

Consolidated Trust Deed (UNOFFICIAL)

Australian Postal Corporation
PostSuper Pty Ltd (ABN 85 064 225 841)

AUSTRALIA POST SUPERANNUATION SCHEME

(ABN 42 045 077 895)

(consolidated as of 18 February 2022
incorporating amendments made by
Deeds of Modification Nos 1 to 20)

IMPORTANT NOTE: This Trust Deed is not the official Trust Deed for the Australia Post Superannuation Scheme.

This document is an unofficial consolidated version of the Trust Deed and various Deeds of Modification that, together, comprise the official Trust Deed for the Australia Post Superannuation Scheme.

In the event of any conflict, the official APSS Trust Deed plus those Deeds of Modification overrule this APSS Trust Deed (Consolidated - Unofficial) version.

Allens
101 Collins Street
Melbourne 3000 Australia
Tel 61 3 9614 1011
Fax 61 3 9614 4661

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Date	This Trust Deed is made 19 June 1990
Parties	<ol style="list-style-type: none">1. Australian Postal Corporation, a corporation established under the Australian Postal Corporation Act 1989 of the Commonwealth of Australia and having its office in the State of Victoria at 71 Rathdowne Street, Carlton (the Corporation)2. Rae Martin Taylor, Angus James Mckenzie, Francis Charles O'Farrell, Brian Keith Baulk, Peter Anthony Norman and Edward John Minnis (the Trustees)
Recitals	<p>A The Corporation has determined to establish a superannuation scheme called Australia Post Superannuation Scheme (the Scheme) for the purpose of providing superannuation benefits for certain of its Employees and of the Employees of any Associated Employers and for the Dependants of those Employees in the event of their death and for such ancillary purposes as are approved by the Regulator.</p> <p>B The Trustees have consented to act as the initial trustees of the Scheme as is indicated by their execution hereof.</p>

NOW THIS DEED WITNESSES that the Corporation **HEREBY ESTABLISHES** an indefinitely continuing fund to be known as **AUSTRALIA POST SUPERANNUATION SCHEME** which shall vest in and be administered by the Trustee upon the trusts and subject to the terms and conditions of this Deed.

1. Interpretation

- (a) The headings in this Deed and any index are for convenience of reference only and shall not affect the interpretation thereof.
- (b) In this Deed unless the context requires otherwise or the contrary intention appears words importing the singular number shall include the plural and vice versa and words importing one gender include the other genders and a reference to a person shall include a corporation.
- (c) If any question shall arise on the construction or meaning of this Deed or the Rules the decision of the Trustee shall be conclusive and binding on all parties concerned.
- (d) Unless the context otherwise requires a reference to a Clause, sub-clause, Rule, sub-rule, paragraph, or sub-paragraph in this Deed or the Rules shall be a reference to the

relevant Clause, sub-clause, Rule, sub-rule, paragraph or sub-paragraph of this Deed or the Rules as the case requires.

- (e) In the interpretation of this Deed or the Rules the provisions of this Deed shall be deemed to be paramount and to the extent to which there is any inconsistency between this Deed and the Rules the provisions of this Deed shall prevail.
- (f) A reference to an Act or Regulations of a Parliament of the Commonwealth or any State or Territory shall be to an Act or Regulations as amended or re-enacted from time to time and for the time being in force.
- (g) Although periods may be expressed in this Deed and the Rules in years, unless the context otherwise requires, for the purposes of the Scheme all calculations to be made by reference to years shall be made by reference to days in a year and for this purpose each year shall have 365 days.
- (h) This Deed and the Rules shall be governed by the law of the State of Victoria.
- (i) Any provision of this Deed which is void, prohibited or unenforceable in any jurisdiction (whether by reason of any Superannuation Law or otherwise) is ineffective as to that jurisdiction to the extent that the provision is void, prohibited or unenforceable. The fact that a provision of this Deed is ineffective by reason of this paragraph does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction. Subject to Superannuation Law, where a provision is ineffective by operation of this paragraph, the Trustee shall determine the effect and interpretation of the remaining provisions of this Deed and the Trustee's determination shall be final, conclusive and binding on all interested persons.
- (j) A reference to an industrial union shall include any industrial union or other body which replaces or succeeds or amalgamates with the industrial union (a *successor*) or any successor.

2. Definitions

In this Deed unless the context otherwise requires the following expressions shall have the meanings respectively assigned thereto.

Accrued Default Amount has the meaning given to it in SIS.

Accrued Retirement Benefit means in relation to a Member an amount equal to the aggregate of:

- (a)
 - (i) the CSS Multiple multiplied by Final Average Salary;
 - (ii) the Member's Transferred Amount (other than the Deferred Transfer Value) together with interest pursuant to sub-clause 11.10 on any part thereof which is received into the Fund from the date it is received into the Fund;
 - (iii) the total of the Member Contributions together with interest thereon pursuant to sub-clause 11.10;

- (iv) where the Member contributed to the Commonwealth Superannuation Scheme during the period between the Commencement Date and the Transfer Date, the percentage of Final Average Salary set out in Column A of paragraph (a)(v) in respect of that period (and pro rata for each day any part of the period is less than a complete year) where the contributions made by the Member to the Commonwealth Superannuation Scheme as a percentage of the Member's salary for the purposes of the Commonwealth Superannuation Scheme during that period were at the level set out in Column B of paragraph (a)(v);
- (v) the aggregate of the following amounts:
 - (A) in respect of Membership as a Full Member before 1 July 2000 - the percentage of Final Average Salary set out in Column A in respect of each year of Membership (and pro rata for each day any part of the period is less than a complete year) where the Member Contributions as a percentage of Salary were at the level set out in Column B

Column A (Percentage of Final Average Salary)	Column B (Member Contributions as a percentage of Salary)
11.3	2
12.3	3
13.3	4
14.3	5
15.3	6
16.3	7
17.3	8
18.3	9
19.3	10 or more; and

- (B) in respect of Membership as a Full Member on or after 1 July 2000:
 - (1) if paragraph (2) does not apply - 14.3% of Final Average Salary in respect of each year of such Membership (and pro rata for each day any part of the period is less than a complete year); or
 - (2) in the case of a Member on 1 July 2000 whose average percentage of Final Average Salary for the total period prior to that date during which the Member contributed to the Commonwealth Superannuation Scheme and to the Scheme

under paragraph (a)(iv) and under this paragraph (a)(v) as in force immediately prior to 1 July 2000 is less than 14.3% – the percentage of Final Average Salary set out in Column A in respect of each year of Membership (and pro rata for each day any part of the period is less than a complete year) where the Member Contributions as a percentage of Salary were at the level set out in Column B until the Member’s average percentage of Final Average Salary in respect of his or her whole Membership becomes 14.3%, and thereafter at 14.3% of Final Average Salary.

Column A (Percentage of Final Average Salary)	Column B (Member Contributions as a percentage of Salary)
14.3	0
15.3	1
16.3	2
17.3	3
18.3	4
19.3	5 or more,

PROVIDED THAT in respect of any period of Fractional Time Service, the percentage of Final Average Salary in respect of any such period of Fractional Time Service (other than for the purposes of paragraph (a)(i)) shall be multiplied by the Service Fraction for that period; and

PROVIDED THAT the maximum amount determined under paragraphs (a)(iv) and (a)(v) in respect of a Member shall not exceed the aggregate of:

- (a) the amount which would have been determined had the Member contributed (where applicable) to the Commonwealth Superannuation Scheme during the period between the Commencement Date and the Member’s Transfer Date;
- (b) the amount which would have been determined had the Member contributed to the Scheme whilst a Full or Contributory Member for the period up to 1 July 2000 at the rate of 5% of the Member’s Salary from time to time; and

- (c) the amount which is the aggregate of 14.3% of the Member's Final Average Salary for each year of membership as a Full Member (and pro rata for each day any part of the period is less than a complete year) occurring on or after 1 July 2000;
- (b) the Accrued Statutory Benefit.

Accrued Statutory Benefit means in relation to a Member an amount equal to the aggregate of:

- (a) in respect of a Member who was at the Commencement Date covered by the Interim Arrangement Act:
 - (i) 1.5% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Service from 1 January 1988 to the Commencement Date;
 - (ii) 1.5% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Service from 1 January 1989 to the Commencement Date;
 - (iii) 1.5% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of CSS Service when the Member was not in Service from 1 January 1988 to the Commencement Date; and
 - (iv) 1.5% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of CSS Service when the Member was not in Service from 1 January 1989 to the Commencement Date;

PROVIDED THAT the period of Service for the purposes of this paragraph shall be reduced by such period as is determined by the Trustee after obtaining the advice of the Actuary having regard to any amount which has been transferred to or otherwise dealt with in respect of the Member under the Interim Arrangement Act otherwise than as a part of a benefit payable under the Scheme;

- (b) in respect of a Member who was at the Commencement Date covered by the Interim Arrangement Act but did not transfer from the Commonwealth Superannuation Scheme to the Scheme as at the Transfer Date - 3% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of the period from the Commencement Date to the Member's Admission Date;
- (c) 3% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a year) of Membership as a Class A Statutory Benefit Member or Class B Statutory Benefit Member;
- (d) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 1992;

- (e) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 January 1993;
- (f) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 1995;
- (g) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 1998;
- (h) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 2000;
- (i) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of a period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 2002; and
- (j) for each year (and pro rata for each day any part of a period is less than a complete year) of Membership as a Class A Statutory Benefit Member from 1 July 2013 – such additional percentage (or part thereof) of the Member's Final Average Salary that corresponds to the amount by which the Charge Percentage in relation to that year exceeds 9,

PROVIDED FURTHER THAT in respect of any period of Fractional Time Service, the percentage of Final Average Salary in respect of any such period of Fractional Time Service shall be multiplied by the Service Fraction for that period.

Actuary means a person who is a Fellow of the Institute of Actuaries of Australia or an Accredited Member of the Institute of Actuaries of Australia or of any body or organisation which succeeds or replaces that Institute and, for any particular purpose under this Deed, the **Actuary** means the person appointed for the time being pursuant to sub-clause 6.10.

Admission Date means in relation to an Employee the date he or she was admitted to membership of the Scheme.

Appointment Rules means the rules setting out procedures for appointment and removal of the Member Representative Directors established by the Trustee pursuant to sub-clause 5.1.3.

Approved Arrangement means a complying superannuation fund for the purposes of the Tax Act, a complying approved deposit fund for the purposes of the Tax Act or an annuity complying with the standards prescribed under Superannuation Law or such other fund or entity which the Trustee determines to be an Approved Arrangement, the acceptance of moneys or assets from or the payment or transfer of moneys or assets to which would not in the opinion of the Trustee cause the Scheme to be in breach of or fail to comply with any relevant requirement of Superannuation Law.

Associated Employer means any person which has been admitted to participation in the Scheme as an Associated Employer as provided in this Deed and which has not ceased to

participate in the Scheme as provided in this Deed and includes any person which replaces or succeeds such an Associated Employer as provided in this Deed.

Auditor means an approved auditor within the meaning of Superannuation Law and, for any particular purpose under this Deed, the **Auditor** means the person or firm of persons appointed for the time being by the Trustee pursuant to sub-clause 6.8.

Australia Post Wage Index means in respect of any year ending on 30 June a number (including a fraction of a number) calculated in accordance with the following formula:

$$\text{APWI} = \frac{A}{B}$$

Where

APWI is the Australia Post Wage Index for a year commencing on 1 July next following the 30 June referred to in A,

A is the average ordinary time rate for the four largest organizational groupings of Employees as determined by the Corporation as at a 30 June, and

B is the average ordinary time rate for the four largest organizational groupings of Employees as determined by the Corporation on 30 June 1990.

Beneficiary means:

- (a) a person (including a Member) who is presently entitled to receive a benefit under the Scheme in accordance with this Deed; and
- (b) in the case of sub-clauses 10.2(a) and 10.3, Rule 8 and any provision of this Deed or the Rules which in the opinion of the Trustee relates to Beneficiary Accounts, an Employee approved by the Employer for the purposes of this definition.

Beneficiary Account means in respect of a Beneficiary an account established and maintained in respect of the Beneficiary pursuant to Rule 8.

Binding Death Benefit Nomination means, subject to any conditions determined by the Trustee (if any), a nomination by a Member of one or more persons to receive all or part of any benefit payable in respect of the Member's death which complies with section 59(1A) of SIS relating to binding death benefit nominations and which is in writing, in a form acceptable to the Trustee, and which has not expired or been revoked.

Charge Percentage in relation to a period, means the applicable charge percentage prescribed under section 19 of the *Superannuation Guarantee (Administration) Act 1992* (Cth) in respect of that period.

Child in relation to a Member includes a child, an adopted child, a foster child, a ward or child within the meaning of the Family Law Act 1975 of the Member or of the Spouse of the Member or a person in respect of whom, in the opinion of the Trustee, a Member or a Spouse of a Member stand in loco parentis.

Claims Assessor means a specialist claims assessment panel or organisation or group of such panels or organisations appointed from time to time by the Trustee with the approval of the Corporation either generally or in any particular case.

Class A Statutory Benefit Member means:

- (a) a Member who applied for and was admitted to membership of the Scheme as a Class A Productivity Member prior to 1 July 1998;
- (b) a Member who applied for and was admitted to membership of the Scheme as a Class A Statutory Benefit Member between 1 July 1998 and 30 June 2000; and
- (c) an Employee who being eligible has applied for and been admitted to membership of the Scheme as a Class A Statutory Benefit Member on or after 1 July 2000.

