

Level 4

141 Queen Street
Brisbane QLD 4000

GPO Box 2498
Brisbane QLD 4001

Phone: 07 3210 1180

Fax: 07 3211 8725

Email: foxlaw@bigpond.com.au

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SUPERANNUATION FUND DEED

"Beecham Family Superannuation Fund"

INDEX

1.	Interpretation	3
2.	Applicable Law	8
3.	The Fund.....	9
4.	Purpose of Fund	9
5.	Sub Funds	9
6.	Trustees	10
7.	Admission of Member	12
8.	Contributions by other than Members.....	12
9.	Contributions by Members	13
10.	Investments	13
11.	Insurance and Annuities	14
12.	Forfeiture of Benefits.....	15
13.	Transfer of Benefits to and from Other Funds	16
14.	Benefits.....	16
15.	Member's Death.....	17
16.	Member's Rights.....	18
17.	Common Law Rights of Members.....	19
18.	Records Accounts and Auditing	19
19.	Application of Reserve Account	20
20.	Allocation of Profits or Losses	21
21.	Liability and Indemnity of Trustee and Members	22
22.	Trustee as Member's Attorney	22
23.	Trust Deed Available for Inspection	22
24.	Variation of Trust Deed	22
25.	Dissolution of the Fund	23
26.	Powers of Trustee	23
27.	Applicable Law	25

SUPERANNUATION FUND DEED

THIS DEED is made on the date set out in Part One of the Schedule.

BY: The person or persons described in Part Two of the Schedule (the Trustee)

INTRODUCTION:

1. This introduction relies upon the definitions in the Deed;
2. The Trustee wishes to establish a superannuation fund to provide benefits to members of the fund and dependents of members in accordance with the Deed and the Applicable Law;
3. The superannuation fund will be an *allocated fund* as distinct from a *defined benefits fund*.

THEREFORE THE TRUSTEE DECLARES AND COVENANTS THAT:

1. Interpretation

1.1. In the Deed, except to the extent that the context otherwise requires:

1.1.1. "Applicable Law" means, as the context and time requires:

- 1.1.1.1. The Occupational Superannuation Standards Act ("OSSA") and regulations;
- 1.1.1.2. The Superannuation Industry (Supervision) Act ("SISA") and regulations;
- 1.1.1.3. The Income Tax Assessment Act 1936 and regulations;
- 1.1.1.4. The Income Tax Assessment Act 1997 and regulations; and
- 1.1.1.5. Any other law or requirement that the Trustee determines to be applicable or relevant in relation to the Fund for the purposes specified in Clause 2;

1.1.2. "Actuary" means a person being a member of the Institute of Actuaries and appointed by the Trustee as actuary for the Fund;

1.1.3. "Allocated Pension" means an Allocated Pension as defined in Part 4 of the Schedule;

1.1.4. "Allocated Pension Account" means an account established pursuant to Clause 18 in which is recorded that part of the Member's Benefit to be used to pay an Allocated Pension to the Member or a Reversionary Beneficiary;

1.1.5. "Approved Fund" means a superannuation fund, approved deposit Fund, eligible roll-over fund, retirement savings account, or other approved fund including a pension fund or annuity arrangement which can accept a transfer from the Fund of a Member's Benefit or which may transfer a Member's Benefit to the Fund without breach of the Applicable Law;

1.1.6. "Asset-Test Exempt Pension" means a Pension Benefit that is exempt or excluded from the *assets test* under the Social Security Act 1991 (C'th) or the Veterans Entitlement Act 1986 (C'th) (and any applicable regulations made under those acts), as relevant;

- 1.1.7. "Auditor" means a person who satisfies the requirements of the Applicable Law and the Authority to be an auditor of the Fund;
- 1.1.8. "Authority" means the person or body which has responsibility for administration of the Act as it relates to the Fund and shall include, as the case may require, the Commissioner of Taxation and the Insurance and Superannuation Commissioner;
- 1.1.9. "Benefit" means any amount paid or payable by the Fund to or in respect of a Member as a Pension Benefit, a Lump-Sum Benefit or any Benefit under the provisions of this Deed;
- 1.1.10. "Beneficiary" means a Dependant, a trustee for a Dependant, a Member's legal personal representative, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits accruing due to a Member's participation in the Fund;
- 1.1.11. "Clause" means a clause in this Deed;
- 1.1.12. "Complying Pension" means a Complying Pension as defined in Part 4 of the Schedule;
- 1.1.13. "Complying Pension Account" means an account established pursuant to Clause 18 in which is recorded that part of the Member's Benefit to be used to pay a Complying Pension to the Member or a Reversionary Beneficiary;
- 1.1.14. "Compulsory Benefit Age" means upon the death of a Member or the age at which, under the Applicable Law, benefits are required to be paid to a Member;
- 1.1.15. "Constitutional Corporation" means a body corporate that is:
- 1.1.15.1. a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
 - 1.1.15.2. a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51 (xx) of the Constitution);
- 1.1.16. "Dependant" includes any one or more of the following:
- 1.1.16.1. the Spouse of the Member;
 - 1.1.16.2. the widow or widower of the Member;
 - 1.1.16.3. any child of the Member and any child of the Member born within 10 months after the death of the Member; and
 - 1.1.16.4. any other person who, in the opinion of the Trustee, is at the relevant date (or in the case of a deceased Member was at the time of that Member's death) wholly or partially financially dependent upon the Member.
- 1.1.17. "Disqualified Person" means:
- 1.1.17.1. Where the person is a natural person, a person who at any time, has been convicted of an offence against or arising out of a law

of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or in relation to whom a civil penalty order has been made or who is an insolvent under administration; and

1.1.17.2. Where the person is a body corporate:

1.1.17.2.1. the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a Disqualified Person and the body corporate knows, or has reasonable grounds to suspect, that:

1.1.17.2.1.1. the person is not eligible under subsection 126B(1) of SISA to apply for a declaration under the SISA waiving his or her status as a Disqualified Person; or

1.1.17.2.1.2. the person is so eligible but will not make an application under subsection 126B(3) of SISA within the period allowed for the purpose; or

1.1.17.2.2. a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or

1.1.17.2.3. an official manager, deputy official manager or administrator has been appointed in respect of the body; or

1.1.17.2.4. a provisional liquidator has been appointed in respect of the body; or

1.1.17.2.5. the body has begun to be wound up.

