

**STUART GRAHAM LUDLOW**

**and**

**EVELYN LORRAINE LUDLOW**

**AND:**

**STUART GRAHAM LUDLOW and EVELYN LORRAINE LUDLOW**

**SUPERANNUATION DEED**

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THIS DEED is made the 16<sup>th</sup> day of March, 1999.

BY: **STUART GRAHAM LUDLOW and  
EVELYN LORRAINE LUDLOW**  
of 6 Talaroo Street, Carindale, Queensland

"Founding Members"

AND: **STUART GRAHAM LUDLOW and EVELYN LORRAINE LUDLOW**  
of 6 Talaroo Street, Carindale, Queensland

"Trustee"

**WHEREAS:**

- A. The Founding Members wish to establish and maintain a superannuation fund for the purpose of providing retiring allowances and other benefits for those who are eligible and become Members of the Fund.
- B. The Trustee has agreed to act as Trustee of the Fund in accordance with the provisions of this Deed.
- C. For as long as SIS requires, where the Fund has individual persons as the Trustee, the Fund is established and maintained primarily for the purpose of providing Old Age Pension benefits for Members in the event of their retirement (or in other circumstances acceptable to the Commissioner) or for the Dependants of the Members in the event of death and the Fund is to be conducted so as to attract the concessional rate of tax applicable to pension funds.

**THE PARTIES AGREE AS FOLLOWS:**

**1. THE FUND AND MEMBERSHIP**

- 1.1 The Founding Members establish a Fund (the "Fund") which is known as the LUDLOW SUPERANNUATION FUND and which commences on the date of this Deed.
- 1.2 For as long as SIS requires, this Fund must be administered by a trustee which is a Constitutional Corporation, or the Fund must have as its sole or primary purpose, the provision of Old Age Pensions.
- 1.3 The Members of the Fund as at the date of this Deed, upon execution of this document, are class "A" Members unless the Trustee otherwise notifies the Members, that they are included in any other of the classes of membership stipulated under Cl. 39 of Division B of this Deed.

2. **DIVISIONS**

- 2.1 This Deed is divided into Division A and Division B.
- 2.2 Division A governs the management and administration of the Fund and Division B governs the amount of the Benefits paid out of the Fund.

3. **COVENANT**

- 3.1 The Founding Members covenant with the Trustee, and the Trustee for itself and its successors and assigns covenants with the Founding Members each to perform and observe the covenants trusts and conditions contained in this Deed so far as they are or ought to be observed by each of them respectively.

# TABLE OF CONTENTS

1.	THE FUND AND MEMBERSHIP .....	1
2.	DIVISIONS .....	2
3.	COVENANT .....	2
DIVISION A - MANAGEMENT AND ADMINISTRATION .....		9
4.	INTERPRETATION - DEFINITIONS .....	9
5.	GENERAL PROVISIONS .....	14
5.1	Employers Powers Not Prejudiced .....	14
5.2	Work Related Claims .....	14
5.3	Prescribed Standards .....	14
6.	APPLICABLE LAW .....	14
7.	COMPLAINTS PROCEDURE .....	14
8.	FUND ASSETS .....	14
9.	ACCUMULATION ACCOUNT .....	15
9.1	Separate Member Accounts .....	15
9.2	Credits .....	15
9.3	Debits .....	15
9.4	Specific Investment .....	16
9.5	Preserved Payment Benefits .....	16
9.6	Taxation, Costs and Charges .....	16
10.	INCOME ACCOUNT .....	16
11.	ADJUSTMENT .....	17
12.	VALUATION .....	18
13.	FUND RECORDS .....	18
13.1	Receipt and Payment of Monies .....	18
13.2	Issue of Receipts .....	18
13.3	Records and Accounts .....	18
13.4	Audit .....	19

19.	<b>TRUSTEE'S POWERS OF INVESTMENT AND SALE</b>	29
19.1	<b>Authorised Investments</b>	29
19.2	<b>Underwriting</b>	30
19.3	<b>Power to Sell and Vary Investments</b>	30
20.	<b>MEMBERSHIP OF FUND</b>	30
20.1	<b>Eligibility and Application for Memberships</b>	30
20.2	<b>Admission</b>	31
20.3	<b>Members and Beneficiaries to Provide Information</b>	31
20.4	<b>Cessation of Membership</b>	31
20.5	<b>Meetings of Members</b>	32
20.6	<b>Admission of Employer</b>	33
21.	<b>CONTRIBUTIONS TO FUND</b>	33
21.1	<b>Members' Contributions</b>	33
21.2	<b>Employer's Contributions</b>	33
21.3	<b>Designation of Class Entitlement</b>	33
21.4	<b>Suspension of Employer Contributions</b>	33
21.5	<b>Administration Costs</b>	33
22.	<b>TRANSFERS TO AND FROM OTHER FUNDS</b>	34
22.1	<b>Transfers to Other Funds</b>	34
22.2	<b>Application of Transferred Amount</b>	34
22.3	<b>Benefits Cease</b>	34
22.4	<b>Preserved Payment Transfers</b>	34
22.5	<b>Transfer From Other Funds</b>	35
22.6	<b>Determination of Member Contributions</b>	35
23.	<b>STATUTORY BENEFIT SCHEME</b>	35
24.	<b>EXCESSIVE BENEFITS</b>	36
24.1	<b>Amounts Limited</b>	36
24.2	<b>Reduce Contributions</b>	36
24.3	<b>Payment of Excess Benefits</b>	36

25.	<b>MONEYS OWING TO FUND OR AN EMPLOYER</b>	37
26.	<b>FORFEITURE OF BENEFITS</b>	37
26.1	Conditions of Forfeiture	37
26.2	Accumulation Account Residue	37
26.3	Application of Certain Forfeited Benefits	38
26.4	Application of Remaining Forfeited Benefits	38
26.5	Equalisation Account	38
26.6	Distribution to Employers	39
27.	<b>CONVERSION OF LUMP SUM TO PENSION</b>	39
27.1	Application to Convert	39
27.2	Amount of Pension	39
27.3	Trustee Decision Final	39
27.4	Purchase of Annuity	39
28.	<b>PENSION PAYMENT CONDITIONS</b>	39
28.1	Method of Payment	39
28.2	Limited by Accumulation Accounts Balance	39
28.3	Limitation on Security for Borrowing	40
29.	<b>COMMUTATION OF PENSION</b>	40
29.1	Conditions of Commutation	40
29.2	Actuary to Determine Benefit	40
30.	<b>TRANSFER IN SPECIE</b>	40
30.1	Transfer of Policy	40
30.2	Transfer of Investments	41
30.3	No Beneficial Interest	41
31.	<b>PAYMENT OF BENEFITS ON DEATH</b>	41
31.1	Benefit Payable on the Death of A Member Leaving Dependants	41
31.2	Benefit Payable on the Death of A Member Leaving No Dependants	41
32.	<b>PAYMENT TO OTHERS ON BEHALF OF BENEFICIARIES</b>	41
33.	<b>TAX ON BENEFITS PAYABLE AND ON CONTRIBUTIONS</b>	42

33.1	Tax on Benefits .....	42
33.2	Tax on Contributions .....	42
34.	<b>PAYMENT OF BENEFITS .....</b>	<b>42</b>
34.1	Address for Benefits .....	42
34.2	Notification of Address .....	42
34.3	Receipt for Benefits .....	42
34.4	Unclaimed Moneys .....	42
35.	<b>ROLLOVER PAYMENTS .....</b>	<b>43</b>
36.	<b>VARIATION OF TRUST DEED .....</b>	<b>44</b>
36.1	Resolution or Deed .....	44
36.2	Limitation on Variation .....	44
36.3	Additional Limitation on Variation .....	44
37.	<b>WINDING UP OF FUND .....</b>	<b>45</b>
37.1	Election to Terminate .....	45
37.2	Procedure on Winding Up .....	45
37.3	Exhaustion of Fund .....	45
38.	<b>TERMS IMPLIED BY ACT .....</b>	<b>45</b>
	<b>DIVISION B - MEMBERS' CONTRIBUTIONS AND BENEFITS .....</b>	<b>46</b>
39.	<b>APPLICATION OF DIVISION .....</b>	<b>46</b>
40.	<b>MEMBERSHIP CLASSIFICATION .....</b>	<b>46</b>
40.1	Classes of Membership .....	46
40.2	Original Class .....	46
40.3	Reclassification .....	46
40.4	Transfer of Accumulation Account .....	46
40.5	Designation of Class .....	46
41.	<b>CONTRIBUTIONS PAYABLE BY MEMBERS .....</b>	<b>47</b>
41.1	Rate of Contributions .....	47
41.2	Take Over Amounts .....	47
42.	<b>BENEFITS PAYABLE ON RETIREMENT .....</b>	<b>47</b>
42.1	Lump Sum Classes .....	47

42.2	Pension Classes .....	47
42.3	"G" Class Membership .....	47
43.	DISABLEMENT .....	47
43.1	Total and Permanent Disablement .....	47
43.2	Temporary Total Disablement .....	49
44.	LEAVING SERVICE .....	50
45.	PRESERVED PAYMENT BENEFITS .....	52
45.1	Payment Limitation .....	52
45.2	Preservation of Benefit .....	52
46.	PAYMENT ON DEATH .....	52
47.	COMMUTATION OF PENSION BENEFITS ON DEATH .....	53
48.	ASSURANCE .....	53
48.1	Power to effect Policy .....	53
48.2	Endowment or Whole of Life Policy .....	53
49.	INCREASES TO BENEFITS .....	53
50.	AMOUNTS OF INSTALMENTS OF PENSION .....	53
50.1	Total of Member Accumulation Account .....	53
50.2	Pension Increase .....	54
51.	DEPENDANT PENSION ON DEATH OF PENSIONER .....	54
52.	PERSONS TO WHOM BENEFITS ARE PAYABLE .....	54
53.	RETENTION OF BENEFIT IN FUND .....	54
	SCHEDULE A .....	56
	SCHEDULE B .....	57



## DIVISION A - MANAGEMENT AND ADMINISTRATION

### 4. INTERPRETATION - DEFINITIONS

4.1 Unless the context otherwise requires the following have the meanings designated:

**"Acceptable Percentage"** means:

- (a) for an Excluded Fund - 40%; and
- (b) otherwise - 0%

**"Accumulation Account"** means the account established on behalf of each Member as described in Cl. 9;

**"Act"** means the *Income Tax Assessment Act, 1936*, the *Superannuation Industry (Supervision) Act 1993* or, where relevant, the *Occupational Superannuation Standards Act 1987*;

**"Actuary"** means the actuary (if any) appointed under this Deed;

**"Annuity"** means an eligible annuity as defined in Section 27A(1) of the Act;

**"Approved Deposit Fund"** in relation to a year of income means a fund which is a complying approved deposit fund under the Act;

**"Auditor"** means the auditor being appointed under this Deed;

**"Beneficiary"** means a person presently and absolutely entitled to receive a Benefit at the relevant time but does not include a person who is a Member at that time;

**"Benefit"** means any amount paid or payable by the Trustee out of the Fund under this Deed to or in respect of a Member;

**"Business Real Property"** of a person means any freehold or leasehold interest in real property which issued wholly and exclusively in the person's business;

**"Class"** means Membership Class;

**"Commissioner"** means the Commissioner of Taxation or the Insurance and Superannuation Commissioner or other regulatory body with responsibility for the administration of occupational superannuation in Australia;

**"Complying Superannuation Fund"** in relation to a year of income means a fund which is a complying superannuation fund under the Act;

**"Constitutional Corporation"** means a constitutional corporation as that expression is defined in the *Superannuation Industry (Supervision) Act, 1993*;

**"Contributions"** means payments to the Fund by Members and Employers under the provisions of this Deed;

**"Deed"** means this document and any authorised alterations, additions, amendments, modifications or variations to it;

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

- (a) the Spouse of a former Member or the widow or widower of a deceased Member; or

- (b) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as that Member's child; or
- (c) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time;

**"Director"** means the directors or board of management for the time being of an Employer or, as the case requires, of the Trustee;

**"Employee"** means a person who is in the permanent employment of an Employer whether on a full-time or part-time basis and where the Employer is a corporation includes a working director, manager or secretary of the corporation and includes a person on Special Leave;

**"Employer"** means any employer, whether an incorporated body, company, trust, partnership, sole trader or person, which is the Employer of a Member and is accepted by the Trustee as an employer pursuant to this Deed;

**"Excluded Fund"** means the Fund if it has fewer than 5 members;

**"Equalisation Account"** means an account established in accordance with Cl. 26.5;

**"Final Average Salary"** means the average salary of the Member over the 3 years of Gainful Employment;

**"Fund Earning Rate"** means the fund earning rate defined in Cl. 10.3;

**"Fund Year"** means a period of 12 twelve months ending on the 30th June, or any other period ending on any other date as the Trustee determines;

**"Gainful Employment"** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Commissioner, and **"Gainfully Employed"** has a corresponding meaning;

**"Income Account"** means an account established in accordance with Cl. 10;

**"Listed Security"** means:

- (a) a share; or
- (b) a unit; or
- (c) a bond or debenture; or
- (d) a right or option; or
- (e) any other security

listed for quotation in the official list of a stock exchange in Australia.

