

THIS DEED is made the 14th day of May One Thousand Nine Hundred and Ninety,  
BETWEEN NINDENT PTY. LIMITED (hereinafter called 'the Employer') of the one part  
AND NINDENT PTY. LIMITED a Company duly incorporated and having its registered  
office at 1 Voyager Close Nelson Bay (hereinafter called 'the Trustees') of the  
other part

WHEREAS NINDENT PTY. LIMITED

- A. On the 1st day of May, 1982 the Employer and the Trustees engrossed a Trust Deed (hereinafter called 'the Trust Deed') to establish a Superannuation Fund called the Watson Superannuation Fund; and
- B. The Trustees with the approval of the Employer and the consent of the Members have the power pursuant to the provisions of the Trust Deed to amend the Deed; and
- C. On the 14th day of May, 1990 the Trustees resolved to replace all the clauses and Articles forming part of the Trust Deed with an amended set of clauses and Articles and the Employer has approved and all the Members have consented thereto.

NOW WITH DEED WITNESSES

That all the clauses of the Trust Deed be rescinded and be replaced by the following:

1. (a) The Trustees shall control and administer the Fund according to the Articles; and  
(b) The Trustees hereby declare that they hold all of the assets of the Fund in trust to be applied in accordance with the provisions of this Deed and will administer them in accordance with the Articles for the time being in force.
2. The Fund comprises an allocated part for Accumulated Benefits and an unallocated part for Defined Benefits each of which shall provide the Retirement Benefits in the form of a Lump Sum, Fully Commutable Pension or Partially Commutable Pension in accordance with the Category of Membership of the Member. This clause shall be interpreted in accordance with the definitions forming part of the Articles attached hereto.
3. This Deed and Articles in force from time to time extends to the successors and assigns of each of the parties hereto and of each such other party as shall by instrument in writing adopt this Deed.
4. The Articles means the rules set forth in the Articles annexed hereto as amended from time to time.
5. The rules and provisions and conditions contained in the Articles shall have the same force and effect as if set out in the body of this Deed.

6. The Trustees with the agreement of the Employer may at any time by resolution or by instrument in writing amend all or any of the provisions of this Deed but no amendment shall be made which detrimentally affects the existing rights of any Members with respect to the period of membership prior to the date of such amendment without the written consent of such Members PROVIDED ALWAYS THAT no amendment introduced primarily for the purpose of securing exemption or relief from liability for income tax under the provisions of the Income Tax Assessment Act 1936 as amended (hereinafter and in the Articles called 'the Tax Act') and/or under the provisions of the Occupational Superannuation Standards Act 1987 as amended (hereinafter and in the Articles called 'the Super Act') shall be deemed to be detrimental to interests of the Members.
  
7. If at any time the Members' benefits in the Fund shall be deemed by the Trustees to be excessive (and such decision of the Trustees shall be final and shall be made by the Trustees having regard to the Regulations of the Super Act and any guidelines published by the Commissioner in relation thereto) the Trustees shall transfer an amount representing the excessive benefits of the Fund to an Excess Benefit Reserve within the fund to the extent allowed by the Commissioner or to a separate taxable superannuation fund which shall be administered under this Deed and Articles so far as they are appropriate. In the Event that the Trustees subsequently determine that the benefits being accumulated in the Excess Benefit Reserve or separate taxable superannuation fund are no longer excessive, the Trustees may transfer all or part of the Member's credit in the Excess Benefit Reserve or separate taxable superannuation fund back to the Fund.

IN WITNESS WHEREOF the parties hereto have executed this instrument on the date hereinbefore written.

THE COMMON SEAL OF NINDENT PTY. LIMITED  
was hereunto affixed by the authority  
of the Directors in the presence of:

)  
)  
)  
\_\_\_\_\_ *R. Watson* \_\_\_\_\_  
Director

\_\_\_\_\_  
*Anna J. Watson*  
Secretary

THE COMMON SEAL OF NINDENT PTY. LIMITED  
was hereunto affixed by the authority  
of the Directors in the presence of:

)  
)  
)  
\_\_\_\_\_ *Anna J. Watson* \_\_\_\_\_  
Director

\_\_\_\_\_  
*E. H. McIsaac*  
Witness



MEMBERS CONSENT TO AMENDMENT OF TRUST DEED:

The undersigned being all of the Members of the Watson Superannuation Fund at the date of the amendment hereby consent to the amendment of all the Trust Deed and Articles so that the terms and conditions applicable to the Fund after the amendments will be as outlined in the 'Members Amendment Notice'.

We acknowledge receipt of and have read and understood that notice and declare that this consent shall be sufficient Member's Consent for the purposes of amending the Fund Trust Deed.

<u>Name</u>	<u>Address</u>	<u>Signature</u>	<u>Date</u>
Kevin A. WATSON	1 Voyager Close Nelson Bay 2315		14th May, 1990
Ann WATSON	1 Voyager Close Nelson Bay 2315		14th May, 1990

MINUTES OF A MEETING OF TRUSTEES OF WATSON SUPERANNUATION FUND HELD AT  
1 VOYAGER CLOSE, NELSON BAY ON 14TH MAY, 1990 AT 10 A.M.

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PRESENT: K.A. Watson  
A. Watson

AMENDMENT OF  
TRUST DEED:

It was NOTED that the Principal Employer have approved and all of the Members of the Fund have consented to the amendment in the Trust Deed. It was RESOLVED that pursuant to the provisions of the Trust Deed the Trustees hereby alter the Trust Deed by the rescission of all the clauses and Rules and their replacement by the clauses and the Articles set out in the Deed of Amendment.

It was RESOLVED to affix the common seal of the company to the Deed of Amendment attesting to these alterations to the Fund Trust Deed.

It was RESOLVED to sign the Deed of Amendment attesting to these alterations to the Fund Trust Deed.

CLOSURE:

There being no further business the meeting was declared closed.



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CHAIRMAN.

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## CHAPTER 1 DEFINITIONS & INTERPRETATION

1.1 In the Trust Deed to which these Articles are an annexure and in these Articles unless the context indicates otherwise the following words and expressions have the following meanings:

Accumulation Benefit: A benefit payable to the following Categories of Membership - AP, AF and AL. This definition shall include benefits payable to a Member in more than one Category pursuant to Article 2.1.

Act: The Tax Act or the Super Act (or both) as the case admits or the context requires in any particular case or context.

Actuary: A Fellow of the Institute of Actuaries of Australia or London.

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.

Approved Deposit Fund: A fund established by a life office, bank, friendly society, building society, credit union, trade union or other financial institution or institutions approved from time to time in accordance with the provisions of the Super Act as an indefinitely continuing fund the sole purpose of which is to act as an investment repository for eligible termination benefits.

Auditor: An independent registered auditor or such other person who satisfies the definition of "approved auditor" in the Regulations of the Super Act.

Category of Membership: An employee who has become a Member of the Fund and who in accordance with Article 2.1 has been designated by his Employer to be a Member in Category UPA, UPB, UPC, UFA, UFB, UFC, ULA, ULB, ULC, AP, AF or AL and Membership Category (or Category, where the context admits) shall have a similar meaning.

The first letter in the Category code is either "U" or "A" where "U" represents an unallocated Defined Benefit and where "A" represents and allocated Accumulation Benefit.

The second letter in the Category code is either "P" or "F" or "L" where "P" represents a Partially Commutable Pension and "F" a Fully Commutable Pension and "L" represents a lump sum benefit.

The Third letter (if any) in the category code is either "A" or "B" or "C" which represents three different levels of Defined Benefit where "A" is the maximum benefit allowed by the Commissioner.

Child: In relation to a person, includes an Adopted Child, a step-child or an ex-nuptial child of the person.

Commissioner: The Commissioner of Taxation or the Insurance and Superannuation Commissioner (or both) as the case admits or the context requires in any particular case or context.

Commissioner of Taxation: The person for the time being holding the office of Commissioner of Taxation under the Tax Act.

