1985,

whichever is the lesser; or

(B) 10% of the historical cost of the total assets of the Fund; and

- (ii) at any time during the Years of Income after the 1994-1995 Year of Income, but prior to the 1998-1999 Year of Income, 10% of the historical cost of the total assets of the Fund;
- (c) the Market Value of In-house Assets of the Fund do not exceed, at the end of a Year of Income of the Fund after the 1997-1998 Year of Income, but before the 2000-2001 Year of Income, 10% of the Market Value of the total assets of the Fund;
- (d) the Market Value of In-house Assets of the Fund do not exceed, at the end of any Year of Income after the 1999-2000 Year of Income of the Fund, 5% of the Market Value of the total assets of the Fund;
- (e) where the Fund was:
  - (i) established on or after 16 December 1985; or
  - (ii) established before 16 December 1985 and the Trustee of the Fund:
    - (A) did not have, at that time, express power to lend money to Members; or
    - (B) had not lent money to Members at that time,

the assets do not include loans to a Member of the Fund or to a relative of a Member of the Fund;
- (f) there is not an acquisition of assets by, or a use of resources of, the Fund after 1 July 1994 constituting the provision of financial assistance to a Member of the Fund or to a relative of a Member of the Fund; and
- (g) there is not an intentional acquisition of assets by the Fund after 1 July 1994 from a Member of the Fund or a relative of a Member of the Fund, except where:
  - (i) the asset is a listed security; or
  - (ii) the Fund is an Excluded Fund and the asset acquired is:

- (A) a freehold or leasehold interest in real property which is used wholly and exclusively in the transferor's business;
- (B) acquired at its Market Value; and
- (C) together with other freehold or leasehold interests in real property of a kind referred to in this paragraph (f), and acquired since 30 November 1993, and would not result in the total value of such interests exceeding 40% of the total value of the assets of the Fund.

### **8.3.7 MARKET VALUE OF IN-HOUSE ASSETS CURRENTLY EXCEED 5%**

Notwithstanding any other provisions of this Deed, where, at any time after 28 January 1993, the Market Value of In-house Assets of the Fund exceed 5% of the Market Value of the total assets of the Fund, the Trustee shall not make any further investment in In-house Assets, which would result in the Market Value of In- house Assets exceeding 5% of the Market Value of the total assets of the Fund.

### **8.3.8 RESTRICTIONS ON DELEGATION OF POWERS OF TRUSTEE**

Notwithstanding any other provision of this Deed, the Trustee may delegate any of its powers or discretions to one or more other persons, provided that:

- (a) the consent of the Trustee is required to the exercise of that discretion; or
- (b) if the Fund has an Employer Sponsor:
  - (i) the exercise of the discretion relates to the contributions that an Employer Sponsor will, after the discretion is exercised, be required or permitted to pay to the Fund;
  - (ii) the exercise of the discretion relates solely to a decision to terminate the Fund; or
  - (iii) the circumstances in which the discretion would be exercised:
    - (A) would not result in the Fund becoming technically insolvent; and
    - (B) would not adversely affect the Members' rights to accrued benefits or entitlements in the Fund,
 and the discretion relates solely to one or more of:
    - (I) non-Mandated Employer Contributions;
    - (II) benefits or entitlements related to non- Mandated Employer Contributions;

- (III) the admission of new Members to the Fund;
- (IV) the category of Members into which a new Member or existing Member is to be placed;
- (V) allowing a person to become an Employer Sponsor of the Fund; or
- (VI) the appointment of a Trustee to the Fund, where the Fund does not have a Trustee.

### 8.3.9 INDEMNIFICATION OF TRUSTEES AND DIRECTORS AND OFFICERS

A Trustee ~~and, where the Trustee is a Constitutional Corporation,~~ a Director or officer of the Trustee, or any Custodian or Investment Manager, shall have a right of indemnity from the assets of the Fund in respect of any expenses incurred or liabilities resulting from any activities carried out by that person in the exercise or purported exercise of the powers, duties, responsibilities and discretions imposed or authorised by the trusts constituted by this Deed and shall not be liable for any loss or damage arising from any:

- (a) act or omission in the exercise of its powers, duties, responsibilities or discretions;
- (b) contract entered into or document executed on the Fund's behalf by the Trustee and, where the Trustee is a Constitutional Corporation, by a Director or officer of the Trustee, or any Custodian or Investment Manager;
- (c) error in judgment by the Trustee and, where the Trustee is a Constitutional Corporation, by a Director or officer of the Trustee, or any Custodian or Investment Manager;
- (d) neglect, default, intent to defraud, wilful misconduct, defalcation, or act or omission of any manager, agent, professional adviser, banker, stockbroker, or other person not bound or deemed to be bound by this Deed;
- (e) breach of duty or of trust, or any neglect or otherwise,

unless such loss or damage arises from or as a result of:

- (f) a liability for a breach of trust if the Trustee:
  - (i) fails to act honestly in a matter concerning the Fund; or
  - (ii) intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (g) a liability for a monetary penalty under a civil penalty order.

