

DATED the 29th day of MARCH 1995

BETWEEN

GUNTONIA INVESTMENTS PTY LTD

("Principal Employer")

A N D

GUNTONIA INVESTMENTS PTY LTD

("Trustee")

**DEED AMENDING
THE JOHN TROUGHTON SUPERANNUATION FUND
TRUST DEED**

PETER WISE & CO
Solicitors
120 Edgecliff Road
Woollahra 2025
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Fax: 387 7908

THIS DEED is made the 29th day of March 1995

BETWEEN **GUNTONIA INVESTMENTS PTY LTD** (A.C.N. 062 948 261) a company duly incorporated and having its registered office at 5 Tunks Street, Waverton in the State of New South Wales ("Principal Employer") of the one part

A N D **GUNTONIA INVESTMENTS PTY LTD** (A.C.N. 062 948 261) a company duly incorporated and having its registered office at 5 Tunks Street, Waverton in the said State ("Trustee") of the other part

WHEREAS

- A. By a Trust Deed dated 28th February, 1994 (hereinafter called "the Trust Deed") the Principal Employer (in the Trust Deed referred to as "the Founder") established a superannuation fund known as **THE JOHN TROUGHTON SUPERANNUATION FUND** ("the Fund").
- B. Under Rule 5 of the Trust Deed the Trustee may by resolution and with the approval of the Principal Employer (in the Trust Deed referred to as "the Founder") amend the Trust Deed.
- C. The Trustee desires to amend the Trust Deed as hereinafter appears and is satisfied that the conditions imposed under Rule 5 of the Trust Deed permit the proposed amendments to be made.

WITNESSES that the Trust Deed shall be deleted and replaced by this Deed provided that if the effect of such amendments is to reduce the entitlement at the date hereof to any benefit provided for under the original Trust Deed, the entitlement to such benefit shall continue to be determined in accordance with the provisions of the original Trust Deed as they existed prior to the amendments contained herein.

1. This Deed shall come into operation on the date first hereinbefore written.
2. The "Rules" means the Rules attached hereto, as amended from time to time, which shall have effect as if set out in the body of this Deed.
3. The assets of the Fund shall continue to be vested in the Trustee upon trust to apply the same in the manner set out in the Rules.
4. The Fund shall be managed and administered in all respects according to the Rules.
5. The Trustee shall be deemed to be duly appointed in accordance with the Rules.

- 6. The power of appointing and removing Trustees shall be as provided in the Rules.
- 7. The provisions of this Deed may be amended in the manner set out in the Rules.

EXECUTED AS A DEED

THE COMMON SEAL of GUNTONIA INVESTMENTS PTY LTD was hereunto affixed in accordance with its Articles of Association in the presence of:

[Handwritten Signature]

 Secretary



[Handwritten Signature]

 Director

THE COMMON SEAL of GUNTONIA INVESTMENTS PTY LTD (as Trustee) was hereunto affixed in accordance with its Articles of Association in the presence of:

[Handwritten Signature]

 Secretary



[Handwritten Signature]

 Director

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RULES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Rules, unless the context otherwise requires:

"Act" means the Occupational Superannuation Standards Act, 1987 (C'th) and the Superannuation Industry (Supervision) Act, 1993 (C'th) and, from the date of its application to the Fund, the Superannuation Industry (Supervision) Act, and regulations, declarations or orders made or issued thereunder or any replacement or additional legislation in respect of the regulations of superannuation funds. Any reference in these Rules to the provisions or requirements of the Act includes provisions or requirements which must be complied with in order to obtain the maximum income tax concessions available in respect of superannuation.

"Associated Employer" means any company person or firm which the Principal Employer has admitted to participation in the Fund and which agrees to be bound by Deed and Rules.

"Commissioner" means the Insurance and Superannuation Commissioner or any person who is appointed by an Act of Parliament to supervise the conduct of superannuation funds.

"Category" means the category of membership in the Fund of each Member which is selected by the Employer and is specified in the form of application for membership completed in accordance with the requirements of Rule 2 or is specified in any application by the Member for a transfer in category of membership which is accepted by the Trustee and the Employer, or which is specified in a notice given by the Employer or the Trustee to the Member.

"Constitutional Corporation" has the meaning attributed to it in the Act.

"Dependant" means the spouse, widow, widower or child (including any adopted child, step-child or posthumous child) of a Member or any other person who, in the opinion of the Trustee, was dependent on the Member at the relevant date or who, in the opinion of the Trustee, the Member had a legal or moral obligation to support at the relevant date.

"Employee" means a person in the employ of an Employer and includes any person who is a director of an Employer which is a company and any person in respect of whom an Employer wishes to make a contribution to the Fund in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act.

"Employer" means the Principal Employer or any Associated Employer and in relation to a particular Member means the Employer by which that Member is for the time being

employed. Reference to the Employer in any Rule requiring the exercise of any discretion, any agreement, determination or approval of any matter or a decision, opinion, appointment or declaration by it shall in the case of an Employer being a company mean the directors of such Employer acting as a board or any person appointed by the directors of such Employer to act on their behalf.

"Employer Representative" has the meaning attributed to it in Rule 17.5.

"Employer's Contribution Account" has the meaning attributed to it in Rule 7.1.

"Full-Time Employee" means a Member who is employed on a full-time basis within the meaning of the Act.

"Fund Accounts" means the Employer's Contribution Accounts, Members' Contribution Accounts, Vested Employer's Contribution Accounts, and Reserve Account.

"Guarantee Act" means the Superannuation Guarantee Charge Act, 1992 (C'th) as amended from time to time.

"Member" means an Employee or any other person approved of by the Trustee who has met all of the requirements of the Fund and has been admitted to Membership of the Fund as provided in Rule 2 and has not ceased to be Member in accordance with Rule 2.5. The term "Member" shall include former Employees and former Members who continue to have rights or contingent rights to Benefits under the Fund. A person shall cease to be a Member when the whole of that person's benefit entitlement has been paid or when the Member dies.

"Member Representative" has the meaning attributed to it in Rule 17.5.

"Member's Accounts" means the Member's Employer's Contribution Account, the Member's Contribution Account and the Member's Vested Employer's Contribution Account.

"Member's Benefit" in respect of a Member means the net amount standing to his credit in the Employer's Contribution Account, the Member's Contribution Account and the Member's Vested Employer's Contribution Account plus the value (if any) at that time of any policy of insurance owned by the Trustee on the life of that Member or paid for out of the amount standing to the credit of his Member's Contribution Account or Employer's Contribution Account or Vested Employer's Contribution Account.

"Member's Contribution Account" has the meaning attributed to it in Rule 7.1.

"Part-Time Employee" means a Member who is employed for at least ten hours per week or such other number of hours as are prescribed under the Act, but who is not a Full-Time Employee.

"Permanently Disabled" and "Permanent Disablement" means:

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience, or
- (ii) where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement or incapacity contained in the policy document evidencing the contract of insurance,

provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such a benefit.

"Preserved Benefit" means any benefit (or part thereof) which is required by the Act to be preserved for the Member in the Fund or in another fund until he has retired from the workforce and attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Act.

"Principal Employer" means the party described in the Deed or such other Employer as the Principal Employer for the time being shall by writing appoint to replace it as Principal Employer and includes the successors and assigns of the Principal Employer and any Associated Employer appointed as the Principal Employer in accordance with Rule 34.

"Reserve Account" has the meaning attributed to it in Rule 7.1.

"Retiring Age" means the age of 65 years or such other age, being not less than 55, as the Trustee and the Employer agree on as being the retiring age for that Member.

"Rules" means these Rules and any alteration to, addition to or variation thereof made from time to time.

"Service" means the most recent period of continuous service as an Employee of an Employer, including any period during which a Member is off work because of injury or illness and receives a regular income from either the Employer or any

insurance scheme sponsored by the Employer, and any other period declared by the Employer to be Service for the purposes of these Rules. The transfer of a Member from Service with one Employer to Service with another Employer shall not be construed as a termination of his Service.

"Spouse" means the legal spouse of a Member and any person regarded by the Trustee in its absolute discretion as a de facto spouse and any previous spouse or de facto spouse as aforesaid who is dependent upon the Member.

"Trustee" means the Trustee of the Fund for the time being.

"The Deed and Rules": References to "the Deed", "the Rules" or "these Rules" or any Rule, Schedule or Appendix include the Deed establishing the Fund and these Rules and the relevant Rule, Schedule or Appendix (as the case may be) as amended from time to time.

