

**TRUST DEED  
AND  
RULES  
OF**

**Kelis  
Superannuation Fund**

**Fund Commencement Date**

**4th June 1996**

Deacons Graham & James  
Lawyers

Corporate Benefits Pty Ltd  
Level 9 Toowong Tower  
9 Sherwood Road  
TOOWONG QLD 4066

DEED OF TRUST

AND

ASSIGNMENT

TO

THE  
DEACONS GRAHAM & JAMES

TRUSTEES OF THE

DEACONS GRAHAM & JAMES

**Deacons Graham & James have prepared this superannuation deed as a standard document  
for use by Corporate Benefits Pty Ltd.**

## TABLE OF CONTENTS

<b>SECTION 1. DEFINITIONS AND INTERPRETATION</b>	<b>1</b>
Actuary	1
Associated Employer	1
Category A Member	1
Category B Member	1
Category C Member	1
Category D Member	1
Category I Member	1
Commencement Date	1
Deed	2
Designated Beneficiaries	2
Employer	2
Employer Contribution Account	2
Fund	2
Fund Service	2
Fund Year	2
Industrial Award	2
Industrial Award Contribution Account	2
Member	2
Member's Contribution Account	3
Net Earning Rate of the Fund	3
Normal Retirement Date	3
Pension	3
Policy	3
Principal Employer	3
Relevant Authority	3
Roll-over Payment	3
Salary	3
Service	3
SIS	3
Tax Act	3
Trustee	4
Unallocated Reserve Account	4
<b>SECTION 2. ESTABLISHMENT</b>	<b>4</b>
Commencement	4
Control of Fund	4
Terms of Trust	4
Regulated Fund Under SIS	4
Sole or Primary Purpose	5
Substitution of Principal Employer	5
Principal Employer's Cessation	5
<b>SECTION 3. ELIGIBILITY AND MEMBERSHIP</b>	<b>5</b>
Eligibility to Category of Membership	5
Application for Membership	5
Commencement of Membership	5
Admission of Members	6
Transfers from Any Superannuation Entity	6
Arrangements with Members	6
Retention of Benefits and Transfers to Superannuation Entities	6
Service	7
Preservation of Benefits	7

<b>SECTION 4. BENEFIT ENTITLEMENT .....</b>	<b>8</b>
Normal Retirement .....	8
Postponed Retirement .....	8
Early Retirement .....	8
Temporary Incapacity .....	8
Permanent Incapacity .....	8
Death .....	8
Spouse's Benefit .....	9
Other Termination of Service .....	9
<b>SECTION 5. DETERMINATION OF BENEFITS .....</b>	<b>9</b>
Abbreviations .....	9
Minimum Benefits .....	9
Normal Retirement Benefit .....	10
Postponed Retirement Benefit .....	10
Early Retirement Benefit .....	10
Spouse's Benefit .....	11
Permanent Incapacity Benefit .....	11
Death Benefit .....	11
Withdrawal Benefit .....	11
Temporary Incapacity Benefit .....	12
<b>SECTION 6. PAYMENT OF BENEFITS .....</b>	<b>12</b>
Lump Sum Benefits .....	12
Pensions .....	12
Commutation .....	13
Death Benefit .....	13
Alternative Forms of Benefit .....	13
Variations .....	13
Cessation of Pension Entitlements .....	13
Payment of Death Benefit .....	14
Payment of Permanent Incapacity Benefits .....	14
Reduction in Death and Disablement Benefits .....	14
Discharge .....	15
Income Tax .....	15
Payment of Benefit to Minors .....	15
Suspension and Forfeiture of Benefits .....	15
Lien Over Benefits .....	15
Balance of Benefit .....	16
Commencement of Benefit .....	16
<b>SECTION 7. CONTRIBUTIONS .....</b>	<b>17</b>
Member Contributions .....	17
Employer Contributions .....	17
Member's Contribution Account .....	18
Employer Contribution Account .....	18
Industrial Award Contribution Account .....	19
Unallocated Reserve Account .....	20
Acceptance of Contributions .....	20
<b>SECTION 8. WINDING UP .....</b>	<b>21</b>
Termination of Trust .....	21
Benefits on Winding Up .....	21



<b>SECTION 9. ASSOCIATED EMPLOYERS</b> .....	22
Admission of Associated Employer.....	22
Retirement of Associated Employer .....	22
<b>SECTION 10. THE ASSETS, EXPENSES AND INVESTMENTS</b> .....	23
Assets of the Fund.....	23
Expenses of the Fund.....	23
Investments .....	23
Powers of Trustee.....	24
Borrowing.....	24
Provision of Benefits .....	24
Revaluation of Assets .....	24
<b>SECTION 11. RECORDS, RETURNS AND ACCOUNTS</b> .....	24
Records.....	24
Trustee's Return.....	25
Annual Accounts .....	25
Valuation by Actuary .....	25
<b>SECTION 12. TRUSTEE</b> .....	26
Appointment and Removal.....	26
Equal Representation Rules.....	26
Exercise of Powers and Discretions.....	27
Powers of Trustee.....	28
Cheques .....	30
Collection .....	30
Directors and Shareholders .....	30
Trustee Exercise Power.....	30
Trustee Covenants.....	31
Indemnity of the Trustee .....	31
Remuneration of the Trustee .....	31
<b>SECTION 13. ADMINISTRATION</b> .....	31
Salary.....	31
Designated Beneficiary.....	31
Rights of Members.....	32
Secrecy .....	32
Members to Give Information.....	32
Notices .....	32
Employer's Right to Terminate Employment .....	32
Variation of Trust Deed .....	33
Complaint by Beneficiaries .....	33
Confidentiality of Trustee's Deliberation.....	33

Handwritten: 217 6 1996

TRUST DEED made THIRTEENTH DAY OF JUNE 1996

**PARTIES** The Principal Employer and the Associated Employer (if any) referred to in Items 1 and 2 respectively of the First Schedule

**AND** The Trustee referred to in Item 3 of the First Schedule

## INTRODUCTION

**A.** The Principal Employer wishes to establish a superannuation fund to be known by the name referred to in Item 4 of the First Schedule to provide retirement and other approved benefits for such of the Employees of the Principal Employer and of any Associated Employer as are Members and for the Dependants of those Members.

**B.** The Trustee has agreed to act as the first Trustee of the Fund.

## IT IS COVENANTED AND AGREED:

### SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed unless the context otherwise indicates:

- (1) "Actuary" means the actuary for the Fund appointed by the Trustee.
- (2) "Associated Employer" means any Employer permitted under SIS to be a contributor to the Fund and is declared by the Principal Employer to be an Associated Employer.
- (3) "Category A Member" means a Member who:
  - (a) is a salaried director of the Employer; or
  - (b) has been classified as a Category A Member by the Employer.
- (4) "Category B Member" means a Member who has been classified as a Category B Member by the Employer.
- (5) "Category C Member" means a Member who has been classified as a Category C Member by the Employer.
- (6) "Category D Member" means a Member who has been classified as a Category D Member by the Employer.
- (7) "Category I Member" means a Member not classified by the Employer as a Category A, B, C, D or E Member who is entitled to a superannuation benefit under an Industrial Award.
- (8) "Commencement Date" means the date referred to in Item 5 of the First Schedule.