Class B Statutory Benefit Member means a Member who applied for and was admitted to membership of the Scheme as a Class B Productivity Member prior to 1 July 1998.

Commencement Date means 1 July 1990.

Commonwealth Superannuation Scheme means the superannuation scheme operated by the Commonwealth of Australia pursuant to the Superannuation Act 1976.

Constitutional Corporation has the meaning given to that term in SIS.

Corporation means the Australian Postal Corporation established under the Australian Postal Corporation Act 1989 or any other body corporate which agrees with the Trustee to assume the obligations of the Australian Postal Corporation under this Deed.

Corporations Act means the *Corporations Act 2001* of the Commonwealth of Australia.

CSS Membership means in relation to a Member the period the Member was an eligible employee for the purposes of the Superannuation Act 1976.

CSS Multiple means in relation to a Member who was a contributory member of the Commonwealth Superannuation Scheme and transferred to the Scheme as at the Transfer Date 14.6% multiplied by the period in years (and pro rata for each day any part of the period is less than a complete year) of the Member's CSS Membership immediately prior to the Commencement Date **PROVIDED THAT** in respect of any period of the Member's CSS Membership where the Member's Service Fraction is less than one, the multiple of the Final Average Salary in respect of any such period of CSS Membership shall be multiplied by the Member's Service Fraction for that period.

CSS Service means in relation to a Member the period during which the Member was:

- (a) employed by an employer approved by the Corporation for the purposes of this definition but was not an eligible employee for the purposes of the Superannuation Act 1976; and
- (b) an eligible employee for the purposes of the Superannuation Act 1976.

Deed means the Deed establishing the Scheme as altered, added to or repealed from time to time.

Deferred Beneficiary means a person who has ceased to be in Service and in respect of whom a benefit is for the time being required to be preserved in the Fund.

Deferred Transfer Value means in relation to a Member who transferred to the Scheme from the Commonwealth Superannuation Scheme an amount equal to 2.5 times the Member's accumulated contributions to the Commonwealth Superannuation Scheme together with

interest from the Transfer Date at such rate as is determined by the relevant Minister or other officer of the Australian Government after obtaining the advice of the Australian Government Actuary.

Dependant means in relation to a Member or Beneficiary:

- (a) the Spouse or Child of the Member or Beneficiary;
- (b) a person in relation to whom the Member or Beneficiary has an interdependency relationship (within the meaning of Superannuation Law) at the time of his or her death; and

any other person whom in the opinion of the Trustee is, or in the case of a deceased Member or Beneficiary was at the time of his or her death, in any way financially dependent on the Member or Beneficiary.

Disqualified Person in relation to an individual or a body corporate (as the case may be) has the meaning given to that term in SIS.

Employee means a person who is in the employ of an Employer (the term **employ** bearing both its ordinary meaning and, if the Corporation so determines, either generally or in respect of any particular provision of this Deed, any expanded meaning provided in any Superannuation Charge Law).

Employer means:

- (a) the Corporation;
- (b) any Associated Employer; and
- (c) any person or persons which carry on business in succession to the Corporation or any Associated Employer,

and in relation to an Employee means the person or persons for the time being employing him or her (the term **employing** bearing both its ordinary meaning and, if the Corporation so determines, either generally or in respect of any particular provision of this Deed, any expanded meaning provided in any Superannuation Charge Law).

Employer Financed Accumulation Account means in respect of a Member an account established and maintained in respect of the Member pursuant to Rule 9.

Employer Financed Benefit means that part of any benefit which is not a Member Financed Benefit.

Employer Representative Directors means directors of the Trustee of the Scheme appointed by the Corporation as contemplated by sub-clause 5.2.2 or deemed to be appointed by the Corporation as provided in sub-clause 5.2.4 (as the case may be).

Equivalent Full-Time Salary means in relation to a Member:

- (a) in respect of any period of Full-Time Service, the Member's Salary; and
- (b) in respect of any period of Fractional Time Service, an amount equal to the Salary which would have applied had the Member worked in Full-Time Service.

Family Law Act means the *Family Law Act 1975* of the Commonwealth of Australia.

Fee Rules has the meaning given to it in SIS.

Final Average Salary means in relation to a Member the average of the Member's Equivalent Full-Time Salary on the three birthdays occurring immediately prior to the date of calculation or such other amount as determined by the Trustee with the consent of the Corporation

PROVIDED THAT:

- (a) in relation to any Member who has been a Member for less than three years and who has not transferred from the Commonwealth Superannuation Scheme at the Transfer Date, the Member's Salary on the date of joining the Scheme shall be deemed to be the Salary which applies for any other earlier birthday which is necessary to be taken into account for the purposes of the calculation;
- (b) in relation to a Member who transfers from the Commonwealth Superannuation Scheme on the Transfer Date, for the purposes of this calculation, the Member's benefit salary for the purposes of the Commonwealth Superannuation Scheme on the Member's birthdays while a member of the Commonwealth Superannuation Scheme shall be taken into account as if the Member's benefit salary had been Salary and as if the relevant period was a period of Membership and if the Member's total period of Membership and period of membership of the Commonwealth Superannuation Scheme is less than three years the benefit salary at the date of becoming a member of the Commonwealth Superannuation Scheme shall be deemed to be the benefit salary which applies for any other earlier birthday which it is necessary to take into account for the purposes of the calculation;
- (c) for the purpose of determining the Potential Retirement Benefit the Member's Final Average Salary shall be determined as if the Member was aged 60 on the basis that the Member's Salary remains unchanged from the date of determination to the date the Member would have attained age 60; and
- (d) for the purposes of determining the retirement benefit under Rule 4.1 and the Accrued Statutory Benefit, the Member's Final Average Salary shall not be less than \$20,000 adjusted annually from 30 June 1991 by being multiplied by the Australia Post Wage Index.

Former Contributory Member means a Member who was a Contributory Member of the Scheme immediately prior to 1 July 2000 under this Deed as in force immediately prior to 1 July 2000.

Fractional Time Service means a period of Service where the Member worked less than the minimum number of hours set by his or her Employer for the class or group of Employees of which the Member is part as notified by the Employer to the Trustee.

Full Member means:

- (a) a Former Contributory Member; and
- (b) an Employee who being eligible has applied for and been admitted to membership as a Full Member.

Full-Time Service means Service other than Fractional Time Service.

Fund means all moneys and assets held by or on account of or for the Trustee pursuant to this Deed.

General Fee Rules has the meaning given to it in SIS.

Independent Director means the director (if any) for the time being appointed as contemplated by sub-clause 5.2.3.

Insurer means any body corporate or unincorporated in the Commonwealth of Australia which carries on the business of issuing policies or contracts insuring payment of money on death or on the happening within the duration or term of the policy or contract of disability injury accident or sickness and whether or not such business is carried on alone or in conjunction with any other business ordinarily carried on by an insurance or assurance company and with whom a policy or policies of insurance or assurance has been effected or taken out by the Trustee in respect of benefits payable under this Deed.

Interim Arrangement Act means the Superannuation Benefit (Interim Arrangement) Act 1988 of the Commonwealth of Australia.

Member means a person who has been admitted to membership, and in Rule 10 includes a person referred to in Rule 10(f), but otherwise does not include:

- (a) a Deferred Beneficiary;
- (b) a Beneficiary whose sole entitlement under the Scheme relates to an amount transferred or credited to one or more Beneficiary Accounts established in respect of that Beneficiary in accordance with this Deed and the Rules;
- (c) a person who has died; or
- (d) a person in respect of whom all benefits to which that person could have become entitled under the Scheme have been paid or have otherwise ceased or been terminated.

Member Financed Benefit means that part of any benefit which is determined by the Trustee as representing Member Contributions together with interest thereon pursuant to sub-clause 11.10 and (where applicable in the case of a Member Financed Benefit invested in a Sub-fund of the type referred to in sub-clause 8.4(e)) less such amount (if any) required to be deducted from the Member Financed Benefit from time to time in accordance with rules (if any) established under sub-clause 8.5(c)(ii).

Member Representative Directors means directors of the Trustee of the Scheme appointed by the Unions as contemplated by sub-clause 5.2.2 or deemed to be appointed by the Unions as provided in sub-clause 5.2.4 (as the case may be).

Member Contributions means the contributions to the Scheme by a Member (if any) which in the case of sub-clauses 8.4 and 8.5 shall include:

- (a) any contribution made to the Fund by the Employer in respect of the Member under sub-rule 3.3(d)(ii) on the basis that the contribution is a Member Contribution and not an Employer contribution for the purposes of sub-clauses 8.4 and 8.5;

- (b) any amount transferred to the Fund in respect of the Member under sub-clause 10.1 on the basis that the amount is a Member Contribution and not an Employer contribution for the purposes of sub-clauses 8.4 and 8.5; and
- (c) such other contributions to the Fund as the Trustee (with the approval of the Corporation) determines to treat as Member Contributions for the purposes of sub-clauses 8.4 and 8.5, including without limitation contributions in respect of a Member to an Employer Financed Accumulation Account established under Rule 9 or a Member's Accumulation Account established under Rule 11.

Membership means in relation to a Member the period of continuous membership of the Scheme of the Member counted in days but excludes such periods of leave of absence as determined in accordance with sub-rule 3.4.

Minimum Retirement Age means in relation to a Member 55 years of age.

Minimum Requisite Benefit or MRB means in relation to a Member the benefit in respect of the Member as determined by the Corporation and certified by the Actuary in order to avoid the Employer incurring a liability for a superannuation guarantee shortfall or similar tax or charge in respect of the Member after taking into account the extent to which the Employer's superannuation guarantee obligation is satisfied as a result of the Member being entitled to benefits from another complying superannuation fund.

MySuper Interest means in relation to a Member, the Member's interest in the Scheme that is attributable to a MySuper Product offered by the Trustee.

MySuper Law means the Statutory Requirements and Prudential Standards with which this Deed, the Rules, the Trustee or the Scheme must comply or satisfy (or with which or which in the reasonable opinion of the Trustee this Deed, the Rules, The Trustee or the Scheme should comply) in relation to a MySuper Product, a MySuper Member or a MySuper Interest.

MySuper Member means a Member who, for the time being, holds an interest in the Scheme that is attributable to a MySuper Product.

MySuper Product means a beneficial interest in the Scheme which is governed by Clause 11B.

Non-Lapsing Death Benefit Nomination means, subject to any conditions determined by the Trustee (if any), a nomination, not being a Binding Death Benefit Nomination, by a Member of one or more persons to receive all or part of any benefit payable in respect of the Member's death which is in writing in a form and manner acceptable to the Trustee, and which has not been revoked.

officer means for the purposes of sub-clauses 6.5, 6.6 and 7.12 a director, secretary, executive officer or employee of the relevant entity.

Operational Risk Reserve has the meaning given in sub-clause 6.14.

Potential Retirement Benefit in relation to a deceased Member means an amount equal to:

- (a) the Accrued Retirement Benefit at the date of death; and
- (b) in the case of a Member who was a Full Member at the date of death, an amount equal to 14.3% of the Member's Final Average Salary for each year (and pro rata for each

day any part of the period is less than a complete year) between the date of death and the Member's 60th birthday.

Prescribed Agreement means an agreement or award (including a consent award) that is certified or made by a Commonwealth or State industrial authority on or after 1 July 1986.

Prescribed Requirements means the prescribed requirements (if any) which apply to the provision of benefits for or in relation to one or more Employees under Section 6 of the Superannuation Benefits (Supervisory Mechanisms) Act 1990.

Prescribed Law means a law of the State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act 1901.

Previous Membership means, in the case of a Member who joined the Scheme on the Transfer Date and who was immediately prior to that date a member of the Commonwealth Superannuation Scheme, the Member's period of continuous membership of the Commonwealth Superannuation Scheme counted in days but excludes such periods of leave of absence as the Trustee determines.

Prudential Standards means prudential standards made by the Australian Prudential Regulation Authority under SIS.

Regulator means the Australian Prudential Regulation Authority and/or the Australian Securities and Investments Commission, as the context requires.

Rules means the Rules set out in Schedule 1 as the same may be altered, added to or repealed from time to time and for the time being in force.

Salary means in relation to a Member an amount determined from time to time as required for the purposes of the Scheme by the Employer with the approval of the Trustee having regard to the relevant provisions of the Superannuation Act 1976 applicable for determining the salary of a Member for the purposes of the Commonwealth Superannuation Scheme **PROVIDED THAT** in any particular case the Employer may from time to time and at any time certify to the Trustee that some other amount shall be the Member's Salary for the purposes of the Scheme for the time being.

Scheme means the superannuation scheme called **AUSTRALIA POST SUPERANNUATION SCHEME** established by this Deed.

Service means employment with an Employer.

Service Fraction means in relation to a Member that fraction that the number of hours the Member works bears to the minimum number of hours set by his or her Employer for the class or group of Employees of which the Member is part.

SIS means the Superannuation Industry (Supervision) Act 1993 of the Commonwealth of Australia and includes any regulations prescribed thereunder.

Spouse means a person who is for the time being or was at the date of death of the Member, in the opinion of the Trustee:

- (i) legally married to the Member;

- (ii) (whether of the same or a different sex) in a relationship with the Member that is registered under a Prescribed Law as a prescribed kind of relationship;
- (iii) not legally married to the Member, but was living with the Member on a genuine domestic basis in a relationship as a couple within the meaning of Superannuation Law.