"Vested Benefit" means any part of the Member's Benefits which is required by the Act to be treated as the minimum benefit vested in and payable to a Member on termination of the Member's employment (subject to any preservation requirements).

"Vested Employer's Contribution Account" has the meaning attributed to it in Rule 7.1.

1.2 Interpretation

- (a) The Deed and Rules shall be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated therein to the extent that they impose requirements on the Trustee or are required by the Act to be so incorporated but the Deed and Rules shall not be so read or construed and no such provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by Rule 28 to vary, add to or rescind the provisions of the Deed and the Rules. Where there is any inconsistency between a provision in the Deed and the Rules and a provision in the Act or regulations which is so incorporated, the latter shall prevail.
- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of these Rules and such invalid Rule or part thereof shall be deemed to have been deleted.
- (c) Headings are for convenience only and shall not affect the interpretation of these Rules.

- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.

2. ADMISSION OF MEMBERS

2.1 Selection and Admission of Members

The Employer may from time to time select Employees, or any other persons, to be admitted as Members who shall apply for membership by completing an application in the form as contained in Appendix "B" or such other form of application as the Trustee decides upon. Upon acceptance of the application by the Trustee, the person making the application is bound by the Deed and these Rules in all respects as if he were an original party to the Deed.

2.2 Applicants to Provide Information

All applicants for membership of the Fund shall provide the Trustee with such information that the Trustee may require, including proof of their correct age.

2.3 Deemed Membership

- (a) The Trustee may accept an Employee or other person selected by an Employer as a Member without requiring the such Employee or other person to complete a membership application form in accordance with Rule 2.1, if the Employer has made an application for membership on behalf of the Employee or other person and has provided the Trustee with such information that the Trustee may require, including the name, address and age of the Employee.
- (b) Where the Employee is being admitted to membership so that the Employer can comply with its superannuation obligations under the industrial award or industrial agreement which governs the terms and conditions of the Employee's employment by that Employer, the Employee shall, after fourteen days employment by the Employer (or such other period specified in the award or agreement) become a Member, provided the Employer complies with the requirements of paragraph (a).
- (c) The Trustee shall, as soon as practicable, advise the Member in writing that he has been accepted as a Member and provide to the Member such other information as is required by the Act.

2.4 Temporary Withdrawal from Service

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 his Fund membership and accrual of Member's Benefits as it considers appropriate.

2.5 Cessation of Membership

A person ceases to be a Member on the happening of the first of the following:-

- (a) when the total amount of all amounts payable under the Rules in respect of his Membership has been paid; or
- (b) when under the Rules all Member's Benefits payable to him cease to be payable.

3. CONTRIBUTIONS BY THE EMPLOYER

3.1 Employer Contributions

- (a) An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it, in its absolute and uncontrolled discretion, from time to time determines. The maximum contribution made in any period shall not exceed the maximum permitted under the Act. The Employer shall pay such contributions to the Trustee in such manner and at such times as are agreed between the Employer and the Trustee.
- (b) Where the contributions are being made pursuant to an industrial award or agreement, the Employer shall contribute in respect of each Member affected by such award or agreement not less than such amount or percentage of remuneration as is determined by the relevant award or agreement.
- (c) Employer contributions shall be credited to the Employer's Contribution Accounts or the Vested Employer's Contribution Accounts as is appropriate.

3.2 Trustee to be Advised

At the time of making such contributions the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member and whether the contributions are made:

- (a) pursuant to an industrial award or agreement; and/or
- (b) in lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.

3.3 Deemed Payment to Trustee

Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company

or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

3.4 Refusal to Accept Contributions

The Trustee shall refuse to accept contributions to the Fund from persons other than the persons permitted under the Act to contribute to the Fund. The Trustee shall refuse to accept contributions where the acceptance of the contributions is contrary to the requirements of the Act. The Trustee shall also refuse to accept contributions in respect of a Member after the Member has, for a continuous period of two years, not been a Full-Time Employee or a Part-Time Employee, unless the contributions are made by an Employer pursuant to an industrial agreement or award or are made in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act or are made in other circumstances provided for in the Act.

3.5 Refusal to Accept Contribution after Age 65

The Trustee shall, in the circumstances required by the Act, refuse to accept a contribution by or in respect of a Member who has attained age 65.

3.6 Leave of Absence

If a Member is granted leave of absence (other than annual leave or long service leave) by the Employer for any reason, the Member shall remain a Member for the period of leave, unless the Trustee otherwise determines. No contribution shall be made in respect of that Member during the period that the Member is on such leave unless the Employer determines otherwise and so advises the Trustee.

4. CONTRIBUTIONS BY MEMBERS

4.1 Member Contributions

(a) Each Member may contribute to the Fund such amount (if any) as is agreed upon between the Member and the Employer, provided that the maximum contribution made in any period shall not exceed the maximum permitted under the Act.

(b) The Employer shall deduct such contributions from the Member's salary and remit them to the Trustee within twenty-eight days of the end of the calendar month in which they were deducted.

4.2 Employer to Advise Trustee

At the time of paying the Members' contributions to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.

4.3 Deemed Payment to Trustee

Any payment of Members' contributions by the Employer directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

4.4 Payment on Behalf of a Member

The Employer may pay, on behalf of a Member, contributions that are payable by the Member, and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member and shall be credited to the Member's Vested Employer's Contribution Account.

4.5 No Enquiry

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Rule 4.1 from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

4.6 Refusal to Accept Contributions

The Trustee shall refuse to accept contributions from Members in the circumstances stated in Rules 3.4, 3.5 and 3.6.

5. INVESTMENTS

5.1 Investment Power

Subject to the provisions of the Act and provided investments are made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.

5.2 Types of Investments

Without limiting the generality of Rule 5.1, the Trustee may invest either directly or indirectly in:

- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) the purchase of or improvement of or mortgage of real property of any tenure whether improved or unimproved;

- (c) subject to the in-house assets rules in the Act, on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion, determines provided that the Trustee may not lend any part of the moneys or assets of the Fund to Members or relatives of Members or give financial assistance to Members or relatives of Members;
- (d) shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- (e) units or sub-units of any unit trust;
- (f) bills of exchange and other negotiable instruments.

5.3 Variation of Investments

The Trustee shall have power to vary, transpose and replace such investments in such manner as it determines, without being responsible for loss occasioned by so varying, transposing or replacing.

5.4 Acquisition of Assets from Members or Relatives

The Trustee shall not acquire assets from Members or relatives of Members except in the circumstances permitted under the Act.

5.5 Particular Investments for Particular Members

The Trustee may hold particular investments solely for particular Members or categories of Members, and shall identify such investments and the Members or category or categories of Members for whom they are held, in the records of the Fund. The earnings of such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and income tax and expenses payable in respect of such investments shall be debited to the relevant Members' Accounts. In offering the Members the facility for them to choose their own investments, the Trustee shall comply with the requirements of the Act.

5.6 Investment Strategy

From the date of application of the Superannuation Industry (Supervision) Act, 1993 to the Fund, the Trustee shall, from time to time, formulate and give effect to an investment strategy in accordance with the requirements of the Act.

5.7 Agreement with Investment Manager

From the date of application of the Superannuation Industry (Supervision) Act, 1993 to the Fund, if the Trustee appoints

or has appointed a company as an investment manager for the Fund or any part of it, the agreement with the investment manager must be in writing and contain provisions which comply with the Act.

5.8 Termination of Agreement with Investment Manager

The Trustee may revoke or vary any such appointment of an investment manager subject to the terms of any agreement entered into by the Trustee with any such investment manager.

5.9 Charge over Assets

The Trustee shall not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed in the Act.

6. POLICIES OF INSURANCE AND ANNUITIES

6.1 Investment in Life Policies and Annuities

- (a) The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- (b) The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- (c) The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

6.2 Payment of Premiums and Application of Proceeds

- (a) The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Member's Accounts in such proportions as agreed upon by the Trustee and the Employer or the Member and, in the absence of any such agreement, on such basis as the Trustee determines.

- (b) The proceeds of such policies shall be credited to the Member's Accounts in the same proportion as premiums for such policies were paid from those accounts.

