

**ARCHKING HOLDINGS PTY LTD
AS TRUSTEE FOR
THE NERI FAMILY TRUST
("the Principal Employer")**

**ARCHKING HOLDINGS PTY LTD
("the Trustee")**

NERI SUPERANNUATION FUND

SUPERANNUATION DEED

Ref: KMA:MAK

**■ PHILLIPS FOX ■
Solicitors
Level 19
The Quadrant
1 William Street
Perth 6000
WESTERN AUSTRALIA**

SUPERANNUATION TRUST DEED FOR EMPLOYED PERSONS

NERI SUPERANNUATION FUND

227067 73 23156005 DUP *****2.00
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THIS DEED is made the *1st* day of *June* 1995 BY:-

1. PARTIES

- 1.1 ARCHKING HOLDINGS PTY LTD (ACN 056 478 123) as trustee for the Neri Family Trust the registered office of which is situate at care of Turco & Co Pty Ltd, Level 1, 2 Mountjoy Road, Nedlands, Western Australia ("the Principal Employer"); and
- 1.2 the said ARCHKING HOLDINGS PTY LTD ("the Trustee").

2. BACKGROUND

- 2.1 The Principal Employer has determined to establish and maintain an indefinitely continuing complying superannuation fund ("the Fund") and intended to be conducted as a regulated fund pursuant to the Superannuation Industry (Supervision) Act 1993 ("SIS Act") as amended and the regulations thereunder ("the Fund").
- 2.2 The Fund is to be known by the name set forth in the First Schedule to this Deed with the object of providing fully secured superannuation and pension benefits for the employed person or persons named in the First Schedule as the members of the Fund and who will henceforth be the beneficiaries of the Fund ("the Members") and the Dependants of the Members.
- 2.3 The Trustee named above has agreed to act as the First Trustee of the Fund.
- 2.4 The Principal Employer and the Trustee agree that the Fund will be conducted as a complying and regulated superannuation fund for employed persons pursuant to all relevant law applicable to those superannuation funds to which concessional advantages will be available under relevant law.
- 2.5 The Principal Employer and the Trustee agree that the Rules annexed to this Deed will be the Rules governing the conduct and management of the Fund.
- 2.6 The Principal Employer and the Trustee agree that this Fund shall operate as an excluded superannuation fund, namely one with not more than four members, and will have a corporate trustee.

OPERATIVE PART

3. DEFINITIONS

Subject to the Rules and the additional definitions therein contained the following words and expressions shall unless the context or subject matter otherwise indicates or requires, have the following meanings ascribed to them:-

- 3.1 "Deed" means this Deed and the Schedules forming part of this Deed and the Rules annexed hereto as amended from time to time.
- 3.2 "Members" means the member or members named in the First Schedule to this Deed and any future member or members of the Fund.
- 3.3 "the Fund" means the indefinitely continuing superannuation fund created pursuant to the provisions of this Deed and to be known by the name set forth in the First Schedule hereto.
- 3.4 "Rules" means the Rules set forth in the annexures hereto including amendments to the Rules from time to time.
- 3.5 "Schedules" means the schedules to this Deed.
- 3.6 "Trustees" means the Trustee or Trustees abovenamed and any Trustee or Trustees in substitution for the abovenamed or any of them as set out in the Rules and acting at any time as Trustees of the Fund.

4. ADDITIONAL DEFINITIONS AND INTERPRETATION

Additional definitions and the interpretation of this Deed and the Schedules and the Rules annexed hereto shall be as set out in the Rules.

5. COMMENCEMENT OF FUND

The Fund shall be established and maintained as an indefinitely continuing complying superannuation fund and shall commence from the commencement date set forth in the Second Schedule.

6. THE TRUSTEE

The Trustee of the Fund may be appointed, removed and replaced in the manner set forth in the Rules.

7. THE ASSETS

The assets of the Fund shall be vested in the Trustee upon trust to be applied in the manner set forth in the Rules and Schedules.

8. ADMINISTRATION

The administration of the Fund shall be performed by the Trustee in accordance with the Rules.

9. TRUSTEES' COVENANT

9.1 In pursuance of the object of this Deed and for the purpose of carrying it into effect the Trustee now and in the future covenants to perform and observe the provisions of this Deed.

9.2 In particular the Trustee undertakes (where relevant to the Fund), to comply with the covenants set out in clause 52(2) of the SIS Act.

EXECUTED as a Deed.

FIRST SCHEDULE

Name of Fund:

Neri Superannuation Fund

Name and Address of First Member of the Fund

Alberino Neri of 16 Wynne Street, Hazelmere, Western Australia

Name and Address of Additional Members of the Fund

Lucy Neri of 16 Wynne Street, Hazelmere, Western Australia

SECOND SCHEDULE

Commencement Date of the Fund

The 1st day of June 1995.

Entry Date

The date of acceptance of the Member's application to join the Fund.

Retirement Date

The sixty-fifth (65th) anniversary of the date of birth of the Member or such other date as the Trustees may determine generally or in respect of an individual Member provided however that in any event the retirement date will be not later than the seventieth (70th) birthday of the Member and not earlier than the fifty-fifth (55th) birthday of the Member and subject always to the requirements laid down in respect of complying funds pursuant to the provisions of all relevant law including the Superannuation Industry (Supervision) Act 1993, and the Regulations thereunder as amended from time to time.

EXECUTION BY THE PRINCIPAL EMPLOYER:

THE COMMON SEAL of)
ARCHKING HOLDINGS PTY LTD)
(ACN 056 478 123))
is affixed in accordance with)
its articles of association:)



A Neri
Signature of authorised person

L Neri
Signature of authorised person

ALBERINO NERI
Name of authorised person

LUCY NERI
Name of authorised person

DIRECTOR
Office held

DIRECTOR
Office held

EXECUTION BY THE TRUSTEE:

THE COMMON SEAL of)
ARCHKING HOLDINGS PTY LTD)
(ACN 056 478 123))
is affixed in accordance with)
its articles of association:)



A Neri
Signature of authorised person

L Neri
Signature of authorised person

ALBERINO NERI
Name of authorised person

LUCY NERI
Name of authorised person

DIRECTOR
Office held

DIRECTOR
Office held

GOVERNING RULES
NERI SUPERANNUATION FUND
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RULES OF THE NERI SUPERANNUATION FUND

These are the Rules referred to in the Deed to which these Rules are annexed.

1. **DEFINITIONS**

1.1 For the purposes of this Deed and Rules the following words and expressions shall unless the context or subject matter otherwise indicates or requires, have the following meanings ascribed to them:

1.2 "**Accumulated Benefit**" means in respect of a Member's Account an amount equal to the sum of

1.2.1 the Member's Allocation (if any);

1.2.2 the Member's Transferred Benefit (if any);

1.2.3 the Employer's Allocation;

1.2.4 any allocations made from the Forfeited Benefits Account;

1.2.5 any allocations made from the Reserve Account;

1.2.6 any distribution of profits both realised and unrealised to which the Member is entitled; and

1.2.7 any other accretions, net earnings of the Fund, and interest to which the Member is entitled and not otherwise taken into account including any payments under any insurance policy;

reduced by the sum of

1.2.8 any allocations made against the Member's Account for expenses, charges, fees or other costs, including administrative costs, incurred by the Trustees; and

1.2.9 any other allowable decrements properly allocated in respect of the Member.

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

1.4 "**Allocated Pension**" means an income stream paid out of an amount being the Accumulated Benefit of a Member.

1.5 "**Alternate Fund**" means any other superannuation fund, retirement fund, deposit fund, or roll-over fund approved by the I.S.C. for the purposes of Relevant Law.

1.6 "**Approved Auditor**" means an approved auditor as defined by the Regulations.

- 1.7 "Associated Employer" means any company firm or person admitted as a party to the Deed pursuant to these Rules.
- 1.8 "Commencement Date" means the commencement date set out in the Second Schedule to the Trust Deed to which these Rules are annexed or as otherwise recited in any Deed of Variation of the Trust Deed to which these Rules are annexed and form part.
- 1.9 "Corporations Law" means the Corporations Act 1989 and the Regulations thereunder and any other laws relating to or governing the conduct of corporations within Australia.
- 1.10 "Deed" means the Deed of which these Rules form part.
- 1.11 "Dependants" shall include any one or more of
- 1.11.1 the spouse or widow or widower of a Member (including any person in a de facto relationship which according to law is recognised as equivalent to the position of a spouse or widow or widower for the purposes of this Deed);
 - 1.11.2 any child including an adopted child, a step-child or an ex-nuptial child of a Member;
 - 1.11.3 any person who in the opinion of the Trustees is actually dependent on a Member for financial support maintenance or education; and
 - 1.11.4 any person named in any notice of preference signed by a member and which notice has been deposited with the Trustees before the death of the Member and which is expressed in terms or to the effect that such person is actually dependent on the Member for financial support maintenance or education.
- The class of Dependants shall be closed at the date of death of a Member except persons en ventre sa mere who, if born prior to the death of the Member, would have been Dependants.
- 1.12 "Employee" means a person who is in the service of the Employer and shall include non-executive directors of the Employer but subject to the restrictions imposed by Section 237 of the Corporations Law.
- 1.13 "Employer" means the employer or employers being party to the Deed including the Principal Employer and any Associated Employer and in respect of a Member means the Employer of the Member.
- 1.14 "Employer's Allocation" means in respect of a Member an amount equal to the sum of the employer contributions including any mandated employer contributions made to the Fund by any person approved by the I.S.C. to contribute, with interest thereon at the rate prescribed from time to time by the Trustees, less the Member's Allocation.

- 1.15 "Employer Contributions" has the same meaning as defined by the Regulations.
- 1.16 "Entry Date" means the first day of January and first day of July in each year or such other date in respect of each Member as the Trustees may determine.
- 1.17 "Exit Date" means in respect of a Member the date upon which the Member ceases to be in the employment of the Employer.
- 1.18 "Forfeited Benefits Account" means the account referred to in Clause 53 of these Rules.
- 1.19 "Fund" means the Trust Fund hereinafter defined.
- 1.20 "Fund Year" means any year commencing the first day of July and ending on the thirtieth day of June following, or such other period agreed upon by the Principal Employer and the Trustees.
- 1.21 "Government Agency" means the Australian Taxation Office, the Commonwealth Government, or any agency of or organisation created by any legislation of the Commonwealth of Australia.
- 1.22 "Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992 as amended from time to time.
- 1.23 "Insurer" means such insurance office or offices as the Trustees and the Principal Employer may decide.
- 1.24 "I.S.C." means the office of the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commissioner Act 1987 as amended from time to time.
- 1.25 "Lump Sum" means the amount of benefit, other than a Pension, payable to or in respect of a Member.
- 1.26 "Mandated Employer Contributions" has the same meaning as defined in the Regulations.
- 1.27 "Member" means an employee who has applied for membership of the Fund and whose application has been accepted and who for the time being is a Member of the Fund or who was a former Member but has not yet been paid all of his benefits.
- 1.28 "Member's Account" means in respect of a Member an account maintained by the Trustees in the name of the Member, the balance of which represents the Accumulated Benefit.
- 1.29 "Member's Allocation" means in respect of a Member an amount equal to the sum of the member financed benefits in respect of that Member made to or received into the Fund.

