

BOSCACCI SUPERANNUATION FUND



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BOSCACCI SUPERANNUATION FUND

DEED dated

13th day of October

1998

BY **GARY MURRAY BOSCACCI** and **KOSTOULA BOSCACCI**("Trustees")

RECITALS

- A. The Trustees wish to establish a superannuation fund for the benefit of those people who become Members of the Fund, on the terms and conditions set out in this Deed.
- B. The Trustees have agreed to act as the trustees of the Fund.

AGREEMENT

COMMISSIONER OF STATE TAXATION

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DEED

1. INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

"Act" means, as the context requires, any one or more of the *Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1936, the Occupational Superannuation Standards Act 1987* and any regulations made pursuant to any of those Acts;

"Annuity" means an annuity which is an eligible annuity for the purposes of the Act;

"Auditor" means the auditor for the time being appointed pursuant to this Deed;

"Commissioner" means, as the context requires, the Commissioner of Taxation or the Insurance and Superannuation Commissioner or any other regulatory body which has responsibility for the administration of occupational superannuation from time to time;

"Deed" means this deed as amended from time to time;

"Dependant" in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member; or
- (b) any child, step-child or adopted child of the Member or former Member including any such child born after the death of the Member and any person who, in the

opinion of the Trustees, is or was actually maintained by the Member or former Member as his child; or

(c) any other person who, in the opinion of the Trustees, was substantially financially dependent on the Member or former Member at the relevant time;

"Employee" means a person in the employment of an Employer and includes a director of that Employer and any other person declared by the Employer to be an Employee;

"Employer" means a person or company by whom a Member is employed, and in relation to a particular Member means the Employer of that Member;

"Employer Contribution Account" means, in relation to a Member, the Employer Contribution Account kept in relation to the Member pursuant to clause 7.1 (b)(1);

"Employer Representative" means a person nominated by the Employer;

"Fund" means all of the assets from time to time held by the Trustees on the trusts of this Deed;

"Fund Earning Rate" means the Fund Earning Rate referred to in clause 28.7-

"Fund Reserve Account" means the Fund Reserve Account referred to in clause 7.1 (a);

"Fund Year" means a period of 12 months ending on the 30th June, or such other period ending on such other date as the Trustees from time to time may determine;

"Investment Fluctuation Account" means the Investment Fluctuation Account referred to in clause 7.4;

"Investment Income" means the Investment Income determined in accordance with clause 28.1;

"Member" means a person who has been accepted by the Trustees as a Member of the Fund and who has not ceased to be a Member;

"Member Accounts" means, in relation to a Member, the Member's Employer Contribution Account and Member Contribution Account and any other accounts established pursuant to clause 7.6 which the Trustees decide are Member Accounts;

"Member Contribution Account" means, in relation to a Member, the Member Contribution Account (if any) kept in relation to the Member pursuant to clause 7. I (b)(ii);

"Member Representative" means a person nominated by the Members or by a trade union or other Organisation representing the interests of the Members;

"Nominated Dependant" means a Dependant nominated by a Member as the Nominated Dependant;

"Nominated Relative" means a Relative nominated by a Member as the Nominated Relative;

"Plan Credit" means, in respect of a Member, the aggregate of the total amounts standing to the credit of the Member's Member Accounts;

"Policy" means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member "Policy" means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of those risks;

"Relative" in relation to a Member or former Member means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, cousin, grandchild or great-grandchild of the Member;
- (b) any Spouse of any of the persons specified in paragraph (a);
- (c) any child of any of the persons specified in paragraph (a) or (b); or
- (d) any other natural person who has been selected by the Trustees to whom the Trustees consider it appropriate to pay a benefit in respect of the Member;

"Relevant Law" means the Act, as modified in its application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner and, where the Trustees deem appropriate:

- (a) any announcement of a proposed change to the Act whether or not the change is to have retrospective effect;

(b) any circular guideline ruling announcement or advice given by the Commissioner;

where the Trustees consider that observance of or compliance with any such announcement circular guideline ruling or advice will either:

- (c) be a prerequisite for or in any way assist the Fund to be a Superannuation Fund in relation to each year of income; or
- (d) be necessary to ensure that the Trustees do not breach the Act.

"Retirement Date" means, in relation to a Member, the Member's 65th birthday;

"Review Date" means a date on which the Trustees determine the Investment Income of the Fund pursuant to clause 28;

"Rollover Payment" means any payment made by the Trustees at the request of a Member or former Member or in other circumstances allowed under the Act or acceptable to the Commissioner to any one or more of the following:

- (a) the trustee of an approved deposit fund;
- (b) the trustee of a Superannuation Fund;
- (c) the trustee of an eligible rollover fund;
- (d) the issuer of an Annuity;

"Spouse" of a person means:

- (a) a person legally married to the person at any time; or
- (b) a person who, although not legally married to the person, in the opinion of the Trustees lives or lived with the person on a bona fide domestic basis as the husband or wife of the person,

but where a person has more than one Spouse the Trustees must determine which one or more of them will be deemed to be that person's Spouse;

"Superannuation Fund" means a superannuation fund which, in the opinion of the trustees of the fund, in the relevant year of income, will be a "complying superannuation fund" for the purposes of the Act;

"Taxation" includes income tax (including capital gains tax, tax on eligible termination payments and tax on contributions) payroll tax, land tax, stamp duty and any other taxes or duties;

"Trustees" means the Trustees for the time being of the Fund whether original additional or substituted.

1.2 Interpretation Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and vice versa;
- (c) a person includes a body corporate;
- (d) a statute, regulation or provision of a statute or regulation ("**Statutory Provision**") will be construed as a reference to that Statutory Provision as amended or re-enacted from time to time and includes any statute, regulation or provision enacted in replacement of that Statutory Provision;
- (e) a clause or schedule is a reference to a clause or schedule of this Deed (unless the context otherwise requires);

and headings are for convenience only and do not affect the interpretation of this Deed.

1.3 Severance if

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly;
 - (b) notwithstanding paragraph (a), a provision of this Deed would still be void, voidable, unenforceable or illegal:
 - (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
 - (ii) in any other case, the whole provision must be severed;
- and the remainder of this Deed will be of full force or effect.

1.4 Words and Expressions Defined in Act

Unless the context indicates a contrary intention, words and expressions used in this Deed will have the meanings assigned to them in the Act.

2. THE FUND

2.1 Establishment

By this Deed, the Trustees establish the **BOSCACCI Superannuation Fund**.

2.2 Fund Vested in Trustees

The Fund will be vested in the Trustees and will at all times be held controlled and managed by the Trustees subject to the trusts powers and provisions of this Deed.

3. MEMBERSHIP OF THE FUND

3.1 Application for Membership

Any person selected by the Trustees who has been invited to become a Member of the Fund by his Employer and who, if required by the Trustees, has lodged with the Trustees an application for membership in such form as the Trustees may determine, may be admitted to membership of the Fund by the Trustees.

3.2 Admission to Membership

When the Trustees admit a person to membership of the Fund, the person will become a Member and will be bound by this Deed.

3.3 Special Conditions of Membership

The terms and conditions applicable to a Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member, may be varied by written agreement between the Trustees and the Member.