**"Member"** means the Founding Members and any Gainfully Employed person who has been accepted by the Trustee as a member of the Fund and has not ceased to be a Member under Cl. 20.4;

**"Member's Contributions"** means the amounts contributed under Cl. 40 or deemed to have been contributed by a Member under Cl. 22.6 (reduced, if the Trustee so determines and if acceptable to the Commissioner, by the cost of providing solely death or disablement cover effected in respect of the Member and by any applicable costs or charges incurred under Cl. 15.2 or Cl. 21.5;

**"Membership Class"** means the Class or Classes of Membership of a Member in accordance with **Cl. 39**;

**"Membership Period"** in relation to a Member means the continuous period expressed in years and any portion of a year that the Member has been a member of "D", "E" or "F" Class and includes any additional Membership Period granted under **Cl. 20.2** together with any further additional Membership Period as the Trustee determines. In the circumstances of retirement by a Member as a result of Total and Permanent Disablement "Membership Period" means the Membership Period the Member would have achieved if the Member had remained a Member until Normal Retirement Age;

**"Member's Vested Contributions"** means:

- (a) Member's Contributions together with Net Earnings compounded annually on those Contributions; and
- (b) those Contributions made by an Employer on behalf of a Member which are required by the Commissioner to be vested in the Member together with earnings as required by the Commissioner;

**"Net Earnings"** means earnings (which may be negative) allocated on a particular amount under **Cl. 10** and the Fund Earning Rate adjusted in accordance with **Cl. 11**, if applicable, or in accordance with **Cl. 9.4** as appropriate;

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

**"Normal Retirement Age"** means the age of 65 years for both males and females or any other age acceptable to or required by the Commissioner and as the Trustee with the consent of the Employer determines;

**"Normal Retirement Factor"** means 3.75% (or any other percentage nominated by the Member to the Trustee) multiplied by the Member's Membership Period but subject to a maximum of 75%, or any other maximum permitted by the Commissioner;

**"Old Age Pension"** has the same meaning as in paragraph 51(xxiii) of the Constitution of Australia;

**"Pension"** means a Benefit payable at a yearly rate by instalments;

**"Pensioner"** means a person receiving a Pension;

**"Period to Retirement"** means the period to the Member's Normal Retirement Date less the Member's Membership Period;

**"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 the expression means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of these risks;

**"Prescribed Standards"** means the standards applicable to the operation of the Fund as set out in Divisions 2.3, 2.4, 2.5, 2.6, 2.7, 4.2, 5.3, 6.2, 9.6, 9.7, 10.3, 13.1, 13.2 and Parts 7 and 11 of the Regulations;

**"Preserved Payment"** means a payment made to the Fund which is to be preserved as provided in this Deed as a result of:

- (a) it being a Productivity Payment; or
- (b) it being otherwise required by the Commissioner or government legislation or regulation to be preserved;

**"Preserved Payment Benefit"** means a Benefit arising from a Preserved Payment;

**"Productivity Payment"** means a payment made to the Fund or a payment made by transfer from another fund or the reclassification of part or all of an existing Benefit of a Member by the Trustee which payment or reclassification takes place pursuant to or as a result of:

- (a) a Superannuation Agreement that has been made or ratified by a tribunal under the Commission's superannuation principles defined in Section 82AAS of the Act; or
- (b) an agreement that:
  - (i) is a Superannuation Agreement that has not been ratified by a tribunal; and
  - (ii) was entered into in connection with and, in the opinion of the Commissioner, is identical or nearly identical to, another Superannuation Agreement that:
    - A. has been made or ratified by a tribunal in accordance with the Commissioner's superannuation principles defined in Section 82AAS of the Act; and
    - B. relates to persons engaged in the same industry as the industry in which the Member is engaged;

**"Productivity Payment Benefit"** means a Benefit arising from a Productivity Payment;

**"Qualifying Eligible Termination Payment"** has the meaning ascribed in Section 27A(12) of the Act;

**"Regulations"** means the regulations under SIS;

**"Relative"** in relation to a former Member means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the former Member or of his or her spouse; and
- (b) the spouse of any person specified in paragraph (a);

**"Retires from Employment"** means actual retirement by a Member from employment or retirement as defined by the Commissioner for the payment of Benefits;

**"Rollover Payment"** means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances acceptable to the Commissioner to or from any one or more of the following:-

- (a) an Approved Deposit Fund;
- (b) a superannuation arrangement described in **Cl. 22**;
- (c) an authorised organisation for the purchase of an Annuity;

**"Secretary"** means the secretary of the Fund appointed under this Deed;

**"SIS"** means Superannuation Industry (Supervision) Act, 1993;

**"Spouse"** in the definition of "Dependant" means:

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member includes a widow or widower **BUT** where there is more than one such person the Trustee must determine which one or more of them is the spouse, and, if more than one person is to be the spouse, the Trustee must determine the proportions in which a Benefit payable to the spouse is to be divided among them;

**"Superannuation Agreement"** means an agreement, award, determination or order that requires the making of superannuation contributions as defined in Section 82AAS of the Act in relation to persons engaged in a particular industry;

**"Taxation"** includes income tax, capital gains tax, tax on eligible termination payment, payroll tax, land tax, stamp duty and any other taxes or duties;

**"Total and Permanent Disablement"** means:

- (a) physical or mental incapacity of such a degree that in the opinion of the Trustee, after considering a certificate or certificates signed by two registered medical practitioners, the Member is incapable of continuing to engage in current employment with an Employer; or
- (b) if the Trustee so determines, total and permanent disablement as defined in any Policy effected in respect of the Member; and

**"Totally and Permanently Disabled"** has a corresponding meaning;

**"Trustee"** means the trustee or trustees of the Fund whether original, additional or substituted.

## 5. GENERAL PROVISIONS

### 5.1 Employers Powers Not Prejudiced

Nothing in this Deed affects the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between the Employer and Employee. The existence or cessation of any actual or contingent Benefit under the Fund is not grounds for claiming or increasing damages in any action brought against the Employer in respect of any termination of employment of the Employee.

## **5.2 Work Related Claims**

Nothing in this Deed in any way affects the right of a Member or the Member's 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 employment with the Employer.

## **5.3 Prescribed Standards**

The Trustee must ensure that the Prescribed Standards applicable to the operation of the Fund are complied with at all times.

## **6. APPLICABLE LAW**

This Deed is governed by and construed and takes effect in accordance with the laws of the State in which this Deed is executed. The Employer, the Trustee, the Members and Beneficiaries accept the jurisdiction of those laws in the adjudication of any dispute with respect to the interpretation or construction of this Deed.

## **7. COMPLAINTS PROCEDURE**

- 7.1 This clause does not apply as a mandatory clause to an Excluded Fund.
- 7.2 Any beneficiary under this Deed has the right to make enquiries into or complaints about the operation of the Fund in writing and either delivered directly or sent by pre-paid mail to the Trustee at its registered office.
- 7.3 Within 90 days of the receipt of the enquiry or complaint, the Trustee must properly consider the matter and advise the beneficiary of its decision. The advice must be in writing and must be sent by pre-paid mail to the beneficiary at the address specified in the enquiry or complaint.
- 7.4 For the purposes of this clause, any written communication delivered directly is deemed received upon delivery and any communication sent by pre-paid mail shall be deemed to be received 2 business days after its posting.

## **8. FUND ASSETS**

- 8.1 The gross assets of the Fund consist of all the cash, investments and other property at any time held by or on account of the Trustee upon the trusts set out in this Deed and include:
  - 8.1.1 transfers - the amount, if any, standing or transferred to the credit of the Fund at or after the date upon which this Deed comes into effect;
  - 8.1.2 Member Contributions - the Contributions the Members make to the Fund at any time;
  - 8.1.3 Employer Contributions - the Contributions an Employer makes to the Fund at any time;
  - 8.1.4 earnings - interest, dividends and distributions of income arising from any investment and the accumulation of that investment;

- 8.1.5 profits - any profits (net of losses) and other benefits arising from any investment and the accumulation of those profits and benefits;
- 8.1.6 policy proceeds - the proceeds of any Policy held by the Fund; and
- 8.1.7 Rollover Payments - monies, investments and other property transferred to the Fund as a Rollover Payment.

## 9. ACCUMULATION ACCOUNT

### 9.1 Separate Member Accounts

The Trustee must establish an Accumulation Account in respect of each Member for each Membership Class.

### 9.2 Credits

The following amounts must be credited to the appropriate Accumulation Account of the Member according to the Class to which the amounts relate:

- 9.2.1 any amount paid into the Fund in respect of the Member as a Rollover Payment;
- 9.2.2 any Contributions made by the Member less Taxation, costs or charges deducted from those Contributions under **Cl. 9.6**;
- 9.2.3 any Contributions made in respect of the Member by an Employer, less any Taxation, costs or charges deducted from those Contributions under **Cl. 9.6**;
- 9.2.4 the proceeds of any Policy or Annuity effected by the Trustee in respect of the Member;
- 9.2.5 any positive earnings as determined by the Trustee under **Cl. 9.4, 10 or 11**;
- 9.2.6 any forfeited amounts allocated but not paid directly to the Member under **Cl. 26.3 or 26.4**.

### 9.3 Debits

The following amounts must be debited to the appropriate Accumulation Account of the Member according to the class to which the amounts relate:

- 9.3.1 any amount paid out of the Fund in respect of the Member as a Rollover Payment;
- 9.3.2 any other Benefit payment made to or in respect of the Member;
- 9.3.3 the costs of any Policy or Annuity effected by the Trustee in respect of the Member;
- 9.3.4 any negative earnings determined by the Trustee under **Cl. 9.4, 10 or 11**;
- 9.3.5 any forfeited amount under **Cl. 25, 26.1 or 26.2**;

- 9.3.6 the proportion of any amount payable by way of Taxation in respect of Contributions to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Rollover Payment, as the Trustee determines.

**9.4 Specific Investment**

- 9.4.1 The Trustee may invest separately in respect of any Member or Class of Members of the Fund or in respect of different Classes of Members as determined by the Trustee at any time.
- 9.4.2 The Trustee must record on whose behalf specific investments are made for the purposes of making up a Members Accumulation Account for each Class.
- 9.4.3 Where specific investments are undertaken, the income and profit (less losses) arising from that investment and any costs or charges applicable to it which are incurred under **Cl. 15.2 or 21.5** and any Taxation which is payable or may become payable in respect of those specific investments must not be allocated to the Income Account. The income and profits (less losses) applicable to any particular Accumulation Account must be allocated directly to that Accumulation Account, which must also be debited directly with the appropriate proportion of any costs or charges applicable to any investment, which are incurred under **Cl. 15.2 or 21.5** and any Taxation which is payable or may become payable in respect of that specific investment.

**9.5 Preserved Payment Benefits**

Despite anything to the contrary in this Deed, any amount representing a Preserved Payment Benefit, at the discretion of the Trustee or at the request of a Member, may be transferred at any time to a Members "G" Class Accumulation Account.

