

INDUSTRY FUNDS INVESTMENTS LIMITED
ACN 006 883 227

AUSTRALIA'S UNCLAIMED SUPER FUND
CONSOLIDATED TRUST DEED ¹

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¹ This is a consolidated version of the Trust Deed, incorporating all amendments effected to the Trust Deed to 30th June 2013 inclusive.

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PART 1

1 INTERPRETATION - DEFINITIONS

In this Deed and rules unless the context otherwise requires:

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in clause 8;

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

"Administration Manager" means the Manager or other organisation appointed as Administration Manager of the Fund in accordance with sub-clause 16.2;

"Annuity" means an annuity as defined for the purposes of the Relevant Law;

"Appropriate Authorisation" means:

- (a) Registrable Superannuation Entity Licence which is granted under section 29D of the *Superannuation Industry (Supervision) Act 1993*;
- (b) authorisation to operate the Fund under section 242F of the *Superannuation Industry (Supervision) Act 1993*; and
- (c) any other authorisations, licences or permits required by the relevant Law to operate the Fund.

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund, Retirement Savings Account and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Relevant Law and includes an Eligible Rollover Fund;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying Approved Deposit Fund in accordance with the Tax Act;

"Auditor" means the auditor for the time being appointed under sub-clause 16.1 of this Deed and approved under the Relevant Law;

"Benefit" means any amount which is payable by the Trustee out of the Fund pursuant to the Rules of the Division to or in respect of a Member or Beneficiary;

"Child" in relation to a Member or former Member, includes a child being the Member's or former Member's issue, a step child, an ex-nuptial child or a legally adopted child;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law;

"Constitutional Corporation" has the same meaning as defined for the purposes of the Relevant Law;

"Contributions" means gross payments, deposits or contributions made in accordance with the provisions of this Deed and the Relevant Law prior to the deduction of any Taxation payable in respect of those Contributions;

"Custodian" means a company appointed as custodian of the Fund in accordance with sub-clause 16.4 and **"Sub-Custodian"** has a corresponding meaning;

"Deed" means this Deed and any Rules made under this Deed;

"Dependant" in relation to a Member, Former Member or Beneficiary (in this definition referred to as the primary person) means:

- (a) the Spouse of a primary person; or
- (b) the Child of a primary person; or
- (c) any other person who, in the opinion of the Trustee, was at the relevant time wholly or partially dependent on the primary person;

"Directors" means the directors or board of management for the time being of the Trustee or any Employer, as the case requires and **"Director"** has a corresponding meaning;

"Disclosure Document" means any document issued by the Trustee offering participation or Membership in accordance with the requirements of the Relevant Law;

"Eligible Rollover Fund" has the same meaning as contained in section 242 of the *Superannuation Industry (Supervision) Act 1993*;

"Employer" has the same meaning as contained in section 10 of the *Superannuation Industry (Supervision) Act 1993*;

"Equalisation Account" means the account established pursuant to sub-clause 8.5;

"Financial Assistance" means financial assistance granted to the Fund under Part 23 of the *Superannuation Industry (Supervision) Act 1993*;

"Forfeiture Account" means the account established pursuant to sub-clause 20.2;

"Fund" means the fund known as the AUSTRALIA'S UNCLAIMED SUPER FUND established by a Deed dated 8 February 1982 as varied from time to time;

"Fund Earning Rate" means the earning rate for the Fund (which may be negative) determined under sub-clause 8.4(c) after taking into account such provisions or reserves for future contingencies as the Trustee shall consider reasonable;

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

"Guarantee Act" means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made under that Act;

"Insurer" means any insurer with whom the Trustee effects a Policy or Policies;

"Investment Manager" means a person appointed as an Investment Manager of the Fund in accordance with sub-clause 16.3;

"Legal Personal Representative" has the meaning attributed to it in section 10 of the *Superannuation Industry (Supervision) Act 1993*;

"Levy" includes a levy payable by the Fund to the Regulator in accordance with the *Superannuation Supervisory Levy Act 1991*, the *Superannuation (Financial Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Fund;

"Lost Member" has the same meaning as contained in *Superannuation (Unclaimed Money and Lost Members) Act 1999*;

"Member" means a person who has been accepted for membership of a Division of the Fund and **"Membership"** means membership of a Division of the Fund;

"Nominated Dependant" means a person nominated in writing by a Member to the Trustee as the nominated Dependant;

"Normal Retirement Age" means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Relevant Law and as the Trustee with the consent of the Employer of that Member shall determine;

"Participating Fund" means any fund that by agreement with the Trustee is admitted to participation in the Fund;

"Policy" means any policy of insurance;

"Policy Committee" has the same meaning as set out in section 10 of the *Superannuation Industry (Supervision) Act 1993*;

"Preserved Payment" means a payment made to the Fund by a Member or an Employer or by transfer from an Approved Benefit Arrangement which is required to be preserved in order for the Fund to be a Complying Superannuation Fund and **"Preserved Payment Benefit"** means a Benefit arising from a Preserved Payment;

"Regulator" means, as the case requires, the Regulator of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body that has the responsibility for administration of superannuation;

"Relevant Law" means

- (a) any requirements under the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Corporations Act 2001*, the *Corporations Regulations 2001*, the *Financial Sector (Collection of Date) Act 2001*, the former *Occupational Superannuation Standards Act 1987*, the former *Occupational Superannuation Standards Regulations 1987*, the *Superannuation (Resolution of Complaints) Act 1993*, the *Family Law Act 1975*, the *Tax Act* and any other present or future legislation which the Trustee must comply with in order for the Fund:
 - (i) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or

- (ii) to avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under this Deed; or
 - (iii) to meet any other requirements of the Regulator;
- (b) in relation to the collection, holding, use and disclosure of personal information as defined in the *Privacy Act 1988*, the National Privacy Principles and any other provisions of that Act,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