1.1.18. "Employer" means an employer under the Applicable Law;

1.1.19. "Employer Contributions" means contributions to the Fund in respect of a Member by the Employer or any previous Employer of the Member;

1.1.20. "Flexi Pension" means a Flexi Pension as defined in Part 4 of the Schedule;

1.1.21. "Flexi Pension Account" means an account established pursuant to Clause 18 in which is recorded that part of the Member's Benefit to be used to pay a Flexi Pension to the Member or a Reversionary Beneficiary;

1.1.22. "Fund" means the fund constituted by this Deed;

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

1.1.24. "Life Expectancy", in relation to a Member, is the number of years determined in accordance with the meaning of that term under the Social Security Act 1991 and, if the determined number of years is not a whole

number and the Member so elects, is rounded up to the next whole number of years;

- 1.1.25. "Lump-Sum Benefit" means a Member's Benefit or any part of it paid or provided other than as a Pension Benefit;
- 1.1.26. "Member" means a person who has been accepted by the Trustee as a member of the Fund and where the context requires but subject to this clause includes a former Member and a Beneficiary. The Trustee may, subject to the Applicable Law, determine that a person is not a Member notwithstanding that that person may be entitled to any benefit in or from the Fund;
- 1.1.27. "Member's Accounts" means the accounts prepared pursuant to Clauses 18.1.2 and 18.2;
- 1.1.28. "Member's Benefit" in respect of a Member is the net amount standing to the Member's credit in the Member's Account plus the value (if any) at that time of any policy of insurance owned by the Trustee and paid for out of that Member's Account and includes any amount paid or payable, whether subject to any contingency or otherwise, by the Trustee out of the Fund pursuant to the Deed to or in respect of the Member;
- 1.1.29. "Non-Member Contributions" means contributions to the Fund in respect of a Member by any person other than the Member;
- 1.1.30. "Non-Vested Employer's Contribution Account" means an account established pursuant to Clause 18 in which is recorded the Employer Contributions and any credits and debits attributable to those contributions which are not Vested Benefits;
- 1.1.31. "Old Age Pension" has the same meaning as in SISA;
- 1.1.32. "Participating Employer" means an Employer from whom the Trustee accepts contributions to the Fund;
- 1.1.33. "Payment Event" means the time at which any Member's Benefit is paid or is commenced to be paid to a Member;
- 1.1.34. "Pension" means an annuity or pension contemplated by the Applicable Law;
- 1.1.35. "Pension Age" means *Pension Age* as defined in the Social Security Act 1991 or the Veterans Entitlement Act 1986, as relevant or, subject to the Applicable Law, such other age determined by the Trustee;
- 1.1.36. "Pension Benefit" means a Pension or any part of a Pension which can be paid or provided by the Fund to a Member under the Applicable Law;
- 1.1.37. "Pension Account" means the Allocated Pension Account, Complying Pension Account, Flexi Pension Account, as the case may be, or such other account maintained by the Trustee in which is recorded that part of the Member's Benefit to be used to pay any other Pension to the Relevant Beneficiary;
- 1.1.38. "Permanently Disabled" and "Permanent Disablement" means:
 - 1.1.38.1. in relation to a Member who has ceased gainful employment such disablement (whether physical or mental) as, in the

opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or

- 1.1.38.2. where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,

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

- 1.1.39. "Preservation Age" means the age before which benefits are prohibited from being paid to the relevant Member by the Applicable Law;
- 1.1.40. "Preserved Benefit" means any benefit which is required by the Applicable Law to be preserved for the Member in the Fund or in another fund until the Member has retired from the workforce and attained the Preservation Age or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Applicable Law;
- 1.1.41. "Qualified Person" means a person who has consented (in writing) to be a trustee of the Fund and who is not a Disqualified Person;
- 1.1.42. "RBL" means the Reasonable Benefits Limit for a Member as defined in the Applicable Law;
- 1.1.43. "Relevant Beneficiary" means the person to whom a benefit is payable being the Member or the Reversionary Beneficiary, as the case may be;
- 1.1.44. "Reserve Account" has the meaning attributed to it in Clause 18;
- 1.1.45. "Reversionary Beneficiary" means a person who succeeds a Relevant Beneficiary to the entitlement to the Pension of the relevant Beneficiary;
- 1.1.46. "Reversionary Pension" means a Pension payable to a person who succeeds a Member to the entitlement of the Member to a Pension Benefit and having the same characteristics as the Pension Benefit payable to the Member;
- 1.1.47. "Schedule" means a schedule to this Deed;
- 1.1.48. "Special Treatment Account" means an account established pursuant to Clause 18 in which is recorded the part of the Member's Benefit subject to a special requirement or concession in the Applicable Law, including, but not limited to, preservation;
- 1.1.49. "Specific Investment" means an investment made by the Trustee for a Member pursuant to Clause 10.4;
- 1.1.50. "Spouse", in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person;
- 1.1.51. "Sub Fund" means a separate fund and trust constituted under Clause 5.5;

- 1.1.52. "Superannuation Contributions Surcharge" has the meaning that it has in the Superannuation Contributions Tax (Assessment and Collection) Act 1997;
- 1.1.53. "Trustee" means the trustee for the time being of the Fund, whether original, additional or substituted;
- 1.1.54. "Vested Benefit" means any part of a Member's Benefit arising from contributions to the Fund, or to a previous superannuation fund, which is required by the Applicable Law to be vested in or payable to the Member on termination of the Member's employment (subject to any preservation requirements);
- 1.1.55. "Vested Benefits Account" means an account established pursuant to Clause 18 in which is recorded the Vested Benefits of the Member.
- 1.2. In this Deed except to the extent that the context otherwise requires:
 - 1.2.1. A reference to any person or body shall include references to its respective successors, assigns, executors and administrators.
 - 1.2.2. References to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to those items as amended, consolidated, supplemented or replaced from time to time.
 - 1.2.3. Words importing one gender include other genders and words importing the singular number include the plural and vice versa.
 - 1.2.4. Headings, marginal notes and the index (if any) to this Deed are included for ease of reference only and shall not be taken into account in the construction or interpretation of any provision of this Deed.
- 1.3. Where any question or dispute arises in respect of the Fund or in respect of interpretation of the Deed, the Trustee's decision shall be final and binding.
- 1.4. Subject to Clause 2, terms used in the Deed which are defined in SISA shall have the same meaning as in SISA unless inconsistent with the context of the Deed.
- 1.5. All provisions of this Deed shall so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect, but if any provision on its true interpretation is illegal, invalid or unenforceable, that provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character. If any such provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Deed shall not in any way be affected or impaired.

