

DATED this 15th day of October 1997

DECLARATION OF TRUST

Establishing

THE HARVEY-SUTTON SUPERANNUATION FUND

CARNEYS

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2. DEFINITIONS

2.1 In this Deed where the context requires or permits,

2.1.1 "The Rules" means the Rules set forth in the Annexure hereto whether as originally framed or as altered or added to from time to time,

2.1.2 the words and expressions defined by the Rules have the meanings therein assigned to them respectively.

3. GENERAL POWERS

The Trustee shall manage and administer the Fund in all respects according to the Rules and shall in relation thereto have all such powers and discretions and be entitled to such indemnities as are by this Deed and the Rules or by law conferred upon it.

4. PURPOSES OF FUND

All assets of the Fund shall be vested in the Trustee who shall stand possessed of the same upon trust to apply the same in the manner and for the objects and purposes of the Fund as set forth in this Deed and the Rules. The primary purpose of the Fund is the provision of retirement benefits complying with Regulatory Law by way of lump sums or pensions.

5. TRUSTEE(S) - APPOINTMENT

5.1 Corporate trustee required - circumstance permitting individuals

The Trustee of the Fund shall be required to be a single constitutional corporation (as that expression is defined by Regulatory Law). If and so long as the Fund has the sole or primary purpose of providing old age pensions either the Trustee shall be a single constitutional corporation or two or more natural persons may act as the Trustee.

5.2 Members as Directors or Trustees

Unless prohibited by Regulatory Law a Member may act as a Director or (when individual Trustees are permitted) Trustee. So long as the Fund is an Excluded Fund then (unless the Trustee is an Approved Trustee under Regulatory Law) a Member or each Member shall act as a Director or Trustee if required by Regulatory Law as a condition of the Fund being an Exempt Excluded Fund.

5.3 Who may appoint trustees

The power of appointment of the Trustee shall vest in the Members so long as the Fund is an Excluded Fund but otherwise in the Trustee or Trustees for the time being provided that if at any time there is no Trustee or there are insufficient Trustees to act then the Member or Members shall have power to appoint a new or additional Trustee.

5.4 Restrictions on appointment of Trustees

The power of appointing Trustees must only be exercised so that the Trustee or Trustees is a corporation or natural persons complying with Regulatory Law as



applicable for the time being to the Fund and with clause 5.1 and other applicable provisions of this Deed. When natural persons are Trustees and Clause 8.2.2.2 applies to the Fund such power shall be exercised by the holder of that power so that a person duly nominated or selected to act as a Trustee under this Deed shall be so appointed.

5.5 Consent to Appointment

No person shall be appointed as a Director or Trustee unless that person has consented in writing to such appointment. A person shall be deemed by such consent to have entered into the covenants contained in Clause 9 as applicable to a Director or Trustee (as the case may be).

5.6 Deemed appointment

A person nominated selected or elected as a Director or Trustee under the provisions of Clause 8.2.2.2 (if applicable) shall be thereby deemed to have been appointed as a Trustee or (if so provided by the Articles of Association of the Trustee being a company) as a director of the Trustee as the case may be.

5.7 Deeds of appointment or retirement

Upon a change of Trustee a Deed of appointment or retirement or of appointment and retirement as a Trustee shall be entered into and executed by each of the Trustees (including each new continuing and retiring Trustee) as and whenever the Trustee determines it is necessary or desirable and the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the names of the continuing and new Trustees or some of them or to a custodian trustee as the continuing and new Trustees may require.

5.8 Interpretation - "Trustee"

Whenever two or more persons are the Trustee the expression "the Trustee" where it appears in this Deed shall mean as the context requires:

5.8.1 all the trustees; or

5.8.2 a single trustee; or

5.8.3 such trustees as are necessary to pass an effective resolution of trustees in accordance with this Deed.

5.9 Interpretation - "Director" and "Trustee and Director"

The expression "Director" when it appears in this Deed shall mean a director of a corporate Trustee and the expressions "Director or Trustee" and "Trustee and Director" shall mean and include each Director and the Trustee and also when there are for the time being two or more Trustees each individual Trustee and if and whenever there are two or more Trustees one or more of whom is a corporate Trustee shall mean and include both each director of each corporate Trustee and each Trustee whether an individual or a corporate Trustee.

6. CORPORATE TRUSTEE

The following provisions of this Clause shall apply so long as a corporation is sole Trustee:

6.1 Exercise of trustees powers by directors

A sole corporate Trustee shall have and be entitled to exercise all the powers authorities discretions and duties vested in the Trustee by this Deed and shall act by its board of directors and other proper officers subject if applicable to Clause 8.2.2.2.

6.2 Cessation of acting as trustee

A sole corporate Trustee shall hold office until:

- 6.2.1 it retires from that office (which, shall be effected by notice in writing given to the Administrator or to each of the Members), or
- 6.2.2 it becomes a disqualified person under the Regulatory Law, or
- 6.2.3 it becomes disqualified from the office by operation of any other law, or
- 6.2.4 while the Fund is an Excluded Fund, it is removed from that office by the Members by notice in writing to the Trustee and any Administrator on the appointment of a new Trustee or Trustees in accordance with this Deed, or
- 6.2.5 it is removed from that office by the Commissioner, or
- 6.2.6 if its appointment is pursuant to the agreement of Members and Employers under Clause 8.2.2.1, and either such agreement ceases and clause 8.2.2.2 is not or does not within sixty (60) days become complied with by such sole corporate Trustee, or the approval by the Commissioner of the body corporate to act as Trustee is revoked,

whichever first occurs, and if there is or will as a result be no Trustee the Members shall forthwith and in any case within sixty (60) days appoint a new Trustee or (if permitted under this Deed and Regulatory Law) new Trustees **PROVIDED THAT** unless the Fund is for the time being an Excluded Fund such a sole corporate Trustee shall not retire as a Trustee until it appoints a new Trustee or Trustees.

6.3 Remuneration and corporate expenses

The sole corporate Trustee shall not (unless it is an Approved Trustee) be entitled to charge and be paid out of the Fund any remuneration for its services but so long as it is not acting other than as Trustee of the Fund it shall be entitled to be reimbursed out of the Fund all expenses reasonably incurred by it in maintaining its proper corporate standing and complying with any statutory or other obligations applying to it as a corporation or otherwise enabling it to carry out its function as Trustee in addition to all expenses incurred by it in relation to the administration

of the Fund as referred to in Clause 11.3.

7. INDIVIDUAL TRUSTEES (PENSION FUNDS ONLY)

If and so long as natural persons are the Trustees (which shall only be permitted when the Deed specifies that the sole or primary purpose of the Fund is the provision of old age pensions) the following provisions shall apply subject (if applicable) to Clause 8.2.2.2:

7.1 Number and quorum

The number of Trustees and the quorum for meetings may be varied from time to time as the Trustees shall determine but shall not be less than two.

7.2 Meetings

The Trustees shall meet together for the despatch of business and regulate their meetings as they think fit. The Trustees shall elect one of their number as Chairman of their meetings whether generally or for a specified term or of each meeting as they may determine. The Trustees may continue to act notwithstanding a vacancy in their number.

7.3 Voting

Any matter may be determined by a majority of the Trustees voting at any duly constituted meeting of the Trustees. Each Trustee present shall be entitled to one vote. The Chairman of the meeting shall not be entitled to a second or casting vote.

7.4 Ceasing to act as Trustee

A Trustee shall cease to be a Trustee:

7.4.1 on his death;

7.4.2 if he resigns in writing given to the Administrator (if any) or to each of the other Trustees;

7.4.3 if he is or becomes a disqualified person and is required under Regulatory Law not to act as a Trustee;

7.4.4 if without the consent of the other Trustees he fails to attend all meetings of Trustees for a period of not less than six months during which not less than three meetings are duly convened and held (or would have been held but for his absence);

7.4.5 so long as the Fund is an Excluded Fund, if he is removed from office by the Members by notice in writing to each of the Trustees and the Administrator (if any).

8. TRUSTEES - CHANGES IN REQUIREMENTS

8.1 Requirement for Approved Trustee

If the Fund ceases to be an Excluded Fund or ceases to satisfy the conditions under Regulatory Law under which the Fund is for the time being an Exempt

Excluded Fund (the trustee of which need not be an Approved Trustee under Regulatory Law) then (unless within such time as may be permitted under Regulatory Law the Fund again becomes an Excluded Fund satisfying those conditions) the Trustee and the Members shall ensure that an Approved Trustee is appointed to act as the Trustee of the Fund.

8.2 Alternative requirements if a standard employer sponsored fund

Where all the Members are Standard Employer - Sponsored Members then the Trustee need not be an Approved Trustee under Clause 8.1 if:-

8.2.1 the Fund is an Excluded Fund; or

8.2.2 the Fund is not an Excluded Fund and either:-

8.2.2.1 in accordance with Regulatory Law the Trustee may be and is for the time being an independent corporation agreed between the Members and the Employers; or

8.2.2.2 the Fund complies with requirements under Regulatory Law for at least equal representation of the Members as Directors or Trustees by not less than one half of the Directors or Trustees being persons selected by the Members whether by approval in writing of not less than two thirds of the Members for the time being or in accordance with such procedures for selection and holding office consistent with Regulatory Law as may be determined by the Trustee, (the balance, if any, of the Directors or Trustees being persons nominated in writing by the Employers) and by the Trustee adopting and following such procedures for meetings and voting as satisfy the equal representation requirements under Regulatory Law.

9. TRUSTEE COVENANTS

9.1 Statutory covenants

The Trustee and each Trustee covenants with the Employers and Members:

9.1.1 to act honestly in all matters concerning the Fund;

9.1.2 to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;

9.1.3 to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members and other beneficiaries;

9.1.4 to keep the money and other assets of the Fund separate from any money and assets, respectively:

- 9.1.4.1 that are held by the Trustee personally; or
- 9.1.4.2 that are money or assets, as the case may be, of an Employer or an associate of an Employer;
- 9.1.5 not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- 9.1.6 to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - 9.1.6.1 the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - 9.1.6.2 the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - 9.1.6.3 the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - 9.1.6.4 the ability of the Fund to discharge its existing and prospective liabilities;
- 9.1.7 if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- 9.1.8 to allow a Member or any other beneficiary access to any information or any documents as may be prescribed under Regulatory Law;
- 9.1.9 to perform and observe any other covenant which may for the time being be prescribed under Regulatory Law;

PROVIDED THAT the covenants contained in this clause shall be subject to and may be altered or modified by the provisions for the time being of Regulatory Law and shall remain binding upon the Trustee and each Trustee as so altered or modified.

9.2 Deemed covenant by Directors of Trustees

Each Director shall be deemed by giving of consent to act as a Director to have

covenanted with the Employers and Members to exercise such a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the covenant contained in Clause 9.1 as would be exercised by a reasonable person in the position of Director in the Trustee's circumstances.

9.3 Confidentiality

Each Director or Trustee and every new Director or Trustee on his appointment shall subject to compliance with the Regulatory Law and Tax Act observe strict confidentiality with regard to the affairs, accounts and transactions of each Employer and Member and of the Fund both while they shall continue to be a Director or Trustee and at all times thereafter.

10. TRUSTEES ADMINISTRATIVE POWERS GENERALLY

10.1 Committees of Trustees

The Trustee may delegate any of its powers to a committee consisting of such of the Directors or Trustees (as the case may be) and of such other persons as the Trustee shall think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed upon them by the Trustee

10.2 Receipts

The receipt in writing of any one of the Directors or Trustees or of any Administrator for any money owing or payable to the Fund shall be sufficient discharge to the person paying such moneys.

10.3 Power to contract

The Trustee may enter into and execute all contracts deeds and documents and do all acts matters or things which it may deem expedient for the purpose of securing the benefits to be provided by or from the Fund and for otherwise effectuating and carrying out the trusts authorities powers and discretions conferred upon the Trustee by this Deed.

10.4 Trustee's absolute discretion

The Trustee in the exercise of the authorities powers and discretions conferred upon it by this Deed shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of its authorities powers and discretions from time to time and at any time or may refrain from exercising all or any of the same from time to time or at all.

10.5 Secretary to Trustees and Fund

The Trustee may appoint a person firm or company as secretary to the Trustees and the Fund and regulate his powers and duties.

10.6 Investment Manager

The Trustee shall have power at any time and from time to time to appoint one or more persons, firms or companies as the Trustee may think fit to act as investment manager for all or any part or parts of the Fund and subject to such conditions as



the Trustee may from time to time determine and may delegate to and confer upon each such investment manager such powers, discretions and authorities relating to the investment and valuation of the part of the Fund entrusted to it for investment as the Trustee may think fit **PROVIDED THAT** any such appointment shall be in writing and otherwise subject as may be required under Regulatory Law.

10.7 Custodian Trustee

The Trustee shall have power at any time and from time to time to appoint one or more persons, firms or companies, as the Trustee may think fit to act as custodian trustee subject to such conditions as the Trustee may from time to time determine and may delegate to and confer upon each such custodian trustee such powers, discretions and authorities relating to the custody of that part of the Fund entrusted to it for custody as the Trustee may think fit.

10.8 Remuneration and removal of Secretary, etc.

The Trustee shall also have power as an expense of the Fund to pay out of the Fund to any such secretary investment manager and custodian trustee such remuneration for his or its services as the Trustee considers proper. The Trustee may remove any such secretary investment manager and custodian trustee and may appoint another or others in his or its place.

10.9 Exercise of investment powers

The power of investment, selling, transfer, variation, transposal, underwriting and sub-underwriting referred to in Rule 23 shall be exercised and carried out either by the Trustee or by the investment manager as aforesaid or partly by one and partly by the other as the Trustee may from time to time determine.

10.10 Minutes of proceedings

Minutes shall be kept of all proceedings of the Trustee or of the Board of Directors of a sole corporate Trustee and of any committee established for the purposes of the Fund and such minutes, if signed by the chairman of a meeting or by the chairman of the next succeeding meeting thereof shall be receivable as prima facie evidence of the matters stated therein.