**9.6 Taxation, Costs and Charges**

Despite anything to the contrary in this Deed, any amount payable by way of Taxation in respect of a Contribution and any costs or charges incurred under **Cl. 15.2 or 21.5**, or an appropriate proportion of those costs or charges, may at the discretion of the Trustee be deducted from the appropriate Contribution or be debited directly to the appropriate Accumulation Account.

**10. INCOME ACCOUNT**

- 10.1 The Trustee must establish an Income Account for the Fund to which must be credited, subject to **Cl. 9.4**, all income and profits of the Fund each year and credits arising out of adjustments under **Cl. 11.1** and profits of the Fund must include any surplus arising from a valuation made under **Cl. 12**.
- 10.2 The Income Account must be debited, subject to **Cl. 9.4**, 9.4, with the following:-
- 10.2.1 any loss sustained on the disposal of any investments of the Fund;
- 10.2.2 any costs or charges incurred under **Cl. 15.2 or 21.5** which are not debited to an Accumulation Account or deducted from Contributions under **Cl. 9.6**;
- 10.2.3 any debits arising out of adjustments made under **Cl. 10.2.5**;



- 10.2.4 any deficiency arising from a valuation made under **Cl. 12**;
- 10.2.5 the proportion of any amount payable or which may become payable by way of Taxation in respect of the Contributions and the income and profits of the Fund as the Trustee may determine to be equitable.
- 10.3 Following the debiting of the Income Account under **Cl. 10.2**, at the end of each Fund Year, the Trustee may determine the earning rate for the Fund, (which may be negative), after taking into account any adjustments under **Cl. 10.4** and a reserve for future contingencies which the Trustee may consider reasonable (referred to in this clause as the "**Fund Earning Rate**"). The Trustee must, when required by the Commissioner, notify the Member of the basis of the calculation of the Fund Earning Rate. The Trustee must then allocate to each Accumulation Account the earnings due, calculated equitably in accordance with the Fund Earning Rate.
- 10.4 The amount distributed as the earnings of the Fund under **Cl. 10.3** must be allocated to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account at the beginning of the Fund Year in respect of the distribution being made, and with appropriate adjustments being made for amounts credited or debited to the Accumulation Account since that date.
- 10.5 Any amount remaining in the Income Account after distribution of earnings under **Cl. 10.4** must be transferred to the Equalisation Account established under **Cl. 26.5**.
- 10.6 In the event that the Trustee is required to pay out a Benefit during the course of a Fund Year and is required to establish a Fund Earning Rate in respect of a portion of a Fund Year, the Fund Earning Rate for that period must be determined by the Trustee on a basis which it considers equitable. The Trustee must, when required by the Commissioner, notify the Member of the basis of the calculation of the Fund Earning Rate.

## 11. ADJUSTMENT

In determining the amount of the Member's Vested Contributions and the amount standing to credit of a Member's Accumulation Account at the time a Benefit is calculated or becomes payable, the Trustee must make an adjustment up to the date of payment reflecting the Fund Earning Rate then applying as it considers equitable and the Income Account must then be debited or credited accordingly.

## 12. VALUATION

At the end of each Fund Year or at any other time the Trustee considers appropriate, which includes the time of the payment of a Benefit to a Member, the Trustee must make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and must determine whether there is a surplus or deficiency which it considers equitable to transfer to the Income Account and the value so determined in respect of each asset must then be reflected in the balance sheet and other accounts of the Fund.

### 13. FUND RECORDS

#### 13.1 Receipt and Payment of Monies

All monies of the Fund must be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank, building society or similar body as determined by the Trustee, or into a trust account of a solicitor, accountant or investment manager appointed under this Deed.

#### 13.2 Issue of Receipts

A receipt given on behalf of the Fund by the Trustee or by the Secretary or by any other person who may be authorised by the Trustee in writing to receive any money of the Fund is a sufficient discharge to the person by or for whom the monies are paid.

#### 13.3 Records and Accounts

The Trustee must:

13.3.1 keep an account of all money received for and disbursed from the Fund and of all dealings in connection with it;

13.3.2 collect and pay promptly into the bank account of the Fund all monies due to the Fund;

13.3.3 keep appropriate records and accounts in proper order and make suitable arrangements for their custody and for the custody of documents relating to the investments of the Fund as the Commissioner may require, including but not limited to:

- (i) reports to Members;
- (ii) minutes of meeting of Directors;
- (iii) records of changes of the Trustee, as they occur;
- (iv) written consents of directors constituting the board of Directors of the Trustee,

for a period of 10 years, and for a period of 5 years (or any other period as may be specified under SIS) the following accounting records:

- (v) a statement of financial position;
- (vi) an operating statement; and
- (vii) those accounts and statements specified in clause 8.02(3) of the Regulations,

and these accounting records must be signed by at least 2 Directors of the Trustee and submitted for audit by an approved auditor under clause 1.04(2)(b) of the Regulations; and

13.3.4 prepare an annual balance sheet of the Fund as at the end of the Fund Year, together with a statement of income and expenditure for that Fund Year.

#### 13.4 **Audit**

Each annual balance sheet and statement and other accounts, books and relevant records must be audited by the Auditor annually or at any other time as required by the Commissioner. If the Auditor is satisfied that the annual return prepared for the Fund for that particular year of income is true and fair, the Auditor must execute an audit certificate in the prescribed form and lodge it with the Commissioner, if required.

#### 13.5 **Trust Deed**

A copy of this Deed must be made available for inspection by any Member on request of that Member and it is sufficient for the purposes of this clause to make a copy of the Trust Deed available to the Member for inspection at a time and place specified either verbally or in writing by the Trustee.

#### 13.6 **Information for Trustee**

An Employer must, as and when requested by the Trustee, give to the Trustee all information in its power or possession which may, in the opinion of the Trustee, be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer under this Deed and is not required to verify that information.

#### 13.7 **Disclosure and Reporting Requirements**

The Trustee must provide in writing to Members and former Members of the Fund and to the Commissioner, when required, all information in relation to the conduct of the Fund and Benefits payable from the Fund as may be required by the Commissioner, and in particular give the following to the Commissioner within the period prescribed in the Regulations after each year of income:

13.7.1 a return in the form prescribed by the Regulations containing all information relating to the Fund as is required in that form in respect of that year of income;

13.7.2 a certificate by the Trustee, in prescribed form, relating to that year of income for the Fund; and

13.7.3 the certificate of the Auditor of the Fund relating to that year of income,

and all other additional or substitutional (or both) information as may be required by the Commissioner under SIS.

#### 13.8 **Notify Commission**

13.8.1 The Trustee must within 3 business days after becoming aware of the occurrence of an event having significant adverse effect on the financial position of the Fund, give written notice to the Commissioner setting out the particulars of the event.

13.8.2 For the purpose of this clause an event has a significant adverse effect on the financial position of the Fund if as a result of the event the Trustee may not be able, at a time before the next annual report by the Trustee to the Beneficiaries, to make payments to Beneficiaries as and when the obligation to make those payments arises.

## 14. TRUSTEE - VACANCY, APPOINTMENT, REMOVAL AND REPRESENTATION

### 14.1 Fund Vested in Trustee

The Fund is vested in the Trustee and managed by the Trustee on the terms and conditions and subject to the trusts powers, authorities and discretions contained in this Deed.

### 14.2 Sole Purpose Test

The Trustee must ensure that the Fund is maintained primarily:

14.2.1 for the purpose of the provision of Old Age Pension benefits and this is to be the core purpose of the Fund; or

14.2.2 for the core purposes and for one or more of the following purposes ("**the ancillary purposes**"):

- (i) the provision of Benefits for each Member on or after the termination of the Member's employment with the Employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member;
- (ii) the provision of Benefits for each Member on or after the Member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged and the cessation is on account of ill-health (whether physical or mental);
- (iii) the provision of Benefits in respect of each Member of the Fund on or after the Member's death, if:
  - (1) death occurred after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before or after the Member joined the Fund); and
  - (2) the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (iv) the provision of Benefits in respect of each Member on or after the Member's death, if:
  - (1) death occurred after the Member attained the age prescribed for the purposes of **Cl. 14.2.1(ii)**; and
  - (2) the Benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (v) the provision of other benefits as the Commissioner approves in writing.

**14.3 Trustee Criteria**

The appointment, removal and composition of the Trustee of the Fund are governed by the criteria specified in this Deed and the other criteria, rules and regulations set down by the Commissioner or made under SIS at any time.

**14.4 Eligibility for Trustee**

14.4.1 The Trustee must be:

- (i) a Constitutional Corporation; or
- (ii) an individual or a group of individuals; or
- (iii) any other trustee approved by the Commissioner.

14.4.2 A Trustee must not be appointed under **Cl. 14.4.1(ii)** unless this Deed provides that the Fund is to be maintained for the sole or primary purpose of providing Old Age Pension benefits.

**14.5 Change of Trustee**

The Trustee ceases to act as the Trustee of the Fund if:

14.5.1 the Trustee resigns from office by notice in writing given to the Members; or

14.5.2 the Trustee is disqualified from holding office by operation of SIS.

**14.6 Continuity of Office**

Any trustee acting as the Trustee, on ceasing to be the Trustee, must do everything necessary to vest the Fund in the new Trustee and must deliver all records and other books to the new Trustee.

**14.7 Office of Trustee**

14.7.1 The office of Trustee must be filled at all times and in the event of a vacancy occurring a new Trustee is to be appointed within 60 days of the vacancy occurring.

14.7.2 If for any reason there is no Trustee at any time, a replacement or new trustee must be appointed by the Members.

**14.8 Covenants of Trustee**

14.8.1 The Trustee specifically covenants as follows:

- (i) to act honestly in all matters concerning the Fund;
- (ii) 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 the property of another for whom the person felt morally bound to provide;
- (iii) to ensure that the duties and powers of the Trustee are performed and exercised in the best interests of the beneficiaries;

- (iv) to keep the money and other assets of the Fund separate from any money and assets that are held by the Trustee personally;
- (v) 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;
- (vi) 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:
  - (1) the risk involved in making, holding and releasing, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (2) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
  - (3) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (4) the ability of the Fund to discharge its existing and prospective liabilities;
- (vii) if there are any reserves of the Fund, to formulate and 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; and
- (viii) to allow a beneficiary access to any prescribed information or any prescribed documents.

14.8.2 An investment strategy is in accordance with **Cl. 14.4.1(vi)** even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the Trustee, where:

- (i) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund;
- (ii) the directions are given after the Trustee has previously given to the beneficiary or the class of specified beneficiaries a choice of two or more investment strategies from which the beneficiary, or class of beneficiaries, may choose a strategy or combination of strategies and the beneficiary or each member of the class of beneficiaries is given the investment objectives of each of the strategies and all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies, and the beneficiary, or each member of the class of beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed. The Trustee should clearly identify to the beneficiary, or to each member

of the class of beneficiaries, when giving to him, her or them a choice of two or more investment strategies, the strategy the Trustee will adopt if no direction is given.