Deed: Any reference in the Trust Deed to which these Articles are an annexure or in the Articles to "this Deed" shall be and be deemed to be a reference to and to include both the Trust Deed to which these Articles are an annexure and to these Articles themselves.

Defined Benefit: A benefit payable to the following Categories of Membership - UPA, UPB, UPC, UFA, UFB, UFC, ULA, ULB, and ULC. This definition shall include benefits payable to a Member in more than one Category pursuant to Article 2.1.

Dependant: In relation to a person, includes the spouse or any child of the person.

Designated Beneficiary: A Dependant specified in writing by a Member to the Trustees.

Employee: A person who is in the employment of the Principal Employer or a Participating Employer and in the case of an Employer which is a company, includes a director of the company.

Employer: Includes both the Principal Employer and all Participating Employers unless inconsistent with the subject matter or context and includes a person who engages another person to preform work under a sub-contract.

Employer-Financed Vested Benefit: Of any Member means the contributions made by the Employer of that Member voluntarily and/or by specific agreement with that Member and/or in accordance with certified agreements or consent awards ratified by the Australian Conciliation and Arbitration Commission (or relevant State Commission or Tribunal) and conferred on that Member to be an entitlement on resignation or withdrawal and includes amounts to which that Member becomes entitled upon withdrawal or as a result of the exercise of a discretion by the Trustees or the employer as to the amounts of benefits payable upon withdrawal or which are otherwise deemed by the Commissioner to be an Employer-Financed Vested Benefit.

Excess Benefit Reserve: The reserve established within the Fund pursuant to Clause 9 of the Deed.

Final Average Salary: The average Salary of the Member during the last three years of his Fund Service or if his Fund Service is less than three years during the whole of his Fund Service.

Forfeited Benefits Register: The register established within the Fund pursuant to Article 4.10.

Fully Commutable Pension: A pension payable under this Deed where the person entitled to the pension has the sole right to commute that pension in whole or in part to an equivalent capital sum (as determined by the Trustees) and such right to commute the pension is exercisable at the time of entitlement or at any time thereafter.

Fund: Is the Fund established by clause 1 of this Deed.

Fund Account: The accounts of the Fund established pursuant to Article 4.7.

Fund Service: The sum in completed months (expressed as years and fractions of a year, each completed month counting as one-twelfth of a year) of the following:

- (a) the continuous period of service between
  - (i) the date the Member commenced employment with his Employer or such later date as is specified by his Employer at the time the member joins the Fund, and
  - (ii) The Member's Normal Retirement Date, and
- (b) any period of service recognised by the Trustees in accordance with Articles 2.5 and 2.7, and
- (c) such other periods as are arranged between the Member and his Employer from time to time and agreed to by the Trustees.

PROVIDED THAT Fund Service may only be regarded as exceeding the period of service calculated in paragraphs a) and b) of this definition with the prior approval of the Commissioner.

Individual Account: The separate account maintained for each Member of the Fund pursuant to Article 4.8.

Insurance and Superannuation Commissioner: The person for the time being holding the office of Insurance and Superannuation Commissioner under the Insurance and Superannuation Commissioner Act 1987.

Legal Personal Representative: The person who has been granted probate of a deceased Member's will or letters of administration of his estate.

Member: An Employee who has applied to join the Fund and who has been approved by the Trustees as a Member of the Fund and who has not ceased to be a Member of the Fund, and includes persons in receipt of a pension from the Fund and former Employees who continue to have rights or contingent rights to benefits under the Fund.

Member - Financed Benefit: In the case of an Accumulation Benefit, the accumulation of the Member's contributions plus the amount transferred to the Fund in respect of that Member being a

benefit from the previous fund that had, prior to that transfer, become vested in the member, together with the net earnings of the Fund as determined by the Trustee in accordance with Commissioner's guidelines from time to time. In the case of a Defined Benefit, the rate of the Member's contribution multiplied by his Salary or Final Average Salary (as the case may be) multiplied by the period of his Fund Service (in completed months) during which he contributed to the Fund. In any case the Member-Financed Benefit shall at all times be calculated in accordance with the Regulations of the Super Act.

Normal Retirement Date: The day of attaining age 65 or such other age as the Employer may specify for a particular Member.

Partially Commutable Pension: A pension payable under this Deed where the person entitled to the pension has the sole right to commute in whole or in part up to twenty five percent (25%) of that pension to an equivalent capital sum and such right to commute the pension is exercisable at the time of entitlement or at any time thereafter.

Participating Employer: Any employer which is a subsidiary of the Principal Employer or any incorporated body company trust partnership or sole trader from time to time approved to be a Participating Employer in accordance with Article 7.1.

Permanent Disablement:

- (a) The Member having suffered the loss of two limbs, or the sight of both eyes or the loss of one limb and the sight of one eye (where limb is defined as the whole hand or foot); or
- (b) the Member being absent from his employment with his Employer through injury or illness for six consecutive months and in the opinion of the Trustees, after consideration of medical evidence, having become incapacitated to such an extent as to render the Member unlikely ever to resume work or attend to any gainful profession or occupation; or
- (c) such other incapacity as the Trustees and the Employer shall regard as Permanent Disablement after receiving a certificate signed by two (2) medical practitioners certifying that in their opinion the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience.

Salary: The annual remuneration of the Member including directors fees but excluding overtime and irregular bonuses as advised by the Employer of the Member.

Spouse: In relation to a person, includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person.

Super Act: The Occupational Superannuation Standards Act 1987 as amended.

Tax Act: The Income Tax Assessment Act 1936 amended.

Temporary Disablement: Continuous disability of a Member due to physical or mental disability, bodily injury, illness disease or infirmity rendering a Member unable to perform his duties to his Employer and not incurred or inflicted for the purpose of obtaining a benefit from the Fund. Every question of Temporary Disablement shall be decided by the Trustees after consideration of medical evidence and their decision shall be conclusive and binding upon all parties concerned.

Trustees: The first Trustees of the Fund or any other Trustees of the Fund appointed from time to time by the Principal Employer whether substituted or additional.

- 1.2 In the Deed and Articles, unless inconsistent with the subject matter or context, words importing the singular number shall include the plural number and vice versa and words importing one gender shall include the other gender.
- 1.3 Headings inserted in any Article are for convenience only and shall not affect the interpretation of the provisions of that Article.
- 1.4 If any term defined in the Act is used in this Deed but not defined herein then such term shall have the same meaning that it has for the purposes of the Act.
- 1.5 References in this Deed and Articles to any statute are to be deemed to include a reference to that statute as amended from time to time or any consolidation or re-enactment thereof or any statute enacted in substitution of the same and reference to any provision of any statute is to be deemed (where appropriate) to include reference to the corresponding provision of that statute as amended or any consolidation or re-enactment thereof or any statute enacted in substitution therefor.

## Chapter 2 MEMBERSHIP

### Classes of Employees

- 2.1 (a) Each Employer may group its Employees into one or more classes and if so grouped the Employer shall nominate to the Trustees the following requirements which shall be applicable to all Employees within each class:
  - (i) the eligibility requirement for all Employees in that class to be invited to join the Fund,
  - (ii) the Category of Membership of all eligible Employees in that class,
  - (iii) the level (if any) of the contribution by all eligible Employees in that class, and
  - (iv) any other requirement agreed by the Trustees and Employer.

- (b) The Employer of an Employee shall advise the Trustees the classification or Category for each Employee at the time of inviting his application for membership PROVIDED THAT if such advice is not given upon approval by the Trustees of the Employee's application the Member shall be deemed to be a Member of a class having the benefits advantages and obligations of a Category AL Member.
- (c) The Employer of a Member shall advise the Trustees:
  - (i) when a Member has changed class or Category; and
  - (ii) whether the Member's benefit in respect of Fund Service prior to the change is calculated in accordance with his prior Category or Categories or his new Category.
- (d) A Member may not at any one time be a Member of more than one Category of Membership PROVIDED THAT he may be entitled to benefits from more than one Category of Membership where pursuant to Article 5.9 he has changed his Category of Membership in respect to prior Fund Service.