10.11 Powers to take proceedings and to pay taxes and expenses

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

- 10.11.1 to commence carry on or defend proceedings relating to the Fund or the rights of Members, former Members and beneficiaries,
- 10.11.2 to deduct from the payment of a benefit to a Member income tax or any other tax or duty payable by statute in relation to such benefit and remit the tax so deducted to the relevant authorities in accordance with the Tax Act,
- 10.11.3 to pay out of the Fund the costs charges and expenses

incurred by the Trustee in and incidental to the administration and winding up of the Fund or otherwise in relation thereto to the extent to which they are not paid by the Employers,

- 10.11.4 to pay out of the Fund any income tax or other tax or duty in respect of any receipt transaction investment income profits or capital appreciation of the Fund.

10.12 Fund assets not available to meet Trustee's personal liabilities

Assets of the Fund including assets held in the name of a Trustee are not part of the estate of the trustee in his individual personal or corporate capacity for any purpose whatsoever including any claim on the assets of the Trustee by reason of debts or obligations incurred by the Trustee in such individual capacity. A Trustee has no possessory lien on any assets of the Fund in order to satisfy debts or obligations arising otherwise than as Trustee of the Fund and may not charge any assets of the Fund whether specifically or generally otherwise than for the purposes of the Fund and then only if and to the extent permitted under Regulatory Law.

10.13 Exercise of powers and discretions despite personal interests

The Trustee may exercise or concur in exercising the authorities powers and discretions hereby vested in it or otherwise by law notwithstanding that the Trustee or any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a director or shareholder of any company or otherwise) in the mode or result of exercising such authority power or discretion or may benefit either directly or indirectly as a result of the exercise of any such authority power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

11. TRUSTEES LIABILITIES AND INDEMNITY

11.1 Limit on personal liability for acts as trustees

Except as referred to in Clause 11.4 a Trustee and Director shall not be liable by virtue of any contract agreement or other instrument made or executed by him or on his behalf as one of the Trustees nor for any other loss or damage suffered by the Fund or any other Director or Trustee.

11.2 Limit on liability for acts of others

Except as referred to in Clause 11.4 a Trustee and Director shall not be liable for the neglect or default of any custodian trustee investment manager agent barrister solicitor banker stockbroker accountant consultant actuary or other person nor for allowing trust funds or securities to remain in custody or control of any such person for any time however long.

11.3 Indemnity from Fund

Except as referred to in Clause 11.4 a Trustee and Director shall be indemnified

and reimbursed out of the Fund for any costs expenses claims and damages which he or it may pay or incur in or about the administration of this Deed and the Rules or in defending any proceedings relating to any such claims but shall not be entitled to any remuneration for services to the Fund except as above provided in the case of an Independent Trustee and of a sole corporate Trustee.

11.4 Limits on Indemnity and Power to Insure

The provisions of this Deed shall not operate to indemnify a Trustee or Director against a liability that:

- 11.4.1 arises because of his failure to act honestly in a matter concerning the Fund;
- 11.4.2 arises because of his intentional or reckless failure to exercise in relation to the Fund the degree of care and diligence he was required to exercise; or
- 11.4.3 consists of a monetary penalty under a civil penalty order under Regulatory Law;

or in any other circumstances as may for the time being be prescribed under Regulatory Law **PROVIDED THAT** this Clause 11.4 shall not preclude the effecting and maintenance of insurances at the cost of the Fund for the benefit of the Fund against any liabilities of the Fund, the Trustee or Directors in relation to the matters referred to in Clauses 11.1, 11.2 and 11.3 as and to the extent permitted under Regulatory Law.

12. EMPLOYERS UNDERTAKING

Until the expiration of a notice to terminate contributions given in accordance with the Rules each Employer shall at the time provided pay to the Trustee all such sums as shall be payable by the Employer in accordance with the Rules.

13. EFFECT ON EMPLOYMENT RIGHTS

13.1 Employer's right to terminate employment not affected

Nothing herein contained shall in any way restrict the rights of an Employer to determine the employment of a Member (or subject to Regulatory Law to remove from office any director who is a Member) at any time and the fact that he is a Member is not to be taken as a guarantee of his employment, or continuance in office.

13.2 Benefits not a ground for damages

The benefits to which a Member might claim to be entitled hereunder shall not be used as a ground for increasing damages in any action brought by such Member against the Employer in respect of his dismissal.

13.3 Benefits not affecting workers compensation rights

Nothing herein shall in any way affect the right of a Member or his legal personal representative or other person to claim damages or compensation at Common Law

interests of the Fund and of the Members generally that such election be made.

17. AMENDMENT OF DEED

All or any of the provisions of this Trust Deed may be added to or altered or modified at any time in accordance with the Rules.

18. GOVERNING STATE LAW

This Trust Deed and the Rules shall in all respects be governed and construed in accordance with the law of the State of New South Wales (under the laws of which State the trusts of the Fund are established) including in respect of the application to the Fund of Regulatory Law and any other relevant laws of the Commonwealth of Australia and except to the extent that under Regulatory Law a provision of a law of the Commonwealth of Australia may apply to the exclusion of a law of the said State following an election under Clause 16 above.



or under Workers' Compensation Acts or any other Statute in force governing compensation to a member injured or dying from any accident arising out of and in the course of his employment with the Employer and the amount payable hereunder shall not be reduced by reason of any payment that may be made in respect of such damages or compensation.

14. RIGHTS TO BENEFITS AND INTERESTS IN FUND

14.1 Member's rights personal

All rights of a Member under the Trust Deed and Rules are personal to the Member except as expressly or by necessary implication provided in the Trust Deed or Rules.

14.2 Limit on member's right to Fund assets

Except as provided by the Trust Deed and the Rules or by Regulatory Law a Member shall have no right to or interest in his benefit nor to or in any asset of the Fund.

14.3 Limit on Employer's entitlement to Fund assets

In no circumstances shall an Employer be entitled to any money or other assets of the Fund except as otherwise provided under the Rules.

15. OVERRIDING DEEMED COMPLIANCE REQUIREMENT

Notwithstanding anything otherwise herein contained the Fund shall at all times be administered by the Trustee in accordance with and in such manner as to ensure compliance with the Regulatory Law as is applicable to the Fund as a complying fund for the purposes of the Regulatory Law and insofar as the provisions of the Trust Deed and Rules may not encompass or may conflict with the Regulatory Law the Trust Deed and the Rules shall be deemed to have been amended so as to include or comply with all Regulatory Law as is for the time being applicable to the Fund as a complying fund (and in particular in regard to any payment of part or all of the Member's entitlement or transfer to the Fund or from this Fund to another superannuation arrangement of any money to which a Member is entitled) unless and except as may be otherwise determined by the Trustee (provided that no such determination shall be made which prejudicially affects the benefits accrued to a Member prior to the effective date of the determination) AND each Member and his Dependants and each Employer shall be bound by the Trust Deed as though so amended notwithstanding that the effect of such amendment may be or include the denial reduction or deferral of payment or application of Benefits or part thereof the withdrawal of any rights or entitlement conferred by this Deed or the imposition of a liability or increased or additional liability to make Contributions or to meet expenses of the Fund.

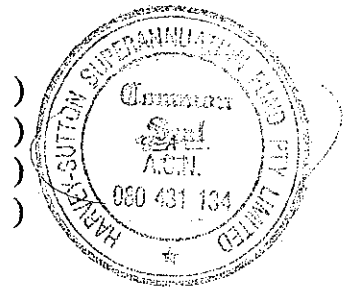
16. IRREVOCABLE ELECTIONS FOR COMPLIANCE PURPOSES

It is expressly declared that the Trustee shall have power to elect irrevocably that the Fund shall comply with and be subject to Regulatory Law or to a provision of Regulatory Law if and whenever it is a condition of Regulatory Law that such an election be made and the Trustee considers it necessary or advisable in the



IN WITNESS WHEREOF the Trustee has executed this Deed Poll the day and year first above written.

THE COMMON SEAL of
HARVEY-SUTTON SUPERANNUATION FUND PTY LIMITED
was hereunto affixed in the
presence of




Sole Director

ANNEXURE HEREINBEFORE REFERRED TO - RULES

COMMENCEMENT OF RULES

- 1.1 These Rules shall come into operation on the date specified in the Deed adopting the same or if no date is specified therein then on the date of execution of such Deed.

DEFINITIONS AND INTERPRETATION

2. The headings in these Rules shall not affect the construction hereof, and unless excluded by the context or unless the contrary intention appears:
- 2.1 "**Account**" means and includes an Employer Contribution Account and a Member Contribution Account.
- 2.2 "**Actuary**" means the actuary (if any) for the time being appointed pursuant to Rule 21.2.
- 2.3 "**Administrator**" means the administrator (if any) for the time being appointed pursuant to Rule 21.1.
- 2.4 "**Approved Trustee**" means a corporation for the time being approved by the Commissioner as an approved trustee under Regulatory Law.
- 2.5 "**Auditor**" means the person, firm or company for the time being appointed as auditor of the Fund under Rule 21.3.
- 2.6 "**Benefit**" means any amount which is or may become payable by the Fund to or in respect of a Member under these Rules.
- 2.7 "**Benefit Designation Account**" means an account so designated and to be maintained under Rule 7.3 for the purpose of recording the portion of each Member's Benefits for the time being which are to be or may be treated in a particular way under Regulatory Law or the Rules.
- 2.9 "**Commissioner**" means the person for the time being appointed as Insurance and Superannuation Commissioner under the Insurance and Superannuation Commissioner Act, 1987, and wherever necessary includes any person or body vested from time to time under the Regulatory Law with powers necessary or incidental to the regulation or supervision of superannuation retirement benefit or pension funds operating in Australia.
- 2.10 "**Compliance Status**" means the eligibility of the Fund under the Tax Act for concessional tax treatment in respect of its income and gains and the eligibility of the Fund as a recipient of contributions which are deductible to or confer

concessions on the payer under the Tax Act or the Superannuation Guarantee Scheme.

- 2.11 **"Dependant"** of a Member means:
- 2.11.1 a person who is the Spouse or a child (including posthumous, adopted or ex-nuptial child) of the Member, and
- 2.11.2 any other person who in the opinion of the Trustee is dependent on the Member, at the time of the Member's death or, in the event of application of Rule 13 to the benefits of the Member, at the time of payment of a benefit under Rule 13.2.
- 2.12 **"Determined Rate"** means the rate of investment return on the General Fund net of expenses and outgoings of the Fund (other than outgoings separately debited to the Accounts) determined by the Trustee from time to time to be credited to each Employer Contribution Account Member Contribution Account and Pension Benefit Account and which may be a different rate as between different Members or Accounts. If the Trustee is required by Regulatory Law to calculate and show separately the investment return and the expenses and outgoings the "Determined Rate" shall mean and include each of the rates (or different rates as between different Members and Accounts) so determined by the Trustee for investment return and for expenses and outgoings.
- 2.13 **"Employee"** means any person having a gainful occupation by reason of either being employed by an Employer (in the case of part-time employees if engaged at least ten hours per week on average or such lesser time as may be permitted under Regulatory Law and including as a director of an Employer which is a company) or who is engaged (whether or not as an employee) in a business, trade, profession, vocation, calling, occupation or any other activity acceptable to the Commissioner and as a result of which that person gains or seeks to gain assessable income and may (if the Member requests and the Trustee agrees) include any Member who is temporarily not so employed or engaged for a period not exceeding two years or such other period as may in any particular case or for the time being be acceptable under Regulatory Law.
- 2.14 **"Employer"** means any company, person, firm or body which has been admitted to participation in the Fund as an employer of a Member pursuant to Rule 4 and "the Employer" in relation to any Member or former Member means the Employer in whose service that person is or was at the relevant time.
- 2.15 **"Employer Benefit"** has the meaning given to it by Rule 8.3.
- 2.16 **"Employer Contribution Account"** means an account so designated and to be maintained under Rule 7.1 for the purpose of recording the proportion of each Member's Benefits as for the time being represent contributions by employers.

- 2.17 **"Excluded Fund"** means a superannuation fund of which there are less than five members or satisfying such (if any) other conditions as for the time being results in a fund being an excluded fund for the purposes of Regulatory Law.
- 2.18 **"Exempt Excluded Fund"** means an Excluded Fund which has one or more Members who are not Standard Employer-sponsored Members but which is for the time being not required to have an Approved Trustee as Trustee.
- 2.19 **"Financial Year"** means the period from the date of commencement of the Fund to the following 30 June and thereafter a period of twelve months ending at midnight on 30 June in each year or such other period (not exceeding twelve months) and such other date as the Trustee may from time to time determine.
- 2.20 **"Fund"** shall mean the Fund as constituted pursuant to the Trust Deed.
- 2.21 **"Gainfully Employed"** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling or occupation and in relation to being Gainfully Employed **"full time"** means Gainfully Employed for at least 30 hours each week and **"part time"** means Gainfully Employed for at least 10 hours, and less than 30 hours, each week Provided each such expression shall be given such meaning (if different) as is for the time being ascribed to it under Regulatory Law;
- 2.22 **"General Fund"** means the assets of the Fund but excluding all policies of insurance or assurance effected in respect of Members pursuant to Rule 24.
- 2.23 **"Mandated Contributions"** means contributions in relation to a Member made by an employer of the Member that are made pursuant to an industrial award or agreement or are made to satisfy the obligations of the employer under the Superannuation Guarantee Scheme whether as contributions to the Fund or by way of payment of a shortfall component and include any contributions which the Trustee determines pursuant to Regulatory Law are to be treated as Mandated Contributions.
- 2.24 **"Member"** means an Employee Non-Employee or Pensioner who has been admitted as and for the time being is a member of the Fund and includes a person who has been a Member and who is receiving benefits or who is entitled to receive benefits from the Fund as a result of his membership of the Fund.
- 2.25 **"Member Contribution Account"** means an account so designated and to be maintained under Rule 7.2 for the purpose of recording the proportion of each Member's Benefits as for the time being represent contributions by or deemed to be made by the Member.
- 2.26 **"Member's Accounts"** means the Employer Contribution Account and the Member Contribution Account in respect of the relevant Member and shall also

be taken to refer to the Benefit Designation Account in respect of that Member but not so as to aggregate any amount referred to in the Benefit Designation Account with balances on the Employer Contribution Account and Member Contribution Account.