## 15. TRUSTEE'S POWERS OF MANAGEMENT

### 15.1 Additional Powers

In addition to the powers which it might by law have and which are otherwise granted to it by this Deed, the Trustee has the following powers:

- 15.1.1 to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- 15.1.2 to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;
- 15.1.3 to borrow money and to secure the repayment of that money with or without security which the Trustee deems advisable in order to secure temporary finance where:
  - (i) the purpose of the borrowing is to enable the Trustee to make a payment to a Beneficiary which the Trustee is required to make by law or by this Deed and which, apart from the borrowing, the Trustee would not then be able to make; and
  - (ii) the period of the borrowing does not exceed 90 days; and
  - (iii) the total amount to be borrowed does not exceed ten (10) percent of the value of the assets of the Fund,

but this sub-clause does not prohibit the Trustee from borrowing money if the purpose of the borrowing is to enable the Trustee to cover the settlement of a transaction for the acquisition of any of the following -

- bonds, debentures, stocks, bills of exchange or other securities;
- shares in a company;
- units in a unit trust;
- futures contracts;
- forward contracts;
- interest rates swap contracts;
- currency swap contracts;
- forward exchange rate contracts;
- forward interest rate contracts;

- a right or option in respect of a security, share, unit, contract or policy;
- any similar financial instrument;
- foreign exchange currency; and

both at the time the relevant investment decision was made:

- it was likely that the borrowing would not be needed and the borrowing is not taken, under a written determination made by the Commissioner, to be exempt from the provisions of SIS governing this sub-clause; and
- the period of the borrowing does not exceed 7 days,

and if the borrowing were to take place the total amount borrowed by the Trustee would not exceed 10% of the value of the assets of the Fund;

15.1.4 to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, reinsurance company or superannuation fund;

15.1.5 to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by an Employer where there exists the possibility of transfers of Employees to the Fund; and

15.1.6 to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member and that Annuity must be in the name of the Trustee or, if the Trustee determines, in the name of the former Member;

15.1.7 to retain the services of and to appoint professional or other advisers in relation to the management, administration or investment of the Fund and to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund including the fees of the advisers and the remuneration of persons appointed under this Deed and to revoke any appointment, but if the Trustee enters into an agreement with an investment manager under which money of the Fund is placed under the control of the investment manager, the Trustee must ensure that agreement enables the Trustee to require the investment manager to provide appropriate information, upon request by the Trustee:

- (i) to inform the Trustee as to the making of and return on investments made by the investment manager; and
- (ii) to enable the Trustee to assess the capability of the investment manager to manage the investments of the Fund,

and the Trustee must request that information whenever it is necessary or reasonable to do so.

Where the Trustee entered into an agreement with an investment manager prior to December 1, 1993 and that agreement does not contain a provision which enables the Trustee to obtain the type of information referred to in this sub-clause, the Trustee must, as soon



as possible, seek to have the agreement amended to contain that provision. Where the investment manager refuses to allow the amendment, the Trustee must terminate the agreement despite any provision to the contrary in it;

- 15.1.8 to indemnify or undertake to indemnify any person company government or institution in respect of any claims matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- 15.1.9 generally to do all acts and things the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed,

**BUT** in the exercise of its powers, given by law or by this clause, the Trustee is not to be subject to any direction from any other person, except in the following circumstances:

- a direction given by a court;
- a direction given by the Commissioner;
- a direction given by a beneficiary or a group of beneficiaries that relates to Benefits payable to that beneficiary or to that group;
- a direction given by a beneficiary or a group of beneficiaries relating to an investment strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund and those directions are given in those circumstances stated in clause 4.02 of the Regulations;
- a direction given by the Employer or any associate of the Employer in those circumstances stated in clause 4.03 of the Regulations; or
- a direction given by the Superannuation Complaints Tribunal.

## **15.2 Remuneration of Trustee**

The Trustee is not entitled to charge professional fees incurred in respect of the provision of its services as Trustee of the Fund.

## **15.3 Indemnity of Trustee**

- 15.3.1 The Trustee is indemnified out of the Fund against all liabilities incurred by it in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it under this Deed or at law and has a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity.
- 15.3.2 This indemnity extends to any payments made to any person whom the Trustee believes in good faith to be entitled to a payment although it may be subsequently found that the person was not in fact so entitled.
- 15.3.3 No Trustee is liable for anything done or omitted to be done except in the case of fraud or other wilful misconduct on its part.
- 15.3.4 The indemnity given in this clause does not operate to exempt the Trustee from or indemnify the Trustee against:

- (i) liability for breach of trust where the Trustee fails to act honestly;
- (ii) liability where the Trustee recklessly fails to exercise the degree of care and diligence required or reasonably expected of the Trustee in respect of any matter affecting the Fund; or
- (iii) liability for monetary penalty under a civil penalty order pursuant to SIS.

15.3.5 Nothing in this Deed operates to prohibit the Trustee from seeking advice from any person in respect of any matter relating to the performance of the Trustee's duties or the exercise of the Trustee's powers and the Trustee is indemnified out of the assets of the Fund in respect of the reasonable cost of obtaining that advice.

15.3.6 The indemnity given under this clause extends to the Directors of the Trustee on the same terms as the indemnity given to the Trustee and operates despite Section 241 of the Corporations Law.

#### 15.4 Confidentiality of Information

The Trustee must regard as strictly confidential (so far as is practicable) all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed or anything relating or incidental to it.

#### 15.5 Trustee Discretion

15.5.1 The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed has an absolute and uncontrolled discretion the exercise of which is final and binding **BUT** the Trustee must not discriminate against any person on the grounds of that person's sex or marital status in a manner which infringes any law of the Commonwealth or of a State or Territory in respect of discrimination.

15.5.2 Under this Deed a discretion may be exercised by a person other than the Trustee, only if:

- (i) the consent of the Trustee is given to the exercise of that discretion; and
- (ii) the exercise of the discretion relates to Contributions to be made by the Employer; or
- (iii) the exercise of the discretion relates solely to a decision to terminate the Fund; or
- (iv) the discretion is exercised in those circumstances set out in clause 4.04 of the Regulations.

This sub-clause does not apply to an Excluded Fund.

16. **APPOINTMENT OF ACTUARY, AUDITOR AND SECRETARY**

16.1 **Appointment**

The Trustee, if necessary, may appoint a person or firm to the following offices on conditions it determines:

16.1.1 an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of actuaries of which at least one member or director (as the case requires) is a Fellow;

16.1.2 an Auditor who is both appropriately qualified and is independent according to the criteria specified by the Commissioner or the Regulations made under SIS.

16.2 **Secretary**

In addition, the Trustee may at any time appoint a person to be the Secretary on conditions it determines and may appoint other officers it considers desirable for the proper management of the Fund.

16.3 **Removal**

The Trustee may remove from office any person appointed under this clause.

17. **ACTUARIAL INVESTIGATIONS**

17.1 **Report**

Where an Actuary has been appointed, the Trustee may cause the Actuary to make an actuarial investigation of the Fund and to report in writing on the results of the investigation and on the state and sufficiency of the Fund at a date not more than 3 years after the date on which this Deed comes into effect and after that time at intervals not exceeding 3 years. In undertaking this investigation the Actuary must have regard to the present and future liabilities of the Fund and must make any appropriate recommendations in relation to the Fund.

17.2 **Information to Be Supplied to Actuary**

The Trustee must give the Actuary all information reasonably required for the purposes of the investigation.

17.3 **Actuary's Reports to Members**

The Trustee must send a copy of each report furnished by the Actuary to each Member.

17.4 **Not Bound to Act on Advice**

Both the Members and the Trustee may ask the Actuary for information or advice but they are under no obligation to be bound by or act upon the advice so provided.

18. **VARIATION IN BENEFITS**

18.1 **Actuary's Report**

Where the report by the Actuary under **Cl. 17** discloses that the Fund is more than or less than sufficient to provide the Benefits under this Deed or where the Trustee is of the view that the Fund is more than or less than sufficient to provide the Benefits under this Deed, the Trustee may, after obtaining the advice of the Actuary and in a manner which is in the opinion of the Trustee equitable to all persons concerned, make changes to:

- 18.1.1 the Contributions payable by Members or by any Class of Members;  
or
- 18.1.2 the amount of the Benefits or any particular class of Benefits, including Benefits in the course of payment, either to Members or Beneficiaries generally or to any section or Class of Members or group of Beneficiaries.

19. **TRUSTEE'S POWERS OF INVESTMENT AND SALE**

19.1 **Authorised Investments**

Those moneys forming part of the Fund which are not required immediately for the payment of Benefits or other amount authorised by this Deed must be invested as soon as practicable by and under the control and in the name of the Trustee in any of the following investments:

- 19.1.1 any investment authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- 19.1.2 any first 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;
- 19.1.3 on deposit with or on loan to any bank, building society, credit co-operative or other financial institution on the normal terms and conditions of their borrowings;
- 19.1.4 on deposit with or on loan to any Employer or any other person or organisation with or without security and at a rate of interest and upon terms the Trustee considers reasonable despite that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- 19.1.5 the 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 similar security in or of any Employer, building society or company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock are fully or partly paid up and whether secured or unsecured, registered or unregistered;
- 19.1.6 any Policy or Annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise;

19.1.7 the acquisition of any real or personal property or any interest in property (despite that the property may be acquired for the profit which may be expected whether from resale or otherwise or that the property or interest in property is not producing income at the date it is acquired) and the improvement or extension of that property but the acquisition may be from a Member or a relative of a Member only where the asset the subject of the acquisition:

- (i) is Business Real Property or a Listed Security of the Member or relative;
- (ii) is acquired at market value; and
- (iii) is a Business Real Property asset and (after acquisition) it, together with any other Business Real Property acquired from a Member or a relative of a Member since the commencement of SIS, would represent no more than the Acceptable Percentage of the total value of the assets of the Fund;

19.1.8 the 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 the units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;

19.1.9 the discounting of loans, mortgages, contracts, hire purchase agreements or leases; or

19.1.10 any other investments which the Trustee considers appropriate and which are acceptable to the Commissioner,

**BUT** the Trustee is not authorised to make a loan or give any other financial assistance using the resources of the Fund to any Member or a relative of a Member for any reason whatever **AND** no investment undertaken may be in contravention of the investment criteria, including the in-house asset rules, specified by the Commissioner or by legislation or regulation at any time, and at all times must be on an arm's length basis.

## 19.2 Underwriting

The Trustee may underwrite or sub-underwrite the issue of any investments authorised by this Deed.

## 19.3 Power to Sell and Vary Investments

The Trustee has the power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

## 20. MEMBERSHIP OF FUND

### 20.1 Eligibility and Application for Memberships

Any Gainfully Employed person wishing to obtain retirement and other benefits from a superannuation fund is eligible to make application for membership of the Fund in the form of Schedule A or in any other form the Trustee determines.

## 20.2 Admission

- 20.2.1 Upon receipt of a completed application for membership in the appropriate form the Trustee may determine to admit the applicant to membership of the Fund.
- 20.2.2 A Member is regarded as having joined the Fund on a date determined by the Trustee or, if the Trustee makes no determination, the date of the completed application for membership.
- 20.2.3 Subject to any other conditions which may be applied under this Deed, the Trustee, after obtaining the advice of the Actuary (if any) may impose conditions on an applicant's admission to membership and the rights and duties of the Member including conditions on the classification of the Member into a Membership Class or Classes and may limit and impose conditions upon Benefits as it sees fit.
- 20.2.4 The Trustee, after obtaining the advice of the Actuary (if any) and subject to the provisions of **Cl. 39**, may remove or vary all or any of the conditions placed on admission.
- 20.2.5 As soon as practicable after the admission of a person as a Member of the Fund, the Trustee must give to the Member a written statement containing those details the Commissioner requires.

## 20.3 Members and Beneficiaries to Provide Information

- 20.3.1 Every Member and Beneficiary when requested by the Trustee must furnish all information the Trustee considers necessary for the purposes of any investigation or otherwise in connection with the Fund, and must submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.
- 20.3.2 If a Member or a Beneficiary fails to comply with the provisions of this clause, the Trustee may suspend the payment of any Contributions in respect of that Member or withhold any Benefit in respect of that Member or Beneficiary until the provisions are complied with.
- 20.3.3 If a Member or a Beneficiary furnishes information required under this Deed, affecting or likely to affect the Benefits payable to or in respect of the Member or Beneficiary, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may alter the Benefits to amounts that would have applied had full and accurate information been supplied.

## 20.4 Cessation of Membership

A person ceases to be a Member of the Fund upon the earliest of the following to occur:

- 20.4.1 the date upon which payment of all Benefits is completed;
- 20.4.2 the completion of a Rollover Payment by the Trustee in respect of all Benefits;
- 20.4.3 death;
- 20.4.4 the commencement of the payment of a Pension or the purchase of an Annuity;

20.4.5 the provisions of **Cl. 26** operating to terminate membership.

## 20.5 Meetings of Members

The following provisions apply in relation to meetings of Members of the Fund:

20.5.1 To call a meeting of Members requires a notice to be served on the Trustee, signed by the lesser in number of 20 Members or one-half of the number of Members in the Fund, requesting a meeting of Members.