#### Application for Membership

- 2.2 (a) Every Employee who is invited by his Employer to participate in the Fund shall apply in writing in a form approved by the Trustees for admission to membership of the Fund and on approval by the Trustees shall become a Member of the Fund and shall receive a written statement of his rights and the rights of his Dependants to receive benefits under this Deed.
- (b) Any Employee who fails to apply for admission to membership of the Fund within thirty (30) days of first becoming invited to join the Fund shall thereafter only be admitted with the consent of his Employer and on such terms and conditions (being not more favourable to the Employee than would have applied if he had become a Member when first invited so to do) as the Trustees may determine.
- 2.3 (a) The completed and signed application of an Employee shall constitute agreement by that Employee:
  - (i) to become a Member of the Fund; and
  - (ii) to be bound by the terms and conditions of this Deed.
- (b) A Member shall cease to be a Member of the Fund at a date determined by the Trustees.
- 2.4 No Member shall be entitled to any benefit (other than a Temporary Disablement Pension as provided for in Rule 5.16 hereof) from the Fund while remaining an Employee of any Employer who contributes to or has contributed to the Fund on his behalf.

Portability: Transfer from another fund

- 2.5 The Trustees may at the request of the Employer make such arrangements as they think proper with an Employee or any previous Employer of the Employee or the trustee of any superannuation fund or Approved Deposit Fund of which the Employee was a Member for any transfer of assets (including cash) to the Fund and may make arrangements regarding any other matter which in their opinion is pertinent to or consequent upon the admission of such Employee to membership of the Fund PROVIDED THAT such part or the whole (as the case may be) of that member's transferred amount that is attributable to contributions made in consequence of an industrial award or that is otherwise an Employer-Financed Vested Benefit or other benefit subject to compulsory preservation must be held in trust until:
- (a) the death or Permanent Disablement of the Member;
  - (b) the Member attains age fifty five (55) and retires from the workforce; or
  - (c) such other event as is approved by the Commissioner
- and PROVIDED FURTHER THAT such part or the whole (as the case may be) of that Member's transferred amount that had prior to the transfer become vested in the Member shall at all times be deemed to be an Member-Financed Benefit.

Portability: Transfer to another fund

- 2.6 Should a Member:
- (a) leave the employment of his Employer and become eligible to join another superannuation fund or an Approved Deposit Fund or elect to apply his benefit toward the purchase of an annuity (either immediate or deferred); or
  - (b) remain in the employment of his Employer and become eligible to join any other superannuation fund;

The Trustees may with the agreement of the Employer and the Member transfer (by a payment in cash or transfer in specie), in lieu of part or all of any other benefit to which the Member may be entitled under this Deed, directly to the trustees of that other superannuation fund or Approved Deposit Fund or directly to the life office or other financial institution granting that annuity (as the case may be) such portion of the assets of the Fund as the Trustees consider equitable and shall advise the trustees of that other superannuation fund or Approved Deposit Fund or the life office or other financial institution granting that annuity the proportions (if any) of the amount so paid which are deemed to be a Member-Financed Benefit and an Employer-Financed Vested Benefit PROVIDED HOWEVER THAT the transfer of that part (if any) of the total benefit being transferred which is attributable to contributions made pursuant to and in connection with an industrial award or which is otherwise an Employer-Financed Vested Benefit or other benefit subject to

compulsory preservation may only be transferred to a superannuation fund or Approved Deposit Fund which has the appropriate provisions to continue to preserve such part of the transferred amount as is required by the Commissioner from time to time or may only be applied toward the purchase of an annuity which may not commence payments prior to age fifty-five (55) and which cannot be surrendered prior to that age (as the case may be).

Temporary Absence from Employment

- 2.7 Where the Trustees are satisfied that a Member who leaves employment for whatever reason is likely to return to that employment within a reasonable period, they may with the consent of the Employer and the Member make such arrangements in regard to the benefit entitlement of the Member as they consider appropriate and without limiting the generality of the foregoing the Trustees may recognise the period of service for which the Member has temporarily withdrawn from employment for the purpose of calculating Fund Service.

Information

- 2.8 (a) Every Member and Dependant when requested by the Trustees shall furnish any information the Trustees shall deem necessary for the purposes of any investigation or otherwise in connection with the Fund and without limiting the generality of the foregoing such information shall include:
- (i) evidence of age of Member or Dependant;
  - (ii) in the case of Member, medical evidence at the commencement of his membership of the Fund;
  - (iii) in the case of a Member receiving a pension, evidence that he has not died;
  - (iv) in the case of a Dependant, evidence of the death of the Member or any other Dependant.

If any Member or Dependant fails to comply with the beforementioned, the Trustees may suspend the payment of any benefits or pensions.

- (b) Where the information furnished by or in respect of a Member or Dependant in any statement submitted to the Trustees is fraudulently incorrect in any material particular, the benefits payable to or in respect of such Member or Dependant may cease or may be adjusted to such amounts as shall be determined by the Trustees in their absolute discretion.

### Chapter 3 CONTRIBUTIONS

- 3.1 The Employers shall contribute to the Fund from time to time:
- (a) for the provision of any Defined Benefit, such amount as the Trustees, acting on the advice of an Actuary, shall determine is required to provide such benefits under this Deed; or
  - (b) for the provision of any Accumulation Benefit, in respect of each Member such amount as it determines;

PROVIDED THAT an Employer may at any time vary, suspend or terminate its contributions.

- 3.2 Each Member shall contribute to the Fund such amount (if any) as is determined by his Employer as being the amount payable by all Members within the class to which he belongs and his Employer shall deduct the contributions so determined from his remuneration from time to time unless otherwise agreed between the Member and his Employer.
- 3.3 Each Employer shall pay its contributions and its Members' contributions to the Trustees in such a manner and at such time or times as are agreed upon between each Employer and the Trustees.
- 3.4 Any payment by a Member or an Employer direct to any investment manager, life insurance office or other financial institution or entity shall be deemed to be both a payment by that Member or Employer into the Fund and a payment by the Trustees of the Fund to such investment manager, life insurance office or other financial institution or entity. Any contribution may be paid by cheque cash assignment or transfer of ownership of any benefits or assets (including insurance policies).

### Chapter 4 THE FUND

- 4.1 The Fund shall comprise the following:
- (a) any contributions by Members;
  - (b) contributions by each Employer;
  - (c) interest, dividends and other proceeds arising from any investment and the accumulation thereof;
  - (d) payments from any death or disablement insurance or annuity policy; and
  - (e) monies, investments and other property transferred to the Fund from any other superannuation fund or Approved Deposit Fund.

#### Investment

- 4.2 All monies belonging to the Fund but not required to meet current payments may be invested by the Trustees in or upon investments, whether secured or unsecured, of any kind (not limited to

investment of trust funds) and in any country of the world as the Trustees in their absolute discretion shall think fit and without limiting the generality of the foregoing either directly or indirectly in:

- (a) any one or more of the investments authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) debentures of, or preference or ordinary shares or stock in, or registered notes or bills of exchange either secured or unsecured issued by, or unsecured loans to, or share or stock options offered by any company in Australia or elsewhere;
- (c) trading savings or merchant banks, building societies, friendly societies, authorised or unofficial dealers in the short term money market or other deposit-taking institutions acceptable to the Trustees;
- (d) units or sub-units in any unit trust or any mutual fund;
- (e) real or leasehold property;
- (f) life insurance policies, accident and sickness or disability policies, either alone or jointly with some other person;
- (g) the purchase of immediate or deferred annuities contingent on the life of a Member or Dependant (either alone or jointly) or for a fixed period;
- (h) deposits at call or fixed terms with an Employer;
- (i) any other investment which the Trustees consider to be appropriate and which is acceptable to the Commissioner.

with full power to vary, replace and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled dealing with his own property may do.