Statutory Benefit means in relation to a Member a benefit arising from compulsory employer contributions pursuant to a Prescribed Agreement, a Superannuation Agreement or legislation.

Sub-fund means a sub-fund established by the Trustee pursuant to sub-clause 8.4.

Superannuation Agreement means an agreement, award or order that requires the making of contributions to a superannuation or similar fund or arrangement by an Employer in respect of its Employees other than in accordance with this Deed but does not include a Prescribed Agreement.

Superannuation Authority means any person or body appointed under any Superannuation Law who is empowered under that legislation or some other legislation to:

- (a) exercise any discretion;
- (b) give any consent or approval; or
- (c) give effect to and administer the Superannuation Law.

Superannuation Charge Law means any Federal or State Law which imposes a charge, levy or tax upon employers if a minimum level of superannuation benefit (whether by way of a minimum level of contribution or otherwise) is not provided in respect of an employee within the meaning of the legislation.

Superannuation Complaints Tribunal means the tribunal established by the Superannuation (Resolution of Complaints) Act 1993 of the Commonwealth of Australia.

Superannuation Law means Superannuation Requirements in any of:

- (a) SIS;
- (b) the Superannuation Entities (Taxation) Act 1993;
- (c) the Tax Act;
- (d) the Superannuation Charge Laws of the Commonwealth of Australia;
- (e) the Corporations Act;
- (f) the Family Law Act;
- (g) any other present or future law of the Commonwealth of Australia or any State or Territory of it which the Trustee with the approval of the Corporation determines to be a Superannuation Law for the purposes of this Deed;
- (h) regulations and statutory instruments made or issued under any of the acts specified in paragraphs (a) to (g) (inclusive) and all other requirements, whether legislative or otherwise, including (without limitation):

- (i) any standards, administrative guidelines, rulings or determinations made or laid down by a Superannuation Authority; and
 - (ii) statements by the government of the Commonwealth of Australia or any State or Territory (as the case may be) advising changes and proposed changes to Superannuation Law; and
- (i) a statutory instrument which replaces any of the acts specified in paragraphs (a) to (g) (inclusive) or regulations specified in paragraph (h), or has the same effect, in whole or in part (whether or not passed or approved by the same legislative or other relevant authority and whether or not incorporating or adopting any law previously in force).

Superannuation Requirement means a requirement with which or which the Scheme, this Deed or the Trustee must comply or satisfy (or with which or which, in the reasonable opinion of the Trustee, the Scheme, this Deed or the Trustee ought comply or satisfy) in order to be a complying superannuation fund for the purposes of the Tax Act or in order to secure or better secure any concession in respect of any tax or other government impost granted or available to the Scheme or in order to avoid what the Trustee may consider to be a relevant penalty, detriment or disadvantage.

Tax Act means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth of Australia and includes any regulations prescribed thereunder.

Temporary Incapacity has the meaning given to it in SIS.

Terminal Medical Condition has the meaning given to it in SIS.

Total Accrued Benefit Value means 120% of the aggregate value as determined by the Actuary of the benefits presently or prospectively payable under the Scheme in respect of all Members and other persons entitled under the Scheme as at the date of determination to the extent that such benefits have accrued in respect of the period prior to the date of determination.

Total Fund Value means the total market value as determined by the Actuary of all the assets of the Fund as at the date of determination.

Total and Permanent Disablement means:

- (a) in relation to a Member who last became a Member of the Scheme on or before 30 June 2014, disablement due to illness or injury as a result of which:
 - (i) the Member has suffered while a Member the loss of two limbs or the sight of both eyes or the loss of one limb and the sight of one eye (where limb is defined as the whole hand or the whole foot); or
 - (ii) (1) the Member has been continuously absent from work for a period of not less than six months or such lesser period (if any) as may be agreed between the Corporation and the Trustee from time to time either generally or in any particular case; and
 - (2) the Trustee receives a certificate signed on behalf of the Claims Assessor to the effect that in the opinion of the Claims Assessor the

Member is incapacitated to such an extent as to render the Member unlikely ever to engage in regular employment for which the Member is, for the time being, reasonably qualified by reason of education, training or experience,

- (b) in relation to a Member who was admitted to membership of the Scheme on or after 1 July 2014, ill-health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

PROVIDED THAT unless the Corporation otherwise determines, either generally or in any particular case, Total and Permanent Disablement shall not include disablement as a result of illness or injury which in the opinion of the Claims Assessor or, if there is for the time being no Claims Assessor, the Trustee, has been inflicted, incurred or aggravated for the purposes of obtaining a benefit under the Scheme.

PROVIDED FURTHER THAT where pursuant to this Deed the Trustee has effected a policy of insurance under which insurance is or may become payable in respect of the disablement of the Member or group of Members the Trustee shall determine that Total and Permanent Disablement shall have the same meaning as is given to those words for the purposes of such policy in which event any determination by the relevant insurer as to whether or not a Member is so disabled in terms of such policy shall be binding on all persons interested for the purposes of the Deed.

Transfer Date means 1 July 1990 or such other date as the Trustee shall determine either generally or for any particular Member or class of Members.

Transferred Amount means in relation to a Member who transferred to the Scheme from the Commonwealth Superannuation Scheme with effect from the Transfer Date an amount including the Deferred Transfer Value agreed between the Trustee and the Commonwealth Superannuation Scheme in respect of his or her membership of the Commonwealth Superannuation Scheme.

Trustee means the trustee or trustees for the time being of the Fund whether initial, additional or substituted.

Union means one of the Unions and where the context admits includes an organisation at present known as the Australian Council of Trade Unions.

Unions means each of the Communication Workers' Union of Australia, the Public Service and Broadcasting Union Australian Government Employment and the Australian Council of Trade Unions and includes any union which in the opinion of the Corporation is formed as a result of a reorganisation or amalgamation of any of them.

Year of Income means the year ending on 30 June of each year or any other date as determined by the Trustee from time to time and approved by the Corporation and the Regulator.

2A. Overriding prudential requirements

2A.1 Election of Superannuation Law

The Trustee may, where permitted by Superannuation Law, elect (in such form and within such period as may be required by Superannuation Law) that Superannuation Law is to apply in relation to the Scheme. An election may be made pursuant to this Clause even though the election may be irrevocable.

2A.2 Superannuation Law taken to be included in Deed

Notwithstanding any provision of this Deed, any provision of Superannuation Law that is required to be included in this Deed for the Scheme to remain or to be a complying superannuation fund for the purposes of the Tax Act, or for the Scheme to comply with or satisfy other requirements of Superannuation Law, shall be taken to be included in this Deed as if every such provision was set out in this Deed on and from the date that the provision is required to be so included.

2A.3 Inconsistency of provisions

In the event of any inconsistency between any of the provisions taken by Clause 2A.2 or 19.1 (as the case may be) to be included in this Deed and the other terms of this Deed, the provisions taken to be included by Clause 2A.2 or 19.1 (as the case may be) shall prevail.

2A.4 Power to comply with Superannuation Law

The Trustee has power to comply with any requirement or provision of Superannuation Law including, without limitation, any requirement or provision in relation to:

- (a) equal representation;
- (b) proceedings of the Trustee;
- (c) maintaining reserves of the Fund;
- (d) borrowing money or maintaining an existing borrowing;
- (e) investing the assets of the Fund;
- (f) in-house assets;
- (g) acquiring assets from Members or their relatives;
- (h) providing financial assistance to Members or their relatives;
- (i) appointing investment managers and custodian trustees;
- (j) requiring investment managers to provide information to the Trustee;
- (k) establishing procedures for dealing with enquiries into, or complaints about, the operation and management of the Scheme;
- (l) keeping and retaining records and reports in relation to the Scheme;
- (m) reporting significant adverse events in relation to the Scheme;
- (n) preparing statements in relation to the Scheme;

- (o) providing information about the Scheme to Members, Employers, the Regulator, members of staff of the Regulator and other persons;
- (p) complying with notices and requests in relation to the Scheme;
- (q) acceptance of contributions by the Scheme;
- (r) payment of benefits, including (without limitation) payment of unclaimed benefits and payment of benefits to an eligible rollover fund;
- (s) collection of tax file numbers;
- (t) any mergers of the Scheme with other superannuation funds;
- (u) payments out of the Scheme to an Employer; and
- (v) winding up of the Scheme.

3. Purposes of the Scheme

The purposes of the Scheme are:

- (a) to provide superannuation benefits for Members upon their retirement from Service and on the death of Members for their Dependants; and
- (b) such ancillary purposes as approved by the Regulator.

4. Constitution of the Fund

The Fund shall consist of:

- (a) all investments, cash and other assets transferred to the Trustee pursuant to the provisions of this Deed;
- (b) all contributions by Members pursuant to this Deed;
- (c) all amounts contributed or paid by an Employer to the Trustee;
- (d) any grants or other gifts, donations, legacies or other benefactions by whomsoever made; and
- (e) the income earned by the investments and other assets and by investment of the said contributions, amounts or assets transferred, grants, gifts, donations, legacies and benefactions and any other profits, gains or accretions earned or derived therefrom.

5. Trusteeship

5.1 Eligibility and appointment

5.1.1 Eligibility

The Trustee shall be a Constitutional Corporation.

5.1.2 Appointment and removal

- (a) The power of appointment and removal of the Trustee shall be vested in the Corporation, which power shall not be exercised without prior consultation with the Australian Council of Trade Unions and other than in such circumstances as are permitted under Superannuation Law.
- (b) The Corporation shall not intentionally appoint a Disqualified Person as Trustee.

5.1.3 Compliance with Superannuation Law

The Corporation and the Trustee shall each take such action as they consider necessary and appropriate to ensure that the Trustee is constituted in a manner which complies with Superannuation Law including, without limitation, appropriate action in respect of the Memorandum and Articles of Association of the Trustee and the appointment and composition of and filling of vacancies on the board of directors of the Trustee. The Trustee shall establish rules setting out procedures for appointment and removal of the Member Representative Directors and shall publish those rules in such manner as may be required under or may satisfy Superannuation Law.

5.1.4 Termination of Trusteeship

A Trustee for the time being shall hold office until the earliest of:

- (a) its retirement from that office by notice in writing to the Corporation and the Unions;
- (b) its removal from that office by the Corporation after prior consultation with the Australian Council of Trade Unions in such circumstances as are permitted under Superannuation Law;
- (c) it becoming a Disqualified Person or otherwise disqualified from office by operation of law;
- (d) the appointment of a receiver, receiver and manager or liquidator in respect of it or the whole or any part of its property or the approval by a court of a scheme of arrangement providing for its dissolution other than for the purpose of reconstruction (notwithstanding that it has not thereby become a Disqualified Person);
- (e) it entering into a compromise, arrangement or scheme of arrangement with or for its creditors or any class of them (notwithstanding that it has not thereby become a Disqualified Person); and
- (f) the lodgement of a petition or an order being made or a resolution being passed for the liquidation or winding up of the Trustee or the placing of the Trustee under official management or the Trustee going into voluntary administration (notwithstanding that it has not thereby become a Disqualified Person).

5.1.5 Retirement of Trustee

- (a) If the office of Trustee becomes vacant the Corporation shall subject to Superannuation Law after prior consultation with the Australian Council of Trade Unions by deed appoint another Constitutional Corporation to act as Trustee in accordance with this Clause.
- (b) Upon termination of office under sub-clause 5.1.4 of this Clause, the Trustee shall subject to sub-clause 5.1.6 of this Clause be deemed to be discharged from the trusts

of this Deed and the duties and obligations of a Trustee under this Deed at the time and on the date of termination of office.

- (c) Upon termination of office under sub-clause 5.1.4 of this Clause, the Trustee shall thereupon do everything necessary to vest the Fund in the Trustee appointed in its stead and shall forthwith deliver all records and documents held by it in relation to the Scheme to the new Trustee.

5.1.6 Antecedent breach by Trustee

Nothing contained in this Deed shall relieve a Constitutional Corporation which ceases to be Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

5.1.7 Consultation with Australian Council of Trade Unions

For the purposes of paragraph (a) of sub-clause 5.1.2, paragraph (b) of sub-clause 5.1.4 and paragraph (a) of sub-clause 5.1.5, a consultation with the Australian Council of Trade Unions shall be deemed to have occurred:

- (i) if at least seven clear days notice of the proposed appointment or removal (as the case may be) has been given to the Secretary of the Australian Council of Trade Unions and neither sub-paragraph (ii) nor (iii) hereof apply;
- (ii) if the Secretary of the Australian Council of Trade Unions requests a meeting to discuss the proposed appointment or removal (as the case may be) within the seven clear days period referred to in sub-paragraph (i) hereof and that meeting is held within thirty clear days of the giving of the notice referred to in sub-paragraph (i) hereof or the thirty clear day period expires without a meeting being convened; or
- (iii) if the Secretary of the Australian Council of Trade Unions certifies that a consultation has occurred or that a consultation is not necessary.

5.2 Articles of Association of Trustee

5.2.1 Provision in Articles

Without limiting the generality of sub-clause 5.1.3, the Articles of Association of the Trustee shall include provision for the matters set out in this sub-clause 5.2.

