

SUPERANNUATION DEED

establishing

JACQUELINE FURBY SUPERANNUATION FUND

Reference: 04-442

*Franklyn Simon Wheatley*  
*Solicitors*

72 Kings Park Road West Perth  
Western Australia

**Telephone: 9322 1399 or 9322 1966**

Facsimile: 9322 2727

## INDEX

<u>CLAUSE</u>	<u>SUBJECT MATTER</u>	<u>PAGE</u>
1.	Establishment of Fund .....	1
2.	Self-Managed Superannuation Fund .....	1
3.	Interpretation .....	1
4.	Admission of Members .....	4
5.	Cessation of Membership .....	4
6.	Meetings of Members .....	4
7.	Admission of Participating Employers.....	5
8.	Fund Assets .....	5
9.	Member's Account.....	5
10.	Income Account .....	6
11.	Equalisation Account .....	6
12.	Forfeiture of Benefits .....	7
13.	Specific Investments .....	7
14.	Valuation .....	8
15.	Fund Records, Audit and Reporting to Members .....	8
16.	Covenants by Trustee.....	8
17.	Appointment and Removal of the Trustee .....	8
18.	Liability of Trustee.....	9
19.	Indemnity of Trustee.....	9
20.	Proceedings of Trustee.....	10
21.	Appointment of Auditor and Other Officers .....	10
22.	Trustee's Powers Including Investment .....	10
23.	Policies of Assurance.....	11
24.	Contributions to Fund .....	12
25.	Spouse Contributions.....	12
26.	Creation of Interest for Spouse of a Member .....	12
27.	Reduction of Benefit under Family Law Act .....	12
28.	Administration Costs .....	12
29.	Notification of Other Funds.....	13
30.	Transfers from Other Funds.....	13
31.	Transfers to Other Funds .....	13
32.	Benefits Payable on Retirement.....	13
33.	Retirement Prior to Normal Retirement Age .....	14
34.	Segregation of Pension Assets .....	14
35.	Financial Hardship .....	14
36.	Temporary Disablement .....	14
37.	Permanent Disablement .....	14
38.	Benefits Payable on Death.....	14
39.	Amounts of Instalments of Pension.....	15
40.	Persons to Whom Benefits are Payable.....	15
41.	Retention of Benefit in Fund .....	16
42.	Limitation of Benefits .....	16
43.	Conversion of Lump Sum to Pension.....	16
44.	Pension Payment Conditions .....	16
45.	Commutation of Pension .....	17
46.	Transfer of Benefits in Specie .....	17
47.	Payment of Tax on Benefits and Contributions .....	17
48.	Termination of Employer's Contributions.....	17
49.	Substitution of Principal Employer .....	18
50.	Variation of Trust Deed .....	18
51.	Dissolution of the Fund .....	18
	Application for Membership.....	19
	Schedule .....	20

This DEED is made - 24TH DAY OF MAY 2004

BY JACQUELINE MARY FURBY of 6/ 3 Waxham Place, North Beach, Western Australia  
and SUZANNE LYNDA FURBY of 2/ 25 Stewart Street, Scarborough, Western Australia  
(called "the Trustee").

ABN 66 012 878 629  
WESTERN AUSTRALIA STAMP DUTY  
DEE 24/05/04 15:07 002252402-001  
FEE \$ \*\*\*\*\*0  
SD \$ \*\*\*\*\*20.00 PEN \*\*\*\*\*.00

### PROVISIONS

#### 1. ESTABLISHMENT OF FUND

1.1 The Trustee hereby establishes a self-managed superannuation fund (called "the Fund") for the purpose of providing superannuation benefits for persons who become members of the Fund.

1.2 The Trustee shall act as the first Trustee and will hold and maintain the Fund as an indefinitely continuing superannuation fund upon the trusts and with and subject to the powers and provisions contained in this Deed.

1.3 The Fund shall be known as the **JACQUELINE FURBY SUPERANNUATION FUND** and shall commence on the date on which the Fund becomes a regulated superannuation fund pursuant to the Superannuation Industry (Supervision) Act 1993 (called "the Act").

#### 2. SELF-MANAGED SUPERANNUATION FUND

2.1 Notwithstanding anything contained in this Deed, if the Trustee of the Fund is not a constitutional corporation as defined by the Act the primary purpose of the Fund is the provision of old-age pensions as defined by the Act and this provision shall not be amended in such a way as would breach section 60(2) of the Act.

2.2 The requirements and other provisions prescribed by the Act and its regulations, the Corporations Act 2001 as amended from time to time and its regulations or any other statute, regulation or statutory requirement from time to time relating to superannuation funds (called "the Law") shall be deemed to be included in this Deed to the extent that they are required in order for the Fund to be a self-managed superannuation fund and to obtain the maximum income tax and other concessions or to comply with the Law AND the Law shall to that extent prevail in the event of any inconsistency between the Law and other provisions of this Deed. The Trustee shall at all times be enabled to do and undertake all things necessary to comply with the Law.

#### 3. INTERPRETATION

3.1 In this Deed unless the context otherwise requires -

"Member's Account" means the account established on behalf of each Member or Beneficiary as described in clause 9;

"Actuary" means the actuary (if any) for the time being appointed pursuant to clause 21 of this Deed;

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

"Auditor" means the auditor for the time being appointed pursuant to clause 21 of this Deed;

"Beneficiary" means a person who has a beneficial interest in the Fund at the relevant time;

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

"Commissioner" means the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Insurance and Superannuation Commissioner or such other regulatory body as shall have responsibility for the supervision of the conduct of superannuation funds from time to time;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a complying superannuation fund pursuant to the Law;

"Contributions" means payments to the Fund by Members and Employers in accordance with the provisions of this Deed. Contribution may be made by way of cash or to the extent allowable by the Law by way of transfer of an asset or in specie contribution;

"Dependant" in relation to a former Member means -

- (a) the Spouse (as later defined) of a former Member or the widow or widower of a deceased Member;
- (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 his child; or
- (c) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time;

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

"Employee" means a person in the employment of an Employer and includes a director of that Employer;

"Employer" means any person who employs a Member and who makes Contributions to the Fund on behalf of a Member and includes the Principal Employer and Participating Employers and any Employer specified in the Schedule (if any);

"Equalisation Account" means the account established pursuant to clause 11;

"Financial Year" means a period of twelve months ending on 30 June;

"Forfeiture Account" means the account established pursuant to clause 12;

"Fund Earning Rate" means the fund earning rate defined in clause 10.3;

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

"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 Law;

"Member" means a person who has been accepted as a Member of the Fund pursuant to clause 4 of this Deed who has not ceased to be a Member pursuant to clause 5 and includes a former Member who at the relevant time is receiving or is entitled to receive Benefits from the Fund;

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

"Normal Retirement Age" means the age of 65 years for males and 60 years for females or such other age as the Trustee may determine from time to time but not being less than the age prescribed under the Law for the payment of preserved benefits;

"Pension" means a Benefit payable at a yearly rate by instalments and, except in the expression "old-age pension", includes a Benefit if it is taken to be a pension for the purposes of the Law;

"Pensioner" means a person receiving a Pension;

"Policy" means any policy of insurance 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 and includes any policy covering any two or more of the foregoing risks;

"Preserved Payment" means a payment made to the Fund by an Employer or a Member or by transfer from another fund which is preserved in accordance with the Law;

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

"Principal Employer" means the person or persons described as such in this Deed (if any) or any Employer who elects to become the Principal Employer pursuant to the provisions of clause 7;

"Regulations" means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Corporations Act and any relevant legislation, regulation, rulings and explanatory notes published with the approval or knowledge of the Regulator.