- (9) **"Deed"** means this Deed and Schedules of this Deed and any authorised alterations additions amendments modifications or variations made from time to time.
- (10) **"Designated Beneficiaries"** means any Dependant specified as a Designated Beneficiary by a Member to the Trustee.
- (11) **"Employer"** means the Principal Employer and any Associated Employer which have agreed to adopt this Fund for those of its Employees eligible to join the Fund. A reference to the Employer is a reference to the Employer of the Member.
- (12) **"Employer Contribution Account"** means the account established in respect of a Member under clause 7.7.
- (13) **"Fund"** means the fund established by this Deed.
- (14) **"Fund Service"** means the sum in completed years and months of the following -
- (a) The continuous period of Service between -
    - (i) the date specified by the Trustee as the date from which membership of the Fund commenced, and
    - (ii) the Normal Retirement Date.
  - (b) such other periods agreed to by the Trustee provided that the Trustee complies with SIS.
- (15) **"Fund Year"** means any one of the following periods:
- (a) the period from the Commencement Date to 30 June next;
  - (b) each following period of 12 months ending on 30 June in each year;
- but the Trustee may alter the Fund Year to a period of 12 months ending on any other day and the reference to 30 June in those circumstances will be altered accordingly.
- (16) **"Industrial Award"** means an award relating to superannuation for a particular class of employees given by a Commonwealth State or Territory Industrial Authority or Tribunal or any other Relevant Authority or any other form of compulsory superannuation introduced by Commonwealth State or Territory legislation whereby any Employer is required to contribute on behalf of a Member including Mandated Employer Contributions.
- (17) **"Industrial Award Contribution Account"** means the account established in respect of a Member under clause 7.8.
- (18) **"Member"** means an Employee who has become a Member of the Fund in accordance with the clause 3.4 and includes former Employees who continue to have rights or contingent rights to benefits under the Fund.



- (19) **"Member's Contribution Account"** means the account established in respect of a Member under clause 7.6.
- (20) **"Net Earning Rate of the Fund"** means the rate of return earned on the Fund assets (or on the assets held for a particular class or Category of Members) for a particular Fund Year or other relevant period after allowing for administration costs as the Trustee determines and/or the averaging of such rates earned on a basis acceptable to a Relevant Authority or under SIS. The Trustee may declare an interim Net Earning Rate of the Fund to be applied for the period succeeding the date at which the previous accounts of the Fund were prepared.
- (21) **"Normal Retirement Date"** means the date notified by the Employer to the Trustee being not less than the Member's 65th birthday or such other date as may be acceptable to a Relevant Authority or under SIS and agreed to by the Trustee.
- (22) **"Pension"** includes an allocated pension.
- (23) **"Policy"** means any policy of assurance including a policy on the life of a Member for endowment term incapacity 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.
- (24) **"Principal Employer"** means the Principal Employer named in Item 1 of the First Schedule or its successor in office.
- (25) **"Regulations to SIS"** means the *Superannuation Industry (Supervision) Regulations*.
- (26) **"Relevant Authority"** means the Commissioner of Taxation, Commissioner or such other government authority empowered to act or set guidelines in the area of superannuation.
- (27) **"Roll-over Payment"** means any payment made by or received by the Trustee at the request of a Member or former Member or in any other circumstances acceptable to a Relevant Authority or under SIS to or from any other Superannuation Entity.
- (28) **"Salary"** means the ordinary annual rate of salary of a Member for services rendered or work done in the employment of the Employer including fees payable as a director of the Employer, bonuses, commissions and other emoluments of a like nature but not including payments for overtime.
- (29) **"Service"** means the period during which an Employee is gainfully employed by the Employer and includes service as a salaried director of the Employer and includes the periods specified in clause 3.14.
- (30) **"SIS"** means the *Superannuation Industry (Supervision) Act 1993* and where appropriate includes the Regulations to SIS.
- (31) **"Tax Act"** means the *Income Tax Assessment Act 1936*.



(32) **"Trustee"** means the trustee for the time being of the Fund.

(33) **"Unallocated Reserve Account"** means the account established under clause 7.9.

1.2 Words and phrases used and not defined in this Deed which are defined in SIS or the Regulations to SIS have, unless the context otherwise indicates, the meaning given to those words and phrases in SIS and the Regulations to SIS (as the case may be).

1.3 References to a person include a corporation partnership incorporated association body corporate unincorporated body instrumentality of the Crown and any statutory public or local authority.

1.4 References to a corporation have the same meaning as in the *Corporations Law*.

1.5 References to any statute or statutory provision include all consolidations re-enactments and substitutions thereof all as amended from time to time and the regulations by-laws and orders for the time being in force thereunder.

1.6 Words importing any gender include all other genders.

1.7 Words importing the singular include the plural and vice versa.

1.8 Headings are inserted for guidance only and do not affect the content of any clauses. References to clauses schedules and annexures shall be construed as references to clauses of and schedules and annexures to this Deed.

1.9 This Deed shall be governed by the law of Queensland.

## **SECTION 2. ESTABLISHMENT**

### **Commencement**

2.1 The Fund comes into operation as from the Commencement Date.

### **Control of Fund**

2.2 The Fund shall is to be vested in and controlled and administered by the Trustee.

### **Terms of Trust**

2.3 The Trustee must hold the Fund upon the terms of this Deed and those contained in SIS.

### **Regulated Fund Under SIS**

2.4 The Trustee must give to the Commissioner a written notice in the form approved under SIS signed by the Trustee electing that SIS is to apply in relation to the Fund.

### **Sole or Primary Purpose**

- 2.5 The sole or primary purpose of the Fund is the provision of old-age pensions.

### **Substitution of Principal Employer**

- 2.6 If the Principal Employer's business is acquired by another Employer (or if another Employer employs more than one half of the Members) the Trustee may elect to accept the substitution of that Employer for the Principal Employer and upon substitution this Deed is to be read and construed as if the substituted Employer was the Principal Employer.

### **Principal Employer's Cessation**

- 2.7 If the Principal Employer determines that it no longer wishes to or is unable to continue as Principal Employer, the Trustee may come to an arrangement with another Employer to take over as the Principal Employer subject to such terms and conditions as are acceptable to the Trustee.

## **SECTION 3. ELIGIBILITY AND MEMBERSHIP**

### **Eligibility to Category of Membership**

- 3.1 Any Employee nominated by the Employer is:
- (1) eligible to become a Category A, B, C, or D Member as determined by the Employer.
  - (2) entitled to a superannuation benefit under an Industrial Award is eligible to become a Category I Member.
- 3.2 Any Employee who fails to become a Member within 30 days of first being nominated to join the Fund may only become a Member with the consent of the Employer and on such terms and conditions (being not more favourable to the Employee than would have applied if he had become a Member when he was first eligible) as the Trustee determines.

### **Application for Membership**

- 3.3 If an Employee becomes eligible, the Employer:
- (1) may apply to the Trustee for membership for the Employee in the form approved by the Trustee (unless otherwise specified the form of application will be in accordance with the Second Schedule); and
  - (2) should advise the Trustee in writing whether the Employee is to become a Category A, B, C or D Member.

### **Commencement of Membership**

- 3.4 An Employee becomes a Member when the Trustee has given notice in writing to the Employer and the Employee that it has approved the application.

### **Admission of Members**

3.5 The Trustee may make arrangements it thinks proper with:

- (1) an Employee;
- (2) any previous employer of the Employee; or
- (3) the trustee of any Superannuation Entity of which the Employee was a member

regarding Roll-over Payments to be made to the Fund in relation to the Membership of the Employee in the Fund.

### **Transfers from Any Superannuation Entity**

3.6 Where a Member is or was a member of any other Superannuation Entity and the Trustee accepts a Roll-over Payment in connection with that Member the Trustee must provide the Member with additional or accrued benefits in such manner as it determines.

3.7 If the Trustee so determines the Member is deemed to have become a Member on the date that the Member became a member of the other Superannuation Entity from which the Roll-over Payment was made.

### **Arrangements with Members**

3.8 The Trustee may with the agreement of a Member and the Employer vary the benefits and/or contributions [except in relation to Mandated Employer Contributions and the benefits related to those Mandated Employer Contributions] otherwise payable in respect of that Member under this Deed.

