

BRIAN GEORGE OSBORN

MAUREEN JEAN OSBORN

("the Trustees")

MBO SUPERANNUATION FUND

Ref: KMA:

■ PHILLIPS FOX ■
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PERTH 6000
WESTERN AUSTRALIA

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SUPERANNUATION TRUST DEED FOR GAINFULLY EMPLOYED PERSONS
MBO SUPERANNUATION FUND

THIS DEED is made the 20 day of April 1995 by:-

1. **PARTIES**

BRIAN GEORGE OSBORN and MAUREEN JEAN OSBORN both of 6 Bretby Close, Carine, Western Australia ("the Trustees")

2. **BACKGROUND**

2.1 The Trustees have determined to establish and maintain an indefinitely continuing superannuation fund (hereinafter called "the Fund") to be known by the name set forth in the First Schedule with the primary object of providing fully secured superannuation benefits as old age pensions for the gainfully employed person or persons named in the First Schedule as the members of the Fund and who will henceforth be beneficiaries of the Fund ("the Members") and the Dependants of the Members.

2.2 The Trustees agree to conduct the Fund as a complying and regulated superannuation fund pursuant to the provisions of the Superannuation Industry (Supervision) Act 1993, and the Regulations thereunder, as amended from time to time.

2.3 The Trustees will act as the first trustees of the Fund but subject always to the provisions of the Rules.

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 pension 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 them or any of them as set out in the Rules.

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, and which Rules form part of this Deed.

5. **COMMENCEMENT OF FUND**

The Fund shall be established and maintained as an indefinitely continuing fund to provide old age pensions and ancillary benefits for gainfully employed members, and shall commence from the commencement date set forth in the Second Schedule.

6. **THE TRUSTEES**

The Trustee or Trustees of the Fund for the time being 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 Trustees 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 in accordance with the Rules.

9. **COVENANTS**

The Trustees undertake to abide by the covenants to be observed by trustees of regulated superannuation entities as set out in the Superannuation Industry (Supervision) Act 1993 as amended from time to time, including the covenants currently set out in section 52(2) of that Act.

10. **EXCLUDED FUND**

The Trustees intend to conduct the Fund as an excluded superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 as amended from time to time.

11. **TRUSTEE'S COVENANT**

In pursuance of the objects of this Deed and for the purpose of carrying those objects into effect the Trustees now and in the future covenant to perform and observe the provisions of this Deed.

EXECUTED as a Deed.

FIRST SCHEDULE

Name of Fund:

MBO Superannuation Fund.

Name and Address of First Member of the Fund

Brian George Osborn~~e~~, 6 Bretby Close, Carine WA 6020

Name and Address of Additional Members of the Fund

SECOND SCHEDULE

Commencement Date of the Fund

The 20th day of April 1994.

Entry Date

In respect of the Member or Members of the Fund named in the First Schedule, the entry date is the Commencement Date of the Fund. Future Members will be admitted on such dates as are determined by the Trustees.

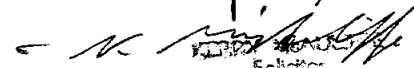
Retirement Date

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 regulated funds pursuant to the provisions of Relevant Law.

EXECUTION BY TRUSTEES:

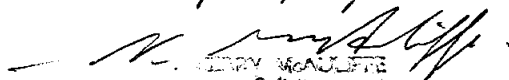
SIGNED by the said
BRIAN GEORGE OSBORNE
in the presence of:

) 


N. McAULIFFE
Solicitor
Phillips Fox
1 Wilkes Street
Furness WA 6009

SIGNED by the said
MAUREEN JEAN OSBORNE
in the presence of:

) 


N. McAULIFFE
Solicitor
Phillips Fox
1 Wilkes Street
Furness WA 6009

THE RULES
MBO SUPERANNUATION FUND
INDEX

<u>CLAUSE</u>	<u>CAPTION</u>	<u>PAGE NO.</u>
1.	DEFINITIONS	8
2.	INTERPRETATION	13
3.	LAW	14
4.	DISPUTES	14
5.	SEVERABILITY	14
6.	THE OBJECTIVES OF THE TRUST	14
7.	APPOINTMENT AND REMOVAL OF THE TRUSTEES	15
8.	MEETINGS OF THE TRUSTEES	16
9.	POWERS AUTHORITIES AND DISCRETIONS OF THE TRUSTEES	16
10.	PROFESSIONAL ADVISERS	17
11.	LEGAL PROCEEDINGS	17
12.	SIGNING OF DOCUMENTS BY THE TRUSTEES	17
13.	POWER OF ATTORNEY	17
14.	REMUNERATION OF THE TRUSTEES	17
15.	PROTECTION OF THE TRUSTEES	18
16.	MEMBER'S RIGHTS AGAINST AN EMPLOYER	18
17.	EMPLOYER'S RIGHTS TO DETERMINE EMPLOYMENT	18
18.	LIENS OVER BENEFITS	18
19.	ADMISSION OF ASSOCIATED EMPLOYERS	19
20.	WITHDRAWAL OF ASSOCIATED EMPLOYERS	19