3.4 Information to be Given to New Members

As soon as practicable after the admission of a person as a Member of the Fund the Trustees will give to that Member any information required by Relevant Law.

3.5 Provision of Information

Every Member and any person who may become entitled to be paid a benefit from the Fund when requested by the Trustees must furnish such information as the Trustees deem necessary for the purposes of any investigation or otherwise in connection with the Fund. Every Member must submit to medical examinations as required by the Trustees by a registered medical practitioner nominated by the Trustees.

3.6 Failure to Comply

If a Member or any other person who becomes entitled to be paid a benefit from the Fund fails to comply with the provisions of clause 3.5 the Trustees may suspend the payment of any contributions in respect of that Member or withhold any benefit in respect of that Member or person until the Member or other person does comply.

3.7 Incorrect or Misleading Information

Where a Member or any other person who becomes entitled to be paid a benefit from the Fund furnishes information required pursuant to this Deed which affects or is likely to affect the benefits payable to or in respect of the Member or person and the information supplied is incorrect or misleading or any relevant information is deliberately withheld, the Trustees may in their absolute discretion alter those benefits in such manner as the Trustees consider appropriate.

4. CONTRIBUTIONS TO THE FUND

4.1 Employer Contributions

Subject to the other provisions of this Deed, a Member's Employer may contribute to the Fund in respect of those of its Employees who are Members such amounts as may be agreed from time to time between the Trustees and the Member. The Employer may make additional contributions in respect of any Member at any time. If the Employer is a company, its contributions may be paid on its behalf by another company in any group of companies to which it belongs.

4.2 Member Contributions

Subject to the other provisions of this Deed, each Member may contribute to the Fund such amount (if any) as that Member determines from time to time.

4.3 Payment of Contributions

Contributions will be paid at the times and in the manner determined by the Trustees, subject to any requirements of Relevant Law.

4.4 Acceptance of Contributions The Trustees:

- (a) may accept contributions from any person in respect of a Member to the extent permitted by Relevant Law;
- (b) must not accept any contribution if, in the opinion of the Trustees, the acceptance of the contribution would not be permitted by Relevant Law.

4.5 Termination, Reduction or Suspension of Contributions Notwithstanding anything

contained in this Deed to the contrary:

- (a) an Employer may from time to time terminate its contributions to the Fund in respect of all or any Members employed by the Employer by giving the Trustees one month's notice in writing of the Employer's intention so to do and upon the expiration of the period stipulated in the notice the liability of that Employer to contribute in respect of those Members will cease and determine except in respect of payments due on or before the date of the expiration of such notice; and
- (b) an Employer may from time to time reduce or suspend all or any part of its contributions to the Fund in respect of all or any Members employed by the Employer by giving the Trustees one month's notice in writing of the Employer's intention so to do and upon the expiration of the period stipulated in that notice the liability of the Employer to contribute in respect of those Members will cease to the extent or for the period mentioned in that notice except in respect of payments due on or before the date of the expiration of such notice,

but upon an Employer giving notice in writing to the Trustees that the Employer intends to terminate or to reduce or suspend the Employer's contributions pursuant to this clause, the Trustees must immediately notify the affected Members and:

- (c) the affected Members may, to the extent and in the manner determined by the Trustees, terminate, reduce or suspend their own contributions to the Fund; and
- (d) whether or not the affected Members terminate, reduce or suspend their own contributions to the Fund, the Trustees may adjust the benefits of those Members on such basis as the Trustees consider equitable.

4.6 Form of Contributions

Subject to any restrictions imposed by Relevant Law, contributions may be made either in cash or by transfer to the Trustees of an asset in specie. If a contribution is made by the transfer of an asset to the Trustees, the amount of the transfer will be the market value of that asset at the time of its transfer, and the transfer will be undertaken on such terms and conditions as are determined by the Trustees.

5. TRANSFERS TO OTHER FUNDS

5.1 Transfers to Other Funds

Without in any way affecting any other provision of this Deed giving the Trustees power to transfer a Member's interest in the Fund to another superannuation arrangement or otherwise deal with the Member's interest in the Fund, but subject to any requirements of Relevant Law:

- (a) where a Member joins or is eligible to join a Superannuation Fund ("Other Fund"); and
- (b) the Member requests that the Member's interest in the Fund be transferred to the Other Fund;

the Trustees may, subject to such conditions and indemnities as the Trustees may require, pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to such amount ("Transferred Amount") as determined by the Trustees which amount represents the Member's interest in the Fund.

5.2 Benefits Cease

The Members Member Accounts will then be debited with an amount equal to the Transferred Amount in such proportions as the Trustees consider appropriate and the receipt of the Transferred Amount by the trustee of the Other Fund will be a complete discharge to the Trustees of all liabilities in respect of, and the Trustees will have no responsibility to see to the application of, the Transferred Amount. If, after the payment of the Transferred Amount to the trustee of the Other Fund, there are any amounts standing to the credit of the Member's Member Accounts, the Member will forfeit those amounts, which will be dealt with as forfeited benefits in accordance with clause 11.

6. TRANSFERS FROM OTHER FUNDS

Where a Member is or was a member of or is or was a beneficiary under any other superannuation arrangement, approved deposit fund, eligible rollover fund or Annuity, the Trustees may receive from the trustee of the other superannuation arrangement, approved deposit fund or eligible rollover fund or from the issuer of the Annuity money or assets in respect of the Member's interest in the superannuation arrangement, approved deposit fund, eligible rollover fund or Annuity. The Trustees will hold the money or assets received as part of the Fund subject to any requirements of Relevant Law and will credit the particular Member's Member Accounts in the manner agreed between the Trustees and the Member to take account of the money or assets received.

7. FUND ACCOUNTS

7.1 Fund Accounts

The Trustees will keep the following Accounts for the purpose of administering the Fund and in particular, for the purpose of calculating the benefits payable from the Fund:

- (a) a Fund Reserve Account;
- (b) the following Member Accounts in respect of each Member:
 - (i) an Employer Contribution Account, to which contributions made in respect of a Member pursuant to clause 4.1 will be credited; and
 - (ii) a Member Contribution Account to which contributions made by the Member pursuant to clause 4.2 will be credited.

7.2 Crediting of Member Accounts

In addition to any amounts to be credited to the Member Account pursuant to clause 7.1, each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be credited with:

- (a) such portion of the Investment Income of the Fund (if positive) as the Trustees determine will be credited to the Member Account in accordance with clause 28.6; and
- (b) any other amounts which the Trustees with the consent of the Member determine will be credited to the Member Account.

7.3 Debiting of Member Accounts

Each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be debited with:

- (a) such portion of the Investment Income of the Fund (if negative), as the Trustees determine will be debited to the Member Account in accordance with clause 28.6; and
- (b) the amount of any tax liability which in the opinion of the Trustees will be incurred by virtue of the Fund's acceptance of any contributions which are to be credited to the Member Account; and
- (c) any other amounts which the Trustees with the consent of the Member determine will be debited to the Member Account.