7. RECORDS, ACCOUNTS AND AUDITING

7.1 Records

The Trustee shall keep such accounts and records as correctly record and explain the transactions and the financial position of the Fund, including all of the following:

- (a) a **minute book** in which proceedings and resolutions of the Trustee are recorded which shall be retained for ten years or for such other period required by the Act;
- (b) an **Employer's Contribution Account** for each Member (or, where two or more Employers contribute in respect of a Member, an account for that Member in respect of each Employer) in which is recorded:
- (i) contributions to the Fund by the Employer in respect of that Member pursuant to Rule 4.1;
 - (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 4.1 and 4.2;
 - (iii) amounts transferred from the Reserve Account pursuant to Rule 7.1(e);
 - (iv) forfeited benefits credited to such account pursuant to Rule 11;
 - (v) amounts debited to such account to pay premiums on policies of insurance or the consideration for any annuity pursuant to Rule 6.2;
 - (vi) the proceeds of policies of insurance credited to such account pursuant to Rules 6.2;
 - (vii) amounts credited to such account pursuant to Rule 21;
 - (viii) amounts debited to such account to pay income tax and expenses;
 - (ix) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to Rule 7.1(e);
- (c) a **Member's Contribution Account** for each Member in which is recorded:

- (i) contributions by that Member pursuant to Rule 4.1;
 - (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 4.1 and 8.2;
 - (iii) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 6.2;
 - (iv) the proceeds of policies of insurance credited to such account pursuant to Rule 6.2;
 - (v) amounts credited to such account pursuant to Rule 29;
 - (vi) amounts debited to such account to pay income tax and expenses;
 - (vii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to Rule 7.1(e);
- (d) a **Vested Employer's Contribution Account** for each Member in which is recorded:
- (i) contributions made by the Employer in respect of that Member pursuant to an industrial award or agreement or in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act;
 - (ii) contributions made by the Employer in respect of that Member pursuant to Rule 4.4 plus such other Employer contributions which the Employer advises the Trustee that it requires to be fully vested in the Member;
 - (iii) profits or losses of the Fund credited or debited to such account pursuant to Rules 8.1 and 8.2;
 - (iv) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 6.2;
 - (v) the proceeds of policies of insurance credited to such account pursuant to Rule 6.2;
 - (vi) amounts credited to such account pursuant to Rule 29;
 - (vii) amounts debited to such account to pay income tax and expenses;

(viii) amounts which are not required to meet income tax liabilities and which are credited to the account pursuant to Rules 7.1(e);

- (e) a **Reserve Account** to which shall be credited profits in accordance with Rules 8.1 and 8.2, forfeited benefits in accordance with Rule 11 and amounts set aside by the Trustee to pay income tax and to which shall be debited income tax paid, such of the expenses of the Fund as the Trustee determines to debit to this account, forfeited benefits applied in accordance with Rule 11 and amounts which the Trustee determines from time to time to transfer to the Members' Accounts on such basis as the Trustee determines to be equitable. The amount in the Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up of the Fund.

7.2 Auditor

The Trustee shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the relevant requirements of the Act.

7.3 Keeping the Accounts and Records

The accounting records of the Fund must be retained for at least five years, or for such other period required by the Act, must be kept in Australia and must be kept in the English language or in a form in which they are readily accessible and readily convertible into the English language.

7.4 Compliance with the Act

The Trustee shall comply with such reporting standards and shall maintain such records as are required under the Act including a statement of the financial position of the Fund and an operating statement (when required) for each financial year of the Fund. Such accounts and statements must be signed by at least two Trustees or two directors of a corporate Trustee.

8. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES

8.1 Valuation and Allocation of Profits or Losses

- (a) After the end of each financial year of the Fund, the profits or losses arising from the investment of the assets of the Fund during the preceding financial year, or

- (b) on the winding-up of the Fund or whenever the Trustee determines it to be necessary, the profits or losses arising from the investment of the assets of the Fund during the current financial year,

less such provision for depreciation, liabilities, losses and taxation as the Trustee in its absolute discretion deems prudent, shall be credited or debited by the Trustee to the Member's Accounts of the Members in proportion to the amounts standing to the credit of such accounts at the beginning of the Fund's financial year for which the accounts are being prepared or on such other basis as the Trustee determines. The Trustee may, in its absolute discretion, credit such proportion as it determines of the amount that would otherwise be credited to the Employer's Contribution Accounts to the Reserve Account.

8.2 Valuation of the Assets of the Fund

- (a) The Trustee may make a valuation of the assets of the Fund (other than policies of insurance and annuities) after the end of each financial year of the Fund and whenever and in such manner as the Trustee determines, and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for taxation as the Trustee, in its absolute discretion, deems to be prudent.
- (b) If the net value of the assets of the Fund determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts at that date, the Trustee shall credit the surplus or debit the deficit to the Members' Accounts in proportion to the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.
- (c) The Trustee may, in its absolute discretion, credit to the Reserve Account such proportion as it determines of the amount that would otherwise be credited to the Employer's Contribution Accounts.

8.3 Interim Earning Rate

The Trustee may allocate an interim earning rate to the Member's Accounts of a Member in respect of whom a benefit is being paid, the same to be determined by the Trustee and to apply from the date on which an allocation was last made under Rule 8.1 or 8.2 to the date on which the benefit is being paid.

8.4 Requirements of the Act

Notwithstanding Rules 8.1, 8.2 and 8.3, the Trustee shall only credit an amount to a Member's Account if to do so would not breach the requirements of the Act.

9. EXCESSIVE BENEFITS

If, at any time, in the opinion of the Trustee, a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustee, in its absolute discretion, may decline to accept any further contributions for the benefit of that Member.

10. FORFEITURE OF BENEFITS

10.1 Forfeiture

A Member or former Member shall cease to be presently or presumptively or contingently entitled to the Member's Benefit, at the discretion of the Trustee, if:

- (a) in its opinion, he has attempted to assign, alienate, charge or encumber all or part of his Member's Benefit;
- (b) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (c) subject to Rule 30.3, his whereabouts cannot be traced by the Trustee for a period of three years after making reasonable enquiries.

10.2 Forfeiture on Bankruptcy

Until the date of application of the Superannuation Industry (Supervision) Act, 1993 to the Fund, a Member shall cease to be presently or presumptively or contingently entitled to his Member's Benefit if he becomes bankrupt.

11. APPLICATION OF FORFEITED BENEFITS

11.1 For the Benefit of the Member

Where Rule 10 applies, the Trustee shall apply the amount so forfeited that stood to the credit of the Member's Contribution Account and Member's Vested Employer's Contribution Account and any other Vested Benefit for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines.

11.2 Relief of Hardship

In order to relieve hardship only, the Trustee may, in its absolute discretion, apply the amount that stood to the credit of the Member's Employer's Contribution Account,

which is forfeited by reason of the operation of Rule 10, for the maintenance or support of the Member or such of his Dependants as the Trustee, in its discretion, determines and such application of the Member's Benefit shall be a discharge to the Trustee for the payment thereof.

11.3 Credit to Reserve Account

The amount of any forfeited benefit in the Fund by reason of the operation of Rule 10 and the benefit payment Rules which is not applied in accordance with Rules 11.1 and 11.2 shall be credited to the Reserve Account and shall be applied within 6 months after the end of each financial year or within such other period which is permitted under the Act:

- (a) to the provision of the benefits that other Members or their Dependants have rights to receive from the Fund; or
- (b) to the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all the circumstances; or
- (c) for any other purpose approved in writing by the Commissioner; or
- (d) in such other manner that is permitted or required under the Act.

11.4 Payment to Employer

If the Trustee decides to pay the amount of any forfeited benefit to an Employer, not being a payment reimbursing the Employer for expenses incurred on behalf of the fund, the Trustee shall, if required by the Act, give the Members written notice of the proposed payment not less than three months before the day when the payment is proposed to be made to the Employer.

11.5 Unclaimed Money

The Trustee shall comply with the requirements of the Act in relation to payment of unclaimed money.

12. COMMON LAW RIGHTS OF MEMBERS

12.1 Compensation or Damages Claims

The provisions of the Deed and the Rules shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law in the event of the Member being injured or dying as a result

of an event arising out of and in the course of his employment.

12.2 Work-Related Claims

The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

13. MEMBER'S RIGHTS TO BENEFITS AND STATEMENTS

- (a) A Member shall have no right to or interest in his Member's Benefit except as provided in these Rules.
- (b) The rights of the Members and their Dependants to receive benefits from the Fund shall be those set out in these Rules.
- (c) The rights of the Members and their Dependants to receive the benefits payable under the Rules shall be fully secured within the meaning of the Act.
- (d) The Trustee shall provide to the Members, or cause the Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Act, including prescribed information on request and information concerning significant events. The Trustee shall retain for so long as they are relevant and, in any event, for at least ten years or for such other period as is required by the Act, copies of all reports given to the Members.
- (e) If the Trustee causes someone else to provide a Member with such a statement, notice, document or with such information, the Trustee shall, if required by the Act, obtain from that person a written declaration stating that the person has provided the statement, notice, document or information, as the case may be, to the Member.

