

**THE NP & JM BURGESS SUPERANNUATION FUND  
TRUST DEED**

Dated: 20<sup>TH</sup> JUNE 1997

PARTIES

**TRALEE PASTORAL COMPANY PTY LTD ACN 008 708 601**

**Deacons Graham & James**

Perth

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THIS DEED is made on the date specified in Schedule A hereto as the Date of the Deed.

BY: The Person(s) named and described in Schedule A as the trustee (the "Trustee")

**INTRODUCTION:**

- A. It is the desire of the Trustee to establish and maintain a superannuation fund for the primary purpose of providing retiring allowances and other benefits for such employed or retired persons as shall be eligible to become members of the Fund and in the event of their death for their Dependents.
- B. The Trustee has agreed to act as trustee of the Fund in accordance with the provisions of this Trust Deed.
- C. The Fund is established and maintained for the primary purpose of providing superannuation benefits for Members (as herein defined) in the event of their retirement or in other circumstances acceptable to the ISC or for the Dependents of Members in the event of the death of a Member.

**IT IS AGREED:**

WESTERN AUSTRALIA STAMP DUTY  
25-JUN-97 001016220-003  
DUP \$ \*\*\*\*\* 2.00  
O/S \$ \*\*\*\*\*5.00

**1. The Fund**

**1.1 Establishment**

The Trustee establishes a fund (herein called the "Fund") which is known by the name described in Schedule A and which commences on the Date of Establishment specified in Schedule A.

**1.2 Purpose**

The Fund is to be maintained for the primary purpose of providing superannuation benefits for the Members in the event of their retirement or for such other purposes or circumstances acceptable to the ISC or for the Dependents of the Members in the event of the death of a Member. The Fund must therefore have a corporate trustee.

**2. Covenants to Perform**

**2.1 General**

The Trustee for itself and its successors and assigns covenants and undertakes to perform and observe the covenants, trusts, and conditions of this Deed so far as the same are to be observed by the Trustee.

**2.2 The Requirements**

The Trustee covenants to comply with the Requirements.

**3. Interpretation - Definitions**

**3.1** In this Deed unless the context otherwise requires:

"Accumulation Account" means the account established on behalf of each Member pursuant to clause 8.1;

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

"Annuity" means an eligible annuity as defined in Section 27A(l) of the ITAA;

**"Approved Deposit Fund"** means an approved deposit fund as defined in Section 27A(l) of the ITAA;

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

**"Beneficiary"** means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;

**"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;

**"Class"** means Membership Class;

**"Commissioner"** means the Insurance and Superannuation Commissioner;

**"Contributions"** means payments to the Fund by Members and Employers and include payments of a shortfall component pursuant to the SGC;

**"Deed"** means this Deed and any authorised variations thereto;

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

- (1) the Spouse of a Member or the widow or widower of a deceased Member; or,
- (2) 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,
- (3) 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 directors for the time being, of the Trustee, or as the case requires, of an Employer;

**"Employee"** means a person in the employment of an Employer (or an associate as defined in section 26AAB of the ITAA) and includes a Director;

**"Employer"** means any employer who contributes to the Fund for a Member and in relation to an Employee or Member means the Employer of such Employee or Member;

**"Equalisation Account"** shall mean the account established pursuant to clause 8.13 for the purposes of stabilising the investment earnings of the Fund;

**"Fund Year"** means a period of twelve months ending on the 30th 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 or reward;

**"Independent Director"** or **"Independent Trustee"** means as those terms are defined in section 10 of SIS;

**"ISC"** means the Insurance and Superannuation Commission;

**"ITAA"** means the Income Tax Assessment Act 1936 as amended from time to time and the regulations thereunder;

**"Lump Sum"** means the amount of Benefit, other than a Pension, payable to or in respect of a Member;

**"Member"** means a person (including an Employee) eligible to join a superannuation fund pursuant to the Requirements and who has been accepted by the Trustee as a



member of the Fund and has not ceased to be a Member pursuant to clause 17.11 and includes a Pensioner;

**"Member's Contributions"** means the amounts contributed pursuant to clause 19.3 or transferred in respect of a Member pursuant to clause 21.1;

**"Membership Period"** in relation to a Member means:

- (1) the continuous period expressed in years and any fraction of a year that the Member has been a member of the Fund;
- (2) any additional Membership Period from when the Trustee has determined to admit the Member pursuant to clause 17.4; and
- (3) less any reduction the Trustee may determine for extended leave.

**"Minimum Benefits"** means the minimum benefits which are required to be applied in respect of a member pursuant to Part 5 of the SIS Regulations;

**"Nominated Dependant"** means a Dependant nominated by a Member as such and includes a reversionary beneficiary of a Pension;

**"Normal Retirement Age"** means the age of 65 years for both males and females or such other age as is acceptable to the ISC and as the Trustee with the consent of the Member shall determine;

**"Other Fund"** means any other superannuation fund, approved deposit fund or rollover fund approved by the ISC for the purposes of the Requirements;

**"Pension"** means, as the context requires:

- (1) a Benefit payable by instalments and **"Pensioner"** means a person receiving a Pension;
- (2) the instalment payable to or in respect of a Pensioner pursuant to clause 28 of this Deed.

**"Permanent Incapacity or Permanent Invalidity"** has the same meaning as in the Requirements or as prescribed by the ISC provided that where any part of a benefit payable in that event is insured, the definition contained in the policy of insurance shall apply;

**"Reasonable Benefit Limits"** or **"RBL"** means the reasonable benefit limits calculated pursuant to the Requirements;

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

- (1) 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,
- (2) the Spouse of any person specified in sub-clause (1);

**"Requirements"** means such of the provisions of SIS, SGC, ITAA or other legislation applicable to superannuation funds which may be enacted after the date of this Deed the compliance with which is either mandatory or not including any requirements of the Commissioner or the Commissioner of Taxation or any Minister of the Crown whether or not having the force of law relative to the operation or administration of the Fund;

**"Restricted Benefit"** means a benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;

**"Rollover Payment"** means any payment made by or received by the Trustee pursuant to section 27D of the ITAA;

**"SGC"** means the Superannuation Guarantee Charge Act 1992, the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Administration) Regulations as the context requires.

**"SIS"** means the Superannuation Industry (Supervision) Act 1993 and the SIS Regulations;

**"SIS Regulations"** means the Superannuation Industry (Supervision) Regulations;

**"Spouse"** means:

- (1) a person legally married at any time to a Member; or,
- (2) a person not legally married to the Member who, in the opinion of the Trustee, lives with the Member 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:

- (3) 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
- (4) if more than one person is so deemed by the Trustee 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 having regard to the period during which each person has been the Spouse of the deceased member and such other matters as the Trustee considers relevant,

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

**"Trustee"** means the Trustee or trustee for the time being of the Fund whether original, additional or substituted.

#### 4. Interpretation - General

##### 4.1 Headings

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

##### 4.2 Capitals

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.

##### 4.3 Statutes

- (1) References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such statutory enactment.

- (2) Any reference herein 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.

#### **4.4 Gender etc**

In this deed unless the context otherwise requires:

- (1) The singular shall include the plural and vice versa.
- (2) The use of one gender shall include all other genders.
- (3) Representations agreements covenants obligations or warranties, by more than one person shall include those persons jointly and each of them severally.
- (4) Person means and includes a natural person, firm or corporation.
- (5) Any word or expression defined in the ITAA and/or the Requirements which is used but not defined herein shall have the meaning ascribed to such word or expression in the ITAA and/or the Requirements.