7.4 Investment Fluctuation Account

The Trustees may establish an Investment Fluctuation Account for the purposes described in clause 28.2. If at any time the Trustees consider that the amount standing to the credit of the Investment Fluctuation Account exceeds such amount as is likely to ever be required for the purposes described in clause 28.2, the Trustees may debit such excess amount from the Investment Fluctuation Account and credit the Member Accounts of all Members and the Fund Reserve Account with such proportions of the excess amount as the Trustees may decide.

7.5 Fund Reserve Account

The amount standing to the credit of the Fund Reserve Account at any time will be equal to the value of the Fund less the sum of the amounts credited to the Investment Fluctuation Account, the Member Accounts of all Members and any other accounts which may be established pursuant to clause 7.6. The Trustees will from time to time, in accordance with Relevant Law, apply the whole or any part of the amount standing to the credit of the Fund Reserve Account in such manner as the Trustees may determine and Relevant Law allows.

7.6 Additional Accounts

in addition to the accounts mentioned in clauses 7.1 to 7.5 (inclusive), the Trustees may establish and maintain such other accounts as the Trustees deem appropriate.

8. BENEFITS

8.1 Benefits

Subject to the provisions of this Deed, a benefit equal to the Member's Plan Credit will become payable in respect of a Member if-

- (a) the Member retires from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the retirement occurred before or after the Member joined the Fund);
- (b) the Member requests payment of his or her benefit after the Member's Retirement Date;
- (c) if an Employer has, at any time, contributed to the Fund in respect of the Member, the Member ceases to be employed by the Employer;
- (d) the Member ceases to work for gain or reward in any business, trade, profession, vocation, calling, occupation or employment on account of the Member's ill-health (whether physical or mental);
- (e) the Member dies; or

(f) Relevant Law otherwise requires or permits the Member's benefit to be cashed.

8.2 Continuity of Employment

If a Member within 90 days or such longer period as the Trustees may determine after ceasing to be employed by an Employer ("First Employer") commences to be employed by another Employer, he will not be entitled to be paid a benefit in respect of his ceasing to be employed by the first Employer.

9. PAYMENT OF BENEFITS

9.1 Method of Payment

- (a) The Trustees may pay a benefit by forwarding a cheque to the postal address last notified of the person to whom the benefit is payable or paying the benefit directly to a bank or other account nominated by the person or in such other manner as the Trustees determine.
- (b) All benefits will be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustees.

9.2 Receipt for Benefits

Any person to whom a benefit is payable must if requested furnish the Trustees with a receipt and release in the form from time to time required by the Trustees.

9.3 **Tax on Benefits** The Trustees may deduct from any benefit payable pursuant to this Deed any Taxation.

9.4 Pensions and Annuities

Notwithstanding anything to the contrary in this Deed, the primary purpose of the Fund is to provide to each Member or his or her Dependents an Old-age Pension, and any benefit payable from the Fund may only be paid by the Trustees in a way that is consistent with that purpose. Without limiting the generality of this clause:

- (a) a Member's benefit must be paid by the Trustees by way of a pension unless the Member requests the Trustees to pay some or all of that Member's benefit as a lump sum.
- (b) A request under paragraph (a) must be made in writing and must be received by the Trustees within 30 days from the date on which that Member's entitlement

arose or such longer period as the Trustees may in their absolute discretion determine.

(c) A benefit or a part of it paid by way of a pension will be paid either by the Trustees applying the relevant proportion of the benefit in the purchase of an annuity (as defined in the Act) for the Member in such manner and on such conditions as the Trustees in their absolute discretion determine or, with the consent of the Employer, by paying the relevant proportion of the benefit as a pension of such amount and on such conditions as the Trustees and the recipient of the pension agree.

(d) If the recipient elects that the pension is to be a pension for the purposes of Relevant Law and that it is to comply with certain minimum standards prescribed by Relevant Law, the agreement between the Trustees and the recipient must include the requirements that ensure both that it is a pension of that type and that it complies with those standards, and this Deed will be deemed to include in it those requirements and those standards but only to the extent that the Deed relates to that pension.

9.5 Payment of Benefits on Death

Where any benefit becomes payable to or in respect of a Member pursuant to this Deed and the Member is not alive when the benefit is to be paid, the Trustees may pay or apply the benefit to or for the benefit of such one or more as determined by the Trustees in their absolute discretion of the Nominated Dependants and/or any other Dependants of the former Member and/or the Legal Personal Representative of the Member in the manner at the times by the instalments and in such proportions between them (if more than one) as the Trustees may from time to time in their discretion determine. If the Member left no Nominated Dependants or other Dependants and there is no Legal Personal Representative of the Member, the Trustees may pay such portion of the benefit as may be allowed under Relevant Law to the Nominated Relative and/or any other Relative of the Member as determined by the Trustees in their absolute discretion. Any portion of the benefit which is not applied in accordance with this clause will be absolutely forfeited and will remain in the Fund to be dealt with in accordance with clause 11.4.

9.6 Payment to Others on Behalf of Beneficiaries

When any person to whom a benefit becomes payable is under the age of 18 years or when in the opinion of the Trustees it would be in the best interests of that person, the Trustees may retain the benefit in the Fund until the Trustees are satisfied that it should be paid to the person or pay all or part of any benefit to any other person for application on behalf of that person and the receipt of the person to whom the benefit is paid will be a complete discharge to the Trustees for the payment in respect of the person. The Trustees will not be bound or concerned to see to the application of the benefit so paid.

9.7 Benefit Payment Restrictions

Benefits payable to or in respect of a Member may only be paid to the Member in cash to the extent permitted by Relevant Law.

9.8 Preserved Benefits

Any benefits which have become payable to a Member but which are unable to be paid to the Member in cash may, at the discretion of the Trustees, be dealt with in accordance with clause 5.1 or clause 9.11 or retained in the Fund.

9.9 Retention of Benefit in the Fund

At the request of a Member or any other person who becomes entitled to be paid a benefit from the Fund, the Trustees may at their absolute discretion but subject to the requirements of Relevant Law, retain all or part of the benefit in the Fund until:

- (a) the Member or person entitled requests that it be paid to him;
- (b) the Member dies; or
- (c) the Trustees elect for whatever reason to pay the benefit to the Member or the person entitled thereto,

whichever first occurs.

9.10 Interest on Benefits

If any benefit, including any amount referred to in clause 33, is retained in the Fund, the Trustees may in their absolute discretion increase the benefit by an amount of interest calculated at the Fund Earning Rate in respect of the period from the date on which the benefit became payable until the date on which the benefit is paid.

9.11 Roll Over Payments

Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any part of any benefit payable to him from the Fund he must make a request to the Trustees in writing nominating the institution to which the payment is to be made and the amount to be applied as the Roll Over Payment. The Member or former Member must in addition complete and execute such documents as are required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner, but in circumstances provided for in the Act or otherwise acceptable to the Commissioner the Trustees may effect a Roll Over Payment in relation to a Member's benefit without the consent of the Member or former Member.

9.12 Transfer of Policy

Where a Member and/or any other person is entitled to be paid or the Trustees in their discretion determine to pay a benefit and where the Trustees hold a Policy of any kind in respect of the Member, the Trustees may in their absolute discretion and in lieu of surrendering the Policy assign it to the Member or other person or to such one or more of them to the exclusion of the other or others as the Trustees in their discretion may determine and the value of the Policy as at the date of assignment will be deducted from the benefit payable to the Member and/or other person and neither the Trustees nor the Employer will be liable to pay any premiums becoming due and owing under the said Policy as from the date of the assignment.

