

THIS DEED OF AMENDMENT is made

2000

By MACTIN PTY LIMITED A.C.N. 063 503 051

DICTIONARY

- 1.1 Amendment Clause: Clause 29 of the Original Deed
- 1.2 Fund: Peter McGavin Real Estate Pty Ltd Provident Fund
- 1.3 Original Deed: Deed dated 23 May, 1978 as amended by Deeds dated 1990 and 16 November, 1994
- 1.4 Substituted Provisions: The provisions set forth in Annexure "A" hereto
- 1.5 Schedule of Rules: The rules set forth in Annexure "B" hereto
- 1.6 Trustee: Mactin Pty Limited A.C.N. 063 503 051

BACKGROUND

- 2.1 The Fund was established by the Original Deed.
- 2.2 The Trustee is desirous of replacing the terms of the Original Deed pursuant to and in accordance with the Amendment Clause in the manner set forth in the Operative Part.

OPERATIVE PART

- 3.1 The Trustee varies the Original Deed by replacing all it's provisions (both as to the Deed and the Schedule thereto) and by substituting therefor the Substituted Provisions and the Schedule of Rules.
- 3.2 The Trustee warrants that the variations herein contained do not reduce nor have any effect on the amount set aside for any beneficiary or on the beneficial entitlement of any beneficiary of the Fund.
- 3.3 The Original Deed remains in full force and effect and will be read and construed and be enforceable as if the Substituted Provisions and the Schedule of Rules were always contained therein.

Signed Sealed and Delivered
by the Trustee in accordance
with S.127 (1) of the
Corporations Law

)
)
)
)
)


.....
Director


.....
Director

ANNEXURE "A"
SUBSTITUTED PROVISIONS

1. **RECITALS**

- 1.1 The Fund was established by the Original Deed as a continuing superannuation trust fund to provide superannuation benefits for such approved persons who made or make application to become members of the Fund.
- 1.2 The assets of the Fund (including contributions to the Fund and investments for the time being representing the same) held by or on account of the Trustee pursuant to the Original Deed shall continue to be held on the same trust for the identical objects and the purposes of the Original Deed.

2. **PROPER LAW**

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State of New South Wales.

3. **REQUIREMENTS TO BECOME A REGULATED SUPERANNUATION FUND**

- 3.1 If the Initial Trustee of the Fund is a Constitutional Corporation then it shall be a requirement under this Deed that the Trustee shall only be a Constitutional Corporation.
- 3.2 If the Initial Trustee of the Fund is not a Constitutional Corporation then the sole or primary purpose of the Fund is the provision of Old-Aged Pensions.

4. **INTERPRETATION**

- 4.1 This Trust Deed shall be read and construed subject to clauses 35.1 and 35.6 (a) of this Deed.
- 4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.
- 4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-

"Account" means an account in the books of account of the Fund;

"Allocated Pension" means a Pension Benefit as referred to in Rule 14.2 of the Rules;

"Ancillary Benefit" means a benefit as provided under Rules 10 or 11 of the Rules;

"Approved Fund" means a superannuation fund, approved deposit fund, eligible roll-over fund, retirement savings account, small accounts holding reserve or other approved fund including a pension fund or annuity arrangement which, amongst other things, can accept a transfer from the Fund of a Member's or a Beneficiary's Benefit or is authorised to transfer a Member's Benefit to the Fund in accordance with the Relevant Legislation;

"Asset-Test Exempt Pension" means a Pension Benefit that is exempt or excluded from the assets test under the Social Security Act 1991 (C'th) or the Veterans Entitlement Act 1986 (C'th) (and any applicable regulation made pursuant thereto), as relevant;

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Reversionary Beneficiary but shall not unless the context otherwise permits include a person who is then a Member;

"Benefit" or "Benefits" means any amount paid or payable by the Fund to or in respect of a Member as a Pension Benefit, a Lump-Sum Benefit or an Ancillary benefit (if not paid as a Pension benefit or a Lump Sum benefit) under the provisions of this Trust Deed;

"Binding Beneficiary Nomination Form" is the form of written direction by a Member to the Trustee for the payment of his or her benefits upon his or her death otherwise referred to in Rule 2.1 of the Rules which subject to the Relevant Legislation is binding upon the Trustee.

"Commissioner" means either the Commissioner of Taxation or the Commissioner of the Australian Prudential Regulatory Authority and prior to July 1, 1998 includes a reference to the Commissioner of the Insurance and Superannuation Commission, or any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Complying Pension" means a pension benefit that meets the requirements of Rule 15 in the Rules;

"Complying Superannuation Fund" means a complying superannuation fund for the purposes of the Relevant Legislation;

"Conditional Preservation Age" shall mean 55 years or some other age prescribed as the Preservation Age by the Relevant Legislation for the payment of all or part of a Member's Benefit from the Fund after Retirement where the Trustee must be satisfied that the Member has ceased to be Gainfully Employed by any Employer or otherwise;

"Contributor" shall mean any person or entity making a contribution on behalf of a Member or Members in accordance with the Relevant Legislation and shall include an Employer or spouse of a Member;

"Constitutional Corporation" means a trading corporation or a financial corporation within the meaning of paragraph 51(xx) of the Commonwealth of Australia Constitution Act;

"CPI" shall mean the Consumer Price Index or any replacement index as published by the Australian Statistician or any other official Federal Government authority which is adopted or utilised for the purposes of administering superannuation or the taxation of Benefits under the Relevant Legislation.

"Dependants" means the spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustee was dependant on the Member at the relevant date;

"Disbursements" means unless the Trustee determines otherwise the direct costs of establishing, administering, managing, operating and terminating the Fund and any administrative, insurance or Taxation costs which are or which relate to those direct costs;

"Earnings" means the positive or negative amount which the Trustee determines to be the income of the Fund less Disbursements either:

- (i) for a Financial Year; or
- (ii) for any other period which the Trustee may declare Earnings;

which may exclude amounts ("excluded amounts") determined by the trustee to be treated as capital and include amounts ("included amounts") which the Trustee has determined to be income which but for that determination would not be included in Earnings where excluded amounts and included amounts may be positive or negative and may be due to timing or permanent differences and Earnings may also reflect unrealised gains or losses;

"Elector" means a Member who is a Qualified Person and includes the legal personal representative of a Member who has died until the later in time of:-

- (a) the payment in full of the last Lump-Sum Benefit due to a Beneficiary of the deceased Member in that capacity; or

(b) the commencement of payment of the last Pension Benefit due to the Beneficiary of the deceased Member in that capacity;

"Eligible Fund" means a superannuation fund, an approved deposit fund, an eligible roll-over fund, a roll-over annuity or any like fund or annuity or any other entity which the Trustees determine to be an Eligible Fund in respect of which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not in the opinion of the Trustee, be in breach of the Relevant Legislation.

"Employer" means a Member's Employer or an associate of a Member's Employer who makes contributions to the Fund for and on behalf of a Member in accordance with the Relevant Legislation;

"Financial Year" means the year ended 30th June unless the Trustee adopts a different financial year which is not in breach the Relevant Legislation.

"Full-Time Basis" means a Member who is employed or self-employed on a full-time basis within the meaning of the Relevant Legislation;

"Funding Member" means a Member in respect of whom the Trustee permits contributions to fund a Complying Pension;

"Initial Trustee" refers to the Trustee or Trustees of the Fund referred to in the Schedule of this Deed;

"Lump-Sum Benefit" means a Benefit or any component of it paid otherwise than as a Pension in accordance with this Trust Deed;

"Member" subject to the Relevant Legislation means a person whom the Trustee has admitted as a Member of the Fund and has not ceased being a Member by virtue of clause 6.4 hereof;

"Member's Account" in respect of a Member shall include the net amount then standing to his or her credit in the accounts of the Fund made up of contributions by or on behalf of the Member or any amounts transferred to the Fund by or on behalf of the Member plus any share of the profit or loss of the Fund allocated to that Member less any amounts transferred to a Reserve Account or payments made pursuant to this Deed or pursuant to the requirements of the Relevant Legislation;

"Member's Benefit" in respect of a Member shall include the net amount then standing to his or her credit in the Member's Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Account and which the Trustee has allocated to that Member;

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

"Old-Aged Pensions" or "Old-Aged Pension" has the same meaning as in paragraph 51(xxiii) of the Commonwealth of Australia Constitution Act.

"Part-Time Basis" refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Relevant Legislation;

"Pension" means an annuity or pension contemplated by the Relevant Legislation and shall, except where this Trust Deed states otherwise, mean an annuity or pension which is not a Reversionary Pension unless the Trustee has agreed in writing with the Member or Beneficiary that the Pension is a Reversionary Pension and where 'Pensioner' and 'Reversionary Pensioner' shall have corresponding meanings;

"Pension Benefit" means a Pension or any component of which can be paid or provided from the Fund to a Member or Beneficiary in compliance with the Relevant Legislation;

"Pensioner" means a Member who receives or is entitled to receive or who has applied to receive benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of or entitled to receive a Pension;

"Penultimate Cashing Age" means the age of 65 years or such other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed either on a Full-Time or a Part-Time basis;

"Permanently and Totally Disabled" subject to the provisions of the Relevant Legislation means -

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or
- (ii) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance;
- (iii) where there is no insurance policy, the physical or mental ill-health of the Member as certified by two registered medical practitioners who certify that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;
- (iv) any other circumstances which are acceptable to the Trustee and which are permitted under the Relevant Legislation.

"Preservation Age" shall have the same meaning as prescribed in the Relevant Legislation and subject to fulfilling such overriding requirements shall mean:-

- (a) for a person born before 1 July 1960 – 55 years; or
- (b) for a person born during the year before 1 July 1960 to 30 June 1961 – 56 years;
- (c) for a person born during the year before 1 July 1961 to 30 June 1962 – 57 years;
- (d) for a person born during the year before 1 July 1962 to 30 June 1963 – 58 years;
- (e) for a person born during the year before 1 July 1963 to 30 June 1964 – 59 years; or
- (f) for a person born after 30 June 1964– 60 years.