#### **8.4 COMPOSITION OF CERTAIN BOARDS OF TRUSTEES AND DIRECTORS - PRE-1 JULY 1995**

##### **8.4.1 BASIC EQUAL REPRESENTATION RULES**

**"Basic Equal Representation Rules"** means, in relation to a Fund:

- (a) that:
  - (i) there is a group of 2 or more natural persons who are Trustees of the Fund; and
  - (ii) the group of Trustees consists of equal numbers of Employer representatives and Member representatives; or
- (b) that:
  - (i) there is a single corporate Trustee of the Fund; and
  - (ii) the board of the corporate Trustee consists of equal numbers of Employer representatives and Member representatives; or
- (c) in relation to a group of natural persons who are Trustees, or to the board of a corporate Trustee:
  - (i) the group or board includes an additional Independent Trustee or an additional Independent Director, as the case may be; and
  - (ii) the additional Independent Trustee or additional Independent Director, as the case may be, is appointed at the request of the Employer representatives, or the Member representatives, who are Members of the group or board.

##### **8.4.2 PRE-1 JULY 1995 ALTERNATIVE AGREED REPRESENTATION RULES**

**"Pre-1 July 1995 Alternative Agreed Representation Rules"** means, in relation to a Fund, one or more of the Trustees are appointed following their nomination by agreement between:

- (a) either:
  - (i) the Members of the Fund; or
  - (ii) a trade union, or other organisation, representing the interests of those Members; and

- (b) either:
  - (i) the Employer or Employers of those Members; or
  - (ii) an organisation representing the interests of that Employer or those Employers.

#### **8.4.3 REPRESENTATION REQUIREMENTS - LESS THAN 200 MEMBER FUNDS**

From 1 July 1994 to 30 June 1995, where the Fund:

- (a) has less than 200 Members; and
- (b) is a Standard Employer Sponsored Fund and:
  - (i) was established on or after 16 December 1985; or
  - (ii) there are 2 or more Standard Employer Sponsors of the Fund, any one of which is not an Associate of any of the other Standard Employer Sponsors,

the Fund must comply with:

- (c) the Basic Equal Representation Rules; or
- (d) the Pre-1 July 1995 Alternative Agreed Representation Rules.

#### **8.4.4 REPRESENTATION REQUIREMENTS - 200 OR MORE MEMBER FUNDS**

From 1 July 1994 to 30 June 1995, where the Fund:

- (a) has 200 or more Members; and
- (b) is a Standard Employer Sponsored Fund and:
  - (i) was established on or after 16 December 1985; or
  - (ii) there are 2 or more Standard Employer Sponsors of the Fund, any one of which is not an Associate of any of the other Standard Employer Sponsors,

the Fund must comply with the Basic Equal Representation Rules.

#### **8.4.5 INCREASE TO 200 OR MORE MEMBERS**

Where:

- (a) the Fund's membership increases to 200 or more between 1 July 1994 and 30 June 1995;

- (b) sub-rule 8.4.4 is applicable in respect of the Fund;
  - (c) from the date of increase to 200 or more Members, more than 90 days remain to 30 June 1995; and
  - (d) the Fund does not, at that time, comply with the Basic Equal Representation Rules,
- then the Trustee shall have 90 days do all acts, matters and things and make all necessary changes required of it to ensure that the Fund complies with the Basic Equal Representation Rules.

## **8.5 COMPOSITION OF CERTAIN BOARDS OF TRUSTEES AND DIRECTORS - POST-30 JUNE 1995**

### **8.5.1 POST-30 JUNE 1995 ALTERNATIVE AGREED REPRESENTATION RULES**

"Post-30 June 1995 Alternative Agreed Representation Rules" means, in relation to the Fund:

- (a) there is a single corporate Trustee of the Fund; and
- (b) the Trustee is appointed following the nomination by agreement between:
  - (i) a majority of the Members of the Fund; and
  - (ii) the Employer or Employers of those Members; and
- (c) there is an approval of the Trustee in force in accordance with sub-rule 8.5.2; and
- (d) the Trustee is not an Associate of a Standard Employer Sponsor of the Fund.