9.13 Transfer of Investments

The Trustees may with the consent of a Member and/or any other person to whom a benefit is payable and to the extent permitted by Relevant Law transfer investments of the Fund of equivalent value to that Member and/or other person in lieu of paying the whole or part of the amount otherwise payable.

9.14 No Beneficial Interest

Notwithstanding any provision of this Deed, no Member or any other person entitled to be paid a benefit from the Fund will have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of this Deed.

9.15 Unclaimed Benefits

The Trustees may deal with any unclaimed money in the manner specified in the Act.

10. ASSIGNMENTS, CHARGES AND MONEYS OWING TO THE FUND OR TO AN EMPLOYER

10.1 Assignments and Charges

The Trustees must not recognise, or in any way encourage or sanction, the assignment of or a charge over the whole or any part of a Member's Plan Credit or his or her interest in it, or a charge over the whole or any part of the Fund, except to the extent that they are permitted to do so by Relevant Law.

10.2 Deduction from Benefit

Subject to the requirements of Relevant Law, the Trustees may deduct from any part of a Members Plan Credit and either themselves retain or if appropriate pay to the Employer any money owing by the Member to the Trustees or, if the Trustees are satisfied that the Employer's claim is valid, to the Employer, and pay any balance to the Member or other person to whom the benefit would but for this clause have been payable.

11. FORFEITURE OF BENEFITS

11.1 Conditions of Forfeiture

Subject to the requirements of Relevant Law, any Member, former Member or after his death, any of his Dependants or his legal personal representative:

- (a) who assigns or charges or attempts to assign or charge any benefit;
- (b) whose benefits whether by his own act operation of law an order of any Court or otherwise become payable to or vested in any other person, company, government or other public authority;
- (c) who becomes bankrupt or insolvent;
- (d) in the opinion of the Trustees is incapable of managing his affairs; will;
- (e) if a benefit had become payable prior to the occurrence of any of the above events, to the extent permitted under the Act and at law generally:
 - (i) if paragraph (c) applies to a Member, forfeit entitlement to that portion of the benefit which exceeds the Member's pension reasonable benefit limit for the purpose of the Act;
 - (ii) otherwise, forfeit entitlement to all of his or her benefits and in the case of a Member he or she will cease to be a Member;

otherwise, to the extent permitted under the Act and at law generally:

- (i) if paragraph (c) applies to a Member, forfeit entitlement to that portion of the benefit which exceeds the Member's pension reasonable benefit limit for the purpose of the Act;
- (ii) otherwise, forfeit entitlement to all of his or her benefits and in the case of a Member he or she will cease to be a Member as defined in the Act.

11.2 Member Account Residue

Any Member or former Member in respect of whom all benefits which the Trustees consider should be paid pursuant to the provisions of this Deed have been paid and who still has a residual amount standing to the credit of any of his Member Accounts will forfeit that amount forthwith and that amount will be dealt with as a forfeited benefit.

11.3 Application of Certain Forfeited Benefits

Subject to the requirements of Relevant Law, the Trustees may pay or apply the whole or any part of any benefits which have been forfeited to or for the benefit of the former Member or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustees may from time to time in their absolute discretion determine or, if the Member has died, the benefits may be applied in accordance with clause 9.5.

11.4 Application of Remaining Forfeited Benefits

Any forfeited benefits not dealt with in accordance with clause II. 3 will be credited to the Fund Reserve Account.

12. APPOINTMENT AND REMOVAL OF TRUSTEES - Number of Trustees

12.1 There will not be less than two nor more than ten Trustees unless the Trustees resolve to change the maximum or minimum number.

12.2 Subject to clause 12.3, the Trustees may resolve to increase or reduce the number of Trustees.

12.3 If clause 14.2 applies:

(a) and an Independent Trustee is to be appointed in accordance with clause 15, the number of Trustees must be an odd number;

(b) otherwise, the number of Trustees must be an even number;

and, if the number of Trustees determined in accordance with clause 12.2 would not otherwise comply with this clause 12.3, the number of Trustees will be deemed to have been increased by one.

13. APPOINTMENT AND REMOVAL OF TRUSTEES - When equal representation rules do not apply

The Following provisions apply at any time when clause 14.2 does not apply and, if clause 14.2 commences to apply, pending the appointment of Trustees in accordance with clause

14.2:

(a) The Members may by unanimous resolution:

(i) remove any Trustee and appoint another person in that Trustee's place;

- (ii) appoint any person as an additional or replacement Trustee.
- (b) A Trustee will continue to hold office until he or she dies or until his or her office is vacated.
- (c) The Trustees may appoint a person to act as a Trustee to fill a casual vacancy.

14. APPOINTMENT AND REMOVAL OF TRUSTEES - When equal representation rules apply

14.1 If, at any time:

- (a) the Fund has to comply with the "basic equal representation rules" as prescribed by Relevant Law (or has to comply with either the "basic equal representation rules" or an "alternative agreed representation rule" as provided for under Relevant Law and, at the relevant time, does not comply with the relevant "alternative agreed representation rule"); or
- (b) the Trustees determine that clause 14.2 will apply, the provisions of clause 14.2 will apply,

14.2 The following provisions apply at any time when this clause 14.2 applies:

- (a) Apart from any Independent Trustee appointed in accordance with clause 16, one-half of the total number of Trustees will be Member Representatives ("Member Representative Trustees") and one-half will be Employer Representatives ("Employer Representative Trustees"). For this purpose, the Trustees must convene a meeting to be held as soon as reasonably practicable (but, in any event, within 90 days, or such other period prescribed by Relevant Law) after the day on which this clause 14.2 commences to apply, at which meeting:
 - (i) the number of Trustees may be increased or reduced, as contemplated in clause 12.2;
 - (ii) the Trustees must adopt procedures ("Member Representative Appointment and Removal Procedures") for the appointment and removal of Member Representative Trustees in accordance with paragraph (d) of clause 14.2; and
 - (iii) the existing Trustees must retire and be replaced by Trustees each of whom must be either a Member Representative Trustee or an Employer Representative Trustee, as required by this clause 14.2. An existing Trustee will, notwithstanding his or her retirement pursuant to this paragraph, be eligible

to be re appointed as either a Member Representative Trustee or an Employer Representative Trustee.

(b) Employer Representative Trustees may be removed or replaced at any time and for any reason by notice in writing by the Trustees.

(c) The procedures for appointing and removing Member Representative Trustees and the term of office of those Trustees will be as specified in the Member Representative Appointment and Removal Procedures but must not be inconsistent with the requirements of Relevant Law.

(d) The Trustees may, from time to time:

(i) adopt Member Representative Appointment and Removal Procedures (which may or may not be in substitution for any Member Representative Appointment and Removal Procedures previously adopted under this clause 14.2);

(ii) amend or revoke the Member Representative Appointment and Removal Procedures;

but:

(iii) the Member Representative Appointment and Removal Procedures must not be inconsistent with Relevant Law;

(iv) if any provision of the Member Representative Appointment and Removal Procedures is or becomes inconsistent with Relevant Law, it will be void and of no effect.