### **Retention of Benefits and Transfers to Superannuation Entities**

3.9 If a Member:

- (1) (a) leaves the Service and requests all or part of his benefit to be retained in the Fund; or
- (b) requests the transfer of benefits from any other Superannuation Entity including a Roll-over Payment to this Fund;
- (2) leaves the Service and requests payment of all or part of his benefit to another Superannuation Entity; or
- (3) remains in the Service and becomes eligible to join any other Superannuation Entity

the Trustee may in accordance with SIS in lieu of part or all of any benefit to which the Member may be entitled under this Deed retain pay or transfer to the trustee of such Superannuation Entity the benefits in respect of the Member required to be vested in the Member or to be preserved together with such portion of the other assets of the Fund so paid or transferred as in the opinion of the Trustee is just and equitable.



- 3.10 The retention payment or transfer referred to in clause 3.9 is to be in satisfaction of such part or all of the benefit to which the Member would otherwise have been entitled under this Deed.
- 3.11 The receipt by the trustee of the other Superannuation Entity is a sufficient discharge to the Trustee.
- 3.12 The Trustee is not in any way responsible for the payment or disposal by the trustee of the other Superannuation Entity of such portion of the asset of the Fund so paid or transferred.
- 3.13 Where any part of such transfer is required to be preserved in accordance with the standard prescribed by the Regulations to SIS the Trustee should obtain the necessary assurances that the benefit will be dealt with in accordance with the provisions of clause 3.16.

#### **Service**

- 3.14 The following periods are deemed Service if permitted by a Relevant Authority or under SIS:
- (1) any period of employment with any employer with which the Employer is directly or indirectly allied or associated to such extent as the Trustee determines;
  - (2) any period of employment (whether military or otherwise) in connection with or in contemplation of hostilities, compulsory national service and such other national service as the Trustee determines;
  - (3) any period of absence from duty with the Employer which by operation of any statute is deemed to be employment with the Employer;
  - (4) any period of absence from duty with the Employer whilst in receipt of a Temporary Incapacity Benefit or where such absence is because of illness or injury; and
  - (5) the whole or any part of a period of absence from duty with the Employer which the Trustee determines is to be regarded as employment of the Member.
- 3.15 Where the Trustee is satisfied that a Member withdrawing from the Service is likely to return to the service within a reasonable period, it may make such arrangements in regard to the Member's Service and accrual of benefits as it considers appropriate.

#### **Preservation of Benefits**

- 3.16 A Member's benefits in the Fund:
- (1) may only be paid by:
    - (a) being cashed in accordance with Division 6.3 of the Regulations to SIS;
    - or

- (b) being rolled over or transferred in accordance with the provisions of Division 6.4 of the Regulations to SIS; and
- (2) must not be paid except when, and to the extent, that the Fund is permitted under SIS to pay them; and
- (3) must be paid when, and to the extent that, the Fund is required or permitted under SIS to pay them.

#### **SECTION 4. BENEFIT ENTITLEMENT**

##### **Normal Retirement**

- 4.1 A Member who retires from Service at his Normal Retirement Date is entitled to receive a Normal Retirement Benefit.

##### **Postponed Retirement**

- 4.2 A Member who retires from Service after his Normal Retirement Date is entitled to receive a Postponed Retirement Benefit.

##### **Early Retirement**

- 4.3 A Member who with the consent of the Employer retires from Service within 5 years of his Normal Retirement Date is entitled to receive an Early Retirement Benefit.

##### **Temporary Incapacity**

- 4.4 A Member who is absent from Service due to Temporary Incapacity may be entitled to receive a Temporary Incapacity Benefit.
- 4.5 The question as to whether the Member's circumstances constitute Temporary Incapacity and every other question as to Temporary Incapacity is to be decided by the Trustee after receipt of a report by a qualified medical practitioner approved by it.

##### **Permanent Incapacity**

- 4.6 A Member who retires from Service prior to his Normal Retirement Date because of Permanent Incapacity is entitled to receive a Permanent Incapacity Benefit.

##### **Death**

- 4.7 On the death in Service of a Member before his Normal Retirement Date a Death Benefit is payable.
- 4.8 On the death in Service of a Member after his Normal Retirement Date the Postponed Retirement Benefit is payable assuming he retired the day before he died.
- 4.9 On the death of a former Member who is in receipt of a pension from the Fund a Death Benefit may become payable.

### **Spouse's Benefit**

- 4.10 If a Member dies while in receipt of a Pension the Member's Spouse is to receive a Spouse's Benefit unless the Trustee determines otherwise.

### **Other Termination of Service**

- 4.11 A Member who retires from Service and who is not entitled to a Normal, Postponed or Early Retirement Benefit or a Permanent Incapacity Benefit and in respect of whom a Death Benefit is not payable may be entitled to receive a Withdrawal Benefit subject to the requirements of SIS.

## **SECTION 5. DETERMINATION OF BENEFITS**

### **Abbreviations**

- 5.1 For the purpose of determining benefits in clauses 5.3 to 5.20 the following abbreviations have been used:
- (1) "t" is completed Fund Service at date of termination of Service;
  - (2) "n" is prospective Fund Service as at the date of entry to the Fund;
  - (3) "V" is 0.01 for Category B, C, and D Members.
  - (4) "R" is the resignation factor in the Vesting Schedule to this Deed against the appropriate entry for complete years of Fund Service;
  - (5) "E" is the credit in the Member's Employer Contribution Account at date of termination;
  - (6) "K" is the credit in the Member's Contribution Account at date of termination;
  - (7) "I" is the credit in the Member's Industrial Award Contribution Account at date of termination;
  - (8) "e" is an annual amount determined by the Trustee as being equal in value to the credit in the Member's Employer Contribution Account at date of termination; and
  - (9) "k" is an annual amount determined by the Trustee as being equal in value to the credit in the Member's Contribution Account at date of termination; and
  - (10) "i" is an annual amount determined by the Trustee as being equal in value to the credit in the Member's Industrial Award Contribution Account at date of termination.

### **Minimum Benefits**

- 5.2 (1) If the Fund is an Accumulation Fund, the Member's minimum benefits are:
- (a) the Member's Member-Financed Benefits; and



- (b) the Member's Mandated Employer-Financed Benefits.
- (2) If the Fund is a Defined Benefit Fund, the Member's minimum benefits are:
  - (a) if the Member belongs to a class of Employees in relation to which a relevant benefit certificate applies, the amount of the Member's minimum requisite benefit; or
  - (b) in any other case:
    - (i) the Member's Member-Financed Benefits; and
    - (ii) the Member's Mandated Employer-Financed Benefits.
- (3) The definitions provided in Section 5 regarding the benefits payable to Members are subject to those benefits satisfying the minimum requirements specified in clauses 5.2(1) and 5.2(2).

#### **Normal Retirement Benefit**

- 5.3 A Category A, B, C or D Member's Normal Retirement Benefit is to be an annual pension equal to:

$$e + k + i$$

- 5.4 A Category I Member's Normal Retirement Benefit is to be an annual pension:

$$k + i$$

#### **Postponed Retirement Benefit**

- 5.5 If a Member continues in the Service past his Normal Retirement Date the benefit will be calculated in terms of clauses 5.3 to 5.4 including interest and any accretions thereon to his actual date of retirement. The Trustee may at its discretion determine whether Member and/or Employer Contributions may continue after the Member's Normal Retirement Date.

#### **Early Retirement Benefit**

- 5.6 A Category A, B, C or D Member's Early Retirement Benefit is to be an annual pension equal to:

$$e + k + i$$

- 5.7 A Category I Member's Early Retirement Benefit is to be an annual pension equal to:

$$k + i$$

### **Spouse's Benefit**

- 5.8 The Spouse's Benefit payable in respect of a Member who dies whilst in receipt of a Pension from the Fund, is a lump sum determined by the Trustee.