- 4.3 Notwithstanding the general provisions of Article 4.2 the Trustees shall at all times comply with the requirements of the Act and the guidelines of the Commissioner in relation to the investments of the Fund.
- 4.4 Investments may be held in such name or names as the Trustees shall from time to time determine PROVIDED THAT they are not in the name of a Member who is not a Trustee of the Fund. Such names may include the name of a nominee, whether individual or corporate.

Borrowing Restrictions

- 4.5 The Trustees shall not borrow or raise money whether by way of a secured or unsecured loan, otherwise than to secure temporary finance by way of overdraft with an eligible bank as defined in the Regulations of the Super Act.

Expenses

- 4.6 All costs, charges and expenses incurred in the inauguration management and administration of the Fund incurred from time to time which are not paid by an employer shall be paid out of the Fund.

Fund Account

- 4.7 The Trustees shall cause a Fund Account to be maintained in which shall be recorded:
- (a) the total annual contributions (if any) by the Members;
  - (b) the total annual contributions by any Employer;
  - (c) the amount (if any) recorded in the Excess Benefit Reserve; and
  - (d) all other assets of the Fund as specified in Article 4.1 of this Deed.

Member's Individual Account

- 4.8 An Individual Account shall be maintained for each Member of the Fund in which shall be recorded the following financial data:

- (a) for all Categories of Membership, the contributions (if any) by the Member for each year of his membership;
- (b) that proportion of any amount transferred into the Fund on the Member's behalf pursuant to Article 2.5 which the Trustees with the Member's agreement determine to be Member Financed Benefits and non preserved employer financed benefits; and

where Accumulation Benefits are being provided:

- (c) the contributions by his Employer in respect of the Member for each year of his membership; and
- (d) the credit (or debit) of a proportion of the net income and realised profits (or losses) of the Fund arising each year as determined by the Trustees; and
- (e) any assets or allocations from the Forfeited Benefits Register made by the Trustees from time to time.

- 4.9 In the event that Accumulation Benefits are being provided and a Member leaves the Fund during a period in which the Trustees have not determined a proportion of net income and realised profits (or losses) to be allocated to the Members Individual Account then in determining that Member's Individual Account for the purposes of paragraph (d) of Article 4.8 the Trustees may give such credit (or debit) for net income and realised profits (or losses) of the Fund for that period during which the Member was a Member of the Fund as the Trustees in their absolute discretion think fit.

#### Forfeited Benefits Register

- 4.10 A Forfeited Benefits Register shall be maintained for the allocated part of the Fund which provides Accumulation Benefits and shall record, where Accumulation Benefits are forfeited for any particular Member:
- (a) the amount of benefit forfeited or the extent to which a benefit paid or payable to or in respect of a Member is less than the balance in his Individual Account under this Deed; and
  - (b) the manner in which the Trustees have applied this amount in accordance with Article 5.33.

### CHAPTER 5 BENEFIT ENTITLEMENT

#### Retirement Benefit

- 5.1 A Member who retires from employment with his Employer on or after his Normal Retirement Date shall be entitled to a Retirement Benefit.
- 5.2 The Retirement Benefit shall be:
- (a) In the case of a Category UPA Member and a Category UPB Member and a Category UPC Member, a Partially Commutable Pension equal to the Member's Final Average Salary multiplied by the applicable Pension Factor;
  - (b) In the case of a Category UFA Member and a Category UFB Member and a Category UFC Member, a Fully Commutable Pension equal to the Member's Final Average Salary multiplied by the applicable Pension Factor;
  - (c) In the case of a Category ULA Member and a Category ULB Member and a Category ULC Member, a lump sum equal to the Member's Final Average Salary multiplied by the applicable Lump Sum factor;
  - (d) In the case of a Category AP Member, a Partially Commutable Pension which has an equivalent value to the amount recorded in the Member's Individual Account;
  - (e) In the case of a Category AF Member, a Fully Commutable Pension which has an equivalent value to the amount recorded in the Member's Individual Account; and

- (f) In the case of a Category AL Member, a lump sum equal to the amount recorded in the Member's Individual Account.
- 5.3 For the purposes of this chapter "Pension Factor" shall mean:
- (a) in the case of a Category UPA Member or a Category UFA Member, the lesser of:
    - (i) 0.0375 multiplied by the Member's period of fund Service, or
    - (ii) seventy-five per centum (75%) (or such other level as may be approved from time to time by the Commissioner);
  - (b) in the case of a Category UPB Member or a Category UFB Member, the lesser of:
    - (i) 0.025 multiplied by the Member's period of Fund Service, or
    - (ii) fifty per centum (50%);
  - (c) in the case of a Category UPC Member or a Category UFC Member, the lesser of:
    - (i) 0.01 multiplied by the Member's period of Fund Service, or
    - (ii) thirty-seven and one half per centum (37.5%).
- 5.4 For the purposes of this chapter, "Lump Sum Factor" shall mean:
- (a) In the case of a Category ULA Member, the lesser of:
    - (i) 0.35 multiplied by the Member's period of Fund Service, or
    - (ii) seven (7) (or such other level as may be approved from time to time by the Commissioner);
  - (b) In the case of a Category ULB Member, the lesser of:
    - (i) 0.25 multiplied by the Member's period of Fund Service, or
    - (ii) five (5);
  - (c) In the case of a Category ULC Member, the lesser of:
    - (i) 0.175 multiplied by the Member's period of Fund Service, or
    - (ii) three and one half (3.5)
- 5.5 A Member who retires from employment with his Employer after his Normal Retirement Date shall be entitled at the date of such retirement:
- (a) if a Defined Benefit, to a retirement benefit equivalent in value to the Retirement Benefit to which he would have been entitled at his Normal Retirement Date; and

- (b) if an Accumulation Benefit, to either the lump sum or pension (according to his Category of Membership) equivalent in value to the amount recorded in his Individual Account at the date of such retirement.
- 5.6 Should a Member not retire from employment with his Employer at his Normal Retirement Date all Employers contributing on that Member's behalf may in their absolute and individual discretion decide whether or not to continue payment of contributions in respect of that Member after his Normal Retirement Date. The Member may at his own discretion continue paying his contributions (if any) after his Normal Retirement Date.
- 5.7 (a) Where a benefit is paid as a lump sum or Fully Commutable Pension the total benefit shall not exceed the maximum amount specified by the Commissioner and any benefit entitlement in excess of such maximum amount;
- (i) where the retiring Member is not the last Fund Member, shall be applied as a forfeited benefit; and
  - (ii) where the retiring Member is the last Fund Member, shall be paid and transferred to the Principal Employer.
- (b) Where a benefit is paid as a Partially Commutable Pension the amount of the pension shall not exceed the amount specified from time to time by the Commissioner.
- 5.8 Where a Member's Employer suspends or reduces the contributions payable by it and where the retirement benefit is a Defined Benefit, the Trustees may vary the benefits under this Deed from the date on which such suspension or reduction takes place, PROVIDED THAT at all times each Member shall be entitled to a retirement benefit, the level of which shall be determined by the Trustees.
- 5.9 Where a Member's Employer advises the Trustees that the Member has changed his Category of Membership and the Member's benefit in respect of his Fund Service prior to the change of Category (for the purposes of this Article called the "Past Service Benefit"), calculated in accordance with the prior Category or Categories:
- (i) is less than the Past Service Benefit calculated in accordance with the new Category, then the new Category benefit level shall only apply to the prior Fund Service in lieu of the prior Category benefit level at the sole discretion of the Employer; or
  - (ii) is more than the Past Service Benefit calculated in accordance with the new Category, then the new Category benefit level shall only apply to the prior Fund Service in lieu of the prior Category benefit level with the written consent of the Manger.