### **8.5.2 APPROVAL OF TRUSTEES FOR FUND USING POST-30 JUNE 1995 ALTERNATIVE AGREED REPRESENTATION RULES**

Where the Fund has more than 4, but less than 50 Members after 30 June 1995 and proposes to use the Post-30 June 1995 Alternative Agreed Representation Rules, the Trustee shall apply to the Commissioner for approval to use the same, in such form as the Commissioner requires, prior to adopting representation in accordance with those rules.

### **8.5.3 REPRESENTATION REQUIREMENTS - MORE THAN 4, BUT FEWER THAN 50 MEMBER FUNDS**

After 30 June 1995, where the Fund has more than 4, but less than 50 Members, the Fund must comply with:

- (a) the Basic Equal Representation Rules; or
- (b) the Post-30 June 1995 Alternative Agreed Representation Rules.

#### **8.5.4 REPRESENTATION REQUIREMENTS - MORE THAN 49 MEMBER FUNDS**

After 30 June 1995, where the Fund has more than 49 Members, the Fund must comply with the Basic Equal Representation Rules.

#### **8.5.5 INCREASE TO 50 OR MORE MEMBERS**

Where:

- (a) the Fund's membership increases to 50 or more after 30 June 1995;
- (b) sub-rule 8.5.4 is applicable in respect of the Fund; and
- (c) the Fund does not, at that time, comply with the Basic Equal Representation Rules,

then the Trustee shall have 90 days to do all acts, matters and things, and to make all necessary changes required of it to ensure that the Fund complies with the Basic Equal Representation Rules.

#### **8.6 COMPOSITION OF CERTAIN BOARDS OF TRUSTEES AND DIRECTORS - OTHER MATTERS**

##### **8.6.1 VACANCY IN TRUSTEESHIP OR ON BOARD TO BE REMEDIED WITHIN 90 DAYS**

Where a vacancy occurs in the membership of a group of natural persons who are Trustees or on the board of a corporate Trustee, and the Fund is required to comply with the Basic Equal Representation Rules, the vacancy must be filled within 90 days after it occurred in such a way that the Fund continues to comply with the Basic Equal Representation Rules.

##### **8.6.2 APPOINTMENT OF INDEPENDENT TRUSTEE OR DIRECTOR**

A group of natural persons who are Trustees of the Fund may appoint an additional Independent Trustee, or the board of Directors of a corporate Trustee of the Fund may appoint additional Independent Director, as the case may be, by resolution of a majority of their number.

### 8.6.3 RESTRICTION ON INDEPENDENT TRUSTEE OR DIRECTOR

An additional natural person Trustee or additional Independent Director, as the case may be, appointed in accordance with sub-rule 8.6.2, cannot exercise a casting vote in any proceedings of that group of natural persons who are Trustees or board of Directors of a corporate Trustee, as the case may be.

## 9. ACCOUNTS, AUDIT, RECORDS AND RETURNS

### 9.1 TRUSTEE TO ESTABLISH MEMBER ACCUMULATION ACCOUNTS

The Trustee shall establish and keep, in respect of each new Member of the Fund, an Accumulation Account, to which shall be added:

- (a) all contributions made by, for, or in relation to the Member;
- (b) all benefits or entitlements (including eligible termination payments) transferred into the Fund by, for, or in relation to the Member, in accordance with the provisions of this Deed;
- (c) all investment earnings of the Fund or, where the Member is a member of a sub-plan, of that sub-plan, allocated to that Member's Accumulation Account in respect of the amounts referred to in paragraphs (a) and (b);
- (d) the current surrender value of any policy of capital guaranteed life assurance taken out by the Trustee upon the life of that Member;
- (e) all reserves held by the Fund or, where the Member is a member of a sub-plan, by that sub-plan, which the Trustee has allocated to that Member's Accumulation Account, and against which shall be deducted:
- (f) all direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, allocated to the Member's Accumulation Account, whether or not the same relate directly, indirectly or otherwise to one or more of the amounts referred to in paragraphs (a), (b) and (c),

and the Trustee shall allocate, in respect of any and all amounts appropriate to be allocated in respect of Members of the Fund or, where Members are members of a sub-plan, in respect of Members of that sub-plan, the amounts in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might impinge upon the allocation of amounts to a Member's

Accumulation Account. Where the Trustee has made the allocations in accordance with these principles, its decision shall be final.