### **Permanent Incapacity Benefit**

- 5.9 Subject always to clause 6.17 the Permanent Incapacity Benefit in respect of a Category A, B, C or D Member is to be a lump sum equal to:

such amount as advised by the Employer + K + I.

- 5.10 The Trustee may in lieu of a lump sum calculated in terms of clause 5.9 pay an annual pension of equivalent value.

- 5.11 Subject to clause 6.17 a Category I Member's Permanent Incapacity is to be a lump sum equal to:

$$K + I$$

### **Death Benefit**

- 5.12 Subject to clause 6.17 Death Benefit in respect of a Category A, B, C or D Member who dies in the Service is to be a lump sum equal to:

such amount as advised by the Employer + K + I.

- 5.13 Subject always to clause 6.17 the Death Benefit in respect of a Category I Member who dies in the Service is to be a lump sum equal to:

$$K + I$$

- 5.14 The Death Benefit in respect of a Member who dies whilst in receipt of a Permanent Incapacity Benefit pursuant to clause 6.14(1) must be the commuted value in the opinion of the Trustee of the remaining instalments of the Permanent Incapacity Benefit that the Member would have received had he survived.

- 5.15 Where a Member who is receiving a pension from the Fund dies before a minimum period of 10 years' instalments have been made a Death Benefit is to be payable equal to the sum of those remaining instalments of pension the Member would have received had the Member survived that minimum period.

### **Withdrawal Benefit**

- 5.16 The Withdrawal Benefit of a Category A Member is to be a lump sum equal to the product of:

$$E + K + I$$

- 5.17 The Withdrawal Benefit of a Category B, C or D Member is to be a lump sum equal to:

$$E \times [1 - (n - t) \times V] \times R + K + I$$

5.18 The Withdrawal Benefit of a Category I Member is to be a lump sum equal to:

$$K + I$$

#### **Temporary Incapacity Benefit**

5.19 Subject to clause 6.17 the Temporary Incapacity Benefit of a Member is to be a monthly income of such amount as determined by the Trustee in its absolute discretion and must cease when one of the following occurs:

- (1) the Member dies;
- (2) the Member is classified as being Permanently Incapacitated;
- (3) the Member retires;
- (4) the Member is classified as no longer being Temporarily Incapacitated;
- (5) the Member has received 24 instalments of income in respect of a particular disability; or
- (6) the Trustee determines that the Temporary Incapacity Benefit ceases to comply with the requirements of any Relevant Authority or SIS.

5.20 The Trustee has the right to require any such Member to be examined by a qualified medical practitioner approved by it. If the Member refuses or fails to comply with such request to be examined payment of the instalments of Temporary Incapacity Benefit shall be suspended.

### **SECTION 6. PAYMENT OF BENEFITS**

#### **Lump Sum Benefits**

6.1 The payment of any lump sum benefit due to a Member terminating Service is to be paid as soon as practicable after the date the Member's Service terminates. Part or all of a Member's benefit as determined at the date of termination which has not been paid from the fund within 30 days of the date on which the Member's Service terminates may be increased with interest as determined by the Trustee.

6.2 Any lump sum benefit must be paid as an allocated pension unless the person entitled to that lump sum notifies the Trustee to the contrary in which case the benefit will, subject to the requirements of SIS, be paid as a lump sum.

#### **Pensions**

6.3 The first instalment of any pension falls due for payment on the last day of the month in which the Member's Service ceases.

6.4 Pensions are payable monthly unless the Trustee determines that the pension is payable at other intervals.



- 6.5 The last payment of a Member's pension falls due upon the due date immediately preceding the date of his death.

#### **Commutation**

- 6.6 The Trustee at the request of a Member or the Spouse of a Member may commute to a lump sum payment an amount of the pension to which such Member or Spouse may be entitled or such other amount which may be approved by the Trustee and which complies with the requirements of SIS. The commuted value of part or all of a pension is to be determined by the Trustee.
- 6.7 If part of a pension is commuted a Member may elect:
- (1) to have the pension payments reduced proportionately; or
  - (2) to have the pension deferred for such times as agreed between the Member and the Trustee and during such period the Trustee increases the value of the benefit with interest; or
  - (3) to have some combination of reduced and deferred pension.

#### **Death Benefit**

- 6.8 If a Member dies whilst in receipt of a pension the Spouse, Dependants or beneficiaries of the Member are only entitled to a lump sum benefit of an amount determined by the Trustee.

#### **Alternative Forms of Benefit**

- 6.9 A person entitled to a pension from the Fund may with the agreement of the Trustee arrange to vary the amount of the pension and the contingencies on which payment of the pension depends provided that the value of the entitlement is unaltered and either:
- (1) the annual amount of the pension is not increased; or
  - (2) such variation is approved by a Relevant Authority or under SIS.
- 6.10 A person entitled to a lump sum may with the agreement of the Trustee arrange to receive in lieu of the lump sum a pension of equivalent value.

#### **Variations**

- 6.11 The Trustee may increase the amounts of the pensions being paid from the Fund by an amount equal to any percentage increase in the Consumer Price Index (All States) or such other Index the Trustee considers appropriate which has occurred since the later of the date of any previous increase made under this clause or the date at which each such pension first commenced to be paid.

#### **Cessation of Pension Entitlements**

- 6.12 In the event of a Member's individual accounts being exhausted the Member or Spouse who was receiving the pension shall cease to be entitled to any further benefits.

#### **Payment of Death Benefit**

6.13 The Death Benefit is to be paid by the Trustee to any one or more of the following persons and in such proportions as it thinks fit:

- (1) the Designated Beneficiary; and
- (2) all or any of the Dependants of the Member.

If after a period of 2 months from the date of the death of the Member the Trustee is unable to determine any Dependant to whom any portion of the Death Benefit should be paid such portion is to be paid to the legal personal representative of the Member unless otherwise required by SIS.

#### **Payment of Permanent Incapacity Benefits**

6.14 The Permanent Incapacity Benefit of a Member may at the discretion of the Trustee be paid either:

- (1) in a series of instalments over a period of years until the Member's individual accounts have been exhausted; or
- (2) at the election of the Member in a single lump sum.

6.15 Any instalment being paid to a Member ceases with the last payment made prior to his death.

6.16 (1) A Permanent Incapacity Benefit being paid by instalments to a Member ceases with effect from the date the Permanent Incapacity ceases.

(2) The Trustee may require any such Member to be examined by a qualified medical practitioner approved by it.

(3) If the Member refuses or fails to comply fully with such request to be examined payment of the instalments of Permanent Incapacity Benefit may be suspended.

#### **Reduction in Death and Disablement Benefits**

6.17 (1) The Trustee may insure a Member for benefits to be payable on the death, Permanent Incapacity or Temporary Incapacity of the Member.

(2) If a Member is not acceptable at standard rates or where the insured amount payable is reduced for any reason under any Policy that the Trustee may effect for the purposes of reinsuring any part of his Death Benefit, Permanent Incapacity Benefit or Temporary Incapacity Benefit the amount of a Member's Death Benefit, Permanent Incapacity Benefit or Temporary Incapacity Benefit may be reduced by such amount as the Trustee considers appropriate subject to the requirements of SIS.

(3) The Trustee will advise the Employer and if practicable the Member of the new amount provided that the total benefit paid as a result of this clause is not to be

less than the amount which would otherwise have applied if the benefit had been determined in accordance with clauses 5.16 to 5.18.

#### **Discharge**

- 6.18 Payment or transfer to the Member or his Dependants of the benefit to which the Member or his Dependants is entitled discharges the Trustee.
- 6.19 The Trustee is not to be responsible for the payment, transfer or disposal by the Member or his Dependants of the portion of the assets of the Fund so paid or transferred.

#### **Income Tax**

- 6.20 The Trustee may deduct from any benefit contribution or payment under this Deed any form of taxation payable from or in respect of the payment and must remit any amount so deducted to the Commissioner of Taxation.