- 2.27 **"Member's Minimum Benefit"** means the balance for the time being shown in respect of a Member in his Benefit Designation Account under Rule 7.3.1 representing the Member's contributions and Mandated Contributions.
- 2.28 **"Member's Own Benefit"** has the meaning given to it by Rule 8.2.
- 2.29 **"Member's Preserved Benefit"** means the balance for the time being shown in respect of a Member in his Benefit Designation Account under Rule 7.3.3 and representing amounts required to be retained in a superannuation arrangement until a minimum age or other conditions are satisfied (as described in Rule 10.3).
- 2.30 **"Member's Restricted Non-preserved Benefit"** means the balance for the time being shown in respect of a Member in his Benefit Designation Account under Rule 7.3.4 and representing amounts not required to be retained as preserved benefits but which ordinarily cannot be paid to the Member until it becomes payable under either Rule 10.1 or Rule 10.2 (whichever applies to the Member).
- 2.31 **"Member's Total Benefit"** has the meaning given to it by Rule 8.1.
- 2.32 **"Member's Unrestricted Non-preserved Benefit"** means the balance for the time being shown in respect of a Member in his Benefit Designation Account under Rule 7.3.5 and representing amounts not subject to restrictions on payment to the Member under Regulatory Law.
- 2.33 **"Member's Vested Benefit"** means the balance for the time being shown in respect of a Member in his Benefit Designation Account under Rule 7.3.2 representing amounts to which the Member would become entitled as against the Fund (whether or not allowed then to be paid to him) on voluntarily ceasing to be an Employee regardless of the exercise of any discretion then available to any Employer or the Trustee to increase such amount.
- 2.34 **"Non-Employee"** means a person who is not an Employee and **"Non-Employee Member"** means and includes any Non-Employee who has been and remains a Member and (subject to Rule 3.8) any Pensioner Member.
- 2.35 **"Normal Retiring Age"** means the age determined for each Member under Rule 9.
- 2.36 **"Pension Benefit Account"** means an account so designated and to be maintained under Rule 7.4 for the purpose of recording the amount held by the

Fund supporting the payment of Benefits by way of pension to a Pensioner.

- 2.37 "Pensioner" means a person who has become entitled to receive or is for the time being in receipt of payments by way of a pension from the Fund under Rule 12.
- 2.38 "Pensioner Member" means a person admitted as a Non-Employee Member under Rule 3.1.1 receiving or entitled to receive an immediate or deferred pension from the Fund under Rules 10.6 or 12.1.1.
- 2.39 "Permanent Invalidity" means a physical or mental condition from which a Member is suffering of a degree that, in the opinion of the Trustee after obtaining advice from a legally qualified and registered medical practitioner, the Member is unlikely ever to engage in or work for reward in any occupation or work for which he is reasonably qualified by education, training or experience, **PROVIDED THAT** where the Trustee has effected a policy on the life of a Member with an insurance company against the risk of his permanent invalidity or total and permanent disablement, as the case requires, he shall be regarded as being in the said condition if the insurance company pays a claim by the Trustee under the said policy in respect of that condition of the Member.
- 2.40 "Preservation Age" in relation to a Member means the age applicable to that Member as referred to in Rule 10.3.1 as the minimum age for payment of the Member's Preserved Benefit.
- 2.40 "Regulatory Law" means the Superannuation Industry (Supervision) Act 1993 and Regulations issued thereunder from time to time, and any law and regulations in replacement thereof or additional or separate thereto which may regulate or relate to the administration of superannuation retirement or pension funds in Australia and the conferring of concessional status or rates for taxation purposes of such funds or the income of or contribution to or benefits from such funds, and includes any rulings of the Commissioner for the regulation and supervision of superannuation retirement benefit or pension funds operating in Australia and to the extent still in force and applicable to the Fund includes the Superannuation Entities (Taxation) Act, 1987 (formerly Occupational Superannuation Standards Act, 1987) and Regulations issued thereunder.
- 2.41 "Review Date" means the 1st day of July in each year or such other date in each year as the Trustee may determine.
- 2.42 "Salary" means the ordinary weekly, fortnightly or monthly salary or remuneration paid by the Employer to the Member but does not include commission, bonuses, overtime payments, allowances or other like payments unless otherwise agreed by the Employer and the Trustee and then only to the extent permitted under the Regulatory Law.

- 2.43 "Spouse" means the husband, wife, widower or widow of a Member and includes a person who is or (in the case of a deceased Member) was at the date of death of the Member either recognised by law of the State or Territory of residence as the de facto spouse of the Member or in the opinion of the Trustee is or was living as the spouse of the Member on a permanent and bona fide domestic basis.
- 2.44 "Standard Employer-sponsored Member" means a Member in respect of whom an Employer makes contributions to the Fund under an arrangement with the Trustee or has done so within the previous two years.
- 2.45 "Superannuation Guarantee Scheme" means the arrangements established under the Superannuation Guarantee (Administration) Act 1992 and Superannuation Guarantee Charge Act 1992 for the payment of minimum levels of superannuation contributions by employers or of a levy in respect of any shortfall in such contributions.
- 2.46 "Tax" includes any tax, duty, levy, surcharge or other impost of the Commonwealth or any State or Territory of Australia or of any other country or state.
- 2.47 "Tax Act" means the Income Tax Assessment Act 1936 and Regulations issued thereunder from time to time and includes any law and regulations for the time being in force re-enacting or in place of all or any part of the Income Tax Assessment Act 1936 and Regulations thereunder or imposing any tax, duty or charge in relation to contributions to, income, profits, assets or transactions of or benefits or payments from superannuation retirement benefit or pension funds operating in Australia.
- 2.48 "Temporary Incapacity" means a physical or mental condition from which a Member is suffering of a degree that in the opinion of the Trustee, after obtaining advice if it sees fit from a legally qualified and registered medical practitioner, the Member is for the time being unable to carry out the normal duties of his employment or occupation and subject to Regulatory Law may include such a condition while the Member is able to resume some but not all of his normal duties.
- 2.49 "Trustee" means the Trustee or Trustees for the time being of the Fund.
- 2.50 "Unsupported Member" means a Member who is an Employee but not employed by an Employer and includes a Member (whether or not still an Employee) whose Employer has given notice of intention to cease to participate in the Fund (whether generally or in respect of that Member) and who has elected with the approval of the Trustee to become an Unsupported Member.
- 2.51 Words denoting a gender include each other gender and words denoting the

singular number include the plural number and vice versa.

- 2.53 A reference to a statute or regulation made under a statute shall be taken to refer to the statute or regulation as amended and in force for the time being.

ELIGIBILITY FOR MEMBERSHIP

3.1 Application for Membership

Any person wishing to become a Member of the Fund:-

- 3.1.1 as a Pensioner Member; or
- 3.1.2 being an Employee not employed by an Employer; or
- 3.1.3 being an Employee nominated by an Employer; or
- 3.1.4 being a person entitled to benefits from any other superannuation arrangement or terminated employment which under Regulatory Law may be transferred to and held by the Fund for the time being for the benefit of that person and Dependants of that person without prejudice to Compliance Status; or
- 3.1.5 being a Non-Employee whose participation in the Fund would be permitted under Regulatory Law without prejudice to Compliance Status

may make an application to join the Fund in the form set out in the Schedules hereto described as Membership Application or such other form consistent with Regulatory Law as the Trustee from time to time may determine. The Trustee may reject any application which in its opinion does not comply with Regulatory Law or may prejudice Compliance Status.

3.2 Employer may nominate

Each Employer may nominate Employees who have been in the employment of the Employer for at least one month, or for such shorter period as the Employer may in a particular case decide, to be Members.

3.3 Information to prospective members

The Trustee shall give to each applicant on or before becoming a Member such information as is required by Regulatory Law, being all information that the Trustee reasonably believes a Member would reasonably need for the purpose of understanding the main features of the management, financial condition and investment performances of the Fund.

3.4 Additional Information Requirements (Non Excluded Funds)

If the Fund is not an Excluded Fund the information given under Rule 3.3 must

include all the specified information that would then be required to be given by the Fund to a new Member under Regulatory Law and (unless the Fund is an Exempt Excluded Fund or the person is a prospective Standard Employer-sponsored Member) must be given before the prospective Member submits an application to join the Fund and include notice of his rights to withdraw from the Fund under Rule 3.5.

3.5 **Cooling-off period (Non-Exempt Excluded Funds)**

If the Fund is not an Exempt Excluded Fund and the Member is not a Standard Employer-sponsored Member, a Member shall be entitled within 14 days (or such other period as may be prescribed under Regulatory Law) of acceptance of his application to give written notice to the Trustee requesting redemption of his interest in the Fund and the Trustee shall as soon as practicable after receiving the request pay to such Member (notwithstanding Rule 10) the amount which would have been payable under Rule 11.3 as though the Member was an Employee who had ceased to be an Employee subject to any adjustment applicable under Regulatory Law.

3.6 **Acceptance and Classification**

On the application being accepted by the Trustee the applicant shall become a Member (classified where appropriate as an Unsupported Member, Non-Employee Member or Pensioner Member) as from the date specified by the Trustee and shall be deemed to be bound by the provisions of the Deed and the Rules.

3.7 **Reclassification of Members**

3.7.1 An Unsupported Member shall cease to be so classified but shall remain a Member on or after becoming employed by an Employer who agrees with the Trustee to contribute to the Fund in respect of that Member.

3.7.2 A Standard Employer-Sponsored Member who becomes an Unsupported Member and elects with the approval of the Trustee to remain a Member shall be reclassified as an Unsupported Member.

3.7.3 A Standard Employer-sponsored Member or Unsupported Member who becomes a Non-Employee and remains in the Fund shall be reclassified as a Non-Employee Member on request if the Trustee agrees to accept further contributions by or in respect of that Member.

3.7.4 A Non-Employee Member who becomes an Employee shall be reclassified as a Standard Employer-sponsored Member or Unsupported Member as appropriate.

3.7.5 A Member who becomes a Pensioner shall be reclassified as both a Non-Employee Member and a Pensioner Member.

3.8 **Pensioners with continuing contributions as Employees**

A Pensioner Member who is also for the time being an Employee may also

participate in the Fund as an Unsupported Member with separate Member's Accounts and Member's Benefits in relation to contributions to the Fund in respect of his position as an Employee if and so long as permitted under Regulatory Law and with the agreement of the Trustee.

ADMISSION OF EMPLOYERS

4.1 Procedure for admission

The Trustee may on such conditions and as from such date as it shall determine admit an Employer and any of its Employees to participation in the Fund upon such Employer entering into a covenant with the Trustee in the form set out in the Schedules hereto described as Participating Employer's Covenant (or such other form as the Trustee may require) to make all payments to the Trustee and to the Fund and to observe and perform all other relevant conditions and obligations of the Deed and Rules.

4.2 Information for New Employers

If the Fund is not an Exempt Excluded Fund, the Trustee must give to an Employer before it enters into the covenant to participate in the Fund all information relating to the Fund as is for the time being required under Regulatory Law.

CONTRIBUTIONS BY MEMBER

5.1 Amounts as agreed

Subject to Rule 20 a Member may from time to time contribute to the Fund such amounts as are agreed between the Member and such Employers as shall then be contributing to the Fund in respect of that Member or in the case of an Unsupported Member such amounts as are agreed between the Member and the Trustee.

5.2 Contributions from non-associated employers

The Trustee may at its discretion accept contributions in respect of a Member from any person company or body by whom or which a Member is employed or remunerated (including as a director or under a contract for the labour or services of the Member) notwithstanding such person company or body is not an Employer and also any amounts representing any such contributions or any unpaid Mandated Contributions in respect of a Member from any authority or fund authorised to collect hold and remit such contributions provided the Trustee is satisfied acceptance of any such contribution is permitted under Regulatory Law and will not prejudice the Compliance Status.

5.3 Contributions by other persons

The Trustee may accept contributions in respect of a Member from persons other than under Rule 5.2 or Rule 6 (or as transfers to the Fund under rule 16) provided it is satisfied the contributions are from such persons and made in such

circumstances as may for the time being be permitted under Regulatory Law without prejudicing Compliance Status.

5.4 **Apportionment of Contributions between Accounts**

The Trustee shall determine the extent to which contributions under Rules 5.2 and 5.3 other than Mandated Contributions shall be treated as Member Contributions to the Fund.

CONTRIBUTIONS BY EMPLOYER

6.1 **Amounts at Employer's discretion**

Subject to Rule 20 each Employer agrees with the Trustee to contribute to the Fund such amounts in respect of a Member who is its Employee as the Employer shall in its absolute discretion determine from time to time.

6.2 **Contributions from associates of Employers**

The Trustee may accept contributions in respect of a Member from his Employer or any person or company related to or associated with that Employer from whom or which the Trustee may be permitted under Regulatory Law and the Tax Act to accept contributions to the Fund in respect of that Member.

ACCOUNTING RECORDS

7. The Trustee shall keep or cause to be kept pursuant to Rule 22.2 in respect of each Member (to the extent required)

7.1 an "Employer Contribution Account" showing:

7.1.1 contributions by the Employer or others to the Fund in respect of that Member pursuant to Rule 6 (Employer's Contributions) or Rule 5.2 and 5.3 to the extent not determined to be treated as Member Contributions;

7.1.2 sums credited to such Account pursuant to an allocation made under Rule 14 below (allocation of forfeited benefits);

7.1.3 sums debited to such Account in paying premiums on any policy of insurance or assurance in respect of that Member, effected by the Trustee pursuant to Rule 24;

7.1.4 sums credited being that proportion of the proceeds of any such policies as is attributed to sums debited in Rule 7.1.3;

7.1.5 payments, if any, of tax related to contributions or transfers credited to the Employer Contribution Account or to earnings on the balance for the time being in the Employer Contribution Account;

- 7.1.6 benefit payments, transfers to Pension Benefit Account to provide pensions or payments in purchase of pensions debited to such Account pursuant to Rule 11.7;
- 7.1.7 sums credited to such Account pursuant to Rule 16 (transfers to the Fund);
- 7.1.8 investment income and Fund expenses credited or debited at the end of each Financial Year or on such other date as the Trustee determines, calculated at the Determined Rate or respective Determined Rates on the balance in the Employer Contribution Account from time to time since the date on which interest was last credited pursuant to this Rule 7.1.8.