- 1.30 "Member's Transferred Benefit" means in respect of a Member an amount equal to the sum of the amount of benefit transferred into the Fund pursuant to Clause 46 of these Rules with accumulated interest thereon and including that Member's apportioned share of all forfeited benefits and all productivity benefits.
- 1.31 "Member's Financed Benefits" has the same meaning as defined in the Regulations.
- 1.32 "net earnings of the Fund" means the net earnings of the Fund as defined in Regulation 3(1) of the OSS Regulations.
- 1.33 "OSS Act" means the Superannuation Entities (Taxation) Act 1987, formerly known as the Occupational Superannuation Standards Act 1987, as amended from time to time, as affected by Relevant Law;
- 1.34 "OSS Regulations" mean the regulations in force from time to time pursuant to the provisions of the OSS Act, as affected by Relevant Law;
- 1.35 "Pension" has the same meaning as defined in the SIS Act.
- 1.36 "Pensioner" means a Member who has retired from the employment of the Employer on or after the Retirement Date of the Member and who has by preference chosen to accept all or part of his retirement benefit by way of Pension.
- 1.37 "Permanent Incapacity or Permanent Invalidity" means in respect of a Member, Permanent Incapacity or Permanent Invalidity as certified in writing by two registered medical practitioners including the statement that 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 provided however that where any part of the benefit payable in the event of Permanent Incapacity or Permanent Invalidity is insured, the definition of Permanent Incapacity or Permanent Invalidity contained in the policy or policies evidencing the insurance shall apply unless inconsistent with the requirements of the I.S.C..
- 1.38 "Personal Representative" means the person or persons to whom Probate or Letters of Administration has been granted in respect of a Member's estate, or whom the trustees shall otherwise be entitled at law to recognise as the personal representative of a Member's estate.
- 1.39 "Policy" means a policy of insurance or any annuity policy including any policy rider or addendum or annexure effected or accepted for the purposes of the Fund by the Trustees and issued by the Insurer.
- 1.40 "Preserved Benefit" means in respect of a Member the sum of the amount of benefit whether by cash, Policy proceeds or otherwise, whether accepted by the Trustees as a transfer from an Alternate Fund or otherwise arising, and recognised as a Preserved Benefit under the provisions of Clause 35 of these Rules.
- 1.41 "Professional Adviser" means any accountant, actuary, auditor, banker, barrister, insurer, investment adviser, medical practitioner, solicitor, stockbroker,

superannuation consultant, nominee or trustee company or other professional or qualified company firm or person.

- 1.42 "Reasonable Benefit Limits" or "R.B.L." means the reasonable benefits limits prescribed from time to time by the I.S.C. or under the Tax Act.
- 1.43 "Regulations" means the OSS Regulations or the SIS Regulations as in force from time to time, and any regulations enacted in substitution for them or any of them.
- 1.44 "Reserve Account" means the account referred to in Clause 69 of these Rules.
- 1.45 "Residual Benefit" means an amount payable under the provisions of Clause 45 of these Rules.
- 1.46 "Relevant Law" means all laws for the time being in force governing the conduct of those complying or regulated superannuation funds to which taxation concessions apply pursuant to the Tax Act including but not limited to the requirements of the SIS Act, the OSS Act, and the Regulations.
- 1.47 "Retirement Date" means the retirement date determined by the Trustees and to be set out in the Trustees Minutes.
- 1.48 "Review Date" means the review date determined by the Trustees and to be set out in the Trustees Minutes.
- 1.49 "Salary" has the meaning as defined in Regulation 4A of the OSS Regulations.
- 1.50 "shortfall component" has the meaning as defined in Regulation 3(1) of the OSS Regulations.
- 1.51 "SIS Act" means the Superannuation Industry (Supervision) Act 1993 as amended from time to time.
- 1.52 "SIS Regulations" means the regulations in force from time to time pursuant to the provisions of the SIS Act.
- 1.53 "Spouse" in relation to a Member includes a person who although not legally married to the Member lives with the Member on a bona fide domestic basis as the husband or wife of that Member.
- 1.54 "Standards" means the requirements contained in the Standards prescribed by the Regulations, or as otherwise prescribed by the I.S.C.
- 1.55 "Tax Act" means the Income Tax Assessment Act 1936 as amended from time to time and the Regulations thereunder.
- 1.56 "Transferred Benefit" means in respect of a Member the sum of the amount of benefit whether by cash, Policy proceeds, or otherwise, accepted by the Trustees as a transfer from an Alternate Fund inclusive of interest properly accumulated thereon to be held in the Fund in the name of the Member and not released to the Member

at a date earlier than that on which the member would have been entitled to receive that amount from the Alternate Fund had it not been transferred to this Fund.

- 1.57 "transferred retiree member" has the same meaning as set out in the Regulations.
- 1.58 "Trust Fund" means and includes all moneys from time to time held by or on account of the Trustees and all investments and property representing the same including any Policy, and all or any accretions and the income thereon from time to time held by or on account of or due to the Trustees.
- 1.59 "Trustees" means
- 1.59.1 all the Trustees; or
 - 1.59.2 a single Trustee; or
 - 1.59.3 such Trustees as may be necessary to pass an effective resolution of Trustees.
- 1.60 "Vesting Standards" means the vesting standards referred to in Clause 35 of these Rules.

2. INTERPRETATION

- 2.1 Unless the context or subject matter otherwise indicates or requires
- 2.1.1 any word or expression defined in the Tax Act and/or the OSS Act and/or the SIS Act which is used but not defined herein shall have the meaning ascribed to such word or expression in the Tax Act and/or the OSS Act and/or the SIS Act;
 - 2.1.2 any word or expression importing the singular shall include the plural and vice versa; and
 - 2.1.3 any word or expression denoting any particular gender shall include other genders.
- 2.2 The index and headings in this document are for convenience of reference only and shall not affect its interpretation.
- 2.3 Words and phrases defined in this document are for convenience of reference only.
- 2.4 The Trustees in their absolute discretion shall subject to the OSS Act, the SIS Act, and the Regulations, and any law or regulation prohibiting any discriminatory practice or policy, determine the style design and content in any documents or forms which the Trustees may require in the establishment, administration or termination of the Fund.
- 2.5 All amounts payable hereunder shall be calculated in Australian currency according to the rate of exchange at the date of payment thereof.

3. LAW

This Deed shall be governed and construed in accordance with the laws of the State in which the Fund is set up and of the Commonwealth of Australia and the parties hereto, the Trustees and Employers of Members, Members and Members' Dependants, shall accept the jurisdiction of the Courts of that State and of the Commonwealth.

4. DISPUTES

4.1 The Trustees shall maintain an internal procedure for dealing with complaints as required by Relevant Law.

4.2 Nothing herein contained shall limit the right of a Member to make any complaint to the Superannuation Complaints Tribunal under the Superannuation (Resolution of Complaints) Act 1993.

5. SEVERABILITY

5.1 If any Clause or part thereof contained herein and any Schedules forming part of this Deed and Rules shall be judged to be invalid for any reason whatsoever, which invalidity shall extend to any inconsistency between the express terms of this Deed and Rules, and the requirements and terms of Relevant Law, such invalid Clause or part thereof shall be deemed to have been deleted from this Deed and Rules without affecting the remainder.

5.2 The Standards prescribed from time to time by the Regulations are deemed to be incorporated in and to form part of these Rules, and to the extent that anything contained in these Rules is inconsistent with those standards such inconsistency shall be deemed invalid and of no force or effect.

6. THE OBJECTIVES OF THE TRUST

6.1 The objectives of the Trust are:-

6.1.1 to create and conduct an indefinitely continuing fund, established and maintained solely to provide fully secured retirement benefits to employees by way of lump sum payments and old age and other approved pensions and otherwise as herein provided, and/or death benefits for dependants of employees; and

6.1.2 subject to the foregoing, to provide ancillary benefits including such assistance in cases of sickness, misfortune or financial hardship for employees and dependants of employees as the I.S.C. shall approve.

6.2 The Trustees shall, in carrying out the objectives of the Trust, ensure that only employee members, transferred retiree members, the Principal Employer, any Associated Employer of the Principal Employer and such other persons as shall be first approved in writing by the I.S.C. shall be entitled to pay contributions to the Fund.

7. APPOINTMENT AND REMOVAL OF THE TRUSTEES

- 7.1 The appointment and removal of Trustees of the Fund shall at all times be in conformity with the Standards set out in the Regulations. If the sole or prime purpose of the Fund is not the provision of old age pensions then there must be only one trustee of the Fund and which must be a constitutional corporation.
- 7.2 Subject to the above, there may be one corporate trustee of the Fund or not less than two individual trustees of the Fund and in any event not more than four Trustees appointed as Trustees of the Fund. Where there are more than two (2) Trustees one of them shall be appointed Chairman for all meetings of the Trustees.
- 7.3 As the Fund is intended to operate as an excluded superannuation fund, as defined by the SIS Act, all requirements of the SIS Act with respect to the appointment and removal of trustees shall be deemed incorporated herein.
- 7.4 Any power authority or discretion vested in a corporate Trustee hereof may be exercised on its behalf by its directors as a board and the board may appoint such of its employees as it thinks fit to exercise for or on behalf of the corporate Trustee all or any of the powers authorities and discretions exercisable by the Trustees under the provisions of the Deed.
- 7.5 A Trustee shall hold office until the Trustee
- 7.5.1 dies; or
 - 7.5.2 suffers any disability which renders him/her unable to manage his/her own affairs; or
 - 7.5.3 becomes bankrupt; or
 - 7.5.4 being a corporate body goes into liquidation or in respect of which there is an Order made for the winding up of the corporate body other than for the purposes of amalgamation or reconstruction; or
 - 7.5.5 is by operation of law disqualified from office as a Trustee; or
 - 7.5.6 cannot be located after all reasonable enquiries have been made by the Principal Employer during a period of thirty (30) days after the Trustee last performed any act as a Trustee; or
 - 7.5.7 is removed from office by the appointors of that Trustee (or by those empowered to remove a Trustee) serving notice in writing to that effect on the Trustee; or
 - 7.5.8 retires from office by serving notice in writing to that effect to the Principal Employer.
- 7.6 In the event of a Trustee ceasing to hold office in the circumstances described other than those described in sub-paragraph 7.5.8 above, the Trustee shall be deemed to

be discharged from the trusts of the Fund, and in the case of the said sub-paragraph 7.5.8 above, the Trustee shall thereupon execute such documents and do such other things as may be necessary to give an effective discharge therefrom.