"Regulator" means the Commissioner of Taxation, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission.

"Relative" in relation to a former Member means any of-

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

"Retires from Gainful Employment" means actual retirement by a Member from Gainful Employment or retirement as defined by the Law for the payment of Benefits.

"Roll Over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances allowable by the Law to or from-

- (a) an Approved Deposit Fund;
- (b) a superannuation arrangement described in clauses 30 and 31;
- (c) an authorised organisation for the purchase of an Annuity,

and includes an eligible termination payment made by an Employer in consequence of the termination of the employment of a Member;

"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 the term "widow" or "widower" includes such a person,

PROVIDED that where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable hereunder to the Spouse is to be divided between them;

"Taxation" includes income tax, capital gains tax, tax on eligible termination payments, payroll tax, goods and services tax, taxes or surcharges on any contributions, stamp duty and any other taxes or duties;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted;

"Vested Benefits" means any part of the Benefit of a Member arising from Contributions to the Fund or earnings of the Fund or arising from a previous superannuation fund which is a Roll Over Payment to the Fund which is required by the Law to be vested in and payable to a Member on cessation of Gainful Employment by the Member (subject to any preservation requirements).

3.2 References to any statutory enactment shall be construed as references to that enactment and its regulations as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for the statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution therefor.

3.3 For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

3.4 In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender, words importing the singular number shall include the plural number and vice versa and references to a person includes firms, corporations, associations, trustees in their capacity as such and other juristic persons recognised by law.

3.5 The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

3.6 Except so far as the contrary intention appears in this Deed, an expression has, in a provision of this Deed that deal with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.

3.7 Nothing in this Deed shall permit -

- (a) the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any person; and
- (b) a discretion under this Deed that is exercisable by a person other than a trustee to be exercised,

other than as provided by the Law.

#### 4. ADMISSION OF MEMBERS

4.1 Any person satisfying the requirements of the Law may apply for membership of the Fund by completing a written application in the form annexed to this Deed or in such other form as the Trustee may from time to time determine.

4.2 The maximum number of members shall be limited to that allowed by Law and the members shall be all the Trustees or, in the case of a corporate Trustee, all the directors of the Trustee, unless otherwise allowed by the Law.

4.3 Upon receipt of a membership application, the Trustee may determine in its discretion to admit the applicant to membership of the Fund and the Member shall be deemed to have joined on a date determined by the Trustee or, if the Trustee makes no such determination, the date of the membership application.

4.4 Upon acceptance of the application by the Trustee, the Member shall become bound by the provisions of this Deed in all respects as if the Member was an original party to this Deed.

4.5 As soon as practicable after the admission of a person as a Member of the Fund, the Trustee shall give to the Member a written statement containing such details as the Law requires.

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

#### 5. CESSATION OF MEMBERSHIP

A person shall cease to be a Member of the Fund upon the earliest to occur of the following-

- (a) the date upon which payment of all his Benefits is made to him;
- (b) the completion of a Roll Over Payment by the Trustee in respect of all his Benefits;
- (c) the death of the Member;
- (d) the provisions of clause 12 operating to terminate his membership;

PROVIDED that a Member receiving or entitled to receive Benefits from the Fund at that time shall remain a Member for such further period as the Trustee shall determine.

#### 6. MEETINGS OF MEMBERS

6.1 A meeting of Members may be called by Members serving a notice on the Trustee signed by at least two Members, or if there is only one Member, that Member, requesting a meeting of Members.

6.2 The Trustee shall convene a meeting of Members within 14 days of receiving the request and shall send a notice of meeting to each Member.

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

6.4 Every notice of meeting shall -

- (1) be posted or given at least 3 days before the meeting unless all Members otherwise agree;
- (2) advise the place and time of the meeting;
- (3) advise the Member that he may appoint a proxy to vote on his behalf at the meeting PROVIDED that the proxy is lodged with the Trustee not later than 24 hours before the meeting;
- (4) be accompanied by a form of proxy approved by the Trustee;

- (5) set out the matters including any resolutions to be considered at the meeting.

6.5 Every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at their last known address and when so posted the notice shall be deemed to have been given three days after the date of posting.

6.6 The Trustee shall appoint a Chairman of the meeting and shall make such regulations concerning the conduct of the meeting or meetings as it may decide.

6.7 A quorum for the meeting shall be two Members present in person or by proxy or 25% of the Members of the Fund whichever is the lesser and if there is only one Member, that Member PROVIDED that if a quorum is not present within 30 minutes of the time appointed for the meeting the Chairman of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

6.8 Each Member shall be entitled to one vote AND in the event of an equality of votes, the Chairman shall not have a casting vote.

## 7. ADMISSION OF PARTICIPATING EMPLOYERS

In the event that any company, entity or person who contributes to the Fund wishes to participate in the Fund, the Trustee may admit the Employer to the Fund as a Participating Employer and it shall then be bound by the provisions of this Deed.

## 8. FUND ASSETS

The gross assets of the Fund shall consist of -

- (a) such contributions as are made to the Fund from time to time by a Member or an Employer or any other authorized person for the credit of an individual Member together with all interest, dividends, profits (less losses) and other benefits arising from the investment of the Contributions and the assets of the Fund;
- (b) all assets, real and personal property, any Policy in which any monies of the Fund are invested or paid or by which they are represented and all income and profits derived therefrom together with the proceeds of any Policy received by the Fund;
- (c) cash, money, investments and other property for the time being held by the Trustee; and
- (d) money, investments and other property transferred to the Fund as a Roll Over Payment.

## 9. MEMBER'S ACCOUNT

9.1 The Trustee shall establish an Account in respect of each Member.

9.2 The following amounts shall be credited to the appropriate Member's Account:-

- (a) any Contributions made by the Member;
- (b) any Contributions made in respect of the Member or Beneficiaries by an Employer or any other person authorised by the Law to make contributions;
- (c) any amount paid into the Fund in respect of the Member as a Roll Over Payment;
- (d) the proceeds of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiaries;
- (e) such positive earnings as are determined by the Trustee in accordance with clauses 10.3, 10.4, 11.4 or 13.3;
- (f) such forfeited amounts as are allocated to but not paid directly to the Member pursuant to clause 12.4.

9.3 The following amounts shall be debited to the appropriate Member's Account:-

- (a) any amount paid out of the Fund in respect of the Member or Beneficiary as a Roll Over Payment;
- (b) any other Benefit payments made to or in respect of the Member or Beneficiary;
- (c) the costs of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary;
- (d) such negative earnings as shall be determined by the Trustee in accordance with clause 10.3, 10.4 or 13.3;
- (e) such amount as is forfeited pursuant to clause 12;
- (f) such of the costs or charges incurred pursuant to clause 20 or 28 as the Trustee shall determine;

(g) such proportion of any amount payable by way of Taxation in respect of Contributions to the Fund or earnings of the Fund credited to the Member's Account or arising as a result of a Roll Over Payment or otherwise as the Trustee may determine.