5.2.2 Equal representation

- (a) The board of directors of the Trustee shall consist of a minimum of six directors and shall, subject to sub-clause 5.2.3, be composed of equal numbers of representatives of the Corporation and representatives of the Members, of whom:
- (i) three shall be appointed by the Corporation;
- (ii) one shall be appointed by the board of directors of the Trustee at the direction of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia in accordance with the Appointment Rules;
- (iii) one shall be appointed by the board of directors of the Trustee at the direction of the Community and Public Sector Union in accordance with the Appointment Rules; and

(iv) one shall be appointed by the board of directors of the Trustee at the direction of the Australian Council of Trade Unions in accordance with the Appointment Rules as representing Employees whose interests are represented by unions other than the Unions referred to in sub-paragraphs (ii) and (iii) hereof.

(b) The board of directors of the Trustee shall, on the written request of the Corporation, increase (to a maximum of thirteen) or reduce (to a minimum of six or, where there is an Independent Director, seven) the number of directors of the Trustee. If the number of directors is reduced, the Employer Representative Directors who are required to vacate their offices shall be determined by the Corporation, and the Member Representative Directors who are required to vacate their offices shall be determined in accordance with the Appointment Rules.

5.2.3 Independent director

An Independent Director, being a person eligible to be an independent director for the purposes of Superannuation Law, shall be appointed by the directors holding office for the time being if such an appointment is requested by the Employer Representative Directors or the Member Representative Directors.

5.2.4 Initial directors upon Trustee commencing to hold office

Upon PostSuper Pty Ltd first commencing to hold office as Trustee:

- (a) Gerald Patrick Ryan, Angus James McKenzie and Cordell Albert Short shall be deemed to have been appointed by the Corporation;
- (b) Brian Keith Baulk shall be deemed to have been appointed by the Communication Workers' Union of Australia;
- (c) Peter Anthony Norman shall be deemed to have been appointed by the Public Service and Broadcasting Union Australian Government Employment;
- (d) Edward John Minnis shall be deemed to have been appointed by the Australian Council of Trade Unions; and
- (e) John Charles Chappell shall be deemed to have been appointed by the directors of the Trustee as an Independent Director.

5.2.5 Term of office of directors

A director shall hold office until the earliest of:

- (a) in the case of an Employer Representative Director:
 - (i) his or her retirement from office by notice in writing to the board of directors and to the Corporation;
 - (ii) the expiration of the term for which he or she was appointed by the Corporation;
 - (iii) his or her being removed by notice in writing to the Trustee from the Corporation;
- (b) in the case of a Member Representative Director:

- (i) his or her retirement from office by notice in writing to the board of directors and to the Union at whose direction he or she was appointed;
 - (ii) the expiration of the term for which he or she was appointed under the Appointment Rules;
 - (iii) his or her appointment being terminated in such manner as is provided in the Appointment Rules;
- (c) in the case of an Independent Director:
- (i) his or her retirement from office by notice in writing to each of the other directors;
 - (ii) the expiration of the term for which he or she was appointed by the board of directors;
 - (iii) his or her being removed from office by the Trustee upon a resolution passed by at least two-thirds of the Employer Representative Directors and Member Representative Directors;
 - (iv) his or her ceasing to be eligible to be an independent director for the purposes of Superannuation Law;
- (d) the director's death;
- (e) the director's suffering mental or physical incapacity; or
- (f) the director's becoming a disqualified person within the meaning of Superannuation Law.

5.2.6 Re-appointment

A director who has ceased to hold office by reason of the expiration of the term for which he or she was appointed shall be eligible for re-appointment.

5.2.7 Alternate directors

A Member Representative Director shall be entitled to appoint an alternate director in accordance with the Appointment Rules, and an Employer Representative Director shall be entitled to appoint an alternate director by notice in writing.

5.2.8 Chairman of directors

- (a) If there is an Independent Director, then he or she shall be chairman and shall act as chairman of meetings of the board of directors of the Trustee. If the Independent Director is not present at a meeting or is unwilling to act as chairman then the directors shall choose one of their number to be chairman for that meeting.
- (b) If there is not an Independent Director, then the directors shall choose one of their number to be chairman and the directors shall have power from time to time to remove any chairman so appointed and appoint another in his or her stead.
- (c) The Independent Director (whether or not acting as chairman) shall have a deliberative but not a casting vote at meetings.

5.2.9 Decisions of the directors

A decision of the directors shall require not less than two-thirds or such greater proportion of the directors then holding office as prescribed by Superannuation Law to have voted in favour of the decision.

5.2.10 Directors' meetings and decisions

- (a) Any director may at any time convene a meeting of the directors to be held during the hours of business of the Corporation by giving 48 hours' notice, or such notice as the directors may decide from time to time, to each of the other directors (except directors who are reasonably believed by the director convening the meeting to be outside Australia), such notice stating the time and place for the meeting.
- (b) The directors shall comply with any relevant requirements of Superannuation Law in relation to meetings of directors but otherwise may meet together for the despatch of business and adjourn or otherwise regulate their meetings as they think fit.
- (c) Two-thirds of the directors then holding office shall constitute a quorum for a meeting of directors.
- (d) At a meeting of directors each director shall have only one vote.
- (e) The directors shall keep or cause to be kept proper minutes of all meetings. The minutes signed by the chairman of such meeting or by the chairman of the next succeeding meeting thereof shall be receivable as prima facie evidence of the matters stated therein.
- (f) A resolution in writing signed by all the directors at the relevant time in Australia, being at least two-thirds of the directors, shall be as valid and effective as a resolution passed at a duly convened meeting of the directors and it may consist of several documents in a like form each signed by one or more of the directors.

6. Administration

6.1 Management and administration

The general control management and administration of the Scheme shall be vested in the Trustee who shall administer the Scheme in accordance with this Deed.

6.2 Decisions, directions and discretions

6.2.1 Method of giving consent, approval or decision

Any consent approval or decision which is or may be required to be given or made for the purposes of the Scheme by the Corporation or an Employer shall be in writing and shall be signed for and on behalf of:

- (a) the Corporation by a duly authorised officer nominated by the Corporation;
- (b) an Employer by a person who the Employer for the time being nominates to the Trustee as the Employer's authorised officer.

The giving withholding or the making of any consent approval or decision shall be in the absolute discretion of the Corporation or the Employer as the case may require.

6.2.2 Trustee not to be subject to direction

Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), no provision of this Deed shall be construed as permitting the Trustee to be subject, in the exercise of any of the Trustee's powers under this Deed, to direction by any other person to the extent that, in the opinion of the Trustee, such provision will or may contravene Superannuation Law.

6.2.3 Exercise of discretion by person other than the Trustee

- (a) Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), no provision of this Deed shall be construed as permitting a discretion under this Deed that is exercisable by a person other than the Trustee to be exercised without the consent of the Trustee to the extent that, in the opinion of the Trustee, such provision will or may contravene Superannuation Law.
- (b) To the extent that any provision of this Deed provides for the exercise of a discretion by a person other than the Trustee, the exercise of which discretion without the consent of the Trustee would or might contravene Superannuation Law, that discretion may be exercised by that person with the consent of the Trustee, but not otherwise and the Trustee may give its consent to the exercise of such discretion.

6.3 Expenses

All expenses and costs incurred (including, without limitation, income tax and other taxes, expenses and costs incurred by the Employers) in relation to the establishment and administration of the Scheme shall be paid out of the Fund except to the extent that such expenses and costs are met by an Employer on the basis that such expenses and costs are not to be reimbursed and except to the extent that they consist of remuneration paid to the Trustee, in which case they shall be met by the Corporation. Where the Trustee is reasonably satisfied that an Employer has incurred any expenses and costs in relation to the administration of the Scheme (other than such expenses and costs which are incurred on the basis that they are not to be reimbursed) the Employer shall be entitled to be reimbursed in relation thereto.

6.4 Remuneration

The Trustee shall be paid remuneration of such amount and at such intervals as the Trustee and the Corporation shall from time to time agree.

6.5 No conflict

No Member or Employee or officer of any Employer who is a director or other officer of the Trustee shall be disqualified from exercising any power, authority or discretion vested in the Trustee by reason of his or her membership or dual capacity.

6.6 Officers

The Trustee shall with the prior consent of the Corporation be entitled to appoint as officers or servants of the Scheme such persons as the Trustee shall from time to time require for the

proper administration thereof and to pay the remuneration and other expenses properly attributable to their employment out of the Fund.

6.7 Records and statistics

- (a) The Trustee shall keep a complete record of all Members and all information and data necessary or expedient for the proper and efficient working of the Scheme and the carrying out of this Deed.
- (b) The Trustee shall comply with any relevant requirement of Superannuation Law in relation to the keeping and retention of records relating to the operations of the Scheme.

6.8 Auditor

The Trustee shall appoint an Auditor to the Scheme on such terms and conditions and for such period as the Trustee thinks fit. The Trustee may remove the Auditor and appoint another in his or her stead. The Trustee shall be entitled to pay the Auditor's remuneration and other proper expenses out of the Fund.

6.9 Books of account and reports

- (a) The Trustee shall cause proper books of account to be kept showing all the dealings with the assets of the Fund and an account and balance sheet of the Fund made up to the end of each Year of Income shall be prepared, and audited by the Auditor.
- (b) As soon as possible after the accounts and balance sheet of the Fund are audited the Trustee shall cause to be circulated to each Employer a copy of the said accounts and balance sheet together with a copy of the Auditor's report and a report of the Trustee. Each Employer shall keep copies of the said accounts and balance sheet and reports available for inspection by Members employed by it and will inform Members where the same may be inspected.
- (c) The report of the Trustee shall contain such information (if any) as is required by Superannuation Law.

6.10 Actuary

The Trustee shall with the approval of the Corporation appoint an Actuary to the Scheme on such terms and conditions and for such period as the Trustee thinks fit. The Trustee may with the approval of the Corporation remove the Actuary and appoint another in his or her stead. The Trustee shall be entitled to pay the Actuary's remuneration and other proper expenses out of the Fund.

6.11 Actuarial investigation

The Trustee shall cause the Actuary to make an actuarial investigation of the Scheme and valuation of the Fund at such intervals as may from time to time be required by Superannuation Law, or at such shorter intervals as the Trustee may require. The Trustee, each Employer and each Member shall supply the Actuary with all such accounts and information as the Actuary may require. The Actuary shall furnish to the Trustee a report in

writing as to the investigation, valuation and financial position of the Scheme. The report of the Actuary shall be in such form and shall include such matters as required by Superannuation Law.

6.12 Receipts

The receipt of the Trustee or of the Secretary given on their behalf for any moneys payable to the Fund shall be a sufficient discharge to the person by whom those moneys were paid.

6.13 Information to Members and the Regulator

The Trustee shall comply with the relevant requirements of Superannuation Law in relation to the provision of information, reports and documents including extracts of documents to:

- (a) Members and other persons entitled to the same; and
- (b) the Regulator.

6.14 Operational Risk Reserve

(a) Notwithstanding anything expressed or implied to the contrary in this Deed but subject to Superannuation Law, the Trustee will establish and maintain a reserve within the Fund to cover losses arising from operational risks relating to the Scheme (the **Operational Risk Reserve**) in accordance with Superannuation Law and on the following terms:

- (i) the Operational Risk Reserve will be separately identifiable from any Sub-fund established under Clause 8.4 (with the exception of any Sub-funds in respect of assets of the Operational Risk Reserve established by the Trustee under sub-clause 6.14(b)(iii)), any accounts maintained for Members or Beneficiaries under this Deed and any other reserves held within the Fund; and
- (ii) amounts held in the Operational Risk Reserve will only be available to meet losses arising from an 'operational risk event' relating to the Scheme (within the meaning of Superannuation Law) or such other uses or purposes as may be required or permitted under Superannuation Law.

(b) In order to give effect to this sub-clause 6.14, the Trustee shall have power to:

- (i) comply with any requirement or provision of Superannuation Law;
- (ii) at any time and from time to time, having regard to the advice of the Actuary:
 - (A) prescribe, establish, approve or implement any rules, policies, strategies, plans, procedures or other arrangements relating to the establishment, maintenance and operation of the Operational Risk Reserve (collectively, **Procedures**) ; and
 - (B) amend, revoke or otherwise alter such Procedures, including, without limitation, Procedures in relation to:
 - (1) the times, circumstances or manner in which the Trustee will transfer or otherwise allocate amounts within the Fund to the Operational

Risk Reserve, including by taking such amounts into account when determining any rate or rates of interest under sub-clause 11.10;

- (2) the investment strategy and investment arrangements to apply to assets in the Operational Risk Reserve from time to time;
- (3) the process for determining whether and how amounts in the Operational Risk reserve can be called on; and
- (4) the replenishment of the Operational Risk Reserve, the redistribution or reallocation of amounts within the Operational Risk Reserve to other parts of the Fund, and the management and administration of the Operational Risk Reserve upon the termination of the Scheme,

PROVIDED THAT such Procedures are not inconsistent with the provisions of this sub-clause 6.14 or Superannuation Law and **PROVIDED FURTHER THAT** no such Procedures may require or permit any reduction or adverse alteration to a Member's or Beneficiary's right or claim to accrued benefits, or the amount of those accrued benefits, as at the effective date of such Procedures or a relevant amendment thereto, except to the extent that this would not contravene Superannuation Law;

- (iii) establish one or more Sub-funds under sub-clause 8.4 in respect of assets in the Operational Risk Reserve; and
- (iv) do such other acts and things as may in the opinion of the Trustee be necessary or desirable in order to give effect to this sub-clause 6.14 or any relevant requirement or provision of Superannuation Law.