"Retirement Savings Account" has the meaning assigned to that expression in section 8 of the *Retirement Savings Account Act 1997*;

"Roll Over Payment" means any Superannuation Lump Sum made by or received by the Trustee at the request of a Member or former Member or in other circumstances which satisfy the Relevant Law to or from any Approved Benefit Arrangement and includes:

- (a) an Superannuation Lump Sum by an Employer in consequence of the termination of the employment of a Member; and
- (b) a capital gains tax exempt amount or an Superannuation Lump Sum within the meaning of the Relevant Law;

"SHAR" means the Superannuation Holding Accounts Reserve;

"Shortfall Component" has the same meaning as contained in section 64 of the Guarantee Act;

"Spouse" means:

- (a) in relation to the definitions of **"Dependant"**:
 - (i) a person legally married to a Member at any time; or
 - (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term **"widow"** or **"widower"** includes such a person,

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

"Successor Fund" has the same meaning as in the Regulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994*;

"Superannuation Lump Sum" has the same meaning as contained in the Tax Act;

"Tax Act" means the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997* and any regulations issued under those Acts;

"Taxation" includes income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member, Former Member or Beneficiary pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on Superannuation Lump Sum, payroll tax, land tax, stamp duty and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member or Beneficiary;

"Tribunal" means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993*;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted which are appointed in accordance with clause 10 of this Deed;

"Unclaimed Benefits" means those Benefits described as "unclaimed money" under Part 22 of the *Superannuation Industry (Supervision) Act 1993*;

"Withdrawal Benefit" means the minimum Benefit which must be paid to a Member on the Member's withdrawal from the Fund as prescribed by the Relevant Law.

2 INTERPRETATION - GENERAL

2.1 Plural of Words

In this Deed, unless inconsistent with the subject matter or context, words importing the singular number shall include the plural number and vice versa.

2.2 Headings and References to Clauses

The headings in this Deed are for convenience only and shall not affect the interpretation of this Deed. A reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Deed.

2.3 Defined Words

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

2.4 Statutory Enactments

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

2.5 Fund Subject to Relevant Law

This Deed shall be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Deed to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Regulator and this Deed shall be further read and construed on the basis that:

- (a) where there is any inconsistency between a provision in this Deed and a provision under the Relevant Law the latter shall prevail to the extent of the inconsistency;
- (b) in the event of any doubt arising as to the effect of a Relevant Law or if there is an inconsistency between the Relevant Law and a provision of this Deed, the decision of the Trustee shall be final,

PROVIDED THAT this Deed shall not be so read or construed and no such provision of the Relevant Law shall be so incorporated if to do so would constitute a breach of the power granted by clause 24 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

2.6 Requirements of Regulator

Any references to any requirements, consents or approvals being required to be given by the Regulator or for the purposes of satisfying the Relevant Law shall mean requirements, consents or approvals of the Regulator or under the Relevant Law.

2.7 Superannuation Guarantee Legislation

Where permitted, the Trustee shall administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and shall provide all such certificates, reports and other consents or approvals of the Regulator or under the Relevant Law.

PART 2

3 THE FUND

3.1 The Fund

The Fund consists of one (1) division: Division 1 - Eligible Rollover Fund Division.

3.2 Rules

- (a) The specific rights of the Members as well as the specific powers and duties of the Trustee and the specific limitations or applicable restrictions shall be governed as set out in this Deed.
- (b) The Trustee may amend or vary the Rules the same manner as this Deed may be amended or varied.

3.3 Name

The name of the Fund is the "Australian Preservation Fund" or such other name as determined from time to time by the Trustee.

3.4 Commencement

Division 1 has commenced operation.

3.5 Beneficial Interest

Each Member is entitled as provided in this Deed to a beneficial interest but such interest does not:

- (a) entitle the Member other than as provided in this Deed or permitted by law:
 - (i) to interfere with the rights or powers of the Trustee in its dealings with the Fund;
 - (ii) to exercise any rights powers or privileges in respect of any Authorised Investments the Fund; or
 - (iii) to require the transfer to the Member of any of the Assets the Fund;
- (b) confer other than as provided in this Deed any interest in any particular part or Asset of the Fund.

3.6 Further Divisions

Where permitted by the Relevant Law, the Trustee may at any time and from time to time constitute a further Division or Divisions whereupon the Trustee shall execute a deed supplemental to this Deed which provides for:

- (a) a statement of the rules of the Division;
- (b) a means of identification of each such Division;
- (c) a declaration that upon the payment to and acceptance by the Trustee of a Contribution to such Division in accordance with the terms and conditions of that Division, there shall be constituted a trust fund to be held under and in accordance with the terms and conditions of this Deed and the rules.

3.7 Members Bound by Deed

The terms and conditions of this Deed are binding on the Trustee and Member and all persons claiming through them respectively as if each Member had severally been a party to this Deed.

3.8 Purpose of the Fund

The only purpose of the Fund is to be a temporary repository for amounts transferred to the fund from other regulated superannuation funds in circumstances allowed by the Appropriate Authorisations or Relevant Law.

4 GENERAL PROVISIONS

4.1 Exercise of Trustee's Rights

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee by resolution of its Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf PROVIDED THAT any requirements of the Relevant Law are satisfied.

4.2 **Inquiries, Complaints and Disputes**

- (a) If required by the Relevant Law, the Trustee shall ensure that there are in force arrangements to deal with inquiries or complaints from Members, Former Members or Dependants in the circumstances and within the time limits required by the Relevant Law.
- (b) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a Court or the Tribunal, the Trustee shall ensure that it implements any decision of a Court or Tribunal as required by that Court or Tribunal.