"Primary Beneficiary" means a Funding Member to whom is or may be entitled to a Complying Pension;

"Qualified Person" means , subject to the Relevant Legislation:

- (a) an individual who has not died, has not lost their legal capacity and is not Insolvent Under Administration;
- (b) an individual who has not been the subject of a civil penalty order made under the Relevant Legislation;
- (c) an individual who has not been convicted of an offence involving dishonest conduct anywhere in the world;
- (d) a company which has not lost legal capacity, gone into liquidation, receivership or been placed under official management or has not otherwise become Insolvent Under Administration; or
- (e) a Corporate Trustee which is permitted by the Relevant Legislation to act as trustee of the Fund including an Approved Trustee;

and a Corporate Trustee is a Qualified Person only if all directors are also Qualified Persons;

"RBL" means the Reasonable Benefits Limit applicable to a Member as determined by the Trustee from time to time in accordance with Relevant Legislation to determine the maximum amount of concessional tax benefits a Member can receive;

"Relevant Legislation" means the Income Tax Assessment Act, 1936 (C'th), Income Tax Assessment Act, 1997 (C'th), Occupational Superannuation Standards Act, 1987 (C'th), Social Security Act 1991 (C'th), Superannuation Industry (Supervision) Act 1993 (as the case may be) and any regulations made under such legislation and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts and any amending, replacement or additional legislation in respect to superannuation administration, superannuation benefits or superannuation in general which is applicable to the Fund and any reference to the provisions or requirements of the Relevant Legislation means the provisions or requirements of such legislation and the regulations made thereunder and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation or so as to enable the Fund to be deemed a Complying Superannuation Fund;

"Reserve Account" shall be an account set up by the Trustee in accordance with proper accounting standards and practices for contingencies associated with the administration of the Fund and subject to the requirements of the Relevant Legislation, no Member shall be presently entitled to any monies allocated to a Reserve Account.

"Retirement" shall mean subject to any requirements to the contrary contained in the Relevant Legislation:-

- (a) in the case of a person who has reached the Preservation Age that is less than 60 – if:
 - (i) an arrangement under which the member was gainfully employed has come to an end; and
 - (ii) the Trustee is reasonably satisfied that the person intends never again to become Gainfully Employed, either on a Full-Time or Part-Time basis; or
- (b) in the case of a person who has attained age 60 – an arrangement under which the member was gainfully employed has come to an end on or after the member attained that age.

"Revenue Account" has the meaning given to it in clause 11 hereof;

"Reversionary Pension" means a Pension payable to a Beneficiary who succeeds a Member or Beneficiary to the entitlement of the Member or Beneficiary to Pension Benefits.

"Reversionary Beneficiary" means a beneficiary who succeeds a Member or Beneficiary and is entitled to a Reversionary Pension;

"Rules" means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

"Self employed" subject to the terms of the Relevant Legislation refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

"SIS" refers to the Superannuation Industry (Supervision) Act 1993 (C'th);

"SISR" refers to the Superannuation Industry (Supervision) Regulations;

"Self Managed Fund" shall have less than five members and shall otherwise be a self managed fund as defined in Relevant Legislation;"

"Spouse" in relation to a Member means, subject to the Relevant Legislation or where the Trustee otherwise determines that the term as referred to in clause 4.4 hereof applies in lieu of the following definition, a person married to the Member or a person, although not legally married to the Member:

- (a) cohabits with the Member; or
- (b) had cohabited with the Member immediately prior to the Member's death;

on a bona fide domestic basis as husband, wife or lover and if more than one spouse the Trustee shall determine which spouse shall be entitled to be treated as the spouse exclusively or, alternatively, how they are to share the entitlement of a spouse between them;

"Tax" or "Taxes" includes any liability or provision for a liability for a tax, surcharge, duty, levy including any additional tax or penalty or, where the Trustee determines, any similar liability or provision and "Taxation" has a corresponding meaning.

"Taxation Reserve Account" has the meaning given to it in clause 11 hereof;

"Trust Deed" means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time.

"Trust Law" means whichever of the Trustee Act 1925 (NSW), Trustee Act 1958 (Vic), Trusts Act 1973 (Qld), Trustees Act 1962 (WA), Trustee Act 1936 (SA) or the Trustee Act 1898 (Tas) apply or any other Commonwealth, State or Territory legislation of like effect that may apply;

"Unconditional Preservation Age" means the age of 60 years or any age prescribed as the Preservation Age by the Relevant Legislation at the time of a Member's Retirement for the payment of all or part of a Member's benefit from the Fund on Retirement;

"Ultimate Cashing Age" means the age of 70 years or any other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed on a Full -time basis.

4.4 Unless a contrary intention appears the following terms have the same meanings they have from time to time in the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder:

"actuary"
"alternative agreed representation rules"
"annuity"
"approved auditor"
"approved deposit fund"
"approved trustee"
"basic equal representation rules"
"civil penalty order"
"condition of release"
"beneficiary"
"constitutional corporation"
"eligible roll-over fund"
"exempt business real property"
"gainfully employed"
"group of trustees"
"independent trustee"
"in-house assets"
"insolvent under administration"
"legal personal representative"
"life expectancy"
"listed security"
"mandated employer contributions"
"old age pension"
"pension age"
"post-65 employer-financed benefits"
"regulated superannuation fund"
"retirement"
"self managed superannuation fund"
"spouse".

5. **DATE OF COMMENCEMENT**

The Fund was constituted on the date hereinbefore mentioned.

6. **ADMISSION AND CESSATION OF MEMBERS**

- 6.1 Persons who are engaged on a Full-Time Basis or a Part-Time Basis in a business, trade, profession, vocation, calling, occupation or employment OR such persons which the Trustee may otherwise approve **PROVIDED THAT** the requirements of the Relevant Legislation are satisfied, who wish to become Members shall apply for membership by completing a form of application in a style and format permitted or approved by the Trustee.
- 6.2 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.
- 6.3 A Member shall inform the Trustee, as soon as practicable, after he ceases:
- (a) to be Gainfully Employed or self employed on a Part-Time Basis after attaining age 70 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Part-Time employment ; and

- (b) to be Gainfully Employed or self employed on a Full-Time Basis after attaining age 65 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Full-Time employment.

6.4 A person shall cease to be a Member when:-

- (a) all benefits which are or may be payable in respect of a Member have been paid; or
- (b) a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to benefits; or
- (c) the Member's entitlement to benefits is terminated or forfeited; or
- (d) where the Trustee shall otherwise reasonably determine in circumstances not otherwise in breach of the Relevant Legislation.

6.5 The Trustee may admit an applicant as a Member of the Fund and attach special conditions attaching to his or her membership or Benefit in the Fund.

6.6 A person shall not be admitted as a Member of the Fund and will not be a Member of the Fund if the admission of that person would result in the Fund not being a self managed superannuation fund unless:-

- (a) the Fund has an Approved Trustee; or
- (b) The Trustee is acting in accordance with Relevant Legislation so that it will comply as a self managed superannuation fund ; or
- (c) The Trustee has by express resolution resolved that the membership of the fund shall exceed four persons and that the fund shall not be a self managed superannuation fund and no contrary resolution has been made by the Trustee.

Any contributions received in contravention of this provision shall subject to the Relevant Legislation be deemed to be rejected contributions and shall be held by the Trustee in accordance with clause 7.10 or clause 8.8.

6.7 Where a Member has or is likely to obtain, by reason of any misrepresentation or omission, a greater Benefit than he or she would have otherwise have been entitled to, the Trustee may, subject to the Relevant Legislation, reduce the Member's Benefit to the amount he or she would have been entitled to had it not been for the misrepresentation or omission.

6.8 Upon acceptance of the application by the Trustee the person making the application shall be bound by this Trust Deed in all respects as if he were an original party to this Deed.

7. CONTRIBUTIONS ON BEHALF OF A MEMBER

7.1 An Employer, the spouse of a Member or any other person authorised by the Relevant Legislation to make contributions to the Fund for the benefit of a Member or Members, may contribute to the Fund in respect of each Member or a particular Member any amount whatsoever agreed or approved by the Trustee **PROVIDED THAT** such contributions are in accordance with the Relevant Legislation.

7.2 At the time of making such contribution, the Contributor shall advise the Trustee of the contribution in respect of each Member, whether the contribution is a mandated employer contribution and such information which the Trustee requests.

7.3 Subject to the requirements of the Relevant Legislation any payment of contributions by the 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.

7.4 The Trustee may accept an in specie contribution of an asset from a Contributor provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied and such contribution shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.

7.5 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee

consenting in writing prior to any transactions being entered into, a Contributor may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Contributor shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.

- 7.6 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation or the Trustee is of the opinion that such a contribution would breach the Relevant Legislation.
- 7.7 The Trustee may accept contributions in such manner, which complies with the requirements of the Relevant Legislation.
- 7.8 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 clause 8.1 hereof 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.
- 7.9 The Trustee is authorised:-
- (a) to reject any amount, in full or at all, tendered as a contribution to the Fund and, to return to the contributor, any contribution which in the trustee's opinion, could prejudice the Fund's ability to comply with the Relevant Legislation applicable to a Self Managed Fund including any contribution which exceeds the relevant maximum deductible contribution limit applicable to a Member as prescribed in respect of the relevant financial Year by the Relevant Legislation or for any other reason without being bound to give any reason for its rejection; and
 - (b) to request information or documentary evidence to ensure the Contributor is eligible to contribute to the Fund where the information provided in the application for Membership is in the trustee's opinion deficient.
- 7.10 Subject to the Relevant Legislation, the Trustee may hold rejected contributions and other amounts which do not form part of the Fund as a bare trustee for the Contributor or the person otherwise entitled to the amounts.
- 7.11 A Contributor is not bound to make any contribution to the Fund unless the Contributor is bound to make the contributions to the Pension Reserve Account in accordance with sub-clause 7.12 or in accordance with a separate contribution agreement between the Trustee and the Contributor.
- 7.12 A Contributor shall make and the Trustee shall, after making a determination referred to in sub-clause 11.1(h), accept contributions to the Fund for the benefit of the relevant Members in accordance with the determination of an Actuary in accordance with the Pension RBL and the Relevant Legislation relevant to the provision of a Complying Pension to a Member or Members in accordance with the provisions of this Trust Deed.

8. CONTRIBUTIONS BY MEMBERS

- 8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee PROVIDED THAT the contribution is in accordance with the requirements of the Relevant Legislation.
- 8.2 At the time of paying the Member's contribution to the Trustee, the Member shall advise the Trustee of the contribution in respect of the Member.
- 8.3 Subject to the requirements of the Relevant Legislation any payment of a Member's contribution 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 insurance company or investment manager.
- 8.4 The Trustee may accept an in specie contribution of an asset from a Member which may include a listed security or exempt business real property provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied.