#### **4.5 Recitals**

The recitals as hereinbefore set out shall be incorporated in and shall form part of this deed.

#### **4.6 Severability**

If any provision or part of a provision of this deed is or becomes void, invalid or unenforceable for any reason the same shall be severed from this deed but the remainder of this deed shall continue in full force and effect.

#### **4.7 Notice etc**

- (1) Any demand notice consent or other communication to be made or given under this deed shall be in writing and signed by the party giving it and shall be served either by delivery, by facsimile transmission or by prepaid registered mail, to the address of the party as herein specified or at the last known address of such party.
- (2) All notices shall be deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted.
- (3) Notices sent by facsimile transmission shall be deemed to be delivered on the date of transmission.

#### **4.8 Schedules**

Any reference to this deed herein means and includes the schedules and annexures (if any) to this deed, and which are hereby deemed to form part thereof.

#### **4.9 Clauses etc**

Unless the context otherwise requires, reference in this deed to recitals, clauses, schedules or annexures, mean and constitute references to the recitals, clauses, schedules or annexures (if any) of this deed.

#### **4.10 Successors**

This deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

#### **4.11 Day for Payment**

Where the day or date appointed or specified by this deed for the payment of any moneys is not a business day the day or last day by which payment of that money shall be made shall be deemed to be the next following business day.

### **5. Proper Law**

#### **5.1 Law**

- (1) This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the Deed is executed.
- (2) The Trustee, Members and Beneficiaries and any Employers shall accept the jurisdiction of the Courts of that State.

### **6. Arbitration**

#### **6.1 Dispute**

Unless a dispute is covered by clause 11, any question or dispute with respect to the Fund or to the construction or meaning of this Deed shall (if the Trustee so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed pursuant to the provisions of the Commercial Arbitration Act 1985.

#### **6.2 Right of Action**

No right of action shall accrue in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

### **7. Fund Records**

#### **7.1 Receipt**

A receipt given on behalf of the Fund by the Trustee or by the Fund's secretary or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be a sufficient discharge to the person by whom the moneys are paid.

#### **7.2 Accounts etc**

The Trustee shall:

- (1) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- (2) collect, and pay promptly into the bank account of the Fund, all moneys from time to time due to the Fund;
- (3) 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 the ISC shall require;
- (4) prepare accounts as at the end of the Fund Year, as are specified in the Requirements; and
- (5) provide to the Members any Employers and other persons reports, statements and notices as are specified in the Requirements.

### **7.3 Copy of Deed**

A copy of this Deed shall be made available for inspection by any Member on the request of that Member at the registered office of the Trustee during hours when that office is open.

### **7.4 Employer Information**

An Employer shall, 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 without verification.

## **8. Accumulation, Income and Equalisation Accounts**

### **8.1 Establishment of Accumulation Account**

The Trustee shall establish an Accumulation Account in respect of each Member for each Class of which he is a Member.

### **8.2 Credits to Accumulation Account**

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

- (1) any amount paid into the Fund in respect of the Member as a Rollover Payment pursuant to clause 21;
- (2) any Member Contributions;
- (3) any Contributions made in respect of the Member by Employers;
- (4) the proceeds of any policy of assurance or Annuity effected by the Trustee in respect of the Member (to the extent that the value of the policy is not already credited to the Member's accumulation account);
- (5) such positive earnings as are allocated by the Trustee in accordance with clauses 8.8, 8.10 and 8.11;
- (6) such forfeited amounts as are allocated to but not paid directly to the Member pursuant to clause 25.

### **8.3 Debits to Accumulation Account**

The following amounts shall be debited to the appropriate Accumulation Account of the Member according to the Class to which they relate:

- (1) any amount paid out of the Fund in respect of the Member as a Rollover Payment pursuant to clause 20;
- (2) any other Benefit payments made to or in respect of the Member (including the value at that time of any asset transferred pursuant to clause 23);
- (3) the costs of any policy of assurance or Annuity effected by the Trustee in respect of the Member;
- (4) such negative earnings as shall be determined by the Trustee in accordance with clauses 8.8, 8.10 and 8.11;
- (5) any amount forfeited pursuant to clause 25;
- (6) any costs that relate to that particular Member as may be determined by the Trustee.

#### **8.4 Establishment of Income Account**

The Trustee shall establish an Income Account for the Fund.

#### **8.5 Credits to Income Account**

The following amounts shall be credited to the Income Account:

- (1) all income and profits of the Fund each year;
- (2) credits arising out of adjustments pursuant to clause 8.10;
- (3) any surplus arising from a valuation of assets; and
- (4) any contributions in respect of costs pursuant to clause 19.8.

#### **8.6 Debits to Income Account**

The Income Account shall be debited with the following:

- (1) any loss sustained on the disposal of any investments of the Fund;
- (2) any costs or charges incurred or provided for (including income tax);
- (3) any deficiency arising from a valuation of Fund assets (including pursuant to clause 8.10);
- (4) the allocation of earnings to the Member's Accumulation Accounts;
- (5) transfers to the Equalisation Account pursuant to clause 8.9.

#### **8.7 Earning Rate**

- (1) At the end of each Fund Year the Trustee shall determine at its discretion the earning rate (which may be negative) for the Fund and may take into account any provision or reserve for future contingencies as the Trustee shall consider reasonable ("the Fund Earning Rate").
- (2) The Trustee shall allocate to each Accumulation Account the earnings due calculated in accordance with the Fund Earning Rate.

#### **8.8 Allocation of Earning Rate**

The Trustee shall allocate the earnings of the Fund 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 which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to Accumulation Accounts since that date.

#### **8.9 Unallocated earnings**

Any amount remaining in the Income Account after distribution of earnings shall be transferred to the Equalisation Account.

#### **8.10 Interim Earning Rate**

- (1) If the Trustee is required to pay out a Benefit during the course of a Fund Year, the Trustee shall establish a Fund Earning Rate in respect of a portion of a Fund Year on a basis which it considers equitable.
- (2) 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 the Income Account and the Members Accumulation Account shall be debited or credited accordingly.

### 8.11 Specific Investments

- (1) The Trustee may determine to invest separately in respect of:
  - (a) certain Members; or
  - (b) certain Classes of Members.
- (2) The Trustee shall record on whose behalf such specific investments are made for the purposes of maintaining the Member's Accumulation Account.
- (3) The income and profits (less losses) arising from such specific investments and any costs or charges applicable to such specific investments which are incurred shall not be allocated to the Income Account but shall be allocated directly to that Accumulation Account.

### 8.12 Members interest in assets

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 provided that this clause shall not apply where the Trustee has determined to hold specific assets to the account of and in respect solely of a Member or Class of Members.

### 8.13 Equalisation Account

- (1) The Trustee shall have 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 pursuant to clause 25 or any amounts remaining in the Income Account pursuant to clause 8.9.
- (2) Whilst any funds are held in the Equalisation Account they shall not form part of any Accumulation Account and any income shall be credited to the Equalisation Account.
- (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. The Trustee shall have the discretion to deal with the assets of the Equalisation Account as Forfeited Benefits in accordance with the provisions of clause 25.5.