7.2 A "**Member Contribution Account**" showing:

- 7.2.1 contributions made by or in respect of him under Rule 5 and to be treated as Member Contributions;
- 7.2.2 sums debited to such Account in paying premiums on any policy of insurance or assurance on the life of that Member effected by the Trustee pursuant to Rule 24;
- 7.2.3 sums credited being that proportion of the proceeds of any such policies as is attributed to sums debited in Rule 7.2.2;
- 7.2.4 sums credited to such Account pursuant to Rule 16 (transfer to the Fund);
- 7.2.5 payments, if any, of tax related to contributions or transfers credited to the Member Contribution Account or to earnings on the balance for the time being in the Member Contribution Account;
- 7.2.6 benefit payments, transfers to Pension Benefit Account to provide pensions or payments in purchase of pensions debited to such Account pursuant to Rule 11.7;
- 7.2.7 investment income and Fund expenses credited or debited at the end of each Financial Year or on such other date as the Trustee determines, calculated at the Determined Rate on the balance in the Member Contribution Account from time to time since the date on which interest was last calculated pursuant to this Rule 7.2.7.

7.3 A "**Benefit Designation Account**" showing where an amount to be so designated has arisen in respect of the Member and is different from the balances on the Employer Contribution Account or the Member Contribution

Account as the case may be the amounts included in each of those Accounts that are from time to time:

- 7.3.1 Minimum Benefits - being such part or parts (if any) of the Member's Total Benefit as represents contributions by or on behalf of the Member other than by or on behalf of any employer and Mandated Contributions by any employer in respect of the Member (including any amounts transferred to or received by the Fund and representing such Member Contributions or Mandated Contributions to another fund or which are determined under Regulatory Law to be treated as minimum benefits) increased or decreased as provided under Regulated Law.
- 7.3.2 Vested Benefits - being such part or parts (if any) of the Member's Total Benefit as represents contributions received and amounts transferred to or held by the Fund (increased or decreased as provided under Regulatory Law) as were required under Regulatory Law or were otherwise paid to and accepted by the Fund or are required by these Rules to be held by the Fund on the basis that all benefits derived therefrom would be payable to the Member (in the case of an Employee Member in the events referred to in Rule 11.3 or which have subsequently been determined as to be so payable);
- 7.3.3 Preserved Benefits - being such part or parts of the Member's Total Benefit as represents contributions received and amounts transferred to or held by the Fund (increased or decreased as provided under Regulatory Law) and of increments to Member's Accounts as were required under Regulatory Law or were otherwise paid to and accepted by the Fund or are required by these Rules to be held by the Fund on the basis that all benefits derived therefrom would not be paid to the Member except in accordance with Rule 10.3;
- 7.3.4 Restricted Non-preserved Benefits - being such part or parts (if any) of the Member's Total Benefit as represent contributions received and amounts transferred to or held by the Fund (increased or decreased as provided under Regulatory Law) as were required and permitted under Regulatory Law, the terms of payment to and acceptance by the Fund, or by these Rules to be held by the Fund on the basis that benefits derived therefrom are subject to the restrictions on payment to the Member under Rule 10.2 but not to the restrictions on payment set out in Rule 10.3.
- 7.3.5 Unrestricted Non-preserved Benefits - being such part or parts (if any) of the Member's Total Benefit as represent contributions received and amounts transferred to or held by the Fund (increased or decreased as provided under Regulatory Law) as are permitted under Regulatory Law, the terms of payment to and acceptance by the

Fund and by these Rules to be held by the Fund on the basis that benefits derived therefrom are payable to the Member without being subject to the restrictions on payment under either Rule 10.2 or 10.3.

7.3.6 Benefits within any other category or categories which may for the time being be required or permitted by Regulatory Law to be specified for any purpose and which the Trustee determines should be separately specified and recorded for the purposes of the Fund.

7.4 A "Pension Benefit Account" in relation to each Pensioner Member showing:

7.4.1 the initial balance of the Member's Total Benefit retained in the Fund or the initial amount transferred to the Fund (as the case may be) to provide a Pension under Rule 12.1.1;

7.4.2 sums credited being additional Benefits becoming payable to the Member by the Fund under Rules 3.8 and 11.1.4 and determined to be paid by way of pension under Rule 12.1.1;

7.4.3 sums credited to such Account pursuant to Rule 16 (transfer to the Fund);

7.4.4 payments, if any, of tax related to transfers credited to the Member's Pension Benefit Account or to earnings on the balance for the time being in the Pension Benefit Account;

7.4.5 pension benefit payments or payments on commutation of pensions debited to such Account pursuant to Rule 11.7;

7.4.6 investment income and Fund expenses credited or debited at the end of each Financial Year or on such other date as the Trustee determines, calculated at the Determined Rate on the balance in the Pension Benefit Account from time to time since the date on which interest was last calculated pursuant to this Rule 7.4.6.

BENEFITS DEFINED

8.1 The "Member's Total Benefit" at any time in respect of a Member will be the aggregate of the net amounts then standing to the credit of his Employer Contribution Account, Member Contribution Account and Pension Benefit Account and the value at that time of the benefits secured by any policy of insurance or assurance in respect of that Member effected by the Trustee pursuant to Rule 24.

8.2 "Member's Own Benefit" at any time in respect of a Member will be the aggregate of net amounts standing to the credit of his Member Contribution

Account and Pension Benefit Account at that time and, if any policy of insurance or assurance has been effected by the Trustee pursuant to Rule 24 in respect of that Member, the proportion of the benefits of such policy as is attributable to premiums debited to his Member Contribution Account;

8.3 **"Employer Benefit"** at any time in respect of a Member will be the net amount standing to the credit of his Employer Contribution Account at that time in respect of that Member and, if any policy of insurance or assurance has been effected by the Trustee pursuant to Rule 24 in respect of that Member, the proportion of the benefits of such policy as is attributable to premiums debited to the Employer Contribution Account of that Member.

8.4 **Adjustment (interim) of amounts of Benefits**

The amount of each of the Benefits referred to in Rule 7.3 and this Rule 8 at any time shall be subject to such adjustment (if any) as the Trustee considers fair and reasonable as between the relevant Member and all other Members so as to reflect earnings and liabilities of the Fund whether accrued incurred or contingent (and including any liability that would arise in relation to payment of the Benefit concerned) to the extent that such earnings and liabilities have not previously been taken into account in determining a Determined Rate which has been credited or debited to the relevant Account.

NORMAL RETIRING AGE

9.1 **Age as Agreed**

The Normal Retiring Age shall be age 65 or (subject always to Regulatory Law) such other lesser or greater age as may be agreed by the Trustee in respect of a specified Member but if the sole or primary purpose of the Fund is the payment of old age pensions not being earlier than the earliest age at which a pension may commence to be paid under Rule 12.

9.2 **Pensioner's Possible Second Normal Retiring Age**

A Pensioner who also participates in the Fund as an Employee with separate Member's Accounts may have a different Normal Retiring Age agreed by the Trustee in respect of Benefits arising under those separate Member's Accounts if and as permitted by Regulatory Law.

CONDITIONS OF PAYMENT OF BENEFIT

10.1 **Payment of Benefits to Non-Employee Members**

Subject to Rules 10.5 to 10.8 and to the application of Rules 10.3 and 10.4 in relation to the Member's Preserved Benefit, the Benefit to which a Non-Employee Member is entitled under Rule 11 shall be immediately payable to him upon his becoming so entitled Provided that in the case of a Non-Employee Member admitted as a Pensioner Member the Benefit shall commence to be paid as soon as practicable after being so admitted as a Member unless the Member

and the Trustee agree on such admission to defer commencement of payment of the pension to an agreed Normal Retiring Age.

10.2 **Payment of Benefit only on ceasing to be an Employee**

Subject to Rules 10.3 to 10.8 the benefit to which a Member (other than a Non-Employee Member) is entitled under Rule 11 shall be immediately payable to him:-

10.2.1 if employed by an Employer who (or any associate of whom) had at any time contributed to the Fund in respect of the Member, upon ceasing to be so employed; or

10.2.2 if not so employed by an Employer at the time of becoming entitled, upon the Member ceasing to be an Employee under any arrangement under which the Member was Gainfully Employed provided that the Member has attained his Preservation Age and that if the Member has not attained age 60 the Trustee is reasonable satisfied the Member intends never again to become Gainfully Employed either on a full-time or part-time basis;

unless the Member agrees with the Trustee to defer the benefit payment subject to such terms and conditions (including the making and acceptance of contributions to the Fund during such period of temporary unemployment as may be permitted by Regulatory Law) as agreed between the Trustee and the Member until a date so agreed provided such date complies with Regulatory Law and in any case is on or before the Normal Retiring Age of the Member.

10.3 **Preserved Benefits**

Where the Trustee is required by Regulatory Law not to pay part or the whole of the Member's Total Benefit to a Member or where payment of part or the whole of the Member's Total Benefit to a Member would prejudice the Compliance Status of the Fund, but such amount or amounts (being the Preserved Benefit) are required (whether under Regulatory Law or as a condition of Compliance Status or under the terms on which moneys funding such Preserved Benefit have been paid or transferred to the Fund) to be retained in the Fund or in another superannuation arrangement until the Member has satisfied one of the conditions of release applicable under Regulatory Law to the Member's Preserved Benefit including (without limitation) in the event:

10.3.1 the Member has attained age 55 or such other age as may for the time being be specified by Regulatory Law or the Tax Act for a person of the age of that Member as a minimum age for the payment of benefits required to be retained under the said conditions of release and the Trustee is reasonably satisfied the Member intends never to again become Gainfully Employed on a full-time or part-time basis, or

- 10.3.2 the Member has attained age 60 and an arrangement under which he was Gainfully Employed (whether full-time or part-time) has subsequently ceased, or
- 10.3.3 the Member has attained age 65, or
- 10.3.4 the Member has died, or
- 10.3.5 the Member has suffered permanent incapacity for the purposes of the Regulatory Law, or
- 10.3.6 such other circumstances arise as the Commissioner approves,

the Trustee shall, in its sole discretion, determine either to retain the Preserved Benefit in the Fund until such time as it is permitted to pay the Preserved Benefit to the Member or his Dependants (but subject to Rule 17), or to transfer the Preserved Benefit to another superannuation arrangement (including an approved deposit fund or deferred annuity provider and hereinafter called the "Transferee Fund") nominated by the Member subject to the Trustee being satisfied that the Preserved Benefit and increments thereto shall be retained in the Transferee Fund as required by the Regulatory Law. The receipt of the proper officer of the Transferee Fund shall be a complete discharge to the Trustee of all liability to and in respect of the Member and it shall have no responsibility to see to the application of the Preserved Benefit. Where part only of the Benefits or Preserved Benefit of a Member are so paid to a Transferee Fund the entitlement of the Member and his Dependants shall reduce and the liability of the Trustee shall be discharged by the proportion so paid.

10.4 **Preserved Benefits Payable as Pensions**

Notwithstanding Rule 10.3 a Member's Preserved Benefit may upon his ceasing to be an Employee be applied by the Trustee in its discretion at the request of the Member in the provision for the benefit of the Member of a non-commutable life pension or non-commutable life annuity whether paid out of the Fund or provided by purchase from a life insurance company or other authorised organisation and complying with applicable provisions of Regulatory Law.

10.5 **Unrestricted non-preserved benefits**

A Member's Unrestricted Non-preserved Benefit may be paid at any time to the Member in whole or part at the request of the Member subject to such reasonable notice as the Trustee may require and whether by way of lump sum or pension or by purchase of an annuity provided that the Trustee may at any time or from time to time as permitted by Regulatory Law determine upon the expiry of three months notice to all Members affected that each Member's Unrestricted Non-preserved Benefit shall be redesignated as part of that Member's Restricted Non-preserved Benefit and the Benefit shall be redesignated accordingly in the Benefit Designation Account.

10.6 Latest time for payment

Notwithstanding anything contained in Rules 10.1 to 10.5 and Rule 11 the Member's Total Benefit shall become immediately payable and be paid as soon as practicable after:

10.6.1 the Member dies (unless the Member is a Pensioner and a further pension is payable out of the Member's Total Benefit); or

unless and to the extent otherwise permitted under Regulatory Law, after the Member (being an Employee) either:

10.6.1 being at least age 65 ceases to be Gainfully Employed on any full-time or part-time basis; or

10.6.2 being at least age 70 ceases to be Gainfully Employed on a full-time basis,

and in such other circumstances and subject to such other requirements (if any) as for the time being provided under Regulatory Law.

10.7 Restriction on Payments during technical insolvency

Notwithstanding anything contained in these Rules no Benefit payment or any other payment may be made by the Fund during any period in which the Fund may within the meaning of Regulatory Law be technically insolvent unless the payment is approved by the Actuary either expressly or as within a scheme for payment approved in writing by the Actuary.

10.8 Payment of insured benefits

If and to the extent that any Benefit under the Fund is being provided by way of insurance under Rule 24 whether in respect of the death or disability of a Member or otherwise the Trustee shall not be obliged to make or commence payment of the Benefit except as and to the extent that moneys for the Benefit are received by the Trustee from the relevant insurer.