The Member Representative Appointment and Removal Procedures may deal with such matters as the term of office of Member Representative Trustees, eligibility for appointment as a Member Representative Trustee, removal of Member Representative Trustees and appointment of Member Representative Trustees, including nomination and voting procedures. For this purpose, subject to Relevant Law, the Member Representative Appointment and Removal Procedures may provide for the Fund Members to be divided into categories of electorates.

(e) A Trustee will continue to hold office until he or she dies or until his or her office is vacated.

(f) Any vacancy must be filled within 90 days (or such other period prescribed by Relevant Law) of the vacancy occurring.

(g) In the event of a casual vacancy:

- (i) in the case of an Employer Representative Trustee, the Employer may appoint any person to fill the casual vacancy; and
- (ii) in the case of a Member Representative Trustee, the vacancy must be filled in the manner provided for in accordance with the Member Representative Appointment and Removal Procedures.

15. APPOINTMENT AND REMOVAL OF TRUSTEES - Independent Trustee

The following provisions apply at any time when clause 14.2 applies:

- (a) If allowed under Relevant Law, the Trustees may, at any time, at the request of either those of the Trustees who are Member Representative Trustees or those of the Trustees who are Employer Representative Trustees appoint a person who:
 - (i) is not a Fund Member;
 - (ii) is not an associate of any Employer; or
 - (iii) is not an employee of any Employer, or an associate of any Employer;
 - (iv) is not, in any capacity, a representative of a trade union or other Organisation representing the interests of one or more of the Fund Members;
 - (v) is not, in any capacity, a representative of an Organisation representing the interests of any Employer;
 - (vi) meets any other criteria specified in Relevant Law for the appointment of an independent trustee;
as an additional Trustee ("**Independent Trustee**").
- (b) The procedures for appointing and removing an Independent Trustee and any term of office of an Independent Trustee be as specified in procedures adopted by the Trustees ("**Independent Trustee Appointment and Removal Procedures**") for the appointment and removal of an Independent Director in accordance with paragraph (c) of this clause 15, but must not be inconsistent with the requirements of Relevant Law.
- (c) The Trustees may, from time to time:
 - (i) adopt Independent Trustee Appointment and Removal Procedures which may or may not be in substitution for any Independent Trustee

Appointment and Removal Procedures previously adopted under this clause 15;

(ii) amend or revoke the Independent Trustee Appointment and Removal Procedures;

but:

(iii) the Independent Trustee Appointment and Removal Procedures must not be inconsistent with Relevant Law;

(iv) if any provision of the Independent Trustee Appointment and Removal Procedures is inconsistent with Relevant Law it will be void and of no effect.

The Independent Trustee Appointment and Removal Procedures may deal with such matters as eligibility for appointment as an Independent Trustee, the term of office of an Independent Trustee, vacancies in the office of Independent Trustee, the appointment of an Independent Trustee and the removal of an Independent Trustee.

(d) An Independent Trustee will continue to hold office until he or she dies or until his or her office is vacated.

(e) An Independent Trustee does not have a casting vote in addition to his or her deliberative vote.

16. **APPOINTMENT AND REMOVAL OF TRUSTEES - Vacation of Office**

16.1 The office of a Trustee immediately becomes vacant if the Trustee:

- (a) becomes bankrupt or insolvent;
- (b) becomes a disqualified person for the purposes of Relevant Law;
- (c) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns by notice in writing to the other Trustees;
- (e) is removed or replaced in accordance with clauses 13, 14 or 15 (as the case requires);

(f) subject to any provision of Relevant Law or the Member Representative Appointment and Removal Procedures to the contrary, in the case of a Member Representative Trustee:

- (i) ceases to be a Fund Member or, if the Member Representative Trustee was appointed by Fund Members of a particular category or drawn from a particular electorate, ceases to be a Member of the relevant category or ceases to belong to the relevant electorate; or
- (ii) ceases to be an employee or other officer of an Employer; and
- (g) in the case of an Independent Trustee, ceases to satisfy any of the requirements listed in clause 15.

16.2 A Trustee who ceases to hold office pursuant to clause 16.1 (e) will, if otherwise eligible, be entitled to be reappointed as a Trustee in accordance with the procedures applicable under clause 13, 14 or 15 (as the case requires).

17. PROCEEDINGS OF TRUSTEES - Trustees' meetings

17.1 The Trustees may at any time convene a Trustees' meeting.

17.2 A Trustees' meeting may be held by the Trustees communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Trustees need not all be physically present in the same place for a Trustees' meeting to be held. A Trustee who participates in a meeting held in accordance with this clause 17.2 is deemed to be present and entitled to vote at the meeting.

17.3 The Trustees may meet together, adjourn and regulate their meetings as they think fit.

17.4 At a meeting of Trustees, a quorum is two Trustees.

17.5 A Trustee who has a direct or indirect interest in any business to be transacted or matter to be discussed at a Trustees' meeting is to be counted for the purpose of determining whether a quorum is present notwithstanding his or her interest.

17.6 The Trustees are entitled to invite professional advisers or consultants to attend a Trustees' meeting or a meeting of a committee of the Trustees. These invitees are entitled to speak, but not vote at the meetings they attend.

18. PROCEEDINGS OF TRUSTEES - Decision of questions

18.1 Questions arising at a meeting of Trustees are to be decided:

- (a) if clause 14.2 applies, by two-thirds (or such other percentage (if any) prescribed by Relevant Law) of the total number of Trustees;
- (b) otherwise, by a majority of the Trustees present and voting.

18.2 Each Trustee has one vote. The chairman of a meeting does not have a casting vote in addition to his or her deliberative vote.

19. **PROCEEDINGS OF TRUSTEES - Trustees' interests**

19.1 A Trustee and any firm, body or entity in which a Trustee has a direct or indirect interest may in any capacity:

- (a) enter into any contract or arrangement with the Trustees;
- (b) be appointed to and hold any office or place of profit under the Trustees, other than the office of auditor; and
- (c) act in a professional capacity, other than as auditor, for the Trustees, and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Trustee.

19.2 Each Trustee must disclose his or her interests to the Trustees and all declarations must be recorded in the minutes of the relevant Trustees' meeting.

19.3 A Trustee's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Trustee has a direct or indirect interest.

19.4 A Trustee may vote in respect of a contract or arrangement or any other matter in which the Trustee has a direct or indirect interest.

19.5 A Trustee may attest the affixing of the Seal to any document relating to a contract or arrangement or other matter in which the Director has an interest.

20. **PROCEEDINGS OF TRUSTEES - Remaining Trustees**

20.1 The Trustees may act even if there are vacancies in their number.

20.2 If the number of Trustees is not sufficient to constitute a quorum at a Trustees' meeting, the Trustees may act only to convene a meeting of Trustees.

21. **PROCEEDINGS OF TRUSTEES - Chairman**

21.1 The Trustees may elect a Trustee as chairman of Trustees' meetings and may determine the period for which the chairman will hold office.