7.7 Upon a Trustee ceasing to hold office or in any circumstances where there exists a vacancy in the number of Trustees who may be appointed, the Principal Employer (or those entitled hereunder to appoint a Trustee) shall within sixty (60) days after the date such vacancy arises appoint another Trustee in place of the Trustee ceasing to hold office or to fill any vacancy as may exist and thereupon the provisions of the Deed, the Rules and Schedules shall apply to and in respect of any Trustee so appointed.

8. MEETINGS OF THE TRUSTEES

8.1 Unless a corporate body is the sole Trustee pursuant to Clause 7.3 above the Trustees shall meet together at least once in each Fund Year and at such other times as they shall think fit, and two Trustees shall form a quorum.

8.2 Where a corporate body is the sole Trustee the directors thereof shall meet as a board at least once in each Fund Year and at such other times as they shall think fit.

8.3 The Trustees may meet, adjourn and regulate their meetings and proceedings as they shall think fit, and a meeting of the Trustees shall be competent to exercise the powers, authorities and discretions vested herein in the Trustees.

8.4 If the Chairman is not present within thirty (30) minutes following the time appointed for holding a meeting of the Trustees, and if the Trustees present are sufficient to constitute a quorum, the Trustees present may choose one of their number to be the Chairman of such meeting.

8.5 All matters arising at any meeting of the Trustees (or at any meeting of the Board of a sole Corporate Trustee) shall be decided by not less than a two thirds majority of the Trustees or of the members of the Board, as the case may be.

8.6 A resolution in writing signed by all the Trustees shall have the same validity and effect as a resolution made by the Trustees at a duly convened meeting. Where a corporation is appointed as sole Trustee, or as a joint Trustee, then the resolution must be passed also in accordance with the Articles of Association of that corporation.

8.7 The Trustees shall keep or cause to be kept in a minute book a complete record of all matters relating to resolutions and discretions, and the proceedings of every meeting of the Trustees, and of every resolution otherwise made by the Trustees, and such minutes shall be signed by the Chairman of the meeting at the expiration of that meeting or the immediate next succeeding meeting.

9. POWERS AUTHORITIES AND DISCRETIONS OF THE TRUSTEES

9.1 The Trustees may from time to time or at any time exercise or enforce any powers authorities or discretions conferred on the Trustees by the laws of the Commonwealth of Australia or of any State or Territory thereof and shall in addition thereto have vested in them the powers authorities and discretions granted herein.

9.2 Any power authority or discretion vested in the Trustees hereunder shall at all times be subject to the requirements of the SIS Act and to the extent of any inconsistency between these requirements and those set out in the SIS Act the provisions of the SIS Act shall prevail.

10. PROFESSIONAL ADVISERS

10.1 The Trustees may at their discretion retain, suspend or terminate the services of any Professional Adviser for temporary, permanent or special services as they think fit for the proper administration of the Fund.

10.2 The Trustees may appoint a Trustee or other person to act as secretary of the Fund.

11. LEGAL PROCEEDINGS

The Trustees may commence, carry on, defend or abandon any legal proceedings in respect of the Fund, as the Trustees think fit and proper to protect the interests of the Fund or the rights of Members, Pensioners, Surviving Spouses or other persons entitled to a benefit thereunder.

12. SIGNING OF DOCUMENTS BY THE TRUSTEES

Any two (2) of the Trustees, or in the case of a corporate body being the sole Trustee, two (2) directors or a director and a secretary of the corporate body, or a Trustee or other person appointed as secretary pursuant to the provisions of Clause 10.2 above, or a person authorised by resolution of the Trustees, are hereby authorised on behalf of all the Trustees to execute sign enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, deeds, writings, proposals and discharges for Policies, assignments or transfers of Policies or shares and other property and all other documents as validly and effectually as all the Trustees could do.

13. POWER OF ATTORNEY

A Member may appoint the Trustees his/her attorney to carry out such matters in respect of the Fund as directed by the Member.

14. REMUNERATION OF THE TRUSTEES

14.1 Subject to Relevant Law, the Trustees shall be entitled to such remuneration in respect of administering the operations of the Fund as agreed between the Principal Employer (if any), the Trustees and the Members.

14.2 Any person who is a Professional Adviser and is also a Trustee hereof or is a director of a corporate body which is a Trustee hereof, and who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he would make had he not been a Trustee or not been a director of a corporate body which is a Trustee hereof.

15. PROTECTION OF THE TRUSTEES

15.1 The Trustees may act on the advice or opinion of any Professional Adviser and shall not be responsible for any loss occasioned by so acting but subject always to the standards laid down pursuant to the SIS Act and the Regulations.

15.2 The Trustees shall not be liable for any losses (except losses arising from their own wilful default) or for any act or acts committed in the exercise of any power authority or discretion vested in them hereunder or for the neglect or default of any Professional Adviser employed in good faith by the Trustees but subject always to the standards laid down pursuant to the SIS Act and the Regulations.

15.3 Subject to the SIS Act and the Regulations, the Trustees shall be indemnified against all liabilities incurred by or imposed upon them in the execution of their duties hereunder including any liability for taxes or duties in respect of the contributions to and the income of the Fund or taxes or duties incurred in the course of administration and shall have a lien on the Trust Fund for such indemnity and without prejudice to the generality of this paragraph such indemnity shall apply to any payment made to any person whom the Trustees bona fide believed to be entitled thereto although such person was not in fact entitled thereto.

16. MEMBER'S RIGHTS AGAINST THE EMPLOYER

The provisions of this Deed shall not in any way affect or restrict the right of a Member or his Personal Representative or any other person to claim compensation or damages under any statute or at common law in the event of the Member being injured or dying as a result of any event arising out of or in the course of his employment.

17. EMPLOYER'S RIGHTS TO DETERMINE EMPLOYMENT

17.1 The provisions of this Deed shall not in any way affect or restrict the right of the Employer to dismiss or otherwise determine the employment of a Member or remove a director of the Employer from office, and being a Member shall not be taken as guaranteeing continuation of employment or as a director.

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

18. LIENS OVER BENEFITS

- 18.1 The Trustees of the fund must not be a party, nor give effect, to the exercise of a lien over any prescribed benefits by another person.
- 18.2 The Trustees of the Fund must not exercise a lien over any prescribed benefits except in respect of an identified debt owed by a member to the Trustees in their capacity as Trustees of the Fund.
- 18.3 If a person has exercised a lien over particular prescribed benefits prior to the commencement of Regulation 5 of the OSS Regulations otherwise and in accordance with that Regulation the person must not vary the lien except to limit its scope or to remove it.
- 18.4 For the purposes of this clause "prescribed benefits" in relation to a member of the fund means benefits that are required by the Standards prescribed in the Regulations to be:-
- 18.4.1 vested in the Member; or
 - 18.4.2 preserved by the Fund.
- 18.5 A reference to the exercise by a person of a lien over prescribed benefits of the Fund includes a reference to:-
- 18.5.1 the making by a member of the fund of an arrangement in writing that provides for the lien to be exercised in respect of an identified debt owed by the member to the person; and
 - 18.5.2 the giving of notice of the intention of the person to exercise the lien in respect of an identified debt owed by a member to the person if exercise of the lien is required to protect the interests of that person; and
 - 18.5.3 the taking by the person of any action required for the purpose of giving effect to the lien in respect of an identified debt owed by a member to the person.

19. ADMISSION OF ASSOCIATED EMPLOYERS

The Trustees may with the consent of the Principal Employer admit as a party to the Deed any company firm or person which, by virtue of its close association with the Principal Employer, has made application in writing to the Trustees in such form of application as the Trustees may determine to be admitted as an Associated Employer to contribute to and participate in the Fund. An Associated Employer so admitted shall be bound by the provisions of this Deed in the same way as the Associated Employer would be bound if the Associated Employer had been an original party to the Deed.

20. WITHDRAWAL OF ASSOCIATED EMPLOYERS

An Associated Employer shall cease to be a contributor to and cease to participate in the Fund upon:-

- 20.1 the Associated Employer giving written notice to the Trustees of its intention to cease to be an Associated Employer; or
- 20.2 the Associated Employer becoming bankrupt or being placed in liquidation or receivership (except in the case of a reconstruction) or on ceasing to carry on a business; or
- 20.3 the Principal Employer or the Trustees with the consent of the Principal Employer giving written notice to the Associated Employer that it has ceased to be recognised as an Associated Employer.

21. WITHDRAWAL OF THE PRINCIPAL EMPLOYER

If the Principal Employer is for any reason unable or unwilling to continue as a contributor to and a participant in the Fund the Trustees shall have the following powers:-

- 21.1 to appoint by deed or resolution an Associated Employer or an Employer that is willing to continue the Fund and to take the place of the Principal Employer, and such Associated Employer or an Employer shall upon executing the said deed or agreeing to the said resolution become the Principal Employer for the purposes of this Deed as if it had been an original party to the Deed;
- 21.2 to appoint by deed or resolution a company firm or person that acquires all or a substantial part of the assets or business of the Principal Employer and is willing to continue the Fund, and to take the place of the Principal Employer, and such company firm or person shall upon executing the said deed or agreeing to the said resolution become the Principal Employer for the purposes of this Deed as if it had been an original party to the Deed;
- 21.3 to terminate the Fund in accordance with Clause 75 of these Rules.

22. EMPLOYEES OF EMPLOYERS THAT WITHDRAW

- 22.1 A Member who is an employee of an Employer that has ceased to be a participant in the Fund shall continue to be a Member until he shall cease to be employed by an Employer and no benefit to which that Member is entitled shall be transferred by the Trustees to the trustees of an Alternate Fund except in accordance with the provisions of the Rules.
- 22.2 The Trustees shall not accept contributions from or in respect of a Member who is employed by an Employer that has ceased to be a participant in the Fund except with the consent of the I.S.C..