21.	FORM OF APPLICATION	20
22.	ACCEPTANCE OR REJECTION BY THE TRUSTEES	20
23.	ELIGIBLE PERSONS	20
24.	CATEGORIES OF MEMBERSHIP	20
25.	CONTRIBUTIONS TO THE FUND	20
26.	CONTRIBUTIONS BY AN EMPLOYER	21
27.	CONTRIBUTIONS BY THE MEMBERS	21
28.	TERMINATION OR SUSPENSION OF EMPLOYER CONTRIBUTIONS	22
29.	REDUCTION OR LIMITATION OF EMPLOYER CONTRIBUTIONS	22
30.	REDUCTION OR VARIATION OF BENEFITS	22
31.	VESTING STANDARDS	23
32.	PRESERVATION OF BENEFITS	23
33.	PAYMENT OF BENEFITS TO MEMBERS	24
34.	PENSION BENEFITS	25
35.	LUMP SUM BENEFITS	26
36.	RETIREMENT BENEFITS	26
37.	BENEFITS FOR PERMANENT INCAPACITY OR PERMANENT INVALIDITY	26
38.	DEATH BENEFITS	27
39.	RESIDUAL BENEFIT	28
40.	BENEFITS TRANSFERRED FROM OTHER FUNDS	28
41.	BENEFITS TRANSFERRED TO OTHER FUNDS	28
42.	RIGHTS TO BENEFITS FORFEITED UPON LEGAL INCAPACITY	29
43.	INSURED BENEFITS	30
44.	FORFEITED BENEFITS	30
45.	DISCRETIONARY BENEFITS	31

46.	INVESTMENTS GENERALLY	31
47.	VALUATION OF ASSETS	32
48.	POLICIES OF INSURANCE	32
49.	LOANS TO MEMBERS	32
50.	RECORDS	32
51.	BANK ACCOUNTS	33
52.	METHOD OF PAYING BENEFITS	33
53.	ANNUAL ACCOUNTS	33
54.	TAXES	34
55.	ADMINISTRATION EXPENSES	34
56.	RESERVE ACCOUNT	34
57.	AUDIT	34
58.	ACTUARY	34
59.	DISCLOSURE STANDARDS	35
60.	THE DEED AND AMENDMENTS TO THE DEED	36
61.	TERMINATION OF THE FUND	37
62.	NOTICES CONCERNING BREACHES	38
63.	OTHER NOTICES	38
	SCHEDULE	39

RULES OF MBO 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 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 (if any);

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; and

1.2.7 any other accretions and interest 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 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, or an agreed portion of same, subject to such other definition as is included in Relevant Law in force from time to time.

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 the Tax Act, the OSS Act, and the SIS Act.

1.6 "**Approved Auditor**" means an approved auditor as defined by Regulation 4 of the Regulations.

- 1.7 "Associated Employer" means any company firm or person admitted as a party to the Deed pursuant to the provisions of Clause 19 of these Rules.
- 1.8 "Commencement Date" means the commencement date set out in 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 in force from time to time, and any other laws relating to or governing the conduct of corporations within Australia.
- 1.10 "Court" means any court or tribunal of competent jurisdiction under Relevant Law.
- 1.11 "Deed" means the Deed of which these Rules form part.
- 1.12 "Dependants" shall include any one or more of
- 1.12.1 the spouse or widow or widower of a Member;
 - 1.12.2 any child including an adopted child, a step-child or an ex-nuptial child of a Member;
 - 1.12.3 any person who in the opinion of the Trustee\ s is actually dependent on a Member for financial support maintenance or education; and
 - 1.12.4 any person named in any notice of preference signed by a member and which notice has been deposited with the Trustee\ s 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.
- 1.13 "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 referred to in Clause 3 of these Rules.
- 1.14 "Employer" means the employer or employers (if any) of the Member from time to time.
- 1.15 "Employer's Allocation" means in respect of a Member an amount equal to the sum of the employer contributions (if any) including any productivity payments made under any industrial award or legislative enactment made to the Fund by any person approved by the I.S.C. to contribute (other than the Member), with interest thereon at the rate prescribed from time to time by the Trustees, less the Member's Allocation.
- 1.16 "Employer Contributions" has the same meaning as defined in the Regulations.