4.3 **Family Law**

- (a) Subject to the following provisions of this sub-clause, despite any other provisions of this Deed, the Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits of any Member required in accordance with the *Family Law Act 1975*, Regulations made under that Act and any other provisions of the Relevant Law which govern Superannuation and Family Laws ("Relevant Family Laws").
- (b) The Trustee may at any time and from time to time elect under this sub-clause for the purposes of the Relevant Family Laws that this Deed will not have operation to permit the Trustee to establish a new interest in the Fund from the interest of a Member upon the request of the spouse of the Member under the Relevant Family Laws.
- (c) The Trustee may at any time and from time to time determine to revoke an election made under sub-clause 4.3(b) above.

4.4 **Privacy**

In accordance with the Relevant Law, the Trustee will hold, and treat as confidential, all records and information it may hold, receive or become aware of in its capacity as Trustee in relation to Employers or Members and shall not disclose or make known any such records or information to any third party except as may be required in relation to the administration of the Fund or to facilitate the provision of services or Benefits to Members or as may be required by the Relevant Law or as it may otherwise be lawfully required to do except that a Member may authorise the Trustee to release information pertaining to that Member to a third party.

4.5 **Refund of Payments**

If any monies paid to the Fund will or may jeopardise the status of the Fund as a Complying Superannuation Fund or, in the opinion of the Trustee, may have been paid by mistake (whether of law or of fact), the Trustee may refund those monies to the person who paid them to the Fund in accordance with sub-clause 4.8 or transfer them pursuant to sub-clause 18.1. The Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those monies in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt of the Trustee of those monies.

4.6 **Limitation on Accepting Contributions**

The Trustee must not accept Contributions to the Fund by or in respect of a Member that are not permitted by the Relevant Law.

4.7 **Level of Contributions**

The Trustee shall not accept any Contribution or any Shortfall Component:

- (a) if the acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (b) if the Regulator directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component in accordance with the Relevant Law; or
- (c) if the Contribution or Shortfall Component is not otherwise able to be accepted under the Relevant Law.

4.8 **Ineligible Contributions**

If the Trustee shall at any time ascertain that any Contribution or Shortfall Component has been accepted in breach of the provisions of this clause, the Trustee shall refund such Contribution or Shortfall Component within any time period which may be required by the Relevant Law, less any:

- (a) reasonable administration charges, and
- (b) and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution or Shortfall Component had not been received.

5 **PROPER LAW**

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State of Victoria. The Trustee and Members shall accept the jurisdiction of the Courts of Victoria.

PART 3

6 **MEMBERSHIP NOTIFICATION REQUIREMENTS**

6.1 **Notice to New Members**

As soon as practicable before or after the admission of a person as a Member of the Fund, the Trustee shall arrange for each Member to be given information and details relating to the Fund as is required to be provided by the Relevant Law.

6.2 **Nominated Dependant**

A Member may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of:

- (a) the names and addresses of any Dependents to whom the person wishes any Benefit payable upon the person's death to be paid;
- (b) the proportions and manner in which the person wishes those Benefits to be paid;
- (c) the nomination:

- (i) may be varied or replaced from time to time in a manner approved by the Trustee; and
- (ii) it is not binding upon the Trustee but the Trustee may consider the nomination when exercising any of its discretion's in respect of the person.

6.3 Disclosure and Reporting Requirements

The Trustee shall arrange for Members, to be provided with all information in writing, Disclosure Documents, statements, reports and notices as required under the Relevant Law in such manner and at such times as required by the Relevant Law

6.4 Notice to Former Member

As soon as practicable after a person ceases to be a Member of the Fund, the Trustee shall arrange for such former Member, Dependants or Legal Personal Representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by the Relevant Law.

6.5 Disclosure Limitation

No Member, Former Member or Dependand or Legal Personal Representative of a Member shall be entitled to obtain information in respect of any details of the operation of the Fund or on any matter which may relate to the conduct of the Fund which in the opinion of the Trustee would be inappropriate to disclose other than as is provided for by this clause.

6.6 Inspection of Trust Deed and Other Documents

A copy of this Deed and any other documents as required by the Relevant Law shall be made available for inspection by any Member on the request of that Member and unless otherwise required by the Relevant Law, it shall be sufficient for the purposes of this sub-clause to make a copy of this Deed or such documents available to the Member for inspection at a place nominated by the Trustee.

PART 4

7 THE FUND

7.1 Fund Vested in Trustee

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

7.2 Fund Assets

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

- (a) the amount, if any, standing or transferred to the credit of the Fund (including any amounts standing to the credit of any accounts established pursuant to clause 8 of this Deed) at or after the date from which this Deed comes into effect;
- (b) such Contributions (if any) as the Members shall make to the Fund at any time;

- (c) such Contributions as an Employer makes to the Fund at any time;
- (d) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (e) profits and other benefits arising from any investment and the accumulation of those profits;
- (f) moneys, investments and other property transferred to the Fund as a Roll Over Payment;
- (d) such monies and assets paid or transferred to the Trustee pursuant to clause 19 of this Deed;
- (e) such Shortfall Components as are received by the Fund;
- (g) such amounts from SHAR as are received by the Fund;
- (h) any Financial Assistance received by the Fund; and
- (i) such other Contributions permitted under this Deed and the Relevant Law.

8 FUND ACCOUNTS

8.1 Accumulation Accounts

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

8.2 Credits to Accumulation Accounts

The following amounts shall be credited to the Accumulation Account:

- (a) such positive earnings as are determined by the Trustee and transferred from the Income Account;
- (b) such Contributions made in respect of the Member and permitted under the Relevant Law; and
- (c) such other amounts as the Trustee shall from time to time determine.