### 8.14 Allocation of Earnings in Certain Circumstances

- (1) If in the opinion of the Trustee:
  - (a) the amount to the credit of a Member's Accumulation Account is sufficient to provide the Member's Benefits (for example by reason of the Trustee making a determination pursuant to clause 31.1); or
  - (b) the assets of the Fund attributable to the Member or to the Members Benefit are sufficient to provide the Members Benefits,then the Trustee may determine to allocate the earnings of the Fund (or of particular assets) in such manner amongst the Members as the Trustee shall in its absolute discretion determine provided that the Trustee is satisfied that the allocation is fair and reasonable in all the circumstances.
- (2) In making a determination pursuant to clause 8.14(1) the Trustee shall have regard to all the circumstances including the contributions that the Trustee reasonably expects may be made in the future in respect of the Member.

## **9. Audit**

### **9.1 Appointment of Auditor**

The Trustee shall appoint an independent registered auditor or such other person who shall be able to audit the Fund pursuant to the Requirements to carry out an annual audit of the accounts and records of the Fund.

### **9.2 Auditor's Report**

The Auditor shall have access to all papers, accounts, books, records and documents in respect of the Fund and shall prepare a report in writing on the affairs of the Fund.

The Auditor shall submit the report to the Trustee and the Trustee may give a copy to the Members and any Employers.

### **9.3 Certification of ISC Return**

The Auditor shall certify, in the manner required by the Requirements, that the Funds return to the ISC for the year is true and fair in the Auditor's opinion and according to the information and explanations given by the Trustee and as shown in the books, accounts and other relevant records of the Fund.

### **9.4 Auditors queries**

The Trustee shall use its best endeavours to satisfactorily respond to any matters raised by the Auditor pursuant to Part 16 of SIS.

## **10. Disclosure Standards**

### **10.1 Disclosure**

The Trustee shall disclose to:

- (1) the ISC;
- (2) the Members (including prospective and former Members);
- (3) any Employers;
- (4) the trustee of any Other Fund to which a rollover payment is made;
- (5) the Auditor; and
- (6) such other persons as may be specified in the Requirements,

such information from time to time concerning the Fund, Contributions and Benefit entitlements as shall be specified in the Requirements.

## **11. Complaint Resolution Procedure**

### **11.1 Implementation**

There shall be a complaints resolution procedure in accordance with this clause 11 if:

- (1) the Trustee determines that there shall be a complaints resolution procedure for the Fund; or
- (2) the Requirements specify that a complaints resolution procedure must be implemented.

### **11.2 Procedure**

- (1) If a Beneficiary wishes to make an enquiry or complaint in respect of any matter pertaining to that person's membership of, or interest in, the Fund (not being a matter pertaining to all the Members in general), then the Beneficiary



shall make such enquiry or complaint in writing to the Trustee clearly specifying that it is a matter to which the complaint resolution procedures are to comply.

- (2) The Trustee shall consider such enquiries or complaints and may either:
  - (a) give written notice of its decision to the Beneficiary; or
  - (b) request a meeting (or commence such other procedure as the Trustee in its absolute discretion deems appropriate) with the Beneficiary and such other persons as the Trustee deems necessary for the purpose of seeking to resolve the complaint;
- (3) The Trustee may request further information from the Beneficiary, or such other person as the Trustee deems necessary prior to satisfying clause 12.2(2).

### **11.3 Time limit for dealing with Complaint**

The Trustee shall use its best endeavours to ensure that all enquiries or complaints are properly considered and dealt with within 90 days after they are made.

### **11.4 Inform Members of Procedure**

The Trustee shall inform the Members of any complaints resolution procedure implemented for the Fund.

## **12. Fund Assets**

### **12.1 Gross Assets**

The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall be established and maintained by:

- (1) the amount, if any, standing or transferred to the credit of the Fund;
- (2) such Contributions (if any) as the Members shall make to the Fund;
- (3) such Contributions as any Employer makes to the Fund;
- (4) interest dividends and distributions of income arising from any investment and the accumulation thereof;
- (5) profits (less losses) and other benefits arising from any investment and the accumulation thereof;
- (6) the proceeds of any policy of assurance held by the Fund; and,
- (7) moneys, investments and other property transferred to the Fund as a Rollover Payment.

### **12.2 Acceptance of Moneys**

All moneys of the Fund shall be paid 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 from time to time by the Trustee or into a trust account of a Solicitor, Accountant or Investment Manager appointed pursuant to this Deed.

### **12.3 Assets in Name of Trustee or Custodian**

The Fund's assets shall be held in the name of the Trustee or such other person as the Trustee may authorise in writing for that purpose provided that if the Fund has 5

or more members such person has satisfied the requirements of SIS to be a custodian of Fund assets.

#### **12.4 Valuation of Assets**

At:

- (1) the end of each Fund Year; or
- (2) at such other time as the Trustee considers it appropriate (including 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 of assurance held by the Fund) at that date and shall determine whether there is a surplus or deficiency.

### **13. Policies of Assurance**

#### **13.1 Power to Insure**

- (1) The Trustee may insure or acquire life cover on the lives of any Member or Members (either by individual or group policies) for the provision of benefits to be payable to the Trustee on the death or disablement of the relevant Member.
- (2) In the event of death or disablement the Trustee shall credit the Accumulation Account of the Member or former Member with the amount of the proceeds received under the policy of assurance less any expenses in relation thereto.

#### **13.2 Premiums**

Premiums may be debited to the Accumulation Account of the relevant Member or the Income Account as the Trustee determines.

#### **13.3 Inform Member**

The Trustee shall inform the Member of any policies in effect for that Member as specified in the Requirements.

### **14. Fund Trustee**

#### **14.1 General**

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

#### **14.2 Appointment**

The then Trustee (or if there is no Trustee the Members) shall appoint the Trustee of the Fund.

#### **14.3 Persons eligible to be Trustee**

The Trustee of the Fund shall be one or more of the following:

- (1) the original Trustee specified herein;
- (2) such Trustee appointed by the then Trustee with the approval of the Members;
- (3) if the then Trustee is unwilling or unable to appoint a Trustee then such Trustee appointed by the Members;
- (4) such other Trustee as shall be consistent with the Requirements,

#### **14.4 Corporate Trustee**

The Trustee shall (except for any period during which the provisions are to the effect that the sole or primary purpose of the Fund is the provision of old age pensions) be a constitutional corporation as defined in SIS.

#### **14.5 Retirement, Removal of the Trustee**

A person shall forthwith cease to act as a Trustee (or as a Director of a Trustee company) if:

- (1) it is removed by notice in writing from the Members;
- (2) a written resignation is given to the Members;
- (3) the person is disqualified from holding office by operation of law (in particular SIS);
- (4) being an individual, he dies;
- (5) being a company, it is wound up;

#### **14.6 Vesting of Assets**

Any person who acts as a Trustee shall on ceasing to be a Trustee pursuant to this clause do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

#### **14.7 Office to be filled**

- (1) The office of Trustee shall be filled at all times and in the event of a vacancy occurring, a new Trustee shall be appointed within 60 days of such vacancy occurring.
- (2) If for any reason there is no Trustee of the Fund at any time the Members shall undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions.
- (3) If the Trustee is an individual and the Members are unable to appoint a Trustee then upon the death of the Trustee the Trustee's legal personal representative shall become the Trustee.