7. Trustee powers

7.1 Committees

The Trustee may appoint one or more committees on which the Trustee may confer such duties as the Trustee from time to time thinks fit. The members of any such committee shall be removable from office by the Trustee at any time. Any committee so appointed shall at all times and in all things be and remain subject to and conform with the directions of the Trustee. The Trustee shall not be liable for any breach of duty or other wrongful act of any committee or of any member of any committee.

7.2 Contracts

The Trustee may enter into and execute all contracts, deeds and documents and do all acts, matters and things which the Trustee may deem expedient for the purpose of securing the benefits to be provided under the Scheme and for otherwise effectuating and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.

7.3 Power to effect policies

- (a) The Trustee shall have power to effect or take out at the expense of the Fund from time to time one or more term or other policies or contracts with one or more

insurance companies or reinsurance companies to secure in whole or in part any of the benefits payable under the Scheme and to continue or renew or arrange for the continuance or renewal of all or any of such policies or contracts for such period or periods as the Trustee may think fit. The Trustee may also agree from time to time with the insurance company or reinsurance company concerned for any policy or contract to be varied or modified.

- (b) The Trustee shall have power to effect or take out at the expense of the Fund from time to time one or more policies or contracts with one or more insurance companies or reinsurance companies to protect:
- (i) the Fund; and
 - (ii) each of the directors and other officers of the Trustee in respect of liabilities incurred by them or any of them in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed,

and to continue or renew or arrange for the continuance or renewal of all or any of such policies or contracts for such period or periods as the Trustee may think fit. The Trustee may also agree from time to time with the insurance company or reinsurance company concerned for any policy or contract to be varied or modified.

7.4 Bank accounts

The Trustee may open and operate such bank and other accounts as it thinks desirable and all cheques and other negotiable or transferable instruments and all receipts for money paid to the Fund shall be drawn, accepted, endorsed or otherwise executed in such manner as the Trustee from time to time determines.

7.5 Power to borrow

Subject to Superannuation Law, the Trustee shall have power whenever it thinks fit in the interests of the Scheme to raise or borrow sums of money and secure the repayment of any moneys so raised or borrowed in such manner and upon such terms and conditions as the Trustee thinks fit.

7.6 Power to deduct tax, levies

- (a) The Trustee shall have power to deduct any amount in respect of any tax which in the opinion of the Trustee is or may be liable to be payable from the Fund in respect of contributions to or income or realised capital gains of the Fund or otherwise assessable in relation to the Fund and shall have power to credit the amounts so deducted to an account in the books of the Fund pending payment thereof to the relevant government authority and the Trustee shall be released and discharged in respect of the amount so deducted and paid.
- (b) The Trustee shall make any levy payment or other payment out of the Fund as is required by Superannuation Law from time to time to be made and shall have power to deduct any amount in respect of any such levy payment or other payment of any nature or description as is assessed, imposed or otherwise payable, or in the opinion

of the Trustee is likely to be assessed, imposed or otherwise become payable in relation to the Fund and shall have power to debit such an amount to any account in the books of the Fund, or deduct such an amount from any moneys held in the Fund or any benefit payable from the Fund and to credit the amounts so deducted to an account in the books of the Fund pending payment thereof to the relevant government authority and the Trustee shall be released and discharged in respect of the amount so deducted and paid.

- (c) The Trustee shall have power to deduct from any benefit payable under the Scheme such amount as the Trustee considers is appropriate in respect of income tax or other tax payable in respect of such benefit and upon payment of the amount so deducted to the relevant government authority the Trustee shall be released and discharged in respect of the amount so deducted and paid.

7.7 Powers and discretions

The Trustee in the exercise of the authorities, powers and discretions conferred upon the Trustee by this Deed shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of their authorities, powers and discretions from time to time and at any time or may refrain from exercising all or any of the same from time to time or at all.

7.8 Delegation by Trustee

The Trustee may delegate any trust, authority, power and discretion exercisable by the Trustee (including one which the Trustee may have a duty to exercise or perform and the power of delegation) to any person in such manner upon such terms and conditions as the Trustee thinks fit. The Trustee may vary or revoke any such delegation as the Trustee thinks fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

7.9 Legal proceedings

The Trustee shall have power to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Scheme or otherwise concerning the Scheme or this Deed generally and also to compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund.

7.10 Arbitration

The Trustee shall have power to refer any claims or demands by or against the Scheme to arbitration and to observe and perform the awards.

7.11 Trustee may act on advice

The Trustee may act on the advice or opinion of any actuary, consultant, claims assessor, barrister, solicitor, broker, accountant, medical practitioner or other professional person (whether or not such advice or opinion shall be or have been obtained by the Trustee) and shall not be responsible for any loss occasioned by so acting.

7.12 Indemnity

- (a) The Trustee and each officer of the Trustee shall be indemnified to the extent of the Fund against all liabilities incurred by them or it or any of them in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed.
- (b) The Trustee shall have a lien on and may use any moneys for the time being in its hands for such indemnity and generally for the payment of all proper legal and other costs, charges and expenses of administering the Scheme or otherwise performing their duties under this Deed.
- (c) Without affecting the generality of this sub-clause the indemnity provided by this sub-clause shall apply to any payment made to any person whom the Trustee bona fide believed to be entitled to the same although such person was not entitled to the same or all of the same.
- (d) Under no circumstances whatsoever shall the Trustee, the officers of the Trustee or the members of any committee established by the Trustee or any of them be in any way liable or responsible in the event of the Fund proving insufficient for any reason to provide the benefits specified in this Deed or any part of such benefits.
- (e) This Clause is subject to Superannuation Law. Accordingly, notwithstanding the foregoing provisions of this Clause:
 - (i) no lien shall be exercised pursuant to this Clause to the extent that in the opinion of the Trustee to do so will or may contravene any requirement of Superannuation Law; and
 - (ii) any exemption from, or indemnification against, liability is subject to sub-clause (f) of this Clause.
- (f) Any exemption from, or indemnification against, liability provided in this Deed shall not apply to the extent prohibited by Superannuation Law. In particular, but without limiting the generality of the foregoing, no Trustee and no director or other officer of the Trustee shall be exempted from, or indemnified against:
 - (i) liability for breach of trust if the Trustee or that director or other officer (as the case may be):
 - (A) fails to act honestly in a matter concerning the Fund; or
 - (B) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or director or other officer was required to exercise; or
 - (ii) liability for a monetary penalty under a civil penalty order (the term ***civil penalty order*** bearing the meaning given to that term in SIS).

8. Investments

8.1 Investment power

- (a) So much of the moneys of the Fund as is not directly required for any other purpose shall as soon as practicable be invested as a common fund or as one or more Sub-funds of the Fund as provided in clause 8.4 in or upon such investments or property of whatsoever nature and wheresoever and whether involving liability or not and whether producing income or not or upon such personal credit with or without security as the Trustee shall in its absolute discretion think fit as if the Trustee were the beneficial owner thereof with power from time to time to sell or get in any such investments or property and to vary or transpose them for other investments or property of the kind hereby authorised. Notwithstanding the generality of the foregoing, the Trustee shall have power exercisable in such manner as the Trustee shall in its absolute discretion think fit to enter into (whether for the purpose of hedging the investments of the Scheme or otherwise) and carry out and perform obligations under agreements relating to or otherwise acquire rights in respect of any options, futures or forward market, any index traded on an options, futures or forward market, currency hedging arrangements, interest rate swaps, derivative transactions and any other similar transactions of whatsoever nature, and to undertake any other activity for the purpose of making a profit or gain.
- (b) The Trustee may underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any of the authorised investments hereunder and may in exercise of the Trustee's powers of delegation under this Clause give to any investment manager appointed under this Clause general authority to enter into and carry out underwriting or sub-underwriting agreements and the like whether for the Scheme alone or for the Scheme in conjunction with other funds and institutions.

8.2 Custodian Trustees & Investment Managers

- (a) The Trustee shall have power to appoint from time to time such one or more persons, firms or companies as the Trustee thinks fit to act either as custodian trustee or investment manager or both subject to such conditions as the Trustee may from time to time determine and may delegate to and confer upon each such custodian trustee or investment manager such authorities, powers and discretions as the Trustee thinks fit. Notwithstanding the generality of the foregoing, the Trustee shall not appoint or continue the appointment of any custodian trustee or investment manager which is prohibited by Superannuation Law from being or acting as a custodian trustee or as an investment manager (as the case may be).
- (b) The Trustee shall not be liable or responsible for any act, omission, error of judgment, negligence or breach of trust of any custodian trustee or investment manager and shall not be bound to take proceedings against any custodian trustee or investment manager in respect thereof.

- (c) The Trustee shall have power to pay out of the Fund to any such custodian trustee or investment manager such remuneration for his, her, its or their services as the Trustee considers proper.
- (d) The Trustee shall also have power to remove from time to time any such custodian trustee or investment manager.
- (e) No such custodian trustee or investment manager shall be entitled to take any part in the proceedings or deliberations of the Trustee.
- (f) Notwithstanding anything contained in paragraphs (a) and (d) of this sub-clause, the Corporation may from time to time give to the Trustee written notice stating that, on and from the date specified for the purpose in that notice, the Trustee shall not without the consent of the Corporation make any appointment pursuant to paragraph (a) of this sub-clause or effect any removal pursuant to paragraph (d) of this sub-clause. Such a notice shall be binding on the Trustee and shall remain in effect until it is revoked by a further written notice given by the Corporation to the Trustee.

8.3 Additional powers relating to Investments

The powers of investment, selling, getting in, variation and transposal referred to in this Clause shall be exercised and carried out either by the Trustee or by one or more custodian trustees or investment managers as aforesaid as the Trustee may from time to time determine.

8.4 Investment in Sub-funds

- (a) The Trustee may with the approval of the Corporation establish and subject to this sub-clause invest the assets of the Fund in one or more Sub-funds designated in such manner as the Trustee with the approval of the Corporation determines.
- (b) In respect of any Sub-fund which represents Employer contributions to the Fund which are not mandated employer contributions for the purposes of Superannuation Law the Trustee shall invest the assets of that Sub-fund in accordance with such guidelines or directions as the Corporation may from time to time by notice prescribe or give to the extent only that the following or carrying out by the Trustee of such guidelines or directions shall not cause the Scheme to be in breach of or to fail to comply with any relevant requirement of Superannuation Law, and while no such guidelines or directions are in effect, the Trustee shall invest the assets of that Sub-fund in such manner as it shall determine.
- (c) In respect of any Sub-fund which represents Employer contributions to the Fund which are mandated employer contributions for the purposes of Superannuation Law, the Trustee shall invest the assets of that Sub-fund in the same manner as the assets of a Sub-fund are invested pursuant to paragraph (b) of this sub-clause, or as the Trustee may otherwise determine with the approval of the Corporation.
- (d) In respect of any Sub-fund which represents Member Contributions to the Fund which are not subject to investment under paragraph (e) of this sub-clause, the Trustee shall invest the assets of that Sub-fund in such manner as it shall determine.

- (e) In respect of any Sub-fund which represents Member Contributions to the Fund which are attributable to Members invited or required to give directions to the Trustee under sub-clause 8.5, the Trustee shall invest the assets of that Sub-fund in such manner as it shall determine pursuant to arrangements established by the Trustee under sub-clause 8.5.
- (f) In respect of any Sub-fund which represents contributions or assets held in respect of one or more Beneficiary Account, or one or more category or class of Beneficiary Account, which are not subject to investment under paragraph (g) of this sub-clause, the Trustee shall invest the assets of that Sub-fund in such manner as it shall determine.
- (g) In respect of any Sub-fund which represents contributions or assets held in respect of one or more Beneficiary Account, or one or more category or class of Beneficiary Account, which are attributable to Beneficiaries invited or required to give directions to the Trustee under sub-clause 8.5, the Trustee shall invest the assets of that Sub-fund in such manner as it shall determine pursuant to arrangements established by the Trustee under sub-clause 8.5.

8.5 Member and Beneficiary Investment Choice

- (a) This sub-clause applies where:
 - (i) a Sub-fund of the type referred to in sub-clause 8.4(e) is, or is to be, established under sub-clause 8.4(a) in respect of Member Contributions; or
 - (ii) a Sub-fund of the type referred to in sub-clause 8.4(g) is, or is to be, established under sub-clause 8.4(a) in respect of one or more Beneficiary Account, or one or more category or class of Beneficiary Account (as the case may be).
- (b) The Trustee shall upon the direction of the Corporation given in circumstances permitted under Superannuation Law, or with the prior consent of the Corporation, have power to invite or require:
 - (i) one or more Members in relation to their Member Contributions, or one or more category or class of such Members; or
 - (ii) one or more Beneficiaries in relation to such of their Beneficiary Accounts as are specified by the Trustee from time to time (whether generally or in relation to any particular category or case), or one or more category or class of such Beneficiaries,to give directions to the Trustee in relation to the investment of assets which represent those Member Contributions or Beneficiary Accounts (as the case may be) into one or more of the Sub-funds offered by the Trustee. The Trustee's powers under this paragraph are subject to, and must be exercised in accordance with, Superannuation Law.
- (c) Where the Trustee exercises its power under paragraph (b) of this sub-clause, the Trustee shall, in order to give effect to the intention of that paragraph, have power:

- (i) to comply with any requirement or provision of Superannuation Law relating to the making of a choice of investment strategies available to Members or Beneficiaries of the Scheme;
- (ii) with the prior consent of the Corporation:
 - (A) to establish rules which prescribe the terms and conditions upon which the Trustee may invite or require the Members or Beneficiaries referred to in that paragraph to give directions to the Trustee for the purposes of that paragraph including (without limitation) terms and conditions relating to the basis upon which the costs and expenses (if any) incurred by the Trustee in relation to the establishment and administration of a Sub-fund of the type referred to in sub-clauses 8.4(e) and 8.4(g) may be paid out of the relevant Sub-fund; and
 - (B) at any time and from time to time to amend any rules established under sub-paragraph (A); and
- (iii) do such other acts and things as may in the opinion of the Trustee be necessary or desirable in order to give effect to the intention of this sub-clause.