ENTITLEMENT TO BENEFIT**11.1 Retirement**

A Member shall be entitled to receive his Member's Total Benefit:-

11.1.1 in the case of a person admitted as a Pensioner Member - immediately upon admission as a Member or (if a later Normal Retiring Age has been agreed under Rule 10.6) upon attaining his Normal Retiring Age;

11.1.2 in the case of a Non-Employee Member (other than a Pensioner Member) - upon attaining his Normal Retiring Age;

11.1.3 in the case of a Member who is an Employee - upon ceasing to be an Employee on or after his Normal Retiring Age by any reason other than his death, or prior to his Normal Retiring Age for reason of his Permanent Invalidity;

11.1.4 in the case of a Pensioner Member for whom additional Benefits accrue on separate Member's Accounts as an Employee - to the extent of those additional Benefits upon ceasing to be an Employee.

11.2 **Death**

Upon the death of a Member:-

11.2.1 before payment to him of his Benefits and before commencement of payment of any pension, or

11.2.2 whilst his Member's Preserved Benefit is still held by the Fund, or

11.2.3 if a Pensioner, but subject to Rule 12.4

the Trustee shall pay his Member's Total Benefit or the balance of such Benefit (including his Member's Preserved Benefit) to such one or more of the Dependants and the legal personal representatives of the Member and in such proportions if any between them and by way of lump sum and/or pension as the Trustee shall in its absolute discretion determine; provided that if the Trustee shall not exercise such discretion within twelve (12) months from the date of his death or if there are no Dependants of the Member at the date of his death the Trustee shall pay the Benefits to the legal personal representatives of the Member, but if there are no legal personal representatives or Dependants, the Trustee may if permitted by Regulatory Law pay all or any part or parts of the Benefits to any other individual person or persons who the Trustee is satisfied is or are related to or associated with the Member but otherwise or to the extent not so paid, the Benefit shall remain in the Fund to be dealt with in accordance with Rule 14 (if permitted under Regulatory Law) or as unclaimed or lost Member's Benefit under Rule 17.

11.3 **Leaving Gainful Employment**

Upon a Member (other than a Non-Employee Member) ceasing to be an Employee before his Normal Retiring Age by any reason other than his death or Permanent Invalidity subject always to Rule 10 as applicable he shall be entitled to receive:-

11.3.1 his Member's Own Benefit; and

11.3.2 such part of the Employer Benefit as is part of the Member's Minimum Benefit; and

11.3.3 so much (if any) of the balance of the Employer Benefit as may be determined by the Trustee whether on the Member ceasing to be an Employee or under a general scheme set out in a schedule to these Rules or under a prior determination relating to the Member and in each case having regard to any terms and conditions of the payment or transfer to the Fund of any contributions or other amounts forming part of such balance.

11.4 **Nomination of Beneficiaries**

A Member may at any time and from time to time give notice in writing to the Trustee nominating (but without imposing any binding obligation on the Trustee) in the form set out in the Schedule hereto described as Members Beneficiaries Nomination or such other form as the Trustee may require the person or persons to whom and the proportions in which the Member wishes the Trustee to pay Benefits in the event of the death of the Member and may also vary or revoke any such notice.

11.5 **Form of Payment - Lump Sum or Pension**

Benefits payable under this Rule 11 excluding any benefit payable on death of the Member or under Rule 10.5 (but including benefits retained under Rule 10.3) shall be payable:-

11.5.1 so long as the primary purpose of the Fund under Clause 4 of the Deed is the provision of retirement benefits by way of lump sums or pensions, as lump sums (subject to Rule 10.8) unless the Member has given notice whether before or after such benefits became immediately payable electing that his benefits or some proportion thereof shall be payable by way of a pension under Rule 12 and has not revoked such notice;

11.5.2 so long as the primary purpose of the Fund under Clause 4 of the Deed is the provision of retirement benefits by way of old age pensions, as pensions under Rule 12.

11.6 **Ancillary Benefits**

If and to the extent that the Fund is for the time being permitted to provide such benefits and the Benefits are not otherwise being provided under the Rules a Member may also become entitled to such Benefits as may be agreed between the Member and the Trustee and payable in any one or more of the following circumstances:-

11.6.1 as periodical payments by way of additional benefits during the Temporary Incapacity of the Member;

11.6.2 as welfare benefits to assist Members in the event of severe financial hardship, or sickness, accident or other misfortune causing hardship;

- 11.6.3 as a benefit to a Member who ceases contributing to the Fund but remains an Employee;
- 11.6.4 in the case of a benefit under Rule 11.3 as a lump sum in lieu of a pension notwithstanding Rule 11.5.2;
- 11.6.5 any other circumstances for the time being permitted under Regulatory Law,

Provided always that any requirements under Regulatory Law for the provision of such benefits are satisfied and Provided Further that all Benefits under this Rule shall be provided out of the Member's Total Benefit except to the extent provided under insurance policies under Rule 24.

11.7 **Allocation of payments between Benefit Accounts**

- 11.7.1 Each lump sum payment and any amount transferred to a Member's Pension Benefit Account to provide a pension under Rule 12.1.1 or paid to an insurance company or other person in purchase of a pension pursuant to Rule 12.1.2 shall be debited to the Employer and Member Contribution Accounts of the relevant Member in such proportions as the Trustee in its discretion shall determine.
- 11.7.2 Each pension payment under Rule 12.1.1 and any amount paid on commutation of a pension or as a lump sum following the death of a Pensioner shall be debited to the Pension Benefit Account of the relevant Member.
- 11.7.3 Each such payment shall also be applied to reduce the balances for the time being in the Member's Benefit Designation Account as the Trustee shall determine having regard to the particular payment and subject to any priority prescribed by Regulatory Law and applicable to the particular payment.

PENSION BENEFITS

12.1 **Payment from Fund or by purchase**

The amount of pension payable in accordance with Rule 11.5 -

- 12.1.1 may if the Trustee so determines be paid periodically by the Trustee out of the Member's Total Benefit in amounts (whether fixed or varying from time to time as permitted by Regulatory Law) as calculated by the Actuary; or
- 12.1.2 where the pension is not paid out of the Fund periodically, shall be such as is purchased out of the Member's Total Benefit (or part thereof as the case may be) by the Trustee from an insurance

company or any person for the time being authorised to provide annuities or pensions fulfilling the conditions of this Rule.

12.2 **Complying Pensions - conditions**

Any such pension will be subject to the following provisions in the case of so much of a Member's Benefits as may be required to be paid by way of pension complying with specified conditions under Regulating Law ("complying pension") to avoid such Benefits being treated as excessive benefits under the Tax Act or Regulatory Law (or to reduce the amount so treated):

- 12.2.1 the pension shall be payable either for a fixed term of not less than fifteen years or for a term certain of not less than ten years and thereafter so long as the Member is living; and on the expiry of the said fixed term or term certain or death of the Member, whichever is the last to occur, a pension may be payable to the Member's Spouse (if any) or such other Dependant or Dependents of the Member as may be agreed between the Trustee and the Member for so long as the Spouse or Dependant is living of an amount not exceeding the pension payable to the Member and such that the total reversionary component of such pension does not exceed the total pension payable to the Member (including any commuted portion of the pension) as required by Regulatory Law;
- 12.2.2 the pension may be increased annually (on the Review Date if paid by the Fund) by the lesser of 5% and the rate of increase in the Consumer Price Index (All Capital Cities) or by such other amount or rate as may be approved for the time being under Regulatory Law by the Commissioner;
- 12.2.3 the person in receipt of a pension shall be entitled within six months of the date of commencement of the pension (subject to Rules 10.3 and 10.4 if applicable) to commute a part of the pension for a lump sum such that this lump sum, together with lump sums already paid by way of any prior commutations and any other Benefit payments made, shall not exceed fifty per cent (50%) of the Member's Total Benefit or such other proportion or amount as may be permitted to be commuted under the Regulatory Law;
- 12.2.4 the pension shall not be transferable to any person other than the Member or any reversionary beneficiary and may not be charged or otherwise used as security for any borrowing,

or to such other provisions as may be required or permitted for a complying pension under Regulatory Law at the time the pension first becomes payable and as may be agreed between the Trustee and the Member.

12.3 **Non-complying pensions**

Subject to Rule 12.2 a pension may be calculated and paid on such terms and conditions permitted by Regulatory Law as are agreed between the Trustee and the Member at the time the relevant Benefits first became payable provided that in the case of all pensions

- 12.3.1 to the extent that the pension is purchased or paid out of that part of the Member's Total Benefit which is a Preserved Benefit under Rule 10.3 (and is not paid as a pension in accordance with Rule 10.4) it shall not commence to be payable until the Preserved Benefit would be payable;
- 12.3.2 the amount and frequency of instalments of a pension which has been agreed as to be subject to fluctuations may be varied from time to time by agreement between the Member and the Trustee provided that the amount and frequency of payments and all fluctuations shall not exceed the minimum and maximum amounts frequency and fluctuations determined from time to time by the Trustee in consultation with the Actuary or Auditor under and in accordance with Regulatory Law;
- 12.3.3 notwithstanding the fact that any pension paid by the Trustee from the Fund out of a Member's Total Benefit as aforesaid shall be expressed to be paid for life or for a specified period, the same shall cease when the Member's Total Benefit has been extinguished.

12.4 **Residual Benefits**

Where a Pensioner dies, unless a further pension is payable pursuant to Rule 12.2 or 12.3, the Trustee shall hold the Member's Total Benefit then remaining and any moneys received by the Trustee as representing the balance of the term certain of a pension purchased out of the Member's Total Benefit and pay it in accordance with Rule 11.2.

12.5 **Commutation of Pensions**

The Trustee may on request in writing by any Member or Pensioner to whom a pension (other than a pension under Rule 10.4) has become payable commute the whole amount or any part of the pension to a lump sum cash benefit and the amount of the pension payable (and of any amounts which might be payable as pension or otherwise on the death of the Member or other pensioner) shall be reduced to the extent the pension is commuted provided that:-

- 12.5.1 such request may be made either before payment has commenced or at any time or from time to time during payment subject as may be permitted by Regulatory Law and to the absolute discretion of the Trustee to refuse to allow partial commutation of a pension which has previously been partly commuted;

- 12.5.2 the amount payable on commutation and the reduction in the pension and any other benefits remaining payable following partial commutation shall in each case be determined by the Trustee after obtaining the advice of the Actuary or Auditor;
- 12.5.3 subject to Regulatory Law the Trustee may instruct the Actuary or Auditor in giving his advice to regard the state of health of the Member or Pensioner as being unaffected by any significant impairment and to make such other assumptions as the Trustee may determine to be appropriate;
- 12.5.4 the Trustee shall have regard to whether or not the commutation or the amount payable following commutation will cause any material prejudice to the Fund; any other Member or the Dependants of any other Member;
- 12.5.5 no commutation shall be allowed except as and to the extent permitted under Regulatory Law.

12.6 **Earliest Commencement of Old Age Pensions**

Notwithstanding the provisions of this Rule 12, if and so long as the sole or primary purpose of the Fund is the provision of old age pensions, pensions payable or provided by the Fund to a Member shall not commence to be payable until the Member has attained age 60 or such other age (if any) as may for the time being be prescribed under Regulatory Law as the minimum age for commencement of payment of old age pensions. If and to the extent that a fund having the primary purpose of providing old age pensions may under Regulatory Law pay pensions commencing at an earlier age in any particular circumstances, being an age at which and circumstances in which a pension might but for this Rule 12.6 become payable under this Deed and Rules, then the Trustee may pay or provide for a pension payable from such earlier age and in such circumstances if the Trustee is satisfied the Compliance Status of the Fund will not be prejudiced.

APPLICATION OF BENEFITS IN CERTAIN CIRCUMSTANCES

13.1 **Disentitling Events**

It is a condition of a Member becoming entitled to any Benefit (other than the Member's Minimum Benefit his Unrestricted Non-preserved Benefit or any other Benefits to which the Member has become entitled under Rule 11) that the Member should not -

- 13.1.1 be declared an insane or incapable person, or
- 13.1.2 do or attempt to do or suffer any act or thing (including attempt to assign charge or mortgage his interest in the Fund but not including

becoming an insolvent under administration) whereby if any Benefit were payable to him absolutely he would be deprived of the right to receive it or any part of it or it would be disposed of or dealt with otherwise than in accordance with the Rules, or

- 13.1.3 be suffering from any physical or mental disability which in the opinion of the Trustee renders him unable to manage his own affairs.

13.2 Application for Members and Dependants

In any such event the Trustee shall in its absolute discretion apply so much of the Member's Total Benefit as exceeds the Member's Minimum Benefit for the maintenance and support of such Member or such one or more of his Dependants as the Trustee may in its absolute discretion determine provided that so long as the Member remains an Employee who is Gainfully Employed the Trustee shall only be entitled to apply the Member's Total Benefit (excluding as aforesaid) for the relief of hardship of the Member or his Dependants as permitted under Regulatory Law. The payment or application of moneys in pursuance of this Rule shall be a complete discharge to the Trustee therefor. The provisions of Rule 11.2 shall mutatis mutandis apply upon the death of a Member or Dependant (as the case may be) to whom any part of the Member's Total Benefit is being applied pursuant to this Rule 13.2.

13.3 Charges over Member's Benefits not to be recognised

The exclusion of a Member's Minimum Benefit and other Benefits from the effect of Rule 13.1 is not to be taken to permit a Member to create any charge over or assignment of the Member's Minimum Benefit or such other Benefits. The Trustee may not recognise or in any way encourage or permit a Member to charge or assign or attempt to create a charge or assignment over or in relation to his Member's Minimum Benefit or any other benefit to which he is or may become entitled under the Fund.

ALLOCATION OF FORFEITED BENEFITS

14.1 Allocation to Members as Employer Contributions

The amount of any credit balance left in a Member's Total Benefit after the application of Rules 11, 12 and 13 shall unless prohibited by Regulatory Law be treated as contributions to the Fund by employers, and shall be allocated amongst such other Members of the Fund and in such amounts or otherwise dealt with as permitted by Regulatory Law as the Trustee shall in its absolute discretion determine. All such allocations or other dealings shall be shown on the Employer Contribution Accounts.