- 8.5 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee consenting in writing prior to any transactions being entered into, a Member may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Member shall be deemed to be a contribution to the Fund for the Member. Any contributions made under this sub-clause must also comply with sub-clause 8.1.
- 8.6 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation.
- 8.7 The Trustee is authorised:-
- (a) to reject any amount, in full or at all, tendered as a contribution to the Fund and, to return to the Member, any contribution which in the trustee's opinion, could prejudice the Fund's ability to comply with the Relevant Legislation applicable to a Self Managed Fund including any contribution which exceeds the relevant maximum deductible contribution limit applicable to a Member as prescribed in respect of the relevant financial Year by the Relevant Legislation or for any other reason without being bound to give any reason for its rejection; and
 - (b) to request information or documentary evidence relating to Member's eligibility to contribute to the Fund or matters relevant to the Member's contributions where the information provided in the application for Membership is in the Trustee's opinion deficient.
- 8.8 Subject to the Relevant Legislation, the Trustee may hold rejected contributions and other amounts which do not form part of the Fund as a bare trustee for the Member or the person otherwise entitled to the amounts.
- 8.9 A Member is not bound to make any contribution to the Fund unless the Member is bound to make the contributions to the Pension Reserve Account in accordance with sub-clause 8.10 or in accordance with a separate contribution agreement between the Trustee and the Member.
- 8.10 A Member shall make and the Trustee shall, after making a determination referred to in sub-clause 11.1(h), accept contributions to the Fund for the benefit of the Member in accordance with the determination of an Actuary in accordance with the Pension RBL and the Relevant Legislation relevant to the provision of a Complying Pension to a Member in accordance with the provisions of this Trust Deed.

9. INVESTMENTS

- 9.1 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 thinks fit and without limiting the generality of the foregoing either directly or indirectly:-
- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
 - (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
 - (c) any mortgage or other security on freehold or leasehold property even though the amount of the loan may exceed two thirds of the value of the property and whether or not a report or valuation has been obtained on the property;
 - (d) 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 loan any part of the moneys or assets of the Fund to Members or shall not invest in "in-house assets" within the meaning of the Relevant Legislation or otherwise loan or invest monies if to do so would result in the Fund not complying with the Relevant Legislation;
 - (e) in shares, stock, options, debentures, bonds, unsecured notes or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
 - (f) in units or sub-units of any unit trust and in bills of exchange and other negotiable instruments;

- (g) the purchase or acquisition of any personal property and in particular (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them;
- (h) the giving or taking of leases, licenses or options over real or personal property or any interest in respect of them;
- (i) any business including primary production including any direct or indirect interest in any business where a Trustee has invested in a business the trustee, may, to the extent permitted under the Relevant Legislation, carry on the business or employ persons to carry on the business on behalf of the Trustee; or
- (j) any other investments which would not otherwise breach the Relevant Legislation,

PROVIDED THAT the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Relevant Legislation, if any, in order for the Fund to comply with the Relevant Legislation and **PROVIDED FURTHER THAT** the investments made by the Trustee shall not breach or contravene the Relevant Legislation.

- 9.2 The Trustee shall not invest in "in-house assets" within the meaning of the Relevant Legislation if to do so would result in the Fund not complying with the Relevant Legislation.
- 9.3 The Trustee shall invest in a manner that shall not contravene the Relevant Legislation.
- 9.4 The Trustee may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as it, in its absolute discretion, thinks fit, without being responsible for loss occasioned by so varying, transposing or replacing.
- 9.5 Upon a Member being admitted as a Member or at any time whilst a Member or Beneficiary remains a Member or Beneficiary of the Fund, that person may complete a Request (a "Member-Choice Investment Request") that the Trustee make the specific investment specified in the Member-Choice Investment Request. The Member-Choice Investment Request shall contain the following details:
- (a) the particulars of the said specific investment;
 - (b) the terms and conditions upon which the specific investment is to be made;
 - (c) the amounts to be invested in the specific investment; and
 - (d) an acknowledgment by the Member or Beneficiary that the Trustee has an absolute discretion to accept or reject any investment specified in a Member-Choice Investment Request without giving any reasons for the making of its decision; and
 - (e) such other matters as determined by the Trustee.
- 9.6 The Trustee may in its sole and absolute discretion accept the Member-Choice Investment Request **PROVIDED:**
- (a) the amounts specified to be so invested and the Trustee's estimated costs of acquiring the investment shall not exceed the Member's Benefit at the date of the investment adjusted to take into account such reserves and contingencies and other factors that the Trustee may in its sole and absolute discretion determine appropriate;
 - (b) such specific investments are within the powers conferred by Clause 9 and the other provisions of the Deed;
 - (c) such specific investments are in accordance with the investment strategy or strategies formulated by the Trustee;
 - (d) such form of investment shall not be prohibited by the relevant Legislation.
- 9.7 Upon accepting or rejecting the Member-Choice Investment Request, the Trustee shall inform the Member or Beneficiary of its decision forthwith, and where the Trustee has accepted the Request the Trustee shall thereupon acquire the specific investment upon the terms specified therein.

- 9.8 A Member or Beneficiary may submit a further request (a Request for a Variation) by which he/she requests the Trustee to vary or dispose of any specific investments already made by the Trustee pursuant to a Member-Choice Investment Request and the Trustee shall vary the specific investment upon such terms as it shall in its discretion determine.
- 9.9 The Earnings and any incomings and/or outgoings arising from or in connection with the acquisition, holding, management and disposal of any specific investments shall be dealt with pursuant to Clause 11.3.
- 9.10 The Trustee shall formulate and document in writing an investment strategy or investment strategies for the Fund and thereafter implement and give effect to one or more investment strategies for the Fund as required by the Relevant Legislation, which strategies shall be formulated in light of all of the circumstances of the Fund and shall be reviewed from time to time.
- 9.11 Where the Trustee receives an in specie contribution of an asset from a Member or a Contributor pursuant to the provisions of this Deed the Trustee may at the Trustee's discretion retain such asset as an investment asset of the Fund.

10. **POLICIES OF INSURANCE AND ANNUITIES**

- 10.1 The Trustee may, in its absolute discretion, invest the whole or any part of the amount standing to the credit of a Member in the books of the Fund in the payment of premiums on 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.
- 10.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee thinks fit. The Trustee shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of an annuity on such terms as the Trustee, in its absolute discretion, determines.
- 10.3 The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the Member's Account in such proportion as is agreed upon by the Trustee and the Member and in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall, subject to the requirements of the Relevant Legislation, be credited at the Trustee's discretion to any number of the following accounts:
- (i) the Member's Account;
 - (ii) to a Reserve Account established by the Trustee;
 - (iii) such other accounts which the Trustee may determine.
- 10.4 The Trustee shall have power to continue such policies or annuities for such periods as the Trustee thinks fit and to discontinue or surrender such policies or annuities.
- 10.5 The Trustee of the Fund shall not be liable for any loss suffered by the Fund or any of the Members as a result of:
- (a) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not;
 - (b) an insurer failing to pay out on an insurance policy, in whole or in part, for whatever reason,

and the Trustee shall be at liberty to reduce or abandon insurance cover in relation to a Member whose age, ill-health or other circumstances, which must be disclosed under the Insurance Contracts Act 1984 (Cth), would lead to premium costs that are out of proportion with costs that are incurred for a Member or on behalf of other Members.

11. **RECORDS, ACCOUNTS AND AUDITING**

- 11.1 The Trustee shall keep a complete record of all matters essential to the administration of the Fund as

required by the Relevant Legislation and in accordance with applicable accounting standards and proper accounting practices.

11.2 In fulfilling the requirements of clause 11.1 above the Trustee may keep or maintain the following records:-

- (a) A Minute Book in which proceedings and resolutions of the Trustee are recorded.
- (b) A Member's Account for each Member in which is recorded:-
 - (i) contributions to the Fund by the Employer or any other Contributor in respect of that Member pursuant to clause 7 of this Trust Deed;
 - (ii) contributions by a Member pursuant to clause 8 of this Trust Deed;
 - (iii) amounts credited to such account pursuant to clause 30 of this Trust Deed;
 - (iv) Earnings or profits or losses of the Fund credited or debited to such account pursuant to clauses 12.1, 12.2 or other relevant clauses of this Trust Deed;
 - (v) forfeited benefits credited to such account pursuant to clause 15 of this Trust Deed;
 - (vi) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
 - (vii) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
 - (viii) amounts debited to such account to pay Taxes;
 - (ix) amounts which are not required to meet Tax liabilities and which are credited to the account pursuant to paragraph (d) of this clause;
 - (x) amounts debited or credited from any Reserve established by the Trustee pursuant to this Trust Deed;
 - (xi) amounts which are debited or credited pursuant to any provision or power conferred on the Trustee under this Trust Deed provided however such amounts or entries are not contrary to the Relevant Legislation.
- (c) Such other accounts, including Allocated Pension Accounts, reserves and Reserve Accounts, as the Trustee considers appropriate from time to time;
- (d) A Revenue Account to which shall be credited all Earnings or income, (except monies accounted for pursuant to clause 11.3(b)) from investments, profits earned and capital gains realised during each financial year and to which shall be debited all expenses (other than premiums on policies of insurance), outgoings and losses incurred during each financial year.
- (e) A Taxation Reserve Account to which shall be credited amounts set aside by the Trustee to pay Taxes and to which shall be debited Taxes paid and amounts which the Trustee determines from time to time to transfer to the Members' Accounts in proportion to the amounts standing to the credit of those accounts at that time or on such other basis as the Trustee considers to be equitable. The balance in the Taxation Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up or on crystallisation of the Fund.
- (f) A Forfeited Benefits Reserve Account which may be credited with amounts in accordance with clause 15 and to which may be debited any amounts which are applied in accordance with clause 15 hereof;
- (g) A Fund Reserve Account in accordance with any reserving strategy established by the Trustee for stabilising or smoothing the investment earnings of the Fund or to provide for any future contingencies which the Trustee in its discretion may determine;
- (h) A Pension Reserve Account to receive contributions, allocated profits, excess contributions or a members insured benefits or such other amounts as the Trustee may determine at the Trustee's discretion from time to time including amounts based upon the advice of an Actuary,

and without limiting the generality of the foregoing the Trustee may credit the Pension Reserve Account with:

- (i) contributions (if any) by or on behalf of a Funding Member to the Fund including any contribution which exceeds the relevant Funding Member's maximum contribution limit as prescribed in any Financial Year by the Relevant Legislation;
- (ii) sums received on trust and held in accordance with clauses 7.3, 7.4, & 7.5;
- (iii) sums received on trust and held in accordance with clauses 8.1, 8.3, 8.4 & 8.5;
- (iv) sums received on trust and held in accordance with clauses 30;
- (v) Earnings;
- (vi) allocations which may be made from time to time in the trustee's absolute discretion from the Accumulation Reserve Account;
- (vii) Insured benefits received in respect of a Funding Member;
- (viii) Such other amounts as may in the opinion of the Trustee be credited to the Pension Reserve Account in respect of a Funding Member not contrary to the Relevant Legislation;

and the Trustee may debit this Account or pay or provide any amounts, which in the opinion of the Trustee, are required to meet Disbursements, Benefit, Benefit Adjustments, losses, deficiencies and any other amounts so long as the payment or provision is in accordance with the Relevant Legislation and in accordance with actuarial advice.