23. FORM OF APPLICATION

Any person eligible to apply to become a Member of the Fund and who is invited by the Principal Employer so to do may make application in writing to the Trustees in such form of application as the Trustees may determine.

24. ACCEPTANCE OR REJECTION BY THE TRUSTEES

The application of any person who applies to become a Member of the Fund may be accepted or rejected at the discretion of the Trustees (subject to any legal requirement to the contrary), and in the event of the Trustees rejecting any such application the Trustees having properly exercised their discretion shall not be required to assign any reason for their decision.

25. ELIGIBLE EMPLOYEES

Any employee of the Employer shall with the approval of the Employer or as required by law be eligible to apply to become a Member of the Fund and upon acceptance by the Trustees of the application the said person shall thereupon be bound by the provisions of the Deed in all respects.

26. EMPLOYEES WITH DEFERRED APPLICATIONS

26.1 Any employee of the Employer otherwise eligible to apply to become a Member but who for any reason declines to apply to become a Member when first eligible, or who for any lawful reason is not accepted by the Trustees as a Member when first eligible, may with the approval of the Principal Employer and the Trustees, apply at a later date than the Entry Date from which the employee was first eligible to become a Member, to become a Member of the Fund and upon acceptance by the Trustees of the application the said employee shall thereupon be bound by the provisions of this Deed but subject to such special conditions, if any, as the Trustees may determine in respect of such Member.

26.2 An employee whose application to become a Member under the provisions of Clause 26.1 has been accepted by the Trustees shall become a Member on the immediate next Entry Date or such date as is approved by the Trustees.

27. CATEGORIES OF MEMBERSHIP

27.1 The Principal Employer may determine that there shall be different categories of membership.

27.2 The Employer shall determine the category of membership in which the Applicant shall be a Member unless otherwise prescribed by the Regulations.

27.3 The Employer shall have a discretion to transfer a Member or Members from one category to another provided however that no such transfers shall result in the reduction of any benefits that have accrued to any Member except as agreed in writing by all of the Members of the Fund.

28. CONTRIBUTIONS TO THE FUND

28.1 Contributions to the Fund may only be accepted by the Trustees consistent with Relevant Law.

28.2 Without limiting the generality of the above, the Fund may accept contributions that are made in respect of a Member who is under age 65 only if:-

28.2.1 the contributions are mandated employer contributions; or

28.2.2 the contributions are not mandated employer contributions and the Member:

28.2.2.1 has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in full-time or part-time gainful employment; or

28.2.2.2 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 engaged in at the onset of the ill-health;

28.3 The Fund may accept contributions in respect of a Member if the Trustees are reasonably satisfied that the contribution is in respect of a period during which under clause 28.2 above, the Fund may accept the contribution in respect of that Member, even though the contribution is actually made after that period.

29. CONTRIBUTION BY MEMBERS

29.1 Each Member shall contribute such amounts to the Fund as agreed with the Trustees subject always to the requirements of Relevant Law.

29.2 The contributions (if any) payable by a Member may be deducted from the Member's periodic salary and an employee who applies to become a Member of the Fund agrees to such deductions being made by the Employer, or where for any reason deductions are not able to be made by the Employer the contributions (if any) payable by a Member shall be paid by the Member direct to the Employer and, subject to Clause 28 above, shall be paid by the Employer of the Member to the Trustees.

29A. CONTRIBUTIONS BY GOVERNMENT AGENCIES

Any contribution made by a Government Agency in respect of a Member shall be accepted by the Trustees as part of the Member's Accumulated Benefit and shall be subject to preservation in accordance with these Rules.

30. TERMINATION OR SUSPENSION OF EMPLOYER CONTRIBUTIONS

30.1 Subject to the provisions of any industrial award to which the Employer may be bound -

30.1.1 The Employer may at any time by giving prior notice in writing to the Trustees cease to contribute in respect of any or all of the Members who are employees of the Employer, and the Employer's liability to contribute in respect of such Members shall thereupon cease except in respect of contributions due on or before the date given in such notice;

30.1.2 The Employer may at any time by giving prior notice in writing to the Trustees suspend the Employer contributions in respect of any or all of the Members who are employees of the Employer, and the Employer's liability to contribute in respect of such Members to the extent of or for the period described in such notice shall thereupon cease except in respect of contributions due on or before the date given in such notice.

30.2 Nothing herein shall affect the obligation of the Employer to make the mandated employer contributions.

31. TERMINATION OR SUSPENSION OF MEMBER CONTRIBUTIONS

Upon the Employer ceasing to contribute or suspending the Employer contributions pursuant to Clause 30 above, the Members in respect of whom Employer contributions have ceased or been suspended may if they are Members who contribute (but subject to Relevant Law), also suspend contributions in such manner and to such extent as is consistent with the manner in which and the extent to which the Employer contributions have ceased or been suspended.

32. REDUCTION OR LIMITATION OF EMPLOYER CONTRIBUTIONS

Subject to clause 30.2, the Employer may at any time by giving prior notice in writing to the Trustees reduce the Employer contributions, or where on the advice of an Actuary the Employer's contributions should be increased, refrain from increasing the Employer's contributions, in respect of any or all of the Members who are employees of the Employer, and the Employer's liability to contribute in respect of the amount by which the Employer's contributions is reduced, or in respect of the amount above which the Employer refrains from contributing, shall thereupon cease except in respect of contributions due on or before the date given in such notice.

33. REDUCTION OR VARIATION OF BENEFITS

33.1 In the event of any reduction in contributions or refrainment from increasing contributions pursuant to Clause 32 above, or in the event of any cessation or suspension of contributions pursuant to Clause 30 above, the Trustees shall reduce or vary the benefits of the Members in respect of whom the said reduction or refrainment or cessation or suspension applies on such bases as the Trustees, after consultation with the Principal Employer and if thought necessary by the Trustees,

the Actuary, in their absolute discretion deem to be equitable and prudent PROVIDED HOWEVER that the amounts already included in the Members' reserves in respect of the contributions paid prior to the date of the cessation reduction or suspension of contributions shall not thereby be reduced.

33.2 The benefits so reduced or varied as above shall be substituted for the benefits otherwise provided pursuant to the provisions of the Deed and the Rules and such reduced or varied benefits shall continue to be subject to the provisions of this Deed.

33.3 Upon the Trustees reducing or varying the benefits in respect of any Member pursuant to Clause 33.2 the Trustees shall forthwith notify such Member in writing of the reduced or varied benefits.

34. VESTING STANDARDS

34.1 The vesting standards in respect of all assets and entitlements of the Fund shall be as determined by the Regulations.

34.2 Without limiting the generality of Clause 34.1, all Member financed benefits accruing from the date of establishment of the Fund, and all Employer contributions required to be made as mandated employer contributions, and any contributions made by any Government Agency, shall vest in full in the Member from the date of accrual of same.

35. PRESERVATION OF BENEFITS

35.1 With respect to each member of the Fund the benefits referred to in the Regulations relate to the Member, except to the extent to which those benefits become payable on retirement of the Member before attaining the age of 55 years (in the form of a non-commutable pension or annuity payable for life) shall be preserved until:-

35.1.1 those benefits are transferred in accordance with Clause 35.3;

35.1.2 the Member has:

35.1.2.1 retired from the work force; and

35.1.2.2 attained an age of not less than 55 years; or

35.1.3 those benefits become payable in one of the following circumstances:

35.1.3.1 the retirement of the Member from the work force before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity;

35.1.3.2 the death of the Member;

35.1.3.3 the permanent departure of the Member from Australia;

- 35.1.3.4 compliance with Clause 36 hereof with respect to ages for payment of benefits;
 - 35.1.3.5 such other circumstances (if any) as the I.S.C. approves.
- 35.2 A member seeking payment of benefits from the Fund on his or her retirement from the work force on the ground of permanent incapacity or permanent invalidity shall be required to give to the Trustees a certificate signed by two registered medical practitioners certifying that, in the opinion of those medical practitioners, 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.
- 35.3 Where a person who is a member of the Fund withdraws from the Fund in circumstances other than those specified in paragraph 35.1.2 or 35.1.3 above all benefits to which that person is entitled on such withdrawal and that are required to be preserved in relation to that person shall be:
- 35.3.1 retained in the fund;
 - 35.3.2 transferred directly to, for preservation in relation to the person in:
 - 35.3.2.1 another superannuation fund nominated by the person, being a superannuation fund of which the person is, or intends to become, a member and that is required to preserve any benefit so transferred in accordance with the Regulations;
 - 35.3.2.2 an approved deposit fund nominated by the person, being a fund that is required to preserve any benefit so transferred in accordance with the Regulations; or
 - 35.3.2.3 a deferred annuity nominated by the person, being a deferred annuity that cannot be surrendered or assigned before the person attains the age of 55 years and that does not pay benefits except in the circumstances specified in paragraph 35.1.2 or 35.1.3 above.

36. PAYMENT OF BENEFITS TO MEMBERS

- 36.1 A Member's benefits in the Fund must be paid out as soon as practicable after the occurrence of any of the following events:-
- 36.1.1 The Member:
 - 36.1.1.1 having attained age 65 but not age 70; and
 - 36.1.1.2 is not then gainfully employed on either a full-time or part-time basis;
 - 36.1.2 The Member:

- 36.1.2.1 having attained age 70; and
- 36.1.2.2 is not then gainfully employed on a full-time basis;
- 36.1.3 The death of the Member.
- 36.2 The form in which benefits may be paid out is in any one or more of the following forms:-
 - 36.2.1 A single pension; or
 - 36.2.2 a single lump sum; or
 - 36.2.3 the purchase of a single annuity.
- 37. **PENSION BENEFITS**
- 37.1 Where a benefit is payable by way of pension, the Pension may be either an allocated pension, a life pension or a fixed term pension within the meaning of the Regulations and any guidelines laid down from time to time by the I.S.C. as agreed between the Trustees and the Member.
- 37.2 The rate of payment of any pension, and any increases in the rate of payment of any pension, shall be subject to the requirements of the Regulations.
- 37.3 Where a benefit is payable by way of pension the Pension shall -
 - 37.3.1 be by monthly instalments;
 - 37.3.2 commence with the first payment becoming due on the last day of the month succeeding the month in which the relevant event causes the Pension to become due; and
 - 37.3.3 last be due as a Pension instalment on the last day of the month immediately preceding the date of the death of the Pensioner, Surviving Spouse, or other person entitled thereto.
- 37.4 Notwithstanding the provisions of Clause 37.3 above, the Trustees may after obtaining the advice of an Actuary vary the frequency or basis upon which any Pension may be payable.
- 37.5 The Trustees may, after consultation with the Principal Employer and an Actuary, from time to time or at any time (but subject to Clause 37.2 above) increase the amount of Pension payable to or in respect of all Pensioners or Surviving Spouses including transferred retiree members, by application of a formula deemed to be fair and equitable in order to provide for increases which may occur in the cost of living but in any event subject to the Reasonable Benefits Limits in force from time to time.
- 37.6 No Pension shall be of an amount which in the opinion of the Trustees on the advice of an Actuary is greater than that which the assets of the Fund are sufficient

to provide in respect of the Pensioner, Surviving Spouse or other person entitled thereto including a transferred retiree member, and no Pension shall be of an amount which is greater than the amount which the I.S.C. regards as being reasonable and within the Reasonable Benefits Limits.