8.6 Overriding provision relating to Investments

The Trustee shall ensure that the assets of the Fund are invested in such manner and form and subject to such conditions as will in the opinion of the Trustee ensure that the Scheme complies with any relevant requirement of Superannuation Law.

9. Information to Trustee

9.1 Medical examinations

- (a) The Trustee may require applicants for membership of the Scheme to undertake such medical examinations including blood tests from medical practitioners nominated by the Trustee and provide such statements of medical history in such form as the Trustee may specify or require.
- (b) The Trustee may require any Class A Statutory Benefit Member who is eligible to become a Full Member to undertake such medical examinations including blood tests from medical practitioners nominated by the Trustee and provide such statements of medical history in such form as the Trustee may specify or require.
- (c) Any Employee, Full Member or Class A Statutory Benefit Member who fails to undertake or fails to satisfactorily pass such medical examinations including any blood tests or fails to provide a satisfactory statement as aforesaid may at the discretion of the Trustee be refused membership of the Scheme or may be admitted to membership on such special conditions relating to contributions, restricted benefits or otherwise as the Trustee may determine and notify to the Employee, Full Member or Class A Statutory Benefit Member and his or her Employer. The Trustee may enter into an agreement with the Employer to adjust or remove any restriction on benefits

on the basis that the Employer meets any additional cost to the Fund as determined by the Trustee after obtaining the advice of the Actuary which results from any such variation or removal.

9.2 Misleading statements

Where the Trustee are of the opinion that a Member has made a false, misleading or inappropriate statement as to the Member's age, state of health or otherwise or has failed to disclose any relevant fact or information in relation to his or her application for membership or in any medical examination or test for the purposes of the Scheme the Trustee may reduce or adjust any benefit payable to or in respect of the Member in such manner as the Trustee may determine.

9.3 Information to Trustee and confidentiality

- (a) Each Employer shall supply to the Trustee such details concerning the Members employed by it as the Trustee shall from time to time require for the purposes of the Scheme.
- (b) If called upon by the Trustee the Employer shall issue to the Trustee a certificate in respect of such details and the Trustee shall be entitled to rely on that certificate as conclusive evidence of the facts set out therein for all the purposes of this Deed and the calculation of benefits.
- (c) A Member shall supply such information and documents and undergo such medical examinations including blood tests (by medical practitioners nominated by the Trustee) as the Trustee shall require from time to time for the purposes of the Scheme.
- (d) The Trustee and each officer, servant and delegate of the Trustee shall treat as confidential all information regarding Members and Beneficiaries which becomes known thereto in connection with the administration of the Scheme except to the extent reasonably necessary for the operation and administration of the Scheme and the proper application of this Deed.
- (e) No information or details regarding the medical history of an applicant for membership or a Member shall be provided to his or her Employer without the written consent of the person concerned.

10. Portability of benefits

10.1 Transfers from approved arrangements

- (a) Subject to Superannuation Law and sub-clause 10.4, but notwithstanding any other power conferred on the Trustee hereunder, the Trustee may with the approval of the Corporation make and carry into effect an arrangement with the trustee or responsible authority of an Approved Arrangement and any person who participated in an Approved Arrangement, whereby an agreed sum or agreed assets shall be paid or transferred to the Fund and such person shall, if not already a Member or a

Deferred Beneficiary, be admitted as a Member (if necessary) and the amount paid or transferred to the Fund in respect of such Member:

- (i) shall:
 - (A) in the case of an Eligible Employee within the meaning of sub-clause 10.3 and if applicable - be applied in accordance with sub-clause 10.3 and the provisions of Rule 8; or
 - (B) in any other case - be applied so as to provide such additional benefits as shall be determined by the Trustee after obtaining the advice of the Actuary and with the approval of the Corporation; and
 - (ii) may to the extent that the amount represents an employer financed accumulation in respect of the Member, with the consent of the Member be credited to an Employer Financed Accumulation Account established and maintained in respect of the Member pursuant to Rule 9.
- (b) Notwithstanding anything expressed or implied to the contrary in this Deed, the Trustee shall have power to give undertakings to or enter into preservation arrangements with the trustee or responsible authority of an Approved Arrangement on such terms and conditions as the Trustee thinks fit and any benefits or other rights granted to a Member shall be subject to the terms and conditions of any undertaking or arrangement as aforesaid and the terms and conditions of any such undertaking or arrangement shall not be set aside by any alterations, additions or repeals made pursuant to Clause 12.
- (c) Where a Member who has transferred from the Commonwealth Superannuation Scheme is subsequently retrenched and the benefit payable in respect of the Member under the Scheme is less than the benefit which would have been payable under the Commonwealth Superannuation Scheme had the Member remained in that Scheme the Trustee may with the approval of the Corporation and after obtaining the advice of the Actuary increase the benefit otherwise payable under the Scheme up to an amount not exceeding the benefit which would have been payable under the Commonwealth Superannuation Scheme as aforesaid.
- (d) For the avoidance of doubt it is expressly agreed and declared by the Trustee and the Corporation that:
- (i) each Member who has transferred from the Commonwealth Superannuation Scheme pursuant to arrangements made in 1990 between the Corporation, the Trustee and the Commonwealth Superannuation Scheme has a Transfer Date (within the meaning of Clause 2) of 1 July 1990 (a **Former CSS Member**) unless otherwise agreed by the Trustee and the Corporation for the purposes of one or more provisions of this Deed or Rules (whether in relation to Former CSS Members generally or one or more Former CSS Members or categories or classes of Former CSS Members); and
 - (ii) it is the intention of the parties that each Former CSS Member accrues an entitlement to benefits from the Scheme with effect on and from 1 July 1990

on the same terms and conditions and in accordance with the arrangements made in 1990 between the Corporation, the Trustee and the Commonwealth Superannuation Scheme.

- (e) Subject to Superannuation Law, the Trustee shall with the approval of the Corporation have power to adjust (either generally or in relation to any particular category or case) the operation of such provisions of this Deed as it thinks necessary or desirable, and in such manner as it thinks fit, in order to ensure that the intention of sub-paragraph (ii) of paragraph (d) hereof is achieved.
- (f) Subject to Superannuation Law, the Trustee shall with the approval of the Corporation and subject to such conditions as it thinks fit have power to accept into the Fund in respect of a Member amounts transferred from the trustee or responsible authority of an Approved Arrangement.

10.2 Transfers to approved arrangements or Beneficiary Account

- (a) Subject to sub-clause 10.4, in the case of a Beneficiary who is entitled:
 - (i) to an immediate benefit from the Fund; or
 - (ii) to a preserved benefit which is payable from the Fund some time after the Member has left the employ of the Employer,
in lieu of providing all or part of that benefit from the Fund:
 - (iii) the Trustee may, immediately or some time thereafter, transfer or credit (as the case may be) to a Beneficiary Account determined by the Trustee, in accordance with sub-clause 10.3, as if the Beneficiary had requested the transfer or credit to that Beneficiary Account; and / or
 - (iv) the Trustee may:
 - (A) with the consent of the Beneficiary, pay or transfer to an Approved Arrangement; or
 - (B) in the absence of a consent from the Beneficiary within 60 days of the first date upon which consent could have been given under sub-paragraph (iv)(A) hereof, pay or transfer to an Approved Arrangement approved by the Trustee,

an amount representing the value of the benefit determined by the Trustee after obtaining the advice of the Actuary.
- (b) Subject to Superannuation Law and sub-clause 10.4, the Trustee may pay or transfer all or part of a Member's or Beneficiary's entitlement or interest in the Fund and/or any other relevant amount in the Fund to any other Approved Arrangement in accordance with the relevant requirements of Superannuation Law including, without limitation, to a 'successor fund' (within the meaning of SIS) and without the consent of the Member or Beneficiary concerned where permitted under Superannuation Law.
- (c) The Trustee shall have the power to impose such conditions relating to the amount transferred as provided in paragraphs (a) or (b) hereof as the Trustee shall think fit

including, without limitation, such conditions as shall be necessary or desirable in order to comply with the requirements of Superannuation Law in relation to the preservation and portability of benefits.

- (d) Upon completion of the transfer in respect of a Member or Beneficiary under paragraphs (a)(iv) or (b) hereof to an Approved Arrangement, the Trustee shall be released and discharged in respect of the Member or Beneficiary and the persons claiming through or under them respectively.

10.3 Transfer to Beneficiary Account

This sub-clause applies where one or more categories of Beneficiary Account are made available to Beneficiaries generally, or to one or more Beneficiaries or classes of Beneficiaries, in accordance with this Deed and the Rules. If a Beneficiary so requests with the prior consent of the Corporation and the Trustee in accordance with any rules, procedures or arrangements made by the Trustee from time to time, the Trustee shall transfer or credit (as the case may be) to such one or more categories of Beneficiary Account established and maintained pursuant to Rule 8 as are specified by the Beneficiary:

- (a) in the case of an Eligible Employee - the amount specified by the Eligible Employee which represents all or part (as the case may be) of the value of an amount or assets transferred to the Fund pursuant to sub-clause 10.1 from an Approved Arrangement; or
- (b) in any other case - the amount specified by the Beneficiary which represents all or part (as the case may be) of the value of an immediate benefit or a preserved benefit payable from the Fund some time after the Member has left the employ of the Employer to which the Beneficiary is entitled.

In this sub-clause *Eligible Employee* means a Member nominated as such by the Employer and the Trustee for the purposes of this sub-clause.

10.4 Taxation concessions

Notwithstanding anything expressed or implied to the contrary in this Deed, no payment or transfer shall be arranged or made from or to an Approved Arrangement, if in the opinion of the Trustee, so to do would prejudice the taxation concessions available to the Scheme or otherwise cause the Scheme to breach or to fail to comply with any relevant requirements of Superannuation Law or with the Prescribed Requirements.

11. Benefits: general provisions

11.1 Overriding provision relating to benefits

Notwithstanding anything expressed or implied to the contrary in this Deed:

- (a) the Trustee shall not be obliged to pay or otherwise provide any benefit from the Fund which the Trustee considers to represent an Employer Financed Benefit in respect of any period prior to the Transfer Date unless the Corporation is satisfied that the Transferred Amount is received into the Fund or otherwise made available to meet

such benefit and where some part of the Transferred Amount is not received into the Fund or not wholly available to meet the benefit by reason of a liability to taxation in respect thereof, the Trustee may defer or reduce the benefit otherwise payable to the Member for such period or by such amount as the Trustee thinks fit after obtaining the advice of the Actuary;

(b) no benefit:

(i) shall be paid from the Fund or otherwise dealt with; or

(ii) shall be retained in the Fund,

if in the opinion of the Trustee so to do will or may prejudice the granting or continuance of taxation concessions for or in respect of the Scheme or under the Tax Act or cause the Scheme to be in breach of or fail to comply with any requirement of Superannuation Law or with the Prescribed Requirements or any other law or regulation governing complying superannuation funds within the meaning of the Tax Act;

(c) no benefit:

(i) shall fall below the minimum benefit which in the opinion of the Trustee is required to be paid from the Fund; or

(ii) exceed the maximum benefit which in the opinion of the Trustee can be paid from the Fund,

in order to ensure that the granting and continuance of taxation concessions for or in respect of the Scheme under the Tax Act are not prejudiced or that the Scheme is not in breach of or fails to comply with any requirement of Superannuation Law or with the Prescribed Requirements or any other law or regulation governing complying superannuation funds within the meaning of the Tax Act;

(d) No contributions shall be received into the Fund and no accrual of benefits shall be granted if in the opinion of the Trustee so to do will or may prejudice the granting or continuance of taxation concessions for or in respect of the Scheme or under the Tax Act or cause the Scheme to be in breach of or fail to comply with the Prescribed Requirements, Superannuation Law or any other law or regulation governing complying superannuation funds within the meaning of the Tax Act;

(e) In order to ensure compliance with paragraphs (b), (c) and (d) hereof, the Trustee may temporarily or permanently waive or reduce the contributions (if any) payable to the Fund by or in respect of a Member and, in any case subject always to this sub-clause, the Trustee may adjust the benefits provided or to be provided for or in respect of a Member and the circumstances in which the same will be provided in such manner and to such extent as may be determined by the Trustee;

(f) Where a Member ceases to be in the Service and is entitled to a benefit under the Interim Arrangement Act in respect of a period of Service the Trustee shall reduce the benefit payable to or in respect of the Member under the Scheme:

- (i) for any period of Service after 1 January 1988 and prior to 1 January 1989 - by 1.5% of the Member's Final Average Salary for that year (and pro rata for each day any part of the period is less than a complete year); and
- (ii) for any period of Service after 1 January 1989 - by 3% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of the period;

PROVIDED THAT in respect of any period of Fractional Time Service, the percentage of the Final Average Salary in respect of any such period of Fractional Time Service shall be multiplied by the Service Fraction for that period;

- (g) If a Member or a person claiming through or under a Member is or may be entitled to benefits similar to those or any of those provided under the Scheme from another fund or scheme to which an Employer contributes either directly or indirectly, the Trustee may (and shall at the direction of the Corporation) reduce the benefit payable to or in respect of the Member by such amount or in such manner as the Trustee after obtaining the advice of the Actuary thinks appropriate having regard to the value of the benefit provided from such other fund or scheme, **PROVIDED THAT** the Trustee may but shall not be obliged to comply with a direction given by the Corporation pursuant to this paragraph (g) where the direction is given in circumstances such that, if this Deed were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law;
- (h) If the Trustee is required by Superannuation Law to:
 - (i) pay or commence to pay a benefit under the Fund in respect of a Member or other person at or by a certain time; or
 - (ii) otherwise pay or deal or commence to pay or deal with a benefit under the Fund in respect of a Member or other person,

then notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), or the fact that a claim has not been made by the relevant Member or other persons, the Trustee may, subject to and in accordance with Superannuation Law, pay or commence to pay the benefit to or in respect of the Member or other person, as the case requires, or otherwise deal or commence to deal with the benefit (as the case may be), less any deduction that is required to be made in respect of any taxes, duties or charges;

- (i) Where the right of a Member, or of the Dependants of a Member, to receive benefits from the Scheme ceases during a year of income the Trustee shall comply with any relevant requirement of Superannuation Law relating to Members ceasing to be entitled to benefits which is applicable in respect of the Scheme.