11.3 Where pursuant to the provisions of Clause 9 the Trustee acquires a specific investment for a Member:

- (a) the Trustee shall record the identity of the Member for whom such specific investment was obtained, for the purposes of maintaining the relevant accounts relating to that Member and that Member's Member Benefits;
- (b) the following amounts shall not be allocated to the Revenue Account but shall be allocated to relevant accounts relating to that Member and that Member's Members Benefit as the Trustee shall determine:
 - (i) the Earnings or profits or losses arising from such specific investments,
 - (ii) the cost of and the costs and charges incurred with, the acquisition of such specific investments;
 - (iii) any Taxation which is payable or may become payable in respect of such specific investments;
 - (iv) any other costs expenses liabilities and amounts that the Trustee in its discretion determines appropriate to allocate to the accounts relating to the Member and the Members Benefit.

11.4 The Trustee shall appoint an approved auditor (as required by the Relevant Legislation) 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 Legislation.

11.5 The Trustee may make provision or adjustment in the Accounts, including the Members Accounts for all Disbursements (including Taxes on unrealised gains, advance tax instalments and notional surcharge amounts), liabilities, tax credits, depreciation, amortisation or revaluations as the Trustee considers appropriate and the Trustee in keeping such Accounts may alter, exchange and segregate current pension assets from non-current pension assets and deal with the fund as different sub-funds, segments or partitions and account for same in accordance with this Deed.

11.6 Earnings may be credited or debited to the Members' Accounts, the Pension Reserve Account, the Accumulation Reserve Account or other Accounts under this clause so long as these total credits shall not exceed a sum greater than Earnings in a period as ascertained in the Accounts and so long as these

debits shall not exceed an amount greater than Earnings in the event Earnings are in the negative. For the purpose of determining Earnings the Trustee shall have regard to:-

- (i) the accumulated benefit account balances for Members;
- (ii) any property held on behalf of a Member and any income earned from that property;
- (iii) Pension Reserve Account balances, if any;
- (iv) Other reserve Account balances, if any;
- (v) Length of membership;
- (vi) Investment strategies; actuarial advice, if any; and
- (vii) The exchange or segregation of the assets of the Fund, if any, as assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund and the extent to which Earnings are attributable to those assets.

11.7 Earnings may be debited or credited, as the case may require, annually or at other times in the Trustee's absolute discretion.

11.8 The Trustee may make a reasonable estimate in crediting or debiting any Earnings, as the case may be, before final Accounts or financial statements are available to the Trustee after the end of a Financial Year.

11.9 In :

- (i) attributing Earnings to assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund for the purposes of sub-clause 11.6 (vii); or
- (ii) determining income earned from property referred to in sub-clause 11.6 (ii); or
- (iii) identifying the value to be credited to reserve accounts established under clause 11;

the Trustee may determine that any debit to an Account, credit to an Account or other adjustment that relates to the Accounts, Disbursements or financial position of the Fund is to be included or excluded, as the case may be in the absolute discretion of the Trustee, from such determination, attribution or identification and the Trustee shall not be bound to either explain or give reasons for its determination, attribution or identification unless required to do so under the Relevant Legislation.

12. VALUATIONS AND ALLOCATION OF PROFITS & LOSSES

12.1 Subject to any requirements of the Relevant Legislation:

- (a) After the relevant Financial Year, the Earnings or the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities during the preceding financial year); or
- (b) on the winding up of the Fund or whenever the Trustee thinks it necessary, the Earnings or the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities);

during the relevant Financial Year, less such provision for depreciation, Disbursements, liabilities, losses and Taxation as the Trustee in its absolute discretion deems prudent shall be credited or debited by the Trustee to the relevant accounts in accordance with clauses 11.3 (if applicable), 11.6, 11.9 or on such other basis as the Trustee considers to be equitable.

12.2 The Trustee whenever it thinks it necessary may cause the assets of the Fund to be valued or may value the assets of the Fund in such manner as the Trustee may determine and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for Taxation and Disbursements as the Trustee in its absolute discretion deems prudent and if the net value of the assets of the Fund determined in accordance with this clause exceeds or is less than the aggregate of the net amounts standing to the credit of all of the Members' Accounts at that date, the Trustee shall credit the surplus or debit the deficit or otherwise allocate the Earnings to the Members'

Accounts in accordance with clauses 11.3 (if applicable), 11.6, 11.9 or on such other basis as the Trustee considers to be equitable.

- 12.3 Subject to any requirements of the Relevant Legislation the Trustee may allocate to the Member's accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under clause 12.1 or 12.2 to the date on which the benefit is being paid

13. **EXCESSIVE BENEFITS**

If at any time, in the opinion of the Trustee, contributions are made contrary to the Relevant Legislation or a Member's Benefit exceeds or would be likely to exceed the Member's RBL, the Trustee may take such of the following actions which it, in its absolute discretion, determines subject to the requirements of the Relevant Legislation:-

- (a) decline to accept any further contributions for the benefit of that Member;
- (b) establish a separate excessive benefits fund of which the Trustee shall be the trustee and which is subject to the same trusts and powers contained in this Trust Deed;
- (c) transfer to the separate fund established under paragraph (b) of this clause, the amount which the Trustee determines represents the excess over the Member's RBL for the purposes of the Relevant Legislation;
- (d) subject to consent from that Member and compliance with the Relevant Legislation, the Trustee may reduce that Member's benefits to the relevant RBL and the remainder upon that Member attaining a "Condition of Release" shall be forfeited and thereafter applied in accordance with clause 15;
- (e) the trustee may reduce the member's benefits to the relevant RBL for the member and transfer the forfeited amount to a fund reserve established for future liabilities or contingencies which may include future pension obligations;

The Trustee may accept a transfer from the separate fund referred to in paragraph (b) of this clause.

14. **FORFEITURE OF BENEFITS**

- 14.1 Subject to the requirements and provisions of the Relevant Legislation, a Member or former Member shall cease to be presently or presumptively entitled to the Member's Benefit at the discretion of the Trustee if in its opinion:-

- (a) he has become insolvent or has attempted to assign, alienate, charge or encumber all or a 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) his whereabouts cannot be traced by the Trustee for a period of five years, after making reasonable enquiries.

- 14.2 Subject to the requirements of the Relevant Legislation, a Member may by written notice to the Trustee forgo and forfeit benefits in excess of the RBL applicable to that Member at retirement or at the time the Member is entitled to payment of the Member's benefits.

- 14.3 Notwithstanding the provisions of sub-clause 14.1(a), a Member or former Member shall not cease to be presently entitled or presumptively entitled to the Member's Benefit at the Discretion of the Trustee by reason of the Member or former Member becoming bankrupt or committing an act of bankruptcy.

15. **ALLOCATION OF FORFEITED BENEFITS**

The amount of any forfeited benefit in the Fund by reason of the operation of clause 13 (d) or 14 hereof and the Rules annexed hereto shall be credited to the Forfeited Benefits Reserve Account established in accordance with the provisions of clause 11.2 (f) and shall be applied within six months of the end of each financial year (or such other period provided for in the Relevant Legislation):-

- (i) to the provision of the benefits that other Members or their dependants have rights to receive from the Fund; or
- (ii) 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 of the circumstances; or
- (iii) for any purpose approved in writing by the Commissioner; or
- (iv) in such other manner that is permitted or required under the Relevant Legislation.

16. **COMMON LAW RIGHTS OF MEMBERS**

The provisions of this Deed and the Rules annexed hereto 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.

17. **LOANS TO MEMBERS**

The Trustee shall not make any loans or advances to a Member.

18. **MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS**

- 18.1 A Member shall have no right to or interest in his Member's Benefit except as provided herein and in the Rules annexed hereto and in the Relevant Legislation.
- 18.2 The rights of the Members and their dependants to receive benefits from the Fund shall be those set out in this Trust Deed.
- 18.3 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 Relevant Legislation.
- 18.4 The Members shall be provided with statements and information in relation to the administration of the Fund in accordance with the requirements of the Relevant Legislation.
- 18.5 Subject to any contrary provisions contained in this Trust Deed and the requirements of the Relevant Legislation the Trustee may, at the Trustee's absolute discretion, provide Pension Benefits payable under this Trust Deed by applying a Member's Benefit to the purchase, in the ownership of either the Trustee or the Member, a pension or an annuity that meets the requirements of the Relevant Legislation.

19. **EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT**

- 19.1 Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise determine 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.
- 19.2 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.

20. **OFFICE OF TRUSTEE - APPOINTMENT AND REMOVAL & DECISION MAKING**

- 20.1 Subject to the requirements of the Relevant Legislation being satisfied the Trustee shall have the power by deed or by an oral or written resolution to appoint a new or additional Trustee or Trustees **PROVIDED THAT** where the Initial Trustee of the Fund is a Constitutional Corporation then such new trustee must be a Constitutional Corporation unless this Deed is varied pursuant to clause 29 so that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions **AND PROVIDED FURTHER THAT** the Trustee is a Qualified Person.
- 20.2 The office of a Trustee shall become vacant if:-
 - (a) the Trustee resigns its office;

- (b) a resolution is passed or a petition is represented for its winding up or liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or a receiver of its assets is appointed;
- (c) the Trustee is disqualified by law from holding office including pursuant to the Relevant Legislation.

20.3 Subject to the requirements of the Relevant Legislation, a majority of the Members may by resolution or in writing remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or Trustees **PROVIDED THAT** where the Initial Trustee of the Fund is a Constitutional Corporation then such new trustee must be a Constitutional Corporation unless this Deed is varied pursuant to clause 29 so that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions.