2. **Applicable Law**

- 2.1. For the purpose of enabling and, causing (if necessary):
 - 2.1.1. the Fund, the Trustee, the Member and any other relevant person (as determined by the Trustee) to comply with the Applicable Law;
 - 2.1.2. the Fund to obtain concessional tax treatment; and
 - 2.1.3. a contributor to the Fund to obtain a tax deduction for that contributor's contributions to the Fund (if the contributor requires a tax deduction);

the following provisions of this Clause 2 shall apply.

- 2.2. The provisions of this Deed shall be subject to and shall be construed as subject to the Applicable Law.
- 2.3. If a provision of this Deed is inconsistent with the Applicable Law or does not comply with the Applicable Law or requires or allows something which would be inconsistent with the Applicable Law or something which would not comply with the Applicable Law then that provision shall be deemed to be subject to the Applicable Law to the extent of any inconsistency and so as to ensure that the Deed, the Trustees, the Members and the Fund comply with the Applicable Law.
- 2.4. Where the Applicable Law requires the rules of the Fund to include any provision the Deed shall be deemed to include that provision.

3. **The Fund**

- 3.1. The Fund shall comprise all assets from time to time held by or on account of the Trustee pursuant to the Deed and shall include:
 - 3.1.1. any money or other property transferred into the Fund;
 - 3.1.2. any contribution (in money or kind) made to the Fund; and
 - 3.1.3. all profits, accumulations and earnings of the Fund.
- 3.2. The Trustee shall hold the Fund upon the trusts contained in and subject to this Deed.
- 3.3. The Fund shall commence when the first Member becomes a member of the Fund.
- 3.4. The Fund shall be known by the name specified in Part 3 of the Schedule.

4. **Purpose of Fund**

- 4.1. If the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of Old Age Pensions.
- 4.2. If the Trustee is a Constitutional Corporation the sole or primary purpose of the Fund is the provision of benefits to Members.

5. **Sub Funds**

- 5.1. The Trustee may determine to constitute separate trust funds (a Sub-Fund) and in relation to a Sub-Fund:
 - 5.1.1. The Trustee shall specify the Members of the Fund who are to be Members of the Sub-Fund;
 - 5.1.2. The Trustee may specify the name of the Sub-Fund;
 - 5.1.3. The Trustee shall determine the amounts and assets to be paid or transferred from the Fund to the Subfund and any such payment transfer or application shall be effected in accordance with the determination of the Trustee and without limitation of this Clause may be effected by the Trustee recording such payment, transfer or application in the books of account and records of the Fund and the books of account and records of the Sub-Fund;
 - 5.1.4. The Trustees may be the trustees of the Sub-Fund;
 - 5.1.5. Except to the extent otherwise determined by the Trustees at the constitution

of the Sub-Fund, the provisions of this Deed shall, with all necessary modifications, apply to the Sub-Fund as if the Sub-Fund was established by a separate Deed with like provisions.

6. Trustees

6.1. Appointment

- 6.1.1. A majority of the Members may appoint a Qualified Person as trustee of the Fund.
- 6.1.2. A majority of the Trustees may appoint a Qualified Person as trustee of the Fund.

6.2. Removal

- 6.2.1. A person shall cease to be a trustee of the Fund if:
 - 6.2.1.1. that person resigns as trustee of the Fund;
 - 6.2.1.2. that person ceases to be a Qualified Person in relation to the Fund;
 - 6.2.1.3. a majority of the Members resolve to remove that person as trustee; or
 - 6.2.1.4. the Trustees resolve to remove that person as trustee.

6.3. Decisions

- 6.3.1. Where the Trustee comprises two (2) natural persons, trustee decisions shall require unanimous approval;
- 6.3.2. Where the Trustee comprises more than two (2) persons the decision of the majority shall prevail but any deadlock shall be determined by reference to the Trustees' votes where each Trustee's vote is *weighted* as follows:
 - 6.3.2.1. Subject to Clause 6.3.2.3, if the Trustee is not a Member the Trustee shall have one (1) vote;
 - 6.3.2.2. If the Trustee is a member the Trustee shall have one (1) vote for each one dollar (\$1.00) of the value of that Trustee's Members Account in the Fund as recorded in the Fund's most recent records;
 - 6.3.2.3. If the Trustee is a personal representative of a member of the Fund the Trustee shall have one (1) vote for each one dollar (\$1.00) of the value of the deceased member's Member Account in the Fund as recorded in the Fund's most recent records.
- 6.3.3. Where the Trustees are natural persons:
 - 6.3.3.1. The Trustees may meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit;
 - 6.3.3.2. A conference at which a quorum of Trustees is present or in which a quorum of Trustees participate shall be competent to

exercise the trusts, powers and discretions vested in the Trustees and subject to any contrary resolution of the Trustees a majority of the Trustees shall constitute a quorum.

- 6.3.3.3. The trustees may confer via any means as the Trustees by resolution approve including any electronic means, and a resolution passed by such a conference shall, notwithstanding that the Trustees are not present together in the same place at the same time, be deemed to have been passed at a Trustee's meeting held on the day on which and the time at which the conference was held;
- 6.3.3.4. If there is any interruption to a conference of Trustees using any of the means set out in Clause 6.3.3.3, the Trustees have a discretion to determine that the interruption constitutes an adjournment of the conference until the time communications are reconnected or the Trustees determine.
- 6.3.3.5. Minutes of any conference or Trustees' meeting may be confirmed by facsimile, email or by such other means as the Trustees by resolution approve; and
- 6.3.3.6. If a quorum of the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees in the terms set out in the document, a resolution in those terms shall be taken to have been passed at a Trustees' meeting held at the time at which the document was signed by the last Trustee required to sign that document.

- 6.3.4. Where the Trustee comprises a corporation the decisions of that trustee shall be as determined in accordance with that corporation's constitution or governing rules or the relevant laws applicable to it.

6.4. Remuneration

- 6.4.1. The Trustee shall not be entitled to receive remuneration from the Fund for the Trustee's services unless remuneration is permitted under the Applicable Law;
- 6.4.2. Any Trustee engaged in any profession or business may, notwithstanding that person's office of Trustee, act in a professional capacity, and shall be entitled to charge and be paid all professional and other charges for any business or work or act done by that person, that person's firm or that person's company, in connection with the Fund including acts which a trustee could have done personally; and
- 6.4.3. A Trustee shall not be required to elect between professional charges and any commission or fees otherwise authorised by the Members, statute or Court of Law and subject to this Clause a Trustee shall be entitled to the Trustee's normal fees, charges and commissions including any amounts authorised by legislation.