## 10. INCOME ACCOUNT

10.1 The Trustee shall establish an Income Account for the Fund to which shall, subject to clause 13, be credited with the following:-

- (a) all income and profits of the Fund each year;
- (b) any credits arising out of adjustments pursuant to clause 10.7;
- (c) any surplus arising from a valuation undertaken pursuant to clause 14; and
- (d) any amount transferred from the Equalisation Account.

10.2 The Income Account shall, subject to clause 13, be debited with the following:-

- (a) any loss sustained on the disposal of any investments of the Fund;
- (b) any costs or charges incurred pursuant to clause 20 or 28 which are not debited to a Member's Account;
- (c) any debits arising out of adjustments pursuant to clause 10.7;
- (d) any deficiency arising from a valuation undertaken pursuant to with clause 14;
- (e) such 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 which are not debited to a Member's Account as the Trustee may determine.

10.3 Following the debiting of the Income Account as specified in clause 10.2 above, at the end of each Fund Year the Trustee shall determine at its discretion the earning rate (which may be negative) for the Fund after taking into account any adjustments under clause 10.7 and such provision or reserve for future contingencies as the Trustee shall consider reasonable (called "the Fund Earning Rate"). The Trustee shall when required by the Law notify the Member of the basis of the calculation of the Fund Earning Rate. The Trustee shall then allocate to each Member's Account the earnings due calculated equitably in accordance with the Fund Earning Rate.

10.4 The amount distributed as the earnings of the Fund pursuant to clause 10.3 above shall be allocated to each Member's Account in proportion to the amount standing to the credit of that Member's Account at the beginning of the Fund Year in respect of which the distribution is being made, but the Trustee may make an appropriate adjustment for amounts (if any) credited or debited to the Member's Account since that date.

10.5 Any amount remaining in the Income Account after distribution of earnings pursuant to clause 10.1 and 10.2 shall be transferred to the Equalisation Account established pursuant to clause 11.

10.6 In the event that the Trustee is required to pay out a Benefit during the course of a Fund Year and is thus required to establish a Fund Earning Rate in respect of a portion of a Fund Year, such Fund Earning Rate for that period shall be determined by the Trustee on a basis which it considers equitable. The Trustee shall notify the Member of the basis of the calculation of the Fund Earning Rate.

10.7 In determining the amount standing to the credit of a Member's Account at the time a Benefit is calculated or becomes payable, the Trustee shall make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as it shall at its discretion consider equitable and in accordance with the requirements of the Commissioner and the Income Account shall be debited or credited accordingly.

## 11. EQUALISATION ACCOUNT

11.1 The Trustee shall have the power at any time to establish the Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account pursuant to clause 10.5.

11.2 Whilst any monies are held in the Equalisation Account they shall not form part of any Member's Account and any income derived by the Fund on the monies held in the Equalisation Account shall be credited to that Account and any taxation on that income shall be debited to that account.

11.3 The Equalisation Account shall be used by the Trustee to stabilise the investment earnings of the Fund and to provide for such future contingencies as the Trustee considers reasonable and the Trustee shall have the discretion to deal with the assets of the Equalisation Account as it shall see fit in the supplementation of the investment earnings of the Fund.



11.4 When a person ceases to be a Member the Trustee may take the advice of the Actuary in determining whether any amount should be transferred from the Equalisation Account to the Member's Account for purposes of the payment of a Benefit.

## 12. FORFEITURE OF BENEFITS

12.1 Subject to the Law, any Member, Former Member, Beneficiary or any of the Dependants or the legal personal representative of a deceased Member -

- (a) who assigns or charges or attempts to assign or charge any Benefit;
- (b) whose Benefits whether by his own act, operation of law, an order of any Court or otherwise become payable to or vested in any other person, government or other public authority;
- (c) who commits an act of bankruptcy;
- (d) who in the opinion of the Trustee is incapable of managing his affairs;
- (e) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits;
- (f) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee during a period of five years after a payment was last made to him by the Trustee,

shall forfeit entitlement to all his Benefits (other than a vested benefit) and, in the case of a Member, shall cease to be a Member of the Fund.

12.2 Benefits which have not yet become payable and which in the opinion of the Trustee exceed the Member's lump sum reasonable benefit limit for the purposes of the Law, may, in the discretion of the Trustee, be forfeited.

12.3 The Trustee shall hold upon trust and pay or apply any Benefits which have been forfeited for the benefit of the Beneficiary, the former Member or his Nominated Dependants or if no nomination is made to any one or more of them in such proportions amongst them as the Trustee may from time to time in its absolute discretion determine.

12.4 If the former Member or Beneficiary has died and if after reasonable enquiries no Dependants can be located the Trustee may pay the Benefit to his legal personal representative or if there is no legal personal representative to such Relatives of the deceased Member as appear to the Trustee to be entitled to share in his estate.

12.5 Any Benefits or amounts remaining in relation to a Member or Beneficiary referred to in clause 12.1 or 12.2 after the application of monies pursuant to clause 12.3 shall be applied for all or any of the following purposes:-

- (a) the provision of Benefits for other Members of the Fund or their Dependants or such one or more of them to the exclusion of the other or others of them as the Trustee shall determine; or
- (b) the provision for other Members of the Fund who have rights to receive benefits from the Fund or for the Dependants of additional benefits on a basis that is reasonable having regard to all the circumstances;
- or
- (c) to a separate account to be called the Equalisation Account established pursuant to clause 11.4; or
- (d) to repay to any Employer 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
- (e) for any other purposes approved from time to time by the Commissioner.

## 13. SPECIFIC INVESTMENTS

13.1 The Trustee may undertake to invest separately in respect of certain Members or Beneficiaries as determined by the Trustee from time to time.

13.2 The Trustee shall record on whose behalf the specific investments are made for the purposes of making up a Member's Account for each Class.

13.3 In that event, the income and profits (less losses) arising from specific investments and any costs or charges applicable to specific investments which are incurred pursuant to clauses 20 or 28 and any Taxation which is payable or may become payable in respect of specific investments shall not be allocated to the Income Account but to the particular Member's Account. The income and profits (less losses) arising from specific investments applicable to any particular Member's Account shall be credited directly to that Member's Account which shall also be debited directly with the appropriate proportion of any costs or charges applicable to specific investments which are incurred pursuant to clauses 20 or 28 and any Taxation which is payable or may become payable in respect of specific investments.

#### 14. VALUATION

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Law shall require (including but without limitation at the time of the payment of a Benefit to a Member), the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

#### 15. FUND RECORDS, AUDIT AND REPORTING TO MEMBERS

15.1 The Trustee shall -

- (a) keep account of all monies received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into the bank account of the Fund, all monies from time to time due to the Fund;
- (c) keep a record of all decisions made by the Trustee in respect of matters affecting the Fund;
- (d) keep a record of changes of changes of the Trustee and of directors of the Trustee and of all consents given by the Trustee or a director of the Trustee;
- (e) keep copies of reports given to all Members of the Fund;
- (f) keep appropriate records, books and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments of the Fund as required by the Law;
- (g) 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.

15.2 The accounts and statements of the Fund shall be audited by the Auditor annually or at such other time or times as shall be required by the Law.

15.3 The Trustee shall provide to Members and former Members of the Fund such information in relation to the conduct of the Fund and the Benefits payable from the Fund as shall be required by the Law.