20.4 Any provisions of the Trust Law requiring at least two trustees after the retirement of a trustee which may be expressly negated or excluded from having effect shall not apply to the Fund constituted by this Deed and it shall be permissible for one only trustee of Fund irrespective of the number of trustees appointed whether or not originally appointed at the time of creation of the Fund constituted by this Deed.

20.5 Where the Trustee comprises:

- (i) two individuals, trustee decisions shall require unanimous approval; or
- (ii) more than two individuals, trustee decisions shall require majority approval;

and where there is any deadlock on making any decision, each trustee's vote shall be weighted in relation to their Fund balance unless the Relevant Legislation prescribes otherwise and the Trustees may communicate with each other and meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit and, unless the Relevant Legislation prescribes otherwise:

- (a) the Trustees may confer via any means as the Trustees by resolution approve including any electronic means, and a resolution passed by such a conference shall, notwithstanding that the Trustees are not present together in the same place at the same time, be deemed to have been passed at a Trustees' meeting held on the day on which and the time at which the conference was held;
- (b) if there is any interruption to a conference of Trustees using any of the means set out in sub-clause (a) above, the Trustees have a discretion to determine that the interruption constitutes an adjournment of the conference until the time communications are reconnected or the Trustees determine;
- (c) minutes of any conference or Trustees' meeting may be confirmed by facsimile, e-mail or by such other means as the Trustees by resolution approve unless the Relevant Legislation prescribes otherwise; and
- (d) if all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees in the terms set out in the document, a resolution in those terms shall be taken to have been passed at a Trustees' meeting held at the time at which the document was signed by the last Trustee required to sign that document.

20.6 Where the trustee is a Constitutional Corporation, Trustee decisions shall be in accordance with the Articles of Association, Constitution, Applicable Replaceable Rules as stated in the Corporations Law or governing rules of the corporate Trustee unless the Relevant Legislation prescribes otherwise.

21. **POWERS OF TRUSTEE**

21.1 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 Trust Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Trust 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 returns to Government authorities 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) subject to the provisions of the Relevant Legislation, to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee (except for the power to vary or amend this Trust Deed) on such terms and conditions as the Trustee in its absolute discretion thinks fit and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act upon the advice of a barrister, solicitor, accountant, actuary or superannuation consultant in relation to the administration of the Fund and pay out of the Trust Fund the fees payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustee in its absolute discretion thinks necessary 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 thinks fit;
- (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 sees fit;
- (i) subject to the provisions of the Relevant Legislation to borrow any sum of money for the purposes of obtaining temporary finance (as defined in the Relevant Legislation) and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee thinks fit 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 irrevocably elect that the Fund become a regulated superannuation fund under the Relevant Legislation;
- (k) to lease or license assets of the Fund in a manner consistent with the requirements of the Relevant Legislation and otherwise in such manner and on such terms as the Trustee sees fit;
- (l) insuring any risks;
- (m) to acquire such real or personal property as the Trustee sees fit provided that the acquisition is in accord with the requirements of the Relevant Legislation;
- (n) to purchase an interest in an Approved Fund to provide all or a part of a pension or annuity or to provide all or a part of the Pension payable in respect to a Member and the pension or annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member in accordance with the Relevant Legislation;
- (o) to pay all disbursements;
- (p) to acquire and maintain specific investments or money for the purposes of paying benefits to a Member or acquiring annuities for any Members;

- (q) to establish any sub-fund, segment or partition within the Fund with separately identifiable assets, Members and liabilities with such Members only having an interest in that sub-fund which is separately accounted for in accordance with this Deed ;
- (r) to set aside out of the Fund from time to time money as is sufficient, in the Trustee's opinion, to meet any debt or obligation due or accruing;
- (s) to indemnify or undertake to indemnify anyone or any body in respect of any claims, matters or things relating to the Fund or to rights of Members in respect of the Fund;
- (t) to assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other securities modifying any rights, privileges or interest in relation to the Fund and to agree to concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of nay company in which any shares, stock or debentures forming any part of the Fund for the time being may be invested or agree to concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
- (u) generally to do all such things and perform such acts as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed and the Rules annexed hereto.

21.2 The Trustee may exercise any of its powers or rights even where the Trustee is an Employer or a Member, an associate of an Employer or a Member or has a direct personal interest in the benefit or exercise of the power or right so long as the power or right is exercised in a bona fide prudential manner and otherwise not in breach of the Relevant Legislation.

21.3 The Trustee may:

- (a) take or apply, without obtaining any consents from any Members, any part of the Fund in its actual condition or state of investment in or toward the satisfaction of any entitlement in the Fund or towards the benefits of a Member or Members as the Trustee thinks fit;
- (b) the Trustee may ascertain and fix the value of any property of the Fund and the liabilities to which the Fund is committed in accordance with the Relevant Legislation, and every taking or application made under this sub-clause shall bind all persons who are or may become interested in the Fund including persons who do not have legal capacity and persons who are not yet ascertained.

21.4 The Trustee may:-

- (a) take out and maintain insurance over risks to the Fund including:
 - (i) insurance on the lives, disability and working capacity of Members; and
 - (ii) insurance in respect to trustee liabilities;
- (b) transfer any insurance policy, annuity contract or other similar entitlement in the Fund to a Member in respect of any benefit entitlement under the provisions of this Deed and the Trustee may determine the value, if any, that is attributable to the entitlement transferred; and
- (c) meet the cost of insurance out of the Fund.

21.5 The Trustee may withhold tax from any contributions, earnings, gains, property or other payment received, receivable or paid or payable by the fund and obtain and furnish any information and deal in or pay the tax.

22. TRUSTEE - EXERCISING DISCRETIONS AND DISCRIMINATION

In administering the Fund and in exercising the trusts, powers and authorities vested in the Trustee herein and pursuant to the Rules annexed hereto, 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 on the grounds of that

person's race, sex or marital status in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination

23. **LIABILITY OF TRUSTEE**

Except as otherwise provided in the Relevant Legislation, a Trustee shall not be liable for any loss that is:-

- (a) not attributable to his own dishonesty;
- (b) attributable to actions or defaults of a co-trustee;
- (c) attributable to any action taken in conformity with the decisions of the Trustee hereunder; or
- (d) attributable to the neglect or default of an agent employed in good faith by the Trustee.

24. **TRUSTEE'S AND DIRECTORS' INDEMNITY**

The Trustee and the directors of the Trustee shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund for such indemnity **PROVIDED THAT** the right of indemnity shall not extend (in relation to the Trustee or any particular director) to:-

- (a) any liability arising out of the Trustee or any particular director failing to act honestly in a matter concerning the Trust Fund or intentionally or recklessly failing to exercise, in relation to a matter affecting the Trust Fund, the degree of care and diligence required to be exercised; or
- (b) liability for a monetary penalty under a civil penalty order within the meaning of the Relevant Legislation.

25. **REMUNERATION OF TRUSTEE**

Subject to the requirements of the Relevant Legislation, the Trustee shall be entitled to be indemnified and reimbursed for expenses or costs incurred by the Trustee in carrying out the duties and functions as trustee of the Fund. Excepting for such expenses and costs the Trustee shall not be entitled to be paid remuneration for performance of the Trustee's duties, or the provision of any other services to the Fund

26. **REMUNERATION OF PROFESSIONAL PERSONS**

Subject to the requirements of the Relevant Legislation and clause 25 if applicable, any person who is an accountant, actuary, solicitor, barrister or other professional person and is 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 or she would make had he not been a director of a company acting as Trustee hereof.

27. **TRUSTEE AS MEMBER'S ATTORNEY**

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

28. **TRUST DEED AVAILABLE FOR INSPECTION**

A copy of this Trust Deed and the Rules annexed hereto shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.

29. **VARIATION OF TRUST DEED**

- 29.1 The Trustee may 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 this Trust Deed and the Rules annexed hereto 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 **PROVIDED THAT** no such variation, addition or rescission shall have 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, before the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this clause, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

and the benefits that have accrued, or become payable, to or in respect of a Member shall not otherwise be reduced, 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 only to enable the Fund to comply with the Relevant Legislation; or
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction if such approval is required under the Relevant Legislation.

29.2 Where the Initial Trustee is a Constitutional Corporation no variation, addition or rescission of this Deed shall have the effect of changing the requirement that the Trustee must be a Constitutional Corporation unless the provisions of this Deed as varied provide that the sole or primary purpose of this Fund is the provision of Old-Aged Pensions as required by the Relevant Legislation for regulated superannuation funds in the case of trustees not being Constitutional Corporations.

29.3 Where the Initial Trustee is not a Constitutional Corporation no variation, addition or rescission of this Deed shall have the effect of changing the sole or primary purpose of the Fund being the provision of Old-Aged Pensions unless this Deed as varied provides that the trustee must be a Constitutional Corporation.

29.4 The requirements, if any, specified in the Relevant Legislation and relevant for amendment of the governing rules of the Fund must in addition be complied with for the purposes of amending or varying the provisions of this deed.

29.5 The Trustee shall as soon as practicable advise the Members in writing of the nature, purpose and effect of any such variation, addition or rescission.

30. **TRANSFER OF BENEFIT FROM ANOTHER ELIGIBLE FUND**

30.1 Where a Member requests that an amount standing to his credit or a policy of insurance in another Eligible Fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Account **PROVIDED THAT** the requirements of the Relevant Legislation are satisfied

30.2 The Trustee may accept in specie transfers from the Trustees of another Eligible Fund if not prohibited by the Relevant Legislation.

31. **TRANSFER OF BENEFIT TO ANOTHER ELIGIBLE FUND**

31.1 The Trustee may, on receiving the written request of a Member, transfer the whole or a part of the Member's Benefit to an Eligible Fund which the Trustee is satisfied complies with the Relevant Legislation or provided termination of employment has occurred transfer the benefit to the Eligible Fund which the Trustee is satisfied complies with the Relevant Legislation. The receipt by the trustees of such fund of the benefits shall be a complete discharge to the Trustees of the Fund in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred except where otherwise not permitted by the Relevant Legislation.

- 31.2 The Trustee may transfer benefits of a Member to another fund by way of an in specie transfer of assets if not prohibited by the Relevant Legislation.

32. **BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable in cash hereunder shall be calculated in and be payable in Australian currency. This clause shall not apply to benefits paid to members in the form of an in specie transfer of assets from the Fund.

33. **ADMISSION OF EMPLOYERS TO FUND**

- 33.1 The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of a form of application in a style manner and format which the Trustee determines.