#### **Payment of Benefit to Minors**

- 6.21 When any beneficiary is under the age of 18 years the Trustee may pay all or part of a benefit to any other person for application on behalf of the beneficiary and or to his Dependants and the receipt of the person to whom the benefit is paid is to be a complete discharge to the Trustee for the payment in respect of the beneficiary. The Trustee is not to be bound or concerned to see to the application of the benefit.

#### **Suspension and Forfeiture of Benefits**

- 6.22 Benefits payable out of the Fund may be suspended subject to the requirements of SIS if the person otherwise entitled hereto:
- (1) owing to mental illness or for any reason requires care, treatment or control for his own good or in the public interest and is in the opinion of the Trustee for the time being incapable of managing his own affairs; or
  - (2) is unable positively to be traced by the Trustee after making reasonable enquiries.
- 6.23 The benefits suspended by the Trustee under clause 6.22 may be applied by the Trustee for the benefit of any person otherwise entitled to them and his Dependants or any of them as the case may be provided that should the person still be in the employ of an Employer such benefits may only be applied for the maintenance and support of the Member or his Dependants to relieve hardship until the Member is no longer in such employ and to the extent that they are not so applied are to be retained and used for the general purposes of the Fund subject to compliance with the requirements of SIS.

#### **Lien Over Benefits**

- 6.24 (1) The Trustee may deduct to the extent permitted under SIS from any payment to a Member:



- (a) any debt due from the Member to the Principal Employer or any Associated Employers and/or
  - (b) any losses or expenses incurred by any of them in consequence of the Member's fraud, dishonesty, wilful damage to property or serious misconduct.
- (2) Written notification by the Principal Employer to the Trustee is sufficient evidence to the Trustee of the existence and amount of the debt or losses or expenses.
  - (3) Neither the Principal Employer nor any Associated Employer is to make any deduction from nor exercise any lien over any benefit that is required to be vested or preserved in accordance with any provision of this Deed or to comply with the requirements of SIS.
  - (4) Neither the Principal Employer nor any Associated Employer is to make any deduction from nor exercise any lien over any benefit representing a return of a Member's contributions (including moneys deemed to be Member's contributions) or interest on those contributions.

#### **Balance of Benefit**

6.25 Where any benefit paid to a Member on termination of employment is less than the full value of that Member's interest in the Fund the amount of the excess is to be applied within 2 months of the end of each Fund Year in one or more of the following ways which the Trustee determines:

- (1) as an allocation between the Members' Contribution Accounts, Employer Contribution Accounts or Industrial Award Contribution Accounts to be appropriate and equitable between the Members;
- (2) to reduce the amount of the Employer's contributions to the Fund;
- (3) to meet the administrative expenses of the Fund;
- (4) to provide assistance to Members in the case of financial hardship, sickness, accident or other misfortune causing hardship; or
- (5) in such other manner that is approved by a Relevant Authority or under SIS.

#### **Commencement of Benefit**

6.26 (1) A Member's benefits must be cashed as soon as practicable after the occurrence of any of the following:

- (a) the Member:
  - (i) has attained age 65 but not age 70; and
  - (ii) is not gainfully employed on either a full time or part time basis;

- (b) the Member:
    - (i) has attained age 70; and
    - (ii) is not gainfully employed on a full time basis;
  - (c) the Member dies.
- (2) The form in which benefits must be cashed is any one or more of the following:
- (a) a single lump sum;
  - (b) a single pension; and/or
  - (c) the purchase of a single annuity.

## **SECTION 7. CONTRIBUTIONS**

### **Member Contributions**

- 7.1 A Category A, B, C, D or I Member may contribute to the Fund during his Service before his Normal Retirement Date an amount as determined by him and agreed to by the Trustee provided the Trustee is authorised to accept those contributions in accordance with SIS.
- 7.2
- (1) Unless the Employer otherwise determines or the law does not allow deductions to be made, a Member's contributions are to be deducted from his Salary.
  - (2) If the Employer otherwise determines or the law does not allow the deductions the Member is to pay his contributions to the Employer when he receives each payment in respect of his Salary.
  - (3) The Employer is to pass on Members' contributions to the Trustee as soon as practicable after the end of the calendar month in which it was deducted.

### **Employer Contributions**

- 7.3 During each Fund Year, the Employer must contribute to the Fund an amount equal to the Mandated Employer Contributions in relation to each Employee who is a Member.
- 7.4 During any year, the Employer may contribute to the Fund in addition to the Mandated Employer Contributions such additional amounts as it determines. Those contributions may be determined either as a percentage of Salary or as a specific dollar amount and may vary both between Members and from year to year.
- 7.5 If the Employer suspends payments of the non-Mandated Employer Contributions, the Trustee may vary the benefits related to those non-Mandated Employer Contributions for the Employees of that Employer who are Members other than benefits accrued at the date the suspension or reduction takes effect.

### **Member's Contribution Account**

7.6 There must be established a Member's Contribution Account for each Member to which shall be credited:

- (1) the contributions made by him under clause 7.1;
- (2) the contributions made by his Employer for credit to this account under clause 7.4;
- (3) the proceeds of any Policy to the extent that premiums for such Policy have been deducted from this account;
- (4) the share of income to be credited to the account determined at the Net Earning Rate of the Fund; and
- (5) any other moneys which are received by the Fund in respect of the membership of the Member as determined by the Trustee

and from which shall be debited:

- (6) any benefits or amounts payable to or in respect of the Member under this Deed which the Trustee determines should be debited to his Member's Contribution Account;
- (7) a proportion of any negative earnings of the Fund determined by the Trustee and attributable to the Member's Contribution Account;
- (8) any death or disability insurance premiums in respect of the Member as the Trustee determines at his discretion should be debited to the account provided that the Member has approved the provision of such death or disability cover; and
- (9) any other amounts payable out of the Fund in respect of the membership of a Member which at the discretion of the Trustee should be debited to his Member's Contribution Account (including any assessment for income tax on contributions received in respect of that Member referred to in clauses 7.6(1) and 7.6(2) or benefits paid to that Member).

### **Employer Contribution Account**

7.7 There must be established an Employer Contribution Account for each Member in the Fund to which shall be credited:

- (1) the contributions made by the Employer under clause 7.3;
- (2) the contributions made by the Employer for credit to this account under clause 7.4;
- (3) the share of income to be credited to the account determined at the Net Earning Rate of the Fund;



- (4) the proceeds of any Policy to the extent that premiums for such Policy have been deducted from this account; and
- (5) any other moneys which are received by the Fund in respect of the membership of the Member as determined by the Trustee

and from which shall be debited:

- (6) any benefits or amounts payable to or in respect of the Member under this Deed which the Trustee determines should be debited to his Employer's Contribution Account;
- (7) a proportion of any negative earnings of the Fund determined by the Trustee and attributable to the Member's Employer Contribution Account;
- (8) any death or disability insurance premiums or a portion thereof in respect of the Member as the Trustee determines at his discretion should be debited to this account; and
- (9) any other amounts payable out of the Fund in respect of the membership of a Member which at the discretion of the Trustee should be debited to his Employer's Contribution Account (including any assessment for income tax on contributions received in respect of that Member referred to in clauses 7.7(1) and 7.7(2) or benefits paid to that Member).