15.4 A copy of this Deed shall be made available for inspection by any Member on the request of that Member.

#### 16. COVENANTS BY TRUSTEE

Notwithstanding anything contained in this Deed, the Trustee covenants -

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries of the Fund;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (1) that are held by the Trustee personally; or
  - (2) that are money or assets, as the case may be, of an Employer or an associate of an Employer of the Fund;
- (e) 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 but this shall not prevent the Trustee from engaging or authorizing persons to do acts or things on behalf of the Trustee;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund as required by the Law;
- (g) if there are any reserves of the Fund, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any prescribed information or any prescribed documents; and
- (i) comply with all applicable requirements of the Law.

#### 17. APPOINTMENT AND REMOVAL OF THE TRUSTEE

17.1 Subject to the Law, a majority of Members may by notice in writing or by Deed:-

- (a) remove any Trustee;
- (b) appoint an additional Trustee; or

(c) appoint a new Trustee in place of any Trustee who ceases to be a Trustee for any reason, AND any Member or Employer is eligible to be a Trustee.

17.2 The office of a Trustee shall become vacant and a Trustee shall cease to be a Trustee if the Trustee or any of them:-

- (a) resigns its office by notice in writing to the Members;
- (b) is removed from office by the Members pursuant to clause 17.1;
- (c) is disqualified from office by operation of law;
- (d) if being an individual, dies or is declared mentally ill;
- (e) becomes insolvent or is wound up;
- (f) becomes a disqualified person or is suspended or removed from office under the Law;
- (g) being a natural person, ceases to be a member of the Fund, unless the Law otherwise allows; or
- (h) being a company, ceases to have all its directors as members of the Fund, unless the Law otherwise allows.

17.3 If at any time there is no Trustee for any reason, any of the Members may act as the Trustee for the purpose only of convening a meeting of Members to appoint a new Trustee.

17.4 Notwithstanding the provisions of Section 7(2) of the Trustees Act, a sole Trustee may be appointed and act as a trustee irrespective of whether previously there had been more than one Trustee appointed AND a Trustee may be discharged from the office of trustee notwithstanding that a sole Trustee remains or is appointed where more than one trustee was originally appointed.

17.5 Notwithstanding anything contained in this Deed, the Trustee shall be such persons as are required by Law or such constitutional corporation having the directors required by the Law.

#### 18. LIABILITY OF TRUSTEE

Subject at all times to the provisions of the Law with the exception of fraud or wilful neglect or misconduct on the part of the Trustee or any director or officer of the Trustee, the Trustee shall not incur any liability for -

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) the act or default of any co-Trustee or of any Member;
- (c) the neglect or default of any agent employed in good faith by the Trustee;
- (d) any act or acts done or omitted to be done in conformity with any decisions of the Trustee;
- (e) any mistake or determination or erroneous decision that exposes the Trustee to any claim action suit or demand at the instance of any Member or of any claimant or of any person having at any time an interest in the Fund.

#### 19. INDEMNITY OF TRUSTEE

Each of the Trustee and any directors of the Trustee shall be indemnified out of the Fund against all liabilities incurred by them or any of them as a result of any action taken or omitted in good faith in the administration of the fund including 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 shall have a lien on and may use any part of the Fund for the purposes of this indemnity PROVIDED that this provision shall not exempt the Trustee from, or indemnify the Trustee against -

- (a) liability for breach of trust if the Trustee -
  - (1) fails to act honestly in a matter concerning the Fund; or
  - (2) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order under the Law,

AND this provision shall not indemnify a director of the Trustee against -

- (a) a liability that arises because the director -
  - (1) fails to act honestly in a matter concerning the Fund; or
  - (2) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligences that the director is required to exercise; or
- (b) the liability for a monetary penalty under a civil penalty order under the Law.

## 20. PROCEEDINGS OF TRUSTEE

20.1 Any determination by the Trustee in exercise of any power conferred on the Trustee by this Deed may be made -

- (a) in writing signed by all the Trustees;
- (b) by a resolution duly passed at a meeting of the Trustee;
- (c) in the case of a sole corporate Trustee, in the manner set out in clause 20.2; or
- (d) by telephone or other similar means if each Trustee has been given written or verbal notice of the meeting and each Trustee takes part and each is able to hear each of the other Trustees.

20.2 A corporate Trustee may exercise or concur in exercising any power conferred on the Trustee by a resolution of the company or of its directors.

20.3 The Trustee if at any time they are more than one shall act jointly.

## 21. APPOINTMENT OF AUDITOR AND OTHER OFFICERS

21.1 The Trustee shall appoint an auditor who shall be an approved auditor under the Law as the Auditor of the Fund.

21.2 The Trustee may if necessary appoint a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia as the Actuary. The Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or act upon the advice so provided.

21.3 The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more firms (individually called "the Manager") to act on behalf of the Trustee in regard to the purchase, sale, management, administration or retention of and the dealing in any or all of the investments of the Fund whether in the name of that Manager or otherwise.

21.4 The Trustee from time to time may appoint such other officers as it considers desirable for the proper management of the Fund.

## 22. TRUSTEE'S POWERS INCLUDING INVESTMENT

22.1 So much of the monies forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested as soon as practicable by and under the control and in the name of the Trustee in any of the following investments in Australia or elsewhere:-

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) any mortgage on freehold property, whether first or otherwise;
- (c) on deposit with or on loan to any bank, building society, credit co-operative or other financial institution on such terms and conditions as the Trustee shall determine;
- (d) on deposit with or on loan to any person (including a Member or an Employer) with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing;
- (e) the purchase or acquisition of shares or stock of any class or description or any debenture, note, bond, mortgage, option or other security in or of any person (including a Member or an Employer);
- (f) 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 howsoever arising;
- (g) the purchase or acquisition of any real or personal property from any person (including a Member or an Employer) and the improvement or extension of that property;
- (h) the purchase or acquisition of or subscription for any unit or sub-unit in any Unit Trust 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;
- (i) any other investments which the Trustee considers appropriate and which are acceptable to the Commissioner;

PROVIDED that the Trustee shall not -

- (a) make a loan to or provide any other financial assistance to a Member or a relative of a Member;
- (b) acquire an asset from a Member or the Relative of a Member; or

(c) breach the in-house asset rules or other relevant provisions contained in the Law; other than as permitted by the Law.

22.2 In addition to the powers conferred by law and otherwise granted by this Deed, the Trustee shall have the following powers:-

- (a) 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;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of the Members, former Members or Beneficiaries;
- (c) to set aside out of the Fund from time to time such sums of money as may in the Trustee's opinion be sufficient to meet any debt or obligation due or accruing;
- (d) to pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or securities;
- (e) to assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other securities modifying any rights, privileges or interest in relation to the Fund and to agree to and concur in any scheme of arrangement for the increase or reduction of its value or amount in the capital of any company in which any such shares stock or debentures forming any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
- (f) to vary or transpose any investments into or for any other investment or investments of any nature or kind authorised by this Deed and to vary the terms of any document or security;
- (g) to borrow money and to secure its repayment in any manner and upon any terms (including with or without security) which the Trustee may deem advisable in order to secure temporary borrowing permitted by section 67 of the Law;
- (h) subject to the Law to retain the services of professional or other advisers in relation to the management or administration 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 payment of fees to the advisers;
- (i) to insure or re-insure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company or superannuation fund;
- (j) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member, which Annuity shall be in the name of the Trustee or, if the Trustee so determines, in the name of the former Member;
- (k) to act in accordance with the Law notwithstanding that this Deed may not otherwise expressly authorize the Trustee to do so;
- (l) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, and preservation of the Fund and in the performance of its obligations under this Deed;
- (m) subject to the Law, to delegate to any person such terms as the Trustee thinks fit any of the powers or duties conferred upon it by this Deed and may deliver to that person any assets comprised in the Fund and from time to time may revoke that delegation or vary its terms,

PROVIDED that nothing in this Deed is to be construed as allowing the exercise of the powers of the Trustee to be under the direction of any other person unless permitted by the Law or the exercise of a discretion of the Trustee to be made by any other person.