- 33.2 An Employer admitted as an Employer to the Fund shall supply such information which the Trustee requests so as to enable the Trustee to properly administer the Fund and comply with the requirements of the Relevant Legislation.

34. **DISSOLUTION OF THE FUND**

- 34.1 When the last remaining Member ceases to be a Member the Fund shall be wound up and the Trustee shall, subject to the Rules annexed hereto, pay or transfer to the Members, Member's Benefits in accordance with the provisions of the Rules annexed hereto, 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.

- 34.2 Notwithstanding anything contained in clause 34.1, the Trustee shall not pay or transfer a Member's Benefit to a Member except in accordance with the provisions of the Trust Deed and the Rules annexed hereto.

- 34.3 If any amount remains in the Fund, after all the Members' Benefits have been paid, the amount so remaining shall be paid to the Members or former Members or their dependants in such proportions as the Trustee considers to be equitable but otherwise in accord with the Relevant Legislation.

- 34.4 The trusts constituted by this Trust Deed shall, unless previously terminated in accordance with clause 34.1 hereof, endure during the life of the survivor of all the lineal descendants of His Late Majesty King George V living at the date of this Trust Deed and for twenty-one years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts hereby established provided that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provides that the Rule against Perpetuities shall not apply.

35. **COMPLIANCE WITH RELEVANT LEGISLATION**

- 35.1 If there is a conflict or inconsistency between the provisions of this Deed and the Relevant Legislation, the Relevant Legislation is to prevail and any provision in this Deed is to be read down, construed and interpreted by the Trustees in such a manner so as to give effect to the Relevant Legislation and to enable the Fund to be operated in a manner that is consistent with the Relevant Legislation.

- 35.2 The Trustees have the power to do all acts and things or to omit to do such acts or things as they consider necessary, desirable or expedient for the Fund to be operated or administered in accordance with the Relevant Legislation and/or for the Fund to be a Complying Superannuation Fund and for the Trustees, Employers, Members and beneficiaries not to be in contravention or in the opinion of the Trustees any possible or potential contravention of the Relevant Legislation.

- 35.3 The powers conferred upon the Trustees by Clause 35.2, without limiting the generality of such powers, include the right to administer and operate the Fund so that:-

- (a) the Fund is operated solely for one or more of the core and ancillary purposes specified in the Relevant Legislation;
- (b) the Fund is operated so as to comply with any standards prescribed under the Relevant Legislation which are applicable to the Fund;

- (c) the Trustees are entitled to provide to the Commissioner with such returns and information as required by the Commissioner or as required by the Relevant Legislation;
- (d) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Commissioner;
- (e) the Trustees may inform or disclose to, the Commissioner such event, omission or thing that the Relevant Legislation may require to be disclosed to the Commissioner and/or seek the advice or ruling or direction of the Commissioner as they consider necessary;
- (f) the Trustees may pay from the Fund any levy or charge imposed upon the Fund under the Relevant Legislation; and
- (g) the Trustees may seek from the Commissioner any exemption or modification of the provisions of the Relevant Legislation in respect of their application of the Fund;
- (h) the Trustees may pay a Member's or a beneficiary's benefits or interest in the Fund, in the circumstances prescribed by the Relevant Legislation, to the Commissioner or an eligible roll-over fund even if no claim for such benefit has been made by or in respect of the Member or beneficiary.

35.4 The Trustees are not to be taken to be in contravention of the Deed or in breach of trust if in giving effect to clauses 35.1 and 35.2, they:

- (a) construe or interpret this Deed;
- (b) do such acts or things;
- (c) omit to do such acts or things;

which might otherwise be in contravention of this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of the Relevant Legislation.

35.5 The Trustees are not to be taken in contravention of this Deed or in breach of trust if they do anything or make any omission which is contravention of the Relevant Legislation if:

- (a) the Trustees rectify the contravention within such period as may be allowed under the Relevant Legislation or within such further period as the Commissioner allows; or
- (b) the Commissioner notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

35.6 (a) Notwithstanding any provision of this Deed any other covenant or other requirement required by the Relevant Legislation to be included in this Deed is deemed to be included as if every such covenant or requirement was set out in this Deed on and from the date that covenant or requirement is required to be so included.

- (b) If the Relevant Legislation or the Commissioner no longer requires any such covenant or requirement to be included then that covenant or requirement ceases to be included.
- (c) If any such covenant or requirement or its operation is pursuant to the provisions of the Relevant Legislation modified then the Trustees are only required to comply with the covenant or requirement as it may be so modified.
- (d) The Trustees are not to be taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such covenant or requirement if the contravention is waived by the Commissioner.

36. ACTUARIAL REQUIREMENTS

The Trustee shall engage an actuary where required under the Relevant Legislation and shall cause the Fund to otherwise comply with the actuarial requirements of the Relevant Legislation, if applicable.

ANNEXURE "B"
SCHEDULE OF RULES

1. ENTITLEMENT TO BENEFITS AFTER RETIREMENT OR ATTAINING UNCONDITIONAL PRESERVATION AGE

1.1 A Member shall subject to the provisions of the Trust Deed and the requirements of the Relevant Legislation be entitled to be paid the Member's Benefit after his or her Retirement from the workforce after attaining a Conditional Preservation Age or alternatively after attaining an Unconditional Preservation Age. The benefit payable under this Rule 1.1 shall:-

(a) in the case where the Trustee of the Fund is a Constitutional Corporation pursuant to a requirement to be a Constitutional Corporation contained in this Deed, be paid in one or more of the following forms:-

- i. Lump Sum
- ii. Allocated Pension
- iii. Complying Pension based on the advice of an Actuary
- iv. By acquiring an Annuity from an Approved Fund.

(b) where the Fund has the sole or primary purpose for the provision of Old-Aged Pensions under the provisions of this Deed and subject to the Relevant Legislation a Member's Benefit shall be paid as an old-aged pension and may be taken as any one or more of the following benefits:-

- i. Lump Sum, if commuted by the Member
- ii. Allocated Pension
- iii. Complying Pension based on the advice of an Actuary
- iii. By acquiring an Annuity from an Approved Fund.

1.2 A Benefit payable under Rule 1.1 other than the Member's Post 65 Employer Financed Benefits shall commence to be paid as a Benefit or transferred to an Approved Deposit Fund as a paid Benefit as soon as practicable after the occurrence of any of the following events in accordance with the Relevant Legislation:-

(a) the Member:

- (i) has attained age 65 but not age 70; and
- (ii) is not Gainfully Employed on either a Full-time or a Part-time Basis;

(b) the member:

- (i) has attained age 70; and
- (ii) is not gainfully employed on a Full-time Basis;

(c) the member dies.

1.3 A Member's Post-65 Employer Financed Benefits shall commence to be paid and shall be paid in accordance with the Relevant Legislation.

2. BENEFITS PAYABLE ON DEATH WHERE DEPENDANTS

2.1 Subject to the requirements of the Relevant Legislation being satisfied and the Relevant Legislation allowing a binding direction to the Trustee from a Member as to the payment of the Member's

Benefit upon his or her death, a Member or Beneficiary may provide the Trustee with a binding written direction in a form and style as permitted by the Trustee which may or may not be included on a Member Application Form but otherwise in accordance with the Relevant Legislation as to the payment of a Benefit which would be payable upon their death to one or more of that person's Dependant's or the legal personal representative of the deceased Member or Beneficiary, as the case may be (Binding Beneficiary Nomination Form). If the Trustee consents, such Binding Beneficiary Nomination Form may subject to the requirements of the Relevant Legislation relate to the type, amount, and proportions of different components or Benefit to be paid upon a Member's or Beneficiary's death and also specify whether a Pension Benefit, reversionary or not, is to be provided on the death of the Member. A Member or Beneficiary may vary any such direction contained in a Binding Beneficiary Nomination Form at any time by providing a fresh Binding Beneficiary Nomination Form to the Trustee prior to the Member's or Beneficiary's death (as the case may be) provided that such variation is in accordance with the requirements, if any, of the Relevant Legislation and the requirements relating to the Binding Beneficiary Nomination Form as aforesaid.

2.2 The Trustee shall subject to the Relevant Legislation and Rules 5, 6 & 7 pay the Benefits to the dependants or legal personal representatives nominated on the Binding Beneficiary Nomination Form provided the Trustee pursuant to the Relevant Legislation is able to have the discretion of the Trustee curtailed by reason of a binding direction in the form of a Binding Beneficiary Nomination Form. In the absence of any such duly executed Binding Beneficiary Nomination Form or in the case where the Trustee is not bound by a Binding Beneficiary Nomination Form by reason of the Relevant Legislation, Rule 2.3 shall apply.

2.3 On the death of a Member or Beneficiary who has not provided the Trustee with a valid notice binding the Trustee in accordance with Rule 2.1 above or the Trustee is not under the Relevant Legislation bound by a Binding Beneficiary Nomination Form, the Trustee may pay or apply the Member's Benefit that is payable on the death of the Member or Beneficiary subject to Rules 5, 6 & 7 as follows:-

(i) Where the Member or Beneficiary has left a Nominated Dependant or Nominated Dependents, to such one or more of the Nominated Dependents of the deceased Member or deceased Beneficiary in the manner, at the times and in such proportions between them, if more than one, as the Trustee may in its absolute discretion determines **PROVIDED THAT** should the deceased Member or deceased Beneficiary, as the case may be, not have Nominated Dependents, or should the Trustee in its absolute discretion determine that it would be inequitable or inappropriate to pay the Benefit or any part thereof to the Nominated Dependents, the Trustee shall pay or apply the Benefit subject to Rules 5, 6 & 7 to such one or more of the deceased Member's or deceased Beneficiary's Dependents in the manner, at the times and in such proportions between them, if more than one, as the Trustee may in its absolute discretion determine.

(ii) Where the Member or Beneficiary has no Dependents then Rule 3 shall apply.

2.4 In exercising the discretions conferred in Rule 2.3 the Trustee shall have regard to any Nominated Dependents but otherwise shall not be bound to apply the benefits towards the Nominated Dependents and otherwise has a complete discretion as to the allocation of the benefits as stated in Rule 2.3.