21.2 If no chairman is elected or if the chairman is not present at any Trustees' meeting within 10 minutes after the time appointed for the meeting to be in, the Trustees present must elect a Trustee to be chairman of the meeting.

21.3 The Trustees may elect a Trustee as deputy chairman to act as chairman in the chairman's absence.

22. PROCEEDINGS OF TRUSTEES - Written resolutions

22.1 If all the Trustees who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is deemed to have been passed at a Trustees' meeting held on the day on which the document was last signed by a Trustee

22.2 For the purposes of clause 22. 1, two or more identical documents, each of which is signed by one or more Trustees, together constitute one document signed by those Trustees on the days on which they signed the separate documents.

22.3 Any document referred to in this clause 22 may be in the form of a telex or facsimile transmission.

23. PROCEEDINGS OF TRUSTEES - Validity of acts of trustees If it is discovered

that:

- (a) there was a defect in the appointment of a person as a Trustee; or
- (b) a person appointed as a trustee was disqualified;

all acts of the Trustees before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

24. PROCEEDINGS OF TRUSTEES - Minutes and registers

24.1 The Trustees must cause minutes to be made of

- (a) the names of the Trustees present at all Trustees' meetings or committee meetings;
- (b) all resolutions and proceedings of Trustees' meetings and committee meetings;
- (c) all orders made by the Trustees; and
- (d) all disclosures of interests made pursuant to clause 19.

24.2 Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body.

24.3 The Trustees must keep all registers required by this Deed and Relevant Law.

25. CONTINUITY OF OFFICE

A Trustee will, on ceasing to be a Trustee, do everything necessary to vest the Fund in the continuing and new Trustees and deliver all records and other books to the continuing and new Trustees.

26. TRUSTEES' POWERS OF MANAGEMENT

26.1 Trustees' General Powers The Trustees will have power:

- (a) to manage administer and deal with the Fund and all proceedings matters and things connected with the Fund; and
- (b) to enter into and execute all contracts deeds and documents and to do all such matters and things as they consider expedient for the purpose of carrying out the trusts authorities powers and discretions conferred upon the Trustees by this Deed with power, subject to the other provisions of this Deed, to give such undertakings and incur all such obligations relating to the Fund as the Trustees think fit;

and such further powers as may be necessary ancillary or incidental to this Deed.

26.2 Additional Specific Powers

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

- (a) to settle compromise or submit to arbitration any claim matter or thing relating to this Deed or the Fund or to the rights of Members former Members or any other persons claiming to be entitled to be paid a benefit pursuant to this Deed;
- (b) to commence carry on or defend proceedings relating to the Fund or to the rights of Members former Members or other persons claiming to be entitled to be paid a benefit from the Fund;
- (c) subject to any restrictions contained in Relevant Law, to borrow money and to secure the repayment of that money in any manner and upon any terms with or without security which the Trustees may consider advisable;
- (d) to insure or reinsure any risks contingencies or liabilities of the Fund;

- (e) to underwrite, sub-underwrite or otherwise assume liability for any risk contingency or liability under any superannuation arrangement conducted by an Employer in connection with any transfer of Employees to the Fund;
- (f) to retain the services of and to appoint professional or other advisers or agents in relation to the management administration or investment of the Fund and to pay out of the Fund all expenses of and incidental to the management and administration of the Fund including the fees of any advisers or agents and the remuneration of persons appointed pursuant to this Deed and to revoke any such appointment; and
- (g) to indemnify or undertake to indemnify any person company government or institution in respect of any claim matter or thing relating to the Fund or to the rights of Members, former Members or other persons entitled in respect of the Fund.

26.3 Trustees' Discretion

In the exercise of the authorities powers and discretions vested in them pursuant to this Deed, the Trustees will have an absolute and unfettered discretion and may from time to time exercise or enforce all or any of such powers authorities and discretions and will have power generally to do all such things as the Trustees in their absolute discretion consider appropriate in the administration of the Fund and the performance of their obligations under this Deed.

26.4 Trustees may act on advice

The Trustees may act on the advice or opinion of any accountant actuary barrister solicitor or medical practitioner professional adviser or expert whether or not such advice has been obtained by the Trustees.

26.5 Indemnity of Trustees

The Trustees will be indemnified out of the Fund against all liabilities, losses, costs and expenses (excluding any liability for a monetary penalty under a civil penalty order imposed under the Act) incurred in the exercise or purported exercise or attempted exercise of the trusts powers authorities and discretions vested in the Trustees or at law and will have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity and generally for the payment of all legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing their duties under the Deed. This indemnity will extend to any payments made to any person whom the Trustees bona fide believes to be entitled to it although it may subsequently be found that the person was not in fact so entitled, but will not be available to any person if the person failed to act honestly or intentionally or recklessly failed to exercise the degree of care and diligence that the person was required to exercise. In this clause, the word "Trustees" includes any former Trustee.

26.6 Delegation by Trustees

The Trustees may delegate to any one or more persons firms or companies on such terms as the Trustees may think fit any of the authorities powers and discretions conferred upon the Trustees. Without limiting the generality of the foregoing the Trustees may appoint from time to time such one or more persons firms or companies as the Trustees may think fit to act either as custodian or investment manager or both subject to such conditions as the Trustees may from time to time determine and may delegate to and confer upon such a custodian or investment manager such authorities power or discretions, including the Trustees' power of delegation, as the Trustees may think fit. The Trustees will have power to pay out of the Fund to any such custodian investment manager or other delegate such remuneration for its services as the Trustees consider proper and to remove from time to time any such custodian or investment manager.

26.7 Trustees' Remuneration

The Trustees will not receive any salary or remuneration from the Fund in respect of their services as Trustees unless otherwise agreed in writing between the Members and the Trustees, but nothing in this Deed will preclude any firm corporation or partnership of which the Trustees or any of them is a partner director shareholder related body corporate (as defined in the *Corporations Law*) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

26.8 Confidentiality of Information

The Trustees and every Employer will regard as strictly confidential so - far as practicable all information disclosed to or gained by them in the course of administering the Fund or otherwise in connection with this Deed or anything relating or incidental to it.

26.9 Liability of Trustees

The Trustees will not be liable for any loss or breach of trust whatsoever other than:

- (a) loss attributable to the Trustees, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the Trustees were required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order made against the Trustees under the Act.

26. 10 Liability of Directors of Trustees

A director of a Trustee will not be liable for any loss or breach of trust whatsoever other than:

- (a) loss attributable to the director, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the director was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order made against the director under the Act.

26.11 Inquiries and Complaints

The Trustees may, and to the extent required pursuant to the Act, must, establish arrangements under which:

- (a) Members and other beneficiaries have the right to make inquiries into, or complaints about, the operation or management of the Fund in relation to the Member or beneficiary making the inquiry or complaint; and
- (b) those inquiries or complaints will be properly considered and dealt with within 90 days or such other period as may be prescribed by Relevant Law after they are made.