### **15. Trustee's Powers of Management**

#### **15.1 Powers**

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

- (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;
- (2) To commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;
- (3) To borrow money and to secure the repayment thereof in any manner and upon any terms (including with or without security) which the Trustee may deem advisable in order to secure temporary finance in order to overcome cash flow problems in the payment of superannuation benefits or for other purposes acceptable pursuant to the Requirements;

- (4) To insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, reinsurance company or other body;
- (5) To purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;
- (6) To retain the services of and to appoint professional or other advisers (including actuaries) in relation to the management, administration or investment of the Fund;
- (7) To pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund;
- (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;
- (9) To comply with any order of the Superannuation Complaints Tribunal or any similarly constituted Board, Court or Authority; and
- (10) Generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

#### 15.2 Trustee Fees

The Trustee shall be entitled to charge professional fees and to recover costs and disbursements incurred in respect of its services as Trustee of the Fund which fees may be charged in respect of:

- (1) Contributions made to the Fund; and,
- (2) income earned by the Fund; and,
- (3) management and administration of the Fund generally.

The fees charged (if any) by the Trustee shall be determined each Year by consultation between the Trustee and the Members.

#### 15.3 Trustees Indemnity

The Trustee (and in the case of a Trustee company, its directors) shall, except in the case of:

- (1) fraud;
- (2) wilful or reckless failure to exercise proper care and diligence; or
- (3) a civil penalty order pursuant to SIS,

be indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law.

#### 15.4 Information Confidential

The Trustee shall regard as strictly confidential (so far as shall be practicable) all information disclosed to or gained by the Trustee in the course of administering the Fund.

### **15.5 Trustee's Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion. If after the exercise of a discretion, the Trustee for any reason forms the opinion that the discretion should be exercised differently, then the Trustee may, subject to the Requirements, re-exercise that discretion.

### **15.6 Comply with ISC**

The Trustee shall notwithstanding any other provision contained herein abide by all lawful directions, orders and authorities issued by the ISC in force from time to time.

### **15.7 Appointment of Trustee**

If for any reason the Members are unable to appoint a new Trustee then a new Trustee may be appointed by any person who is or may be a Beneficiary and if more than 1 by majority.

## **16. Trustee's Powers of Investment and Sale**

### **16.1 Trustee to Invest**

So much of the moneys of the Fund as shall not be required immediately for the payment of Benefits or expenses shall be invested as soon as practicable by and under the control and in the name of the Trustee (or such other person as the Trustee may authorise in writing for that purpose pursuant to clause 12.3) in any of the following investments:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (2) any mortgage on freehold property situated in Australia or elsewhere up to the value of the property and whether or not a formal valuation has been obtained;
- (3) on deposit with or on loan to any Bank, Building Society, Credit Co-operative or other financial institution;
- (4) on deposit with or on loan to any person or organisation whatsoever (including an Employer) with or without security and at such rate of interest upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly therefrom;
- (5) the purchase or acquisition in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option or other like security in or of any building society or company (including an Employer) incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (6) any policy of assurance 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;
- (7) the purchase or acquisition of any real or personal property and the improvement or extension thereof;

- (8) the purchase or acquisition of or subscription for any unit or sub-unit in any Unit Trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (9) any other investments which the Trustee considers appropriate and which are consistent with the Requirements;

provided that:

- (10) the Trustee is not authorised to make a loan or give any other financial assistance to any Member of the Fund contrary to Section 65 of SIS unless for purposes approved under the Requirements or by the ISC from time to time;
- (11) the Trustee is not authorised to acquire assets from Members relatives or others in contravention of Section 66 of SIS;
- (12) no investment shall be in contravention of the in-house asset rules of SIS; and
- (13) all investments shall be made pursuant to the Trustee's investment strategy.

## **16.2 Sell and Vary**

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

## **16.3 Investment Strategy**

The Trustee shall formulate and implement an investment strategy in respect of the Fund having regard to the matters specified in SIS.

## **17. Membership of Fund**

### **17.1 Invitation by Trustee**

The Trustee shall invite such persons who are eligible to become members of superannuation funds pursuant to the Requirements as it shall in its absolute discretion determine for membership of the Fund provided that if Schedule A specifies the persons eligible to become members no person other than the persons specified (or within the class of persons specified) shall be eligible to become Members.

### **17.2 Application Form**

- (1) The acceptance of any invitation shall be made to the Trustee in writing and may be accompanied by a completed application for membership in the form of Schedule B or in such other form (if any) as the Trustee may require.
- (2) If the Trustee has determined that no application form is necessary the Member shall supply such information to the Trustee as the Trustee requires to enable the person to be admitted.

### **17.3 Admission of Member**

Upon receipt of a completed application for membership in the appropriate form (or upon the receipt of the required information from the Member) the Trustee may determine to admit the applicant to membership of the Fund.

### **17.4 Date of Admission**

The Member shall be deemed to have joined:

- (1) on a date determined by the Trustee; or

- (2) if the Trustee makes no such determination, the date of the completed application for membership.

#### **17.5 Classes of Membership**

The Trustee may determine that there shall be different Classes of membership. The Trustee may determine the Class of membership in which the applicant shall be admitted.

#### **17.6 Statement**

On 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 specified in the Requirements.

#### **17.7 Conditions of Membership**

The Trustee may impose conditions on an applicant's admission and may limit and impose conditions upon Benefits as it sees fit.

#### **17.8 Member Furnish Information**

Every Member and Beneficiary when requested by the Trustee shall:

- (1) furnish such information as the Trustee deems necessary for the purposes of the Fund; and
- (2) shall submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.

#### **17.9 Suspend Contributions etc**

If a Member or a Beneficiary fails to comply with the provisions of this clause, the Trustee may suspend the acceptance of any Contributions or withhold any Benefit until he does comply.

#### **17.10 Misleading Information**

Where a Member or Beneficiary furnishes information, affecting or likely to affect the Benefits payable, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may in its absolute discretion alter the Benefits to amounts that would have applied had full and accurate information been supplied.

#### **17.11 Cessation of Membership**

A person shall cease to be a Member of the Fund upon:

- (1) the date upon which payment of all his Benefits is made in respect of him;
- (2) his death; or
- (3) the provisions of clause 25.2 or otherwise operating to terminate his membership.

### **18. Meetings of Members**

#### **18.1 Notice**

To call a meeting of Members shall require:

- (1) a notice requesting a meeting to be served on the Trustee signed by at least one-half of the Members; or
- (2) a resolution by the Trustee,

**18.2 Trustee convene**

The Trustee shall convene a meeting of Members as soon as practicable thereafter and shall send a notice of meeting to each Member specifying that a meeting will be held within 28 days of that notice being issued;

**18.3 Notice of Meeting**

Every notice of meeting shall:

- (1) be posted or given at least 10 days before the meeting;
- (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 he lodges the proxy with the Trustee not later than 24 hours before the meeting;
- (4) be accompanied by a form of proxy approved by the Trustee; and,
- (5) set out the matters including any resolutions to be considered at the meeting.

**18.4 Notice validly given**

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

**18.5 Conduct of Meeting**

The Trustee shall appoint a Chairman of the meeting and shall make such regulations concerning the conduct of the meeting as it may determine.