## **9.2 TRUSTEE TO MAKE ALLOCATIONS AT LEAST ANNUALLY**

Where, during a Year of Income, the Fund has operated such that amounts appropriate to be allocated to Members' Accumulation Accounts have arisen, the Trustee may make as many allocations of such amounts during the course of the Year of Income as the Trustee thinks fit, but shall in any event make at least one allocation in respect of each Year of Income which encompasses the period from the date of the last allocation (if any) up to and including the last day of that Year of Income.

## **9.3 TRUSTEE TO KEEP RECORDS OF TYPES OF BENEFITS**

In addition to maintaining details of the value of Accumulation Accounts for each Member, the Trustee shall keep records in such a manner as to enable the Trustee to determine the amounts of benefits and entitlements of individual Members which consist of:

- (a) Minimum Benefits;
- (b) Preserved Benefits;
- (c) Restricted Non-preserved Benefits; and
- (d) Unrestricted Non-preserved Benefits.

## **9.4 TRUSTEE TO KEEP ACCOUNTING RECORDS**

The Trustee of the Fund must:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the Fund; and
- (b) keep its accounting records so as to enable the preparation of:
  - (i) the accounts and statements of the Fund mentioned in rule 9.5 and, where applicable, rule 9.6; and
  - (ii) the returns of the Fund mentioned in rule 9.8; and
- (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Act; and

- (d) keep the said accounting records of the Fund:
  - (i) for at least 5 years after the end of the Year of Income to which the transactions relate;
  - (ii) cause the records to be kept in Australia; and
  - (iii) keep the records:
    - (A) In writing in the English language; or
    - (B) in a form in which they are readily accessible and readily convertible into writing in the English language.

## **9.5 PREPARATION OF ACCOUNTS**

Except where rule 9.6 applies, the Trustee of the Fund must, in respect of each Year of Income of the Fund, prepare accounts and statements in respect of the Fund which consist of at least:

- (a) in respect of the 1994-95 Year of Income of the Fund:
  - (i) a statement of net assets of the Fund; and
  - (ii) a statement of changes in net assets of the Fund; or
- (b) in respect of the 1995-96 and later Years of Income:
  - (i) a statement of financial position of the Fund;
  - (ii) an operating statement of the Fund; and
  - (iii) such other accounts and statements as the Act and Regulations specify, from time to time,

and, where practicable, the Trustee shall prepare those accounts and statements so as to ensure that the Auditor does not qualify the accounts of the Fund for lack of detail or non-compliance with relevant Australian Accounting Standards.

## **9.6 ACCOUNTS REQUIRED WHERE BENEFITS SOLELY LIFE ASSURANCE**

Where the Fund, at the end of any Year of Income, is a Fund from which the benefits and entitlements paid to each individual Member of the Fund are wholly determined by reference to policies of life assurance, the Trustee shall prepare the following accounts and statements:

- (a) a statement that policies of life assurance are in place at the end of the Year of Income;
- (b) a statement as to whether those policies have been fully maintained as directed by the relevant insurers;
- (c) a statement of the identities of those insurers;
- (d) the amounts contributed by Employers and Members in respect of the Year of Income;
- (e) where not all of those amounts have been paid as premiums on those policies, the amount of premiums paid on those policies in respect of the Year of Income; and
- (f) the expenses incurred by the Fund in respect of the Year of Income, other than amounts covered by premiums.

## **9.7 AUDIT OF THE ACCOUNTS**

The Trustee shall appoint, in writing, and shall have the power to dismiss, in writing, an Approved Auditor (the "Auditor") to audit the accounts and statements of the Fund prepared in respect of each Year of Income and shall ensure that each set of accounts and statements prepared in respect of a Year of Income are audited by the Auditor.

## **9.8 PREPARATION AND LODGMENT OF RETURNS**

The Trustee shall, in respect of each Year of Income of the Fund, prepare and lodge:

- (a) with the Commissioner:
  - (i) an annual return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of that Year of Income;
  - (ii) a certificate, in the approved form, by the Trustee in relation to the Fund in respect of that Year of Income; and
  - (iii) the certificate given to the Trustee by the Auditor under Part 13 of the Act in relation to the Fund in respect of that Year of Income; and
- (b) with the Taxation Commissioner, an income tax return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of that Year of Income.