Death Benefits

5.10 Should a Member die before being entitled to a Retirement Benefit, a Death Benefit will be payable in accordance with Article 5.13 of such an amount as shall be determined by the Trustees in their absolute discretion PROVIDED THAT the value of the said Death Benefit shall not exceed the amount:

- (a) if a Defined Benefit, of the Member's equitable share (including the proceeds of any insurance on the life of that Member) of the Fund at the date of death; or
- (b) if an Accumulation Benefit, which is credited to the Member's Individual Account (including the proceeds of any insurance on the life of that Member) at the date of death;

PROVIDED FURTHER THAT the value of the said Death Benefit shall not be less than the proceeds of any insurance effected on the life of the Member plus the Member-Financed Benefit of the Member at the date of death.

5.11 Should a Member die while entitled to a Retirement Benefit then:

- (a) if the Retirement Benefit is a lump sum and the benefit has not been paid, a Death Benefit shall be payable in accordance with Article 5.13 equal to the lump sum to which the Member would have been entitled had he retired at the date of his death; and
- (b) if the Retirement Benefit is a pension and:
  - (i) if the pension has not been paid for the Guaranteed Period (as defined herein) from the date of entitlement, a Death Benefit shall be payable in accordance with Article 5.13 equal to the outstanding instalments of the retirement pension as they fall due intermittently until the end of the said Guaranteed Period, and
  - (ii) if the deceased Member is survived by a widow or widower and further if at the end of the Guaranteed Period such widow or widower remains existent, then a Death Benefit shall be paid of an amount determined by the Trustees not exceeding the amount of the pension commencing at the end of the Guaranteed Period and continuing until the date of death of the said widow or widower as the case may be PROVIDED THAT the Trustees with the agreement of the Employer may vary or suspend this benefit.

For the purposes of this paragraph (b) of Article 5.11 the Guaranteed Period shall be the period of the life expectancy of a Member at his Normal Retirement Date (according to the latest Australian

Life Tables as published by the Australian Government Actuary) or such other period as the Trustees determine within the Commissioner's guidelines from time to time.

5.12 Should a Member die while entitled to a Deferred Benefit (pursuant to and as defined within paragraph (c) of Article 5.20) whether or not the Member shall have been paid part thereof, a Death Benefit shall be payable in accordance with Article 5.13 of such amount as shall be determined by the Trustees in their absolute discretion PROVIDED THAT the amount of the said Death Benefit shall not exceed the amount of that Member's equitable share of the Fund at the date of death PROVIDED FURTHER THAT the amount of the said Death Benefit shall not be less than that proportion of the Member's equitable share of the Fund at the date of death attributable to the Member Financed Benefit of the Member.

5.13 The entitlement to the Death Benefit shall be any one or more of the following persons in such proportions as the Trustees shall in their absolute discretion think fit:

- (a) all or any of the deceased Member's Dependants,
- (b) the Designated Beneficiary, or
- (c) the Personal Representative of the deceased Member.

The Trustees shall within a reasonable time after the death of a member determine the Dependants and shall notify such Dependants in writing of any entitlement.

5.14 If the Member dies intestate and the Trustees after reasonable enquiries have failed to determine a Dependant or Personal Representative within six months from the date of the Member's death then all entitlements of the deceased Member from this Fund shall be forfeited.

#### Permanent Disablement Benefit

5.15 Should a Member retire from the employment of his Employer before being entitled to a Retirement Benefit on the grounds of Permanent Disablement he shall be entitled to a Permanent Disablement Benefit of such an amount as shall be determined by the Trustees in their absolute discretion PROVIDED THAT the value of the said Permanent Disablement Benefit shall not exceed the amount:

- (a) where the benefit is a Defined Benefit, of the Member's equitable share (including the proceeds of any insurance on the life of that Member) of the Fund at the date of Permanent Disablement; and
- (b) where the benefit is an Accumulation Benefit, which is credited to the Member's Individual Account (including the proceeds of any insurance on the life of that Member) at the date of Permanent Disablement;

PROVIDED FURTHER THAT the value of the said Permanent Disablement Benefit shall not be less than the proceeds of

any insurance effected on the life of the Member plus the Member-Financed Benefit of the Member at the date of Permanent Disablement.

Temporary Disablement Pension

5.16 Should a Member remain in the employment of his Employer but be absent from work with his Employer for a period of not less than four (4) weeks on the grounds of Temporary Disablement he shall be entitled to a Temporary Disablement Pension of such an amount as shall be determined by the Trustees in their absolute discretion

PROVIDED THAT the amount of the said Temporary Disablement Pension shall not exceed the Member's Salary at the date of Temporary Disablement and shall be not less than the proceeds of any disablement insurance policy arranged by the Trustees and in all cases such benefits payable cease at the time the Member recovers from his Temporary Disablement or becomes eligible for another benefit payment pursuant to these Articles

PROVIDED FURTHER THAT the said Temporary Disablement Pension shall not be payable for in excess of two years (or such other period as may be approved from time to time by the Commissioner) from the date of commencement of the said pension.

Other Terminations of Employment

5.17 Should a Member's employment terminate before his Normal Retirement Date for any reason not specified in Articles 5.1 to 5.16 inclusive the Trustees may decide to pay a Withdrawal Benefit and such entitlement and the amount thereof shall be determined by the Trustees in their absolute discretion PROVIDED THAT the amount of the said Withdrawal Benefit shall not exceed:

- (a) if a Defined Benefit, the Member's equitable share of the Fund at the date of termination; and
- (b) if an Accumulation Benefit, the balance of the Member's Individual Account at the date of termination

PROVIDED FURTHER THAT the amount of the said Withdrawal Benefit shall not be less than the Member-Financed Benefit and the Employer-Financed Vested Benefit of the Member at the date of withdrawal

PROVIDED ULTIMATELY THAT the whole or that part of the Employer-Financed Vested Benefit of the Member which is subject to compulsory preservation shall not be payable to the Member prior to the Member's attainment of age fifty-five (55) except in those circumstances envisaged in the Regulations of the Super Act.

Benefit Formula

5.18 The Trustees with the agreement of the Employer may decide to determine the amount of the Death Benefit, Permanent

Disablement Benefit, Temporary Disablement Pension or Withdrawal Benefit provided under this Deed by way of a predetermined formula and they shall advise the Members of such formula in writing. The Trustees with the agreement of the Employer after advising the Member's may vary or dispense with the said formulae or any one or more thereof PROVIDED THAT the amount of any benefit calculated in accordance with any such formula in respect of a Member's Fund Service prior to the date of variation or dispensation is not reduced without the consent of those Members so affected.

Form of Benefits

- 5.19 Subject to Article 5.21 a Death Benefit, Deferred Benefit or Permanent Disablement Benefit may be paid as a capital sum at the date of entitlement or as a Partially Commutable Pension or Fully Commutable Pension commencing on the date of entitlement by agreement between the Trustees and the person who is entitled to the benefit PROVIDED THAT each form of benefit has an equivalent value.
- 5.20 Subject to the Regulations of the Super Act a Withdrawal Benefit may be in any one or more of the following forms by agreement between the Trustees and the person entitled to the benefit subject to the Regulations to the Super Act:
- (a) retained in the Fund and paid as a capital sum, Partially Commutable Pension, or Fully Commutable Pension payable at the Member's retirement from the workforce after his age fifty five (55) but at his Normal Retirement Date at the latest; (herein called "Deferred Benefit")
  - (b) transferred to another superannuation fund or Approved Deposit Fund or Life office or other financial institution that grants annuities in accordance with Article 2.6;
  - (c) paid as a capital sum at the date of entitlement; or
  - (d) paid as Partially Commutable Pension, or Fully Commutable Pension commencing on the date of entitlement;

PROVIDED THAT any benefit paid in capital sum, other than on the death of a Member, shall not exceed the amount that would be determined for that person pursuant to the maximum lump sum benefit allowed by the Commissioner.

- 5.21 A person entitled to a benefit from the Fund may with the agreement of the Trustees arrange in lieu of the original form of payment of the benefit to receive part or all of it in some other form of equivalent value PROVIDED THAT the restricted commutability of a Partially Commutable Pension remains unaltered.