3. **BENEFITS PAYABLE ON DEATH WHERE NO DEPENDANTS**

On the death of a Member or Beneficiary leaving no Dependents, the Trustee shall pay the Member's Benefit that is payable on the death of the Member or Beneficiary to the legal personal representative of the deceased Member or Beneficiary **PROVIDED THAT:**

- (a) if there is no legal personal representative, the Trustee shall pay the Benefit to those of the Member's or Beneficiary's Relatives as the Trustee determines to be entitled to a share in the estate of the Member or Beneficiary and if more than one in such proportions between them as the Trustee in its absolute discretion may determine and the receipt of the said legal personal representative or Relative or Relatives as the case may be, shall be a full discharge and the Trustee shall not be liable to see to the application thereof;
- (b) if the Trustee determines that no Relatives are entitled to a share in the estate of a deceased Member or deceased Beneficiary, then the Member's Benefit shall be absolutely forfeited and be dealt with in accordance with clauses 14 & 15 of the Trust Deed.

4. DEATH OF A MEMBER BEFORE PAYMENT OF BENEFIT

In the event of the death of Member before payment of an entitlement to a Lump-Sum Benefit or a Pension Benefit the Trustee may pay the Member's Benefit in accordance with whichever of Rules 2 and 3 above shall be applicable.

5. DEATH OF AN ALLOCATED PENSIONER: REVERSIONARY BENEFICIARY NOMINATED

5.1 Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Trust Deed, where the Pensioner had nominated a Reversionary Beneficiary in a Binding Beneficiary Nomination Form to the Trustee, the Trustee shall pay such Lump-Sum Benefit or Pension Benefit to such Reversionary Beneficiary **PROVIDED THAT** such payment shall not exceed the amount permitted by the Relevant Legislation and permitted by the Trust Deed.

5.2 Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Trust Deed, where the Pensioner had nominated a Reversionary Beneficiary not otherwise contained in a Binding Beneficiary Nomination Form to the Trustee, the Trustee may pay such Lump-Sum Benefit or Pension Benefit to such Reversionary Beneficiary **PROVIDED THAT** such payment shall not exceed the amount permitted by the Relevant Legislation and permitted by the Trust Deed.

6. DEATH OF AN ALLOCATED PENSIONER: NO REVERSIONARY BENEFICIARIES NAMED

Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Deed, where the Pensioner had not nominated a Reversionary Beneficiary the balance of the Member's Benefit relating to the Pensioner shall be paid in accordance with Rules 2 & 3 (whichever shall be applicable) **PROVIDED THAT** if such a payment is not permitted by the Relevant Legislation the balance shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with Clauses 14 and 15 of the Trust Deed or otherwise as permitted by the Relevant Legislation.

7. DEATH OF PERSON ENTITLED TO A COMPLYING PENSION

7.1 Where:

- (a) a Funding Member dies; and
- (b) provision has been made for the payment of a Complying Pension to the Funding Member in accordance with the Relevant Legislation;

the Funding Member Beneficiary is entitled to a Complying Pension which is drawn from the Pension Reserve Account.

7.2 For the purposes of Rule 7.1 a Funding Member Beneficiary shall mean a Dependant, a trustee for a Dependant, a Member's legal personal representative, a Reversionary Beneficiary, or a beneficiary nominated in a Beneficiary Nomination Form who is entitled to Benefits accruing due to a

Member's participation in the Fund. Unless contrary to the requirements outlined in Rule 15 for the provision of Complying Pensions or a Reversionary Beneficiary's entitlement, the beneficiary or beneficiaries nominated in a Beneficiary Nomination Form shall be entitled to the Complying Pension.

8. PAYMENT OF SMALL DEATH BENEFITS

Notwithstanding any other provision of these Rules to the contrary, excepting the provisions of Rule 16 hereof, where upon the death of a Member:

- (a) the benefits to be paid to that Member do not exceed the sum of \$5,000 or such other amount prescribed under the Relevant Legislation;
- (b) the Trustee after reasonable enquiry has not found any Dependant or legal personal representative of the deceased Member; and
- (c) having regard to the quantum of the relevant benefits and the potential expense for the trust fund and dependant associated with legitimate claimants or claimants subsequently coming forward to be paid the relevant benefits it would be unreasonable for the Trustee to insist that the Dependant incur the costs of seeking Letters of Administration;

the Trustee may pay the relevant benefits to the next of kin of the deceased Member or in the event that the Trustee cannot find such next of kin then the Trustee may pay the relevant benefits to such friend of the deceased Member as the Trustee in its absolute discretion decides.

9. PAYMENT OF UNCLAIMED BENEFITS

The Trustee shall give a Statement of Unclaimed Benefits, and pay the same to the relevant commissioner administering Unclaimed Monies as and when required by the Relevant Legislation or the law.

10. BENEFIT PAYABLE ON DISABLEMENT

- 10.1 In the event of a Member becoming in the opinion of the Trustee, Permanently and Totally Disabled, the amount of the Member's Benefit shall, subject to the provisions of the Trust Deed and the Relevant Legislation, be paid to the Member or, if he/she is unable to manage his/her own affairs, to the Guardian or Trustee of the Member or such of the Member's Dependents or the Trustees and Guardians of the Member's Dependants (when such Dependants lack full legal capacity) in such proportions as the Trustee, in its absolute discretion, determines. If, prior to the Trustee determining that a Member is Permanently and Totally Disabled, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his Dependents as aforesaid **PROVIDED THAT** the amount of such benefit shall be paid in accordance with the requirements of the Relevant Legislation.
- 10.2 The Benefit payable under Rule 10.1 on the occurrence of Permanent and Total Disablement shall, in the discretion of the Trustee, be paid as a Lump-Sum benefit or by way of a Pension Benefit but otherwise in accordance with the Relevant Legislation.
- 10.3 Where a Benefit is payable under Rule 10.2 by way of a Pension Benefit, the Trustee shall, in its absolute discretion, determine the amount of the Pension Benefit and the manner in which and the period for which it is paid **PROVIDED THAT** such Benefit shall be paid in accordance with the requirements of the Relevant Legislation.

11. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

11.1 Severe Financial Hardship

Upon an application or claim in writing to the Trustee by a Member claiming severe financial hardship, the Trustee shall, upon being satisfied that the conditions for release of benefits as prescribed by the Relevant Legislation are satisfied in respect to severe financial hardship and the Relevant Legislation is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Relevant Legislation).

11.2 Compassionate Grounds

Upon an application or claim in writing to the Trustee by a Member claiming compassionate grounds, the Trustee shall, at the Trustee's absolute discretion upon being satisfied that the conditions for release of benefits as prescribed by the Relevant Legislation are satisfied in respect to compassionate grounds including the relevant consents being obtained from the Commissioner and the Relevant Legislation is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Relevant Legislation) in accordance with the Relevant Legislation.

11.3 Satisfaction of Conditions of Release & Nil Cashing Restrictions

The Trustee may pay to a Member such benefits which have nil cashing restrictions under the Relevant Legislation or upon satisfying any other condition of release provided in the Relevant Legislation and otherwise in accordance with the payment standards of the Relevant Legislation.

11.4 Termination of Employment – Restricted Non-Preserved Benefits

The Trustee may pay to a Member on termination of Gainful Employment with an Employer before the Unconditional Preservation Age where the Member's Benefit is Restricted Non-Preserved Benefits under the Relevant Legislation and such payment is in accordance with the Relevant Legislation.

11.5 Unrestricted Non-Preserved Benefits

The Trustee may pay to a Member an Unrestricted Non-Preserved Benefit under the Relevant Legislation in accordance with the Relevant Legislation.

12. 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.

13. DEDUCTION OF TAX

The Trustee may deduct from any benefit payable, the amount of any 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.

14. ALLOCATED PENSION PROVISIONS

14.1 For the purposes of this Rule 14, a pension shall mean an Allocated Pension as defined hereunder.

14.2 An Allocated Pension, for the purposes of this Rule, shall mean a pension or any component of it which otherwise satisfies the requirements of Regulations 1.06 (4) & (5) of SISR or any corresponding provisions in the Relevant Legislation and subject to fulfilling such requirements shall be a pension payable out of the capital value of a member's account and where:-

- (a) The pension cannot be transferred to any other person except to a reversionary beneficiary upon the death of the member in receipt of the pension or upon the death of another reversionary beneficiary;
- (b) the pension is paid at least annually;
- (c) the capital value of an pension, and the income from it cannot be used as a security for a borrowing;
- (d) the pension need not be fixed in amount but must be paid at an amount which is between the minimum amount and maximum amount prescribed in Schedule 1A of SISR or any corresponding provisions of the Relevant Legislation.
- (e) otherwise complies with the Relevant Legislation so as to be construed to be a pension that is not a Complying Pension.

14.3 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 benefits and shall cease to be a Member.

14.4 Where a Member becomes entitled to be paid an Allocated Pension, the Member may elect to commute part or all of that pension to a Lump-Sum Benefit, and may nominate:

- (a) that the Member's Benefit be paid as a Lump-Sum Benefit, or
- (b) that the Member's Benefit be paid as an Allocated Pension in accordance with the pension requirements of this Deed;

Upon receipt from any Pensioner or Reversionary Beneficiary of a Commutation Request in such form as the Trustee shall determine, the Trustee may commute to a Lump-Sum part or all of a Allocated Pension payable from the Fund to such Pensioner or Reversionary Beneficiary and upon any such commutation the Trustee shall, subject to the Deed, pay such Lump-Sum to the Pensioner or Reversionary Beneficiary who applied for the same **PROVIDED THAT:**

- (a) the payment of the commuted Benefit and the value of any Allocated Pension remaining payable shall not cause the Fund to breach the Relevant Legislation;
- (b) the Trustee in its discretion has determined that the commutation would not disadvantage the Fund, the Employers, the remaining Members, or Pensioners or Reversionary Beneficiaries;
- (c) the commutation is in accordance with the Relevant Legislation;
- (d) the Trustee shall determine the amount of the Lump-Sum benefit or the amount to be transferred to the Member's Pension Account established pursuant to this Deed and such Lump-Sum or amount to be transferred as aforesaid shall not exceed the amount then standing to the credit of the Member's Accumulation Accounts at the date such Lump-Sum is paid or the amount is transferred;
- (e) the Trustee shall in its absolute discretion reduce the amount of any pension payable from the Fund in respect of the Pensioner or Reversionary Beneficiary to such amount as it determines appropriate in the circumstances of the commutation.

14.5 A Member shall comply with the provisions of Rules 14.2(c) at all times.

15. COMPLYING PENSION PROVISIONS

15.1 For the purposes of this Rule 15, a pension shall mean a Complying Pension that meets the requirements of any one of Rules 15.2 , 15.3 & 15.4. and subject to a determination of the Trustee may include a pension referred to in Rule 15.5.