14. NOTICES AND STATEMENTS TO EMPLOYERS

The Trustee shall provide the Employers with such notices, statements and other information as are required by the Act.

15. EMPLOYER'S RIGHT TO TERMINATE EMPLOYMENT AND REQUEST AN AUDIT

15.1 No Prejudice to Employer's Powers

Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise terminate the employment of a Member or remove a director of the Employer from office

and being a Member shall not be taken as guaranteeing continuation of employment or as a director.

15.2 **Auditors**

Whenever requested to do so by the Principal Employer, the Trustee may appoint auditors approved by the Principal Employer to report on the affairs of the Fund and such report shall be produced to the Principal Employer.

15.3 **Documents**

The Trustee shall provide to an Employer, on request, a copy of the Deed and Rules and any other documents which are required by the Act to be provided.

16. **EMPLOYER'S LIEN OVER MEMBER'S BENEFIT**

16.1 **Employer's Lien**

Notwithstanding anything contained in the Rules to the contrary, an Employer may, if the Trustee so agrees, exercise a lien after the termination of employment of a Member over the Member's Employer's Contribution Account for:

- (a) all amounts owed by the Member to the Employer; and
- (b) any loss or expense incurred by the Employer in consequence of the Member's fraud, dishonesty or other misconduct including the costs to the Employer of recovering such amount,

provided that the lien shall not extend to any Preserved Benefit or Vested Benefit and shall not be capable of being exercised in relation to the Employer's Contribution Account of a Member in Category One of the Fund.

16.2 **Certificate to be Conclusive Evidence**

A certificate signed by the Employer or by the Secretary or Accountant for the time being of the Employer stating the amount of the lien over the Member's Employer's Contribution Account claimed by the Employer shall be conclusive evidence in the hands of the Trustee against all claimants of the amount owing to the Employer in terms of paragraphs (a) and (b) of Rule 16.1 and shall be sufficient authority to the Trustee to pay that amount to the Employer.

16.3 **Notice to Member**

If required by the Act, the Trustee shall give to the Members three months written notice of a proposed payment from a Member's Employer's Contribution Account to the Employer, if the purpose of the payment is other than to

reimburse the Employer for expenses incurred on behalf of the Fund.

16.4 **Repayment**

An Employer to whom an amount is paid under this Rule 16 shall repay to the Trustee, on demand, any amount which the Trustee determines the Employer was not entitled to be paid.

17. **TRUSTEE: APPOINTMENT AND REMOVAL**

17.1 **Powers of Principal Employer**

Subject to Rules 17.2 and 17.5 and the requirements of the Act, the Principal Employer shall have the power by deed to:

- (a) remove a Trustee from office; and
- (b) appoint two persons or a Constitutional Corporation that so consents in writing as a replacement Trustee.

17.2 **Eligibility for Appointment as a Trustee**

- (a) Unless the primary purpose of the Fund is the provision of old-age pensions (within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900), the Trustee must be a Constitutional Corporation.
- (b) If the Act requires it, the board of Trustees or directors of a corporate Trustee shall consist of an equal number of Employer Representatives and Member Representatives elected in accordance with the procedure set out in Rules 17.5 and 17.6.
- (c) If the Trustee is appointed under the alternative agreed representation rule within the meaning of the Act, the Trustee shall be a company that meets the requirements of the Act.

17.3 **Ceasing to Act as Trustee**

A Trustee, or a director of a corporate Trustee where the director is appointed pursuant to Rule 17.5 or 17.10, shall cease to be a Trustee or a director of a corporate Trustee if:

- (a) the Trustee or director resigns his office by notice in writing to the Trustee or to the Principal Employer; or
- (b) he dies; or
- (c) he becomes bankrupt or has, within the preceding three years, made an assignment to or an arrangement or

composition with his creditors under Part X of the Bankruptcy Act, 1966 (C'th) or any replacement legislation; or

- (d) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (e) he or it is disqualified from being a trustee of a superannuation fund by the operation of an Act of Parliament; or
- (f) in the case of a director of a corporate Trustee, he ceases to hold office as a director.

Where, under this Rule or Rules 17.6, 17.8 or 17.10, a director of a corporate Trustee is required to cease to be a director, the directors of the Trustee shall use their best endeavours to terminate that person's directorship.

If the Trustee is a company, it shall cease to be the Trustee if a resolution is passed or a petition is presented for its winding up or liquidation or a receiver of its assets is appointed.

17.4 Receivership or Liquidation

If the Principal Employer is at the time of being placed in receivership or liquidation the sole Trustee, the receiver or liquidator thereof or the Associated Employers shall have the power by deed to appoint a replacement Trustee. If the receiver or liquidator or the Associated Employers fail to appoint a replacement Trustee within sixty days after a vacancy occurs, a majority of the Members shall have the power by deed to appoint a replacement Trustee.

17.5 Member Representatives and Employer Representatives

- (a) If the Act so requires, or if the Principal Employer decides at any time that there should be Trustees, or directors of the Trustee, representing the Members, there shall be, in addition to any independent Trustee appointed pursuant to Rule 17.10, a total number of Trustees, or directors of a corporate Trustee, of an even number determined by the Principal Employer, one-half of whom shall be nominated by the Principal Employer (the "Employer Representatives") and one-half of whom shall be elected by the Members (the "Member Representatives"). The Member Representatives shall be elected, in the discretion of the Trustee, either at a meeting called in accordance with Rule 17.6(a) or by means of a poll conducted in accordance with Rule 17.6(e). The Employer Representative and Member Representatives shall be appointed for a fixed term, the length of which shall be determined by agreement

between the Trustee and the Principal Employer prior to calling the election.

- (b) The provisions of Rule 17.6 shall apply instead of Rule 17.1 in respect of the appointment and removal of Member Representatives.

17.6 Member Representatives: Appointment and Removal

- (a) A meeting of the Members shall be called by the Trustee in accordance with Rule 17.6(b) in relation to the election or removal of Member Representatives or for any other purposes.
- (b) A meeting of Members shall be called as follows:
 - (i) The Trustee shall circulate a notice of the meeting to the Members by either handing to each Member personally or by sending to the Member at the business address of the Member last known to the Trustee, notice of the meeting provided that accidental or unintentional failure to notify any Member shall not invalidate any meeting of Members.
 - (ii) A meeting of Members shall not be held prior to the expiration of three weeks from the date of giving or mailing the notice of the proposed meeting.
 - (iii) The notice given to Members shall stipulate the time and place of such meeting, the reason for calling it and provide an agenda for the meeting.
 - (iv) A meeting may be held at two or more locations determined by the Trustee.
- (c) Where the purpose of the meeting is to elect one or more Member Representatives:
 - (i) The Trustee shall appoint a returning officer.
 - (ii) The Notice of the meeting shall call for nominations to fill any office of Member Representative and state the date by which such nominations must be received by the returning officer.
 - (iii) Any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer and seconder of such Member and be forwarded to the returning officer no later than four days before the appointed day of the meeting.

- (iv) If, three days before the appointed day of the meeting, there have been no nominations, the meeting shall be adjourned for a period of four weeks and fresh notice to Members shall be given in accordance with the provisions of this Rule.
 - (v) If there is a nominee or nominees but the number of nominees does not exceed the number of vacancies in the office of Member Representative, the meeting shall be cancelled and the nominees shall be declared by the returning officer to be elected.
- (d) The following procedures shall apply at a meeting of Members and to the election of Member Representatives by means of a meeting:
- (i) The Trustee shall appoint the chairman of the meeting.
 - (ii) A quorum shall consist of one-third of the Members present either in person or represented by proxy provided that if the meeting is being held at more than one location, there shall be a quorum if one-third of the Members are present either in person or represented by proxy at the various locations but a Member shall not be entitled to attend the meeting or be represented by proxy at more than one location.
 - (iii) Questions to be decided at the meeting shall be decided by simple majority of the Members present or represented by proxy and voting.
 - (iv) Where a purpose of the meeting is the election of one or more Member Representatives, the chairman shall distribute to each Member present at the meeting a ballot paper listing in alphabetical order the names of Members nominated as Member Representatives.
 - (v) The Members present at the meeting or represented by proxy may record one vote for each vacancy in the office of Member Representatives.
 - (vi) The Member who receives the greatest number of votes shall become a Member Representative.
 - (vii) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.