#### **Industrial Award Contribution Account**

7.8 There must be established an Industrial Award Contribution Account for each Member in respect of whom contributions are made pursuant to an Industrial Award to which shall be credited:

- (1) the contributions made by his Employer under clause 7.3;
- (2) the share of income to be credited to the account determined at the Net Earning Rate of the Fund;
- (3) the proceeds of any Policy to the extent that premiums for such Policy have been deducted from this account;
- (4) any amount transferred from any other Superannuation Entity where the amount so transferred represents the Member's Industrial Award Contribution Account within that fund or any other benefit which is required to be preserved under similar terms and conditions; and
- (5) any other amounts determined by the Trustee

and from which shall be debited:

- (6) any benefits or amounts payable to or in respect of the Member under this Deed which the Trustee determines should be debited to his Industrial Award Contribution Account;

- (7) a proportion of any negative earnings of the Fund determined by the Trustee and attributable to the Member's Industrial Award Account;
- (8) any insurance premiums for any Policy or a portion thereof in respect of the Member as the Trustee determines at his discretion should be debited to this account; and
- (9) any other amounts payable out of the Fund in respect of the membership of a Member which at the discretion of the Trustee and subject to the requirements of SIS should be debited to his Industrial Award Contribution Account (including any assessment for income tax on contributions received in respect of that Member referred to in clauses 7.8(1) or benefits paid to that Member).

#### **Unallocated Reserve Account**

7.9 There must be established an Unallocated Reserve Account to which shall be credited:

- (1) such amount of the net earnings of the Fund as the Trustee determines and on a basis acceptable to any Relevant Authority or approved under SIS to allow for the averaging of earnings to take account of possible or actual periodic fluctuations in those earnings;
- (2) provision for known future expenses outgoings or losses to be incurred by the Fund; and
- (3) any share of income to be credited to the account at the discretion of the Trustee

and from which shall be debited:

- (4) such amount of clause 7.9(1) applied for the averaging of earnings in a particular Fund Year.
- (5) such amount to pay expenses outgoings or losses actually incurred for which provision was made in clause 7.9(2); and
- (6) any amount not applied in clauses 7.9(4) and 7.9(5) for credit to the Members' Contribution Accounts, Employer Contribution Accounts and Industrial Award Contribution Accounts as the Trustee determines to be appropriate and equitable between the Members.

#### **Acceptance of Contributions**

7.10 The Fund may accept contributions that are made in respect of a Member who is under the age of 65 only if:

- (1) the contributions are Mandated Employer Contributions; or
- (2) the contributions are not Mandated Employer Contributions and the Member:
  - (a) has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in full time or part time gainful employment; or

- (b) ceased full time or part time gainful employment because of ill health (whether physical or mental) that, at the date of acceptance, prevents the Member from engaging in employment of the kind that the Member engaged in on the onset of ill health.

7.11 If the Fund is a defined benefit fund, it may grant an accrual of benefits in respect of a Member who is under the age of 65 only if:

- (1) the Member has, at any time in the period of 2 years immediately preceding the grant of accrual, engaged in full time or part time gainful employment; or
- (2) the Member has ceased full time or part time gainful employment because of ill health (whether physical or mental) that, at the date of the grant of accrual, prevents the Member from engaging in employment of the kind in which Member engaged at the onset of ill health.
- (3) the accrual is attributable to Mandated Employer Contributions.

7.12 If the Trustee ascertains that contributions have been accepted on behalf of a Member contrary to the requirements of clauses 7.10 and 7.11, the Trustee must refund those contributions less any charge which an insurance company may have made for any Policy and the benefits are to be reduced to those which would have been payable if the contributions had not been paid.

## **SECTION 8. WINDING UP**

### **Termination of Trust**

8.1 The Trust must be wound up if:

- (1) the Trustee declares in writing that the Fund will terminate;
- (2) the Principal Employer declares in writing the Fund will terminate; or
- (3) the Fund must be wound up to comply with SIS.

8.2 As from the date of termination the following apply:

- (1) no further contributions are to be made by the Employer other than arrears of contributions due up to the date of termination; and
- (2) arrears of contributions (if any) are called in immediately.

### **Benefits on Winding Up**

8.3 From the date of termination the Trustee must make such provision out of the assets of the Fund as is necessary to provide for the payment of liabilities of the Fund in accordance with the priorities prescribed by the Regulations to SIS

8.4 Where any part of a benefit payable on winding up the Fund is required to be preserved the Trustee should obtain assurances that the benefit will be dealt with in accordance with the provisions of clause 3.16.



- 8.5 (1) If after providing benefits for Members under the provisions of clause 8.3 a surplus remains such surplus or part thereof may be applied by the Trustee for payment of benefits to Members and ex-Members who have been employed by the Employer prior to the date of termination or their Dependants.
- (2) Where any part of such benefit is required to be preserved the Trustee should obtain assurances that the benefit will be dealt with in accordance with the provisions of clause 3.16.
- 8.6 If after providing benefits pursuant to clauses 8.3 and 8.5 a surplus remains such surplus may revert to the Employer subject to compliance with the requirements of SIS.
- 8.7 A reduction of benefits to which Members would otherwise be entitled may be made in an equitable manner as determined by the Trustees following advice from the Actuary and having regard to the requirements of SIS.

## **SECTION 9. ASSOCIATED EMPLOYERS**

### **Admission of Associated Employer**

- 9.1 (1) The Trustee may admit to the Fund any Associated Employer which has agreed in writing to be bound by this Deed.
- (2) On such admission the Trustee may make such arrangements as it thinks fit with the Associated Employer so admitted regarding the terms on which the Employees of the Associated Employer are to be admitted to membership of the Fund.

### **Retirement of Associated Employer**

- 9.2 The participation in the Fund of an Associated Employer may be terminated:
- (1) by the Associated Employer by notice in writing to the Trustee; or
- (2) by the Trustee by notice in writing to the Associated Employer.
- 9.3 On termination of participation:
- (1) the Trustee must specify a date ("Retirement Date") upon which the Associated Employer ("Retiring Employer") must retire;
- (2) the Retiring Employer must immediately pay all arrears (if any) of contributions up to the Retirement Date;
- (3) benefits which have become payable on or before the Retirement Date continue to be payable out of the Fund;
- (4) the Trustee shall certify that proportion of the assets of the Fund including arrears (if any) of contributions still to be made pursuant to clause 9.3(2) which is properly attributable to Members who were in the employ of the Retiring Employer at the Retirement Date;

- (5) the Trustee may make such arrangements as it thinks proper for the provision in lieu of the benefits which would otherwise be payable out of the Fund, of benefits for employees of the Retiring Employer and their Dependants.

- 9.4 Provision of benefits in conformity with clause 9.3(5) is to be made by application of the proportion of the assets of the Fund certified under clause 9.3(4) in accordance with clauses 8.3 to 8.6 as if the proportion of the assets so certified had constituted a separate fund of which the Retiring Employer was the Principal Employer and the persons in its employ at the Retirement Date and their dependants were the only persons interested and if such separate fund had been wound up by notice made under clause 8.1 having effect from the Retiring Date.

## **SECTION 10. THE ASSETS, EXPENSES AND INVESTMENTS**

### **Assets of the Fund**

- 10.1 The following property constitutes the Fund:

- (1) contributions;
- (2) any assets transferred to the Trustee pursuant to any arrangements made by the Trustee; and
- (3) any other moneys or assets received by the Trustee for the purposes of the Fund.

- 10.2 The assets of the Fund are to be held by the Trustee and applied in accordance with the provisions of this Deed.

### **Expenses of the Fund**

- 10.3 (1) All the expenses of the establishment, amendment and operation of the Fund incurred which are not paid or payable by the Principal Employer or an Associated Employer are to be paid out of the Fund.
- (2) Where death and disability benefits are covered by insurance the insurance premiums for the reinsured portion of the benefits may be paid by the Employer or out of the Fund and at the discretion of the Trustee the insurance premiums in relation to a particular Member may be in part or total debited to that Member's Member Contribution Account or Industrial Award Account, or where the Member has approved the provision of such death and disability cover, to that Member's Contribution Account.

### **Investments**

- 10.4 The Trustee may appoint in writing on such terms as it sees fit one or more corporate bodies (provided they are not disqualified from acting pursuant to SIS) as investment managers.