22.3 Subject to the Law, no Trustee or a director of a Trustee (in this clause called "director") shall be disqualified by his office from contracting with the Trustee on behalf of the Fund, nor shall that contract or any contract entered into by or on behalf of the Fund in which any Trustee or director shall be in any way interested be avoided, nor shall any Trustee or director so contracting or being so interested be liable to account to the Fund for any profit realised by that contract by reason only of the Trustee or a director holding that office or of the fiduciary relationship thereby established.

22.4 Subject to the Law, a Trustee or a Director may vote in respect of any contract or arrangement in which he is interested, and may be counted for the purpose of any resolution regarding that contract or arrangement in the quorum present at the meeting and may participate in the execution of any instrument by or on behalf of the Trustee.

## 23. POLICIES OF INSURANCE

23.1 The Trustee exercising its power contained in clause 22 may effect separate Policies and may secure a Member's Benefits by means of an individual Policy or Policies or a group Policy or Policies or by means of life cover providing benefits payable to the Trustee on the death or disablement of the relevant Member (and the term "Policy" includes a Policy for or including such life cover) or partly in one way and partly in another. The Trustee shall not be responsible or liable to the Member, the Member's legal personal representative or his Dependants should the Trustee determine not to exercise that power and effect such insurance PROVIDED that the Member may

direct the Trustee to effect separate Policies or separate life cover and may further specify the type of Policy to be effected.

23.2 Any monies received by the Trustee being the proceeds of any Policy (whether or not the event giving rise to the payment occurs after the Member has retired from Gainful Employment) shall be paid or applied by the Trustee as if it were part of the Member's Benefit derived from the Contributions to the Member's Account from which the premiums were paid and shall be dealt with as provided in this Deed.

23.3 If in connection with any Policy effected by the Trustee against death or disablement, an insurance company refuses to insure or seeks to impose any limitations or special conditions in respect of a Member, notwithstanding the Benefits payable pursuant to this Deed in respect of any of these contingencies, the Trustee after obtaining the advice of the Actuary (if any) may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member as it shall determine.

#### 24. CONTRIBUTIONS TO FUND

24.1 Each Member may contribute to the Fund in respect to the Member such amounts as the Member with the approval of the Trustee may agree from time to time.

24.2 An Employer may contribute to the Fund in respect of a Member in its employment such amount as the Employer may from time to time agree with the Trustee.

24.3 Any other person authorised by the Law may contribute to the Fund in respect to a Member such amount as the person may from time to time agree with the Trustee.

24.4 No contribution shall be accepted by the Trustee where the acceptance of the contribution may prejudice the concessional tax treatment of the Fund or breaches the Law.

24.5 Contributions may be made to the Fund -  
 (a) in respect of a Member for the purposes of the Superannuation Guarantee (Administration) Act so that the Superannuation Guarantee charge is not payable by the Employer making the contributions; or  
 (b) as a payment of the shortfall component under the Superannuation Guarantee (Administration) Act in relation to the Member.

#### 25. SPOUSE CONTRIBUTIONS

If the Law allows a Member may request that contributions to the Fund in respect of the Member be split between the Member and the Member's spouse and the Trustee may give effect to that request by admitting the spouse as a Member and crediting contributions to that person.

#### 26. CREATION OF INTEREST FOR SPOUSE OF A MEMBER

The Trustee may, at the request of a spouse or former spouse of a Member, create an interest in the Fund for that person for the amount payable to that person under an agreement or Court order in accordance with the Family Law Act or transfer that amount to another superannuation fund.

#### 27. REDUCTION OF BENEFIT UNDER FAMILY LAW ACT

The Trustee may deduct from a Member's benefit the amount payable to the Member's spouse or former spouse under an agreement or Court order made in accordance with the Family Law Act. The amount so deducted will be applied for the benefit of the spouse or former spouse.

#### 28. ADMINISTRATION COSTS

All expenses incurred in connection with the preparation, establishment, administration and winding up of the Fund shall be borne and paid by the Trustee out of the Fund and the Trustee shall indemnify any Member in respect of any costs which have been incurred by the Member in connection with the Fund PROVIDED that no Trustee shall receive any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.

29. NOTIFICATION OF OTHER FUNDS

- 29.1 Every Member of the Fund shall notify the Trustee -
- (a) if he becomes a Member of any other Complying Superannuation Fund (called "the Other Fund") or becomes entitled to benefits from an Approved Deposit Fund or by way of an Annuity;
  - (b) if, being a Member of the Other Fund or being entitled to the other benefits, he ceases to be a Member of the Other Fund or entitled to the other benefits; or
  - (c) if he ceases to be Gainfully Employed such that he is no longer able to contribute to the Fund.

29.2 Where pursuant to clause 29.1, the Member is required to make a disclosure to the Trustee such disclosure shall be in writing setting out all benefits which at that time have been provided, are being provided or may at some future time be provided for the Member or his Dependants together with such additional information as is relevant to the notification.

30. TRANSFERS FROM OTHER FUNDS

30.1 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 or Approved Deposit Fund or Annuity the whole or any part of the assets of the superannuation arrangement with the intent of preserving the rights entitlements and interests of any of the existing members of such superannuation arrangement at the time of takeover or acquisition.

30.2 The Trustee shall hold the assets as part of the Fund and reflect such rights entitlements and interests in the particular Member's Account as it shall determine and, if the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date he became a member of the original fund from which the benefit was transferred.

31. TRANSFERS TO OTHER FUNDS

31.1 Where a Member joins or is eligible to join any other Complying Superannuation Fund (called "the Other Fund") and the Member requests that the whole or part of his 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 such amount (called "the Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Member in the Fund at the time of the request for the transfer as the Member has requested be transferred.

31.2 The Trustee may require that the Member or former Member be entitled to such rights in the Other Fund as it shall agree with the trustee of the Other Fund are just and equitable and, in particular, may require that such portion only of the Transferred Amount as it shall determine is to be regarded in the Other Fund as being attributable to Contributions by the Member or former Member.

31.3 The Benefit of a Member in respect of whom a Transferred Amount is paid under this clause shall be reduced by the amount of the Transferred Amount and the receipt of the Transferred Amount by the proper officer of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect of that amount and, except as provided in clause 31.2, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

31.4 Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund to the extent of his Account he shall make a request to the Trustee in writing nominating the institution to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification together with such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner.

31.5 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 shall ensure that the provisions of the Other Fund provide that if the Member wishes to leave the Other Fund the amount of the Preserved Benefit must be preserved in accordance with the requirements of the Law.