**10.****MEETINGS****10.1 MEETINGS OF TRUSTEES OR BOARD OF DIRECTORS****10.1.1 NOTICE OF MEETING OF TRUSTEES OR BOARD OF DIRECTORS**

The Trustees may and, where the Trustee is a Constitutional Corporation, the Directors of the Trustee may, convene a meeting of the Trustees, or of the board of Directors of the Trustee, as the case may be, by 1 of their number giving 1 month's notice in writing to each of the other Trustees or Directors of the Trustee, as the case may be, of the time, place and matters which the meeting will be convened to address.

**10.1.2 ALTERNATIVE NOTICE REQUIREMENTS**

Where one or more Trustees and, where the Trustee is a Constitutional Corporation, one or more Directors of the Trustee, consider that the circumstances are such that the giving of notice as specified in sub-rule 10.1.1 is not appropriate, given the nature of the relationships of the Trustees, or Directors of the Trustee, as the case may be, or given the urgency of the matters to be discussed, 1 of their number shall make his or her best attempts to contact each of the other Trustees or Directors of the Trustee, as the case may be, and to outline the matters which the meeting is convened to address, and to agree upon a time and place at which the meeting is to be held.

**10.1.3 PERSON TO CHAIR MEETINGS**

Before any business is discussed at a meeting of Trustees and, where the Trustee is a Constitutional Corporation, of the board of Directors of the Trustee, they shall appoint one of their number to chair the meeting, and the meeting shall be conducted by that person in a fair and reasonable manner, but shall otherwise be conducted as that person sees fit.

**10.1.4 MEETINGS TO BE CONVENED ANNUALLY**

Meetings of Trustees and, where the Trustee is a Constitutional Corporation, meetings of the board of Directors of the Trustee, may be convened at any time one of their number considers appropriate, but as a minimum, shall be convened at least once each calendar year, after the end of the Fund's Year of Income, to consider:

- (a) the accounts of the Fund and the Auditor's report made out in respect of those accounts;
- (b) the returns and certificates of the Fund prepared to be lodged with the Commissioner and the Taxation Commissioner;
- (c) any matters raised by the accounts and statements which require action or attention; and

- (d) any other matters which the Trustees or the board, as the case may be, consider appropriate.

### 10.1.5 QUORUM

A quorum for the purpose of voting at meetings of Trustees and, where the Trustee is a Constitutional Corporation, of the board of Directors of the Trustee, shall be the greater of:

- (a) 2; or
- (b) half of their total number.

### 10.1.6 VOTING BY PROXY

A Trustee and, where the Trustee is a Constitutional Corporation, a Director of the Trustee, not able to be present at a meeting of the Trustees or of the board, as the case may be, may nominate a person to attend the meeting as the first-mentioned person's proxy, subject to the following requirements:-

- (a) The person nominated as proxy shall carry into and put before the meeting an authority, signed by the person in whose place the proxy is attending, in the following form:-  
 "I,....., being a Trustee/Director of the Trustee, of.....Superannuation Fund, do hereby authorise....., who presents this document to the meeting, to act as my proxy for the purposes of this meeting.

"Signed....., dated.....".

- (b) A person shall be nominated as proxy for one meeting at a time.
- (c) A person nominated as proxy, who is not otherwise a Trustee or a Director of the Trustee, as the case may be, shall be asked to leave the room in which the meeting is being held, should the chairperson consider that a subject to be discussed is of a sensitive or confidential nature.
- (d) A person nominated as proxy shall be given an opportunity to read aloud and to table any written statement from the person in whose place he or she is attending, and shall be entitled to vote strictly in accordance with the directions of that person, but a proxy, who is not otherwise a Trustee or a Director of the Trustee, shall not be further entitled to participate in the discussions and conduct of the meeting.

## **10.2 MEETINGS OF MEMBERS**

### **10.2.1 REQUIREMENTS FOR MEETING TO BE HELD**

Subject to the provisions of Part 11, for the resolution of disputes, a meeting of the Members of the Fund shall be convened by the Trustees or, where the Trustee is a Constitutional Corporation, by the Directors of the Trustee, when:

- (a) the Trustee or the board of Directors, as the case may be, considers it necessary; or
- (b) upon a Trustee or a member of the board of Directors, as the case may be, receives a request that such a meeting be held, signed by not less than 25% of the current Members of the Fund.