20.5.2 The Trustee must convene a meeting of Members within 14 days of receiving the request and must send a notice of meeting to each Member specifying that a meeting will be held within 14 days of that notice being issued.

20.5.3 The Trustee may convene a meeting of Members at any time by notice in writing.

20.5.4 Every notice of meeting must:

- (i) be posted or given at least 10 days before the meeting;
- (ii) advise the place and time of the meeting;
- (iii) advise the Member that a proxy may be appointed by the Member to vote on the Member's behalf at the meeting **BUT** the Member must lodge the proxy with the Trustee not later than 24 hours before the meeting;
- (iv) be accompanied by a form of proxy approved by the Trustee; and
- (v) set out the matters (including any resolutions) to be considered at the meeting.

20.5.5 Every notice served is validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at the last known address, and when so posted the notice is given 3 days after the date of posting.

20.5.6 The Trustee appoints a Chairman of the meeting and makes any regulations concerning the conduct of the meeting it considers necessary.

20.5.7 Subject to **Cl. 20.5.6**, a quorum for the meeting is 10 Members present in person or by proxy, or 25% of the Members of the Fund whichever is the lesser, **BUT** if a quorum is not present within 30 minutes of the time appointed for the meeting, the Chairman must adjourn the meeting to the same time and place in the following week and a quorum for that meeting is the number of Members present in person or by represented by proxy.

20.5.8 Each Member is entitled to one vote, and the Chairman has a casting vote in the event of an equality of votes.

## **20.6 Admission of Employer**

- 20.6.1 A Member's employer may make written application to the Trustee to be admitted to participation in the Fund;
- 20.6.2 The Trustee may accept or reject an employer's application for participation. The employer becomes an Employer for the purposes of this Deed on the date on which the Trustee issues a notification to the Employer of its acceptance as a participating employer;
- 20.6.3 The Employer, by virtue of its application for participation, consents to be bound by the provisions of this Deed;
- 20.6.4 The Employer must promptly furnish any information requested by the Trustee for the purposes of investigation or otherwise in connection with the Fund in the format required by the Trustee;
- 20.6.5 The participation of the Employer may be terminated:
- (i) by the Employer by notice in writing to the Trustee in writing advising that it has permanently ceased contributing to the Fund; or
  - (ii) by the Trustee by notice in writing to the Employer.

## **21. CONTRIBUTIONS TO FUND**

### **21.1 Members' Contributions**

A Member may contribute to the Fund at a rate and in a manner as the Trustee and the Member agree.

### **21.2 Employer's Contributions**

An Employer may, if permitted by the Act to contribute to the Fund, and with the consent of the Member, contribute to the Fund at a rate and in a manner as the Trustee and the Employer agree.

### **21.3 Designation of Class Entitlement**

Where an Employer makes a Contribution in respect of a Member and the Member is a member of more than one Membership Class, the Employer must designate in relation to which Membership Class the Contribution is being made on behalf of that Member and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account applicable to that Member.

### **21.4 Suspension of Employer Contributions**

An Employer may, by notice in writing to the Trustee, suspend payment of or reduce the Contributions payable by it in respect of a Member.

### **21.5 Administration Costs**

All costs, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation or winding up of the Fund, are borne and paid by the Trustee.



## 22. TRANSFERS TO AND FROM OTHER FUNDS

### 22.1 Transfers to Other Funds

Where a Member joins or is eligible to join any other Complying Superannuation Fund conducted as a concessional fund pursuant to the relevant sections of the Act (called the "**Other Fund**") and the Member requests that the whole or a part of that Member's entitlement in the Fund be transferred to the Other Fund, the Trustee may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to that amount (called the "**Transferred Amount**") as determined by the Trustee, which amount reflects the whole or that part of the entitlement of the particular Member in the Fund at the time of the request for the transfer which the Member requested to be transferred. The Trustee may obtain the advice of the Actuary in the computation of the Transferred Amount.

### 22.2 Application of Transferred Amount

The Trustee may require that a former Member be entitled to those rights in the Other Fund as it agrees with the trustee of the Other Fund are just and equitable and may require that a portion only of the Transferred Amount is to be regarded in the Other Fund as being attributable to Contributions by the former Member.

### 22.3 Benefits Cease

The Benefits of a Member in respect of whom a Transferred Amount is paid under this clause are reduced by the amount of the Transferred Amount and the receipt of the Transferred Amount by the proper officer of the Other Fund is a complete discharge to the Trustee of all liabilities in respect of that amount and, except as provided in Cl. 22.2, the Trustee has no responsibility to see to the application of the Transferred Amount.

### 22.4 Preserved Payment Transfers

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund the Trustee must ensure that the Other Fund provides that if the Member wishes to leave the Other Fund the amount of the Preserved Payment Benefit must be preserved in one or more of the following ways:

- 22.4.1 in the superannuation fund the Member is leaving until retirement from Gainful Employment at or after age 55;
- 22.4.2 in another superannuation fund which preserves benefits until retirement from Gainful Employment at or after age 55;
- 22.4.3 in an Approved Deposit Fund which is required to preserve the Benefits until retirement from Gainful Employment at or after age 55;
- 22.4.4 in an Annuity under which Benefits are precluded from being paid out to the Member prior to retirement from Gainful Employment at or after age 55 except where the Annuity is in the form of a non-commutable pension payable for life, commencing at the time acceptable to the Commissioner,

or that it may be released or be paid to the Member in other circumstances acceptable to the Commissioner.

## 22.5 Transfer From Other Funds

- 22.5.1 Where a Member is or was a member of or is or was the beneficiary under any other superannuation arrangement including an Approved Deposit Fund or Annuity, the Trustee may by resolution take over or acquire by transfer or otherwise from the trustee of the other superannuation arrangement the whole or any part of the assets of that superannuation arrangement with the intent of preserving the rights entitlements and interests of any of the existing members of that superannuation arrangement at the time of takeover or acquisition.
- 22.5.2 The Trustee must hold those assets as part of the Fund and reflect the rights entitlements and interests in the particular Member's Accumulation Account as it determines and, if the Trustee so determines, the Member becomes a Member of the Fund on the date of membership in the original fund from which the benefit was transferred, **BUT** where the transfer:
- (i) takes place from a fund administered under former Section 23FB or former Section 23(ja) of the Act, the assets must be preserved in accordance with the requirements of those former sections, as appropriate; or
  - (ii) incorporates an amount which was paid to the Fund for the credit of the Member as a Preserved Payment, the assets representing that amount must be preserved until the retirement of the Member from Gainful Employment at or after the age of 55 years or until other circumstances acceptable to the Commissioner arise.

## 22.6 Determination of Member Contributions

On any transfer under **CI. 22.5**, the amount of any entitlement for an individual member of any superannuation arrangement for the purposes of determining the Member's Contribution under **CI. 40.2** is the amount the trustee of the superannuation arrangement from which the Member transferred certifies as having been contributed by that Member or deemed to have been contributed by that Member for the purposes of the Act, or, failing a certification by that trustee the amount is that amount the trustee of the superannuation arrangement considers to be fairly attributable to the contributions of that Member to the superannuation arrangement, together with accrued earnings. The amounts deemed to be contributions of the Member under this clause, for the purpose of determining the Member's Benefits and the remainder (if any), are deemed contributed by the employer of that Member.

## 23. STATUTORY BENEFIT SCHEME

Where a scheme which has government support or recognition whether in the Commonwealth of Australia or any State or Territory or any other place with which the activities of the Employer are or may be concerned (the "**Statutory Scheme**") provides, or will provide, Members, their dependents or Beneficiaries with benefits which in the opinion of the Trustee are of a similar nature to any Benefit provided under this Deed, the Trustee after seeking the advice of the Actuary, may alter or vary this Deed to correspond to the provisions of the Statutory Scheme, but subject always to **CI. 36**.

## 24. EXCESSIVE BENEFITS

### 24.1 Amounts Limited

Despite anything to the contrary contained in this Deed, while it remains a requirement of the Commissioner, Benefits payable to Members under this Deed must be limited to amounts which are not excessive for the purposes of the reasonable benefits limits applied by the Commissioner, after taking into account the Benefits the Member has already received, is currently entitled to receive or may receive from an Employer or from any other superannuation arrangement, (including an Approved Deposit Fund or Annuity) as the Trustee considers applicable, and as the Commissioner requires.

### 24.2 Reduce Contributions

If at any time:

24.2.1 the Benefit payable to a Member is aggregated with applicable Benefits which the Member has already received, is currently entitled to receive or may receive from an Employer or under any other superannuation arrangement, or if the amount held in the Equalisation Account is in the reasonable opinion of the Trustee, likely to be excessive in amount having regard to the criteria applied by the Commissioner; or

24.2.2 the Commissioner advises the Trustee in writing that the Commissioner is satisfied that the Benefits payable to a Member or the Benefits the Member's dependants have a right to receive from the Fund are excessive in amount and in writing specifies the sum which will reduce the amount of the Benefit which the Member or dependants have a right to receive from the Fund to a sum which is not excessive in amount,

the Employer or Member (or both) must reduce the Contributions payable to the Trustee on behalf of that Member or dependants by the amount the Trustee determines or (in the case of a notice as is referred to in **Cl. 24.2.2**) as the Commissioner specifies as necessary to reduce the Benefit payable to or in respect of that Member, either alone or if aggregated with any benefits payable under any other superannuation arrangement, to an amount which is not or is not likely to be excessive in the opinion of the Commissioner. In making the reduction the Trustee may do either or both of the following:

- (i) require the amount of Contributions being paid in respect of a Member firstly by the Employer or secondly by the Member to be reduced to the extent and in the manner the Trustee determines;
- (ii) prohibit the Employer or Member (or both) from making any further Contributions in respect of the Member.

### 24.3 Payment of Excess Benefits

24.3.1 In this clause the expression "**Excess Benefits**" means the amount by which a Benefit or the Equalisation Account is excessive for the purposes of this clause.

24.3.2 If the Commissioner permits the payment of Excess Benefits to Members without jeopardising the complying status of the Fund, the Trustee, subject to **Cl. 33.1**, may pay the Excess Benefits to the Member or that Member's dependants.

25. **MONEYS OWING TO FUND OR AN EMPLOYER**

Where a Member at any time ceases to be an Employee and owes any moneys to the Fund or to an Employer (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) or if the Member has committed any fraud upon an Employer or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to the Employer, the Member is regarded as having forfeited the right to receive a sum equivalent to the moneys owing to the Fund or the Employer (as the case may be) from that part of the Benefit payable which does not represent Member's Vested Contributions or a Preserved Payment Benefit and the Trustee must:

- 25.1 if the moneys are owed to the Fund, retain them in the Fund; or
- 25.2 if the moneys are owed to the Employer, retain them in the Fund or pay them to the Employer or as the Employer directs.

26. **FORFEITURE OF BENEFITS**

26.1 **Conditions of Forfeiture**

Any Member, former Member, or (after death) any Dependants or the Member's personal representatives:

- 26.1.1 who assigns or charges or attempts to assign or charge any Benefit;
- 26.1.2 whose Benefits whether by that person's own act, operation of law, an order of any court or otherwise (other than as a result of bankruptcy) become payable to or vested in any other person, company, government or other public authority;
- 26.1.3 who for any reason is unable personally to receive or enjoy the whole or any portion of the Benefits or, in the opinion of the Trustee, is incapable of managing his or her affairs;
- 26.1.4 who in the opinion of the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct;
- 26.1.5 who is a former Member who cannot (subject to reasonable enquiries having been made) be located and whose Dependants cannot be located by the Trustee during a period of 2 years after a payment was last made to the former Member by the Trustee,

forfeits entitlement to all Benefits and, in the case of a Member, ceases to be a Member of the Fund.

26.2 **Accumulation Account Residue**

Any Member or former Member who has been paid all Benefits which the Trustee considers should be paid under this Deed, and who still has a residual amount standing to the credit of the Accumulation Account forfeits that residual amount, which must then be dealt with as a forfeited Benefit.