6.5. Trustee with Interest

- 6.5.1. A Member may be a Trustee and may be an officer of a Trustee notwithstanding that Member's interest in the Fund.
- 6.5.2. The Trustee may exercise any of the Trustee's powers or rights and a Member may participate (as a Trustee or as an officer of the Trustee) in the

exercise of the Trustee's powers or rights notwithstanding that the Trustee or Member is an Employer or an associate of an Employer or has a direct or indirect interest or benefit in the exercise of the power or right.

6.6. Signing of documents by Trustees

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

7. Admission of Member

- 7.1. A person who wishes to become a Member may apply for membership of the Fund in such form as is nominated by the Trustee from time to time.
- 7.2. An applicant shall provide to the Trustee such information as the Trustee may require to consider the applicant's application.
- 7.3. The Trustee may accept an application from a person to become a Member even though that person has not complied with this Clause 7 .
- 7.4. The Trustee shall, as soon as practicable, advise the Member in writing that the member has been accepted or rejected as a Member and provide to the Member such other information, consents and authorities as shall be required by the Applicable Law.
- 7.5. Upon acceptance of an application by the Trustee, the applicant is bound by the Deed.
- 7.6. For the avoidance of doubt the Trustee may accept or reject an application to become a Member in the Trustee's absolute discretion.

8. Contributions by other than Members

- 8.1. Subject to Clause 8.6, an Employer, or any other person authorised by the Applicable Law to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount in cash or in kind as the contributor, in the contributor's absolute and uncontrolled discretion, determines.
- 8.2. Non-Member Contributions shall be credited to such of the Member's Accounts as is appropriate.
- 8.3. This Clause does not apply to contributions made by a Member for that Member.
- 8.4. At the time of making contributions to the Fund, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member, and whether the contributions are made (if such be the case):
- 8.4.1. Pursuant to an industrial award or agreement; and/or
- 8.4.2. In lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.
- 8.5. Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
- 8.6. The Trustee may refuse to accept any contribution to the Fund or any payment of money or transfer of property to the Fund.

9. Contributions by Members

- 9.1. Subject to Clause 8.6, a Member may contribute to the Fund such amount as the Member (in the Member's absolute discretion), determines.
- 9.2. The Employer may, if authorised by the Member, deduct contributions from the Member's salary and remit them to the Trustee on behalf of the Member. At the time of paying the Member's contribution to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.
- 9.3. Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
- 9.4. The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member.
- 9.5. The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Clause 9.2 from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice.

10. Investments

10.1. Investment Power

Subject to the Applicable Law, the Trustee may invest the whole or any part of the money or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.

10.2. Types of Investments

Without limiting the generality of Clause 10.1 and subject to the Applicable Law the Trustee may invest either directly or indirectly in:

- 10.2.1. investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- 10.2.2. the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- 10.2.3. a deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on terms as the Trustee, in its absolute discretion determines;
- 10.2.4. shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- 10.2.5. units or sub-units of any unit trust; and
- 10.2.6. bills of exchange and other negotiable instruments.

10.3. Variation of investments

The Trustee has power to vary, transpose and replace investments in a manner it

determines without being responsible for loss occasioned by so varying, transposing or replacing.

10.4. Particular investments for particular members

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

10.5. Investment Choice

10.5.1. The Trustee may offer a Member a choice of 2 or more investment strategies from which the member may choose a strategy or combination of strategies for the investment of that part of the Fund which represents the Member's Benefit. This process will be referred to as "investment choice".

10.5.2. The Trustee shall hold particular investments solely for a Member or group of Members, in accordance with the investment strategy chosen by the Member or Members, as the case may be.

10.5.3. A Member and the Trustee may agree to a Member changing that Member's investment choice.

10.5.4. The costs and expenses associated with a Member changing that Member's investment choice shall be debited to the relevant Member's Accounts.

10.5.5. The earnings on the investments held by the Trustee as a result of the Member's investment choice shall be credited to the relevant Member's Accounts and income tax and expenses payable in respect of those investments shall be debited to the relevant Member's Accounts.

10.5.6. The Trustee shall comply with the requirements of the Applicable Law in offering investment choice to a Member.

10.6. Investment Strategy

From time to time, the Trustee shall formulate and give effect to an investment strategy in accordance with the requirements of the Applicable Law.

10.7. Agreement with investment manager

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

10.8. Custodians

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

11. Insurance and Annuities

11.1. The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability, trauma or

accident insurance in which the Trustee has a legal or equitable interest, or in payment of the consideration for an annuity.

- 11.2. The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- 11.3. The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.
- 11.4. Subject to Clause 11.5, the premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Members' Accounts in such proportions as determined by the Trustee and the proceeds of such policies shall be credited to the Members' Accounts in the same proportions as premiums for such policies were paid from those accounts except that:
 - 11.4.1. Unless otherwise determined by the Trustee, the purpose of the policies shall be to provide funds to the Trustee to meet the relevant Member's Benefit upon death or Permanent Disability of the Member.
 - 11.4.2. To the extent that the proceeds of the policy, when added to the balance of the relevant Member's Benefit, exceeds the RBL for that Member, then, unless otherwise determined by the Trustee, the proceeds of the policy equivalent to that excess shall be credited to the Reserve Account and, to that extent, the Member shall be deemed to have relinquished that part of the Member's Benefit
- 11.5. The Trustee may determine that policies be held for the benefit of the Reserve Account, in which event the premiums and other considerations shall be paid from, and the proceeds shall be paid to, the Reserve Account.

12. **Forfeiture of Benefits**

- 12.1. Subject to the Applicable Law a Member shall cease to be entitled to the Member's Benefit and the Member's Benefit shall be forfeited if (unless and to the extent that the Trustee otherwise decides):
 - 12.1.1. The Member has attempted to assign, alienate, charge or encumber all or part of the Member's Benefit (other than by a testamentary disposition or devolution);
 - 12.1.2. The Member's whereabouts cannot be traced by the Trustee for a period of three years after making reasonable enquiries;
 - 12.1.3. The Member is convicted of an offence involving fraud against a Participating Employer;
 - 12.1.4. The Member has relinquished or renounced the Member's Benefit but only to the extent of the relinquishment or the renunciation (which may take place in whole or in part);
 - 12.1.5. To the extent of the balance standing to the credit of a Pension Account, no further payments of the Pension (other than an Allocated Pension) are required to be made in accordance with the terms of the Pension;
 - 12.1.6. The relinquishment provisions of Clause 11.4.2 apply; or

12.1.7. The forfeiture provisions of Clause 15.1.6 apply.

- 12.2. Except to the extent otherwise determined by the Trustee, the amount of any forfeited benefit shall be credited to the Reserve Account. Such amount as is not credited to the Reserve Account shall be applied at the Trustee's discretion.