### **10.2.2 NOTICE OF MEETING OF MEMBERS**

Upon the requirements of sub-rule 10.2.1 being met, the Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall give to each Member of the Fund 1 month's notice in writing that a meeting of the Members of the Fund is to be held, and such a notice shall specify the time, place, reason why the meeting is required to be held and the matters to be addressed at the meeting.

### **10.2.3 CONDUCT OF MEETINGS OF MEMBERS**

The Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall appoint 1 of their number to chair the meeting, and the meeting shall be conducted by that person in a fair and reasonable manner, but shall otherwise be conducted as that person sees fit.

### **10.2.4 CAPACITY OF MEETINGS OF MEMBERS**

Subject to the requirements of this Deed and to the provisions of the Act and Regulations, where the Fund is not a Standard Employer Sponsored Fund, the Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, must use their best endeavours to comply with a resolution carried in a meeting of Members by a majority of the Members then present in person or by proxy.

### **10.2.5 QUORUM FOR MEETING OF MEMBERS**

A quorum for the purposes of voting at meetings of Members shall be no less than half of the total Members of the Fund present in person or by proxy.

### **10.2.6 VOTING BY PROXY**

A Member not able to be present at a meeting of Members may nominate a person to attend the meeting as the Member's proxy, subject to the following requirements:-

- (a) The person nominated as proxy shall carry into and put before the meeting an authority, signed by the Member in whose place the proxy is attending, in the following form:-  
 "I,....., being a Member of the ..... Superannuation Fund, do hereby authorise....., who presents this document to the meeting, to act as my proxy for the purposes of this meeting.  
 "Signed....., dated.....".
- (b) A person shall be nominated as proxy for one meeting at a time.
- (c) A person-nominated as proxy shall be entitled to vote strictly in accordance with the directions of the Member, but a proxy, who is not otherwise a Member shall not be further entitled to participate in the discussions and conduct of the meeting.

## **11. RESOLUTION OF INQUIRIES AND COMPLAINTS**

### **11.1 IN THE FIRST INSTANCE**

#### **11.1.1 PROCEDURE**

The Trustees, or where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall within 90 days consider any inquiry or complaint of one or more Members which has been raised either in a meeting of the Members, or in writing, and in any case where an inquiry or complaint is not dealt with to the satisfaction of the Member or Members within that time the parties shall arrange for a convenient time and place to meet with each other, for the purpose of resolving the matter and each party, or the representatives of each party, shall be allowed approximately equal time to present the reasons for and to propose resolutions to their grievances.

#### **11.1.2 CONDUCT OF MEETINGS**

The parties present at a meeting of the kind referred to in sub-rule 11.1.1:

- (a) may, by agreement, appoint a person to chair a meeting held to settle a dispute in the first instance, but it shall not be necessary to do so;
- (b) shall appoint a person to take and distribute to all parties in attendance written minutes of the proceedings at the meeting; and
- (c) may agree to convene one or more further meetings to address the issues in dispute.

**11.2 PROCEDURES IF NO RESOLUTION IN FIRST INSTANCE**

**11.2.1 REFERENCE TO SUPERANNUATION COMPLAINTS TRIBUNAL**

If, after a meeting of the kind referred to in sub-rule 11.1.1 there has been no resolution to the dispute, the Trustee shall inform the other parties of their right, if any, to refer the matters in dispute to the Superannuation Complaints Tribunal.

**12. ADMINISTRATION**

**12.1 INTERPRETATION OF DEED**

Except as otherwise expressly provided, the interpretation and application of the provisions of this Deed shall be the decision of the Trustee and that decision shall be binding and final.

**12.2 DESIGNATED BENEFICIARY**

A Member wishing to designate a Dependant or other person as a beneficiary shall do so in writing to the Trustee in the following form, or in such other form as the Trustee may, from time to time, approve:-

"I,.....of..... hereby acknowledge that the discretion vested in you as to the application of benefits in circumstances where I cannot receive them myself is an absolute, free and unfettered discretion, but I express the wish that in the exercise of that discretion you give consideration to paying any such benefits to the following persons, in the following proportions:

"Name of Designated Beneficiary	Address	Relationship to Member	Proportion of Benefits
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"Dated this.....day of.....

"Signed....."