**26.3 Application of Certain Forfeited Benefits**

The Trustee holds upon trust and must pay or apply any Benefits which have been forfeited and which represent a Member's Vested Contributions or Productivity Payment Benefits to or for the benefit of the former Member or Beneficiary (as the case requires) or Dependants or any one or more of them in the proportions between them and on the terms the Trustee determines. Where the former Member remains in the employment of the Employer any payments so made must be limited to the relief of hardship of the former Member or of that person's Dependants.

**26.4 Application of Remaining Forfeited Benefits**

The Trustee, subject to **Cl. 25** and **Cl. 26.3** must hold any Benefits which have been forfeited upon trust and pay or apply them as follows:

- 26.4.1 to or for the benefit of the former Member or Beneficiary or Dependants, or any one or more of them, in the proportions between them and on the terms the Trustee determines **BUT** where the former Member remains in the employment of the Employer any payments so made must be limited to the relief of hardship of the former Member or Dependants; or
- 26.4.2 to or for the benefit of Members and former Members who have rights to receive Benefits from the Fund, or for their Dependants, on a basis that the Trustee considers reasonable having regard to all the circumstances in which Benefits may be paid instead of Contributions which were otherwise payable by the Employer or the Member to the Fund; or
- 26.4.3 to a separate account to be called the Equalisation Account established under **Cl. 26.5**; or
- 26.4.4 to repay to the Employer any amounts representing Contributions and accumulated earnings on those Contributions made in respect of a Member whose rights to receive Benefits under the Fund have ceased; or
- 26.4.5 for any purpose approved by the Commissioner.

**26.5 Equalisation Account**

- 26.5.1 The Trustee has power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any forfeited benefits held under **Cl. 26.4** or any amounts remaining in the Income Account under **Cl. 10**.
- 26.5.2 While any funds are held in the Equalisation Account they must not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Equalisation Account must be credited to the Equalisation Account.
- 26.5.3 The Equalisation Account is to be used by the Trustee to stabilise the investment earnings of the Fund and to provide for those future contingencies the Trustee considers reasonable. The Trustee has the discretion to deal with the assets of the Equalisation Account in accordance with **Cl. 26.4.1**, **26.4.2**, **26.4.4** and **26.4.5** and in the payment of Taxation. Payments made by the Trustee from the Equalisation Account can be made for any of the purposes specified in **Cl. 26.4.1**, **26.4.2**, **25.4.4** and **26.4.5** and for the payment of

Taxation in respect of the Contributions and the income and profits of the Fund.

**26.6 Distribution to Employers**

If on the winding up of the Fund there remains no person entitled to any forfeited Benefits which are held in the Equalisation Account after the Trustee has dealt with them under this clause then any residual amount is to be apportioned amongst the Employers in the proportions determined by the Trustee.

**27. CONVERSION OF LUMP SUM TO PENSION**

**27.1 Application to Convert**

On the written application of a Member the Trustee may pay a Pension to the Member from the Fund in accordance with **Cl. 50** and **Cl. 51**, instead of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member under this Deed.

**27.2 Amount of Pension**

The cost of any Pension payable under this clause is to be determined by the Trustee after obtaining the advice of the Actuary, who, unless otherwise directed by the Trustee, must make due allowance in any calculations for the expenses of the future management of the Pension payments.

**27.3 Trustee Decision Final**

The decision of the Trustee as to whether or not any Pension is to be paid or provided is final and binding.

**27.4 Purchase of Annuity**

If permitted by the Commissioner, the Trustee may pay any Pension under this clause by purchasing any Annuity of a kind permitted by the Commissioner in the name of the Member or the former Member's Dependents from any financial or other institution the Commissioner permits and on terms the Commissioner requires.

**28. PENSION PAYMENT CONDITIONS**

**28.1 Method of Payment**

Where any Benefit under the Fund is payable in the form of a Pension, the Pension is to be payable in the manner and on the conditions the Trustee determines, and it is to be payable by instalments which may be equal or unequal and on the dates the Trustee determines after consultation with the person to whom the Pension is payable on the conditions the Trustee determines and the Commissioner allows.

**28.2 Limited by Accumulation Accounts Balance**

All or a part of a Pension payable to or in respect of a Member (except to the extent that it has been provided by the purchase of an Annuity) is to be payable from the Accumulation Account, and only to the extent the Accumulation Account permits. If all of the former Members or Beneficiaries to whom a Pension is payable die while there is still an amount standing to the credit of the appropriate Accumulation Account, the balance of that Accumulation Account must be dealt with under **Cl. 31**,

but where this is unacceptable to the Commissioner, the Benefits are to be dealt with under **Cl. 26.4**.

**28.3 Limitation on Security for Borrowing**

Where any Benefit is payable in the form of a Pension the capital value of the Pension and the income from it cannot be used as security for a borrowing.

**29. COMMUTATION OF PENSION**

**29.1 Conditions of Commutation**

On the written application of a Member, former Member or Beneficiary the Trustee may commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to the recipient, as applicable, **BUT**:

- 29.1.1 the commutation of the Benefit must be in circumstances acceptable to the Commissioner;
- 29.1.2 the amount of the commuted Benefit including the value of any remaining Pension must be subject to **Cl. 24**;
- 29.1.3 any amount in excess of the amount specified in **Cl. 24** must be dealt with in accordance with that clause or as otherwise required by the Commissioner; and
- 29.1.4 where any amount remains in the Fund after all Members' entitlements have been paid out, the amount remaining must be dealt with in accordance with **Cl. 26.4** as a forfeited Benefit,

**AND** commutation under this clause must only take place where, in the opinion of the Trustee, the commutation would not be to the disadvantage of the Fund, the Members or Beneficiaries.

**29.2 Actuary to Determine Benefit**

- 29.2.1 The Trustee after obtaining the advice of the Actuary must determine the amount of the lump sum payable in respect of the Pension being commuted.
- 29.2.2 The Trustee may instruct the Actuary in furnishing any advice to regard the state of health of the person receiving or to receive the Pension being partially or wholly commuted as being unaffected by any significant impairment and to make any other assumptions as it determines in its discretion and the Trustee may act upon the advice so obtained.

**30. TRANSFER IN SPECIE**

**30.1 Transfer of Policy**

Where a Member or that Member's Dependants (or both) are entitled to be paid, or the Trustee determines to pay any of them, the whole or any part of the Member's Vested Contributions, including any interest in a Policy on the life of the Member, the Trustee instead of surrendering the Policy may assign it to the Member or to the Dependants or to any one or more of them to the exclusion of the others as the Trustee determines. The value of the Policy as at the date of

assignment must be debited as a payment to the Member in the assessment of entitlements as reflected by the Member's Accumulation Account. The Trustee is then not liable to pay any premiums becoming due and owing under the Policy as from the date of the assignment.

**30.2 Transfer of Investments**

The Trustee, with the consent of a Member or Beneficiary to whom a Benefit is payable, may transfer investments of the Fund of equivalent value to the Member or Beneficiary instead of paying the whole or part of the amount otherwise payable **BUT** the Trustee must be satisfied that the transfer will not cause the Fund to fail to satisfy the requirements of a Complying Superannuation Fund.

**30.3 No Beneficial Interest**

Despite any other provision of this Deed, no Member or Beneficiary has or acquires any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while the asset or assets remain subject to this Deed.

**31. PAYMENT OF BENEFITS ON DEATH**

**31.1 Benefit Payable on the Death of A Member Leaving Dependants**

Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving Dependants, the Trustee must pay or apply the Benefit to or for the benefit of the Nominated Dependant of the former Member but where there is no Nominated Dependant or the Trustee considers it inappropriate or inequitable to pay the Benefit to any Nominated Dependent, the Trustee may pay or apply the Benefit to or for the benefit of any one or more of the former Member's Dependants or the legal personal representative of the Member in the manner, at the times, by the instalments and in the proportions between them, if more than one, as the Trustee determines.

**31.2 Benefit Payable on the Death of A Member Leaving No Dependants**

Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependants, the Trustee must pay the Benefit to the Member's legal personal representative, or where there is no legal personal representative, to or for the benefit of the Relatives as appear to the Trustee to be entitled to share in the estate. Where there are no Relatives, the Benefit is absolutely forfeited and remains in the Fund to be dealt with in accordance with **Cl. 26.4.**

**32. PAYMENT TO OTHERS ON BEHALF OF BENEFICIARIES**

**32.1** When any Beneficiary is under the age of 18 years, or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and the receipt of the person to whom the Benefit is paid is a complete discharge to the Trustee for the payment in respect of the Beneficiary.

**32.2** The Trustee is not bound or concerned to see to the application of the Benefit so paid.



### 33. TAX ON BENEFITS PAYABLE AND ON CONTRIBUTIONS

#### 33.1 Tax on Benefits

33.1.1 The Trustee, or with the agreement of the Trustee, an insurance company or other appropriate organisation, must deduct from any Benefit payable to any Member or Beneficiary under this Deed any Taxation required to be deducted (or the Taxation the Trustee considers is required to be deducted) and must pay the Taxation to the relevant authorities within the required time for payment.

33.1.2 The Member or Beneficiary is entitled to receive only the net Benefit or payment after the deduction of Taxation **BUT** if as a result of a Member electing to make a Qualifying Eligible Termination Payment a refund of Taxation paid by the Trustee is paid to the Trustee by the Australian Taxation Office, the Trustee must pay the full amount of the refund to the payee of the Qualifying Eligible Termination Payment.

#### 33.2 Tax on Contributions

The Trustee, or with the agreement of the Trustee, an insurance company or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution from that Contribution or from an Accumulation Account. Where Taxation has been deducted from a Contribution, a reference to the crediting of a Contribution to an Accumulation Account means the crediting of the Contribution after the deduction of Taxation.

### 34. PAYMENT OF BENEFITS

#### 34.1 Address for Benefits

The Trustee may forward Benefits to the postal address or bank account of the Member or Beneficiary last notified or to any other place the Trustee determines.

#### 34.2 Notification of Address

Every Member or Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary (except where no further Benefit is payable from the Fund) must notify the Trustee in writing at the time the Benefit becomes payable and immediately after a change of address of:

34.2.1 that person's place of residence and their full postal address; and

34.2.2 the bank account (if any) to which the Benefit is to be paid.

#### 34.3 Receipt for Benefits

Any person to whom a Benefit is payable, if requested, must furnish the Trustee with a receipt and release in the form required by the Trustee.

#### 34.4 Unclaimed Moneys

34.4.1 Should the Trustee, after due enquiry, be unable to locate a person entitled to a Benefit, the amount of that Benefit as determined by the Trustee is then unclaimed moneys.

34.4.2 Within 28 days of the end of each half year period, the Trustee must prepare and give to the Commissioner a statement of all unclaimed

moneys in the Fund (in a form approved by the Commissioner) as at the date of that half year period.

34.4.3 The Trustee must pay all unclaimed moneys in the Fund as shown on the statement to the Commissioner at the time the statement is given.

34.4.4 Where the Trustee follows the procedure detailed in this clause, the Trustee is discharged from all liability relating to those unclaimed moneys.

### 35. ROLLOVER PAYMENTS

35.1 Where a Member or former Member wishes to effect a Rollover Payment in respect of all or any entitlements in the Fund, that person must request the Trustee in writing to do so, nominating the institution to which the payment is to be made and the amount to be applied as the Rollover Payment. The Member or former Member must additionally complete and execute a Rollover Payment notification or any other documents required to enable the Rollover Payment to be effected and for it to be recorded by the Commissioner. In circumstances acceptable to the Commissioner, the Trustee may effect a Rollover Payment without the consent of the Member or former Member.

35.2 Where:

35.2.1 the Trustee determines that a Benefit (other than a Pension) is immediately payable to or on behalf of a Member; and

35.2.2 a period of 90 days has elapsed since the Benefit became payable; and

35.2.3 the Benefit has not been paid,

the Trustee may pay the Benefit to a rollover fund which has been declared by the Commissioner to be an eligible rollover fund.

35.3 Where:

35.3.1 **Cl. 35.2** applies; and

35.3.2 the Trustee is satisfied that at least 2 consecutive prescribed reports to Members have not been received by the Member,

the Trustee must pay the Benefit to an eligible rollover fund.