27. INVESTMENTS

27.1 Authorised Investments Subject to:

- (a) the restrictions imposed by Relevant Law on investing in in-house assets;
- (b) any prohibition on acquiring certain kinds of assets from Members or relatives of Members which is prescribed by Relevant Law;
- (c) any prohibition prescribed under Relevant Law against lending money or giving financial assistance to, Members or relatives of Members; and
- (d) any other restrictions imposed by Relevant Law;

so much of the moneys forming part of the Fund from time to time as is not required immediately for the payment of benefits or other amounts authorised by this Deed may be invested by the Trustees in any investment whatsoever which the Trustees consider appropriate, including, but without in any way being limited to, the following investments:

- (i) 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;
- (ii) any mortgage on freehold property situated in Australia or elsewhere even though the amount of the loan may exceed two-thirds of the value of the

property and whether or not a report or valuation has been obtained on the value of the property;

(iii) on deposit with or on loan to any bank building society or other financial institution;

(iv) on deposit with or on loan to any Employer or any other person or Organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustees may deem reasonable notwithstanding that the Trustees may have a direct or indirect interest in the borrowing or may benefit directly or indirectly therefrom;

(v) the purchase or acquisition in any way of shares or stock of any class or description or of any type of bond mortgage debenture note option or other like security in or of any Employer or any other company or trust fund, society, un-incorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;

(vi) any Policy or annuity whether by proposal purchase or otherwise and any choses in action interest for life or any lesser term or in reversion or howsoever arising;

(vii) the purchase or acquisition of any interest in real or personal property and the improvement or extension thereof,

(viii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;

(ix) the discounting of loans mortgages contracts hire purchase agreements or leases; and

(x) bills of exchange, promissory notes or other negotiable instruments.

27.2 Power to Sell and Vary Investments

The Trustees will have power as they see fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

27.3 Investment Directions

The Trustees may from time to time, in their absolute discretion, allow a Member or Members to give directions to the Trustees in relation to the investment of a portion of the Fund's assets representing the Member's Member Accounts on the basis that the Trustees may comply with any such investment directions, but will not be obliged to do so. When an investment is made pursuant to any direction made by a Member in accordance with this clause:

- (a) the Trustees must note in the Fund's records that the investment was made in accordance with a Member's investment directions and the name of the Member;
- (b) any income or gains or losses of a revenue or capital nature arising from the investment will be credited or, in the case of a loss, debited, to the relevant Member's Member Accounts and such amounts will be excluded from the calculation of Investment Income pursuant to clause 28.1;
- (c) any costs, charges or expenses incurred or arising from the investment and any Taxation which is or may become payable in respect of the investment will be debited to the Member's Member Accounts and any such amounts will be excluded from the calculation of Investment Income pursuant to clause 28.1.

28. INVESTMENT INCOME AND INVESTMENT FLUCTUATION ACCOUNT

28.1 Investment Income

At the end of each Fund Year and on any other date which the Trustees consider appropriate ("Review Date") the Trustees must value all of the assets of the Fund at the Review Date and determine:

- (a) the Investment Income of the Fund in respect of the period since the previous Review Date which will comprise all net income and net capital gains whether realised or unrealised after deducting any capital losses and such allowance for expenses and taxation as the Trustees consider appropriate; and
- (b) the Fund Earning Rate to be credited (or debited) to Member's Accounts and the Fund Reserve Account in accordance with clause 28.6.

28.2 Investment Fluctuation Account

The Trustees may utilise the Investment Fluctuation Account in the manner described in this clause as a mechanism for smoothing any fluctuations in the value of investments and the level of Investment Income.

28.3 Credits to the Investment Fluctuation Account

The Trustees may, when determining the Fund Earning Rate in accordance with clause 28.1, decide that a portion of the Investment Income determined in accordance with clause 28.1 should be set aside for the purpose set out in clause 28.2, in which case the appropriate portion of the Investment Income will be credited to the Investment Fluctuation Account.

28.4 Debits to the Investment Fluctuation Account

The Trustees may, when determining the Fund Earning Rate, in accordance with clause 28.1, decide that the Investment Income should be supplemented as contemplated in clause 28.2, in which case, an appropriate amount will be debited to the Investment Fluctuation Account.

28.5 Relevant Considerations

For the purpose of making the decisions contemplated in clauses 28.1, 28.3 and 28.4, the Trustees must consider the following matters:

- (a) the amount standing to the credit of the Investment Fluctuation Account;
- (b) the amount of the Investment Income;
- (c) the amount of Investment Income which is expected to arise in respect of the subsequent Fund Year;
- (d) the Investment Income credited to the Members' Member Accounts in respect of the previous Fund Year; and
- (e) such other matters as the Trustees consider relevant.

28.6 Crediting Accounts

The Trustees will as soon as reasonably practicable after the Review Date credit (if the Fund Earning Rate is positive) or debit (if the Fund Earning Rate is negative) the Member Accounts in respect of all Members and the Fund Reserve Account with interest, at the Fund Earning Rate, on such basis as the Trustees consider equitable having regard to the balances of those accounts during the Fund Year and the requirements of Relevant Law.

28.7 Interim Fund Earning Rate

The Trustees may, from time to time, during each Fund Year, determine an interim Fund Earning Rate which will be used when determining the interest to be credited (or debited) to any account for the purpose of calculating benefits.

29. COSTS AND EXPENSES AND TAXATION

29.1 Costs and Expenses

cept as otherwise expressly provided in this Deed:

- (a) all costs charges and expenses incurred in connection with the preparation establishment maintenance administration operation or winding up of the Fund will be borne by the Fund and paid by the Trustees and the Trustees may debit the Members' Member Accounts, the Fund Reserve Account and the Investment Income of the Fund in such manner as it considers appropriate to reflect the payment of or the making of any provision for any such costs charges and expenses; and
- (b) the Trustees will indemnify the Employer in respect of any costs charges or expenses which are properly incurred by the Employer. The Trustees may, however, accept contributions in respect of such costs charges or expenses from the Employer or may arrange with the Employer for such costs charges or expenses to be paid and borne by the Employers in such manner and in such proportions as they may determine.

2 Taxation

The Trustees may make provision in such manner as they consider appropriate to allow for any anticipated or future liability for Taxation in respect of the Fund and will have power to pay Taxation in respect of the Fund out of the Fund. The Trustees may debit the Members' Member Accounts, the Fund Reserve Account and the Investment Income of the Fund in such manner as they consider appropriate to reflect the payment of or the making of any provision for any such Taxation. The Trustees will not be liable to account to any Member or any other person for any payments made by the Trustees in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory of it or any other country or part of a country for Taxation or any other charges upon the Fund or for or on account of the retention of any moneys or assets in the Fund to meet any prospective liability on the part of the Trustees in relation to the Fund to such fiscal authority, notwithstanding that such payment or provision need not have been made.

FUND RECORDS

Receipt and Payment of Moneys

The Trustees will lodge all moneys of the Fund as soon as practicable to the credit of an account in the name of the Fund kept with a bank, building society or other financial institution into a trust account of a solicitor accountant investment manager or administration manager appointed pursuant to this Deed.

Issue of Receipts

receipt given on behalf of the Fund by the Trustees or by any other person who may from time to time be authorised by the Trustees in writing to receive any moneys of the Fund will be sufficient discharge to the person by whom the moneys are paid.