Increased in Pension

- 5.22 Pensions in the course of payment shall be increased annually by the lesser of the "Consumer Price Index (all

Groups)" as published from time to time by the Australian Statistician and five percent (5%) PROVIDED THAT the Trustees with the agreement of the Employer, may vary or suspend the annual increase. The Trustees may increase the pension by greater than five percent (5%) if permitted by the Commissioner.

Prevention of Excessive Benefits

5.23 Subject to Article 5.7, in the event that the total benefits payable to or in respect of a Member under these Articles together with the benefits paid or payable to or in respect of him under any other superannuation fund or Approved Deposit Fund being in the opinion of the Trustees excessive in amount having regard to the Act the Trustees in their sole and absolute discretion may adjust his benefits and contributions appropriately.

Payment of Benefits

5.24 The determination as to whether any person is entitled to a payment from the Fund and if so the amount of such payment shall be made by the Trustees whose decision shall be final.

5.25 No benefit shall be paid to a Member or his Dependants while the Member is employed by his Employer except as specifically provided for in this Deed.

5.26 Should the person entitled to a benefit be under the age of majority, the Trustees may pay all or part of the benefit to any other person appearing to the Trustees to be the parent or guardian or person having the actual custody or control of the minor to be held in trust for application on behalf of the minor (or his Dependants) and the receipt of the person to whom the benefit is paid shall be a good and sufficient discharge to the Trustees and the Trustees shall not be bound to see the application thereof.

5.27 Any benefit entitlement of the Member or his Dependants may be paid by cheque, cash or transfer of ownership of life insurance policies as the Trustees in their absolute discretion think fit. The Trustees may with the agreement of the Member or beneficiary to whom a benefit is payable transfer investments of the Fund of equivalent value to such Member or beneficiary in lieu of paying the whole or part of the amount otherwise payable under this Deed PROVIDED THAT the Trustees receive from the Commissioner prior written approval.

5.28 (a) Pensions shall be payable monthly unless the person entitled to receive the pension and the Trustees agree that the pension shall be payable at other intervals, and on such terms and conditions as the Trustees shall decide.

(b) The first instalment of any pension shall fall due for payment on the last day of the month in which the Member becomes entitled to his pension benefit.

- (c) The last instalment of any pension shall fall due for payment upon the last day of the month immediately preceding the date of the Member's death or, if he is survived by a widow or widower, the date of death of the said widow or widower as the case may be.

5.29 All amounts payable hereunder shall be calculated in Australian currency according to the current rate of exchange at the date of payment.

#### Member's Debt

5.30 If so required by the Principal Employer or his Employer, the Trustees shall deduct from the payment to a Member any debt (including contributions paid in advance) due from the Member to any Employer or to the Fund or any loss suffered by any Employer or the Fund on account of the Member's dishonesty, fraud or defalcation and shall pay the amount so deducted to the relevant Employer or Employers or to the Fund as the case may be PROVIDED THAT the Trustees may not so deduct any debt from the Member to the Employer from the Member-Financed Benefit or the Employer-Financed Vested Benefit of that Member.

#### Long Service Leave

5.31 The amount paid or payable to a Member for any long service leave whilst in the employment of his Employer or due to him at the time of termination of his employment for any reason may at the discretion of the Trustees be deducted:

- (a) if a Defined Benefit, from the Member's entitlement to benefits PROVIDED THAT the amount of such deduction shall not exceed the proportion of the Member's entitlement which is determined by the Trustees to be the contributions made by the Employer or Employers on behalf of the member; and
- (b) if an Accumulation Benefit, from the Member's Individual Account PROVIDED THAT the amount of such deduction shall not exceed the amount contributed to the fund on his behalf by his Employer or Employers.

PROVIDED FURTHER THAT the amount of such deductions shall be considered as forfeited benefits and shall be recorded in the Forfeited Benefits Register.

#### Forfeiture of Benefits

5.32 Benefits payable out of the Fund shall at the option of the Trustees be forfeited (and, if an Accumulation Benefit, the amount recorded in the Forfeited Benefits Register) if the person otherwise entitled thereto:

- (a) without the consent of the Trustees assigns, alienates or charges such benefits or part thereof;
- (b) becomes bankrupt or insolvent;

- (c) owing to mental illness requires care, treatment or control or his own good or in the public interest and is in the opinion of the Trustees for the time being incapable of managing himself or his affairs;
- (d) in the opinion of the Trustees commits fraud or is guilty of dishonesty, defalcation or serious misconduct; or
- (e) (subject to reasonable enquiries by the Trustees) cannot be located and whose Dependants cannot be located by the Trustees during a period of one year after a payment was last made to him or on his behalf by his Employer or by the Trustees.

Application of Forfeited Benefits

5.33 The Trustees may at their sole discretion apply any benefits forfeited by Members or remaining in the Fund by virtue of the provisions of this Deed towards any one or more of the following purposes:

- (a) the provision of grants to one or more Members of the Fund or their Dependants by way of welfare benefits, sickness benefits or benefits to meet individual cases of hardship;
- (b) the provision of supplementary benefits for retired Members of the Fund;
- (c) the provision on a reasonable basis of additional benefits for existing Members of the Fund;
- (d) the payment of any contribution due by a Member who is suffering hardship;
- (e) the payment to the Employer of a Member by way of recompense for losses suffered by the Employer due to misconduct or defalcation by the Member;
- (f) the payment of contributions to the Fund which an Employer may have undertaken to make in respect of any Member;
- (g) the payment to any Employer in accordance with the Act; and
- (h) any other purpose approved by the Commissioner

PROVIDED THAT any benefit paid to a Member whilst in the service of his Employer shall be paid only to alleviate hardship and

PROVIDED FURTHER THAT forfeited Accumulation Benefits shall be applied only for the benefit of Members, their Dependants and retired Members who were at the date of the forfeiture entitled to Accumulation Benefits and forfeited Defined Benefits shall be applied only for the benefit of Members, their Dependants and retired Members who were at the date of forfeiture entitled to Defined Benefits and

PROVIDED ULTIMATELY HOWEVER THAT any forfeited Accumulation Benefits remaining in the Fund after the termination of the last Member or retired Member to whom Accumulation Benefits were applicable shall be treated for the purposes of the preceding proviso as if they were forfeited Defined Benefits and applied in that regard as aforesaid and similarly any forfeited Defined Benefits remaining in the Fund after the termination of the last Member or retired Member to whom Defined Benefits were applicable shall be treated for the purposes of the preceding proviso as if they were forfeited Accumulation Benefits and applied in that regard as aforesaid.

## CHAPTER 6 THE TRUSTEES

### Appointment of Trustees

- 6.1 (a) The Trustees shall be appointed from time to time by the Principal Employer,
- (b) The number of individual trustees shall be a least two (2) except when the Trustee is an incorporated body where it may be the sole trustee.
- (c) The Employer shall appoint the chairman of Trustees.
- (d) Any Employer, directors of any Employer, other persons and Members are eligible to be Trustees of the Fund.
- 6.2 The appointment of the first trustee and any subsequent trustee shall at all times comply with all the Regulations of the Super Act and without limiting the generality of that statement particularly in respect of the composition of the persons appointed as trustees or appointed to the board of a body corporate trustee and the notification to commissioner of any changes in trustees within the prescribed time.
- 6.3 In such circumstances as the Trustees may deem expedient the Trustees may appoint either in respect of the whole of the Fund or any part thereof new Trustees in any country in the world and may transfer assign and set over the whole or part of the investments of the Fund to any such new Trustees upon similar trusts and subject to similar terms and conditions to those declared in this Deed and either subject to the control of the Trustees or to the exclusion of such control and the Trustees shall in such event be indemnified and held harmless against any loss which may arise from the exercise of this power.