- (viii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative or Representatives shall appoint the other Member Representatives by deed.
 - (ix) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
 - (x) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (e) Where the Trustee determines that an election of Member Representatives is to be conducted by a poll, the following procedure shall apply:
- (i) The Trustee shall appoint a returning officer and the Trustee shall circulate a notice to the Members by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to send a notice to a Member shall not invalidate the poll. The notice shall call for nominations to fill any vacancy/ies in the office of Member Representative, state the date by which such nomination must be received by the returning officer and state that any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer and seconder of such Member.
 - (ii) If no nominations have been received by the returning officer by the date referred to in sub-paragraph (i), the Trustee shall circulate a fresh notice in accordance with the provisions of this Rule.
 - (iii) After the date for receipt of nominations has passed, if the number of nominees does not exceed the number of vacancies in the office of Member Representative, the nominees shall be declared by the returning officer to be elected.
 - (iv) After the date for receipt of nominations has passed, if there have been more nominees than there are vacancies in the office of Member

Representative, the Trustee shall distribute a ballot paper to each Member by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to distribute a ballot paper to a Member shall not invalidate the poll. The ballot paper shall list in alphabetical order the names of Members nominated for election as Member Representatives. A note shall be included on the ballot paper requesting the Members to record one vote for each vacancy in the office of Member Representative and specifying the date by which the ballot paper must be returned to the returning officer.

- (v) The Member who receives the greatest number of votes shall become a Member Representative.
 - (vi) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.
 - (vii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative of Representatives shall appoint the other Member Representatives by deed.
 - (viii) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
 - (ix) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (f) Any Member Representative may be removed by resolution of Members passed at a meeting of Members convened by the Trustee on receiving a written request by four Members to do so and conducted in accordance with the provisions of this Rule.
- (g) A Member Representative shall cease to be a Trustee or a director of a corporate Trustee on the earlier of the day on which he ceases to be a Member or the day that he ceases to be an Employee or on the happening of any of the events referred to in Rule 17.3 or the day that

a resolution is passed in accordance with paragraph (f) of this Rule that he be removed or the day on which his term expires.

17.7 Member Representatives, Casual Vacancies

- (a) Where there is a casual vacancy in the office of a Member Representative, the Trustee can, in its absolute discretion, decide not to require another election of Member Representatives but rather to ask the person who received the next greatest number of votes at the last election, but who was unelected, if he or she is willing to accept appointment as a Member Representative. If that person accepts that appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the Trustee.
- (b) If the person who is asked to accept appointment as a Member Representative in accordance with paragraph (a) of this rule refuses to accept the appointment, the Trustee shall ask, in turn, the persons who received the next greatest number of votes at the last election whether they are willing to accept appointment as a Member Representative. If any of them accept the appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the Trustee. If none of the persons who received votes at the last election are willing to accept appointment as a Member Representative, a fresh election shall be conducted in accordance with Rule 17.6.
- (c) The Trustee shall advise the Members of the name of the Member Representative who is appointed as a Trustee or a director of the Trustee as a result of there being a casual vacancy in the office of a Member Representative.

17.8 Employer Representatives

Employer Representatives may be appointed to office and removed from office by the Principal Employer. If the Trustee is a company, the directors shall use their best endeavours to appoint the Employer Representatives as directors of the Trustee pursuant to the articles of association of the Trustee.

17.9 Existing Trustee to Resign

If an equal number of Member Representatives and Employer Representatives are appointed as Trustees in accordance with Rule 17.6, the existing Trustees shall resign with effect from the date the appointment of the Employer Representatives and Member Representatives takes effect, unless they have appointed as Employer Representative Trustees or Member Representative Trustees. If they fail to resign, they shall be removed as Trustees by the Principal Employer in accordance with Rule 17.1.

17.10 Independent Trustees

If either the Employer Representatives or the Member Representatives advise the remaining Trustees, or the remaining directors of a corporate Trustee, that they require the appointment of an independent Trustee, or an independent director of a corporate Trustee, the Trustee or Trustees shall appoint as a Trustee, or as a director of a corporate Trustee, a person that the Trustee or directors of a corporate Trustee regard as being independent of the Employers and the Members and their representatives. An independent Trustee or director of a corporate Trustee so appointed may be removed from office by a resolution of the Trustees or the directors of a corporate trustee. He shall cease to be a Trustee if he resigns by giving notice to the other Trustees or shall cease to be a director of a corporate Trustee, if he resigns by giving notice to the corporate Trustee, or on the happening of any of the events referred to in paragraphs (b), (c), (d), (e) or (f) of Rule 17.3.

17.11 Vacancies

Any vacancy in the office of a Trustee, or a director of a corporate Trustee, shall, where such vacancy is required to be filled, be filled within sixty days (or such other number of days as is provided for in the Act) of the date on which the vacancy occurred provided that the failure to fill a vacancy shall not invalidate any subsequent appointment.

17.12 Consent to Act as Trustee or Director

A person shall only be appointed as a Trustee or as a director of a corporate Trustee if that person consents in writing to the appointment. Each written consent shall be retained by the Trustee for ten years or for such other period required by the Act.

17.13 Records of Changes in Trustees or Directors

The Trustee shall maintain a record of changes in Trustees or directors of a corporate Trustee for ten years or for such other period required by the Act.

18. POWERS OF TRUSTEE

The Trustee shall have complete management and control of the Fund and shall in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law exercise any of the following powers:

- (a) to pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Fund expenses incurred in
 - (i) providing for the secretarial work required for proper record keeping and administration to be performed,
 - (ii) having the accounts of the Fund audited,
 - (iii) having taxation returns and Government returns prepared, and
 - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (d) to delegate by Power of Attorney or otherwise to any person or company any of the powers duties and discretions vested in the Trustee on such terms and conditions as the Trustee, in its absolute discretion, determines and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and to pay out of the Fund the fees payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee determines;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee determines;

- (i) to borrow any sum of money for the purposes permitted by the Act and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) to elect that the Fund become a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (k) if required by the Act, to implement and administer an arrangement for beneficiaries of the Fund 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 for such enquiries or complaints to be considered and dealt with within ninety days (or such other period prescribed under the Act) of the date on which they were made;
- (l) to act on a direction given by a Court, the Commissioner or the superannuation complaints tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);
- (m) to comply with covenants of trustees imposed by the Superannuation Industry Supervision Act, 1993, (C'th);
- (n) to do those things permitted or required by the Act; and
- (o) generally to do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of the Trustee's obligations under the Deed and Rules.

19. TRUSTEE: EXERCISING DISCRETIONS AND ANTI-DISCRIMINATION LAW

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities provided that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory, that is applicable to the Fund, in respect of discrimination.

20. LIABILITY OF TRUSTEE, DIRECTORS AND MEMBERS**20.1 Liability of Trustee and Directors**

The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee.

20.2 Members' Liability

Each of the Members (other than in their capacities as Trustees or directors of a corporate Trustee) shall not be liable for any action taken or omitted in administering the Fund.

21. TRUSTEE'S AND DIRECTORS' INDEMNITY

The Trustee, and each of the directors of a corporate Trustee, shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 20.1 and shall have a lien on the Fund for such indemnity. The Trustee, and the directors of a corporate Trustee, shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

22. TRUSTEE'S MEETINGS**22.1 Individuals**

- (a) Where the Trustees are individual persons, they may meet together to dispose of business concerned with the administration of the Fund, determine a quorum, adjourn the meetings and otherwise regulate their meetings as they see fit. Two-thirds of the Trustees shall be a quorum unless there is only one Trustee in which case a quorum shall be that Trustee.
- (b) A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustees herein.
- (c) The Trustees may elect a chairman of each meeting.
- (d) A resolution of the Trustees shall be valid and binding if two-thirds of the total number of Trustees have voted in favour of it.

- (e) The Trustees shall keep minutes of their resolutions and proceedings in a book provided for that purpose.
- (f) A resolution in writing, signed by two-thirds of the Trustees, shall have the same effect and validity as a resolution of the Trustees passed at a duly convened meeting.

22.2 Directors

Where the Trustee is a company, the meetings of the directors shall, subject to meeting the requirements of the Act, be governed by the articles of association of the company.