- 1.17 "Entry Date" means the date upon which the Member is admitted as a Member of the Fund.
- 1.18 "Exit Date" means in respect of a Member the date upon which the Member ceases to be a Member of the Fund by virtue of the death of the Member or the Member ceasing to be in gainful occupation or resulting from the Permanent Incapacity or Permanent Invalidity of the Member, or otherwise ceasing by operation of law to be entitled to remain as a Member.
- 1.19 "Forfeited Benefits Account" means the account referred to in Clause 44 of these Rules.
- 1.20 "Fund" means the Trust Fund hereinafter defined.
- 1.21 "Fund Year" means any year commencing the first day of July and ending on the thirtieth day of June following, or such other period as determined by the Trustees.
- 1.22 "Gainful Occupation" means engagement in any business, trade, profession, vocation, calling, occupation or employment including but not limited to employment as or engagement in any directorship agency dealership business undertaking or contractual undertaking, and "Gainfully Occupied" shall have a like meaning.
- 1.23 "Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992 as amended from time to time.
- 1.24 "Insurer" means such insurance office or offices as the Trustee\ s in consultation with the Member may decide.
- 1.25 "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.
- 1.26 "Lump Sum" means the amount of benefit, other than a Pension, payable to or in respect of a Member.
- 1.27 "Mandated Employer Contributions" has the same meaning as defined in the Regulations.
- 1.28 "Member" means a person who is gainfully occupied or who is otherwise a transferred retiree member and 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.
- 1.29 "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.
- 1.30 "Member's Allocation" means in respect of a Member an amount equal to the sum of the Member's personal contributions to the Fund with interest thereon at the rate

prescribed from time to time by the Trustees and including that Member's share of all productivity benefits and other accretions to the Fund.

- 1.31 "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 40 of these Rules with interest thereon at the rate prescribed from time to time by the Trustees or by the Regulations and including that Member's apportioned share of all forfeited benefits.
- 1.32 "net earnings of the Fund" means the net earnings of the Fund as defined in the 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" means 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 or Relevant Law.
- 1.36 "Pensioner" means a Member who has retired from gainful occupation, including a transferred retiree member, and who has by preference chosen to accept all or part of his or her 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 32 of these Rules.

- 1.41 "Professional Adviser" means any accountant, actuary, auditor, banker, barrister, insurer, investment advisor, 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 benefit limits prescribed from time to time by the I.S.C. or under Relevant Law.
- 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 "Relevant Law" means all legislation and regulations thereunder in force from time to time regulating and/or affecting superannuation funds and trust funds generally within Australia and its States including but not limited to relevant sections of the Tax Act, OSS Act, SIS Act and the Regulations.
- 1.45 "Reserve Account" means the account referred to in Clause 56 of these Rules.
- 1.46 "Residual Benefit" means an amount payable under the provisions of Clause 40 of these Rules.
- 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 same meaning as defined in the Regulations.
- 1.50 "Schedule" means the Schedule at the end of these Rules.
- 1.51 "shortfall component" has the meaning as defined in the Regulations.
- 1.52 "SIS Act" means the Superannuation Industry (Supervision) Act 1993 as amended from time to time including the regulations thereunder, or any legislation in force in substitution for the said legislation.
- 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 in relation to the SIS Act and the OSS Act the requirements contained in the Standards prescribed by the Regulations.
- 1.55 "Supplementary Fund" means the separate and distinct fund (if any) established pursuant to the provisions of these Rules.
- 1.56 "Tax Act" means the Income Tax Assessment Act 1936 as amended from time to time and all regulations thereunder and any legislation in addition to or in substitution therefor.

- 1.57 "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 thereon at the rate prescribed from time to time by the Trustees, or by the Regulations, 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.
- 1.58 "transferred retiree member" has the same meaning as set out in the Regulations.
- 1.59 "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 income therefrom from time to time held by or on account of or due to the Trustees.
- 1.60 "Trustees" means
- 1.60.1 the first Trustees or Trustees hereof; or
 - 1.60.2 all the Trustees; or
 - 1.60.3 a single Trustees; or
 - 1.60.4 such Trustees as may be necessary to pass an effective resolution of Trustees.
- 1.61 "Vesting Standards" means the vesting standards referred to in Clause 31 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 and/or Relevant Law 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 and/or Relevant Law;
 - 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 express requirements of the OSS Act, the SIS Act and the Regulations or of Relevant Law or any lawful direction of the I.S.C., such invalid Clause or part thereof shall be deemed to have been deleted from this Deed, and Rules without affecting the remainder.

5.2 All of the Standards prescribed for complying or regulated superannuation funds as set out in the Regulations are deemed to be incorporated in these Rules. Any provisions of these Rules deemed inconsistent with the Standards shall be of no force or effect.