### **Powers of Trustee**

- 10.5 The Trustee has all the powers over and in respect of the Fund and the assets of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund subject only to:
- (1) the restrictions imposed under SIS;
  - (2) the Regulations to SIS;
  - (3) the exercise of those powers being consistent with the "sole purpose test" prescribed by SIS; and
  - (4) the investments of the assets of the Fund being consistent with the investment strategy formulated by the Trustee in compliance with the provisions of SIS.

### **Borrowing**

- 10.6 The Trustee must not borrow or maintain an existing borrowing of money unless allowed to do so by the provisions of SIS.

### **Provision of Benefits**

- 10.7 The Trustee may enter into any contracts with an insurance company or make arrangements with the trustees of any other Superannuation Entity to provide for all or any part of the benefits which are to be or may become payable under this Deed and may pay out of the Fund all payments to be made by it under such contracts or arrangements.

### **Revaluation of Assets**

- 10.8 (1) The Trustee may revalue the investments of the Fund at any time according to their then market value as determined by the Trustee and any capital profit or loss resulting from such revaluation less such provision for liabilities and taxation as the Trustee deems prudent is to be credited or debited as the case may be to the Member's Contribution Accounts and Employer Contribution Accounts and if appropriate Industrial Award Accounts at the date of the revaluation.
- (2) A revaluation may be made and the profit or loss credited or debited even though at the date of revaluation any Member's right to payment of moneys standing to his credit in the Fund has accrued.

## **SECTION 11. RECORDS, RETURNS AND ACCOUNTS**

### **Records**

- 11.1 The Trustee must keep or cause to be kept a complete record of all persons who become Members of the Fund and of all deaths, retirements, dismissals from among Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund and otherwise required by SIS.



### **Trustee's Return**

11.2 The Trustee must, within the period prescribed by SIS after each Fund Year give to the Commissioner:

- (1) a return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of the Fund Year;
- (2) a certificate, in the approved form, by the Trustee in relation to the Fund in respect of the Fund Year;
- (3) the certificate given to the Trustee by an Approved Auditor in relation to the Fund in respect of the Fund Year; and
- (4) any other matters required under SIS.

### **Annual Accounts**

11.3 The Trustee must:

- (1) keep such accounting records as correctly record and explain the transaction and financial position of the Fund;
- (2) so keep its accounting records so as to enable the following to be prepared;
  - (a) the accounts and statements of the Fund required by SIS;
  - (b) the returns of the Fund mentioned in clause 11.2; and
- (3) so keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with this Deed and SIS.

11.4 The accounts and statements of the Fund in respect of a Fund Year must be audited by an Approved Auditor.

11.5 The Trustee must make such arrangements as are necessary to enable the audit of those accounts and statements in accordance with the provisions of SIS.

### **Valuation by Actuary**

- 11.6
- (1) If the fund is a defined benefit fund, the Trustee must require an actuarial investigation to be made in relation to the Fund at the times and in the manner prescribed by SIS.
  - (2) The Trustee must obtain an actuarial report in relation to each investigation made in relation to the Fund.
  - (3) The actuarial report must be obtained within the period of 12 months commencing on the date immediately following the valuation date in relation to the Fund.

- (4) The actuarial report must contain the matters specified in the Regulations to SIS.
- 11.7 The Trustee may deal with any surplus or deficiency by decreasing or increasing the rates of contributions or by increasing or decreasing the rates of benefits (whether vested or prospective) or in any other manner subject to compliance with the requirements of SIS.
- 11.8 If the Actuary or Auditor not being satisfied about the solvency of the Fund that person and the Trustee must comply with the procedures contained in SIS.

## **SECTION 12. TRUSTEE**

### **Appointment and Removal**

- 12.1 The Principal Employer, subject to the requirements of SIS is to appoint:
  - (1) a Trustee; and
  - (2) the Employer Representative.
- 12.2 The Trustee appointed to administer the Fund must be either:
  - (1) a constitutional corporation the directors of which comprise such number of Member Representatives and Employer Representatives as are necessary to satisfy the requirements of SIS; or
  - (2) a board of trustees comprising such numbers of Member Representatives and Employer Representatives as are necessary to satisfy the requirements of SIS; or
- 12.3 The Member Representatives or the Employer Representatives may as the context permits request the appointment of an additional independent member to the board of directors of the Trustee or as an additional Trustee.
- 12.4 The additional independent director or trustee must not under any circumstance exercise a casting vote in any proceedings of the board.

### **Equal Representation Rules**

- 12.5 The board of the Trustee or board of Trustees is deemed to consist of equal numbers of Employer Representatives and Member Representatives if:
  - (1) the board includes an additional independent director or trustee;
  - (2) the additional independent director or trustee is appointed at the request of the Employer Representatives and Member Representatives, who are the members of the board in accordance with clause 12.3.
- 12.6 If a vacancy occurs in the membership of the board of the Trustee or Trustees and immediately before the vacancy occurred, the Fund complied with the basic equal representative rules prescribed by SIS, the vacancy must be filled within 90 days after it

occurred in such a fashion that immediately after the vacancy is filled, the Fund complies with the basic equal representative rules prescribed by SIS.

12.7 The office of Trustee or the position of a member of a board becomes vacant if the person holding the position:

- (1) resigns;
- (2) dies;
- (3) becomes bankrupt or makes assignment to or composition with creditors;
- (4) is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health;
- (5) being a company has a resolution passed, has a summons issued or a petition presented for its winding up or liquidation or has a receiver of its assets appointed;
- (6) where appointed by the Principal Employer as an Employer Representative is removed by notice in writing from the office or position by the Principal Employer at any time that the Principal Employer may determine;
- (7) where appointed as a Member Representative:
  - (a) if the Member Representative's tenure of that position expires;
  - (b) if the Member Representative ceases to be a Member; or
  - (c) if the Member Representative ceases to satisfy a condition that the Member Representative was required to satisfy to be eligible for appointment; or
- (8) the person is otherwise disqualified from acting under SIS.

12.8 If the Principal Employer being a company is placed in receivership or liquidation an Associated Employer or the receiver or liquidator is to have the power to appoint:

- (1) the Trustee subject to the provisions of SIS;
- (2) the Employer Representative.

12.9 Upon a change of Trustee the retiring Trustee must execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the succeeding Trustee.

#### **Exercise of Powers and Discretions**

12.10 Every discretion vested in the Trustee is absolute and uncontrolled.

12.11 Every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.



12.12 The Trustee, may subject to SIS, by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred upon the Trustee by this Deed.

12.13 The Trustee must not be subject to the direction of any other person in the exercise of any of the Trustee's powers except:

- (1) a direction given by a Court;
- (2) a direction given by the Commissioner;
- (3) a direction given by a beneficiary or a group of beneficiaries that relates to benefits payable to that beneficiary or those beneficiaries, as the case may be;
- (4) a direction given by a beneficiary or a group of beneficiaries where:
  - (a) the direction relates to the investment strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
  - (b) the directions are given in circumstances covered by the Regulations to SIS;
- (5) if the fund is an employer sponsored fund - a direction given by an Employer, or an associate of the Employer, in circumstances prescribed by the Regulations to SIS; or
- (6) a direction given by the Superannuation Complaints Tribunal.

12.14 A discretion conferred pursuant to this Deed must not be exercisable by a person other than the Trustee unless:

- (1) the consent of the Trustee is given to the exercise of that discretion; or
- (2) if the Fund is an employer sponsored fund:
  - (a) the exercise of the discretion relates to the contributions the Employer will, after the discretion is exercised, be required or permitted to pay the Fund; or
  - (b) the exercise or the discretion relates solely to a decision to terminate the Fund; or
  - (c) the circumstances in which the discretion was exercised are covered by the Regulations to SIS.