8.3 Debits to Accumulation Accounts

The following amounts shall be debited to the appropriate Accumulation Account:

- (a) any amount paid out of the Fund in respect of the Member as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;
- (b) any other Benefit payments made to or in respect of the Member;
- (c) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll Over Payment as the Trustee may determine;

- (d) such of the costs, charges and expenses incurred in accordance with clause 15 or an appropriate portion thereof as the Trustee may determine;
- (e) the amount of any lien exercised pursuant to clause 14;
- (f) such negative earnings as shall be determined by the Trustee in accordance with sub-clause 8.4, or 8.7;
- (g) any moneys paid in respect of the Trustee indemnity set out in clause 14;
- (h) any amount of Levy determined by the Trustee to be appropriate to debit;
- (i) any amount of Taxation attributable to the Member or Beneficiary; and
- (j) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.

8.4 **Income Account**

- (a) The Trustee shall establish an Income Account to which shall, be credited the following:
 - (i) all income and profits each year;
 - (ii) credits arising out of adjustments pursuant to sub-clause 8.6;
 - (iii) any amount transferred from the Equalisation Account pursuant to sub-clause 8.5;
 - (iv) any Financial Assistance received by the Fund and not credited to an Accumulation Account;

and profits shall include any surplus arising from a valuation undertaken at any time during the year in accordance with sub-clause 8.7.

- (b) The Income Account shall be debited with the following:
 - (i) any loss sustained on the disposal of any investments of the Fund;
 - (ii) any costs or charges incurred pursuant to clause 15 which are not debited to an Accumulation Account;
 - (iii) any debits arising out of adjustments pursuant to sub-clause 8.6;
 - (iv) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Accumulation Account;
 - (v) any deficiency arising from a valuation undertaken in accordance with sub-clause 8.7;
 - (vi) any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Fund which are not debited to an Accumulation Account as the Trustee determines to be equitable;

- (vii) any amount of Levy payable by the Fund and not debited to an Accumulation Account;
 - (viii) any income transferred to the Equalisation Account.
- (c) Following the debiting of the Income Account as specified in sub-clause 8.4(b), at the end of each Fund Year the Trustee shall determine the Fund Earning Rate.
 - (d) The amount determined as the earnings of the Fund shall be allocated from the Income Account to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Accumulation Account since that date.
 - (e) Any amount remaining in the Income Account after distribution of earnings pursuant to sub-clause 8.4(d) shall be transferred to the Equalisation Account established under sub-clause 8.5.
 - (f) In the event that the Trustee is required to determine a Fund Earning Rate in respect of a part of a Fund Year then such interim Fund Earning Rate for that period shall be determined by the Trustee in accordance with the Relevant Law on a basis which the Trustee considers to be equitable. The Trustee shall when required by the Regulator or the Relevant Law notify the Members of the basis of the calculation of the interim Fund Earning Rate.

8.5 Equalisation Account

- (a) The Trustee shall have power at any time to establish an Equalisation Account in respect of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account under sub-clause 8.4.
- (b) Whilst any moneys are held in the Equalisation Account, they shall not form part of any Accumulation Account and any income earned by the Fund on the moneys held in the Equalisation Account shall be credited to the Equalisation Account.
- (c) The Equalisation Account shall at the discretion of the Trustee be used for the following purposes:
 - (i) to generally give effect to the reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
 - (ii) to provide for such contingencies as the Trustee shall determine;
 - (iii) to augment the Fund Earning Rate;
 - (iv) to meet any Taxation payments payable by the Fund;
 - (v) to pay any expenses, charges, commission or brokerage payable by the Fund;
 - (vi) to or for the benefit of a Member including augmentation of the Accumulation Account on a basis that does not breach the Relevant Law; or
 - (vii) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

8.6 **Adjustment of Accumulation Account**

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

8.7 **Valuation of the Fund**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Relevant Law shall require the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

9 **FUND RECORDS, DISCLOSURE AND INVESTIGATION**

9.1 **Receipt and Payment of Moneys**

All moneys of the Fund shall be lodged as soon as practicable in the name of the Trustee or Custodian with a bank or non bank financial institution as determined from time to time by the Trustee in accordance with this Deed.

9.2 **Issue of Receipts**

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

9.3 **Records and Accounts to be Kept**

The Trustee shall arrange for:

- (a) the keeping of accounts and records of all moneys received into and disbursed from the Fund and of all dealings in connection with such moneys;
- (b) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law; and
- (c) the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such accounts and statements in respect of each Fund Year as are required by the Relevant Law.
- (d) the preparation and lodgment of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law.

9.4 **Audit**

The Trustee shall:

- (a) make suitable arrangements for the auditing of the accounts, books and relevant records of the Fund by an approved Auditor annually or at such other times as required by the Relevant Law; and
- (b) obtain from the approved Auditor a certificate at such time and in such form as required by the Relevant Law.

9.5 **Disclosure and Reporting Requirements**

The Trustee shall arrange to provide to:

- (a) Participating Funds;
- (b) Employers;
- (c) the Regulator;
- (d) a Court or Tribunal;
- (e) the Auditor, and
- (f) any other persons specified in the Relevant Law,

with such information or documentation, at such time and in such manner as shall be required by the Relevant Law.

9.6 **Production of Books or Access to Premises**

The Trustee shall make suitable arrangements for the production of any books, records or other information in relation to the Fund and the access to premises where any such books or information are kept for the purpose of inspection and the taking of copies in accordance with the Relevant Law.

9.7 **Directions of Regulator**

The Trustee must comply with any direction or requirement of the Regulator in relation to the Fund including but not limited to the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

9.8 **Information and Documents for Tribunal**

The Trustee shall arrange to provide to the Tribunal any information or documents relevant to a complaint before the Tribunal in such manner and within such time as required by the *Superannuation (Resolution of Complaints) Act 1993* and may make submissions to or attend a conference of the Tribunal as the Trustee sees fit.