6. THE OBJECTIVES OF THE TRUST

6.1 The principal 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 by way of old age pensions to gainfully occupied persons who are Members of the Fund, and otherwise as herein provided, and/or death and other benefits for dependants of such Members;

- 6.1.2 subject to the foregoing, to provide ancillary benefits including such assistance in cases of sickness, misfortune or financial hardship for the Members and dependants of the Members as the I.S.C. shall approve; and
 - 6.1.3 to conduct the Fund as an excluded superannuation fund as defined in the SIS Act.
- 6.2 The Trustees shall, in carrying out the objectives of the Trust, ensure that only gainfully occupied persons (and their employer where relevant) or transferred retiree members shall be entitled to pay contributions to the Fund.

7. **APPOINTMENT AND REMOVAL OF THE TRUSTEES**

- 7.1 The Trustees named at the beginning of this document shall be the first Trustees of the Fund PROVIDED HOWEVER that should either of them be unable or unwilling to continue in that capacity then Gillian Ann Osborne shall act as a replacement trustee. In the event that the primary objective of the Fund is not the payment of a pension then a constitutional corporation must be appointed as the sole trustee of the Fund in accordance with the provisions of the SIS Act.
- 7.2 Subject to the Regulations not less than two nor more than four individuals, or a corporation, may be appointed as trustee or trustees of the Fund.
- 7.3 A Trustee shall hold office until the Trustee:-
- 7.3.1 dies; or
 - 7.3.2 suffers any disability which renders him/her unable to manage his/her own affairs; or
 - 7.3.3 becomes bankrupt; or
 - 7.3.4 being a corporation goes into liquidation or in respect of which there is an order made for the winding up of the corporation other than for the purposes of amalgamation or reconstruction; or
 - 7.3.5 is by operation of law disqualified from office as a Trustee; or
 - 7.3.6 cannot be located after all reasonable enquiries have been made by the Employer (if any) during a period of thirty (30) days after the Trustee last performed any act as a Trustee; or
 - 7.3.7 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
 - 7.3.8 retires from office by serving notice in writing to that effect upon the Members.

7.4 In the event of a Trustee ceasing to hold office in the circumstances described other than those described in sub-paragraph 7.3.8 above, the Trustee shall be deemed to be discharged from the trusts of the Fund, and in the case of the said sub-paragraph 7.3.8 above, the Trustee shall thereupon execute such documents and do such other things as may be necessary to give an effective discharge therefrom.

7.5 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, any remaining Trustee or Trustees together with the Members shall within sixty (60) days after the date such vacancy arises meet and 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 The Trustees shall meet together at least once in each Fund Year and at such other times as they shall think fit.

8.2 Where there are more than two (2) but not more than four (4) Trustees appointed, then two (2) Trustees shall form a quorum.

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 shall be decided by not less than a two thirds majority of the Trustees.

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.

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, 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**

12.1 Subject to Clause 13 below, any two (2) of the Trustees, 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.

12.2 The Trustees may by arrangement with the Members agree to a variation in the execution and signing procedures referred to above including the delegation of the authority of the Trustees in respect thereof to any third party including any one or more of the Members.

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 The Trustees or any of them shall be entitled to be paid and retain out of the Trust Fund such remuneration, if any, as may be agreed from time to time in writing between the Trustees and the Members.

14.2 Any person who is a Professional Adviser and is also a Trustees hereof or is a director of a corporate body which is a Trustees 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/she would

make had he/she 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.
- 15.3 The Trustees shall, subject to Relevant Law, 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 who the Trustees bona fide believed to be entitled thereto although such person was not in fact entitled thereto.

16. MEMBER'S RIGHTS AGAINST AN EMPLOYER

The provisions of this Deed shall not in any way affect or restrict the right of a Member or his/her 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 and in the course of any employment of the Member.

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 an 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 Subject to Relevant Law, 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 Regulations under the OSS Act otherwise than 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 any existing Employer of a Member, but subject to Relevant Law, admit as a party to the Deed any company firm or person which by virtue of its close association with the 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, and to contribute to and participate in the Fund.

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 Employer or the Trustees with the consent of the Employer giving written notice to the Associated Employer that it has ceased to be recognised as an Associated Employer.

21. **FORM OF APPLICATION**

Any person eligible to apply to become a Member of the Fund may make application in writing to the Trustees in such form of application as the Trustees may determine.

22. **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.

23. **ELIGIBLE PERSONS**

Any gainfully occupied person including any transferred retiree member shall with the approval of the Trustees 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 this Deed in all respects.

24. **CATEGORIES OF MEMBERSHIP**

The Trustees may from time to time in consultation with the Members determine that there shall be different categories of membership.