13. **Transfer of Benefits to and from Other Funds**

- 13.1. Where a Member requests that an amount standing to that Member's credit, or a policy of insurance, in another superannuation fund or in an approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of such amount, asset or policy to the credit of the Member's Account.
- 13.2. If any part of an amount or the value of the policy which is transferred from another superannuation fund or approval deposit fund to the Fund is a Preserved Benefit, the benefit and accretions shall not be paid prior to the Member retiring from the workforce and attaining the Preservation Age, except upon the Member's death or Permanent Disablement or in such other circumstances permitted under the Applicable Law.
- 13.3. Subject to Clause 13.4 and to the Applicable Law, the Trustee may, upon the request of a Member, transfer the whole or part of the Member's Benefit to the trustee of an Approved Fund or approved deposit fund. The Trustee may, without the request of a Member, transfer the whole of the Member's Benefit to a successor fund to the Fund where the Trustee is satisfied that the successor Fund complies with the Applicable Law. The receipt of the trustee of such other or successor fund shall be a complete discharge to the Trustee in respect of any liability to that Member (and persons claiming through that Member) in relation to the part of the benefit so transferred.
- 13.4. A transfer of any Preserved Benefit pursuant to Clause 13.3 shall not be made where the Trustee has reason to believe that the transferee fund does not or will not comply with the Applicable Law.
- 13.5. Where a period of ninety (90) days has elapsed since a Member's Benefit became payable under the Deed and the Member's Benefit has not been paid, the Trustee may pay the Member's Benefit to an eligible rollover fund.
- 13.6. The Trustee may, in its absolute discretion, transfer a Member's Benefit in accordance with Clause 13.3 or Clause 13.5 by paying the amount of the Member's Benefit, or transferring assets of the Fund equal in value to the Member's Benefit, to the trustee of the other fund.

14. **Benefits**

- 14.1. The amount of the Member's Benefit may be paid or commenced to be paid to the Member when the Member attains the Preservation Age.
- 14.2. The amount of the Member's Benefit shall be paid or commence to be paid to the Member when the Member attains the Compulsory Benefit Age.
- 14.3. To the extent permitted by the Applicable Law a Member may express a preference to the Trustee to receive the Member's Benefit by way of Lump-Sum Benefit or Pension Benefit or a mixture of both or in any other manner permitted by the Applicable Law.
- 14.4. Subject to the Applicable Law, and this Deed and having regard to the Member's preference (but not being bound by it) the Trustee may, in the Trustee's discretion, provide a Member's Benefit as one or more of the following, including by way of mixture:

- 14.4.1. a Lump Sum Benefit;
- 14.4.2. an Allocated Pension;
- 14.4.3. a Complying Pension;
- 14.4.4. a Flexi-Pension;
- 14.4.5. an annuity; or
- 14.4.6. such other form as is approved under the Applicable Law.
- 14.5. Member's Benefits may be paid in money or in any other form of property.
- 14.6. Where a Member owes money to the Trustee or to a Participating Employer, the Trustee may pay that part of the Member's Benefit as does not exceed the debt to the creditor in payment of the Member's Benefit.
- 14.7. Where a person to whom benefits are payable is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.
- 14.8. The Trustee may deduct from any benefit payable the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

15. **Member's Death**

- 15.1. Subject to Clause 15.2, upon the death of a Member, the Trustee may:
 - 15.1.1. make any determination relating to the type, amount and proportions of different components in that Member's Benefit;
 - 15.1.2. have regard to (but shall not be bound by) any nomination, direction or wish by the Member in relation to the Member's Benefit which was communicated to the Trustee (in writing) prior to the Member's death;
 - 15.1.3. pay the Member's Benefit:
 - 15.1.3.1. to any Dependant of the Member;
 - 15.1.3.2. to the Member's legal personal representative notwithstanding that there are Dependents of the Member; or
 - 15.1.3.3. in such proportions and in such manner between the Member's Dependents and the Member's legal personal representative or as otherwise authorised by the Applicable Law, as the Trustee in its absolute discretion, determines;
 - 15.1.4. pay the Member's Benefit to the Member's legal personal representative;
 - 15.1.5. pay the Member's Benefit to the nearest of kin of the Member where the Member has no legal personal representative and there are no Member's Dependents; or
 - 15.1.6. if there are no Dependents and the Member has no personal representative, forfeit the Member's benefit, in which event the Member's benefit shall be credited to the Reserve Account.

15.2. If:

15.2.1. a Member provides the Trustee with a written direction as to payment of the Member's Benefit upon the Member's death to one or more of that Member's Dependants;

15.2.2. the Member and the Trustee agree (in writing) that the written direction of the Member is *binding* in the event of the Member's death; and

15.2.3. the direction is not revoked prior to the Member's death;

the Trustee shall be bound to comply with that direction (as varied) so far as possible having regard to the Fund, the Member's Benefit, the Applicable Law and any other matter which the Trustee determines to be relevant.

15.3. For the avoidance of doubt:

15.3.1. a Member may revoke a direction by notice (in writing) to the Trustee;

15.3.2. a Member may vary or issue a new direction to the Trustee at any time;

15.3.3. the Trustee may refuse to agree that a direction is binding upon the Trustee unless and until the direction is in such form as required by the Trustee.

16. **Member's Rights**

16.1. A Member shall have no right to or interest in that Member's Benefit except as provided in this Trust Deed.

16.2. For the avoidance of doubt, the nature of a Member's Benefit pursuant to the provisions of the Deed is as follows:

16.2.1. a Member has a right to have the Fund administered according to the Deed.

16.2.2. a Member's Benefit under the Fund does not entitle the Member to any particular asset comprising, or to any particular part of, the Fund.

16.2.3. a Member does not have any proprietary, beneficial, caveatable or other interest in any asset forming part of the Trust Fund.

16.2.4. a Member does not have any proprietary, beneficial or other interest in the Fund.

16.2.5. a Member is not entitled, with all other Members, to the beneficial interest in the Fund as an entirety.