9.9 **Lost Members**

Where a Member is a Lost Member, the Trustee shall give such information in respect of the Lost Member to the Regulator at such time and in such manner as required by the Relevant Law.

PART 5

10 **FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

10.1 **Trustee must hold Appropriate Authorisation**

The Trustee of the Fund shall at all times be a Constitutional Corporation which is eligible to hold Appropriate Authorisation unless the Relevant Law otherwise provides.

10.2 **Policy Committees**

In the event that the Trustee is required to establish one or more Policy Committees for the Fund under the Relevant Law, it shall take all necessary steps to establish and maintain the operation of such Policy Committees in order to fulfil the functions required of Policy Committees as set out in the Relevant Law and it shall administer, dissolve, reform or replace such Policy Committees as necessary in accordance with the Relevant Law.

10.3 **Change of Trustee**

A Trustee shall immediately cease to act as Trustee of the Fund:

- (a) if it is placed in receivership or in liquidation;
- (b) if it is disqualified from holding office as a Trustee by operation of the Relevant Law or if the Trustee is removed or suspended from office under the Relevant Law;
- (c) if it ceases to hold Appropriate Authorisation; or
- (d) if it resigns as a Trustee of the Fund by giving written notice to the Regulator.

10.4 **Appointment of Trustee**

A Trustee of the Fund shall be appointed in writing in accordance with the provisions of this Deed by the retiring Trustee PROVIDED THAT in the event that the retiring Trustee is unable or unwilling to do so, then a majority of Members or the Regulator shall determine who shall act as Trustee in accordance with the provisions of this Deed and the Relevant Law and shall take such steps as are necessary to appoint the person to the office of Trustee.

10.5 **Retirement of Trustee**

If the Trustee has retired from office, the Trustee shall thereupon or at any time thereafter, do, sign and execute all such things, papers, writings, documents, deeds and instruments as maybe necessary to give proper effect to such retirement from office and the transfer or assignment to or otherwise the vesting of the assets comprised in the Fund in the new Trustee.

11 TRUSTEE'S INVESTMENT POWERS

11.1 Investment Strategy

The Trustee shall formulate and give effect to one diversified investment strategy in relation to the Assets of the Fund which may be reviewed from time to time and shall be formulated and effected in accordance with the Relevant Law.

11.2 Authorised Investments

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment strategy of the Fund as determined under sub-clause 11.1 in any of the following investments:

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (c) on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;
- (d) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (e) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (f) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (g) the acquisition of any futures, options or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund;
- (h) any other investments or joint ventures which the Trustee considers appropriate and which satisfy the Relevant Law,

and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee must not make a loan to or give any financial assistance to a Member or a relative of a Member of the Fund and PROVIDED FURTHER THAT the Trustee shall ensure that all investments shall be in accordance with the Relevant Law.

11.3 **Power to Sell, Vary and Otherwise Deal with Investments**

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

11.4 **Interest of Trustee in Investment**

- (a) Subject to sub-clause 11.4(b), the Trustee and any Director shall have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (b) The Trustee and any Director shall disclose details of any interest in an investment to which sub-clause 11.4(a) applies in the manner prescribed under the *Corporations Act 2001* and the Relevant Law.

11.5 **Provision of Investment Choice**

The Trustee shall not be obliged to provide investment choice to Members of the Fund.

11.6 **Securities Lending Arrangements**

The Trustee may enter into any securities lending agreement or facility with the Custodian for the lending of securities of the Fund held by the Custodian, whether in Australia or overseas to approved borrowers for the purposes of achieving an investment return for the Fund.

12 **TRUSTEE'S POWERS OF MANAGEMENT**

12.1 **Trustee to Manage the Fund**

Subject to the provisions of this Deed, the Trustee must manage the Fund for the benefit of the Members with full and complete powers of management.

12.2 **Additional Powers**

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

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members or former Members;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members or former Members and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (c) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT such borrowing shall not breach the Relevant Law;

- (d) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (e) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (f) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (g) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members or former Members in respect of the Fund PROVIDED that an indemnity shall only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (h) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (i) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (j) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to clause 14;
- (k) to maintain reserves in respect of the Fund;
- (l) to enter into such agreements or enforce any agreement that benefits Members of the Fund;
- (m) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (n) to seek modifications of or exemptions from the application of the Relevant Law to the Fund PROVIDED THAT the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted; and
- (o) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

12.3 Exercise of Trustee Powers

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or

personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Fund.

12.4 **Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding PROVIDED THAT the Trustee shall not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination PROVIDED FURTHER THAT the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed shall be subject to the Relevant Law.

12.5 **Trustee Delegation**

The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation PROVIDED THAT any such delegation shall only be undertaken in accordance with the Relevant Law.

12.6 **Trustee Direction**

Except in those circumstances which are acceptable within the Relevant Law the Trustee shall not be subject to direction by any person in the exercise of any of its powers.

13 **LIMITATION OF LIABILITY**

13.1 **Liability of Trustees and Directors**

Neither the Trustee nor any of its Directors shall be liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except a liability that:

- (a) arises because of that person's failure to act honestly; or
- (b) arises because of that person's intentional or reckless failure to exercise the degree of care and diligence that that person is required to exercise; or
- (c) consists of a monetary penalty under the Relevant Law.

13.2 **Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under sub-clause 13.1, the Trustee shall not incur any liability for:

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) any act or default of any former Trustee or any Director of a former Trustee, of any Member or of any agent employed in good faith by the Trustee;

- (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee;
- (d) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

13.3 Limitation of Exemption from Liability

This clause shall only operate to exempt a person from liability to the extent that the provision of such an exemption is not limited by or would be inoperative under the Relevant Law.