11.2 No benefit while in service

No Member will be entitled to receive any benefit from the Scheme whilst remaining in Service, other than:

- (a) the payment or release of benefits as provided for in this Deed or the Rules (including, for the avoidance of doubt, under sub-clause 11.17 or Rule 4.5 of Schedule 1); or
- (b) in circumstances where Superannuation Law requires such a benefit to be paid.

11.3 Rights to benefits

No Member or person claiming through or under a Member or on his or her behalf or a Dependant or legal personal representative shall be entitled to require payment of any amount from the Fund except as may be expressly provided for and specified in this Deed or the Rules.

11.4 Claims for benefits

- (a) Every Member and person claiming or in receipt of a benefit under the Scheme shall furnish to the Trustee such information, documents and evidence and undergo such medical examinations including blood tests as the Trustee shall consider necessary for the purpose of properly administering the Scheme. Failure to comply with any request of the Trustee under this paragraph (a) shall entitle the Trustee to suspend payment of the benefit or consideration of any claim thereto, as the case may require, until the requirements of this paragraph (a) are complied with.
- (b) Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), a Member or other person shall not be entitled to be paid a benefit if the Trustee has not:
 - (i) in the case of paragraph (h) of sub-clause 11.1 determined to pay a benefit; or
 - (ii) in any other case - received a claim from the Member or other person (as the case may be), and the requirements set out in paragraph (a) have been fully complied with.
- (c) Except as expressly provided for in this Deed or the Rules, no Member can require the Trustee to assess the Member's entitlement to a benefit which is payable on cessation of Service whilst the Member remains in the Service of an Employer.

11.5 Proofs

Whenever it shall be necessary for the Trustee to decide questions of fact the Trustee may act upon such proofs or presumptions as the Trustee may deem satisfactory whether the same be strictly legal proofs or legal presumptions or not.

11.6 Payment of death benefits

- (a) Unless clause 11.6A or clause 11.6B applies, any benefit payable from the Scheme on the death of a person who was a Member of the Scheme at the time of his or her death, shall be paid or applied by the Trustee to or for the benefit of such one or more of:
 - (i) the Member's Dependents;
 - (ii) the Member's legal personal representative; and
 - (iii) if applicable, any other person but only on the terms and in the circumstances permitted under Superannuation Law,

to the exclusion of others or other of them or in such proportions between them and in such form, manner, and subject to such conditions as the Trustee shall determine.

- (b) In ascertaining the Dependants or legal personal representative of a Member the Trustee:
 - (i) shall not be under any legal obligation to locate, establish or identify all the persons who might possibly qualify; and
 - (ii) may act upon such information as the Trustee thinks fit to locate, establish and identify persons as the Dependants or legal personal representative of that Member.
- (c) If, after reasonable enquiry, the Trustee determines that there are no Dependants or legal personal representative, or no Dependants or legal personal representative of the Member whose existence or whereabouts are known to the Trustee, any benefit payable to or in respect of the Dependants or legal personal representative of the Member shall cease to be payable and shall be retained in the Scheme for the general purposes of the Scheme **PROVIDED THAT** if at any time the Trustee receives a claim from a person whom the Trustee accepts as a Dependant or the legal personal representative of the Member, the Trustee may in its absolute discretion reinstate and pay all or part of the benefit which would otherwise have been payable in respect of the Member but for the operation of this sub-clause.

11.6A Binding Death Benefit Nomination

Subject to Superannuation Law:

- (a) a Member may by notice, in the form of a Binding Death Benefit Nomination, require the Trustee to pay any benefit payable in respect of the Member's death to the person or persons and in the proportions (if any) specified in that Binding Death Benefit Nomination;
- (b) where the Trustee has received a Binding Death Benefit Nomination, the Trustee must give effect to the Binding Death Benefit Nomination in accordance with its terms; and
- (c) a Binding Death Benefit Nomination will cease to be binding if:
 - (i) the Member revokes the Binding Death Benefit Nomination, or gives the Trustee a new Binding Death Benefit Nomination or Non-Lapsing Death Benefit Nomination pursuant to Clause 11.6B; or
 - (ii) it expires in accordance with the requirements of Superannuation Law.

11.6B Non-Lapsing Death Benefit Nomination

Subject to Superannuation Law:

- (a) the Trustee may consent to a Member exercising a discretion regarding the payment of any benefit payable in respect of the Member's death to a person or persons, and in the proportions (if any), specified in a Non-Lapsing Death Benefit Nomination given by the Member to the Trustee;

- (b) if the Trustee has an approved Non-Lapsing Death Benefit Nomination form (whether or not known by that name) available for a Member to obtain, complete and provide to the Trustee, and the Trustee has received and accepted a completed Non-Lapsing Death Benefit Nomination from that Member, the Trustee will be taken to have consented to the exercise by that Member of the discretion described in paragraph (a);
- (c) subject to paragraph (e), where the Trustee has received a Non-Lapsing Death Benefit Nomination to which the Trustee has consented in accordance with paragraph (b), the Trustee must give effect to the Non-Lapsing Death Benefit Nomination in accordance with its terms;
- (d) a Non-Lapsing Death Benefit Nomination given under paragraph (a) will cease to be binding if the Member revokes the Non-Lapsing Death Benefit Nomination in writing or gives the Trustee a new Non-Lapsing Death Benefit Nomination pursuant to paragraph (a) or a Binding Death Benefit Nomination pursuant to Clause 11.6A; and
- (e) the Trustee is not required to comply with paragraph (c) if the Trustee:
 - (i) is subject to a Court order that has the effect of restraining or prohibiting the Trustee from paying a benefit in respect of the Member in accordance with a Non-Lapsing Death Benefit Nomination given under paragraph (a); or
 - (ii) is aware that the Member is subject to a Court order that requires the Member to amend or revoke any Non-Lapsing Death Benefit Nomination given under paragraph (a) or has the effect of restraining or prohibiting the Member from giving a Non-Lapsing Death Benefit Nomination under paragraph (a).

11.7 Payment to spouse

Notwithstanding anything expressed or implied to the contrary in this Deed, where a deceased Member is survived by more than one person who qualifies as his or her Spouse:

- (a) the benefit payable under this Deed shall be at such rate or of such amount as would be applicable if the deceased Member concerned were survived by one Spouse; and
- (b) the benefit shall be payable to those persons or to such one or more of them to the exclusion of the others or other of them or in such proportions between them as the Trustee shall from time to time determine having regard to the respective needs of those persons and to such other matters as the Trustee considers relevant.

11.8 Beneficiary under legal disability

- (a) If it appears to the Trustee that a Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with an amount otherwise payable to the Beneficiary from the Fund, the Trustee may pay or apply the whole or part of any benefit payable to the Beneficiary in such one or more of the following ways as the Trustee may think fit, namely:
 - (i) to any Dependant of the Beneficiary;

- (ii) for or towards the maintenance, education, advancement or otherwise howsoever for the benefit of the Beneficiary or of any Dependant of the Beneficiary in such form and manner and subject to such terms and conditions as the Trustee may think fit; and
 - (iii) without limiting the generality of paragraph (b) hereof, to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee, which trust may be subject to such trusts and powers as the Trustee may think fit) or a representative, spouse, child, parent or guardian of or to have for the time being the care or custody of the Beneficiary or any Dependant of the Beneficiary or to have the financial expense of the care or custody of the Beneficiary or of any Dependant of the Beneficiary.
- (b) The receipt of any person to whom the Trustee is authorised to make any payment under this sub-clause shall be a full and sufficient discharge to the Trustee and the Trustee shall not be bound or concerned to see to the application of such payment.
- (c) The Trustee shall not be under any duty to have recourse to this sub-clause or to consider whether recourse should be had hereto, notwithstanding that the Trustee may have actual notice of any infirmity, lack of fitness or other relevant matter provided for herein.

11.9 Insured benefits

- (a) Where the Trustee has entered into any insurance arrangement to provide some or all of the benefit payable from the Fund to or in respect of a Member and the Insurer either declines cover or reduces the amount payable to or in respect of a Member, then notwithstanding anything expressed or implied to the contrary in this Deed or the Rules the Trustee shall reduce the amount of the benefit otherwise payable to or in respect of the Member by the amount which the Insurer declines or refuses unless the Employer enters into an arrangement acceptable to the Trustee to reimburse the Fund in respect of the amount of insurance so declined or refused.
- (b) Where the Trustee is of the opinion that had the Trustee entered into an insurance arrangement under paragraph (a) hereof that the Insurer under such arrangement would have declined cover or reduced the amount otherwise payable to or in respect of a Member, then notwithstanding anything expressed or implied to the contrary in this Deed or the Rules, the Trustee shall reduce the amount of the benefit otherwise payable to or in respect of the Member by the amount which the Trustee believes the Insurer would have declined or refused unless the Employer enters into an agreement acceptable to the Trustee to reimburse the Fund for the cost of providing the benefit over and above the reduced benefit which would have otherwise been provided to or in respect of the Member. In forming an opinion under this paragraph the Trustee shall be entitled but not obliged to rely on a certificate from a proper officer of an insurance company selected by the Trustee as to whether or not an Insurer would have declined or reduced cover in the relevant circumstances.

- (c) Without limiting the generality of clause 11.9(a) and notwithstanding any other provision of this Deed or the Rules, where the Trustee has entered into (or sought to enter into) an insurance arrangement to provide some or all of the benefit payable from the Fund to or in respect of a Member who has benefits provided under Rule 8 or Rule 10 and in respect of benefits payable to that Member under Rule 12 (but only to the extent those benefits relate to their status as Members under Rule 8 or Rule 10):
 - (i) the payment (or otherwise) of the relevant part of that benefit will be determined solely by the terms of the applicable policy of insurance (if any); and
 - (ii) the amount payable in respect of the relevant part of the benefit will be limited to the amount actually received by the Trustee in respect of the policy of insurance (if any).

11.10 Interest

- (a) Where the Trustee is required to credit or debit amounts in respect of interest in respect of any period, the Trustee shall, after obtaining the advice of the Actuary, determine a rate having regard to the actual net earning rate of the Fund taking into account all proper expenses and taxes incurred or to be incurred by the Fund in relation to that period.
- (b) The Trustee shall also have power in a similar manner to determine an interim rate in respect of any period prior to the determination of the actual earning rate for that period.
- (c) Notwithstanding paragraph (a), where the assets of the Fund are invested in Sub-funds as referred to in Clause 8.4, the Trustee may, after obtaining the advice of the Actuary determine a separate rate in respect of any such Sub-fund and may credit that rate in lieu of the rate referred to in paragraph (a) where interest is required to be credited pursuant to the provisions of this Deed either generally or in respect of any particular provision as the Trustee may think fit and the Trustee shall also have power in a similar manner to determine an interim rate in respect of such a Sub-fund in respect of any period prior to the determination of the actual earning rate for the Sub-fund for that period, **PROVIDED THAT** the Corporation may from time to time give to the Trustee written notice stating that, on and from the date specified for the purpose in that notice, the Trustee shall not without the approval of the Corporation determine a separate rate in respect of a Sub-fund in accordance with this paragraph, and such a notice shall remain in effect until it is revoked by a further written notice given by the Corporation to the Trustee.
- (d) The Trustee shall comply with the relevant requirements of Superannuation Law in determining any rate or rates of interest for the purposes of the Scheme;
- (e) For the avoidance of doubt, amounts in respect of interest determined in respect of a period may be negative and the Trustee shall have power to debit amounts by applying a negative rate.

11.11 Discharge of Trustee

The receipt of a Beneficiary, legal personal representative or any person acting on behalf of a Beneficiary shall be a complete discharge to the Trustee in respect of the amount paid to that person and the Trustee shall not be bound to see to the application thereof.