- 37.7 The Trustees may at the request of a pensioner, Surviving Spouse or other person entitled to a benefit hereunder including a transferred retiree member and after obtaining the advice of an Actuary (but subject to the Regulations) commute for a Lump Sum up to one half of the Pension to which the Pensioner, Surviving Spouse or other person is entitled, or such greater or lesser amount than one half as the I.S.C. may allow, the Lump Sum amount of which shall be determined by the Actuary.
- 37.8 After payment of the required Lump Sum amount referred to in sub-clause 37.7 above, the amount remaining, of the said commuted value not paid by way of Lump Sum shall thereafter be payable by Pension the amount of which shall be determined by dividing such remaining amount by a commutation factor determined with the advice of an Actuary PROVIDED THAT if the aggregate of the amounts of benefit payable to or in respect of the Member would exceed an amount which is greater than the amount which the I.S.C. regards as being within the Reasonable Benefits Limits then that sum which is in excess of the Reasonable Benefits Limits shall be identified as and paid as a separate lump sum.
- 37.9 The Trustees shall not pay any pension benefit to a Member until the Trustees are satisfied that:
- 37.9.1 the reporting requirements applicable to payment of a pension as laid down by the Regulations have been complied with; and
 - 37.9.2 the I.S.C. is in possession of that Member's Tax File Number and that all requirements relating to the disclosure of the Member's Tax File Number have been made in accordance with the Regulations or otherwise pursuant to the Tax Act or other relevant legislation.

38. LUMP SUM BENEFITS

- 38.1 A Member may (subject to the Regulations) elect to be paid a lump sum from the Member's Accumulated Benefit.
- 38.2 A Member may (subject to the Regulations) elect to commute a pension to a Lump Sum payment.
- 38.3 The payment of any Lump Sum benefit due to or in respect of a Member shall be made as soon as possible after the date on which the benefit becomes payable, but if in the opinion of the Trustees the payment of such benefit will or is likely to endanger the financial security of the Fund, payment of the benefit may be deferred for a period not exceeding twelve (12) months from the date upon which the benefit became payable.

- 38.4 No Lump Sum benefit shall be of an amount which in the opinion of the Trustees is greater than that which the assets of the Fund are sufficient to provide in respect of the Member.
- 38.5 The Trustees shall not pay any Lump Sum benefit to a Member until the Trustees are satisfied that:
- 38.5.1 the reporting requirements applicable to payment of a lump sum as laid down by the Regulations have been complied with; and
 - 38.5.2 the I.S.C. is in possession of the Member's Tax File Number and that all requirements relating to the disclosure of the Member's Tax File Number have been made in accordance with the Regulations or otherwise pursuant to the Tax Act or other relevant legislation.

39. **TRUSTEES' DISCRETIONS**

- 39.1 Subject to the foregoing and the requirements of Clause 63 hereof, the Trustees may in their absolute discretion pay any Lump Sum benefit by way of periodic payment or annuity and if paid by way of periodic payment or annuity in consequence of a determination made under this Clause by the Trustees it may be commuted to a Lump Sum payment only with the approval of the Trustees.
- 39.2 The amount of any periodic payment or annuity referred to in sub-clause 39.1 above or the amount of any commuted value referred to therein shall not be more than that which the Trustees, after seeking the advice of an Actuary if deemed appropriate, determine is the maximum amount that can be paid.
- 39.3 Where the Trustees have applied all or any part of the contributions in respect of a Member, as premiums for any policy which provides for the accumulation of an amount of benefit in respect of the Member, the said amount whether as a maturity, surrender, termination or withdrawal value may be applied by the Trustees towards the Accumulated Benefit in respect of the Member.

40. **RETIREMENT BENEFITS**

- 40.1 Subject to Clauses 50, 51 and 52 of these Rules, the objectives of the Fund, and the preservation requirements, upon a Member retiring from the employment of the Employer the Trustees shall pay to the Member his/her Accumulated Benefit by way of allowed Pension or Lump Sum according to a determination made by the Member not less than one (1) year prior to the Retirement Date and conveyed by notice in writing to the Trustees. In the absence of any such determination by the Member, but subject to the Regulations, the Trustees shall assume that the Accumulated Benefit is to be paid by way of a Pension.
- 40.2 If as a result of the determination of the Member all or any part of the benefit is to be payable by way of Pension, the Trustees shall pay to the Pensioner during the lifetime of the Pensioner a Pension determined in accordance with the provisions of Clause 37 above, and if the Pensioner is survived by a Surviving Spouse the Trustees shall thereafter pay to the Surviving Spouse the balance of the Member's

entitlement as a pension on such terms and conditions agreed between the Trustees and the Surviving Spouse (subject to Relevant Law), or as the Trustees in their discretion determine.

41. BENEFITS FOR PERMANENT INCAPACITY OR PERMANENT INVALIDITY

41.1 Subject to Clauses 50, 51 and 52 of these Rules, upon a Member ceasing to be employed by the Employer as a result of Permanent Incapacity or Permanent Invalidity, the Trustees shall pay to or in respect of the Member that Member's Accumulated Benefit.

41.2 In the event that at the time Permanent Incapacity or Permanent Invalidity occurs the Trustees have insured any of the benefit payable in consequence of Permanent Incapacity or Permanent Invalidity the Trustees shall, subject to the provisions of Clauses 50, 51 and 52 of these Rules, pay to or in respect of the Member the benefit that would have been payable in the event of the death of the Member the amount being determined under Clause 45 hereof.

42. DISMISSAL BENEFITS

Subject to Clauses 18, 50, 51 and 52 of these Rules, and the Regulations, upon a Member being dismissed from the employment of the Employer for misconduct involving fraud, dishonesty or misappropriation, the Trustees shall pay to the Member a Lump Sum the amount of which shall be the sum of:-

42.1 the Member's Allocation less those amounts included therein requiring to be preserved under the Regulations; and

42.2 the Member's Transferred Benefit (if any), less that proportion requiring to be preserved under the Regulations.

43. TERMINATION OF EMPLOYMENT BENEFITS

Subject to Clauses 50, 51 and 52 of these Rules, and the Regulations, upon a Member ceasing to be employed by the Employer in circumstances other than those described in Clause 42 above and his or her next Employer not making any contribution to the Fund in respect of the Member, the Trustees shall subject to the preservation requirements and the Regulations pay to the Member his or her Accumulated Benefit and as a Lump Sum.

44. DEATH BENEFITS

44.1 Subject to Clauses 50, 51 and 52 of these Rules, upon the death of a Member prior to the Member's Retirement Date and before the whole of his Accumulated Benefit has been paid to him or her, the Trustees shall pay or apply for the benefit of any one or more or all of the Dependants of the deceased Member and in such shares and proportions and in such manner as the Trustees in their absolute discretion determine, the Member's Accumulated Benefit, or as a death benefit such part of the Member's Accumulated Benefit as has not been paid.

- 44.2 If the Trustees determine that a deceased Member is not survived by any Dependants the death benefit payable hereunder shall be paid to the Personal Representative, but if a grant of Probate or Letters of Administration in respect of the Estate of the Member is not made within three (3) years of the date of death the benefit payable hereunder, except the Member's Allocation (if any) and the Member's Transferred Benefit (if any), shall be dealt with as directed by the ISC.
- 44.3 Subject to Clauses 50, 51 and 52 of these Rules, upon the death of a Member on or after the Retirement Date the Trustees shall:-
- 44.3.1 in the case of a Member who has determined a preference for a Pension either in whole or part, pay such amount of Pension as would have been payable as if the Member had retired, to the Surviving Spouse (if any), but if there is no Surviving Spouse then pay or apply a Residual Benefit in accordance with Clause 45 following; and
- 44.3.2 in the case of a Member who has determined a preference for a Lump Sum either in whole or part, pay or apply the amount of the Lump Sum benefit as a death benefit as if the Member had died prior to the Retirement Date.

45. RESIDUAL BENEFIT

- 45.1 Subject to Clauses 50, 51 and 52 of these Rules, if upon the death of a Pensioner prior to the tenth anniversary of the Retirement Date in respect of the Pensioner, the Pensioner is not survived by a Surviving Spouse, there shall remain a Residual Benefit the amount of which shall be determined from the provisions of sub-clause 40.3.2 above, of the Rules and which shall be applied by the Trustees as a death benefit as if the Pensioner had died prior to the Retirement Date.
- 45.2 Subject to Clauses 50, 51 and 52 of these Rules, if upon the death of a Pensioner prior to the tenth anniversary of the Retirement Date in respect of the Pensioner, the Pensioner is survived by a Surviving Spouse who does not thereafter survive to the said tenth anniversary, there shall remain on the death of the Surviving Spouse a Residual Benefit the amount of which shall be determined from the provisions of Clause 40.3.2 above and which shall be applied by the Trustees as a death benefit as if the Pensioner had died prior to the Retirement Date.
- 45.3 If the Trustees determine that a deceased Pensioner in respect of whom there is a Residual Benefit, is not survived by any Dependants on the date of death of the Pensioner or the date of death of the Surviving Spouse, as the case may be, the Residual Benefit shall be applied as a death benefit and shall be payable to the Personal Representative, but if a Grant of Probate or Letters of Administration in respect of the Estate of the Pensioner is not made within three (3) years of the date of the death of the Pensioner or one (1) year of the date of the death of the Surviving Spouse, whichever is the later the benefit payable hereunder except the sum of the Member's Allocation (if any) and the Member's Transferred Benefit (if any) reduced by the sum of the amounts paid since the Retirement Date in respect of the Member, shall be dealt with as directed by the ISC.