35.4 The Trustee must provide a written notice setting out the circumstances in which a Benefit may be paid to an eligible rollover fund under **Cl. 35.2** and **35.3**:

35.4.1 to a Member when the Member becomes a member of the Fund; and

35.4.2 to all Members at least once in each year.

### 36. VARIATION OF TRUST DEED

The provisions of this Deed may be added to, amended, altered, modified or varied (called "**Variation**") by the Trustee with the consent of the Founding Members, or the Employers where there are no Founding Members, on the following basis:

**36.1 Resolution or Deed**

The Variation must be:

- 36.1.1 by oral declaration or written resolution of the Trustee and the Members, and a certified copy of minutes of a meeting of the Trustee and of the Members confirming the oral declaration or a certified copy of the written resolution must be furnished to the Commissioner if required by the Commissioner; or
- 36.1.2 by deed executed by the Trustee and the Members and a copy of the deed forwarded to the Commissioner if required by the Commissioner.

**36.2 Limitation on Variation**

No Variation may have the effect of:

- 36.2.1 reducing or adversely affecting the rights of any Member in relation to an accrued Benefit or the amount of any accrued Benefit payable to any Member or Beneficiary in the Fund, without either the written consent of those Members of the Fund who are required to consent by the Commissioner or the written approval of the Commissioner; or
- 36.2.2 subject to **Cl. 36.2.3**, effecting a change of the Trustee, unless any new trustee is a Constitutional Corporation; or
- 36.2.3 allowing individuals to be appointed as Trustee unless this Deed is simultaneously amended to provide that the Fund is maintained for the sole or primary purpose of providing Old Age Pension benefits.

**36.3 Additional Limitation on Variation**

In addition to the requirements of **Cl. 36.2** a Variation must not be made unless:

- 36.3.1 the Trustee consents to the Variation; or
- 36.3.2 the Variation relates to the Contributions an Employer will, after the Variation, be required or permitted to pay to the Fund; or
- 36.3.3 the Variation relates solely to the termination of the Fund; or
- 36.3.4 the circumstances in which the Variation is made are as set out in clause 4.05 of the Regulations; or
- 36.3.5 the Variation is made solely for the purpose of conferring on the Trustee the power to consent to any Variation.

This clause does not apply to an Excluded Fund.

**37. WINDING UP OF FUND**

**37.1 Election to Terminate**

The Trustee may elect to wind up the Fund at a certain date (the "**Termination Date**") in the following circumstances:

- 37.1.1 where any Employer ceases to contribute to the Fund; or

- 37.1.2 if there are no Members remaining in the Fund; or
- 37.1.3 if the Trustee otherwise determines for any reason that the Fund should be wound up.

**37.2 Procedure on Winding Up**

Where the Fund is to be wound up, the Trustee must:

- 37.2.1 give written notice to each Employer and Member that the Fund is to terminate on the Termination Date; and
- 37.2.2 arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with **Cl. 37.3** after deducting from the assets of the Fund the costs of administering and winding up the Fund.

**37.3 Exhaustion of Fund**

Subject to **Cl. 44.1**, the Trustee must pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- 37.3.1 Benefits to which Members, former Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
- 37.3.2 the provision of additional Benefits to Members, former Members and their Dependants as the Trustee determines; and
- 37.3.3 payment to those Employers who have made Contributions to the Fund as the Trustee determines.

**38. TERMS IMPLIED BY ACT**

The provisions of the Act or the Regulations (or of any statute, regulation or enactment) as are required to be included in the trust deeds or rules of superannuation funds in order for them to be concessionally taxed as complying funds are deemed to be included in this Deed, but only so far as they do not conflict with any express provision of it, and unless the Trustee by resolution elects that any provision otherwise deemed to be included is not to be so included.

## DIVISION B - MEMBERS' CONTRIBUTIONS AND BENEFITS

### 39. APPLICATION OF DIVISION

The Benefits available under Division B, subject to **Cl. 24** apply to Members who have made application in the manner required to the Trustee and who have been admitted as Members of the Fund.

### 40. MEMBERSHIP CLASSIFICATION

#### 40.1 Classes of Membership

Despite anything to the contrary contained in this Deed there are 7 Classes of membership of the Fund which are designated:

"A" Membership Class

"B" Membership Class

"C" Membership Class

"D" Membership Class

"E" Membership Class

"F" Membership Class

"G" Membership Class

#### 40.2 Original Class

All Members upon joining the Fund become "A" Class Members (the "**Original Class**") unless otherwise nominated by the Member when the nomination for Membership is made under **Cl. 20.1**, and remain members of the Original Class unless the Trustee makes a written nomination for a Member to become a member of an additional or alternative Class and the Trustee obtains a written consent from the Member to that nomination **BUT** the Member remains also a member of the Original Class unless the Trustee nominates otherwise.

#### 40.3 Reclassification

A Member may be reclassified to any other Class at any time in the same manner as provided in **Cl. 40.2**, but any Benefits forming part of the Member's Accumulation Account which become vested in that Member during the time the Member was a member of another Class are retained as an entitlement of the Member to the extent that the entitlement was vested in the Member at the time the reclassification took place.

#### 40.4 Transfer of Accumulation Account

Upon the reclassification of a Member as a member of another Class, the Trustee may transfer all or any of the Member's other Accumulation Accounts to the new Membership Class subject to the proviso in **Cl. 40.3**.

#### 40.5 Designation of Class

If a Member is reclassified to another Membership Class and that Member remains a member of more than one Class, at the time any Contribution is made by an Employer, the Employer must designate the Class to which the Contribution is

attributable under **CI. 21.4** and where that Employer makes no designation the Trustee may make the designation **BUT** any Productivity Payment is to be automatically designated a Contribution attributable to the "G" Membership Class.

#### 41. **CONTRIBUTIONS PAYABLE BY MEMBERS**

##### 41.1 **Rate of Contributions**

All Members may make Contributions up to any amount which may be advised by the Trustee to the Members. Contributions cease from a Member at the Normal Retirement Age.

##### 41.2 **Take Over Amounts**

Member's Contributions for the purposes of this clause include any amounts taken over from other superannuation arrangements which are so designated under **CI. 22.6**.

#### 42. **BENEFITS PAYABLE ON RETIREMENT**

##### 42.1 **Lump Sum Classes**

Where an "A" Class Member or a "B" Class Member or a "C" Class Member retires from employment at or after the Normal Retirement Age that Member is entitled to be paid a lump sum Benefit equal to the amounts standing to the credit of the Accumulation Account or Accounts applicable to the relevant Class or Classes as at the date of retirement.

##### 42.2 **Pension Classes**

Where a "D" Class Member or an "E" Class Member or an "F" Class Member retires from employment at or after the Normal Retirement Age the Trustee must pay a Pension to the Member which, subject to **CI. 50**, must be for an annual amount determined by multiplying the Member's Normal Retirement Factor by the Member's Final Average Salary.

##### 42.3 **"G" Class Membership**

Where a "G" Class Member retires from employment at or after the Normal Retirement Age that Member must be paid a lump sum Benefit equal to the full amount standing to the credit of the "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to retirement to take a Pension, in which case the "G" Class Benefit is to be paid in accordance with **CI. 28**.

#### 43. **DISABLEMENT**

##### 43.1 **Total and Permanent Disablement**

Where a Member of any Class, in the opinion of the Trustee, becomes Totally and Permanently Disabled, that Member, upon being notified by the Trustee of the fact that the Trustee has formed the opinion, must be paid by the Trustee:

- 43.1.1 in respect of the "A" Class Accumulation Account, a lump sum Benefit equal to the total of the following amounts:

- (i) the Member's Vested Contributions in relation to the "A" Class Accumulation Account;
- (ii) the proceeds of any Policy effected in relation to the "A" Class Accumulation Account and which are received as a result of the Total and Permanent Disablement of the Member; and
- (iii) any further portion of the balance of the Member's "A" Class Accumulation Account as the Trustee determines;

43.1.2 in respect of the "B" Class Accumulation Account, a lump sum Benefit equal to the total of the following amounts:

- (i) the Member's Vested Contributions in relation to the "B" Class Accumulation Account;
- (ii) an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of payment (not including the proceeds of any Policy received as a result of the Total and Permanent Disablement of the Member) determined by the length of time the Member has been a Member of the Fund. This percentage amount is as set out in the second column of Schedule C of this Deed opposite the number of years specified in the first column as the number of years for which the Member has been a Member of the Fund as at the date of Total and Permanent Disablement;
- (iii) the proceeds of any Policy effected in relation to the "B" Class Accumulation Account and which are received as a result of the Total and Permanent Disablement of the Member; and
- (iv) any further portion of the balance of the Member's "B" Class Accumulation Account as the Trustee determines;

43.1.3 for a "C" Class Member, the full amount standing to the credit of the Member's "C" Class Accumulation Account as at the date of payment;

43.1.4 for a "D" Class, "E" Class or "F" Class Member, a Pension which, subject to **Cl. 50**, must be for an annual amount determined by the Trustee and for the purposes of **Cl. 50** the entitlement of the Member is the total of the following:

- (i) In respect of the "D" Class Accumulation Account:
  - (1) the Member's Vested Contributions in relation to the "D" Class Accumulation Account;
  - (2) the proceeds of any Policy effected in relation to the "D" Class Accumulation Account which are received as a result of the Total and Permanent Disablement of the Member; and
  - (3) any further portion of the balance of the Member's "D" Class Accumulation Account as the Trustee determines;

- (ii) In respect of the "E" Class Accumulation Account:
  - (1) the Member's Vested Contributions in relation to the "E" Class Accumulation Account;
  - (2) an amount equivalent to a percentage of the balance of the Member's "E" Class Accumulation Account as at the date of payment (not including the proceeds of any Policy received as a result of the Total and Permanent Disablement of the Member) determined by the length of time the Member has been a Member of the Fund. This percentage amount is as set out in the second column of Schedule C opposite the number of years specified in the first column as the number of years the Member has been a Member of the Fund as at the date of Total and Permanent Disablement;
  - (3) the proceeds of any Policy effected in relation to the "E" Class Accumulation Account which are received as a result of the Total and Permanent Disablement of the Member; and
  - (4) any further portion of the balance of the Member's "E" Class Accumulation Account as the Trustee determines;
- (iii) In respect of the Members "F" Class Accumulation Account the full amount standing to the credit of the "F" Class Accumulation Account as at the date of payment;

43.1.5 for a "G" Class Member a lump sum Benefit equal to the full amount standing to the credit of the "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to retirement as a result of Total and Permanent Disablement to take a Pension, in which case the Benefit will be paid in accordance with **Cl. 28.**

#### **43.2 Temporary Total Disablement**

In the event a Member of any Class, in the opinion of the Trustee, becomes totally disabled as defined in this clause and a Policy has been effected by the Trustee in respect of that Member which covers the total disablement, the following provisions of this clause apply:

- 43.2.1 The Trustee must recognise a Member as having become totally disabled (but not Totally and Permanently Disabled) if:
  - (i) the Member is disabled as a result of illness, accident or injury which commences at or prior to the earlier of the Member attaining the age of 65 years or Normal Retirement Age; and
  - (ii) as a result of the illness, accident or injury the Member has been continuously absent from employment for the eligibility period contained in any Policy effected in respect of the Member; and



- (iii) the Trustee, after consultation with the insurance company, is satisfied that the Member is disabled within the meaning of the definition of temporary total disablement agreed upon by the Trustee and the insurance company; and
- (iv) the Trustee expects the Member's disablement to be temporary.

- 43.2.2 The Member must be paid (to the extent acceptable to the Commissioner) an income Benefit of an amount equal to the amount payable as a result of the Member's total disablement under the Policy arranged between the Trustee and the insurance company and advised to the Member at the time of becoming a Member or at the time the Policy was effected in the manner specified in the Policy.
- 43.2.3 Payment of Contributions to the Fund by the Member (if any) may be suspended during the time any income Benefit is payable.
- 43.2.4 The Member continues to be a Member of the Fund during the period of total disablement and for the eligibility period of absence caused by the total disablement and the aggregate of these periods for the purpose of the Fund must be included in the Member's years as a Member of the Fund and in the Member's Membership Period.
- 43.2.5 The income Benefit under this clause ceases to be payable in accordance with the conditions applicable to the Policy.