32. BENEFITS PAYABLE ON RETIREMENT

32.1 Where a Member :-

- (a) retires from Gainful Employment at or after the age of 55 years;
- (b) retires from his employment with an Employer at or after the Normal Retirement Age;
- (c) reaches the age of 65 years; or
- (d) fulfils the criteria of the Commissioner for the payment of Benefits notwithstanding that the Member continues in employment,

the Member shall be entitled to be paid the amount standing to the credit of the Member's Account as at the date of payment.

32.2 Where a Member is eligible for payment of a Benefit in accordance with the preceding sub-clause and wishes to have the whole or any part of his Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 43 and 44.

### 33. RETIREMENT PRIOR TO NORMAL RETIREMENT AGE

33.1 Subject to the Law, where a Member ceases to be Gainfully Employed prior to the Normal Retirement Age for any reason other than death or permanent disablement, the Trustee shall pay to the Member the amount standing to the credit of the Member's Account as at the date of payment.

33.2 Where a Member is eligible for payment of a Benefit in accordance with the above sub-clauses and wishes to have the whole or any part of the Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 43 and 44.

### 34. SEGREGATION OF PENSION ASSETS

In relation to each Pension payable to a Member, the Trustee may segregate or set apart the assets which represent the Pension payable to the Member or a Nominated Dependant for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of the Pension as those liabilities fall due for payment.

### 35. FINANCIAL HARDSHIP

Subject to the Law, the Trustee may pay a Member the whole or any part of the amount standing to the credit of the Member's Account as at the date of payment if the Trustee is satisfied that the Member would suffer financial hardship if the whole or part of the Benefit was not paid to the Member.

### 36. TEMPORARY DISABLEMENT

Where a Member becomes in the opinion of the Trustee temporarily disabled (but not Permanently Disabled) as defined in the circumstances provided by the Law and a Policy has been effected by the Trustee in respect of the Member which covers total disablement, the Member shall be paid (to the extent acceptable under the Law ) 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.

### 37. PERMANENT DISABLEMENT

37.1 Where a Member becomes in the opinion of the Trustee permanently disabled in the circumstances provided by the Law, that Member shall be paid by the Trustee a lump sum Benefit equal to the full amount standing to the credit of the Member's Account as at the date of his payment.

37.2 Where a Member is eligible for payment of a Benefit in accordance with the preceding subclause and wishes to have the whole or any part of the Benefit payable as a Pension, a Pension shall be paid in accordance with the provisions of clauses 43 and 44.

### 38. BENEFITS PAYABLE ON DEATH

38.1 On the death of a Member while he is still a Member prior to the Normal Retirement Age, the Trustee shall pay a lump sum Benefit equal to the total of the amounts standing to the credit of the Member's Account as at the date of payment to such persons in accordance with the provisions of this clause.

38.2 On the death of a former Member or a Beneficiary who is at the time of his death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may subject to the Law pay to the Dependents of the former



Member or to the estate of the Member in such proportions as it shall in its absolute discretion determine the balance of the Member's Account which has not been paid out by way of a Pension during his lifetime.

38.3 Where there is a valid binding nomination the Trustee shall make payment to the nominated Dependant or the estate of the deceased member in accordance with that binding nomination to the extent the valid binding nomination is in place.

38.4 Where this Deed provides for the payment of a Benefit on the death of a Member or former Member or Beneficiary leaving Dependents, the Trustee shall pay or apply the Benefit to or for the benefit of the Nominated Dependant of the former Member but in the event that there is no Nominated Dependant or the Trustee considers it inappropriate to pay the Benefit to any Nominated Dependant, the Trustee shall pay or apply the Benefit to or for the benefit of such one or more of the former Member's Dependents or the legal personal representative of the Member in the manner, at the times, and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine.

38.5 Where this Deed provides for the payment of a Benefit on the death of a Member or former Member leaving no Dependents, the Trustee shall pay the Benefit to his legal personal representative, or if there is no legal personal representative, to or for the benefit of such Relatives of the former Member as appear to the Trustee to be entitled to share in his estate, provided that if there be no Relatives and subject to the requirements of the Law in respect to Vested Benefits, the Benefit shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with clause 12.

38.6 For the purposes of clause 38.1 the Trustee shall take account of any nomination of Nominated Dependents made by the Member, but shall not be bound by it, unless the nomination is in the form of a binding direction given in accordance with the requirements of the Law, in which case, the Trustee will pay the benefit in accordance with that direction, if it is still current and valid at the date of the Member's death to the extent the nomination is valid and binding.

#### 39. AMOUNTS OF INSTALMENTS OF PENSION

39.1 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 shall be equal to such amount as the Trustee considers appropriate taking into account such amount as shall be acceptable under the Law and the amount standing to the credit of the Member's Account (or the amount represented by the proportion of the Accumulation Account to which the Member is entitled, if less).

39.2 Any Pension payable pursuant to clause 39.1 may, if allowed by the Law, be increased or decreased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate.

39.3 On the death of a former Member who is at the time of his death still in receipt of a Pension pursuant to the provisions of this Deed, the Trustee may pay a Pension not exceeding such amount as shall be acceptable under the Law to the Spouse or to the legal personal representative of the Member. If the former Member and all the Beneficiaries to whom the Pension is payable die whilst there is still an amount standing to the credit of the Member's Account, the balance of the Member's Account shall be dealt with in accordance with the provisions of clause 12.

#### 40. PERSONS TO WHOM BENEFITS ARE PAYABLE

40.1 Subject to the provisions of this Deed, the Trustee shall pay the Benefits referred to in this Deed as follows -

(a) Where the Benefit or balance of the Benefit is payable following the death of the Member or former Member, the payment shall, subject to paragraph (d), be made in accordance with the provisions of clause 38.

(b) Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of his entitlement in the Fund he shall make a request to the Trustee in writing nominating the institution to which the payment is to be made, and the amount to be applied as the Roll Over Payment. The Member or former Member shall additionally complete and execute a Roll Over Payment Notification or such other documents as shall be required to enable the Roll Over Payment to be effected and for it to be recorded by the Commissioner PROVIDED that in circumstances acceptable under the Law the Trustee may effect a Roll Over Payment without the consent of the Member or former Member.

(c) Where the Benefit or balance of the Benefit is payable following the disablement of a Member, it shall be paid to the Member or alternatively, in the event of the death of the Member, to the Dependents of the Member.

- (d) Where the Benefit or balance of the Benefit is payable as a reversionary Pension, it shall be paid in accordance with the provisions of clause 39.3.
- (e) 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 shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.
- (f) In all other cases the Benefit shall be paid to the Member.

40.2 Notwithstanding any provision of this Deed:-

- (a) no Member or his Dependants shall be entitled to receive any Benefit under this Deed prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances acceptable under the Law;
- (b) any Pension or Annuity that a Member or the Dependants of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or his Dependants have a right to receive from the Fund are to be paid, not later than such time as is acceptable under the Law.

41. RETENTION OF BENEFIT IN FUND

At the request of a Member or Beneficiary, the Trustee may at its absolute discretion retain all or part of any Benefit payable under this Deed until -

- (a) the Member or Beneficiary requests that it be paid to him;
- (b) the Member dies in which event it will be paid pursuant to clause 40; or
- (c) the Member attains the age of 75 years or his Normal Retirement Age whichever is earlier,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of the Account of that Member or Beneficiary as at the date of payment PROVIDED that all Benefits must be paid in accordance with the Law.