46. **BENEFITS TRANSFERRED FROM OTHER FUNDS**

Subject to the provisions of this Deed, the Trustees may in their absolute discretion and subject to such terms and conditions as they think fit accept from the trustees of an Alternate Fund of which the Member is or was a member and from the Member a benefit whether by cash, Policy or otherwise, the amount of the benefit being an amount accrued in respect of the Member under such Alternate Fund and that part (if any) of the said amount accepted by the Trustees as represents an amount vested in the Member at the date of transfer shall be held as a Member's Transferred Benefit PROVIDED THAT amounts included therein requiring preservation shall be identified as such at the date of transfer.

47. **BENEFITS TRANSFERRED TO OTHER FUNDS**

Subject to Clause 35, the Trustees may if given written authority from a Member so to do transfer to the trustees of an Alternate Fund of which the Member shall become a member the whole or such part of the benefit otherwise payable in respect of the Member pursuant to the provisions of this Deed as the Trustees in their absolute discretion shall determine and provided that the Trustees are satisfied that the preservation requirements under the Regulations will be met.

48. **MEMBERS TRANSFERRING FROM ONE CATEGORY OF MEMBERSHIP TO ANOTHER**

- 48.1 The Principal Employer may in consultation with the Trustees establish different categories of membership including a default category.
- 48.2 In the event of a Member being eligible and being required by the Trustees to transfer from one category of membership (herein called the "previous category") to another category of membership (herein called the "new category") and the Member continuing to be in the employment of an Employer, the contributions payable by or in respect of the Member and the benefits payable to or in respect of the Member shall be varied or adjusted as provided herein.
- 48.3 Upon a Member transferring from a previous category to a new category the Member and the Employer shall, unless the Trustees determine otherwise, in respect of the requirements relating to contributions in the previous category cease to conform with the said requirements from the date immediately preceding the next Review Date following the date upon which the requirement to change categories occurs and shall, unless the Trustees determine otherwise, from the said Review Date conform with the requirements relating to contributions in the new category.
- 48.4 The benefits payable to or in respect of a Member who transfers from a previous category to a new category shall be the aggregate of his benefits accrued by his membership of each category of which he has been a Member and is a Member at the date a benefit becomes payable.

49. UNPAID LEAVE OF ABSENCE

In the event of a Member by the operation of any law or by arrangement with the Employer taking leave of absence of not less than one (1) month and ceasing to receive any instalments of Salary for such period of absence, the Trustees may, after consultation with the Employer and a Professional Adviser if deemed appropriate, vary the benefits payable on and subsequent to the date of commencement of the leave of absence in respect of the Member, and in determining the benefits to be so payable the Trustees may have regard for the period of absence and such other matters which the Trustees in their absolute discretion deem to be appropriate.

50. RIGHTS TO BENEFITS FORFEITED UPON LEGAL INCAPACITY

50.1 Subject to Relevant Law, a Member, Pensioner, Surviving Spouse or other person entitled to a benefit hereunder, but yet to meet all requirements to have the benefit immediately available, shall at the discretion of the Trustees cease to be entitled to his or her benefit or any part thereof if in the opinion of the Trustees the said Member, Pensioner, Surviving Spouse or other person entitled thereto:-

50.1.1 becomes bankrupt;

50.1.2 suffers any disability which renders him or her unable to manage his or her own affairs;

50.1.3 in any way attempts to assign, alienate, charge or encumber all or any part of his or her benefit except in accordance with the provisions of this Deed; or

50.1.4 cannot be located after all reasonable enquiries have been made by the Trustees during a period of one year after payment was last made by the Employer or by the Trustees, to the said Member, Pensioner, Surviving Spouse or other person entitled thereto.

50.2 Subject to Clause 50.5 below the Trustees shall thereafter accept no further contributions in respect of a Member whose rights to benefits are forfeited pursuant to the immediately preceding paragraph.

50.3 The Trustees shall set up a Forfeited Benefits Fund clearly designated as such and into which forfeited benefits are transferred.

50.4 The whole or any part of the benefits the rights to which are forfeited under Clause 50.1 above, may only be applied at any time or from time to time in the absolute discretion of the Trustees in order to relieve hardship, for the maintenance and support or otherwise for the benefit of any one or more of the Member, Dependants of the Member, Pensioner or Surviving Spouse as the Trustees may in their absolute discretion determine, and the application of any benefit pursuant to this Sub-Clause shall be a complete discharge to the Trustees for the payment thereof.

50.5 If a Member, Pensioner, Surviving Spouse or other person entitled to a benefit hereunder (and in respect of whom the application of Clause 50.1 above has caused

the forfeiture of his or her rights to benefits) subsequently becomes discharged from bankruptcy, or who in the opinion of the Trustees subsequently becomes capable of managing his or her own affairs or in respect of whom any assignment, alienation, charge or encumbrance has ceased to have effect, or who is subsequently located, the Trustees may in their absolute discretion and subject to the provisions of this Deed, reinstate such rights to benefits as the Trustees in their discretion deem to be equitable having regard to the period for which contributions ceased to be paid, and the amount (if any) of benefit, the right to which may have been forfeited and has already been paid or applied in accordance with the provisions of this Deed, and may thereafter accept contributions in respect of such Member in accordance with the provisions of the Deed.

51. INSURED BENEFITS

- 51.1 If for any reason the Insurer on the happening of an insured event does not pay to the Trustees any part of the proceeds of the Policy as would provide any part of the benefits payable hereunder the benefits payable under the provisions of the Deed may in the discretion of the Trustees be reduced by the amount that the Insurer does not pay.
- 51.2 If for any reason the Insurer declines to accept any proposal for insurance or will only accept such proposal on terms and conditions which the Trustees in their absolute discretion regard as being unacceptable to the Trustees, the benefits payable under the provisions of the Deed on the happening of the uninsured event may in the discretion of the Trustees be reduced by the amount that is not insured.
- 51.3 If for any reason the Member fails or declines to provide the Trustees or the Insurer with such evidence as may be required to insure any part of the benefits payable in respect of the Member, or if for any reason the Trustees determine in their absolute discretion that any part of the benefits payable in respect of the Member shall not be insured, the benefits payable under the provisions of the Deed on the happening of the uninsured event may in the discretion of the Trustees be reduced by the amount that is not insured.

52. PAYMENT OF EXCESSIVE BENEFITS

Notwithstanding anything contained in the Trust Deed or Rules, where it appears to the Trustees that benefits which are or may be provided from the Fund for a Member or a Member's Dependants are or are likely to be excessive in terms of the SIS Act and the Regulations, the Trustees may at their absolute discretion do all or any of the following:-

- 52.1 arrange for the reduction, suspension or termination of future contributions to the Fund either by or in respect of the Member, or both;
- 52.2 reduce the benefits that are being or may be provided under the Fund for the Member or the Dependants of that Member.

53. FORFEITED BENEFITS

53.1 If after the payment of or the specific allocation of moneys for the payment of all the benefits to be paid to or in respect of a Member, there remains any amount of Accumulated Benefit in respect of the Member, such amount remaining shall be transferred to the Forfeited Benefits Account.

53.2 The Trustees shall within the time prescribed by the Regulations apply such amount of the Forfeited Benefits Account as has arisen from benefits forgone by Members during the immediately preceding Fund Year, and has not already been applied, for the purposes of or towards any or all of the following:-

53.2.1 the provision of the benefits to which Members or their Dependants have rights;

53.2.2 the provision of additional benefits for Members or their Dependants on a basis that is reasonable having regard to all the circumstances;

53.2.3 the payment of contributions which would otherwise be payable by the Employer;

53.2.4 the payment of contributions of any Member who due to accident, illness or injury is suffering from hardship;

53.2.5 the payment of administrative expenses incurred in respect of the fund including premiums for insurance in respect of any Policy;

53.2.6 any other purposes approved by the I.S.C.

54. DISCRETIONARY BENEFITS

Subject to the approval of the I.S.C., the Trustees may in their absolute discretion after consultation with the Principal Employer and a Professional Adviser if deemed appropriate, pay to or in respect of a Member an amount in addition to the benefit otherwise payable under the Rules.

55. LOSS OF ENTITLEMENT TO BENEFITS

55.1 Where the right of a Member of the Fund or of the Dependants of a Member of the Fund to receive benefits from the Fund ceases during a year of income the provisions of the following paragraphs of this clause shall apply.

55.2 If, at the time of the cessation of the right, a specific part of the amount of the Fund was appropriated for the provision of benefits for the Member or his or her Dependants - the amount of those benefits must be applied in the year of income, or in the period of six (6) months after the year of income, for:

55.2.1 the provision of the benefits that other Members or their Dependants have rights to receive from the Fund; or

- 55.2.2 the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the I.S.C. is satisfied is reasonable having regard to all the circumstances; or
- 55.2.3 any other purpose approved in writing by the I.S.C.
- 55.3 If, at the time of the cessation of the right, a specific part of the amount of the Fund was not appropriated for the provision of benefits for the Member or his or her Dependants - any additional benefits that have been, or are to be, provided from the Fund for other Members of the Fund or their Dependants because of the cessation of the right must have been, or must be, provided on a basis that the I.S.C. is satisfied is reasonable having regard to all the circumstances.