23. SIGNING OF DOCUMENTS BY TRUSTEES

Where there are two or more individual persons acting as Trustees, any one of the Trustees is hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

24. REMUNERATION OF TRUSTEE

The Trustee shall be entitled to be paid and retain out of the Fund such remuneration as is agreed upon from time to time in writing by the Trustee and the Principal Employer.

25. REMUNERATION OF PROFESSIONAL PERSONS

Any person who is an actuary, accountant, solicitor, barrister or other professional person and is also a Trustee or a director of a company acting as Trustee who is called upon or whose firm is called upon to perform any service in relation to the Fund, shall be entitled to make the same professional charges for such service that he would make had he not been a Trustee or a director of a company acting as Trustee hereof.

26. TRUSTEE MEMBER'S ATTORNEY

Each Member hereby irrevocably appoints the Trustee as his attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.

27. DEED AND RULES AVAILABLE FOR INSPECTION

- (a) A copy of the Deed and Rules shall be kept by the Principal Employer at its principal place of business and be available for inspection by any Member at all reasonable times.

- (b) If required by the Act, the Trustee shall provide a Member with a copy of the Deed and Rules.

28. AMENDMENT OF DEED OR RULES

28.1 Amendment of Deed or Rules

The Trustee may, with the consent of the Principal Employer, at any time and from time to time either by deed executed by the Trustee or by oral resolution, vary, add to or rescind all or any of the provisions from time to time of the Deed or these Rules and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of:

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable, to a Member, before the date of the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this Rule, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required to enable the Fund to comply with the Act; or
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction.

28.2 Notification to Members

As soon as practicable after a provision of the Deed or Rules is varied, added to or rescinded, the Trustee shall give to a Member, whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Act, written advice that complies with the Act and which explains the nature and purpose of the variation, addition or rescission and the

effect of the variation, addition or rescission on the Member's entitlements or rights.

29. TRANSFER OF BENEFIT FROM ANOTHER FUND

29.1 Transfer from Another Fund

Where a Member requests that an amount standing to his credit or a policy of insurance in another superannuation fund or in an approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Contribution Account provided that if that amount or policy is being transferred from a superannuation fund conducted by or contributed to by an Employer or associate of an Employer, the amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account and/or the Member's Vested Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account and/or the member's employer's vested contribution account (or the equivalent thereof) in the previous superannuation fund, or on such other basis as the Trustee and the Member agree.

29.2 Preserved Benefits

If any part of the benefit or the value of the policy which is transferred is a Preserved Benefit, the benefit and accretions thereto shall not, notwithstanding any other Rule or Rules, be paid prior to the Member retiring from the workforce and attaining the age of 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as may be allowed under the Act.

30. TRANSFER OF BENEFIT TO ANOTHER FUND

30.1 Transfer to Another Fund

Subject to Rule 30.2, the Trustee may, on receiving the written request of a Member unless the transfer is to a successor fund within the meaning of the Act, transfer the whole or part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or, provided termination of employment has occurred, transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act. The receipt of the trustee of such fund shall be a complete discharge to the Trustee in respect of any liability to that Member and person claiming through him in relation to the amount so transferred.

30.2 Preserved Benefits

A transfer of any Preserved Benefit pursuant to Rule 30.1 shall only be made if it is a condition of such transfer that the amount of any Preserved Benefit transferred shall not be paid from the transferee fund prior to the Member retiring from the workforce and attaining age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted under the Act and if it is a condition of such transfer that the Preserved Benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions.

30.3 Transfer to Eligible Roll-over Fund

Where a period of ninety days has elapsed since a benefit (other than a pension) became payable under these Rules and the benefit has not been paid, the Trustee may pay the benefit to an eligible roll-over fund, as defined in the Act. The Trustee must also make such payment where the Trustee is satisfied that two reports to Members (that are required to be given under the Act) have not been received by the Member to whom the benefit has become payable. However, if the benefit payable is less than \$500 (or another amount prescribed in the Act) the Trustee may treat the benefit as unclaimed money and pay it to the Commissioner in accordance with the Act.

31. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

32. ADMISSION OF ASSOCIATED EMPLOYERS TO FUND

The Trustee may, with the consent of the Principal Employer, admit an Associated Employer as a contributor to and a participant in the Fund on completion of such form of application as the Trustee decides upon. An Employer so admitted shall be bound by the provisions of the Deed and Rules in the same way the Employer would be if it had been an original party to the Deed.

33. WITHDRAWAL OF ASSOCIATED EMPLOYER FROM FUND

- (a) An Associated Employer shall cease to be a contributor to and a participant in the Fund:
 - (i) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be an Associated Employer; or

30.2 Preserved Benefits

A transfer of any Preserved Benefit pursuant to Rule 30.1 shall only be made if it is a condition of such transfer that the amount of any Preserved Benefit transferred shall not be paid from the transferee fund prior to the Member retiring from the workforce and attaining age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted under the Act and if it is a condition of such transfer that the Preserved Benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions.

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The Trustee may, with the consent of the Principal Employer, admit an Associated Employer as a contributor to and a participant in the Fund on completion of such form of application as the Trustee decides upon. An Employer so admitted shall be bound by the provisions of the Deed and Rules in the same way the Employer would be if it had been an original party to the Deed.

33. WITHDRAWAL OF ASSOCIATED EMPLOYER FROM FUND

- (a) An Associated Employer shall cease to be a contributor to and a participant in the Fund:
 - (i) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be an Associated Employer; or

- (ii) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.
- (b) Employees of an Associated Employer that has ceased to be a participant in the Fund shall continue to be Members until such time as their employment is terminated and their benefits have been paid in accordance with these Rules. No benefit shall be paid to such Members during the period that their employment by the Associated Employer continues unless such payment is permitted by the Act or unless the consent of the Commissioner has been obtained in writing.
- (c) The Trustee shall not accept contributions from Employees of an Associated Employer that has ceased to be a participant in the Fund.

34. WITHDRAWAL OF PRINCIPAL EMPLOYER FROM FUND

If the Principal Employer is, for any reason, unable or unwilling to continue as a contributor to and a participant in the Fund, the Trustee shall have the following powers:

- (a) to appoint by deed an Associated Employer that is willing to continue to participate in the Fund, to take the place of the Principal Employer and such Associated Employer shall, upon executing the said deed, become Principal Employer for the purposes of the Deed and Rules as if it had been an original party to the Deed; or
- (b) to appoint by deed a company, a person or firm, that acquires all or a substantial part of the assets or business of the Principal Employer, and is willing to participate in the Fund, to take the place of the Principal Employer and such company, person or firm shall, upon executing the said deed, become the Principal Employer for the purposes of the Deed and Rules as if it had been an original party to the Deed.

35. TERMINATION OF CONTRIBUTIONS

In the event of the Principal Employer giving written notice to the Trustee that no further contributions are to be made to the Fund, the Trustee shall refuse to accept any further Employers' or Members' Contributions from the date the written notice takes effect and the Fund shall continue to be administered by the Trustee until dissolved in accordance with the Deed and Rules.

36. DISSOLUTION OF THE FUND

36.1 Dissolution of the Fund

When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind-up the Fund or, if, subject to Rule 34, the Principal Employer becomes bankrupt or is placed in liquidation or receivership, the Fund shall be wound up. The Trustee shall pay or transfer to the Members, benefits in accordance with the provisions of these Rules after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted by the Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with these Rules.

36.2 Allocation of Remaining Amounts

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid by the Trustee to the following persons and entities in the order stated until the amount of the Fund is exhausted:

- (a) payments to the Members and previous Members of such amounts as the Trustee, in its absolute discretion, determines;
- (b) payments to such of the deceased Members' Dependents of such amounts and in such proportions as the Trustee, in its absolute discretion determines;
- (c) payment of the balance to the Employers in such proportions as the Trustee determines is appropriate.

36.3 Preserved Benefits

Notwithstanding anything contained in Rule 36.1, the Trustee shall not, in the case of a Preserved Benefit, pay or transfer the benefit to a Member, until the Member retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of his earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Act.

36.4 Perpetuity Period

The trusts constituted by the Deed and Rules shall endure for such period as is allowed by law for the duration of the trusts hereby established.

PAYMENT OF BENEFITS**37. BENEFIT PAYABLE ON RETIREMENT OR ATTAINING AGE 65****37.1 Payment on Retirement or at Age 65**

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid or commence to be paid to a Member who, having attained the Retiring Age, ceases to be an Employee. The Member's Benefit shall also be paid or commence to be paid to a Member on attaining age 65 if he continues to be employed by the Employer after attaining age 65 but the number of hours worked are insufficient for the Member to be considered to be a Part-Time Employee. Notwithstanding Rules 37.2 and 37.3, a Member's Benefit shall be paid or commence to be paid to a Member who, having attained age 65, continues in employment but requests payment of his benefit.