42. LIMITATION OF BENEFITS

Notwithstanding any other provision of this Deed, the Trustee shall not pay any Benefits to Members, their Dependants or Beneficiaries where the payment would breach the Law or prevent the Fund from qualifying for concessional taxation status AND in particular no Preserved Payment Benefit shall be paid to a Member or his Dependants until retirement of the Member from Gainful Employment or the attaining of the age of 55 years whichever is the later, his earlier death or in other circumstances and in a form allowed under the Law.

43. CONVERSION OF LUMP SUM TO PENSION

43.1 On the written application of a Member or a Beneficiary, the Trustee may pay to the Member or the Beneficiary from the Fund a Pension in accordance with the provisions of clause 44 in lieu of the whole or any portion of any lump sum Benefit which is otherwise payable to the Member or the Beneficiary.

43.2 The amount of any Pension payable pursuant to this clause shall be determined by the Trustee after obtaining the advice of the Actuary.

43.3 The Trustee shall retain the services of an Actuary and shall comply with all reporting obligations of the Law.

44. PENSION PAYMENT CONDITIONS

44.1 Where any Benefit under the Fund is payable in the form of a Pension, the Pension may be either an allocated pension, a lifetime pension, a fixed term pension, a market linked pension or any other type of pension payable in such manner and on such conditions as the Trustee shall determine and the Law shall allow, and shall be payable by instalments which may be equal or unequal and on such dates as the Trustee determines after consultation with the person to whom the Pension is payable.

44.2 All or a part of a Pension payable to or in respect of a Member shall (except to the extent that it has been provided by the purchase of an Annuity) be payable from the Member's Account, and where so payable it will be payable only to the extent the Member's Account will permit.

44.3 The Trustee may provide a pension payable under this Deed by applying the Benefit to the purchase, in the ownership of either the Trustee or the Member, of an annuity which complies with the requirements of the Law.

44.4 The Trustee may, in its absolute discretion, agree with a Member or a Beneficiary to vary the amount of a pension payable under this Deed and the contingencies on which the pension depends provided that the value of the

Benefit is unaltered and the variation does not breach the Law.

44.5 The conditions set forth in the Schedule shall govern the payment of lifetime pensions and fixed term pensions.

45. COMMUTATION OF PENSION

45.1 On the written application of a Member or a Beneficiary, the Trustee shall commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to the Member or the Beneficiary PROVIDED that -

- (a) the commutation of the Benefit is acceptable under the Law;
- (b) the amount of the commuted Benefit including the value of any remaining Pension shall be subject to the provisions of clause 42;
- (c) any amount in excess of the amount allowable under clause 30 shall be dealt with as required by the Commissioner;
- (d) where any amount remains in the Fund after all Members' entitlements have been paid out the amount so remaining shall be dealt with in accordance with clause 12 as a forfeited Benefit;
- (e) in the opinion of the Trustee, the commutation would not be to the disadvantage of the Fund;
- (f) in respect of lifetime pensions and fixed term pensions the Trustee may only agree to the commutation of the pension in the circumstances and manner permitted by the Regulations and by section 9A of the Social Security Act 1991 or any replacement legislation in relation to lifetime pensions and by section 9B of the Social Security Act 1991 or any replacement legislation in relation to fixed term pensions.

45.2 The Trustee after obtaining the advice of the Actuary and in accordance with the provisions of this Deed shall determine the amount of the lump sum payable in respect of the Pension being commuted and shall comply with any reporting obligations of the Law.

46. TRANSFER OF BENEFITS IN SPECIE

46.1 Where a Member and his Dependants are entitled to be paid or the Trustee in its discretion determines to pay to a Member the whole or any part of the Member's Account which includes any interest in a Policy of any kind on the life of the Member, the Trustee may in its absolute discretion and in lieu of surrendering the Policy assign it to such Member or to his Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of the Policy as at the date of assignment shall be debited as a payment to the Member in the assessment of his entitlement as reflected by the Member's Account, and the Trustee shall not be liable to pay any premiums thereafter becoming due and owing under the Policy as from the date of the assignment.

46.2 The Trustee may with the consent of a Member or Beneficiary to whom a Benefit is payable transfer assets of the Fund of equivalent value to the Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed PROVIDED that the transfer will not cause the Fund to fail to satisfy the Law.

46.3 Subject to the provisions of clause 13 notwithstanding any other provision of this Deed, no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst the asset or assets remain subject to the provisions of this Deed.

47. PAYMENT OF TAX ON BENEFITS AND CONTRIBUTIONS

47.1 The Trustee or with the agreement of the Trustee, an insurance company or other appropriate organisation, shall deduct from any Benefit payable to any Member pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it and shall pay the deduction to the relevant authorities. A Member or Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation.

47.2 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. Where the Taxation has been deducted from a Contribution, a reference to the crediting of a Contribution to a Member's Account means the crediting of the Contribution after the deduction of such Taxation.

48. TERMINATION OF EMPLOYER'S CONTRIBUTIONS

48.1 Where an Employer has been admitted to make Contributions to the Fund pursuant to clause 7, its

contributions to the Fund shall terminate and the Employer shall cease to be an Employer (including a Principal Employer or a Participating Employer, if appropriate) for the purposes of the Fund if the Employer -

- (a) enters into liquidation or is placed in receivership; or
- (b) terminates its Contributions to the Fund; or
- (c) gives notice to the Trustee of its intention to cease to be an Employer.

48.2 Where an Employer has terminated its Contributions in accordance with clause 48.1, the Trustee shall continue to hold the interests of the Member in accordance with the provisions of this Deed.

48.3 In the event that an Employer is admitted to make Contributions to the Fund on behalf of a Member, and that Employer is reconstructed, goes into liquidation for the purposes of reconstruction, is merged or amalgamated with another Employer, or if it disposes of all or any of its undertaking, the Trustee may enter into a deed an arrangement with the successor to that Employer with the object of that successor continuing to act as an Employer of the Fund and to make Contributions on behalf of Members.

#### 49. SUBSTITUTION OF PRINCIPAL EMPLOYER

If the Principal Employer (if any) is for any reason unable or unwilling to continue as a Principal Employer the Trustees may appoint by resolution or by deed any person that is willing to continue as and be a contributor to the Fund to take the place of the Principal Employer and that person shall become Principal Employer for the purposes of the Trust Deed as if the person had been an original party to the Trust Deed.

#### 50. VARIATION OF TRUST DEED

50.1 Subject to this clause, the Trustee may add to, amend, alter, modify or vary (called "the Variation") any trust, power or provision in this Deed from time to time by written resolution of the Trustee or by Deed executed by the Trustee.

50.2 The Trustee shall as soon as practicable advise the Members of the Fund of the nature and purpose of the Variation and the effect (if any) on their entitlements.

50.3 No Variation shall have the effect of 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 the Members of the Fund or the written approval of the Commissioner.

50.4 No variation shall impose any increase in liability on any Employer or any Member to contribute to the Fund without that Employer's or Member's consent.

50.5 The provisions of this clause shall be subject to the Law and in particular section 60 of the Act.

#### 51. DISSOLUTION OF THE FUND

51.1 When the last remaining Member ceases to be a Member of the Fund, the Fund shall be wound up.

51.2 If any amount remains in the Fund after all entitlements of former Members or their Dependants have been paid, the amount so remaining shall be paid to the former Members or their Dependants in such proportions as the Trustee considers equitable subject to the Law.