56. INVESTMENTS GENERALLY

- 56.1 Investments made by the Trustees under the terms of the Deed and the Rules shall at all times be in accordance with the Standards laid down under the Regulations.
- 56.2 The Trustees may from time to time invest the whole or any part of the moneys or assets of the Trust Fund not presently required for any other purpose in or upon any investments of any kind which the Trustees in exercising their absolute discretion think fit provided that all investments shall be made on an arms length basis and, without limiting the generality of the foregoing, either directly or indirectly in:-
 - 56.2.1 investments authorised by the laws of the Commonwealth of Australia or any State or Territory of the Commonwealth for the investment of trust funds;
 - 56.2.2 approved pooled superannuation trusts;
 - 56.2.3 the securities of any government, semi-governmental body of public authority in Australia;
 - 56.2.4 approved deposit funds;
 - 56.2.5 deposits with any bank or building society or authorised dealer in the Australian short-term money market; or
 - 56.2.6 deposits with any of the Employers or any other company firm or person on such terms as the Trustees in their absolute discretion determine, provided however that any such deposits shall not at any time exceed the percentage of the value of all assets of the Fund as determined by the Regulations, and provided that such deposits shall be subject to the "in-house assets" restrictions laid down by the Regulations from time to time;
 - 56.2.7 shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia;

- 56.2.8 the purchase of land of any tenure, whether improved or unimproved;
 - 56.2.9 bills of exchange and other negotiable instruments;
 - 56.2.10 the acquisition of units or sub-units of any common fund, property trust, unit trust, or cash management trust, established in Australia and listed on a Stock Exchange in Australia or available to the general public, or available exclusively or generally to trustees, or available upon application for the investment of moneys, including non-listed property trusts or unit trusts;
 - 56.2.11 the purchase of annuities either immediate or deferred, contingent upon the life of a Member, Dependant or Surviving Spouse, or for a fixed period; and
 - 56.2.12 the payment of any premiums on a Policy.
- 56.3 The investments made by the Trustees may be held in such names including the name of a nominee company, firm or person as the Trustees shall determine.
- 56.4 The Trustees shall have the power to vary, transpose or replace such investments in such manner as they in their absolute discretion think appropriate without being responsible for any involuntary loss resulting from such action.
- 56.5 The Trustees shall not borrow money nor secure the repayment of moneys by charge or mortgage over all or any of the assets in the Trust Fund except in such circumstances as shall first be approved in writing by the I.S.C. or as shall otherwise be allowed by the Regulations. The Trustees may only borrow to obtain temporary finance by way of an overdraft or similar prescribed facility, and then only for the purpose of overcoming cash flow problems in the payment of superannuation benefits.
- 56.6 The Trustees may delegate to any person, firm or company on such terms as the Trustees think, the power and duties of investment conferred upon them under this Deed and Rules, and may deliver to any such person, firm or company any assets of the Fund and shall not be liable for any loss occasioned by any acts of the person, firm or company to whom such delegation is made. The Trustees may at any time terminate such delegation.
- 57. INVESTMENT EARNINGS**
- 57.1 The Trustees shall as at the review date in each year determine the amount of the net investment earnings of the Fund for the year ending on the review date and these earnings shall include capital gains and shall be reduced by capital losses which have arisen from the realisation during that year of any of the assets of the Fund.
- 57.2 The Trustees shall on such basis as they determine cause a valuation to be made as at the review date in each year of the assets of the Fund and shall determine the net gain or loss resulting from the valuation and the whole or such part as the Trustees

determine of the net gain or loss as aforesaid shall be included in or deducted from (as the case may be) the investment earnings of the Fund for that year.

- 57.3 If the net losses for the year on the realisation of assets and those (or the part thereof as aforesaid) arising from the valuation of the assets of the Fund exceed the net investment income of the Fund for that year the net investment earnings of the Fund for that year will become a net investment loss and will be allocated by the Trustees in the same manner as applies to net investment earnings.
- 57.4 In determining the net investment earnings or losses of the Fund for any year (for the purposes of allocation in terms of this Clause) the Trustees may use a method of averaging which they consider to be appropriate in order to reduce the fluctuations in the rate of net investment earnings (or losses) from year to year and for this purpose the Trustees may obtain actuarial or other advice if they so determine.
- 57.5 The Trustees as at each review date shall allocate the net investment earnings (or loss) for the year (determined as aforesaid) between the allocated and unallocated portions of the Fund in proportion to the amounts of those respective portions of the Fund as at the previous review date.
- 57.6 Where, by agreement between the Trustees and the Members there is a shared or joint investment, the Trustees may in their absolute discretion and at any time:-
- 57.6.1 create a separate account in respect of any type or source of income (including any form of foreign sourced income and wherever from);
 - 57.6.2 on receipt of any income, credit the amount so received to that account;
 - 57.6.3 in each accounting period determine the amount and the proportions and the manner in which the Trustees shall pay, set aside any or all of the income from that account, to or from the benefit of all or any one or more of the Members and to the exclusion of others, and provided always that such discretion shall be consistent with the Standards laid down by the Regulations;
 - 57.6.4 determine the income or account against which expenditure or losses incurred in deriving the income paid into the account is to be set off.
- 57.7 Any amount paid, applied or set aside under clause 57.6 is deemed, for all purposes, to be paid, applied or set aside from that account only.
- 57.8 Without limiting the powers set out in clause 57.6 above the Trustees may in their absolute discretion, pay out of the share of corpus which would otherwise pass to a member entitled to corpus upon his or her becoming absolutely entitled as against the Trustees to any asset or entitlement forming part of an investment amount to which that member has an entitlement, any income tax or duty attributable to a capital gain as determined under Part IIIA of the Tax Act, and which arises by reason of the member becoming absolutely entitled to the asset or beneficial interest as against the Trustees.

- 57.9 The amount of the net investment earnings (or loss) which is allocated to the allocated portion of the Fund shall be allocated by the Trustees to the employees who are Members as at the review date in the proportion which their respective Members' Accumulated Benefit as at the previous review date and one half of the increase (or less one half of the decrease) in their respective Members' Accumulated Benefit during the year bear to the aggregate of those reserves and part increases (or decreases) as aforesaid and the amount so allocated to the member shall be credited (or debited) to the Member's Accumulated Benefit and shall thereby form part of (or reduce) the Member's Accumulated Benefit as at the review date.
- 57.10 The amount of the net investment earnings (or loss) which is allocated to the unallocated portion of the Fund shall be added to and form part of the unallocated portion of the Fund as at the review date.
- 57.11 In determining the net investment earnings (or loss) for the year for the purposes of this Clause the Trustees shall take into account any amounts which during the year have been credited to (or debited against) members' Accumulated Benefit where for any reason it has been necessary to determine the amount in a member's Accumulated Benefit at a date other than the review date.

58. VALUATION OF ASSETS

The Trustees may at any time cause a valuation to be made of any or all of the assets held in the Trust Fund and for the purposes of such valuation the Trustees may, after seeking the advice of a Professional Adviser if deemed appropriate, employ any formula or method which the Trustees in their absolute discretion believe to be fair and reasonable.

59. POLICIES OF INSURANCE

- 59.1 The Trustees may effect or acquire or accept an assignment of and maintain a Policy which they consider suitable for the investment of the Trust Fund or for providing benefits payable to a Member under the provisions of the Deed or for the purpose of insuring any risk or loss on such terms and conditions and for such periods as the Trustees think fit, and such Policy shall be held upon trust to be administered according to the provisions of the Deed.
- 59.2 The Trustees may enter into any contract or insurance on the life of a member of any disability policy in respect of a Member.
- 59.3 The Trustees shall have the power to continue such Policy and to discontinue surrender withdraw from assign vary or borrow on the security of such Policy.
- 59.4 The Insurer in respect of a Policy shall not be required to see to the performance of any of the trusts of this Deed.

60. LOANS TO MEMBERS

The Trustees may not grant a loan to a Member from any part of the moneys or assets of the Trust Fund.

61. MEMBERS ASSETS

The Trustees must not purchase any asset from any Member or any relative of a Member of the Fund except in those limited circumstances permissible under the SIS Act.

62. RECORDS

62.1 The Trustees shall keep or cause to be kept a register of all Members showing their full names, addresses, dates of birth and all other particulars which the Trustees deem to be necessary for the proper administration of the Fund.

62.2 The Trustees shall keep or cause to be kept and retained such other registers, records and accounts as are prescribed by the Regulations from time to time.

62.3 The Trustees shall keep or cause to be kept a Forfeited Benefits Account which shall record the receipt of and the allocation of all amounts transferred in and out pursuant to the provisions of Clause 53 of these Rules.

63. BANK ACCOUNTS

The Trustees may open maintain and close such bank accounts whether current, savings, investment or other deposit accounts and such building society accounts as they determine and generally do all such things and perform such acts as the Trustees in their absolute discretion consider appropriate in the administration of the moneys of the Trust Fund and the performance of their obligations under the Deed.

64. METHOD OF PAYING BENEFITS

64.1 The payment by the Trustees of any amount in satisfaction of a benefit to or in respect of a Member or any other person entitled thereto may be by means of an order cheque payable to such person or the bank account of such person and the payment so made shall be final and conclusive evidence that the moneys thereby paid have been paid and received by such person and all claims and demands against the Trustees in respect of the amount so paid have been absolutely satisfied and discharged.

64.2 The Trustees may require before the payment of a benefit, or any part of a benefit, such evidence as the Trustees in their absolute discretion deem to be relevant and necessary in respect of the payment of the benefit, including but not limited to evidence of the date of birth of a Member, evidence of marriage or bona fide de facto relationship in respect of a Dependant, evidence of survival in respect of a payment by Pension or annuity and evidence of death in respect of a Member.

64.3 If a person to whom the Trustees determine a benefit or any part of a benefit is to be paid has not reached the legal age of adulthood, or if in the opinion of the Trustees it would be in the best interests of the said person, the Trustees may in their absolute discretion pay and entrust all or any part of the benefit to any other company, firm or person to be applied for the benefit of the first said person, and the payment thereof shall be final and conclusive evidence that the moneys thereby paid and entrusted have been paid and received and all claims and demands against the Trustees in respect of the amount so paid have been absolutely satisfied and discharged.

64.4 The Trustees may with the agreement of a Member or beneficiary to whom a benefit is payable transfer Fund assets including investments of equivalent value to that Member or beneficiary in lieu of paying the whole or part of the amount otherwise payable under this Deed and the Rules provided the Trustees are able to satisfy the I.S.C. that the transfer will not cause the Fund to fail to satisfy the standards under the SIS Act and Regulations.

65. **ANNUAL ACCOUNTS**

The Trustees shall prepare or cause to be prepared in respect of each Fund Year:-

65.1 a statement of income and expenditure of the Fund;

65.2 details of all Member's contributions to the Fund during the Fund Year;

65.3 details of all Employer's contributions to the Fund during the Fund Year;

65.4 details of all Fund earnings and other benefits allocated to each Member's account during the Fund Year;

65.5 all other details as shall be required by the I.S.C. or the Regulations;

and copies of which shall be produced to the Principal Employer.

66. **ANNUAL RETURNS**

The Trustees shall cause to be filed with the I.S.C. (or as the I.S.C. shall direct from time to time) an annual return containing such information and in such form as is prescribed by the Regulations.

67. **TAXES**

67.1 The Trustees shall prepare or cause to be prepared such returns of income as the Commissioner of Taxation may require, and such other returns or reports to the I.S.C. and/or Government bodies as the Trustees may by the operation of any law be required so to prepare.

67.2 The Trustees may deduct from any benefit to or in respect of a Member any taxes or duties for which they are accountable and pay only the residual amount in

respect of such benefit and to account for such taxes or duties to the appropriate authorities.

- 67.3 The Trustees may deduct from any contributions to the Fund any contributions tax required by law.