### **12.3 RESTRICTIONS ON RIGHTS OF MEMBERS**

No person, whether as a Member or otherwise, shall have any claim, right or interest to, in respect of, or against the Trustee, the Fund, or any contributions made to the Fund, except under and in accordance with the provisions of this Deed.

### **12.4 MEMBERS' RIGHTS TO INSPECT DEED**

Every Member shall have the right to inspect a copy of this Deed, at a time and a place which is convenient to the Trustee.

### **12.5 SECRECY**

#### **12.5.1 INTERESTS OF MEMBERS**

No Member shall have any right to enquire, nor shall be given any information concerning the interest of another Member.

#### **12.5.2 OTHER CONFIDENTIAL INFORMATION**

The Trustee shall observe strict secrecy with regard to the affairs, accounts and transactions of the Fund, but this shall not prevent the publication of financial, statistical or other information to all Members, generally, whenever thought fit by the Trustee.

### **12.6 RECEIPTS AND PAYMENTS IN SPECIE**

Subject to the provisions of this Deed contained in sub-rules 5.4.1 to 5.4.7, restricting the payment of benefits and entitlements otherwise than in cash, where:

- (a) any benefits or entitlements of Members are payable, transferable or receivable by or to the Fund; or
- (b) any liabilities incurred on behalf of the Fund are required to be satisfied; or
- (c) any assets are owing to or are to be acquired by the Fund,

the Trustee may, with the agreement of the other party, in lieu of money and at its absolute and unfettered discretion make or receive settlement of the amounts concerned by:

- (d) transferring assets of the Fund to; or
- (e) receiving a transfer of assets from,

another person, at the assets' arm's length Market Value.

## **12.7 MEMBERS TO PROVIDE INFORMATION**

Every Member and every person claiming a benefit or entitlement, or in receipt of a pension, or other benefit or entitlement shall, from time to time, give the Trustee such information or authorisation and produce such documents as the Trustee shall consider necessary for the purposes of giving effect to the provisions of this Deed.

## **12.8 VARIATION OF TRUSTS OR DEED**

The Trustee may and, where the Fund is a Standard Employer Sponsored Fund, the Trustee and the Standard Employer Sponsor may, at any time amend, revoke, replace or modify all or any of the provisions of this Deed by deed or other written instrument or by resolution in writing, provided that such amendment, revocation or modification does not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
- (d) offend the provisions of the Act and Regulations as they exist, from time to time, or any re-enactments or replacements of the Act and Regulations made after the date of this Deed.

## **12.9 EFFECT OF CHANGES IN RELEVANT LEGISLATION**

The requirements for the Fund to constitute a Complying Superannuation Fund and a Regulated Superannuation Fund, in accordance with the Act and Regulations, the Income Tax Assessment Act 1936, as amended, and any amendments, replacements, re-enactments, or additions to the legislation governing the provision of superannuation and retirement benefits, shall be deemed to be included as a part of this Deed and, to the extent that there is any inconsistency between this Deed and those requirements, those requirements shall prevail, and the Trustee shall be authorised and empowered to act in a manner which ensures that the trusts administered in accordance with this Deed ensure that the Fund remains a Complying Superannuation Fund and does not breach any requirements of the above-mentioned legislation.

### **13. PUBLIC OFFER SUPERANNUATION FUNDS**

#### **13.1 PREREQUISITES FOR FUND TO BECOME A PUBLIC OFFER FUND**

Should the Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, consider it appropriate that the Fund become a Public Offer Superannuation Fund, the Trustees or the board, as the case may be, shall only commence to operate the Fund as a Public Offer Superannuation Fund after taking the following steps:-

- (a) Convening a meeting of the Members of the Fund, attended by not less than 75% of the Members of the Fund, in person or by proxy, and obtaining at that meeting the approval to make the Fund a Public Offer Superannuation Fund, by resolution carried by not less than 75% of the Members present in person or by proxy.
- (b) Retaining the services of a qualified, legal practitioner for the purpose of amending this Deed to comply with the requirements of the Act and Regulations with respect to Public Offer Superannuation Funds, and otherwise contains provisions necessary and prudent for the operation of the Fund in that manner.
- (c) Take all necessary and prudent steps to ensure that the commencement and operation of the Fund as a Public Offer Superannuation Fund is in full compliance with the Act and Regulations.