25. **CONTRIBUTIONS TO THE FUND**

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

25.2 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:-

25.2.1 the contributions are mandated employer contributions; or

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

25.2.2.1 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

25.2.2.2 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;

- 25.3 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 25.2 above, the Fund may accept the contribution in respect of that Member, even though the contribution is actually made after that period.
- 25.4 The Trustees shall refuse to accept contributions from persons other than those approved by the I.S.C. to make contributions into the Trust Fund.
- 25.5 Any payment of any contributions, whether by an Employer or any other persons contributing, made directly to an Insurer, investment manager or nominee shall be deemed to be both a payment of contributions to the Trustees and payment by the Trustees to the Insurer, investment manager or nominee, as the case may be.
- 25.6 The Trustees shall not accept deductible contributions during a year of income that exceed the maximum deductible contributions applicable to the Fund pursuant to the Regulations.
- 25.7 Any member who ceases to be gainfully occupied within the meaning of the Regulations must immediately notify that fact to the Trustees.
26. **CONTRIBUTIONS BY AN EMPLOYER**
- 26.1 An Employer (where applicable) may during each Fund year make contributions, such contributions being of the amounts determined by the Trustees pursuant to Clause 25.1 above in respect of a Member.
- 26.2 Subject to Clause 25 above, the contributions payable by the Employer shall be paid to the Trustees.
27. **CONTRIBUTIONS BY THE MEMBERS**
- 27.1 Each Member may contribute such amounts (if any) and from such date, as shall be agreed upon between the Employer (if any) the Trustees and the Member but subject to such limits as shall be imposed by the Regulations from time to time.
- 27.2 The contributions payable by a Member may be deducted from the Member's periodic salary (where applicable) or paid directly by the Member and all such payments shall be made to the Trustees.
- 27.3 Contributions made by a transferred retiree member may be made in such manner as is approved by the ISC.

28. **TERMINATION OR SUSPENSION OF EMPLOYER CONTRIBUTIONS**

28.1 Subject to the provisions of any industrial award to which an employer may be bound -

28.1.1 An 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.

28.1.2 An 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.

28.2 Nothing herein shall affect the obligation of an Employer to abide by the provisions of the Guarantee Act.

29. **REDUCTION OR LIMITATION OF EMPLOYER CONTRIBUTIONS**

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.

30. **REDUCTION OR VARIATION OF BENEFITS**

30.1 Notwithstanding anything to the contrary contained herein, in the event of such reduction in contributions or refrainment from increasing contributions pursuant to Clause 29 above, or in the event of such cessation or suspension of contributions pursuant to Clause 28 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.

30.2 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.

30.3 Upon the Trustees reducing or varying the benefits in respect of any Member pursuant to the immediately preceding paragraph the Trustees shall forthwith notify such Member in writing of the reduced or varied benefits.

31. VESTING STANDARDS

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

31.2 Without limiting the generality of Clause 31.1, all Member financed benefits accruing from the date of establishment of the Fund, and all Employer contributions required to be made pursuant to any industrial award and also to avoid the imposition of any Superannuation Guarantee charge or levy or similar impost under the Guarantee Act, shall vest in full in the Member from the date of accrual of same.

32. PRESERVATION OF BENEFITS

32.1 With respect to each Member of the Fund, the benefits referred to in the Regulations in relation 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:-

32.1.1 those benefits are transferred in accordance with Clause 32.3;

32.1.2 the Member has:

32.1.2.1 retired from the work force; and

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

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

32.1.3.1 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;

32.1.3.2 the death of the Member;

32.1.3.3 the permanent departure of the Member from Australia;

32.1.3.4 compliance with Clause 33 hereof with respect to ages for payment of benefits;

32.1.3.5 such other circumstances (if any) as the ISC approves.

32.2 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 reasonable qualified by education, training or experience.

32.3 Where a person who is a member of the Fund withdraws from the Fund in circumstances other than those specified in paragraph 32.1.2 or 32.1.3 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:

32.3.1 retained in the fund;

32.3.2 transferred directly to, for preservation in relation to the person in:

32.3.2.1 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;

32.3.2.2 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

32.3.2.3 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 32.1.2 or 32.1.3 above.

33. PAYMENT OF BENEFITS TO MEMBERS

33.1 A Member's benefits in the Fund must be paid out as soon as practicable after the occurrence of any of the following events:-

33.1.1 The Member:

33.1.1.1 having attained age 65 but not age 70; and

33.1.1.2 is not then gainfully employed on either a full-time or part-time basis;

33.1.2 The Member:

33.1.2.1 having attained age 70; and

33.1.2.2 is not then gainfully employed on a full-time basis;

33.1.3 The death of the Member.

33.2 The form in which benefits may be paid out is in any one or more of the following forms:-

- 33.2.1 A single pension; or
- 33.2.2 a single lump sum; or
- 33.2.3 the purchase of a single annuity.