3 Records and Accounts to be kept The Trustees must:

- (a) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect and pay promptly into a bank or other account of the Fund all moneys from time to time due to the Fund;
- (c) keep appropriate records and accounts having regard to the requirements of Relevant Law and make suitable arrangements for custody of documents relating to the investments of the Fund; and
- (d) prepare accounts and statements in relation to the Fund as at the end of the Fund Year in accordance with Relevant Law.

3.4 Audit

The Trustees must cause the accounts and statements referred to in clause 30.3(d) to be audited by the Auditor at the end of each Fund Year or at such other time or times as required by Relevant Law and the Auditor must give to the Trustees a report in respect of such audit. If the Auditor is satisfied that the annual return prepared for the Fund for that particular year of income is true and fair he will execute an audit certificate in the prescribed form for lodgement with the Commissioner.

5 Availability of Deed

Copy of this Deed must be made available for inspection by any Member on the request of that Member.

6 Information for Trustees

The Trustees may request a Member's Employer to give to the Trustees all information in its power or possession which may, in the opinion of the Trustees, be necessary or expedient for management and administration of the Fund. The Trustees may act upon any information given to them by an Employer pursuant to this Deed.

7 Disclosure and Reporting Requirements

The Trustees must provide to Members, former Members, Employers, the Commissioner and other persons who ask the Trustees to provide them with information about the Fund information in relation to the conduct of the Fund and benefits payable from the Fund in a form as required by Relevant Law.

APPOINTMENT OF AUDITOR

The Trustees must appoint an Auditor on such conditions as the Trustees determine and who both appropriately qualified and independent according to the criteria specified by Relevant Law. The Auditor may be a person or a firm.

COMPULSORY OR GOVERNMENT SUPERANNUATION

1 Compulsory Superannuation

Where at any time an obligation is imposed upon an Employer to make compulsory contributions to a superannuation fund other than this Fund providing retirement death or disability benefits in respect of Members of the Fund, then the Employer may immediately cease its contributions to the Fund by the amount of the compulsory contribution being due to the other fund in respect of those Members who are members of the other fund.

Government Benefit Scheme

Where a scheme having government support or recognition whether in the Commonwealth of Australia or any State or Territory of it or any other place with which the activities of the Employer are or may for the time being be concerned ("Government Scheme") provides or provides Members or their Dependants with benefits which in the sole opinion of the Trustees are of a similar nature to any benefit provided under this Deed, the Trustees with the consent of the Principal Employer may alter or vary in any way whatsoever the provisions of the Deed which in the sole discretion of the Trustees corresponds to the provisions of the Government Scheme.

TERMINATION OF THE FUND

Termination

- (a) it appears to the Trustees that the Fund is insolvent and the Trustees resolve to terminate the Fund;
- (b) for any reason the Trustees think it is appropriate to and does resolve to terminate the Fund;
- (c) there are no Members in the Fund and the Trustees resolve to terminate the Fund; or
- (d) the Member, by unanimous resolution, ask the Trustees to terminate the Fund

the Fund will be terminated from such date as determined by the Trustees ("Termination Date").

Allocation of Assets

moneys and assets of the Fund after payment or allowance for any liabilities or expenses of Fund and will be applied to the extent that such moneys and assets will permit to provide benefits in respect of each Member pro rata to each Member's Plan Credit in such form and amount as determined by such arrangements as the Trustees determine.

Provision of Benefits

Member or other person entitled to be paid a benefit will accept the benefits provided in clause 33.2 in full discharge of all claims in respect of the Fund provided that:

- (a) the payment of any benefit pursuant to this clause will be subject to clauses 9, 10 and 11;
- (b) no benefit will be paid pursuant to this clause to or in respect of any Member while the Member remains in the employ of an Employer other than for such purposes and in such circumstances as Relevant Law allows or the Commissioner approves.

AMENDMENTS

Amendments to the Trust Deed

Provisions of this Deed including this clause may be added to amended altered modified or deleted with immediate, prospective or, to such extent as the law allows, retrospective effect from time to time by the Trustees by deed but no amendment alteration variation or deletion ("Amendment") may be made which is not permitted by Relevant Law.

Notice to Members

Trustees must promptly give the Members written notice of any such Amendment if required pursuant to Relevant Law to do so.

RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE

Employer's Powers not Prejudiced

Nothing in this Deed will affect the powers of an Employer with regard to the remuneration, employment or dismissal of an Employee or any other dealings between the Employer and Employee. The existence or cessation of any actual or prospective or possible

benefit under the Fund will not be grounds for claiming or increasing damages in any action brought against the Employer in respect of any termination of employment or otherwise.

35.2 Work-related Claims

Nothing in this Deed will in any way affect the right of a Member or his personal representative to claim damages or compensation under common law or under any workers' compensation legislation or any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of his employment with the Employer.

36. PROPER LAW

This Deed will be governed and construed and will take effect in accordance with the laws of South Australia. Employers, the Trustees, Members and former Members and their Dependents and Legal Personal Representatives must accept the jurisdiction of the Courts of that State. If that State is South Australia, section 35b of the *Trustee Act 1936* of South Australia has no application to this Deed.

37. RELEVANT LAW

37.1 Power to Comply with Relevant Law

Notwithstanding any other provision of this Deed and in addition to the powers and discretions conferred upon the Trustees by this Deed, the Trustees will be empowered but not, except as provided in this Deed, required to do or procure to be done or refrain from doing such acts matters and things as in the opinion of the Trustees may be necessary or desirable:

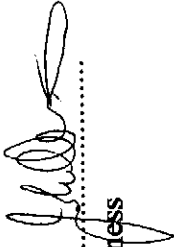
- (a) to enable the Fund to become, and continue to be, a regulated superannuation fund; and
- (b) in order to comply with or satisfy any provision or requirement of Relevant Law or of the Commissioner.

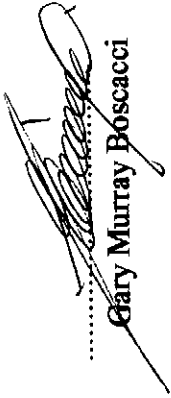
37.2 Deemed Inclusion of Relevant Law Requirements

Notwithstanding any other provision of this Deed, all provisions of Relevant Law (if any) that must be included in this Deed from time to time in order for the Fund to be a Superannuation Fund for the purposes of Relevant Law in any year of income are deemed to be included in this Deed, but only for so long as that deemed inclusion is necessary for the Fund to be a Superannuation Fund. If there is any inconsistency between any provision deemed to be included in this Deed pursuant to this clause 37.2 ("deemed provision") and any other provision of this Deed, the deemed provision must prevail and that other provision of this Deed will be deemed to be modified to the extent of the inconsistency.

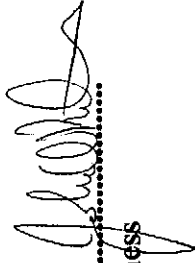
EXECUTED as a deed.


SIGNED as a deed by
GARY MURRAY BOSCACCI
in the presence of


.....
Witness


.....
Gary Murray Boscacci

SIGNED as a deed by
KOSTOULA BOSCACCI
in the presence of


.....
Witness


.....
Kostoula Boscacci