---

APPLICATION FOR MEMBERSHIP

To: The Trustee,

I hereby apply for admission to membership of the Fund.

I agree and undertake as follows:

- (a) I understand the terms and conditions of the Trust Deed and I acknowledge I have been informed of my rights and the rights of my Dependants pursuant to the Deed.
- (b) I will be bound by the provisions of the Deed governing the Fund.
- (c) I am not nor have been a member of any superannuation fund nor have an interest in any Approved Deposit Fund or Rollover Annuity other than as disclosed on the reverse of this Application.
- (d) 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 Roll Over Annuity.
- (e) I will notify the Trustee if at any time I cease to be Gainfully Employed as defined in the Deed.
- (f) I consent to the Trustee acting as Trustee of the Fund.
- (g) In the event of my death, I nominate the following persons as my Nominated Dependants:-  
(Note - a nomination is not necessary and if made must be reviewed from time to time.)

NAME	ADDRESS	RELATIONSHIP	PERCENTAGE OF TOTAL BENEFIT OR FIXED AMOUNT

Dated the 24<sup>TH</sup> day of MAY 2004

Name: Jacqueline Mary Furby

Address: 7 WILKINSON PLACE  
NORTH BEACH

Signature: Jacqueline Furby

SCHEDULE

- 1 Lifetime Pensions
- (a) Pension Complies with Regulations and Social Security Act
- (i) A lifetime pension shall be paid, at least, annually throughout the life of the Member.
- (ii) A lifetime pension shall comply with the requirements of the Regulations and with the requirements of section 9A of the Social Security Act, 1991 or any replacement legislation.
- (b) Pension Amount
- Subject to meeting the requirements of the Regulations and of section 9A of the Social Security Act, 1991 (or any replacement legislation) in relation to the amount of pension payments, the annual amount of a lifetime pension shall be determined by the Trustee and shall be paid by instalments of such amounts and on such dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.
- (c) Indexation
- Subject to meeting the requirements of the Regulations of section 9A of the Social Security Act 1991 (or any replacement legislation) in relation to pension increases, the amount of a lifetime pension shall be increased annually in the manner (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.
- (d) Commutation of Pension
- (i) A person in receipt of or entitled to a lifetime pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (ii) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by the Regulations and by section 9A of the Social Security Act 1991 (or any replacement legislation).
- (iii) If the pension is commuted under this Rule 5.4(d), the amount payable shall not be greater than the benefit that was payable before the commutation.
- (e) Pension Payable to Reversionary Pensioner on Death of Member
- (i) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of the Member, a pension shall be paid to a reversionary pensioner or pensioners.
- (ii) The amount of the reversionary pension shall be the amount agreed on by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.
- (iii) The reversionary pension shall only be paid for the period and on the terms permitted by the Regulations and by section 9A of the Social Security Act 1991 (or any replacement legislation).
- (f) Payment to Reversionary Pensioner or Legal Personal Representative
- (i) Subject to 1(e) above in the event of the death of a Member entitled to a lifetime pension, within ten years after the commencement date of the pension, the Trustee shall pay to a reversionary pensioner of the deceased Member or, if there is not a surviving reversionary pensioner, to the deceased Member's legal personal representative, an amount equal to the total payments that the Member would have received, had the Member not died, from the date of the death until ten years after the commencement date of the pension.
- (ii) Subject to clause 1(e) above in the event of the death of a Member entitled to a lifetime pension, within ten years after the commencement date of the pension, if there is a reversionary pensioner who dies within that ten year period, the Trustee shall pay to the reversionary pensioner's legal personal representative an amount determined by the Trustee not exceeding the difference between:
- (A) the sum of the amounts that would have been payable to the deceased reversionary pensioner in the period of ten years; or
- (B) the sum of the amounts paid to the deceased reversionary pensioner.
- (iii) If a legal personal representative of a deceased Member or reversionary pensioner is not appointed within three years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in the manner it determines, subject to meeting any requirements of the Regulations.
- (iv) No benefit is payable in respect of a Member who dies more than ten years after the commencement date of a pension if the deceased Member does not have a reversionary pensioner to whom a pension is paid or payable under 1(e) above. Any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in the manner it determines, subject to meeting any requirements of the Regulations.

2. Fixed Term Pensions(a) Pension Complies with Regulations and Social Security Act

(i) A fixed term pension shall be paid, at least, annually for a fixed term agreed on by the Member and the Trustee.

(ii) A fixed term pension shall comply with the requirements of the Regulations and with the requirements of section 9B of the Social Security Act, 1991 or any replacement legislation.

(b) Pension Amount

Subject to meeting the requirements of the Regulations and of section 9B of the Social Security Act 1991 (or any replacement legislation) in relation to the amount of pension payments, the annual amount of a fixed term pension shall be determined by the Trustee and shall be paid by instalments of such amounts and on such dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

(c) Indexation

Subject to meeting the requirements of the Regulations and of section 9B of the Social Security Act 1991 (or any replacement legislation) in relation to pension increases, the amount of a fixed term pension shall be increased annually in the manner (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

(d) Commutation of Pension

(i) A person in receipt of or entitled to a fixed term pension may make a written application to the Trustee requesting the Trustee to commute part of all of the pension to a lump sum payment.

(ii) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amounts calculated by the Trustee, but only in the circumstances and manner permitted by the Regulations and by section 9B of the Social Security Act 1991 (or any replacement legislation).

(iii) If the pension is commuted under this clause 2(d) the amount payable shall not be greater than the benefit that was payable before the commutation.

(e) Pension Payable to Reversionary Pensioner on Death of Member

(i) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, in the event of the death of the Member, a pension shall be paid to a reversionary pensioner or pensioners.

(ii) The total amount of the reversionary pension or pensions shall be the amount that would have been payable to the deceased Member, had the deceased Member not died, apportioned between the reversionary pensioners on the basis agreed by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.

(f) Payment to Legal Personal Representative

(i) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that in the event of the death of a Member and if there is not a surviving reversionary pensioner, the Trustee shall pay to the deceased Member's legal personal representative, an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute such payments to a lump sum payment of an amount calculated by the Trustee.

(ii) If a pension is paid to a reversionary pensioner who dies within the fixed term for which the pension is payable, the Trustee may either pay to another reversionary pensioner or to the deceased Member's legal personal representative an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute such payments to a lump sum payment of an amount calculated by the Trustee.

(iii) If a legal personal representative of a deceased Member (to whom an amount is payable under paragraph 2(f)(i) above or 2(f)(ii) above is not appointed within three years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the pension shall be treated as forfeited benefits and applied by the Trustee in the manner it determines, subject to meeting any requirements of the Regulations.

THE SCHEDULE

EMPLOYER:

ROBIN M HALBERT (ABN 44 918 476 373) of 1<sup>st</sup> Floor, 100 Outram Street, West Perth, Western Australia.

EXECUTED on the 24<sup>TH</sup> day of MAY 2004.

SIGNED by  
JACQUELINE MARY FURBY  
in the presence of

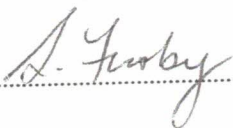
)  
)  
)

  
.....

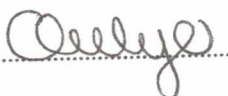
Witness

SIGNED by  
SUZANNE LYNDA FURBY  
in the presence of

)  
)  
)

  
.....

Witness

  
.....