34. PENSION BENEFITS

- 34.1 Where a benefit is payable by way of pension it shall be in any one of those forms of pension set out in Item 1 of the Schedule.
- 34.2 Where a benefit is payable by way of pension it shall be (for the purposes of these Rules and the Members affected by these Rules) in the form of pension set out in Item 2 in the Schedule.
- 34.3 Where the chosen form of pension is a fixed term pension the following provisions shall apply (where the Member to receive the pension is in receipt of, or anticipating to be in receipt of, any social security benefits):-
 - 34.3.1 the duration of the fixed term pension and the entitlement of the Member pursuant to the terms of the fixed term pension cannot be varied by either the Trustee or the Member once established;
 - 34.3.2 the entitlement of the Member pursuant to the fixed term pension is not commutable to a lump sum or any other form of pension whether in whole or in part;
 - 34.3.3 payment of the member's entitlements pursuant to the fixed term pension is to be guaranteed by an Australian bank or such other financial institution as shall be acceptable to the Australian Department of Social Security and (where appropriate) the ISC.
- 34.4 The form of pension chosen as set out in Item 2 of the Schedule may be paid at the times and in the manner set out in Item 3 in the Schedule.
- 34.5 If a pensioner surviving spouse or other person entitled to a benefit hereunder seeks to commute for a lump sum the lump sum entitlement will be as set out in Item 5 of the Schedule.
- 34.6 The Trustees shall not pay any pension benefit to a Member or a Member's Dependents until the Trustees are satisfied that:
 - 34.6.1 the reporting requirements applicable to payment of a pension as laid down by the Regulations or Relevant Law have been complied with; and
 - 34.6.2 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.

35. LUMP SUM BENEFITS

- 35.1 A Member may (subject to the Regulations) and Relevant Law be paid the Member's Accumulated Benefit (or a proportion of it) as a lump sum payment as set out in Item 5 of the Schedule, and in such manner as the Trustees deem fit.
- 35.2 The payment of any Lump Sum benefit due to or in respect of a Member shall be made as soon as practicable after the date on which the benefit becomes payable.
- 35.3 No Lump Sum benefit shall be of an amount which in the opinion of the Trustees breaches the Standards or which is greater than that which the assets of the Fund are sufficient to provide in respect of the Member.
- 35.4 The Trustees shall not pay any Lump Sum benefit to a Member until the Trustees are satisfied that:
- 35.4.1 the reporting requirements applicable to payment of a lump sum as laid down by the Regulations and Relevant Law have been complied with; and
 - 35.4.2 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.

36. RETIREMENT BENEFITS

- 36.1 Subject to these Rules, upon a Member retiring from gainful occupation and provided that the Member is aged at least fifty-five (55) years and not more than seventy (70) years the Trustees shall pay to the Member his benefit by way of an allocated pension, fixed term pension, life pension, or Lump Sum (as shown in the Schedule) or otherwise according to a determination agreed between the Member and the Trustees not less than one (1) year prior to the Retirement Date (or such shorter period as approved by the Trustees) and conveyed by notice in writing to the Trustees. In the absence of any such determination by the Member, the Trustees shall assume that the benefit is to be paid by way of a Pension, in which case the Trustees shall have an absolute discretion as to the type of Pension to be paid.
- 36.2 If as a result of the determination of the Member all or any part of the benefit is to be payable by way of Lump Sum, the Trustees shall pay to the Member the Lump Sum determined in accordance with Clause 35 above.

37. BENEFITS FOR PERMANENT INCAPACITY OR PERMANENT INVALIDITY

- 37.1 Subject to 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.

37.2 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 42 and 43 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 38 hereof.

38. **DEATH BENEFITS**

38.1 On the death of a Member the Trustees will have an absolute discretion to pay beneficiaries by way of lump sum or alternatively to pay a Pension in the case of a dependant beneficiary.

38.2 Subject to the foregoing (but subject to Clauses 42 and 43 of these Rules), upon the death of a Member prior to the Retirement Date and before the whole of his/her benefit has been paid to him/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 death benefit, or as a death benefit such part of the benefit as has not been paid.

38.3 Notwithstanding the provisions of Sub-Clause 38.1 above, the Trustees may by resolution determine that the amount of death benefit shall be not less than an amount described in such resolution, or not less than an amount calculated by the application of a formula described in such resolution.

38.4 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), may be forfeited.

38.5 Subject to Clauses 42 and 43 of these Rules, upon the death of a Member on or after the Retirement Date the Trustees may:-

38.5.1 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 40 hereof; and

38.5.2 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.