**18.6 Quorum**

A quorum for the meeting shall be 2 Members present in person or by proxy or 25% of the Members of the Fund whichever is the lesser 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.

**18.7 Members Vote**

Each Member shall be entitled to one vote with the Chairman being given a casting vote in the event of an equality of votes.

**19. Contributions to Fund**

**19.1 Acceptance**

The Member any Employer or any other person permitted by the Requirements to make contributions into the Fund may contribute such amounts and from such dates as the Trustee may determine.

**19.2 Refusal**

The Trustee shall refuse to accept contributions:

- (1) if the acceptance of the contributions would be contrary to the Requirements in respect of the Member;
- (2) that exceed the maximum deductible contributions under the ITAA in respect of the Member;



- (3) from persons other than those permitted by the ISC to make superannuation contributions.

### **19.3 Member Contributions**

- (1) Each Member shall contribute such amounts (if any) and from such date, as shall be agreed upon between the Trustee and the Member but subject to any limits prescribed by the Requirements.
- (2) Any Contributions payable by a Member may be deducted by his Employer from each salary payment and shall be paid by the Employer to the Fund forthwith.

### **19.4 Employer Contributions**

Any Employer may, with the consent of the Member and the Trustee, contribute in respect of a Member who is an Employee in such manner as agreed between the Member, the Employer and the Trustee.

### **19.5 Extended Leave**

If a Member takes extended leave, the Trustee may consult with the Member regarding any variation in the Contributions in respect of the Member.

### **19.6 Contributions to more than one Membership Class**

Where Contributions are made in respect of a Member and the Member is a member of more than one Membership Class, the Member shall designate in relation to which Membership Class or Classes the Contribution is being made and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts.

### **19.7 Contribution in Cash or Assets**

Any contribution made by a Member or an Employer shall be paid in cash or by transfer of assets provided that where a contribution is made by the transfer of an asset:

- (1) the Trustee determines that the assets transferred are appropriate investments for the Fund;
- (2) the Trustee shall obtain a valuation of such asset as soon as is reasonably practicable; and
- (3) there is no breach of clauses 16.1(11), 16.1(12) or 16.1(13).

### **19.8 Contributions for Costs**

The Trustee may accept Contributions in respect of the costs of the conduct of the Fund without those Contributions being allocated to a Member.

## **20. Transfers to Other Funds**

### **20.1 Transfers out**

Where a Member joins or is eligible to join any Other Fund and the Member requests that the whole or a 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 (the "Rollover Payment") as determined by the Trustee.

### **20.2 Requirements**

The Rollover Payment must comply with the Requirements.

**20.3 Transfer of Restricted Benefits**

Where a Member or former Member has Restricted Benefits which form part of the Rollover Payment the Trustee shall ensure that the provisions of the Other Fund provide that such amounts must be preserved or dealt with in accordance with the Requirements but the Trustee shall not be responsible for the manner in which the Restricted Benefits are dealt with.

**20.4 Discharge**

The receipt of the Rollover Payment by the proper officer of the Other Fund shall be a complete discharge to the Trustee of all liabilities in respect thereof and the Trustee shall have no responsibility to see to the application of the Rollover Payment.

**20.5 Complete Documents**

The Member or former Member shall complete and execute a Rollover Payment Notification or such other documents and provide to the Trustee such information as shall be required to enable the Rollover Payment to be made.

**20.6 Consent**

Subject to clause 20.7 the Trustee must not effect a Rollover Payment without the consent of the Member or former Member.

**20.7 Compulsory Rollover**

Subject to clause 20.8 the Trustee:

- (1) shall pay benefits described in section 244(3) of SIS; and
- (2) may pay Benefits described in section 244(1) of SIS,

to an eligible rollover fund as determined by the Trustee, such fund satisfying the Requirements to accept such amounts.

**20.8 Small accounts**

The Trustee shall not be required to pay benefits to an eligible rollover fund if the Trustee has determined to implement such procedures as may be prescribed to ensure that Members with account balances of less than \$1,000.00 (or such other figure as may be prescribed by the ISC) do not have their account balances eroded.

**21. Transfers From Other Funds**

**21.1 Transfers in**

Where a Member is or was a member or beneficiary of any Other Fund the Trustee may take over or acquire by transfer or otherwise from the trustee of the Other Fund the whole or any part of the moneys or assets of that Fund with the intent of preserving the entitlements and interests of the member of such Other Fund at the time of transfer.

**21.2 Entitlements in the Fund**

The Trustee shall hold the same as part of the Fund and reflect such entitlements and interests in the particular Member's Accumulation Account as it shall determine.

**21.3 Acceptance of Restricted Benefits**

Where the Trustee is advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustee shall preserve or deal with such amount in accordance with the Requirements.

#### **21.4 Amount, Composition of Entitlement**

On any transfer in accordance with this clause 21, the amount of any entitlement for the Member shall be the amount or the value of the assets transferred as determined by the Trustee and the composition thereof shall be as determined by the Trustee having regard to the information provided by the trustee of the Other Fund.

#### **22. Payment of Benefits**

##### **22.1 Requirements**

The Benefits must be paid in accordance with the Requirements and in particular complying with:

- (1) the payment of benefits standards (part 6 of the SIS Regulations); and
- (2) the minimum benefit standards (part 5 of the SIS Regulations).

##### **22.2 Procedure before Benefits payable**

No benefit shall be deemed to accrue and Benefits shall only be due and payable when:

- (1) the Member (or in the case of the Member's death, the Nominated Dependant or other Beneficiary) has given to the Trustee:
  - (a) such evidence as the Trustee may require as to the event giving rise to the entitlement;
  - (b) a written request that the Trustee pay the benefit to or in respect of the Member; and
- (2) the Trustee has:
  - (a) received the evidence and the request;
  - (b) determined in writing that the benefit is payable; and
  - (c) notified in writing the person requesting the benefit of the Trustee's determination.

##### **22.3 Address etc**

Benefits are payable in the manner and to the address of the Member or Beneficiary advised to the Trustee from time to time or otherwise as may be determined by the Trustee.

##### **22.4 Information to Trustee**

Every Member or Beneficiary shall notify the Trustee in writing at the time a Benefit becomes payable of:

- (1) his place of residence and full postal address;
- (2) the manner in which the benefit is to be paid; and
- (3) the bank account (if any) to which he requests that the Benefit be paid.

##### **22.5 Receipt**

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

**22.6 Death Benefits**

The person or persons to whom Death Benefits shall be payable and in what proportions and in what manner shall be determined by the Trustee pursuant to clause 34.

**22.7 Actual Balance**

Benefits payable shall be determined having regard to the balance of the Members Accumulation Account at the time of actual payment.

**22.8 Deduction of Tax from Benefits Payable**

The Trustee shall deduct from any Benefit payable any Taxation required to be deducted or such Taxation as the Trustee shall consider is required to be deducted, including any Taxation payable on income or profits of the Fund whether realised or unrealised.

**22.9 Deferral at Member's Request**

With the consent of the Member (including where the Member does not request the Benefit be paid) the Trustee may defer payment (or commencement of payment) of the Benefit until the earlier of:

- (1) the Member's request for the Benefit to be paid; or
- (2) such time as the Requirements specify the Benefit must be paid.