37.2 Continuation of Part-Time Employment After Age 65

In the event that the Member is and continues to be a Part-Time Employee after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his attaining age 70 or if the number of hours that he works reduces below the level required to be a Part-Time Employee or upon his retirement from the employment of the Employer, whichever occurs first.

37.3 Continuation of Full-Time Employment After Age 65

In the event that the Member is and continues to be a Full-Time Employee after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his ceasing to be a Full-Time Employee. If the Member, after attaining age 65, becomes a Part-Time Employee after having ceased to be a Full-Time Employee, then Rule 37.2 shall apply.

37.4 Member to Inform Trustee

A Member shall inform the Trustee as soon as practicable after he ceases either:

- (a) to be a Part-Time Employee after age 65; or
- (b) to be a Full-Time Employee after age 65.

37.5 Payment of Benefit by Pension

The benefit payable under this Rule 37 may, in the discretion of the Trustee, be paid by way of a pension in accordance with Rule 47. However, a benefit that becomes payable shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of

PAYMENT OF BENEFITS

37. BENEFIT PAYABLE ON RETIREMENT OR ATTAINING AGE 65

37.1 Payment on Retirement or at Age 65

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid or commence to be paid to a Member who, having attained the Retiring Age, ceases to be an Employee. The Member's Benefit shall also be paid or commence to be paid to a Member on attaining age 65 if he continues to be employed by the Employer after attaining age 65 but the number of hours worked are insufficient for the Member to be considered to be a Part-Time Employee. Notwithstanding Rules 37.2 and 37.3, a Member's Benefit shall be paid or commence to be paid to a Member who, having attained age 65, continues in employment but requests payment of his benefit.

37.2 Continuation of Part-Time Employment After Age 65

In the event that the Member is and continues to be a Part-Time Employee after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his attaining age 70 or if the number of hours that he works reduces below the level required to be a Part-Time Employee or upon his retirement from the employment of the Employer, whichever occurs first.

37.3 Continuation of Full-Time Employment After Age 65

In the event that the Member is and continues to be a Full-Time Employee after attaining age 65, the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his ceasing to be a Full-Time Employee. If the Member, after attaining age 65, becomes a Part-Time Employee after having ceased to be a Full-Time Employee, then Rule 37.2 shall apply.

37.4 Member to Inform Trustee

A Member shall inform the Trustee as soon as practicable after he ceases either:

- (a) to be a Part-Time Employee after age 65; or
- (b) to be a Full-Time Employee after age 65.

37.5 Payment of Benefit by Pension

The benefit payable under this Rule 37 may, in the discretion of the Trustee, be paid by way of a pension in accordance with Rule 47. However, a benefit that becomes payable shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of

a pension that is an old-age pension within the meaning of Section 51 (xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation. Such old-age pension shall commence to be paid on the later of the Member attaining age 60 and retiring from the workforce.

37.6 Payment of Unclaimed Money to the Commissioner

If a benefit (other than a pension) has become payable under this Rule 37 and the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to trace the person to whom the benefit is payable, is unable to do so, the Trustee shall treat the benefit as unclaimed money and pay it to the Commissioner in accordance with the requirements of the Act.

38. BENEFIT PAYABLE ON DEATH

38.1 Benefit Payable on Death

If a Member dies before payment or commencement of payment of a benefit under Rule 37, the amount of the Member's Benefit shall be held by the Trustee on trust for the benefit of such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines. The Trustee shall take account of any nomination of beneficiaries made by the Member, but shall not be bound by it.

38.2 Payment to Legal Personal Representative

If the Trustee is unable to establish within six months after the Member's death that there are any Dependants, the Member's Benefit shall be paid to the Member's legal personal representative.

38.3 Payment other than to Dependant or Legal Personal Representative

If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member and the amount of the death benefit does not exceed \$5,000 (or any other amount prescribed in the Act), the Trustee may, if permitted by the Act, pay the benefit to a person or persons selected by the Trustee.

38.4 Forfeited Benefits

Subject to Rule 38.3, if a grant of probate or letters of administration is not made in respect of the estate of the Member within three years after his death (or such longer period as the Trustee determines), the benefit payable

hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 11.

39. BENEFIT PAYABLE ON DISABLEMENT

39.1 Benefit Payable on Disablement

Subject to the provisions of these Rules, if the employment by the Employer of a Member is terminated before the Retiring Age as a result of the Member being Permanently Disabled, the Member's Benefit shall be paid to the Member, or, if he is unable to manage his own affairs, to such of his Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

39.2 Proceeds of Temporary Disablement Insurance Policy

If, prior to such termination of employment, the proceeds of a temporary disablement insurance policy on the life of the Member become payable, such proceeds shall be paid to the Member or his Dependants as aforesaid subject to such limitations as are imposed under the Act.

40. BENEFIT PAYABLE ON DISMISSAL

- (a) If a Member is dismissed from the employment of the Employer for misconduct involving fraud or dishonesty, then, subject to the provisions of these Rules, the only benefit payable to that Member shall be the amount of the Member's Contribution Account plus the amount of the Member's Vested Employer's Contribution Account plus any other Vested Benefit plus such additional part (if any) of the Employer's Contribution Account which the Trustee, in its absolute discretion, determines.
- (b) Any Preserved Benefit shall be paid on the terms and conditions set out in Rule 42 in relation to such benefit.

41. BENEFIT PAYABLE ON TERMINATION OF EMPLOYMENT BEFORE RETIRING AGE

If the employment by the Employer of a Member is terminated before the Retiring Age otherwise than in the circumstances referred to in Rules 38, 39 or 40 and his new employer does not make any contributions to the Fund on his behalf:

- (a) the amount of the Member's Contribution Account;
plus

- (b) that part (if any) of the amount of the Member's Employer's Contribution Account calculated in accordance with the provisions of the Vesting Schedule in the relevant Appendix for that Member's Category of membership annexed to these Rules; plus
- (c) such additional part (if any) of the amount of the Member's Employer's Contribution Account which the Trustee, in its absolute discretion, determines (with the balance of that Account to be applied in accordance with Rule 11 as a forfeited benefit); plus
- (d) the amount of the Member's Vested Employer's Contribution Account; plus
- (e) any other Vested Benefit not otherwise payable hereunder,

shall, if the Member has attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) and is retiring from the workforce, be paid to the Member. If the Member has not attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or, having attained age 55, has not retired from the workforce, the Trustee shall pay or commence to pay to the Member only that part of the benefit payable which is not a Preserved Benefit.

42. PAYMENT OF PRESERVED BENEFIT

If any part of the benefit payable under Rules 40 and 41 is a Preserved Benefit and the Member has not attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or, having attained age 55, has not retired from the workforce, the Trustee shall:

- (a) retain the Member's Preserved Benefit in the Fund (to which earnings of the Fund shall be proportionately credited) and pay such benefit to him after he retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and requests that the benefit be paid to him provided that the Trustee shall pay or commence to pay the Preserved Benefit no later than the attainment by the Member of the age of 65 years or in such other circumstances as are permitted under the Act, or shall pay such benefit in accordance with Rules 38 or 39 in the event of his earlier death or Permanent Disablement, or shall pay such benefit to the Member if the Trustee is satisfied that he is leaving Australia to reside permanently overseas; or

- (b) if the Member requests that his benefit be transferred to another superannuation fund or to an approved deposit fund, transfer the benefit in accordance with Rule 30, provided the Trustee is satisfied that the trust deed of the transferee fund contains similar restrictions on the payment of benefits to those contained in this Rule 42; or
- (c) in its discretion, pay the Preserved Benefit to the Member by a non-commutable pension or annuity for the life of the Member; or
- (d) if the Member so requests, purchase a deferred annuity to be held by the Trustee until the Member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and
 - (i) under which the first annuity payment is not to be made until on or after the member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, provided that the annuity instalments shall commence to be paid no later than the attainment by the Member of the age of 65 years or in such other circumstances as are permitted by the Act, and
 - (ii) which cannot be surrendered (except to make a payment in accordance with Rule 30) until the Member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and
 - (iii) which cannot be mortgaged or encumbered in any manner whatsoever,

provided that if the amount of the Member's Preserved Benefit does not exceed \$500 (or such other amount that is prescribed under the Act), it shall be paid to the Member on termination of his employment and paragraphs (a), (b), (c) and (d) of this Rule 42 shall not apply to such benefit.