14 INDEMNITY OF TRUSTEE

14.1 Indemnity

The Trustee and where applicable its Directors shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under this Deed or at law except a liability that person:

- (a) fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that that person is required to exercise; or
- (c) incurs a monetary penalty under the Relevant Law;

and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purpose of this indemnity PROVIDED HOWEVER that the exercise of the lien by the Trustee under this sub-clause shall only be done if permitted by the Relevant Law.

14.2 Payments in Good Faith

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

14.3 Opinion or Advice

This indemnity shall extend to the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

14.4 Failure to Carry Out Agreement

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

14.5 **Agents and Servants of Trustee**

This indemnity shall extend to the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

14.6 **Limitation of Indemnity**

The indemnity provided under this clause in respect of the Trustee or any Directors, officers, agents or servants of the Trustee shall not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

15 **REMUNERATION OF TRUSTEE**

15.1 **Costs and Disbursements**

The Trustee shall be entitled to charge the Fund professional fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Fund as the Trustee determines. The fees, costs and disbursements will be debited to the Income Account of the Fund or directly to the Accumulation Accounts of Members as determined by the Trustee fourteen (14) days after the last business day of the month and which fees, costs and disbursements may reduce the Member's Withdrawal Benefit.

15.2 **Fees Determined Annually**

The fees charged (if any) by the Trustee shall be determined at the commencement of each Fund Year. The fees will be disclosed in the Disclosure Document. Prior notice of any changes which are intended to be made to the fees chargeable shall be provided to the Members and any Employers by the Trustee.

15.3 **Reimbursement**

The Trustee shall be entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (b) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
- (c) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (d) all professional fees and expenses of any barrister, solicitor, accountant, actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;

- (e) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any Disclosure Document, any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (f) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (g) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions and the attendance of the Trustee before the Tribunal;
- (h) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices;
- (i) any reasonable fees payable or to be payable to directors of the Trustee by the Trustee; and
- (j) any other expenses as determined by the Trustee pursuant to the Relevant Law.

PART 6

16 APPOINTMENT OF ACTUARY AUDITOR AND MANAGERS

16.1 Actuary and Auditor

The Trustee shall if necessary appoint a person or firm to the following offices on such conditions as it shall determine:

- (a) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (b) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law.

16.2 Administration Manager

The Trustee may appoint in writing on such terms as it thinks fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administration Manager of the Fund to carry out some or all of the administration of the Fund which appointment shall be made on such terms and conditions as the Trustee considers appropriate.

16.3 Investment Manager

- (a) The Trustee shall have power to appoint in writing one or more persons or companies to act as Investment Manager for the Fund for such period and on such terms and conditions as the Trustee shall determine PROVIDED THAT the person or company is qualified to act and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law;
- (b) The Trustee may delegate to each Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration,

valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee shall determine and may reallocate the assets of the Fund being invested by that Investment Manager.

16.4 **Custodian**

- (a) The Trustee shall have power to appoint one or more companies to act as a Custodian for the Fund and the Fund's bank account for such period and on such terms and conditions as the Trustee shall determine and may delegate and confer upon such Custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund, or the appointment of Sub-Custodians as the Trustee shall determine provided that the company appointed to act as Custodian shall not be prohibited from so acting at any time under the Relevant Law;
- (b) The Trustee shall not be liable or responsible for any act, omission, error judgment, negligence or breach of trust by any Custodian;
- (c) The Trustee shall have power to pay out of the Fund to any such Custodian such remuneration for their services as the Trustee considers appropriate;
- (d) The Trustee may remove from office any Custodian appointed pursuant to this clause.

16.5 **Consultants and Officers**

In addition, the Trustee from time to time may appoint and remunerate such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

16.6 **Removal**

The Trustee may remove from office any person or company appointed to any position under this clause and shall remove any such person or company where so required by the Relevant Law.

17 **ACTUARIAL INVESTIGATIONS**

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or to act upon the advice so provided except in circumstances required by the Relevant Law.

PART 7

18 **TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS**

18.1 **Transfers to Approved Benefit Arrangements**

Where a Member joins or is eligible to join any Approved Benefit Arrangement and requests the transfer of the whole or part of his or her entitlement in the Fund, or if the Trustee determines to transfer the whole or part of the entitlement held on behalf of a Member to an Approved Benefit Arrangement where the Member is not at the time of the transfer a participant in that Approved Benefit Arrangement, and the Relevant Law enables such a transfer to take place, then the Trustee may transfer the whole or any part of the amount in the Fund representing the Member's Benefit to

the trustee of the Approved Benefit Arrangement PROVIDED THAT a transfer may only be made pursuant to this sub-clause where the Trustee is satisfied that:

- (a) the transfer is permitted under, and is made in accordance with, the Relevant Law; and
- (b) the rights of the Member to receive the Benefits arising from the amount transferred are fully secured.

18.2 Successor Fund Transfers

The Trustee may enter into an arrangement with the trustee of another Approved Benefit Arrangement under which the Trustee agreed to transfer the whole or part of any Benefit held on behalf of a Member of the Fund to a Successor Fund without the consent of the Member

18.3 Effect and Method of Transfer Out

- (a) The receipt of the transferred amount by the proper officer of the Approved Benefit Arrangement shall be a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee shall have no responsibility to see to the application of the transferred amount.
- (b) Upon the completion of a payment or transfer in respect of a Member under this clause all the rights and interest of that Member under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the transferred amount shall be entirely extinguished.

18.4 Roll Over

Where a Member wishes to effect a Roll Over Payment in respect of all or any of the entitlement of the Member in the Fund, the Member shall:

- (a) make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment or the percentage of the Member's Accumulation Account to be applied as the Roll Over Payment; and
- (b) complete and execute a notification of the Roll Over Payment or such other documentation as shall be required by the Tax Act to enable the Roll Over Payment to be effected to the Approved Benefit Arrangement in accordance with the Relevant Law.