68. **ADMINISTRATION EXPENSES**

All or any costs or expenses incurred in connection with the formation or administration of the Fund may be paid out of the Trust Fund in such manner as the Trustees in their absolute discretion shall decide or the Trustees may with the agreement of the Principal Employer arrange for such costs or expenses to be paid by the Principal Employer and the Employers in such manner and in such proportions as the Principal Employer shall determine.

69. **RESERVE ACCOUNT**

The Trustees may maintain such reserve account as the Trustees deem appropriate or as otherwise may be directed by the I.S.C. from time to time.

70. **AUDIT**

- 70.1 The Trustees shall appoint an approved auditor to carry out a regular audit of the accounts and records of the Fund in accordance with the Regulations.

- 70.2 An auditor so appointed shall have access to all papers, accounts, books records and documents in respect of the Fund and shall prepare a report in writing on the affairs of the Fund. The auditor shall submit to the Trustees the written report so produced and the Trustees shall give a copy of such report to the Principal Employer.

- 70.3 The auditor so appointed shall certify, in the manner required by the Regulations, that the Funds return to the I.S.C. for the year is true and fair in the auditor's opinion and according to the information and explanations given by the Trustees and as shown in the books, accounts and other relevant records of the Fund.

- 70.4 A Member shall be entitled to request a copy of the Auditors' Report and any actuarial reports in respect of the Fund.

71. **ACTUARY**

The Trustees shall appoint an Actuary for all and any purposes prescribed by the Regulations, and to complete the necessary actuarial investigation and report required by the Regulations.

72. DISCLOSURE STANDARDS

72.1 The Trustees shall disclose to the I.S.C., and to the Members, such information from time to time concerning the Fund, contributions and benefit entitlements as shall be required by the Regulations from time to time.

72.2 Without limiting the generality of the foregoing, the Trustees shall provide a written statement to each Member within six (6) months of the end of the year of income of the Fund. The statement shall set out the following information:-

72.2.1 where a Member's Accumulated Benefit on withdrawal from the Fund is based on contributions to the Fund or on those contributions plus earnings etc.

72.2.1.1 the benefits vested in the Member at the beginning of that year of income;

72.2.1.2 the benefits vested in the Member at the end of that year and the method of calculating those benefits;

72.2.1.3 the benefits that are required to be preserved, both by the Regulations and by the Trust Deed if the Member withdraws from the Fund;

72.2.1.4 contributions made by the Member during the year;

72.2.1.5 Fund earnings allotted to the Member during that year and the rate at which those earnings were allotted; and

72.2.1.6 any current death benefit applying to the Member.

72.2.2 where withdrawal benefits are based on an endowment or whole of life policy:-

72.2.2.1 the sum assured;

72.2.2.2 bonuses accruing during that year of income;

72.2.2.3 contributions made by or on behalf of the Member during that year of income; and

72.2.2.4 where withdrawal benefits are defined in terms of a Member's salary - each of the foregoing required items of information with the exception that information on Fund earnings shall not be required to be provided.

72.3 For the purposes of Clause 72.2 above, it will be the obligation of the Trustees to set out sufficient information to enable a Member to clearly understand how the amount of benefits vested in that member is arrived at or may be calculated.

- 72.4 Upon a Member leaving the Fund that Member shall be given a written statement setting out the Member's entitlements and the method of determining those entitlements. Any amounts that are required by the standards to be preserved are to be identified. Where the Member leaves the Fund otherwise than by death or retirement, the statement is also to set out the information referred to in Clause 72.2 above, in respect of the period between the end of the previous year of income and the date upon which the Member leaves the Fund.
- 72.5 Upon a Member becoming a Member of the Fund that Member is to be given a written statement setting out the kinds of benefits provided by the Fund, the conditions relating to those benefits and the method of determining benefit entitlements. Such statement shall set out sufficient information to enable the member to clearly understand the kinds of benefits provided by the Fund and the method of determining benefit entitlement thereunder.
- 72.6 Where a Member so requests the Trustees shall give to that Member, but not more than once in respect of each year of income of the Fund unless the Trustees so agree:-
- 72.6.1 a copy of such auditors' reports as are specified in the request; and
 - 72.6.2 a copy of such returns certificates and notices referred to in Sections 12 and 13 of the OSS Act (or its equivalent under the SIS Act) as are specified in the request.
73. **GOVERNMENT PROVIDED SUPERANNUATION AND INDUSTRY SCHEMES**
- 73.1 If at any time there is introduced or there are changes made to any scheme of Government provided superannuation, pensions or social insurance, whether by the Commonwealth of Australia or any State or Territory of the Commonwealth, as a result of which Members or Dependants of Members may become eligible to participate in such scheme, the Principal Employer may by notice in writing direct the Trustees to make such variations to the benefits payable and contributions under this Deed, from a date to be nominated in the said notice, as:-
- 73.1.1 would not reduce the benefits payable in respect of a Member or Dependants by an amount which in the opinion of the Trustees would exceed the value of the Government provided superannuation, pensions or social insurance; and
 - 73.1.2 would not prejudicially affect the existing rights in respect of a Member arising from contributions made to the Fund prior to the date nominated in the said notice; and
 - 73.1.3 shall be approved in writing by the I.S.C.
- 73.2 If in any period during which a contribution is to be made to the Fund the Employer for any reason makes or is required to make a contribution, subscription or payment of any kind to any scheme of superannuation, pension fund or employer-financed insurance for Members or Dependants of Members, whether or

not such scheme is managed, promoted or supported by any industrial body or union, or association or any group of such bodies, unions or associations, the Employer shall unless the Employer resolves otherwise, reduce the contribution to be made to the Fund, by an amount equal to the contribution, subscription or payment made or required to be made to the said scheme of superannuation, pension fund or employer-financed insurance, and the Principal Employer may thereupon direct the Trustees to make such variations to the benefits payable under this Deed as may be appropriate in respect of the relevant Members or Dependants of the Members.

73.3 Notwithstanding the application of the immediately preceding paragraph, where the benefits being provided under the Fund include an insured sum to be paid in the event of death or Permanent Disablement of a Member, the Employer shall unless the Employer resolves otherwise, make a contribution of not less than the sum needed to enable the Trustees to pay any premium due for payment to the Insurer in respect of the insured event.

74. THE DEED AND AMENDMENTS TO THE DEED

74.1 A copy of the Deed shall be kept by the Trustees or the Principal Employer for inspection by any Member at all times and by any eligible employee making application to become a Member of the Fund.

74.2 The Trustees shall be entitled at any time and from time to time with the written consent of the Principal Employer, by instrument in writing executed by the Trustees and all of the Employers, (and subject to such notice to Members as required by Relevant Law), to alter add to or repeal all or any of the provisions of the Deed:-

74.2.1 to enable the Fund to comply with any law, regulation, custom or practice of the Commonwealth of Australia or any State or Territory thereof in relation to superannuation, pensions, insurance, employee trust funds or employee benefits generally or otherwise; or

74.2.2 to enable the Trustees to reduce or vary the benefits for the purposes of Clause 32 of these Rules; or

74.2.3 for any other purpose PROVIDED THAT no such alteration addition or repeal shall operate so as to:-

74.2.3.1 vary the objects of the Deed; or

74.2.3.2 remove or diminish or purport to remove or diminish those benefits vested in a member;

74.2.3.3 enable any preserved benefit to be paid out of the Fund prior to the retirement, resignation, dismissal or death of the Member; or

74.2.3.4 prejudicially affect the existing rights in respect of any Member at the date from which such alteration, addition or repeal is to be effective unless -

74.2.3.4.1 all of the Members shall consent thereto in writing; or

74.2.3.4.2 approval to same is first granted in writing by the I.S.C.;

74.2.3.5 impose any further liability on any employee entitled to participate in the Fund, without that employee's consent.

74.3 The Trustees shall forthwith notify every Member of any alteration to or addition to or repeal of the provisions of the Deed as herein provided and explaining the nature, purpose and effect of any such alteration addition or repeal (as the case may be), and such other details as shall be required by the Regulations, but any accidental failure or omission to give any such notification or its non-receipt by a Member shall not affect the validity of the relevant alteration addition or repeal.

75. TERMINATION OF THE FUND

75.1 In the event of the Principal Employer giving notice in writing to the Trustees of its desire to terminate the Fund and notice of which shall be given in writing to Members by the Trustees, or in respect of circumstances in which the rule against perpetuities applies, upon the expiration of eighty (80) years after the Commencement Date whichever event shall first occur, the Trustees shall continue to administer the Fund in accordance with the provisions of this Deed except that:-

75.1.1 no further contributions except contributions due on or before the date determined for termination under this Clause, shall be accepted in respect of any Member; and

75.1.2 no new Members shall be admitted to the Fund;

and when all benefits have been paid, transferred or applied in accordance with the provisions of the Deed the Fund shall be deemed to be dissolved and the Deed shall cease to have effect; provided always that in respect of circumstances in which the rule against perpetuities applies, if at the expiration of the said eighty (80) year period and such further period (if any) as may be lawful there shall be any benefit not paid transferred or applied, the same shall be paid transferred or applied forthwith to the persons entitled thereto and the Fund shall be deemed to be dissolved and this Deed shall thereupon cease to have effect.

75.2 In the event that there remains no Member and the Trustees determine that there remains no liability to pay any benefit, debt, charge, fee or expense of any kind in respect of the Fund, and there remains in the Trust Fund any amount not applied or required for any other purpose, the Trustees shall after the expiry of a period of not less than one (1) year, and not more than three (3) years pay or apply the amount remaining for the benefit of any one or more persons who had been

Members or Dependants of Members and in such shares and proportions and in such manner as the Trustees subject to the directions of the I.S.C. shall determine and on the completion of such payments or application the Fund shall be deemed dissolved and this Deed shall thereupon cease to have effect.

76. NOTICES CONCERNING BREACHES

The Trustees shall give notices of all breaches of the Regulations and of all significant adverse events affecting the Fund to the I.S.C. in accordance with the Regulations.

77. OTHER NOTICES

- 77.1 Any letter, notice or other document to be served on the Trustees shall be deemed to have been duly served if delivered personally or transmitted by fax or sent by prepaid post addressed to the Trustees at any registered office of the Principal Employer.
- 77.2 Any letter, notice or other document to be served on a Member or Dependant or other person shall be deemed to have been duly served if delivered personally to him or sent by prepaid post to him at the address last known to the Trustees.
- 77.3 Any letter, notice or other document sent by fax or by post shall be deemed to have been served on the day when in the normal course of post it should have been delivered to the address and in the case of a fax immediately upon completion of the transmission of same.