**23. Transfer in Specie**

**23.1 Life Policy**

- (1) Where a Benefit is payable (either by way of Pension or Lump Sum) and the Benefit includes any interest in a policy of assurance of any kind on the life of the Member the Trustee may in its absolute discretion assign the same to the person entitled to the Benefit.
- (2) The Trustee shall not be liable to pay any premiums thereafter becoming due and owing under the said policy as from the date of such assignment.

**23.2 Assets**

The Trustee may with the consent of the person entitled to a Benefit transfer investments of the Fund of equivalent value to such person in lieu of paying the whole or part of the amount otherwise payable.

**24. Payment to Others on Behalf of Members or Beneficiaries**

**24.1 Payment to Others**

- (1) Subject to the Requirements where:
  - (a) any Member or Beneficiary is under the age of 18 years; or
  - (b) it would be in the Trustee's opinion in the best interests of the Member or the Beneficiary,the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Member or the Beneficiary.
- (2) 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 Member or the Beneficiary and shall be deemed to be a payment to the Member or the

Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

## **25. Forfeiture of Benefits**

### **25.1 Benefits accruing or accrued**

Subject to the Requirements all Benefits:

- (1) accruing; or
- (2) accrued,

shall be held by the Trustee upon the trusts herein contained until the happening of any of the events described in clause 25.3.

### **25.2 Forfeiture**

Upon the happening of an event as described in clause 25.3, subject to the Requirements, any Member, former Member or after his death, any of his Dependants or his personal representative shall forfeit entitlement to:

- (1) all his Benefits which are accruing or may thereafter accrue;
- (2) all his Benefits which have at that time accrued,

other than that part which represents the Member's Minimum Benefit and, he shall cease to be a Member of the Fund.

### **25.3 Events of Forfeiture**

Clauses 25.1 and 25.2 shall apply to any Member:

- (1) who assigns or charges or attempts to assign or charge any Benefit;
- (2) whose Benefits whether by his own act, operation of law, Court order or otherwise become payable to or vested in any other person, company, government or other public authority;
- (3) who has a judgment entered against him for an amount not less than \$10,000;
- (4) who has a garnishee order made against him;
- (5) who becomes insolvent; or
- (6) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs.

### **25.4 Residual Amounts**

Subject to the Requirements, any Member or former Member who has been paid all Benefits which the Trustee considers should be paid to him and who still has a residual amount standing to the credit of his Accumulation Account shall forfeit such amount forthwith and such amount shall be dealt with as a Forfeited Benefit.

### **25.5 Dealing with Forfeited Benefits**

The Trustee shall, subject to the Requirements, hold upon trust and pay or apply any Benefits which have been forfeited as follows:

- (1) to or for the benefit of the former Member or Beneficiary (as the case requires) or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine provided however that where the former

Member remains in the employment of the Employer any payments so made shall be limited to the relief of hardship of the former Member or of his Dependants;

- (2) to or for the benefit of Members and former Members of the Fund who have rights to receive Benefits from the Fund or for their Dependants on a basis that the Trustee in its absolute discretion considers reasonable having regard to all the circumstances (and if more than one of them in such proportions between them and on such terms as the Trustee may in its absolute discretion determine) which Benefits may be applied in lieu of Contributions which were otherwise payable;
- (3) to the Equalisation Account;
- (4) in lieu of Contributions;
- (5) for any other purpose consistent with the Requirements or approved from time to time by the ISC.

#### **25.6 Balance to former Members on Winding-Up**

If on the winding up of the Fund there remains no person entitled to any Benefits forfeited hereunder then any residual amount shall be apportioned amongst the former Members in such proportions as shall be determined by the Trustee.

#### **26. Excessive Benefits**

##### **26.1 Limit on Benefits**

Notwithstanding any other clause of this Deed, including clause 30.2 the Trustee may in its absolute discretion determine that Benefits payable to any Member under this Deed shall (when added to the RBL amounts of any benefits to which that Member has received or is entitled to under any other superannuation arrangements including Approved Deposit Funds and Annuities) exceed the Member's RBL (or the amount that Trustee has calculated to be the Member's RBL).

##### **26.2 Information to Trustee**

A Member shall, upon the Trustee's request, provide to the Trustee:

- (1) sufficient information to enable the Trustee to calculate the Member's RBL; or
- (2) a copy of the Member's RBL determination.

##### **26.3 Excess Benefits**

The Trustee may in its discretion but subject to the Requirements deal with the Benefits in excess of the Member's RBL as the Trustee may determine, including treating such amount as a Forfeited Benefit.

##### **26.4 Variation in Contributions**

If at any time:

- (1) the Trustee is of the opinion that a Member's Benefits may exceed the Member's RBL after taking into account the adjusted RBL amounts of any previous benefits (as determined under Division 14 of Part III of the ITAA);
- (2) the Trustee has been advised that the Benefits payable from the Fund are or may be in excess of the Members' RBL; or,

- (3) where a report by an actuary discloses that the assets of the Fund are sufficient to provide the Benefits under this Deed (or where the Trustee has formed that opinion),

then the Trustee may require the Member and/or Employer to forthwith reduce or cease the Contributions in respect of that Member by such amount as the Trustee in its absolute discretion shall determine as necessary in order to reduce the Benefit payable in respect of that Member (either alone or aggregated with any other benefits payable) to an amount which is not or is not likely to exceed the Member's RBL.

## **26.5 Compulsory Contributions**

An Employer need not comply with a request under clause 26.4 where the Employer must make compulsory superannuation contributions in respect of the Member concerned.

## **27. Preservation of Benefits**

### **27.1 Satisfaction of Condition of Release**

The Trustee shall ensure that any Benefits which are required to be preserved or which are restricted pursuant to the Requirements are so preserved or restricted until the satisfaction of the relevant condition of release prescribed in the SIS Regulations.

## **28. Pension Benefits**

### **28.1 Terms of Pension**

The Trustee shall in consultation with the Member or the Beneficiary, determine the terms upon which a Pension is payable. Subject to clause 28.2, 28.3 and 28.4 and unless agreed to the contrary with the Member or the Beneficiary the Pension shall:

- (1) commence on the day the benefit becomes payable pursuant to clause 22;
- (2) be by monthly, quarterly, six monthly or yearly instalments payable in arrears;
- (3) increase annually at a rate consistent with the Requirements;
- (4) subject to the Fund's ability to pay a pension for life be payable during the life of the Pensioner and upon the death of the Pensioner, to the Nominated Dependant (whether by way of continuation of the Pension or by way of commutation and payment of a Lump Sum) or in the absence of a surviving Nominated Dependant the pension shall be commuted and paid to the estate of the Pensioner; and
- (5) not be assignable or able to be charged encumbered or mortgaged in any manner whatsoever.

### **28.2 Trustee may vary**

The Trustee may, subject to the Requirements, vary the frequency or basis upon which any Pension may be payable.

### **28.3 Limit**

No Pension shall be of an amount which in the opinion of the Trustee is greater than that which the assets of the Fund are sufficient to provide.