18.5 Transfer to Eligible Rollover Fund

The Trustee may in accordance with the Relevant Law and, where required by the Relevant Law the Trustee shall, transfer a Member's Benefit to an Eligible Rollover Fund including the Eligible Rollover Fund Division of the Fund.

PART 8

19 TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS

19.1 Takeover or Transfer of Benefits

Subject to sub-clause 19.2, where a person who is or will be admitted as a Member ("**Relevant Person**") is or was a member of any other Approved Benefit Arrangement, the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of transfer.

19.2 Rights and Entitlements of Member in Transferred Benefits

The Trustee shall hold any such amounts transferred in accordance with sub-clause 19.1 as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Relevant Person shall be deemed to have become a Member of the Fund on the date the Relevant Person became a member of the Approved Benefit Arrangement from which the Benefit was transferred.

19.3 Consent of Relevant Person

If a resolution of the kind referred to in sub-clause 19.1 is made the Trustee is not required to obtain the consent of the Relevant Person.

PART 9

20 FORFEITURE OF BENEFITS

20.1 Conditions of Forfeiture

Any Member or after the death of a Member, any of the Dependants of the Member:

- (a) who assigns or charges or attempts to assign or charge any Benefit;
- (b) whose interest in any Benefit, whether by the Member's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (c) who is insolvent or who commits or has committed an act of bankruptcy;
- (d) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit or who, in the opinion of the Trustee is incapable of managing the person's affairs;
- (e) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

shall forfeit entitlement to any Benefit held in the Fund at that time by that person PROVIDED HOWEVER that this sub-clause shall only apply to the extent that it is not limited by or inoperative under the Relevant Law or the *Bankruptcy Act 1966* (Cth) PROVIDED FURTHER

that the Trustee shall only recognise an assignment or charge of a Benefit where it is acceptable under the Relevant Law.

20.2 Forfeiture Account

The Trustee shall have power at any time to establish a Forfeiture Account of the Fund and shall transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the provisions of sub-clause 20.1 above or otherwise forfeited in accordance with this Deed.

Whilst any moneys are held in the Forfeiture Account they shall not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Forfeiture Account shall be credited back to the Forfeiture Account.

The Forfeiture Account shall be applied in accordance with the remaining provisions of this clause.

20.3 Application of Forfeited Benefit Entitlements

The Trustee shall hold upon trust and pay or apply any amounts which have been forfeited and are held in the Forfeiture Account in any one or more of the following ways:

- (a) to or for the benefit of the Member or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (b) to the trustee of the estate of the former Member (subject to the provisions of the *Bankruptcy Act 1966* (Cth));
- (c) to or for the benefit of the Member or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (d) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (e) for the provision to other Members of the Fund or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (f) for crediting to the Equalisation Account to be applied in accordance with sub-clause 8.5;
- (g) for any other purpose approved in writing by the Regulator,

PROVIDED THAT where a Member remains in the employment of an Employer any payments made to that Member shall be limited to the relief of hardship of the Member or of the Dependants of the Member and PROVIDED FURTHER THAT the Trustee shall only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law.

20.4 Readjustment of Member Interest

Where a forfeiture of a Benefit occurs under this clause in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may, readjust any rights, entitlements or interests of the Member in the Fund and may provide the Member with such rights or entitlements as the Trustee considers appropriate

PROVIDED THAT the rights or entitlements shall not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

20.5 **Severability**

If any part of this clause should be construed as illegal, invalid or void, the legality and validity of the remaining parts of this clause shall not be affected and the illegal, invalid or void part shall be deemed to be deleted.

PART 10

21 **PAYMENT OF BENEFITS ON DEATH**

21.1 **Payments to Dependants or Legal Personal Representatives**

Upon the death of a Member who had Dependants, the Trustee may pay or apply the Benefit to or for the benefit of one or more of the Member's Dependants (including any Nominated Dependants) or Legal Personal Representative in such proportions, form, manner and at such times as the Trustee shall from time to time in its discretion determine PROVIDED THAT the payment of the Benefit shall comply with the Relevant Law.

21.2 **Payments to Other Persons**

Upon the death of a Member who had no Dependants, the Trustee shall pay the Benefit to the Legal Personal Representative of the Member, or if there is no Legal Personal Representative may pay or apply the Benefit in such a manner as permitted by the Relevant Law.

21.3 **Discharge of Trustee**

The receipt by a Dependant or the Legal Personal Representative of a Benefit paid under this clause shall be a complete discharge to the Trustee in respect of any amount paid to that person and the Trustee shall not be bound to see to the application thereof.

22 **PAYMENT OF BENEFITS**

22.1 **Arrangements for Payment of Benefits**

The Trustee shall make arrangements for the payment of Benefits with the Member or Dependant in accordance the Relevant Law. Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in a form from time to time required by the Trustee.

22.2 **Payment to Others on behalf of Certain Dependants**

When any Dependant is under the age of 18 years or is under any legal disability or when in the opinion of the Trustee it would be in the best interests of the Dependant, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee shall determine:

- (a) to or towards the maintenance, education, advancement, support or benefit of the Dependant in such manner and on such terms and conditions as the Trustee shall determine; or

- (b) to any other person who appears to the Trustee to be a trustee for the Dependant or Spouse, Child, parent or guardian or a person having custody of the Dependant for application on behalf of the Dependant,

and the receipt of the person to whom the Benefit is paid shall be a complete discharge of the Trustee for the payment in respect of the Dependant and the Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

22.3 Preservation Conditions

Notwithstanding any other provision of this Deed which may be construed to the contrary:

- (a) no Member or Dependant of a Member shall be entitled to receive any Benefit which is subject to preservation unless permitted by the Relevant Law;
- (b) any Benefit held by the Trustee which it is unable to pay out to the Member may, at the discretion of the Trustee, be dealt with in accordance with clause 18, or be retained in the Fund subject to clause 20.