39. **RESIDUAL BENEFIT**

- 39.1 Subject to Clauses 42 and 43 of these Rules, if upon the death of a Pensioner who is not survived by a Surviving Spouse and there shall remain a Residual Benefit (being an amount as certified by the appointed Actuary of the Fund) such Residual Benefit shall be applied by the Trustees as a death benefit as if the Pensioner had died prior to the Retirement Date.
- 39.2 Subject to Clauses 42 and 43 of these Rules, if upon the death of a Pensioner who is survived by a Surviving Spouse who does not thereafter survive until payment in full of the pension to which the Surviving Spouse becomes entitled hereunder, the Residual Benefit thus remaining shall be applied by the Trustees as a death benefit as if the Pensioner had died prior to the Retirement Date, or otherwise dealt with as directed by the I.S.C.
- 39.3 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 forfeited.

40. **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.

41. **BENEFITS TRANSFERRED TO OTHER FUNDS**

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.

42. RIGHTS TO BENEFITS FORFEITED UPON LEGAL INCAPACITY

- 42.1 Subject to Relevant Law, a Member, Pensioner, Surviving Spouse or other person entitled to a benefit hereunder (but not yet fully entitled absolutely as against the Trustees) 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:-
- 42.1.1 becomes bankrupt;
 - 42.1.2 suffers any disability which renders him or her unable to manage his or her own affairs;
 - 42.1.3 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
 - 42.1.4 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.
- 42.2 Subject to Clause 42.5 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.
- 42.3 The Trustees shall set up a Forfeited Benefits Fund clearly designated as such and into which forfeited benefits are transferred.
- 42.4 The whole or any part of the benefits the rights to which are forfeited under Clause 42.1 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.
- 42.5 If a Member, Pensioner, Surviving Spouse or other person entitled to a benefit hereunder (and in respect of whom the application of Clause 44.1 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.

43. INSURED BENEFITS

- 43.1 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.
- 43.2 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.
- 43.3 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.

44. FORFEITED BENEFITS

- 44.1 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.
- 44.2 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:-
- 44.2.1 the provision of the benefits to which Members or their Dependants have rights;
 - 44.2.2 the provision of additional benefits for Members or their Dependants on a basis that is reasonable having regard to all the circumstances;
 - 44.2.3 the payment of contributions which would otherwise be payable by the Employer;
 - 44.2.4 the payment of contributions of any Member who due to accident or injury is suffering from hardship;
 - 44.2.5 the payment of administrative expenses incurred in respect of the fund including premiums for insurance in respect of any Policy;
 - 44.2.6 any other purposes approved by the I.S.C.

45. 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.

46. INVESTMENTS GENERALLY

46.1 Investments made by the Trustees under the terms of the Deed and the Rules shall at all times be in accordance with the Standards.

46.2 Subject to the above, the Trustees may from time to time after consultation with the Members invest the whole or any part of the moneys or assets of the Trust Fund as they think fit, provided that all investments shall be made in accordance with the Standards and on an arms length basis and, without limiting the generality of the foregoing, either directly or indirectly in:-

46.2.1 investments authorised or allowed by the laws of the Commonwealth of Australia or any State or Territory of the Commonwealth for the investment of trust funds;

46.2.2 approved pooled superannuation trusts;

46.2.3 the securities of any government, semi-governmental body of public authority in Australia;

46.2.4 approved deposit funds;

46.2.5 deposits with any bank or building society or authorised dealer in the Australian short-term money market; or

46.2.6 shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia;

46.2.7 the purchase of land of any tenure whether improved or unimproved;

46.2.8 bills of exchange and other negotiable instruments;

46.2.9 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;

46.2.10 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

46.2.11 the payment of any premiums on a Policy.

46.3 The investments made by the Trustees shall be held in the names of the Trustees and/or a custodian trustee selected by the Trustees.

46.4 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. The Trustees may only borrow to obtain temporary finance such as by way of an overdraft or similar prescribed facility, as allowed by the Regulations.

47. 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.

48. POLICIES OF INSURANCE

48.1 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 under the provisions of the Deed or for the purpose of insuring any risk of 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.

48.2 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.

48.3 The Insurer in respect of a Policy shall not be required to see to the performance of any of the trusts of this Deed.

49. LOANS TO MEMBERS

The Trustees shall not make any loans to a Member from any part of the assets or income of the Fund.

50. RECORDS

50.1 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.

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

51. BANK ACCOUNTS

Subject to the approval of the Members, 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.

52. METHOD OF PAYING BENEFITS

52.1 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.

52.2 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.

52.3 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.

52.4 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.

53. ANNUAL ACCOUNTS

The Trustees shall prepare or cause to be prepared in respect of each Fund Year a statement of all income and expenditure and a balance sheet duly audited (where required) and copies of which shall be produced to the Members.