16.2.6. a Member's interest in the Fund is limited to the monetary benefits payable from the Fund at the times and subject to the conditions stipulated in the Deed.

16.3. The rights of the Members and their Dependants to receive the benefits payable under this Trust Deed shall be fully secured within the meaning of the Applicable Law.

16.4. The Trustee shall provide to the Members and prospective members, or cause the Members or prospective members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Applicable Law including prescribed information on request and information concerning significant events.

- 16.5. If the Trustee causes a person to provide a Member with such a statement, notice, document or with such information, the Trustee shall, if required by the Applicable Law, obtain from that person a written declaration stating that the person has provided the statement, notice, document or information, as the case may be, to the Member.

17. **Common Law Rights of Members**

- 17.1. The provisions of this Trust Deed shall not in any way affect the right of a Member or the Member's personal representatives or any other person to claim compensation or damages in the event of the Member being injured or dying as a result of an event arising out of or in the course of the Member's employment.
- 17.2. The Member shall not use the fact of being a Member as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

18. **Records Accounts and Auditing**

- 18.1. The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund and as required by the Applicable Law including:
- 18.1.1. Minutes in which proceedings and resolutions of the Trustee are recorded.
- 18.1.2. A Member's Account for each Member in which is recorded:
- 18.1.2.1. Contributions to the Fund by any other person in respect of that Member;
- 18.1.2.2. Contributions by that Member;
- 18.1.2.3. Profits or losses of the Fund credited or debited to such account;
- 18.1.2.4. Profits or losses on a Specific Investment credited or debited to such account;
- 18.1.2.5. Forfeited benefits credited to such account;
- 18.1.2.6. Amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity;
- 18.1.2.7. The proceeds of policies of insurance credited to such account;
- 18.1.2.8. Amounts credited to such account to pay income tax and expenses;
- 18.1.2.9. Amounts which are credited to or transferred from the Reserve Account.
- 18.1.3. A Reserve Account in respect of which:
- 18.1.3.1. Profits shall be credited in accordance with the provisions of this Deed which enable the crediting of profits to the Reserve Account.
- 18.1.3.2. Forfeited benefits shall be credited;

- 18.1.3.3. Any gifts or undesigned transfers of money or assets to the Fund, whether in the nature of income or capital, shall be credited;
 - 18.1.3.4. Forfeited benefits applied in accordance with Clause 12.2 shall be debited;
 - 18.1.3.5. Liabilities for income tax and other taxes authorised to be debited to the Reserve Account shall be debited;
 - 18.1.3.6. Payments and receipts under Clauses 11.5 and 20 shall be debited and credited;
 - 18.1.3.7. Such other taxes, charges or expenses as determined by the Trustee shall be debited;
 - 18.1.3.8. Payments under Clause 19.6 shall be debited;
 - 18.1.3.9. Amounts are credited or debited which relate to a Member's Account which are not permitted by the Applicable Law to be credited or debited to the Member's Account.
- 18.2. The Trustee may dissect any Member's Account in its absolute discretion as the Trustee sees fit into one or more Accounts including, but not limited to, the following Accounts:
- 18.2.1. Vested Benefits Account;
 - 18.2.2. Complying Pension Account;
 - 18.2.3. Flexi Pension Account;
 - 18.2.4. Allocated Pension Account;
 - 18.2.5. Non-Vested Employers Contribution Account;
 - 18.2.6. Special Treatment Account;
 - 18.2.7. Allocated Pension Account.
- 18.3. Where required by the Applicable Law, the Trustee must appoint an Auditor or an Actuary to the Fund to fulfil the requirements of the Applicable Law.

19. Application of Reserve Account

- 19.1. Subject to Clause 19.4, upon a Payment Event, the Reserve Account shall be applied to the respective Members' Accounts in proportion to the amounts standing to the credit of such Members' Accounts at the time of the Payment Event unless, or to the extent, that the Trustee, at that time, otherwise determines.
- 19.2. Subject to Clause 19.4, immediately before the winding up of the Fund, the Reserve Account:
- 19.2.1. May be applied by the Trustee for the benefit of Members or Beneficiaries in such proportions as determined by the Trustee.
 - 19.2.2. To the extent that the Trustee does not exercise the discretion under the preceding paragraph, shall be transferred to the Members' Accounts in proportion to the amounts then standing to the credit of such Members'

Accounts.

- 19.3. The Trustee shall not debit against a Pension Account (if any) any amount not being:
- 19.3.1. a payment of the relevant Pension; or
 - 19.3.2. forfeiture in accordance with Clause 12.1.5; or
 - 19.3.3. expenses in relation to the administration and investment attributable to the Pension.
- 19.4. If the Trustee resolves to treat the Members as being of more than one class for the purposes of this clause then Clause 19.2 shall operate to apply the Reserve Account equally (or in such other proportions specified by the Trustee) among the classes but within each class, as specified in Clause 19.1.
- 19.5. The accounting records of the Fund must be retained for such period required by the Applicable Law, must be kept in Australia and must be kept in the English language or in a form in which they are readily accessible and readily converted into the English language.
- 19.6. Where pursuant to the terms of a Pension, the Trustee is required to make a payment of a Pension, not being an Allocated Pension, and there is a sufficient balance standing to the credit of the Member's Pension Account, the Trustee must make the required payment from the relevant Pension Account but where the amount standing to the credit of the Pension Account is exhausted, and further payments of Pension (not being an Allocated Pension) are due, the Pension shall be paid from the Reserve Account.

20. Allocation of Profits or Losses

- 20.1. At the end of each financial year of the Fund, upon the winding up of the Fund, or whenever the Trustee determines it to be appropriate, the profits and losses arising from the investment of the Fund, less such provision for depreciation, liabilities, losses and taxation as the Trustee, in its absolute discretion, deems prudent shall be credited or debited by the Trustee to the Members' Accounts in proportion to the amounts standing to the credit of such Members Accounts at the beginning of the financial period for which the accounts are being prepared or on such other basis as the Trustee equitably determines. The Trustee may, in its absolute discretion, credit to the Reserve Account such proportion as it determines. The Trustee may make a reasonable estimate in crediting or debiting any profits or losses before final accounts are available to the Trustee for the financial period.
- 20.2. The Trustee may make a valuation of the assets of the Fund (other than policies of life insurance and annuities) after the end of each financial year of the Fund and whenever it determines in such manner as the Trustee determines and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for taxation as the Trustee, in its absolute discretion, deems to be prudent.