22.4 Unclaimed Benefits

The Trustee shall give to the Regulator a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Regulator at such time and in such manner as required by the Relevant Law.

22.5 Death of Member Prior to Benefit Payment

Where a Member has become entitled to payment of a Benefit and before payment has been made by the Trustee, the Member dies, the Trustee may pay that Benefit in accordance with the provisions of clause 21.

22.6 Limitation on Benefits

Notwithstanding any other provision of this Deed, the Trustee shall not pay out any Benefits to Members or Dependants where such payment would cause the Fund to breach the Relevant Law.

PART 11

23 PAYMENT OF TAXATION AND LEVIES

23.1 Tax on Benefits

The Trustee shall deduct from any Benefit payable to any Member pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

23.2 Tax on Contributions and Shortfall Components

The Trustee may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an

Accumulation Account shall mean the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

23.3 **Tax on Income**

The Trustee may deduct any Taxation in relation to the taxable income of the Fund not otherwise deducted under this clause from the Income Account or from Accumulation Accounts of Members.

23.4 **Surcharge**

The Trustee may make provision and shall deduct any surcharge or other amount of whatever description levied on the Fund in respect of a Member, pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation). The Trustee shall adjust the Benefit of the said Member to reflect the cost to the Fund of the cost of the payment.

23.5 **Payment to Relevant Authority**

The Trustee shall pay all Taxation and any Levy which is due and payable by the Fund, to the relevant authorities within the required time for payment.

PART 12

24 **VARIATION OF TRUST DEED**

The provisions of this Deed including this Clause may be added to, amended, altered, modified, rescinded or varied ("**Variation**") from time to time by the Trustee either prospectively or retrospectively on the following basis:

24.1 **Deed**

The Variation shall be by Deed executed by the Trustee and a copy of such Deed shall be forwarded to the Regulator and each Participating Employer if required by the Relevant Law.

24.2 **Notice**

On any Variation being effected, the Trustee shall if so required by the Relevant Law advise the Members in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required under the Relevant Law.

24.3 **Limitation on Variation**

No Variation shall have the effect of:

- (a) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected; or
- (b) reducing the amount of an entitlement other than an entitlement referred to in sub-clause 24.3(a) that is or may become payable in relation to a period before the date of the Variation,

unless:

- (i) the reduction is required to enable the Fund to comply with the Relevant Law; or
- (ii) the Member so affected consents in writing to the reduction; or
- (iii) the Regulator consents in writing to the reduction,

PROVIDED THAT each Variation shall comply with the Relevant Law.

24.4 **Further Limitation of Variation**

No Variation to this Deed shall permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Deed provides that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

PART 13

25 **WINDING UP OF FUND**

25.1 **Election to Terminate**

The Trustee may elect to wind up the Fund at a certain date ("**Termination Date**") in the following circumstances:

- (a) if there are no further Members remaining in the Fund;
- (b) if the Trustee determines for any reason that the Fund should be wound up; or
- (c) if it is required by the Regulator.

25.2 **Procedure on Winding Up of Fund**

Where the Fund is to be wound up the Trustee shall:

- (a) give written notice to each Participating Fund and Member that the Fund is to terminate on the Termination Date;
- (b) arrange to pay or transfer Benefits to Members in accordance with sub-clause 25.3, after deducting from the assets of the Fund all the costs and expenses of administering and winding up the Fund.

25.3 **Exhaustion of Fund**

The Trustee shall pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (a) Benefits to which Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date; and
- (b) the provision of additional Benefits to Members and their Dependants as the Trustee in its absolute discretion considers appropriate

SCHEDULE 1
RULES OF DIVISION I - ELIGIBLE ROLLOVER FUND DIVISION

1 MEMBERSHIP AND APPLICATION OF DIVISION

1.1 Purpose of Division 1

Division I will be maintained solely as an Eligible Rollover Fund.

1.2 Application of Division

The Membership classification and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division.

1.3 Admission to Membership

- (a) The Trustee may determine to admit a person as a Member of the Division:
 - (i) on the date the Trustee accepts an amount into the Fund in respect of that person; or
 - (ii) upon receipt of an application from a Participating Fund for a person to become a Member of the Fund;
- (b) The person shall be deemed to have joined the Fund on a date determined by the Trustee.
- (c) Upon admission to Membership of the Fund, the Member shall be bound by this Deed in all respects.

1.4 Cessation of Membership

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

- (a) the date upon which payment of the Member's Benefits is made to the Member;
- (b) the date upon which payment of the Member's Benefits is made to an Approved Benefit Arrangement on behalf of the Member;
- (c) on the death of the Member;
- (d) the date on which Unclaimed Benefits representing the Member's Benefits in respect of a Member are paid to the Regulator; or
- (e) the date on which the Member ceases to be entitled to Benefits under this Deed.

2 CONTRIBUTIONS

- (a) The Trustee may accept into the Fund any amounts in respect of a Member permitted under the Relevant Law.
- (b) The Trustee may repay any amounts it has accepted contrary to the Relevant Law, less any amounts paid out for Taxation or costs.

3 PAYMENT OF BENEFITS

3.1 On Request

The Trustee may pay out the amount standing to the credit of the Accumulation Account of the Member as soon as practicable on the request of the Member in accordance with the Relevant Law.

3.2 Payment on Death of Member

On the death of a Member whilst still a Member the Trustee shall pay the full amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made in accordance with the provisions of clause 21 of this Deed.

3.3 Transfer to Approved Benefit Arrangement

The Trustee may transfer all or any of the amount standing to the credit of the Accumulation Account of the Member to an Approved Benefit Arrangement in accordance with clause 18.