#### **Powers of Trustee**

12.15 The Trustee has to the extent permitted by SIS the following powers:

- (1) to purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it thinks fit;
- (2) to appoint and at its discretion remove or suspend any of the Approved Auditor, managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as it thinks fit, determine their powers and duties and fix their salaries or emoluments and require security in such instances and to such amount as it thinks fit and any persons so employed is deemed for the purposes of this Deed to be employed by the Trustee;
- (3) to institute, conduct, defend, compound, compromise or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
- (4) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (5) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (6) to borrow money for the purposes of obtaining temporary finance by way of overdraft and to secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as it thinks fit and in particular by charging or mortgaging all or any of the assets of the Fund;
- (7) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (8) to pay benefits out of the Fund to persons entitled;
- (9) to decide as and when necessary who are Dependants for the purposes of this Deed;
- (10) in case of mental or physical ill-health or incapacity of a person entitled to benefits to pay or apply such benefits or any part thereof at its discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing to the application of payments under this sub-clause or payments made in the exercise of any other powers vested in the Trustee by this Deed;
- (11) to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts and deeds in the name and on behalf of the Fund as it may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purpose of the Fund;

- (12) subject to the agreement of the Member and the Employer to enter into an arrangement with a Member varying the benefits and/or contributions otherwise payable in respect of that Member in any manner which it thinks fit;
- (13) generally to do all such things and perform such acts as the Trustee considers appropriate in the administration of the Fund and the performance of its obligations under this Deed.
- (14) all other powers conferred on trustees under SIS; and
- (15) the power to elect that the Fund be a regulated superannuation fund under SIS.

#### **Cheques**

- 12.16 All cheques and other negotiable or transferable instruments and all receipts of moneys paid and transfers to the Fund must be signed drawn accepted endorsed or otherwise executed as the case may be in the manner determined by the Trustee.

#### **Collection**

- 12.17 The Trustee shall arrange for the collection of all moneys falling due to the Fund and for their prompt lodgment to the credit of the Fund's banking account.

#### **Directors and Shareholders**

- 12.18 Any person being a director or shareholder of the Trustee or member of a board of trustees may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this deed without affecting the validity of the exercise of such powers and discretions.

#### **Trustee Exercise Power**

- 12.19 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:
- (a) the Trustee or any other person being a director or shareholder of the Trustee may:
    - (i) have a direct or personal interest (whether as Trustee of any other settlement or in a personal capacity or as director or shareholder of any corporation or otherwise) in the mode or result of the exercise of such discretion;
    - (ii) benefit either directly or indirectly as a result of the exercise of such power or discretion; or
    - (iii) be a Member;
  - (b) the Trustee is the sole Trustee.



### **Trustee Covenants**

- 12.20 The Trustee upon electing to become a regulated superannuation fund acknowledges that it is bound by the covenants prescribed for trustees under SIS.

### **Indemnity of the Trustee**

- 12.21 The Trustee and any director of the Trustee company are indemnified against all liabilities incurred by it through any act or omission in the exercise of its powers, duties and discretions under this Deed or in the bona fide intended or purported exercise of its duties under this Deed to the extent permitted under SIS.
- 12.22 For the purposes of this Deed the Trustee is entitled to regard a direction, instruction or other written authorisation signed by or purporting to be signed by the Secretary for the time being of the Principal Employer or an Associated Employer as a valid direction, instruction or other written authorisation of the Principal Employer or an Associated Employer.

### **Remuneration of the Trustee**

- 12.23 The Trustee is be entitled to charge professional fees and recover costs and disbursements incurred in respect of the provision of its services as Trustee. These fees may be charged for new or existing Members in respect of the following:
- (1) contributions made to the Fund;
  - (2) income earned by the Fund; and
  - (3) the management and administration of the Fund generally.
- 12.24 The fees charged by the Trustee are to be determined each year by agreement in writing between the Trustee and the Principal Employer.

## **SECTION 13. ADMINISTRATION**

### **Salary**

- 13.1 A Member's Salary is to be advised to the Trustee by the Employer at his date of entry to the Fund and at such other times as agreed by the Trustee and the Employer.
- 13.2 If the Employer reduces a Member's annual rate of salary the Member may subject to the requirements of SIS elect by notice in writing to the Trustee and the Employer that his Salary for the purpose of the Fund shall continue unchanged and if the Employer and the Trustee agree to such election the reduction is not taken into account for the purposes of the Fund.

### **Designated Beneficiary**

- 13.3 A Member wishing to designate a Dependant as a Beneficiary may do so in writing to the Trustee in a form the Trustee approves.

### **Rights of Members**

- 13.4 No person whether as a Member or otherwise has any claim, right or interest to or in respect of the Fund or any contribution thereto or any interest therein or any claim upon or against the Trustee except under and in accordance with the provisions of the Deed.
- 13.5 Every person who becomes a Member is deemed to be bound by this Deed.
- 13.6 Every Member has the rights conferred by SIS regarding the inspection of documents and receipt of information.
- 13.7 The Trustee must provide to Members and former Members and to any Relevant Authority that requires, such information in relation to the conduct of the Fund, contributions made to the Fund and benefits payable from the Fund as are required by SIS.
- 13.8 No Member or Dependant is entitled to obtain information in respect of any details of the operation of the Fund or on any matter which may relate to the conduct of the Fund which in the opinion of the Trustee would be inappropriate to disclose other than as provided for in this clause.

### **Secrecy**

- 13.9 No Member is to have any right to enquire nor will he be given any information concerning the interest of any other Member or whether an Employee is a Member of the Fund.
- 13.10 The Trustee must observe strict secrecy with regard to the affairs accounts and transactions of the Fund but this does not prevent the publication of financial, statistical or other information to all Members generally whenever thought fit by the Trustee or as required to comply with SIS.

### **Members to Give Information**

- 13.11 Every Member and every person claiming a benefit or in receipt of a pension or other benefit must give the Trustee such information or authorisation to obtain such information and produce such documents as the Trustee considers are required for the purpose of putting this Deed into effect.

### **Notices**

- 13.12 Any notices to be given under this Deed are deemed to have been validly given if they were handed to the party to be served or if posted by prepaid post and duly addressed to the party to be served at the last known address of such party or his last known place of employment.

### **Employer's Right to Terminate Employment**

- 13.13 Nothing in this Deed shall restrict the right of the Employer to dismiss an Employee or be used to increase damages in any action brought against the Employer in respect of such dismissal or affect the rights of a Member or his legal personal representative or other persons to claim damages or compensation at common law or under a *Workers'*



*Compensation Act* or any other statute in force governing compensation to a Member injured or dying from an accident arising out of or in the course of his employment with the Employer and the amount payable under this Deed is not to be reduced by reason of payment of such damages or compensation except as herein provided.

#### **Variation of Trust Deed**

- 13.14 The provisions of this Deed must not be amended in such a way that the sole or primary purpose of the Fund would be a purpose other than the provision of old age pensions, unless the provisions of this Deed provide, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.
- 13.15 The Trustee with the approval of the Principal Employer may amend, revoke or vary the provisions of this Deed (subject to the provisions of clause 13.14) provided that the amendment is of a type permitted under SIS or the Regulations to SIS.

#### **Complaint by Beneficiaries**

- 13.16 If required by SIS, the Trustee must take all reasonable steps to ensure that there are at all times in force arrangements under which:
- (1) beneficiaries have the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to the beneficiary making the enquiry or complaint; and
  - (2) enquiries or complaints so made will be properly considered and dealt with within 90 days after they are made.

#### **Confidentiality of Trustee's Deliberation**

- 13.17 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person or beneficiary:
- (1) any document disclosing any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee by this Deed or disclosing the reasons for any particular exercise or non-exercise of any power or discretion or the material upon which those reasons were or might have been based;
  - (2) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed (not being legal advice obtained by the Trustee at the cost of the Fund); or
  - (3) any reason for exercise or non-exercise of any power or discretion.