43. DEFERMENT OF PAYMENT OF BENEFIT

The payment of any benefit payable under Rules 40 or 41 which is not a Preserved Benefit or payable under Rules 37.1 or 39.1 may, at the request of the Member and with the consent of the Trustee, be deferred until the Member requests payment of the benefit. Such deferred benefit shall, however, be paid to the Member in accordance with Rules 38 and 39 in the event of the Member's death or Permanent Disablement or on the attainment by the Member of age 65 or in accordance with Rules 37.2 or 37.3 or in

accordance with the requirements of the Act. Earnings of the Fund shall be allocated to such deferred benefit in accordance with Rule 8.

44. PAYMENT OF BENEFITS TO MINORS

Where a person to whom benefits are payable hereunder is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

45. DEDUCTION OF INCOME TAX

The Trustee may deduct from any benefit payable, the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

46. MODE OF PAYMENT OF BENEFITS

46.1 Lump Sum or Pension

The benefit payable under Rules 37, 39, 40 or 41 shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension unless any part of the benefit is required by the Act to be paid by way of lump sum or pension. A benefit that becomes payable under Rule 37 shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation. Such old-age pension shall commence to be paid on the later of the Member attaining age 60 and retiring from the workforce.

46.2 Transfer in Specie

The Trustee may, at the request of the recipient of a benefit, and, if required under the Act, with the approval of the Commissioner, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.

47. PENSION CONDITIONS

47.1 Trustee's Discretion

Subject to Rule 46.1, where a benefit is payable under Rules 37, 39, 40 or 41 by way of pension, the Trustee shall, in its absolute discretion, determine the amount of the pension

and the manner in which and the period for which it is paid, provided that the pension shall be paid at least annually and the annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act and the pension shall be paid on a basis that complies with the requirements of the Act.

47.2 Cessation of Payments

When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefit and, if a Member, shall cease to be a Member.

47.3 Commutation of Pension

The recipient of a pension under these Rules may commute the pension or part thereof to a lump sum payment on making written application to the Trustee provided the commutation complies with the requirements of the Act.

47.4 Benefit Payable to Spouse on Death of Member

(a) On the death of a Member to whom a pension is being paid and who is survived by a spouse, the Trustee may determine to pay to the spouse until the spouse's death or, until the Member's Benefit is reduced to nil, if that occurs before the spouse's death, a pension of such amount as the deceased Member's spouse and the Trustee agree upon from time to time or, in the absence of such agreement, of such amounts and on such terms and conditions as the Trustee determines provided that if the pension has to be paid on some other basis for the Fund to comply with the Act, it shall be paid on that basis. The annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act.

(b) A pension payable to a Member's spouse pursuant to this Rule 47.4 shall commence on the date of the Member's death.

47.5 Payment to Member's Dependants

(a) In the event of the death of a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under Rule 47.4, or in the event of the death of a Member's spouse to whom a pension was payable under Rule 47.4, the balance of the Member's Benefit (if any) shall be paid in a lump sum to such of the Member's Dependants in such shares and proportions as the Trustee, in its absolute discretion, determines.

- (b) If payment of part or all of such benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated in paragraph (d) of this Rule.
- (c) If the Trustee is unable to establish within 6 months after the death of a Member or the Member's spouse (if a pension was being paid to the Member's spouse) that there are any Dependents, the benefit payable under this Rule 47.5 shall, in the discretion of the Trustee, be paid to the Member's or the Member's spouse's legal personal representative but, if a grant of probate or letters of administration in respect of the estate of the deceased Member or the deceased Member's spouse is not made within three years after his or her death, (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this Rule.
- (d) A forfeited benefit shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 11.

47.6 No Assignment or Encumbrance

- (a) Pensions payable from the Fund shall not be assigned or otherwise transferred by the person in receipt thereof (except to the extent provided in Rule 47.4) and shall not be mortgaged or encumbered in any manner whatsoever.
- (b) Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

47.7 Annuities

The Trustee may, in its absolute discretion, (including where an old-age pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Act.

48. BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP

The Trustee may, in its absolute discretion, pay part or all of the Member's Benefit to a Member who is not entitled to be paid a benefit under the balance of these Rules, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his benefit is not paid to

him. Any such payment must first be approved by the Commissioner, if the Act so requires.

49. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

The Trustee may, in its absolute discretion, pay part or all of a Member's Benefit to a Member, or another person, in the circumstances provided for in the Act, notwithstanding the restrictions imposed by these Rules.

50. JURISDICTION

50.1 Law

The Fund and the provisions of the Deed and these Rules shall be governed by and construed according to the law of the State of New South Wales.

APPENDIX "A"

APPLICATION FOR PARTICIPATION BY AN ASSOCIATED EMPLOYER

To: The Trustee of the
The John Troughton Superannuation Fund (the "Fund")

.....
(the "Associated Employer") hereby applies to participate in the Fund and to include employees of the Associated Employer as members of the Fund and in consideration of the acceptance of the Associated Employer as a participant in the Fund, the Associated Employer undertakes to contribute to the Fund and be bound by the Deed governing the Fund as if it were originally named therein.

DATED this day of 19

To be signed by company applicant:

THE COMMON SEAL of
PTY LIMITED was hereunto affixed in
accordance with its Articles of Association
in the presence of:

.....
Director

.....
Secretary/Director

To be signed by sole trader or partner applicant/s:

SIGNED SEALED AND DELIVERED
by the said
in the presence of:

.....
(Signature)

.....
(Signature of Witness)

SIGNED SEALED AND DELIVERED
by the said
in the presence of:

.....
(Signature)

.....
(Signature of Witness)

APPENDIX "B"

APPLICATION FOR MEMBERSHIP

OF

**THE JOHN TROUGHTON SUPERANNUATION FUND
("the Fund")**

1. I,
of
hereby apply for membership in Category
of the Fund which is administered in terms of the Deed and Rules governing the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining the fund, in the event of my retirement, death or termination of employment with my Employer, the method of determining those benefits and any conditions relating to those benefits.
3. In consideration of my admission to membership, I hereby agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
4. I hereby authorise my current Employer to deduct from my salary such amounts (if any) as are from time to time agreed upon by myself and my Employer as contributions to be made by me to the Fund.
5. I hereby consent to Guntonia Investments Pty Ltd acting as Trustee of the Fund.

6. NOMINATION OF BENEFICIARIES

Whilst I acknowledge the discretion the Trustee has, to determine who the benefit is paid to, I hereby nominate the following persons to receive the benefit payable by the Trustee of the Fund in the event of my death:

PERSON	RELATIONSHIP	PERCENTAGE
---------------	---------------------	-------------------

7. I hereby authorise the Trustee, in the event of my termination of employment, to transfer any benefit payable to me but which cannot be paid to me on my termination of employment (a preserved benefit), to a fund nominated by me in writing to the Trustee at the time of my termination of employment, or, if I fail to make such a nomination within 60 days of the date of my termination of employment, to the Fund.

If a fund nominated above is not, in the opinion of the Trustee available or appropriate for such a transfer to be made to it or if a fund is not nominated above, or if I fail to nominate a fund to which the transfer can be made within 60 days of my termination of employment, I understand that the effect of the Trust Deed is that the Trustee can, if my benefit is not able to be paid to me within 90 days after I have become entitled to it, pay the benefit to an eligible rollover fund for my benefit. Until the Trustee decides otherwise, the eligible rollover fund to which any such payment would be made is :

Name:

Address:

Date:

Applicant's Signature:

Witness:

APPENDIX "C"

VESTING SCHEDULE

THE JOHN TROUGHTON SUPERANNUATION FUND

CATEGORY ONE

Percentage entitlement of the amount standing to the credit of the Member's Employer's Contribution Account for the purpose of Rule 41

100%

APPENDIX "C"

VESTING SCHEDULE

THE JOHN TROUGHTON SUPERANNUATION FUND

CATEGORY

Number of years
completed as a
Member of the Fund

Percentage entitlement of the
amount standing to the credit of
the Member's Employer's
Contribution Account for the
purpose of Rule 41

%

APPENDIX "C"

VESTING SCHEDULE

THE JOHN TROUGHTON SUPERANNUATION FUND

CATEGORY

Number of years
completed as an
Employee of the
Employer

Percentage entitlement of the amount standing
to the credit of the Member's Employer's
Contribution Account for the purpose of
Rule 41

%