### Termination of Trustees

- 6.4 Any one Trustee shall cease to be a Trustee:
- (a) when the Principal Employer serves notice in writing to that effect on that Trustee; or
- (b) when the Trustee serves notice in writing to that effect on the Principal Employer; or

- (c) upon his death or upon his being declared legally incompetent or upon his becoming bankrupt; or
- (d) (where the Trustee is a Company) upon a receiver being appointed or an order being made for the winding up of the Trustee other than for the purposes of amalgamation or reconstruction,

and in any such event the Trustee shall be deemed to be discharged from the trusts hereof and in the case of (a) or (b) of this Article shall thereupon execute such documents and do such things as may be necessary to give effect to such discharge. In the event of any Trustee ceasing to be a Trustee of this Deed the Principal Employer may appoint one or more new trustees in accordance with Articles 6.1 and 6.2.

#### Meeting of Trustees

- 6.5 The Trustees shall meet together for the despatch of business and regulate their meetings as they consider appropriate. Two (2) Trustees shall constitute a quorum for the transaction of business. Any matter may be determined by a simple majority of the Trustees voting at any duly constituted meeting of the Trustees and such simple majority decision shall be deemed to be the decision of the Trustees PROVIDED THAT if the total membership exceeds two hundred (200) the said voting shall be by two-thirds majority. Each Trustee present at such a meeting shall be entitled to one vote and the chairman shall not be entitled to have a second or casting vote.
- 6.6 A resolution in writing, signed by all the Trustees or, if the Trustee is a company, all the directors thereof, shall be as valid and effectual as if it had been passed at a meeting of the Trustees or of the directors of the Trustee company duly convened and held.
- 6.7 The Trustees shall appoint a secretary who may be one of the Trustees. A minute book shall be kept by such secretary and there shall be entered in such minute book particulars of all minutes of all meetings of the Trustees. Such minutes shall be signed by the chairman of the meeting. Any minutes so signed shall in the absence of fraud be prima facie evidence of the matters stated in such minutes.
- 6.8 An incorporated company acting as sole Trustee shall be a quorum and shall be competent to decide all questions which may properly come before a meeting of Trustees.

#### Secrecy

- 6.9 The Trustees and every new Trustee on his appointment shall observe strict secrecy with regard to the affairs, accounts and transactions of each Employer and of the Fund both while they shall continue to be a Trustee and at all times thereafter and if so required by the Principal Employer shall enter into a bond of such value terms and conditions as shall be agreed by the Trustees and the Principal Employer.

Signing of Documents

- 6.10 (a) The Trustees shall open a current account or any other type of account at any bank, building society, credit union or cash management trust they may decide. The operation of the account or accounts shall be by the Trustees and/or such other person as the Trustees shall from time to time by resolution so determine.
- (b) All cheques and other negotiable or transferable instruments for payments or transfers out of the Fund and all receipts for monies paid or transferred into the Fund shall be signed drawn endorsed or otherwise executed as the case may be by any one or more of the Trustees or such other person or persons as the Trustees shall from time to time by resolution so determine.
- (c) Should the Trustee apply for insurance cover on the life of any Member or on the lives of any group of Members such application or proposal may be signed by any one of the Trustees (or in the event that an incorporated company is acting as sole Trustee then it may be signed by any one of the directors thereof) PROVIDED THAT the resolution to effect the insurance was made at a properly convened meeting of the Trustees.

Trustees' Discretion and Indemnity

- 6.11 (a) The Trustees in the exercise of the authorities powers and discretions hereby vested in them shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the authorities powers and discretions from time to time and at any time or may refrain from exercising all or any of such authorities powers and discretions from time to time or at all times and the Trustees' decisions as to the final interpretation and effect of this Trust Deed shall be final.
- (b) A Trustee shall not be liable for:
- (i) any losses except losses arising from his own wilful misconduct;
  - (ii) the acts or defaults of his co-trustees or of an Employer;
  - (iii) any act or acts done bona fide in conformity with the decisions of the Trustees hereunder; and/or
  - (iv) the neglect or default of any actuary, auditor, solicitor, banker, accountant, administrator or other agent employed in good faith by the Trustees.

- (c) The Trustees and each of them shall be indemnified against all liabilities incurred by them in the execution on their duties hereunder and shall have a lien of the Fund for such indemnity. The costs charges and expenses incurred by the Trustees in and incidental to the administration and winding up of the Fund or otherwise in relation thereto to the extent to which they are not paid by an Employer shall be paid out of the Fund.
- (d) If the Trustees become liable for any income tax or other tax in respect of any investment income or capital appreciation of the Fund they may deduct an amount equal to such tax from such income.

#### Protection of Fund

- 6.12 Assets of the Fund including assets held in the name of a Trustee are not part of the estate of the Trustee in his individual personal or corporate capacity for any purpose whatsoever including any claim on the assets of the Trustee by reason of debts or obligations incurred by the Trustee in such individual capacity. A Trustee has no possessory lien on any assets of the Fund in order to satisfy debts or obligations arising otherwise than as Trustee of the Fund and subject to Article 4.5 may not charge any assets of the Fund whether specifically or generally otherwise than for the purposes of the Fund.

#### Records

- 6.13 The Trustees shall keep or cause to be kept a complete record of all persons who become Members of the Fund and of all the other matters essential for the working of the Fund.

#### Annual Audit

- 6.14 The Trustees shall cause to be prepared an Income and Expenditure Account and Balance Sheet of the Fund at the end of the financial year of the Principal Employer. An Auditor who satisfies the requirements of the Regulations of the Super Act shall be appointed by the Trustees and he shall provide to the Trustees such written Certificates as may be required by the Commissioner from time to time. The Trustees shall provide the Auditor with all papers accounts and documents connected with the Fund in this regard.

#### Actuarial Review

- 6.15 Where Defined Benefits are being provided, the Trustees shall instruct an Actuary to make a valuation of the assets and liabilities of the Fund at least once in every three years from the Commencement Date and shall provide him with such information as he shall require for this purpose. The Actuary shall report in writing to the Trustees upon the results of his valuation and in this regard the Trustees shall instruct the Actuary to include in his report all actuarial valuations calculations and analyses required by the Regulations of the Super Act.

Compensation of Trustees

6.16 The Trustees may receive from the Principal Employer or the Fund such compensation as may be agreed between the Trustees and the Principal Employer from time to time.

Power of Trustees

6.17 In addition to the powers which they might by law have and which are otherwise granted to them by this Deed the Trustees shall have the following powers:

- (a) to commence carry on or defend proceedings related to the Fund or the rights of Members former Members and Beneficiaries;
- (b) to insure or reinsure any risks contingencies or liabilities of the Fund with any insurance company friendly society superannuation fund or like body;
- (c) to issue or provide pensions or annuities to Members or their Dependants;
- (d) to deduct income tax from the payment of a benefit to a member and remit the tax so deducted to the Commissioner in accordance with the Act;
- (e) to retain the services of professional consultants whether persons firms or companies in relation to the management administration or investment of the Fund and to delegate to such consultants such powers as they shall see fit from time to time and pay in accordance with Article 4.6 the fees payable to such professional consultants;
- (f) to pay from the Fund such governmental fee or tax levied upon the Fund by the Act or the Commissioner's guidelines as may be required from time to time.
- (g) to provide the Commissioner at all times with such information regarding the Fund as he may require;
- (h) generally to do all acts and things as the Trustees may consider necessary or expedient for the administration maintenance and preservation of the Fund (including maintaining the Fund's exemption from income tax) and in the performance of their obligations under this Deed.

Notice of Amendments

6.18 The Employer shall notify each Member in writing of any amendment to these Articles or to the Trust Deed to which these Articles are an annexure as soon as practical after the said amendment explaining the nature and purpose of the alterations and the effect (if any) of the alteration on the entitlement of the Member.