14.2 Repayment to Employers

No amounts shall be repaid to an Employer by the Trustee out of the balance referred to in Rule 14.1 except as may be permitted on termination of the Fund.

14.3 **Restrictions on Allocation or repayment**

The allocation or other application of the balance referred to in Rule 14.1 must be effected in accordance with any applicable provisions of Regulatory Law and the Trustee shall have power in its discretion to apply such balance for any purpose permitted by Regulatory Law.

TRANSFER OF BENEFIT TO NEW FUND

15.1 **Transfer individually or generally**

The moneys and assets comprising any benefit payable to a Member on his leaving the Fund may at the Trustee's discretion with the approval of the Member concerned be paid or transferred to another superannuation arrangement (including an approved deposit fund or deferred annuity provider) empowered to accept the transfer of such moneys and assets and to provide benefits for the Member **PROVIDED THAT** while the Member remains an Employee of an Employer who has contributed to the Fund for the benefit of such Member, such transfer may be made only to a superannuation arrangement which complies with Regulatory Law. The receipt of the trustee of that arrangement shall be a complete discharge to the Trustee in respect of all liability to the Member and persons claiming in respect of his interest.

15.2 **Information to Members**

On any transfer of the benefits of a Member to another superannuation arrangement the Trustee shall give to the Member information relating to such transfer in accordance with Rule 28.1.

TRANSFERS OF BENEFITS TO THE FUND

16.1 **Transfers from another fund**

Where a Member who had been admitted to the Fund was a member of any other superannuation arrangement and -

16.1.1 there is paid or transferred to the Trustee for the credit of the Fund an amount equal to the whole or any part of the value of the Member's interest in that other superannuation arrangement, or

16.1.2 there is assigned and transferred absolutely to the Trustee for the benefit of the Fund any policy of life assurance or annuity contract in respect of him or of any Dependant,

the Trustee after obtaining such advice as it deems necessary shall determine the value of such payment assignment or transfer as the case requires, and shall credit the Member with such addition to his Employer Contribution Account his Member Contribution Account or his Pension Benefit Account or to any of them in such proportion as it shall determine and shall appropriately adjust the balance or balances shown in his Benefit Designation Account.

16.2 Transfers of other eligible amounts

The Trustee may accept from the Member or from any other person body or entity (not being another superannuation arrangement) money or other assets which the Trustee considers suitable as assets of the Fund to provide Benefits for the Member and shall deal with the same as if transferred under Rule 16.1 Provided Always that the Trustee is satisfied such money or other assets may be accepted under Regulatory Law without prejudice to Compliance Status.

UNCLAIMED AND LOST MEMBERS BENEFITS**17.1 Benefits - optional transfer to E.R.F.**

In any circumstances for the time being permitted or required under Regulatory Law including (without limitation) in relation to

17.1.1 a Member who is lost so that under Rule 30.2 or otherwise under Regulatory Law the Trustee is for the time being not required to give information to the Member under Rules 27 or 28, or

17.1.2 a Member whose Benefit (other than a pension from the Fund under Rule 12.1.1) has become immediately payable to or in respect of the Member and has not been paid more than 90 days after it became so payable (but subject in the case of a benefit on death to Rule 17.4)

the Trustee may at its discretion (but subject to Rule 17.4) pay the Benefit of a Member to an eligible rollover fund (as defined under Regulatory Law) previously chosen by the Trustee as the recipient of such benefits.

17.2 Notice to Members as to E.R.F.

The Trustee shall advise Members of the particulars of the eligible rollover fund chosen by it under Rule 17.1 but failure to do so shall not prevent the Trustee exercising the power to transfer Benefits to an eligible rollover fund under Rule 17.1 or otherwise under Regulatory Law.

17.3 Benefits payable and unclaimed

Where a Benefit (other than a pension from the Fund under Rule 12.1.1) has become immediately payable to any person who has reached the eligibility age for an age pension (as defined under Regulatory Law), that person has not applied to the Trustee for payment of the Benefits and the Benefit cannot be paid because the person cannot be located by the Trustee after making reasonable efforts to do so, then the Trustee must (subject to Rule 17.4) treat the amount of the Benefit as unclaimed money and either pay the amount to the Commissioner with the appropriate information as required by Regulatory Law or comply with any applicable law of a State or Territory in relation to unclaimed moneys.

17.4 Benefits on death - application of death benefit rules

Benefits held under Rule 11.2 following the death of a Member, former Member or any other person in receipt of a pension shall not be paid to an eligible rollover fund under Rule 17.1 nor treated as unclaimed moneys under Rule 17.2 unless and until the Trustee is satisfied the provisions of Rule 11.2 (other than dealing with the Benefit under this Rule 17) have been exhausted in relation to the Benefit or Regulatory Law requires that the Benefit be dealt with under the provisions referred to in the preceding paragraphs of this Rule 17.

17.5 Notice to Member affected

On the transfer of a Benefit to another fund or to the Commissioner under any of the provisions of this Rule, the Trustee shall give to the Member such information as may be required under Rule 28.1 unless under Rule 30.2 information is not required to be given because the Trustee is unable to locate the Member.

EXCESSIVE BENEFITS**18.1 Benefits prejudicing Fund's status**

If at any time the benefits provided from the Fund for the benefit of a Member or his Dependents are in the opinion of the Trustee excessive for the purposes of compliance with Regulatory Law or the Tax Act so as to prejudice the Compliance Status of the Fund, the Trustee may transfer the benefit or such part of the benefit as is considered to be excessive to the credit of the Member in a separate superannuation or trust fund of which the Trustee shall be the Trustee.

18.2 Alternative payment of Member's excessive benefits

If at any time the Benefits payable from the Fund for a Member or his Dependents when aggregated with benefits provided in respect of such Member from any other superannuation fund or funds are in the opinion of the Trustee excessive for the purposes of Regulatory Law or the Tax Act so as to result in the loss or reduction of any concessional rate of tax on the Benefits the Trustee with the consent of the Member may determine that part of the Benefits only shall be paid to the Member and the balance shall be provided whether by the Fund or following transfer to another fund under Rule 15 or Rule 18.1 by way of pension under Rules 12.1 and 12.2.

EXCESS BENEFITS FUND

19. For the purpose of Rule 18 a separate and distinct fund (herein referred to as "the Excess Benefits Fund"), not being a fund the income of which is exempt from income tax or liable to the minimum concessional rate of income tax by reason of approval under the Regulatory Law either in whole or in part, is hereby vested in the Trustee who hereby declares that it will hold the respective benefits therein comprised (if any) in trust for the same person upon the like terms and conditions and subject to the like trusts powers authorities and

provisions as if those respective benefits had in all other respects remained a portion of the Fund. No person shall be a member of the Excess Benefits Fund other than a Member of the Fund in respect of whom contributions payable thereunder have been reduced or adjusted or whose benefits are deemed to be or are likely to be excessive pursuant to Rule 18.

EXCESSIVE OR PROHIBITED CONTRIBUTIONS

20.1 General discretion to decline contribution

The Trustee shall have power in its discretion, after considering the requirements of the Regulatory Law, to decline to accept any further contribution for the benefit of any particular Member of the Fund or to require a reduction in the rate of contributions for that Member.

20.2 Restrictions on accepting contributions

The Trustee shall not accept contributions in respect of any Member if having regard to:

20.2.1 whether the Member is Gainfully Employed on a full-time or part-time basis, or not so employed, or

20.2.2 the amount nature or source of the contributions, or

20.2.3 the age of the Member

or to any other relevant factor, the Fund is not for the time being permitted under Regulatory Law to accept those contributions.

ADMINISTRATION OF FUND

21.1 Appointment of Administrator

The Fund shall be administered by the Trustee or by an Administrator being such person firm or company appointed by the Trustee and such Administrator shall perform such duties as determined by the Trustee for such remuneration as is determined by the Trustee.

21.2 Appointment of Actuary

From time to time the Trustee may appoint a person or a firm to the office of Actuary at such remuneration and other conditions as it thinks fit.

A person appointed to the office of Actuary or where a firm is appointed every principal of that firm shall be a Fellow of the Institute of Actuaries of Australia or shall be a person who in the opinion of the Trustee is suited by his actuarial knowledge and experience to fill the office of Actuary.

21.3 **Appointment of Auditor**

Unless under Regulatory Law the Fund is for the time being permitted to dispense with audit of the accounts, the Trustee shall appoint a person firm or company authorised under Regulatory Law to so act to be the Auditor for the time being of the Fund upon such terms and conditions as the Trustee thinks fit.

BOOKS AND RECORDS

22.1 **Fund Records Generally**

The Trustee shall keep or cause to be kept:

22.1.1 records of all changes of Trustee and changes of directors of any corporate Trustee and of all consents to act given by a Trustee or Director under the Deed;

22.1.2 minutes of its resolutions and proceedings in a book or appropriate file provided for that purpose;

22.1.3 a register of Members showing their names and particulars of benefits to which they are respectively entitled;

22.1.4 copies of reports given to Members or any particular class or Category of Members;

22.2 **Accounting Records**

The Trustee shall keep or cause to be kept an Employer Contribution Account, Member Contribution Account, Benefit Designation Account and Pension Benefit Account (as required) for each Member as provided by Rule 7, and such other accounts and records of the moneys received and disbursed by it and of the investments of the Fund and of any reserves or provisions made as correctly record and explain the transactions and financial position of the Fund and enable the accounts statements and returns required in respect of the Fund to be properly and conveniently prepared.

22.3 **Other records**

The Trustee shall keep or cause to be kept such other records as may from time to time be required to be kept under Regulatory Law or the Tax Act.

22.4 **Period for retention of records**

The Trustee shall retain or cause to be retained all books records reports and accounts required to be kept in respect of the fund for not less than the period required under Regulatory Law (being at least ten (10) years in relation to the documents referred to in Rule 22.1 and at least five (5) years in relation to the accounting records referred to in Rule 22.2).

INVESTMENT

23.1 Permitted forms of investment

The Trustee may from time to time in the name of the Trustee or in the name of any investment manager or custodian trustee or otherwise under the control of the Trustee invest the whole or any part of any moneys or assets of the Fund not required for any other purpose in or upon any investments of any kind as the Trustee in its absolute discretion shall think fit with power to sell transfer lease turn to account vary transpose or convert such investments into or for another or others as with like discretion it thinks fit without being responsible for any loss occasioned by any such investment or dealing with investments. In particular, but without limiting the generality of the foregoing the Trustee may invest in any of the following investments:

- 23.1.1 any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds,
- 23.1.2 any mortgages of or charge on freehold or leasehold lands situated in Australia or elsewhere, including mortgages or charges entered into jointly with other companies or persons, even though the amount of the loan may exceed two-thirds of the value of the land, and even though the mortgage or charge shall not rank as a first charge on the land,
- 23.1.3 on deposit with or loan to any building society or bank or any other company or person with or without security and at the rate of interest and upon terms which the Trustee may deem expedient,
- 23.1.4 the purchase or acquisition in any way of shares and stock (of any class or description) and of all or any type of bonds, mortgages or debentures in or of any building society or bank or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid-up and of any notes, options or other like securities issued by any of those companies or societies and whether secured or unsecured, registered or unregistered,
- 23.1.5 the purchase or acquisition in any way of any unit or other security or interest in any unit or other trust or fund whether or not carrying on business or owning assets in Australia or any part of the world and whether or not for the time being listed on any stock exchange,
- 23.1.6 any mortgage of or charge on any personal property,
- 23.1.7 any policy of assurance or annuity contract whether by proposal,

purchase or otherwise, and any interests for life or any lesser terms or in reversion and howsoever arising,

- 23.1.8 the purchase or acquisition of any real or personal property and the repair maintenance improvement or extension thereof,
- 23.1.9 the purchase or acquisition of any interest either jointly or in partnership or in any unit of interest,
- 23.1.10 discounting of loans, mortgages, contracts, hire purchase agreements, or leases,
- 23.1.11 the purchase and sale of options and option contracts of any kind whatsoever listed on any recognised Stock Exchange in Australia and including the provision of any security or guarantee in connection therewith,
- 23.1.12 any other investment which the Trustee could make if acting personally and not as Trustee,

PROVIDED THAT if the Investments are lawfully affected by any law custom or practice of the Commonwealth of Australia or any State or Territory thereof, or any other country, state or territory, as the case requires, they shall be subject to the law custom or practice in the relative country, state or territory, to meet the requirements of that law custom or practice.

23.2 Underwriting

The Trustee shall have power to enter into such underwriting or sub-underwriting arrangements or the like as it may think proper.

23.3 Restrictions on loans to and dealings with Members and Employers

Notwithstanding the generality of the foregoing provisions of this Rule:

- 23.3.1 no moneys of the Fund shall be lent to any Member or Dependant or to any person who for the purposes of the Tax Act is a relative of a Member either directly or by means of arrangements being entered into for any loan to a Member or Dependant or relative (as above described) in the exercise of any of the general powers of investment of assets of the Fund unless or to the extent that such a loan is permitted under Regulatory Law and is made in the circumstances and on such conditions as are so permitted;
- 23.3.2 no investments of the Fund may be acquired directly or indirectly from any Member or any relative of a Member unless and to the extent not prohibited by Regulatory Law;

- 23.3.3 all investments of the Fund shall be made on an arm's length basis as required by Regulatory Law;
- 23.3.4 no part of the assets of the Fund shall be directly or indirectly invested in or lent to an Employer or an associate of an Employer except as and to the extent permitted under Regulatory Law.

INSURANCES

- 24.1 **Insurances to provide additional benefits**
The Member or an Employer may direct the Trustee to effect policies of insurance or assurance in respect of any Member to provide benefits as specified by the Member or Employer (as the case may be) additional to any other benefit payable in accordance with the provisions of this Trust Deed provided such additional benefits are permitted under Regulatory Law and will not prejudice the Compliance Status of the Fund.
- 24.2 **Insurances to provide benefits payable**
The Trustee may effect policies of assurance or insurance to provide for all or any part of the benefits which may become payable from the Fund.
- 24.3 **Insurances to protect Fund**
The Trustee may effect any policies of insurance which it may consider necessary or advisable to protect assets of the Fund against any possible risk or liability.
- 24.4 **Payment of premiums**
The Trustee may pay out of the Fund all premiums payable in respect of such policies.