#### 44. LEAVING SERVICE

- 44.1 In the event of a Member of any Class ceases to be employed prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Trustee must pay to the Member the following amounts:
  - 44.1.1 in respect of the "A" Class Accumulation Account, a lump sum Benefit equal to the total of the following amounts:
    - (i) the Member's Vested Contributions in relation to the "A" Class Accumulation Account; and
    - (ii) any further portion of the balance of the Member's "A" Class Accumulation Account the Trustee determines;
  - 44.1.2 in respect of the "B" Class Accumulation Account, a lump sum Benefit equal to the total of the following amounts:
    - (i) the Member's Vested Contributions in relation to the "B" Class Accumulation Account;
    - (ii) an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of payment, determined by the length of time the Member has been a Member of the Fund. This percentage amount is as set out in the second column of Schedule C of this Deed opposite the number of years specified in the first column as the number of years for which the Member has been a Member of the Fund as at the date of ceasing to be employed; and

- (iii) any further portion of the balance of the Member's "B" Class Accumulation Account the Trustee determines;
- 44.1.3 for a "C" Class Member, the full amount standing to the credit of the Member's "C" Class Accumulation Account as at the date of payment;
- 44.1.4 for a "D" Class, "E" Class or "F" Class Member, a Pension which, subject to **Cl. 50**, is for an annual amount determined by the Trustee and for the purposes of **Cl. 50**, the entitlement of the Member is the total of the following:
  - (i) in respect of the "D" Class Accumulation Account:
    - (1) the Member's Vested Contributions in relation to the "D" Class Accumulation Account; and
    - (2) any further portion of the balance of the Member's "D" Class Accumulation Account the Trustee determines;
  - (ii) in respect of the "E" Class Accumulation Account:
    - (1) the Member's Vested Contributions in relation to the "E" Class Accumulation Account;
    - (2) subject to **Cl. 50**, an amount equivalent to a percentage of the balance of the Member's "E" Class Accumulation Account as at the date of payment, determined by the length of time the Member has been a Member of the Fund. This percentage amount is as set out in the second column of Schedule C opposite the number of years specified in the first column as the number of years for which the Member has been a Member of the Fund as at the date of ceasing to be employed; and
    - (3) any further portion of the balance of the Member's "E" Class Accumulation Account the Trustee determines;
  - (iii) in respect of the "F" Class Accumulation Account, the full amount standing to the credit of the Member's "F" Class Accumulation Account as at the date of payment;
- 44.1.5 for a "G" Class Member, a lump sum Benefit equal to the full amount standing to the credit of the "G" Class Accumulation Account as at the date of payment, unless the Member nominates to the Trustee prior to cessation of employment to take a Pension benefit, in which case the Benefit is to be paid in accordance with **Cl. 28**.

#### 45. **PRESERVED PAYMENT BENEFITS**

##### 45.1 **Payment Limitation**

Despite anything to the contrary in **Cl. 26, 39, 42, 43 and 44**, no Preserved Payment Benefit may be paid to a Member or Dependants until retirement of the Member from Gainful Employment at or after age 55, earlier death or in other circumstances and in a form acceptable to the Commissioner.

#### 45.2 Preservation of Benefit

Any Preserved Payment Benefits held by the Trustee which are unable to be paid out to the Member, at the discretion of the Trustee, may either be dealt with under **Cl. 22.4** or be retained in the Fund subject to **Cl. 45.1** and **53**.

#### 46. PAYMENT ON DEATH

46.1 On the death of a Member of any Class prior to the Normal Retirement Age and while still a Member of the Fund, the Trustee, subject to **Cl. 24**, must pay the following amounts in accordance with **Cl. 31**:

46.1.1 in respect of a Member's "A" and "D" Class Accumulation Accounts, a lump sum Benefit equal to the total of the following amounts:

- (i) the Member's Vested Contributions in relation to the "A" and "D" Class Accumulation Accounts;
- (ii) the proceeds of any Policy effected in relation to the "A" and "D" Class Accumulation Accounts received as a result of the death of the Member; and
- (iii) any further portion of the balance of the Member's "A" Class or "D" Class Accumulation Account as the Trustee determines;

46.1.2 in respect of a Member's "B" and "E" Class Accumulation Accounts, a lump sum Benefit equal to the total of the following amounts:

- (i) the Member's Vested Contributions in relation to the "B" and "E" Class Accumulation Accounts;
- (ii) an amount equal to a percentage of the balance of the Member's "B" and "E" Class Accumulation Accounts as at the date of payment (not including the proceeds of any Policy received as a result of the death of the Member) determined by the length of time the Member has been a Member of the Fund. This percentage amount is as set out in the second column of Schedule C opposite the number of years specified in the first column as the years for which the Member was a Member of the Fund as at the date of death;
- (iii) the proceeds of any Policy effected in relation to the "B" and "E" Class Accumulation Accounts received as a result of the death of the Member; and
- (vi) any further portion of the balance of the Member's "B" or "E" Class Accumulation Account as the Trustee determines;

46.1.3 for a "C" Class Member or an "F" Class Member or a "G" Class Member, a lump sum Benefit equal to the full amounts standing to the credit of the Member's "C", "F" and "G" Class Accumulation Accounts as at the date of payment.

#### 47. COMMUTATION OF PENSION BENEFITS ON DEATH

- 47.1 On the death of a former Member of any Class or a Beneficiary who is at the time of death still in receipt of a Pension, the Trustee, subject to its acceptability to the Commissioner, may pay to the Dependents of the former Member or to that person's estate, in the proportions the Trustee determines, the balance of the Member's Accumulation Account which has not been paid out by way of a Pension during that person's lifetime.

48. **ASSURANCE**

48.1 **Power to effect Policy**

In addition to any other power in this Deed to effect a Policy, the Trustee may insure or acquire life cover on the lives of any Member for the provision of Benefits to be payable to the Trustee on the death or disablement of the relevant Member (and the term "**Policy**" includes a Policy for or including that life cover). In the event of death or disablement of a Member or former Member covered by a Policy, the Trustee must credit that person's Accumulation Account with the full amount of the proceeds received under the Policy.

48.2 **Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life policy, "Member's Vested Contributions" means in relation to those Contributions and any Net Earnings which, but for this clause, would be applicable to those contributions, the surrender value of the endowment or whole of life policy.

49. **INCREASES TO BENEFITS**

In circumstances where a Member ceases to be employed by an Employer otherwise than in accordance with **Cl. 44**, the Trustee must take into account the Member's interest in the Equalisation Account (if any) and may take the advice of the Actuary in determining whether any amount should be transferred from the Equalisation Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

50. **AMOUNTS OF INSTALMENTS OF PENSION**

50.1 **Total of Member Accumulation Account**

Despite anything to the contrary in this Division, where the Benefit payable in respect of a Member is payable in the form of a Pension, or where the Trustee purchases an Annuity on behalf of a Member, the instalments of the Pension or the purchase price of the Annuity, subject to **Cl. 24** and **49**, are to be the amount the Trustee considers appropriate taking into account the amount standing to the credit of the Member's Accumulation Account (or the amount represented by the proportion of the Accumulation Account to which the Member is entitled, if less), and subject to the minimum and maximum income limits specified in the Act.

50.2 **Pension Increase**

Any Pension payable under **Cl. 42, 43** and **44**, if required by the Commissioner, must be increased in the course of payment by the amount the Trustee considers appropriate to compensate the Pensioner for cost of living increases **BUT** the amount of the increase expressed as a percentage must not exceed for the corresponding period the percentage increase in the Consumer Price Index (All Groups) weighted average of eight capital cities (as published by the Australian

Bureau of Statistics), or in the event that the Consumer Price Index ceases to be published, any other measure of cost of living increases which the Trustee, after seeking the advice of the Actuary, considers appropriate.

**51. DEPENDANT PENSION ON DEATH OF PENSIONER**

On the death of a former Member of any Class who is at the time of death still in receipt of a Pension, the Trustee, unless specifically requested to the contrary by the spouse of the former Member, may pay a Pension to the spouse not exceeding 85% of the Pension being paid to the former Member as at the date of death, or any other amount acceptable to the Commissioner.

**52. PERSONS TO WHOM BENEFITS ARE PAYABLE**

52.1 Subject to the provisions of this Deed, the Trustee must pay the Benefits as follows:

- 52.1.1 where the Benefit or balance of the Benefit is payable following the death of the Member or former Member the payment, subject to **Cl. 52.1.4** must be made in accordance **Cl. 31**;
- 52.1.2 where the Benefit or balance of the Benefit is payable as a Rollover Payment, it must be made in accordance with this Deed to the trustee of the other fund or arrangement;
- 52.1.3 where the Benefit or balance of the Benefit is payable following the disablement of a Member, the payment must be made to the Member or alternatively, in the event of the death of the Member, to the Dependants of the Member, but in any event no payment is to be made other than a payment under **Cl. 43.2** until the time the Member leaves the service of the Employer;
- 52.1.4 where the Benefit or balance of the Benefit is payable as a reversionary Pension, it must be paid in accordance with **Cl. 51**;
- 52.1.5 in all other cases, the Benefit must be paid to the Member.

**53. RETENTION OF BENEFIT IN FUND**

At the request of a Member or Beneficiary, the Trustee may retain in the Fund all or part of any Benefit payable under this Division until:

- 53.1 the Member or Beneficiary entitled requests payment;
- 53.2 the Member dies, in which event it must be paid in accordance with **Cl. 52.1.1**;
- 53.3 the attainment by the Member of age 65 or Normal Retirement Age whichever is earlier; or
- 53.4 the Trustee elects to pay the Benefit to the former Member or Beneficiary,

whichever occurs first, and the amount then payable is the Benefit standing to the credit of the Member's or Beneficiary's Accumulation Account or Accounts as at the date of payment.

## SCHEDULE A

### APPLICATION FOR MEMBERSHIP

Confidential

TO: The Trustee  
[Name of Superannuation Fund]

I, being eligible, apply for admission to membership of the Fund.

I agree and undertake as follows:-

- (a) I will be bound by the trust deed governing the Fund as it is or may be varied at any time;
- (b) I will make a full disclosure in writing of any benefits I have received, may receive or may be entitled to receive from any other superannuation fund, approved deposit fund or rollover annuity.
- (c) I understand the terms and conditions of the trust deed and particularly the terms and conditions of Division B concerning benefits payable and I acknowledge I have been informed of my rights and the rights of my dependants under the deed.
- (d) I consent to the Trustee acting as trustee of the Fund.

I declare the rights held by me and the amounts received by me from any superannuation fund, pension fund, approved deposit fund, annuity or employer are set out in the attachment to this application.

**Dated the**                      day of

\*\*\*\*\*  
SIGNATURE

Name:

Address:

Date of Birth:

## SCHEDULE B

### PERCENTAGE VESTING SCHEDULE

Number of years completed as a Member of the Fund		Percentage of the balance of Member's Accumulation Account payable to Member
AT LEAST	LESS THAN	
0	2	100
2	4	100
4	6	100
6	8	100
8	10	100
10	12	100
12	14	100
14	16	100
16	18	100
18	20	100
20	22	100
22	24	100
24	26	100
26	28	100
28	30	100
32	34	100
34	36	100
36	38	100
38	40	100
40 and over		100

EXECUTED by the parties as follows:

SIGNED SEALED AND DELIVERED by  
STUART GRAHAM LUDLOW as  
Founding Member in the presence of:-

)  
)  
) *SG Ludlow*  
)

*[Signature]*  
.....  
Witness

SIGNED SEALED AND DELIVERED by  
EVELYN LORRAINE LUDLOW as  
Founding Member in the presence of:-

)  
)  
) *E. Ludlow*  
)

*[Signature]*  
.....  
Witness

SIGNED SEALED AND DELIVERED by  
STUART GRAHAM LUDLOW and  
EVELYN LORRAINE LUDLOW as  
Trustee in the presence of:

)  
)  
) *SG Ludlow*  
)  
) *E. Ludlow*  
)

*[Signature]*  
.....  
Witness