Winding Up the Fund

- 6.19 The Trust hereby declared shall be terminated and the Fund shall be wound up:
- (a) by a resolution of the Trustees;
  - (b) by a resolution of the Principal Employer to permanently cease contributing to the Fund;
  - (c) if an order is made for the bankruptcy or winding up of the Principal Employer or if an effective resolution is passed for the winding up of the Principal Employer other than for the purposes of amalgamation or reconstruction and thereafter all Participating Employers unanimously agree to permanently cease contributing to the Fund; or
  - (d) if the Employer decides to permanently close the Fund to new members but continues to make contributions in accordance with Article 3.1, at the death or prior termination of membership of the last Member or Dependant entitled to benefits.
- 6.20 Upon termination the Trustees shall:
- (a) advise the Members and Dependents in writing that the Fund shall be wound up on a specified date (hereinafter called "the Closure Date");
  - (b) at the Closure Date immediately make a call for any arrears of contributions and not accept further contributions;
  - (c) distribute amongst the Members and their Dependents and former Members and their Dependents the net assets of the Fund at the Closure Date in a manner which the Trustees consider equitable in their absolute discretion PROVIDED THAT each Member is distributed at least the amount of the Member-Financed Benefit and Employer-Financed Vested Benefit for that Member;
  - (d) hold in trust for each Member who is an Employee at the Closure Date, his part of the net assets as determined in paragraph (c) of this Article 6.20 for so long as the Member remains an Employee and in this regard the Trustees shall hold such Member's part of the net assets upon the same trusts as are declared in this Deed; and
  - (e) subject to paragraph (d) of this Article 6.20 effect the payment of the allocated net assets in accordance with this Deed as the Trustees with the agreement of each Member or Dependant may determine PROVIDED THAT such proportion or the whole (as the case may be) of that Member's allocated net assets that is attributable to contributions made pursuant to and in connection with an industrial

award or that is otherwise an Employer-Financed Vested Benefit or other benefit subject to compulsory preservation may only be paid to the Member on or after his retirement from the workforce after attaining age fifty-five (55) or transferred to another superannuation fund or Approved Deposit Fund pursuant to Article 2.6 of this Deed.

- 6.21 In the event of the winding up of the Fund due to the death of the widow or widower of the last Member or at the death of the last Member if he has no widow or widower and the Fund has remaining assets, then a Death Benefit shall be payable on behalf of such last Member or on behalf of the widow or widower of such last Member in accordance with Article 5.13 of an amount equal to the remaining assets in the Fund PROVIDED THAT if the Member or Dependant was entitled to a Fully Commutable Pension the amount of remaining assets shall be paid to the Principal Employer and Participating Employers (if any) in such proportions as the Trustees shall determine to be equitable.

#### Transfer of Performance

- 6.22 At the request of the Principal Employer the Trustees may elect to accept the performance by another employer (hereinafter called "the Assignee") of the obligations of the Principal Employer in this Deed. Such acceptance by the Trustees shall discharge the Principal Employer from any Further obligations under this Deed and henceforth the Assignee shall be construed as the Principal Employer for the purposes of this Deed (including the Articles) PROVIDED THAT the Assignee undertakes in writing to be bound by the terms and conditions of this Deed PROVIDED FURTHER HOWEVER THAT such transfer of performance shall in no way relieve the Principal Employer from any obligations under this Deed which relate to the period up to and immediately preceding the Transfer of performance to the Assignee.

#### Reporting

- 6.23 (a) The Trustees shall provide written reports to the Members which contain all information required by the Regulations of the Super Act regarding disclosure and reporting requirements from time to time;
- (b) The Trustees shall provide such written reports to the Commissioner as the Act or the Commissioner's guidelines may require from time to time.

### CHAPTER 7 PARTICIPATING EMPLOYERS

#### Admission of Participating Employer

- 7.1 The Trustees with the agreement of the Principal Employer may admit to the Fund any Participating Employer which has agreed in writing to be bound by this Deed. On such admission the Trustees

shall make arrangements in accordance with Article 2.1 with the Participating Employer so admitted regarding the terms on which the Employees of the Participating Employer are to be admitted to membership of the Fund.

Retirement of Participating Employer

- 7.2 The participation in the Fund of a Participating Employer may be terminated:
- (a) by the Participating Employer by notice in writing to the Principal Employer; or
  - (b) by the Principal Employer by notice in writing to the Participating Employer.
- 7.3 On termination of participation in the Fund as aforesaid:
- (a) the Trustees after consultation with the Participating Employer shall specify a date (hereinafter called "the Retirement Date") upon which the Participating Employer (hereinafter called "the Retiring Employer") shall retire;
  - (b) the Retiring Employer shall forthwith pay all arrears (if any) of contributions up to the Retirement Date;
  - (c) benefits which have become payable on or before the Retirement Date shall continue to be payable out of the Fund;
  - (d) the Trustees shall determine what proportion of the assets of the Fund, including arrears (if any) of contributions still to be made pursuant to paragraph (b) of Article 7.3, is attributable to the Members who were employed by the Retiring Employer at the Retirement Date; and
  - (e) the Trustees in their discretion may make such arrangements as they think proper for the provision, in lieu of the benefits which would otherwise be payable out of the Fund, of benefits for Employees of the Retiring Employer and the Dependants of such Employees.
- 7.4 Provision of benefits pursuant to paragraph (e) of Article 7.3 hereof shall be made by application of the proportion of the assets of the Fund, determined under paragraph (d) of Article 7.3, in accordance with Article 6.20 hereof as if the proportion of the assets so determined had comprised a separate fund of which the Retiring Employer was the Employer and those Members in its employ at the Retirement Date and their Dependants were the only fund members and as if such separate fund has been wound up pursuant to Article 6.19 on the Retirement Date in accordance with the provisions of Articles 6.20 and 6.21.

CHAPTER 8

- 8.1 In the event of the enactment of any legislation which establishes government sponsored rights to benefits for Members or amends rights to benefits provided by existing legislation for Members and if in the opinion of the Principal Employer such benefits are wholly or partly provided by the Fund or are of a type which affects directly or indirectly the current or future aptness of the form or the amount of any of the benefits provided by the Fund the Principal Employer may decide that the benefits provided by the Fund and the contributions by or in respect of the Members shall be varied in a manner determined by the Principal Employer with the Trustee's approval but no such variation shall reduce the amount of the benefits which shall already have been funded for a Member at the date of such variation without the written consent of the Member.
- 8.2 Except as provided in Articles 6.20 and 6.21 the trusts constituted by this Deed shall continue during the life of the survivor of all the lineal descendants now living of His Late Majesty King George VI and twenty-one years after the death of such survivor and such further period (if any) as may from time to time be permitted by law, PROVIDED ALWAYS THAT this provision shall not apply where the laws of the State or Territory of Australia applicable to this Deed provide that the Rule against Perpetuities shall not apply.
- 8.3 Where the laws applicable to this Deed are the laws of the State of South Australia the provisions of section 35(b) of the Trustees Act 1936-1953 of that State are hereby expressly excluded from application to this Deed.
- 8.4 The Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of the principal place of business of the Principal Employer. The Members and Dependants for the time being shall accept the jurisdiction of the Courts of that State or Territory.
- 8.5 Nothing in this Deed shall affect the powers of any Employer with regard to the remuneration, terms of employment or dismissal of an Employee, or any other dealing of any Employer with the Employee.
- 8.6 Any notices to be given to the Trustees or an Employer may be left at the main office for the time being of the Trustees or the Employer (as the case may be) and in the case of notices to be given to any Member may be posted to or left at the address of that Member last known to the Trustees. Any notice given by post may be posted by prepaid ordinary mail and is to be deemed to have been given twenty-four hours after the time of posting.
- 8.7 Notwithstanding any of the provisions of this Deed the requirements contained in the standards prescribed by paragraphs 6(1)(a) and regulations 7, 8, 9, 10, 11, 13, 14, 15, 16, and 17 as in force from time to time of the Regulations of the Super Act, are deemed to be included in this Deed and in the event of any inconsistency between the provisions of this Deed and the Regulations as aforesaid then the Regulations shall prevail.