### **14. WINDING UP**

#### **14.1 CONDITIONS FOR TERMINATION**

The trusts created by this Deed shall cease and determine:

- (a) where the Members, by unanimous resolution, vote to wind up the Fund in a special meeting convened for that purpose, on the first day on which the membership of all Members has been terminated and all benefits and entitlements paid or transferred out of the Fund, such that all the assets of the Fund are expended or distributed;
- (b) where the Fund is a Fund initiated and maintained by one or more Employer Sponsors for their Employees, by unanimous resolution of all current Employer Sponsors that the Fund be wound up, in a special meeting convened for that

purpose, on the first day on which the membership of all Members has been terminated and all benefits and entitlements paid or transferred out of the Fund, such that all the assets of the Fund are expended or distributed;

- (c) where the Trustee becomes aware that the Fund is insolvent and the Commissioner's permission to wind-up is obtained; or
- (d) in any other circumstances where there are no Members or beneficiaries of the Fund and the Trustee considers it to be unlikely that there will be any new Members.

## **14.2 TRUSTEE TO TAKE STEPS**

Where it becomes clear to the Trustee that a vote of the kind mentioned in rule 14.1 has been taken, or that the circumstances of the Fund are those mentioned in either of paragraphs (c) or (d) of that sub-rule, the Trustee shall take all necessary steps to distribute any remaining assets of the Fund and to satisfy any outstanding liabilities, and shall then:

- (a) notify any remaining interested parties of its intention to wind-up the Fund;
- (b) notify the Commissioner and the Taxation Commissioner of its intention to wind-up the Fund;
- (c) have reference any other requirements of the Act and the Regulations concerning the winding-up of Funds; and
- (d) take such further steps as, in the opinion of the Trustee, are required to wind-up the Fund.

**15. TRANSITIONAL PROVISIONS - 1993-94 AND  
PRE-REGULATED FUND ELECTION**

**15.1 TRUSTEES TO MAKE ELECTION TO BECOME REGULATED FUND**

The Trustees of the Fund shall make an election to the Commissioner, in the approved form, for the Fund to become a Regulated Superannuation Fund before the commencement of the Fund's 1994-95 Year of Income, or as soon as practicable after the commencement of that Year of Income, and, in any event, prior to:

- (a) where the Fund is an Excluded Fund, 1 April 1995; and
- (b) in any other case, 1 November 1994,

and the Trustees shall do all things necessary to put the themselves and the Fund in such a position that they and the Fund are in full compliance with the provisions of this Deed, and of the Act and Regulations, prior to, or as soon as practicable after, that election is made.

**15.2 OPERATION OF PRE-EXISTING FUND PRIOR TO ELECTION TO BECOME  
REGULATED FUND - CONTINUANCE OF O.S.S. LAWS**

Except for the provisions of rule 15.1, prior to the Trustees making an election for the Fund to become a Regulated Superannuation Fund and, in any event, in respect of the Fund's 1993-94 and earlier Years of Income, the provisions of this Deed under which the Fund was operating for the purposes of the O.S.S. Laws, which have been deleted and replaced with the current provisions, shall be deemed to continue to operate as if the deletions had not taken place, but shall cease to operate for all purposes in respect of the Fund's 1994-95 and future Years of Income after such time as the Trustees have made the election to become a Regulated Superannuation Fund.

**15.3 OPERATION OF NEW FUND PRIOR TO ELECTION TO BECOME  
REGULATED FUND - CONTINUANCE OF O.S.S. LAWS**

Except for the provisions of rule 15.1, prior to the Trustees making an election for the Fund to become a Regulated Superannuation Fund and, in any event, in respect of the Fund's 1993-94 Year of Income, this Fund shall be subject to and operated in accordance with the provisions of the O.S.S. Laws and, to the extent that any inconsistency arises between the provisions of this Deed and the O.S.S. Laws in respect of the Fund's 1993-94 Year of Income, the O.S.S. Laws will prevail.



**IN WITNESS WHEREOF** these presents have been executed by the party hereto on the day and year first hereinbefore referred to.

**THE COMMON SEAL** of the said  
**C.K.G. WELDING PTY LTD**  
A.C.N. 010-057-744  
was hereunto affixed in accordance with its  
Articles of Association in the presence of:

**PETER JAMES GREEN**  
a Director and

**LAWRENCE GRAHAM KELLY**  
a Director

*[Handwritten signatures of Peter James Green and Lawrence Graham Kelly]*  
\* P.J.G. P.G.  
L.K.  