### **28.4 Allocated Pension**

Where a Member or a Beneficiary requests that a Benefit be payable by way of a Pension which does not meet the requirements of clause 28.1 then a Pension may be payable if:

- (1) the Pension is payable at least yearly;
- (2) the amount of any yearly payment is not more than the maximum amount nor less than the minimum amount prescribed in the Requirements; and
- (3) the terms of the Pension are such that the payments are a pension as defined in the Requirements, such terms to be agreed between the Trustee and the Member or the Beneficiary prior to the commencement of the payment of the Pension.

#### **28.5 Purchase of Pension or Annuity**

If the Trustee so determines a Pension may be provided by way of purchase of a Pension or Annuity from a life office or Other Fund.

#### **29. Commutation of Pension**

##### **29.1 Commutation**

The Trustee shall on the written application of a Member commute all or part of a Pension to a Lump Sum as permitted under the Requirements provided that:

- (1) any commutation shall be subject to the Requirements;
- (2) the Trustee shall determine the amount of the Lump Sum payable in respect of the Pension being commuted and may for that purpose obtain the advice of the Actuary;
- (3) the amount remaining, (if any), of the said commuted value not paid by way of Lump Sum shall thereafter be payable by Pension the amount of which shall be determined by the Trustee (who may obtain the advice of an Actuary);
- (4) in the opinion of the Trustee the commutation would not disadvantage the Fund.

#### **30. Lump Sum Benefits**

##### **30.1 Time for Payment**

- (1) If a Lump Sum benefit is payable then if the Member so requests it shall be paid as soon as possible after the date on which the Benefit becomes payable.
- (2) If in the opinion of the Trustee the payment of the Benefit is likely to endanger the financial security of the Fund, payment may be deferred for a period up to 12 months from the date upon which the Benefit became payable.

##### **30.2 Limit**

No Lump Sum Benefit shall be:

- (1) of an amount which in the opinion of the Trustee is greater than that which the assets of the Fund are sufficient to provide in respect of the Member; and
- (2) unless agreed to the contrary between the Trustee and the Member of an amount which is greater than the Member's RBL less the sum of the adjusted RBL amount of any previous benefits (as determined under Division 14 of Part III of the ITAA).

##### **30.3 SIS Limitation**

- (1) The payment of a Lump Sum (unless by way of commutation of Pension) shall be subject to the Trustee of the Fund at that time being a corporation as



required by SIS and all other requirements of SIS and the SIS Regulations (if any) having been met to allow the payment of Lump Sums.

(2) If those conditions are not met the Benefit shall be payable as a Pension.

### **31. Conversion of Lump Sum to Pension**

#### **31.1 Application**

On the written application of a Member or Beneficiary, the Trustee may pay to the Member from the Fund a Pension payable for life or any period certain or uncertain, in lieu of the whole or a portion of any Lump Sum Benefit.

#### **31.2 Cost of Pension**

The cost and terms of any Pension payable pursuant to this clause shall be determined by the Trustee (who may obtain the advice of the Actuary) in accordance with clause 28.

#### **31.3 Trustees Decision**

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

### **32. Retirement and Termination Benefits**

#### **32.1 Form of Benefit**

Upon a Member:

- (1) retiring from gainful employment on or after the Normal Retirement Age;
- (2) terminating employment in circumstances where the Requirements permit the Benefit to be paid and the Member having requested the Benefit be paid; or
- (3) having retired from employment and attained the age when the Benefit must be paid,
- (4) requesting a Benefit (being a Benefit that is a unrestricted non preserved benefit as defined in SIS) be paid.

the Trustee shall pay to the Member his Benefit by way of Lump Sum.

#### **32.2 Amount of Benefit**

The Benefit shall, subject to clauses 22, 25 and 26 be of an amount equal to the Member's Accumulation Account.

### **33. Benefits for Permanent InCapacity or Permanent Invalidity**

#### **33.1 Form of Benefit**

Upon a Member ceasing to be gainfully employed as a result of Permanent Incapacity or Permanent Invalidity, the Trustee shall pay to or in respect of the Member his Benefit by way of Pension or Lump Sum as may be requested by the Member.

#### **33.2 Amount of Benefit**

The Benefit shall subject to clauses 22, 25 and 26 be of an amount equal to the Member's Accumulation Account.

#### **33.3 Discretionary Benefit**

The Trustee may by resolution determine to pay an additional amount of Benefit.

**34. Death Benefits**

**34.1 Form of Benefit**

Upon the death of a Member before the whole of his Benefit has been paid to him, the Trustee shall pay the Benefit by way of Lump Sum.

**34.2 Amount of Benefit**

The Benefit shall, subject to clauses 22, 25 and 26 be of an amount equal to the former Member's Accumulation Account.

**34.3 Discretionary Benefit**

The Trustee may by resolution determine to pay an additional amount of Benefit.

**34.4 Person to Whom Benefit Payable**

The Trustee shall pay 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 Dependants 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 absolute discretion determine.

**34.5 No Dependants**

If the Trustee determines that:

- (1) a deceased Member is not survived by any Dependants, or
- (2) if in the Trustees opinion having regard to the period of the dependency on the deceased Member and the extent of the dependency and such other matters as the Trustee considers relevant, the whole of the Benefit should not be paid to the surviving Dependants,

the death benefit hereunder (or that part not paid to the surviving Dependants) shall be paid to the Estate of the former Member, but if the Trustee is (or becomes) of the opinion that a Grant of Probate or Letters of Administration in respect of the Estate will be not made the Benefit payable hereunder shall, subject to the Requirements, be paid to one or more Dependants or other persons or be treated as a Forfeited Benefit.

**34.6 Death of a Pensioner**

Subject to the terms of any Pension payable, the Trustee may if requested by the person to whom the Trustee has determined the Benefit is payable pay a Pension equal to such percentage of the Pension that was being paid to the former Member as the Trustee shall in its absolute discretion determine.

**35. Amendments To The Deed**

**35.1 General Power**

The Trustee shall be entitled at any time:

- (1) by instrument in writing executed by the Trustee;
- (2) without giving prior notice to the Members,

to amend, add to or revoke all or any of the provisions of the Deed including this clause.

### **35.2 SIS Limitation**

- (1) If at any time the sole or primary purpose of the Fund is the provision of old age pensions then the Deed shall not then be amended to provide for a different sole or primary purpose unless the Deed is also amended to require (or at that time requires) that the Trustee shall be, and shall continue to be, a constitutional corporation as defined in SIS.
- (2) If at any time the sole or primary purpose of the Fund is not the provision of old age pensions the Deed shall not be amended to allow an individual to be appointed as Trustee of the Fund unless the Deed is also amended to provide (or at that time provides) that the sole or primary purpose of the Fund shall be, and shall continue to be, the provision of old age pensions.

### **35.3 Purpose of Variation**

The variation shall be only:

- (1) to enable the Fund to comply with any law, custom or practice of the Commonwealth or any State or Territory of Australia in relation to superannuation, pensions, taxation, insurance, employee trust funds or employee benefits generally or otherwise;
- (2) for any other purpose provided that no such variation shall operate so as to:
  - (a) vary the objects of the Deed such that the Fund would not amount to a superannuation fund as defined in the Requirements;
  - (b) require the Fund to operate contrary to the prohibitions contained in SIS;
  - (c) prejudicially affect the existing rights in respect of any Member at the date from which the variation is to be effective unless:
    - (i) the Member consents in writing;
    - (ii) a meeting of the Members affected by the variation vote in favour thereof and advise the Trustee in writing; or,
    - (iii) approval is granted in writing by the ISC;
  - (d) impose any further liability on any Employer, without that Employer's consent.