15.2 A Complying Pension shall include a pension that complies with regulation 1.06(2) & (3) of the SISR or such other corresponding Relevant Legislation and subject to complying with such legislation shall have the following characteristics:-

- (a) the pension is paid at least annually throughout the life of the primary beneficiary in accordance with the undermentioned sub-paragraphs (b) & (c), if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension—at least until his or her 16th birthday; or
 - (iii) if the person referred to in the preceding subparagraph 2) is a full-time student at age 16—at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and
- (b) the size of payments of the benefit in a year is fixed, allowing for variation only:
 - (i) as specified in the Trust Deed; or
 - (ii) to allow commutation to pay a superannuation contributions surcharge; and
- (c) unless APRA otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:
 - (i) if CPI_c is not less than CPI_p — not less than SP_p ; or
 - (ii) if CPI_c is less than CPI_p — not less than:

$$\frac{CPI_c}{CPI_p} \times SP_p$$

where:

CPI_c means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made.

CPI_p means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.

SP_p means the sum payable in the immediately preceding year.

and

- (d) the pension does not have a residual capital value; and
- (e) the pension cannot be commuted except:
 - 1) if the commutation is made within 6 months after the commencement day of the pension; or
 - 2) if the commutation is made within 10 years after the commencement day of the pension to the benefit of a reversionary beneficiary on the death of the primary beneficiary; or
 - 3) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under:
 - (A) rules that meet the standards of this sub-rule or sub-regulations 1.06 (3) or (7) of SISR; or
 - (B) a contract that meets the standards of sub-regulations 1.05 (2), (3) or (9) of the SISR; or
 - 4) to pay a superannuation contributions surcharge; and

- (f) if the pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and
- (g) the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
- (h) the capital value of the pension and the income from it, cannot be used as security for a borrowing.

For the purpose of determining whether the aforesaid requirements for a Complying Pension meet the SISR, it is immaterial that:

- (i) if the primary beneficiary dies within 10 years after the commencement day of the pension, a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period of 10 years; and
- (ii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period of 10 years, is payable to the primary beneficiary's estate; and
- (iii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is a surviving reversionary beneficiary who also dies within that period, there is payable to the reversionary beneficiary's estate an amount determined as described in the preceding sub-rule (ii) as if that paragraph applied to the reversionary beneficiary.

15.3 A Complying Pension shall include a pension that complies with regulation 1.06(6) of the Superannuation Industry Supervision Regulations or such other corresponding Relevant Legislation and subject to complying with such legislation shall have the following characteristics:

- (i) that does not meet the standards in Rule 15.2; and
- (ii) provides that the size of the payments of benefit in a year is fixed, allowing for variation only as specified in the Trust Deed; and
- (iii) the commencement day is on or after 1 July 1994;
- (iv) the requirements in the preceding sub-rules 15.2(f) (g), and (h) are met; and
- (v) except in relation to payments, by way of commutation, for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years; and
- (vi) payments in accordance with the contracted size are made at least annually; and
- (vii) the pension can be commuted—except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under SISR Schedule 1B to the pension as if the commencement day were the day on which the commutation occurs.

15.4 A Complying Pension shall include a pension that complies with sub-regulation 1.06(7) of the Superannuation Industry Supervision Regulations or such other Relevant Legislation where the primary beneficiary became entitled to the benefit on or after 20 September 1998 and subject to complying with such legislation shall have the following characteristics:

- (a) the primary beneficiary became entitled to be paid the pension on or after the day when the primary beneficiary became of Pension Age; and
 - (b) the following applies:
 - (i) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary:
 - (A) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years — throughout a period equal to the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); or
 - (B) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more — throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years); and
 - (ii) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day when the primary beneficiary became entitled to the pension; and
 - (iii) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the *previous total*), and does not exceed the previous total:
 - (A) if CPI_c is less than or equal to 4% — by more than 5% of the previous total; or
 - (B) if CPI_c is more than 4% — by more than $CPI_c + 1\%$;
- where:
- CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.
- and
- (iv) the total amount of the payments to be made in a year in accordance with subparagraph (ii) or (iii) may be varied only to allow commutation to pay a superannuation contributions surcharge; and
 - (v) the pension does not have a residual capital value; and
 - (vi) the pension cannot be commuted except:
 - (A) within 6 months after the commencement day of the pension; or
 - (B) by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

- (C) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
- (D) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under rules that meet the standards of subregulation (2), (3) or this subregulation or under a contract that meets the standards of subregulation 1.05 (2), (3) or (9); or
- (E) to pay a superannuation contributions surcharge; and
- (vii) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (viii) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
- (ix) the pension cannot be transferred to a person except:
 - (A) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (B) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
- (x) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.
- (xi) the commencement day for the benefit is the day when the primary beneficiary became entitled to the pension.

15.5 Subject to the provisions of the Relevant Legislation and subject to the requirements of a Complying Pension as outlined in the preceding sub-rules of this Clause 15, the Trustee may vary a Complying Pension on the advice of an Actuary.

15.6 Where the relevant pension is an Asset-Test Exempt Pension, the applicable provisions of the Social Security Act 1991 (C'th) or the Veterans Entitlement Act 1986 (C'th) (and any applicable regulation made pursuant thereto), as relevant, apply to the extent of any inconsistency in preference to any other provision of SIS and SISR relating to the provision of the Pension to ensure that the Pension qualifies as an Asset-Test Exempt Pension except where the Trustee otherwise determines.

16. COMPLIANCE WITH RELEVANT LEGISLATION AND EMPOWERMENT IF PERMITTED BY RELEVANT LEGISLATION

16.1 Notwithstanding anything to the contrary contained in these Rules:-

- (a) no Member shall be entitled to payment of his or her Benefits contrary to the provisions, conditions and standards imposed by the Relevant Legislation and the Trustee shall act in accordance with the provisions of the Relevant Legislation so that the Benefits payable under these Rules shall be taken as Benefits from a Complying Superannuation Fund;
- (b) these Rules shall not restrict the payment of Benefits in any way which are not prohibited by the Relevant Legislation, breach the Relevant Legislation or result in the Fund losing the status of a Complying Superannuation Fund and the Trustee has full discretion to administer and pay Benefits which are not prohibited by the Relevant Legislation, breach the Relevant Legislation or result in the Fund losing the status of a Complying Superannuation Fund.

17. PAYMENT OF BENEFITS IN SPECIE

Where the Trustee may pursuant to these Rules pay a Benefit, the Trustee may at the request of the Member and in accordance with the requirements of the Relevant Legislation pay such Benefits by transferring in specie assets of equivalent value to the benefit payable.

18. ELECTION FOR BENEFITS

18.1 Where a Member or Beneficiary becomes entitled to a Benefit from the Fund, the Member or Beneficiary may subject to the Relevant Legislation, elect to receive his or her Benefit:

- (a) In the manner provided for in Rule 1.1 or a mixture of them which may include more than one of each;
- (b) As an Ancillary Benefit to the extent the Benefit is not included in (a) above.

18.2 An election made under Rule 18.1 shall be in writing and indicate the desired amount or extent that a Lump Sum Benefit and Pension Benefit, as the case may be, is sought to be received and must be provided to the Trustee before the Benefit commences to be paid or within a further period as the Trustee permits. A Member or Beneficiary may specify in any election relating to a Pension Benefit whether or not it is intended to be a Reversionary Pension and, if so, to whom and under what terms or conditions the member or Beneficiary would wish the Pension to be subject to.

18.3 The Trustee may, where permitted by the Relevant Legislation, and having regard to the Member's election but without being bound by it, provide a Benefit payable to a Member or Beneficiary:-

- (a) In the manner provided for in Rule 1.1 or a mixture of them which may include more than one of each;
- (b) As an Ancillary Benefit to the extent the Benefit is not included in (a) above.

19. RETENTION OF BENEFITS

Subject to the Relevant Legislation and Rule 1.2, the Trustee may, with the consent of the Member or Beneficiary:-

- (a) retain a Member's or Beneficiary's Lump Sum Benefit in the Fund for a period as the Trustee shall determine, even though the Member's or Beneficiary's entitlement to be paid has arisen;
- (b) retain a Member's or a Beneficiary's Pension Benefit in the Fund for a period as the Trustee shall determine so long as the Pension commences prior to or on the last day permitted by the Relevant Legislation.

20. PRESERVATION OF BENEFITS

The Trustee shall ensure, to the extent that a Benefit is required to be preserved under the Relevant Legislation, that:

- (a) the Benefit is preserved in the Fund; or
- (b) the Benefit is transferred to an Approved Fund;

in accordance with the Relevant Legislation and the Trustee may make all elections required under them.

21. MEMBER'S DEBT

Where a Member owes money to the Trustee or to a Bound Employer and/or Associate, the Trustee may, subject to the Relevant Legislation, reduce the Member's Benefit by the Member's outstanding debit loan.

22. DISCHARGE

22.1 The payment of all Benefits to or on behalf of a Member or Beneficiary or a transfer to an Approved Fund of all Benefits shall be in full and final satisfaction and discharge of the Trustee's and the Fund's obligations in respect of that Member or Beneficiary and all of his or her rights (or their) rights, entitlements and interests in the Fund.

22.2 Where any Member or Beneficiary is not an Elector, the Trustee may, subject to the Relevant Legislation, pay a Benefit to the Member's or Beneficiary's parent, guardian, legal personal representative, authorised attorney or establish a trust with a suitable trustee ("the Payee") and subject to such terms and provisions as the trustee determines, for the benefit of the Member or the Beneficiary, the costs of same being payable out of the Benefit, and;

- (a) where the Payee is an accountant or solicitor, the Payee shall be entitled, subject to clause 26 of the Trust Deed to act as Payee professionally and to charge professional fees accordingly;
- (b) the Payee shall be entitled to pay or apply the Benefit or any part of it at any time for the advancement, maintenance, education or general well being of a Member or a Beneficiary; and
- (c) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

23. BENEFITS - ALLOWANCES FOR TAX DEDUCTIONS

The Trustee when paying a Benefit may subject to the Relevant Legislation pay or pass on to the Member, the legal personal representatives of the Member or the Beneficiary entitled to the Benefits the whole of a benefit which may otherwise accrue to the Trustee if a deduction were allowed in respect to the payment of the Benefit or under Section 279D of the Income Tax Assessment Act 1936 or any amending or replacement legislation to such provision.