BANK ACCOUNTS AND CHEQUES

- 25.1 **Opening of Accounts**
The Trustee may open and operate on such cheque deposit passbook or other accounts with any bank or other financial institution as it thinks desirable and including any separate trust account which may be required under Regulatory Law for amounts received which cannot be immediately credited to the relevant Member's Account.
- 25.2 **Signature of cheques**
All cheques and other negotiable or transferable instruments shall be signed drawn accepted endorsed or otherwise executed as the case may be in such manner and by such person or persons as the Trustee shall from time to time by resolution determine.

BORROWING

26.1 Restrictions on borrowing

The Trustee shall not borrow any money except by way of an overdraft from a banking institution (or any other financial institution from which temporary borrowing may for the time being be permitted under Regulatory Law) to meet temporary financial requirements of the Fund in the payment of Benefits or the settlement of transactions and in each case subject to compliance with applicable Regulatory Law;

26.2 Prohibition of charge over Fund assets

The Trustee shall not give any charge or other encumbrance of any kind over or in relation to any assets of the Fund or permit any such charge or encumbrance to continue other than as may be expressly or by necessary implication permitted by Regulatory Law.

FINANCIAL REPORTS AND DISCLOSURES

27.1 Annual Accounts and audit

Once at least in each financial year of the Fund the Trustee shall cause the accounts and records of the Fund to be made up and to be audited as at the end of the preceding financial year by the Auditor under and in accordance with the Regulatory Law, **PROVIDED THAT** if and so long as it may be permitted under Regulatory Law and subject to any conditions imposed under Regulatory Law the Trustee may dispense with audit of the accounts and records so made up.

27.2 Annual Report to Members generally

As soon as practicable after the end of each financial year of the Fund the Trustee shall give to each Member all information the Trustee reasonably believes a Member reasonably needs for the purpose of understanding his entitlement to Benefits in the Fund.

27.3 Specific requirements for annual statements if not Excluded Fund

If the Fund is not an Excluded Fund the information required to be given to each Member annually under Rule 27.2 shall be given by written notice and include the particular information as required under Regulatory Law as to:-

27.3.1 the benefits contributions earnings and expenses of the Fund in respect of the Member; and

27.3.2 (whether given separately or together with the notice in relation to the Member's Benefits) a report containing all information that the Trustee reasonably believes a Member would reasonably need for the purpose of understanding the management, financial condition and investment performance of the Fund with current particulars of the

way in which and the persons by whom the affairs of the Fund are conducted.

27.4 Financial year limited to 12 months

A financial year of the Fund shall not exceed 12 months without the approval of the Commissioner.

INFORMATION TO MEMBERS, FORMER MEMBERS AND OTHERS

28. In addition to the information required for new Members under Rule 3.3 and information required periodically under Rule 27, the following information may be required to be given from time to time and Rules 28.6 to 28.8 (inclusive) apply to the supply of information generally.

28.1 Notification of significant events

The Trustee must give to each Member information concerning any event in relation to the Fund of which the Trustee reasonably believes the Member would reasonably expect to be informed before or within such time after the occurrence of any such event, as required by Regulatory Law. Such information shall be given in advance (but not more than three months in advance) of any expected event such as termination of the fund or a decision of the Trustee, where a Member would reasonably be expected to be informed before the event occurs but otherwise may be given as soon as practicable afterwards and in any event within three months except that where the Trustee reasonably believes the event is not adverse to the interests of the Member and that the Member would not be concerned about the delay, the information may be given no later than twelve months after the event occurs. If the Fund ceases to be an Excluded Fund the Trustee must ensure it complies with the requirements under Regulatory Law to provide information about the events specified under Regulatory Law as applicable to a fund which is not an Excluded Fund.

28.2 Information to be supplied on request

The Trustee must give to a Member or other person entitled under Regulatory Law to the information (including an Employer, certain former Members and persons entitled to benefits in respect of a Member) on request information in relation to the Fund that such person reasonably requires for the purposes of:-

28.2.1 understanding the benefit entitlements (past, present or potential) of the relevant Member or beneficiary and the main features of the Fund;

28.2.2 making an informed judgment about the management, financial condition and investment performance of the Fund;

28.2.3 in the case of a Member, former Member or beneficiary, understanding the particular investments of the Fund;

28.2.4 in the case of an Employer, any matter relating to the Superannuation Guarantee Scheme.

28.3 Documents to be supplied on request

If the Fund is not an Excluded Fund, the Trustee must as required by Regulatory Law give to any person on request in writing a copy of such of the following documents relating to the Fund as may be available to the Trustee and are specified in the request:-

28.3.1 audited accounts (including Auditors report);

28.3.2 the most recent report to Members regarding the Fund containing the information described in Rule 27.3.2;

28.3.3 where the person is a Member, former Member or beneficiary entitled to the documents under Regulatory Law, the Trust Deed and rules (including any amendments) and the most recent actuarial report (if any) on the Fund with any subsequent written advice by the Actuary to the Trustee, to the extent such report or advice are relevant to the overall financial condition of the Fund or the entitlements of the person

PROVIDED THAT the Trustee may in lieu of supplying a copy make the document or a copy available during business hours at a suitable place with facilities for inspection and copying or otherwise make the same available for inspection as agreed with the person making the request.

28.4 Information on ceasing to be a Member - general

On a Member ceasing to be a Member the Trustee shall as soon as practicable give to the former Member or (if the Member has died) each person receiving a benefit from the Fund in respect of the deceased Member all information that the Trustee reasonably believes the former Member or each such person would reasonably need for the purpose of understanding his benefit entitlement as for the time being required by Regulatory Law to be given in such circumstances.

28.5 Specific information on ceasing to be a Member

If the Fund is not an Excluded Fund the information given to or in respect of a former Member under Rule 28.4 must include all the specified information that would then be required to be given by the Fund to or in respect of a former Member under Regulatory Law in the circumstances in which the Member ceases to be a Member.

28.6 Clear and effective communication - correction of misleading matters

All information to be supplied under Rules 3.3, 27 and 28 must be given in writing and be worded and presented in a clear and effective manner and (except in the case of the information referred to in Rule 28.2 and 28.3) should be

accompanied by a statement containing further information to rectify any misleading (or potentially misleading) effect if the Trustee has reason to think that the information it is required to give will or may materially mislead the recipient.

28.7 Reasonable endeavours to provide information

It shall be sufficient performance of the Trustees duties under Rules 3.3, 27 and 28 if the Trustee has taken reasonable steps to give the required information to a person but has been unable to do so and information unknown to the Trustee which cannot be obtained by it by making reasonable enquiries need not be given by it.

28.8 Charging for information

A charge for the supply of information under Rule 28.2 or 28.3 of an amount not exceeding the reasonable cost of giving the information may be required by the Trustee to be paid by the persons and in the circumstances specified under Regulatory Law. No charge shall be made for the supply of information under Rules 3.3, 27.2, 27.3, 28.1, 28.4 or 28.5 but the costs thereof shall be treated as expenses of the Fund.

TRUST DEED AND DOCUMENTS AVAILABLE FOR INSPECTION

29. A copy of the Trust Deed and the Rules and of all other documents and information which is required by Regulatory law to be supplied to or made available for inspection by Members and other persons shall be kept by or on behalf of the Trustee at its office or such other suitable place as the Trustee may from time to time determine. All such documents shall be open to inspection for the purposes of satisfying Rule 28.3 (where applicable to the Fund) by any Member or other person as required by Regulatory law and at all reasonable times.

SERVICE OF NOTICES

30.1 Manner of Service

Subject to any applicable requirements under Regulatory Law information under Rules 3.3, 27 or 28 and any other notices may be given by the Trustee to Members either personally or by sending the same by prepaid letter posted to their address last known to the Trustee and where to be given by the Employer to the Member may be given either personally or by sending the same by prepaid letter posted to their address last known to the Employer.

30.2 Dispensing with notices to lost Members

Where at least two consecutive notices containing information under Rules 27 or 28 or any other written notices have been returned unclaimed from the last known postal address of a Member or no address for the Member can be obtained and (in either case) the Trustee has taken reasonable steps to locate the

Member but has been unable to do so then the Trustee shall not be required to give information to the Member under Rules 27 or 28 unless and until the Trustee later becomes aware of the address or location of the Member.

LIQUIDATION OR CESSATION OR TRANSFER OF BUSINESS OF EMPLOYER

31.1 Replacement by a new Employer

If either -

31.1.1 an Employer shall enter into liquidation or cease business and a person, persons or corporation shall agree with it and the Trustee to undertake the obligations of the Employer in respect of the Fund; or

31.1.2 a person, persons or corporation acquires all or a substantial part of the undertaking, assets or share capital of an Employer and is or becomes bound by agreement or pursuant to any statute to perform the obligations of the Principal Employer in respect of the Fund;

and a Member employed by the Employer becomes employed by such other person persons or corporations then the Employer shall upon the happening of that event be released from all obligations in respect of the Fund and the Trust Deed and the Rules shall thereafter have effect as if such other person, persons or corporation had been a party to the Trust Deed and Rules instead of the then Employer.

31.2 Withdrawal of Employer if no replacement

If an Employer shall enter into liquidation or cease business and no person persons or corporations become bound to perform the obligations of the Employer in relation to a Member in respect of the Fund, the provisions of Rule 32 shall apply in relation to that Member as though the Employer had given notice under that Rule expiring on the commencement of the liquidation or the cessation of business as the case may be.

WITHDRAWAL OF EMPLOYERS

32.1 Notice of withdrawal

An Employer may at any time give to the Trustee not less than 90 days notice of intention to cease to participate in the Fund, or such lesser period of notice as the Trustee may in any particular case accept.

32.2 Effect on Members and temporary postponement of effect

On the expiry of notice of withdrawal by an Employer the Fund shall operate or be determined in the manner following so far as regards Members (hereinafter called "the outgoing Members") then in the service of the Employer (hereinafter called "the Withdrawing Employer") and who either are not transferred to the service of another Employer or do not elect with the approval

of the Trustee to become Unsupported Members **PROVIDED THAT** with the consent of the Trustee the Withdrawing Employer may postpone the application of the following provisions for such period not exceeding six (6) months from the date of such cessation as the Trustee and the Withdrawing Employer may agree and in such case the Withdrawing Employer shall be deemed meanwhile to have remained an Employer.

32.3 Application of Benefits for Outgoing Members

The Member's Total Benefit of each outgoing Member (excluding such if any portion of the outgoing Member's Employer Contribution Account in excess of the Member's Vested Benefit as is agreed between the Trustee and the Withdrawing Employer from time to time as representing the proportion of the Member's Total Benefits exceeding the proportion to which the Member would become entitled if leaving service under Rule 11.3) shall in the discretion of the Trustee be wholly or partly dealt with as follows:

- 32.2.1 subject to Rule 10.3, be paid to the Member; or
- 32.2.2 with the approval of the outgoing Member concerned be transferred to another superannuation arrangement or scheme empowered to accept the transfer of such assets provided that while the outgoing Member remains an employee of the Withdrawing Employer who has contributed to the Fund for the benefit of such outgoing Member, such transfer may be made only to a superannuation or provident fund or scheme complying with Regulatory Law and the receipt of the trustee thereof shall be a complete discharge to the Trustee in respect of all liability to the outgoing Member and persons claiming in respect of his interest; or
- 32.2.3 be held and applied by the Trustee or other trustee as hereinafter provided as a fund closed to new entrants and further contributions upon the same trusts as are set forth in the Trust Deed and these Rules but as though in relation to such closed Fund the withdrawing Employer were the sole employer and the members thereof were such of the outgoing Members whose interest is for the time being held under such closed fund and a separate trustee may from time to time be appointed of the assets held under the closed fund and on such appointment being made the Trustee hereof shall cease to have obligations in relation to the assets of such closed fund or outgoing Members or persons claiming under them,

PROVIDED THAT subject to Rules 10.5 and 13 no benefit shall be paid to an outgoing Member while he continues in the service of the Withdrawing Employer who has contributed to the Fund for the benefit of such outgoing Member.

TERMINATION OF EMPLOYER CONTRIBUTIONS

33.1 Procedure on notice to terminate contributions

An Employer may cease its contributions in respect of any or all of its Employees who are Members of the Fund on the expiry of a period of thirty (30) days notice given by the Employer in writing to the Trustee. On receipt of such notice the Trustee shall promptly notify all Members who are included in such notice and the benefits to which such Members would otherwise be entitled shall be adjusted in such manner (if any) as the Trustee determines just and equitable having regard to the interests of the Members generally **PROVIDED THAT** no adjustment shall reduce the Members Minimum Benefits. As soon as practicable thereafter the Trustee shall notify the Members concerned of the manner and the extent to which their benefits are to be affected.

33.2 Members becoming Unsupported Members

If a Member whose benefits have been adjusted as herein provided remains in the service of the Employer or if he (while not in the service of an Employer) requests that the Trustee retain his benefits in the Fund and the Trustee agrees to the request, his benefits shall continue to be held by the Trustee under the trusts of the Fund for the benefit of the Member as an Unsupported Member and of his Dependants in the event of his death.

33.3 Members becoming supported by another Employer

Where the Members employed by the Employer which has given notice of cessation of contributions are or become employed by another Employer which agrees to contribute in respect of such Members in its place, Rules 33.1 and 33.2 shall not apply other than in respect of cessation of contributions by such first mentioned Employer.

TERMINATION OF FUND

34.1 Winding up by the Commissioner

If the Fund is at any time wound up by the Commissioner under a winding-up scheme formulated by him under Regulatory Law then the Fund shall be terminated and wound up in accordance with such scheme.