If the net value of the assets of the Fund determined in accordance with this Clause exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts at that date the Trustee shall, but subject to Clause 20.3 and the Applicable Law, credit the surplus or debit the deficit to the Members' Accounts in proportion to the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.

- 20.3. Subject to the Applicable Law the Trustee may, in its absolute discretion, credit or debit to the Reserve Account such proportion as it determines of the amount that

would otherwise be credited or debited to the Member's Accounts.

- 20.4. The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a Benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under this Clause 20.1 or Clause 20.2 to the date on which the benefit is being paid.

21. **Liability and Indemnity of Trustee and Members**

- 21.1. The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:
- 21.1.1. Dishonest;
- 21.1.2. Attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee; or
- 21.1.3. Contraventions of *civil penalty provisions* under SISA.
- 21.2. Except where, and to the extent that, the Trustee may be personally liable pursuant to Clause 21.1, the Trustee shall be indemnified and reimbursed out of the Fund for any costs, expenses, claims, liability and damages which the Trustees may pay or incur in or about the administration of the trusts, authorities, powers and discretions contained in the Deed.
- 21.3. None of the Members (other than in their capacities as Trustees or directors of a Trustee) shall be liable for any action taken or omitted in administering the Fund.
- 21.4. Where there is more than one Trustee, a Trustee shall not be bound to take proceedings against any other Trustee for any breach or alleged breach of trust.
- 21.5. All persons claiming any beneficial interest in, over or upon the property subject to this Trust shall be deemed to take with notice of and subject to the protection hereby conferred upon the Trustee.

22. **Trustee as Member's Attorney**

- 22.1. Each Member irrevocably appoints the Trustee as that Member's attorney to execute and sign all such deeds and instruments and do all such things the Trustee determines to be necessary or desirable in administering the Fund.

23. **Trust Deed Available for Inspection**

- 23.1. A copy of this Trust Deed shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.
- 23.2. If required by the Applicable Law, the Trustee shall provide a Member with a copy of this Trust Deed.

24. **Variation of Trust Deed**

- 24.1. The Trustee may at any time and from time to time, vary, add to or rescind all or any of the provisions from time to time of the Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained in the Deed and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Applicable Law or if it has the effect of reducing the amount of a benefit that is, or may become, payable in relation to a period before the date of the variation, addition or rescission unless:

- 24.1.1. the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
 - 24.1.2. the reduction is required to enable the Fund to comply with the Applicable Law; or
 - 24.1.3. the Member so affected consents in writing of the reduction; or
 - 24.1.4. the Authority approves in writing of the reduction; or
 - 24.1.5. the variation is permitted or required by the Applicable Law.
- 24.2. As soon as practicable after a provision of the Deed is varied, added to or rescinded, the Trustee shall give to a Member whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Applicable Law, written advice that complies with the Applicable Law and which explains the nature and purpose of the variation, addition or rescission and the effect of the variation, addition or rescission on the Member's entitlements or rights.

25. Dissolution of the Fund

- 25.1. When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund and shall pay or transfer to the Members or former Members, benefits in accordance with the provisions of this Deed, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment and transfers shall be accepted by Members and former Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with this Deed.
- 25.2. If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependants or the Participating Employers in such proportions as the Trustee determines to be equitable.
- 25.3. Notwithstanding anything contained in this Clause, the Trustee shall not, in the case of a Preserved Benefit, pay or transfer the Benefit to a Member until the Member attains the Preservation Age, except in the event of that Member's earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Applicable Law.

26. Powers of Trustee

- 26.1. The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted in this Deed and conferred on trustees by statute and general law, exercise any of the following powers:
 - 26.1.1. to pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund.
 - 26.1.2. to pay out of the Fund expenses incurred in:
 - 26.1.2.1. providing for the secretarial work required for proper record keeping and administration to be performed;
 - 26.1.2.2. having the accounts of the Fund audited;
 - 26.1.2.3. having taxation returns and Government returns prepared; and

- 26.1.2.4. engaging any person the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- 26.1.3. to enter into contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- 26.1.4. to hold any asset of the Fund in the name of any nominee of the Trustee on such terms as determined by the Trustee;
- 26.1.5. to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on any terms and conditions the Trustee in its absolute discretion, determines and the Trustee will not be responsible for any loss incurred as a result of that delegation;
- 26.1.6. to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and pay out of the Fund the fees payable to those advisers;
- 26.1.7. to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
- 26.1.8. to open and maintain all bank accounts as the Trustee determines;
- 26.1.9. to sell the assets of the Fund by private sale or public auction, for cash or on terms and in any other manner and on any other terms the Trustee determines;
- 26.1.10. to borrow any sum of money for the purposes permitted by the Applicable Law and secure the repayment of that money in any manner and on any terms and conditions and at a rate of interest the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund. No lender will be concerned to inquire whether the necessity for any borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- 26.1.11. to elect that the Fund become a regulated superannuation fund under SISA;
- 26.1.12. to act on a direction given by a Court or the Commissioner of the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act, 1993*;
- 26.1.13. to comply with covenants of trustees imposed by the Applicable Law;
- 26.1.14. to do those things permitted or required by the Applicable Law; and
- 26.1.15. generally to do all things and perform all acts the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed.
- 26.2. Any discretion, power, right or consent on the part of or by the Trustee or a delegate of the Trustee, in relation to the Fund may be exercised or given as follows:
 - 26.2.1. by notice in writing;
 - 26.2.2. by deed;

- 26.2.3. by memorandum or minute;
 - 26.2.4. by oral declaration of the Trustee, or where the Trustee is a company by oral declaration of a director of that company, made in the presence of a justice of the peace, a commissioner for declarations, a solicitor or an accountant;
 - 26.2.5. where the Trustee is a company, by a resolution of its members in general meeting or by a resolution of its directors or governing body.
- 26.3. All powers and discretions conferred upon the Trustee by this deed may be exercised notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct, indirect, or personal interest, whether as shareholder, director, member, or partner of any company or partnership or otherwise in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee is the sole Trustee of the Fund.
- 26.4. The Trustee may delegate to any person such of the Trustee's powers or discretions as the Trustee may in its absolute discretion thinks fit including but without limiting the generality of the foregoing the appointment of a delegate or delegates as its attorney or attorneys either in a general or limited capacity.

27. Applicable Law

- 27.1. The Deed shall be governed by and construed in accordance with the law of the location specified in Part Five of the Schedule.