### **35.4 Restricted Membership**

If Schedule A specifies the persons or class of persons eligible to become Members of the Fund then no variation shall operate so as to allow any persons other than those specified, or within the class specified, to be eligible to become Members of the Fund.

### **35.5 Advice to Members**

The Trustee shall notify the Members of the effect of variation but any failure to give any such notification or its non-receipt by a Member shall not affect the validity of the variation.

## **36. Termination of the Fund**

### **36.1 Notice from Principal Employer**

If all of the Members give notice in writing to the Trustee of their desire to terminate the Fund, the Trustee shall:

- (1) continue to administer the Fund in accordance with the provisions of this Deed except that:
  - (a) no further Contributions except Contributions due on or before the date determined for termination under this clause, shall be accepted in respect of any Member;
  - (b) no new Members shall be admitted to the Fund; or
- (2) proceed to wind up the Fund.

### **36.2 Trustee Determination**

The Trustee may determine to wind up the Fund.

### **36.3 Notification**

The Trustee must notify in writing all Members and Employers of the happening of any of the events specified in clauses 36.1 and 36.2.

### **36.4 Application of Assets**

On a winding up the Trustee must apply the Fund's assets in the following order of priority:

- (1) to meet all expenses and liabilities of the Fund;
- (2) the payment (including rollover) of Benefits;
- (3) to increase Benefits as the Trustee may in its absolute discretion determine;
- (4) to pay any remaining amounts to such of the Members and in such proportions as the Trustee may in its absolute discretion determine.

### **36.5 Dissolution**

When all benefits and assets of the Fund have been paid, transferred or applied in accordance with the provisions of the Deed the Fund shall be deemed to be dissolved.

## **37. Superannuation Industry (Supervision) Act**

### **37.1 Deemed inclusion**

Notwithstanding anything expressed or implied to the contrary in the Deed it is expressly agreed and declared that:

- (1) this Deed shall be deemed to include such of the requirements of SIS and the SIS Regulations as are necessary to enable the provisions contained in SIS and the SIS Regulations to be met by the Fund and to enable the Trustee to elect for the Fund to become a regulated fund within the meaning of SIS and thus to obtain the taxation concessions available to regulated funds;
- (2) the Trustee shall have power to, and shall, operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the SIS Regulations;
- (3) where any conflict arises between the provisions of this Deed and the requirements of SIS and the SIS Regulations SIS and/or the SIS Regulations as the case may be shall prevail.

### **37.2 Power to elect etc**

Without limiting any of the terms of the effect of clause 38.1 it is further agreed and declared that:

- (1) the Trustee shall have power to elect under SIS for the Fund to become a regulated fund as defined in SIS;
- (2) notwithstanding any other provision of the Deed the Trustee shall, to the maximum extent permitted by SIS, be indemnified out of the Fund against all liabilities incurred by the Trustee in the exercise (or purported or attempted exercise) of the trusts powers authorities and discretions vested in the Trustee pursuant to the Deed or by operation of law;
- (3) the provisions contained in SIS which do not apply to funds with fewer than 5 members (defined in SIS as "excluded funds") shall not apply to the Fund for any period during which the Fund has less than 5 members.

**37.3 Trustee not disqualified**

The Trustee hereby declares that it is not prohibited by SIS and the SIS Regulations from being a trustee of a superannuation fund.

**37.4 Non-mandatory Requirements**

The Trustee in its absolute discretion may from time to time determine not to comply with any of the Requirements which are not mandatory.



SCHEDULE A

DATE OF DEED: The 20<sup>TH</sup> day of JUNE 1997.

TRUSTEE: TRALEE PASTORAL COMPANY PTY LTD ACN 008 708 601 of "Tralee", Goomalling Road, Meckering in Western Australia.

MEMBERSHIP RESTRICTIONS (IF APPLICABLE, SEE CLAUSE 17.1):

NAME OF FUND: The NP & JM Burges Superannuation Fund

DATE OF ESTABLISHMENT OF THE FUND: The 20<sup>TH</sup> day of JUNE 1997.

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SCHEDULE B  
APPLICATION FOR MEMBERSHIP  
CONFIDENTIAL

To: The Trustee  
The NP & JM Burges Superannuation Fund  
"Tralee", Goomalling Road  
MECKERING WA 6405

Re: Membership

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

I agree and undertake as follows:

- (1) I will be bound by the Trust Deed governing the Fund as it is or may be by variation from time to time.
- (2) I will make a full disclosure in writing of any benefits I may receive or be entitled to receive from any other Superannuation Fund, Approved Deposit Fund or Roll over Annuity.
- (3) I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of the Deed concerning benefits payable and I acknowledge I have been informed of my rights and the rights of my Dependants pursuant to the Deed.
- (4) I consent to the Trustee acting as Trustee of the Fund.

I declare that the rights held by me and the amounts received by me from any superannuation fund, pension fund, Approved Deposit Fund or Annuity are set out in the Attachment.

Dated the     day of                     199 .

Signature                     : .....

Name, Occupation           : .....

Address                     : .....

Date of Birth               : .....

Tax File No                 : .....

NOMINATED DEPENDANT(S)

I nominate the undermentioned persons as my Nominated Dependants:

				% OF TOTAL
SURNAME(S)	GIVEN NAME(S)	RELATIONSHIP		BENEFIT
.....				
.....				
.....				



SCHEDULE B (CONT'D)

ATTACHMENT

PART 1

DETAILS OF OTHER FUND OR PLAN MEMBERSHIPS

\* Total Number of other Plans or Funds or Annuities ( )

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\* Name of other Plan or Fund or Annuity \_\_\_\_\_

\* Trustee \_\_\_\_\_

\* Address of Trustee \_\_\_\_\_

\* Value of Accumulation Account or Members Credit  
or Benefit presently applicable to Applicant

\$ \_\_\_\_\_

\* Contributions paid by Applicant to Plan

\$ \_\_\_\_\_

\* Value of Preserved Benefit (including Productivity  
Benefit)

\$ \_\_\_\_\_

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PART 2

DETAILS OF AMOUNTS (NOT BEING ROLL OVERS) PREVIOUSLY RECEIVED  
FROM SUPERANNUATION FUNDS, PENSION FUNDS, APPROVED DEPOSIT  
FUNDS AND ROLL OVER ANNUITIES.

\* Total number of such amounts previously received ( )

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Amount received \$ \_\_\_\_\_ Date \_\_\_\_\_

Name of Employer, Superannuation Fund, Approved Deposit Fund, Deferred Annuity.

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EXECUTED as a deed on the date set out at the commencement of this Deed.

THE COMMON SEAL of  
TRALEE PASTORAL COMPANY  
PTY LTD ACN 008 708 601  
was hereunto affixed by authority  
of the Board of Directors in the  
presence of:



X<sup>JM</sup>  
*JM Burges*  
.....  
Director/Secretary

X<sup>NP</sup>  
*NP Burges*  
.....  
Director

JOANNE MARIE BURGESS  
.....  
Name of Director/Secretary  
(BLOCK LETTERS)

NEVILLE PHILLIPS BURGESS  
.....  
Name of Director  
(BLOCK LETTERS)