34.2 Winding up due to Insolvency

The Trustee shall initiate the winding up of the Fund if the Fund becomes technically insolvent for the purposes of Regulatory Law by reason that the net realisable value of the assets of the Fund is or becomes less than the sum of all Members' Vested Benefits and either no program is or can be instituted in accordance with Regulatory Law so as to ensure the Fund becomes solvent within five years of the end of the financial year in which the Fund became technically insolvent or the Fund does not comply with the procedures under Regulatory Law in relation to such a program or the Fund is not solvent at the end of such period of five years.

34.3 **Winding up for other reasons**

The Fund or any part thereof shall also be terminated by the Trustee:-

- 34.3.1 pursuant to a resolution of the Trustee; or
- 34.3.2 pursuant to a resolution at a meeting of Members passed by seventy five percent (75%) majority in number of the Members present where at least fifty percent (50%) of the Members of the Fund are present at such a meeting; or
- 34.3.3 at the death or prior termination of membership of the last Member or Dependant entitled to benefits.

34.4 **Notices and Suspension of payments**

On determining pursuant to Rule 34.2 or 34.3.1 that the Fund must be wound up or in any of the events referred to in Rule 34.3.2 or 34.3.3 as the case may be (which event shall be deemed the commencement of the winding up of the Fund or the relevant part thereof) the Trustee shall promptly advise all Members of the Fund accordingly and notwithstanding the provisions of this Deed and the Rules no benefit shall thereafter be paid from the Fund or such part thereof or in respect of such Members other than under Rule 34.5.

34.5 **Priorities for payments in winding up**

Subject to any requirements of the Commissioner under a scheme referred to in Rule 34.1 and to Regulatory Law, on winding up the Fund or such part thereof shall be applied for the following purposes to the extent that the assets or such part thereof will allow:

- 34.5.1 firstly, in paying the costs and expenses of winding up the Fund or such part thereof to the extent that they are not paid by the Employers;
- 34.5.2 secondly, in securing for each Member of the Fund or such part thereof at the date of commencement of the winding-up a minimum benefit equal to the total of his Member's Vested Benefit;
- 34.5.3 thirdly, in securing the balance (if any) of the benefits of those Members and their Dependants who at the date of commencement of the winding up were in receipt of or were entitled to be paid a benefit from the Fund or such part thereof (whether or not subject to Rule 10.3);
- 34.5.4 fourthly, in securing for a Member or his Dependants the balance (if any) of the benefits payable in accordance with this Deed and the Rules where since the date of commencement of the winding up such Member retired on or after his Normal Retiring Age or a benefit

became payable to or in respect of a Member while in the service of the Employer as a result of his death or Permanent Invalidity;

- 34.5.5 lastly, subject to the foregoing the balance then remaining of the Fund or the balance of such part or parts of the Fund in respect of which the winding up is taking place (as the case may be) shall be divided amongst the Members including any Member who may have left the service of the Employer since the commencement of the winding-up (but excluding those Members to whom Rules 34.5.3 or 34.5.4 apply) in such manner and such amount as the Trustee determines **PROVIDED THAT** in the case of Members who may have left the service of the Employer since the commencement of the winding-up such Members' benefits shall not be greater in amount than the benefits to which they could have been entitled but for the operation of this Rule and **PROVIDED FURTHER** that all benefits payable or secured under this Rule shall be subject to Rule 10.

ALTERATION TO TRUST DEED AND RULES

35.1 Conditions for alteration

The Trustee may from time to time either by instrument in writing or by oral resolution (so long as such resolution is manifested in writing and does not relate to the Trust Deed) repeal alter or add to any of the provisions of the Trust Deed or the Rules for the time being **PROVIDED THAT** no alteration addition or repeal so made shall reduce vary adversely or otherwise limit the Member's Total Benefit or any benefit of a Member that in either case has become payable or accrued before the date of repeal, alteration or addition, unless:

- 35.1.1 the alteration does not relate to the Member's Minimum Benefits and the Trustee has his written consent or the approval in writing of the Commissioner; or
- 35.1.2 the alteration is necessary to enable the Fund to comply with Regulatory Law or with the Tax Act.

A certificate by the Actuary or Auditor that any repeal, alteration or addition does not reduce vary adversely or limit the Member's Total Benefit or any benefit of a Member payable or accrued on a particular date or that it does not relate to the Members' Minimum Benefits or that it is required in the circumstances referred to in Rule 35.1.2 (as the case may be) shall be prima facie evidence upon which the Trustee shall be entitled to rely in making any such repeal alteration or addition or in making it without the consent or approval referred to above.

35.2 Prohibition of certain alterations

No alteration may be made to the Trust Deed or Rules if as a result:-

- 35.2.1 an individual would be eligible to be appointed as Trustee unless the Deed and Rules provide (or would by the alterations then made provide) and will continue to provide that following such alteration that the Fund has as its sole or primary purpose the provision of old age pensions;
- 35.2.2 the sole or primary purpose of the Fund would cease to be the provision of old age pensions unless the Deed and Rules provide and will continue to provide following such alteration that the trustee must be a constitutional corporation (as that expression is defined under Regulatory Law).
- 35.3 **Additional conditions for alterations (except Excluded Funds)**
If the Fund is not an Excluded Fund, alterations may only be made to the Trust Deed or Rules in the circumstances in which the governing rules of a regulated superannuation fund (other than an Excluded Fund) may under Regulatory Law be amended.
- 35.4 **Notice of alterations to Members affected**
Notice of any alteration to the Trust Deed or Rules shall be given by the Trustee in accordance with Regulatory Law and Rule 28.1 to every Member affected thereby but accidental failure to give such notice shall not prejudice or invalidate any such alteration.

MEETINGS AND RESOLUTIONS OF MEMBERS

- 36.1 **Convening of meetings**
In relation to any matter which under the Deed and these Rules is or may be the subject of a decision or resolution of the Members as a whole a meeting or postal ballot of Members shall be convened and held on the requisition of one fifth (not being less than 2) of the Members or if the Trustee determines to convene such a meeting or hold a postal ballot.
- 36.2 **Time and Place of meetings**
Meetings of Members shall be held at a time and place determined by the Trustee as reasonably convenient to Members.
- 36.3 **Chairman**
The chairman of the meeting shall determine how the meeting is to be conducted. Unless otherwise resolved by simple majority of the Members present a person nominated by the Trustee shall act as chairman.
- 36.4 **Voting**
Each Member shall have one vote on any question for determination which may be cast at any meeting in person or by proxy or on a postal ballot. The Trustee shall be entitled to attend and speak but not vote at the meeting.

36.5 Certified copy of resolution

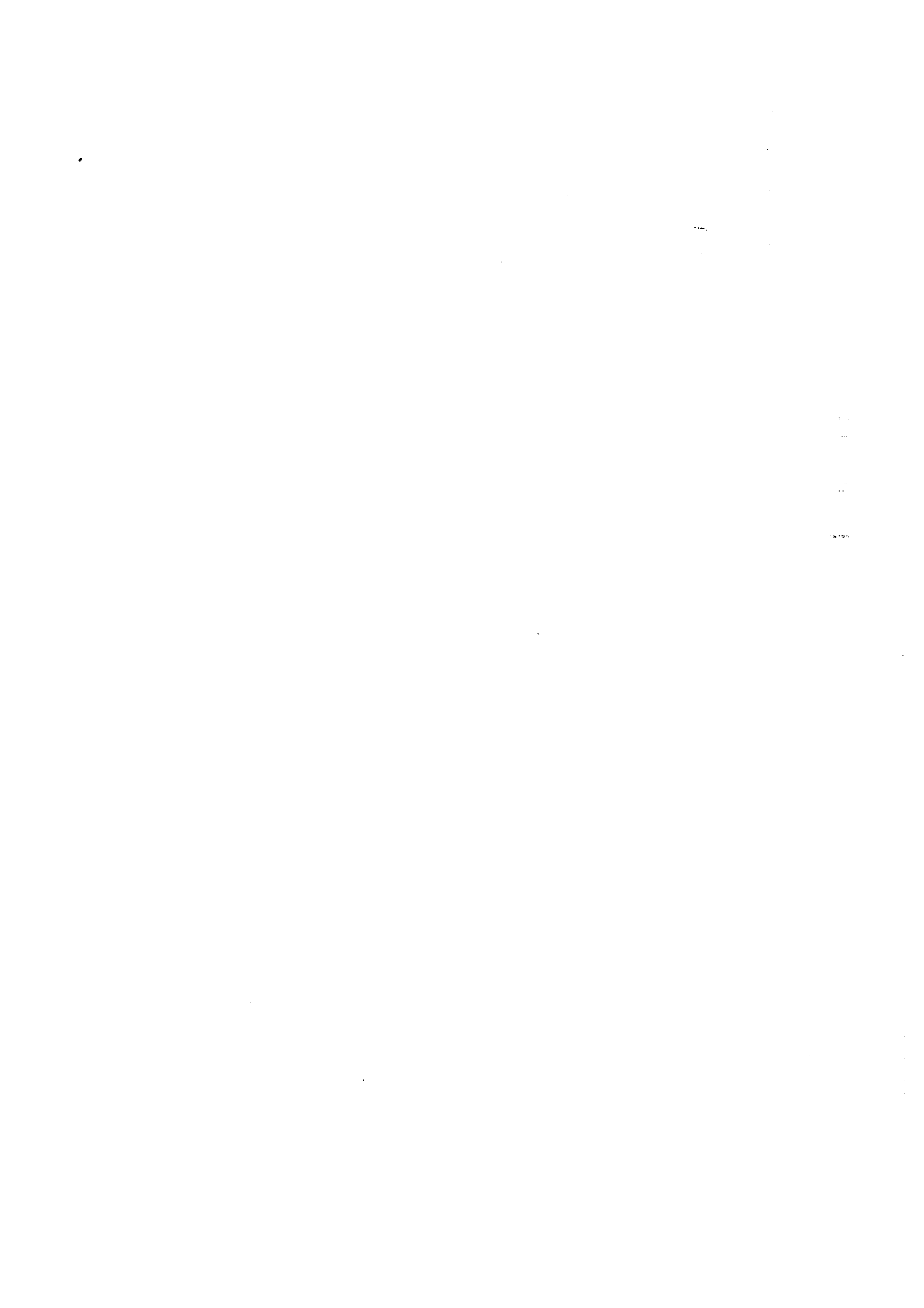
A copy of a resolution of a meeting of members certified by the Chairman of the meeting shall be deemed a true record of the resolution and determination of the Members.

36.6 Resolutions in writing

A resolution signed by not less than seventy five per cent of all the Members for the time being shall be effective as though passed at a meeting of Members. Such a resolution may be contained in more than one document each signed by one or more of the Members.

36.7 Effect of Resolution

A certified copy of a resolution under Rule 36.5 or a resolution in writing under Rule 36.6 delivered to the Trustee shall be deemed the effective exercise of any power or the giving of any consent or approval which is exercisable by or required of the Members under the Trust Deed or Rules.



SCHEDULE A TO RULES

PARTICIPATING EMPLOYER'S SPONSORSHIP AGREEMENT

BY THIS AGREEMENT dated

.....(the "Employer")
(Name of Employer & ACN if a company)

of.....
(Address of Employer)

HEREBY AGREES with

.....
(Name(s) of Trustee(s) and ACN if a company)

as the Trustee(s) for the time being of

.....(the "Fund")
(Name of Superannuation Fund)

HAVING received all such information as it/he/she/they reasonably requires for the purposes of understanding the main features of the Fund and making an informed judgment about the management, financial condition and investment performance of the Fund;

AND IN CONSIDERATION of the said Trustee(s) admitting its/his/her/their employees as members of the Fund;

TO MAKE CONTRIBUTIONS to the Fund and observe and perform all obligations required of an Employer under the governing rules of the Fund in relation to such of its/his/her/their employees as become members of the Fund and generally to be bound by the provisions of the governing rules for the time being of the Fund as applicable to an Employer on and from admission to the Fund as an Employer.

Signed by or on behalf of the Employer)
in the presence of:)
)

.....

SCHEDULE B TO RULES

MEMBERSHIP APPLICATION

The Trustees

.....
(Name of fund)

I hereby apply for membership of your fund. I acknowledge that I have seen particulars of the fund and of the benefits it will provide for me. I am aware that if admitted as a member I will be bound by the terms of the deed and rules which govern the fund, and which may be changed.

I supply the following particulars: as my benefits will be based on these particulars I confirm they are correct:-

FULL NAME: _____
(print all details) (Surname) (given names)

HOME ADDRESS: _____
(No. and street name)

(Town/suburb) (State) (Postcode)

DATE OF BIRTH: _____
(day) (month) (year)

OCCUPATION: _____

**NAME OF EMPLOYER
OR BUSINESS NAME:** _____
(if self employed)

**MEMBERSHIP OF OTHER
SUPERANNUATION FUNDS:** Yes/No _____
(*if yes, give name and address)

**IS ANY AMOUNT TO BE TRANSFERRED FROM ANOTHER FUND,
APPROVED DEPOSIT FUND, DEFERRED ANNUITY OR OUT OF BENEFITS
ON TERMINATION OF PREVIOUS EMPLOYMENT?**

Yes/No _____
(*if yes, give details of amount and source of payment).

**I understand I may have to give additional information, including evidence of health,
for some of my benefits to be arranged or before they can be paid.**

DATE: _____ **SIGNATURE:** _____

SCHEDULE C TO RULES

BENEFICIARIES NOMINATION

The Trustees

(Name of Fund)

I acknowledge that in the event of my death the Trustees will have an absolute discretion to decide the person or persons to whom the death benefits will be paid from the Fund. In order to help the Trustees, but without limiting their discretionary power, I would like the Trustees to know that if it was my decision to make today I would prefer the benefit payable upon my death to be paid to:

- * the following Dependants
- * the following relatives or close associates (if I leave no Dependants)

Full Name of of Dependant, Relative or Close Associate	Relationship	% of Member's Death Benefit	Manner of Payment - Lump Sum or Pension

This preference replaces any previous preference I may have expressed.

Member's name
(please print clearly)

Signature

Date

Note: 'Dependants' are a spouse or any child of a Member, and anyone else financially depending on the member.