THE SCHEDULE

PART ONE:

28. "Allocated Pension" means:

- 28.1. a Pension (or such part of a Pension):
 - 28.1.1. where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Relevant Beneficiary;
 - 28.1.2. where neither the capital value nor the income from the Pension can be used as security for a borrowing;
 - 28.1.3. that is paid at least annually;
 - 28.1.4. where the payments in a year, except a payment by way of commutation are not larger or smaller in total then, respectively, the maximum and minimum amounts prescribed in Schedule 1A of the SISR; and
 - 28.1.5. which otherwise complies with Regulations 1.06(4) and (5) of the SISR and the Applicable Law; or
 - 28.1.6. a Pension which otherwise complies with such parts of the Applicable Law as govern allocated pensions;

29. "Complying Pension" means;

- 29.1. a Pension:

- 29.1.1. that is paid at least annually throughout the life of a Member and if there is a

Reversionary Beneficiary:

- 29.1.1.1. throughout the Reversionary Beneficiary's life; or
- 29.1.1.2. if any Reversionary Beneficiary to whom a Pension is payable is a child of the Member or of a former Reversionary Beneficiary under the Pension - until his or her 16th birthday; or
- 29.1.1.3. if the person referred to in the previous paragraph is a full-time student at age 16 - until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner);
- 29.1.2. where the size of the payments of benefit in a year is fixed in amount subject to variation in accordance with a determination of the Actuary;
- 29.1.3. which, if indexed, is indexed in accordance with the Applicable Law;
- 29.1.4. which does not have a residual capital value;
- 29.1.5. which cannot be commuted except:
 - 29.1.5.1. if the commutation is made within 6 months of the commencement day of the Pension;
 - 29.1.5.2. if the commutation is made within 10 years of the commencement day of the Pension to the benefit of a Reversionary Beneficiary on the death of the Member;
 - 29.1.5.3. where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity under the Applicable Law; or
 - 29.1.5.4. to pay a superannuation contributions surcharge;
- 29.1.6. which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
- 29.1.7. where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
- 29.1.8. where neither the capital value nor the income from the Pension can be used as security for a borrowing; and
- 29.1.9. otherwise complies with Regulation 1.06(2) and (3) of the SISR and the Applicable Law; or
- 29.2. A Pension:
 - 29.2.1. that commences after 20 September, 1998;
 - 29.2.2. in respect of which the Member became entitled to be paid the pension on or after the day the Member became of Pension Age;
 - 29.2.3. that is paid at least annually to the Member or to a Reversionary Beneficiary:
 - 29.2.3.1. if the Life Expectancy of the Member on the commencement

- day is less than 15 years - throughout a period equal to the Member's Life Expectancy or such other period permitted by the Applicable Law; or
- 29.2.3.2. if the Life Expectancy of the Member on the commencement day is 15 years or more - throughout a period that is not less than 15 years but not more than the Member's Life Expectancy or such other period permitted by the Applicable Law;
- 29.2.4. the total amount of the payment made (not taking commuted amounts into account):
 - 29.2.4.1. in the first year after the commencement day is fixed and that payment relates to the period commencing on the day when the Member became entitled to the Pension under the Deed; and
 - 29.2.4.2. in a subsequent year does not fall below the total amount of the payment made in the immediately preceding year (the previous total) and does not exceed the previous total which, if indexed, is indexed in accordance with the Applicable Standards;
- 29.2.5. which does not have a residual capital value;
- 29.2.6. which cannot be commuted except:
 - 29.2.6.1. within 6 months of the commencement day of the Pension;
 - 29.2.6.2. by payment, on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member;
 - 29.2.6.3. by payment, on the death of a Reversionary Beneficiary, to the benefit of another Reversionary Beneficiary, or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
 - 29.2.6.4. where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity under the Applicable Law; or
 - 29.2.6.5. to pay a superannuation contributions surcharge;
- 29.2.7. which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
- 29.2.8. which cannot be transferred to a person except:
 - 29.2.8.1. on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member; or
 - 29.2.8.2. on the death of a Reversionary Beneficiary, to another Reversionary Beneficiary or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
 - 29.2.8.3. where neither the capital value nor the income from the Pension can be used as security for a borrowing; and

29.2.8.4. otherwise complies with Regulation 1.06 (7) of the SISR and the Applicable Law; or

29.3. A Pension which otherwise complies with those parts of the Applicable Law that govern complying pensions;

provided that:

29.4. If the Relevant Beneficiary is in receipt of a benefit under the *Social Security Act 1991* or the *Veterans Entitlement Act 1986* the Pension complies with that act (as appropriate) to the intent and so as to ensure that the Pension qualifies as an Asset Test Exempt Pension;

30. "Flexi Pension" means:

30.1. a Pension (or any part of a Pension);

30.1.1. where the Pension is fixed in amount unless otherwise provided in this Deed;

30.1.2. that commences after 1 July 1994;

30.1.3. which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;

30.1.4. where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of the Member or of another Reversionary Beneficiary;

30.1.5. where neither the capital value nor the income from the Pension can be used as security for a borrowing;

30.1.6. except in relation to payments by way of commutation for superannuation contributions surcharge, variation in payment from year to year does not exceed, in any year, indexation in accordance with the Applicable Law; and

30.1.7. that is paid at least annually;

30.1.8. except in relation to payments by way of commutation, for superannuation contribution surcharge, the commutation is limited by the pension valuation factor prescribed in Schedule 1B of the SISR; and

30.1.9. otherwise complies with Regulation 1.06 (6) of the SISR and the Applicable Law; or

30.2. a Pension which otherwise complies with such parts of the Applicable Law as govern such pensions;

PART TWO:

Date:

_____ 2005

PART THREE:

Trustee:

Stephen Trevor Beecham and Joanne Valerie Beecham

PART FOUR:

Name of Superannuation Fund:

Beecham Family Superannuation Fund

PART FIVE;

Applicable Law:

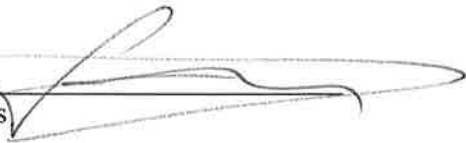
Queensland

EXECUTED AND DELIVERED AS A DEED:

SIGNED SEALED AND DELIVERED by
Stephen Trevor Beecham on the 18 day
of MAY 2005 in the
presence of:

)
)
)
)



Witness 

SIGNED SEALED AND DELIVERED by
Joanne Valerie Beecham on the 18th day
of May 2005 in the
presence of:

)
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)
)



Witness 