54. TAXES

- 54.1 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 Relevant Law be required so to prepare.
- 54.2 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.
- 54.3 The Trustees may deduct from any contributions to the Fund any contributions tax required by law.

55. 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 is agreed between the Trustees and the Members.

56. RESERVE ACCOUNT

The Trustees shall maintain such reserve account as shall be directed by the I.S.C. from time to time.

57. AUDIT

- 57.1 The Trustees shall, where required pursuant to the Regulations, appoint an approved auditor to carry out an annual audit of the accounts and records of the Fund.
- 57.2 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 Members, and in any event a Member shall be entitled to request a copy of the Auditors Report and any actuarial reports in respect of the Fund.
- 57.3 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.

58. 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 from time to time by the Regulations.

59. DISCLOSURE STANDARDS

- 59.1 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, including the information required to be made available pursuant to the Regulations.
- 59.2 Except where specifically exempted in the case of excluded funds, and 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:-
- 59.2.1 where withdrawal benefits are based on contributions to the Fund or on those contributions plus earnings:-
 - 59.2.1.1 the benefits vested in the Member at the beginning of that year of income;
 - 59.2.1.2 the benefits vested in the Member at the end of that year and the method of calculating those benefits;
 - 59.2.1.3 the benefits that are required to be preserved, both by the Regulations and by the Trust Deed if the Member withdraws from the Fund;
 - 59.2.1.4 contributions made by the Member during the year;
 - 59.2.1.5 Fund earnings allotted to the Member during that year and the rate at which those earnings were allotted; and
 - 59.2.1.6 any current death benefit applying to the Member.
 - 59.2.2 where withdrawal benefits are based on an endowment or whole of life policy:-
 - 59.2.2.1 the sum assured;
 - 59.2.2.2 bonuses accruing during that year of income;
 - 59.2.2.3 contributions made by or on behalf of the Member during that year of income; and
 - 59.2.2.4 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.
- 59.3 For the purposes of Clause 59.2 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.

- 59.4 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 from gainful occupation, the statement is also to set out the information referred to in Clause 59.2 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.
- 59.5 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.
- 59.6 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:-
- 59.6.1 a copy of such auditors' reports as are specified in the request; and
 - 59.6.2 a copy of such returns certificates and notices referred to in the Regulations as are specified in the request.
60. THE DEED AND AMENDMENTS TO THE DEED
- 60.1 A copy of the Deed shall be kept by the Trustees for inspection by any Member at all times and by any eligible person making application to become a Member of the Fund.
- 60.2 The Trustees shall be entitled at any time and from time to time with the written consent of the Members, to alter add to or repeal all or any of the provisions of the Deed:-
- 60.2.1 to enable the Fund to comply with Relevant Law, or
 - 60.2.2 to enable the Trustees to reduce or vary the benefits for the purposes of Clause 30 of these Rules, or
 - 60.2.3 for any other purpose PROVIDED THAT no such alteration addition or repeal shall operate so as to:-
 - 60.2.3.1 vary the objects of the Deed; or
 - 60.2.3.2 remove or diminish or purport to remove or diminish those benefits vested in a member;
 - 60.2.3.3 enable any preserved benefit to be paid out of the Fund prior to the retirement, resignation, dismissal or death of the Member; or

60.2.3.4 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 -

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

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

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

61. TERMINATION OF THE FUND

61.1 In the event of the Members giving notice in writing to the Trustees of the desire of the Members to terminate the Fund, or in respect of circumstances in which the rule against perpetuities applies, or 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:-

61.1.1 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

61.1.2 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.

61.2 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 may 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 Regulations or any 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.

62. **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.

63. **OTHER NOTICES**

63.1 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 the address(es) of the Trustees shown at the beginning of this document.

63.2 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/her or sent by prepaid post to him/her at the address last known to the Trustees.

63.3 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.

SCHEDULE

Item 1 Forms of Pension Available:

- Allocated Pension
- Life Pension
- Fixed Term Pension
- Other Pension (to be specified)

Item 2 Chosen Form of Pension: As agreed between the members and the Trustees and duly minuted.

(In the event that the chosen form of pension is to be a fixed term pension the provisions of clause 34.3 of this Deed will prevail).

Item 3 Method of Payment of Chosen Form of Pension:

As agreed between Member and Trustee, and duly minuted.

Item 4 Amount of Entitlement Commutable to Lump Sum:

As agreed between Member and Trustee, and duly minuted.

Item 5 Lump Sum Entitlement

As agreed between Member and Trustee (if relevant) and duly minuted.

(Clause 35.1)

Signed by _____)
 * _____)
 in the presence of: _____)

Dated the _____ day of _____ 1994.