11.12 Application of unpaid benefits

Without prejudice to the foregoing, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with sub-clause 11.6 as if the Beneficiary were a Member at the time of his or her death.

11.13 Benefits strictly personal

- (a) No interest under the Scheme or benefit payable out of the Fund shall be assignable at law or in equity either in whole or in part.
- (b) Except as otherwise expressly provided in this Deed or the Rules,
 - (i) if any Member or Beneficiary shall do or cause or suffer to be done any act or thing; or
 - (ii) if some event shall happen

whereby all or any part of the Member's or Beneficiary's interest in the Fund or a benefit to which the Member or Beneficiary may be or become entitled would whether by the Member's or Beneficiary's own act or by operation of the law or otherwise become payable to or vested in any other person or persons then, notwithstanding anything expressed or implied to the contrary in this Deed or the Rules, such interest or the right to such benefit shall determine and neither the Member nor Beneficiary nor any person claiming under or in respect thereof shall have any further claim or right in respect of that interest or benefit **PROVIDED THAT** notwithstanding the generality of the foregoing this paragraph shall not apply to any interest or benefit to which the Member or Beneficiary (or any person claiming under, or in respect of, him or her) is absolutely entitled or (in the case of a Member or Beneficiary who becomes bankrupt, commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under the Bankruptcy Act 1966) to the beneficial interest (within the meaning of the Bankruptcy Act 1966) of the relevant person.

- (c) In the event of the determination of an interest or a right to a benefit under paragraph (b), the Trustee may (but it shall not be incumbent on the Trustee so to do) pay or apply as the Trustee may think fit for the benefit of the Member or Beneficiary concerned or his or her Dependants (to the exclusion of any one or more of them as the Trustee may determine) any sum or sums not exceeding altogether the amount which would have been payable to or in respect of that Member or Beneficiary if such determination had not occurred.

11.14 Debts or defalcation

The Trustee may deduct from a Member's or Beneficiary's interest in the Fund or from any moneys which but for this sub-clause 11.14 would be payable to or for the benefit of the Member or Beneficiary or any person claiming through or under a deceased Member or Beneficiary, and may retain in the Fund, any amount which the Trustee may determine is owing to the Trustee or the Fund by that Member or Beneficiary either solely or in conjunction with any other person on any account whatever, including without limitation:

- (a) any amount which the Trustee may consider necessary to reimburse or compensate the Trustee or the Fund in respect of any loss or damage suffered thereby as a result of the fraud or other dishonesty of the Member or Beneficiary; and
- (b) interest at such rate and in respect of such period as the Trustee may consider appropriate

PROVIDED THAT no such deduction shall be made if in the opinion of the Trustee so to do will or may prejudice the taxation concessions granted or made available to the Scheme or cause the Scheme to breach or fail to comply with any relevant requirement of Superannuation Law.

11.15 Augmentation of benefits

The Employer may, with the prior consent of the Corporation, from time to time direct the Trustee to increase by such amount or in such manner as the Employer shall specify all or any of the benefits which are or may become payable in respect of a Member **PROVIDED THAT**:

- (a) the Employer agrees to meet the cost to the Scheme of any such direction (after taking account of any provision of this Deed which requires or permits the Trustee to adjust or reduce benefits as a result of any surcharge, tax, charge or import (however described) levied against the Trustee or the Fund in respect of such increase) as determined by the Trustee (having regard to the advice of the Actuary) in accordance with arrangements or undertakings suitable to the Trustee or as the Employer and Trustee otherwise agree;
- (b) the Trustee may refuse to proceed with the provision of all or part of any such increase in respect of any Member if or to the extent that any arrangement or undertaking required by the Trustee under paragraph (a) of this proviso in respect of that increase is not given or made (as the case may be), or having been given or made is not fulfilled or complied with to the satisfaction of the Trustee; and
- (c) the Trustee is satisfied that the provision of the increased benefits will not prejudice the taxation concessions available in respect of the Scheme or cause the Scheme, this Deed or the Trustee to be in breach of, or to fail to comply with or satisfy, Superannuation Law.

11.16 Taxation and surcharge referable to Members and Beneficiaries

- (a) Where applicable, the Trustee shall unless otherwise requested by the Corporation, notwithstanding any provision of this Deed, but subject to Superannuation Law, reduce the benefits (including without limitation any pension benefits) payable from

the Fund to or in respect of a Member or a Beneficiary to take account of any surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which have been or in the opinion of the Trustee may be assessed against the Fund in respect of a Member or Beneficiary, or in connection with a contribution made or deemed to be made in respect of a Member or a Beneficiary, from time to time and any amount which is paid or applied to or in respect of the Member in relation to a tax liability assessed against or incurred by the Member arising out of or in connection with contributions made to the Fund in respect of that Member and/or his or her membership of the Scheme, and in respect of which no adjustment has been made under other provision of this Deed. Where applicable, such reduction shall be made in accordance with paragraph (b) of this sub-clause.

- (b) Where this sub-clause applies, unless the Trustee and the Corporation otherwise agree in any particular case or cases, the Trustee may:
- (i) deduct the amount of the surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which has been assessed against the Fund or otherwise been paid or applied in respect of the Member or Beneficiary from the appropriate account in the Fund into which the employer financed benefits have been credited; or
 - (ii) reduce the benefit payable to or in respect of the Member or Beneficiary by the amount recorded as the debit balance of the notional account maintained in respect of the Member or Beneficiary under paragraph (c) of this sub-clause at the time the benefit becomes payable for or in respect of the Member or Beneficiary,

PROVIDED THAT:

- (A) no reduction shall be made to benefits which have, in the opinion of the Actuary, accrued in respect of a Member or a Beneficiary up to the date of execution of Deed of Modification No 4 relating to the Scheme; and
 - (B) where a benefit is payable under Rule 4.4 to, or in respect of, any person who is a Member on 1 July 2000 that benefit shall not be less than the benefit which would have been payable as at 30 June 2000 under Rule 4.4 as in force at that date by reason of the application of this Rule 11.16(b).
- (c) The Trustee shall maintain a notional account in respect of each Member and Beneficiary to which this sub-clause applies and shall debit such account with:
- (i) the amount of any surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which in the opinion of the Trustee has been assessed against the Fund in respect of the Member or Beneficiary; and
 - (ii) an amount by way of interest on the debit balance of the amount (including any amount to be debited under this paragraph) calculated as at 30 June in each year or whenever the benefit is to be paid to or in respect of the Member or Beneficiary:

- (A) in the case of a tax known as the surcharge contribution tax at the Treasury Bond rate on the relevant day for bonds with a term of 10 years or such other rate determined by the Trustee having regard to the practice or schemes conducted by the Commonwealth of Australia; and
- (B) in the case of any other tax, charge or impost (howsoever described) at a rate (that may be positive or negative and may differ having regard to the nature of the tax, charge or impost) determined from time to time by the Trustee as the Trustee thinks fit.

and shall credit such account with any adjustment, credit or refund of any surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which in the opinion of the Trustee has been made in favour of or received in respect of the Member or Beneficiary.

A Member or Beneficiary may, with the prior approval of the Trustee and the Corporation, reduce the debit balance in the notional account maintained in respect of the Member or Beneficiary under this clause 11.16(c) by making additional contributions or rolling over amounts to the Scheme or by requesting deductions from another account maintained in the Scheme in respect of the Member or Beneficiary for that purpose.

- (d) The Trustee:
 - (i) may make any payment on account of surcharge, tax, charge or impost or advance instalment or any associated amount which has been or which in the opinion of the Trustee may be assessed in respect of a Member or Beneficiary, or in connection with a contribution made or deemed to be made in respect of a Member or Beneficiary, at such time, in such manner, by such arrangement and otherwise that may be required by the applicable legislation;
 - (ii) shall have power to remit the amount deducted or such other amount as the Trustee thinks fit to the Commissioner of Taxation or other relevant authority (as the case may be) or otherwise in accordance with the requirements of the applicable legislation; and
 - (iii) shall have power to debit any amount in the books of the Fund with such amount as the Trustee thinks fit in respect of any payment, or reduction in the benefits, made in this clause and to make such other adjustments and provisions that the Trustee may consider appropriate.

11.17 Release of Benefits on Severe Financial Hardship or Compassionate Grounds

- (a) Subject to Superannuation Law and with the written consent of the Member concerned, the Trustee may release an amount in respect of a Member (not exceeding the amount of the Member's vested benefit in the Scheme) in a case of severe financial hardship or, with the approval of the Regulator, on compassionate grounds.

- (b) Where the Trustee releases an amount in respect of a Member under sub-clause 11.17(a), the Trustee must reduce the benefit which becomes payable to or in respect of the Member in such manner or on such basis as the Trustee determines.

11A Family Law Provisions

11A.1 Benefit splitting and flagging arrangements

Subject to Clause 11A.2, this Clause 11A will apply in respect of a Member and their Spouse if and:

- (a) a superannuation agreement (which provides for a payment flag or a payment split) or a flag lifting agreement has been entered into by the Member and their Spouse and such agreement has taken effect; or
- (b) a splitting order or a flagging order has been made by a court of competent jurisdiction in respect of the Member and their Spouse.

11A.2 Trustee may require Member and Spouse to provide details

A Member and/or their Spouse must provide such information, declarations, proofs, documents and payments as the Trustee may require under Superannuation Law. The Trustee may determine that this Clause 11A will not apply in respect of a Member and their Spouse if the requirements of this Clause 11A.2 have not been complied with to the satisfaction of the Trustee.

11A.3 Definitions

Terms used in this Clause 11A have the same meanings as they do under Superannuation Law.

11A.4 Establishment of accounts

- (a) The Trustee may establish an account in respect of the Spouse of a Member under Rule 10. If the Trustee has previously established an account in respect of the Spouse under Rule 10, the Trustee may credit or debit amounts to that account for the purposes of this Clause 11A.
- (b) The following amounts may be credited to an account maintained in respect of a Spouse:
 - (i) any amount which becomes payable (but which has not yet been paid) to or in respect of the Spouse pursuant to any relevant superannuation agreement, flag lifting agreement or splitting order; and
 - (ii) any amount representing the entitlement of the Spouse under a relevant superannuation agreement, flag lifting agreement or splitting order,in addition to any amounts to be credited pursuant to Rule 10.
- (c) An account maintained in respect of a Spouse may be debited with the fees, costs or expenses (if any) determined by the Trustee under this Clause 11A in addition to any amounts to be debited pursuant to Rule 10.

11A.5 Cessation of benefits

Notwithstanding any other provision of this Deed, the Trustee is not required to pay any amount in respect of a Member if any part of that amount is a splittable payment which is subject to a flagging order or a payment flag. The Trustee will deal with such amounts in accordance with, and has power to take such steps as may be required by, this Clause 11A and Superannuation Law.

11A.6 Calculation of benefits

The Trustee may adjust the benefits payable in respect of a Member, and may calculate the amounts payable in respect of their Spouse, in accordance with any relevant superannuation agreement, flag lifting agreement, court order and Superannuation Law. The Trustee has power to pay such adjusted benefits and calculated amounts or to credit those benefits and amounts to such accounts as may be determined by the Trustee.

11A.7 Commutation

Notwithstanding any other provision of this Deed, the Trustee may at any time commute a pension payable in respect of a Member in whole or in part in circumstances where such commutation is expressly or impliedly required under Superannuation Law on such basis as the Trustee thinks fit.

11A.8 Splitting interest in the growth phase and allocated pensions

- (a) The Trustee may maintain an account in respect of a Spouse for the purposes of splitting any interest of the Member in the Scheme which is in the growth phase or which is being paid as an allocated pension.
- (b) The Trustee may credit to the account referred to in paragraph (a) an amount corresponding to the Spouse's entitlement in respect of the Member's interest in the Scheme (less any fees, costs or expenses charged by the Trustee). Such amount will be determined on a basis determined by the Trustee which is in accordance with the relevant superannuation agreement, flag lifting agreement or court order and Superannuation Law.
- (c) The Trustee may make such adjustments and take such steps as may be necessary or desirable to reduce the Member's interest in the Scheme by the amount of the Spouse's entitlement calculated under paragraph (b). Such adjustments may be made on a basis determined by the Trustee with the approval of the Actuary which is not inconsistent with the relevant superannuation agreement, flag lifting agreement or splitting order and Superannuation Law.
- (d) Subject to Superannuation Law, the Trustee may determine the preserved, unrestricted non-preserved and restricted non-preserved components of the benefits of the Member and their Spouse in the Scheme.

11A.9 Provision of information

The Trustee may:

- (a) provide the Member and/or their Spouse with information relating to the benefits and interests of the Member and their Spouse; and
 - (b) require any fees or costs to be paid in connection with, and prior to, the provision of such information,
- in accordance with Superannuation Law.

11A.10 Fees, costs and expenses

Subject to Superannuation Law, the Trustee may in its discretion determine that fees, costs or expenses shall be paid or charged in respect of costs and expenses incurred in connection with the application and administration of this Clause 11A. Any fees, costs or expenses shall, subject to Superannuation Law, be paid or charged to such account of the Member and/or their Spouse and on such basis as determined by the Trustee.

11A.11 Transfer of benefits

If a Spouse is a Member, the Trustee may transfer the balance of an account maintained in respect of the person to such other account as may be maintained by the Trustee in respect of the person as the Trustee may determine.

11A.12 Rollover

The Trustee may, in accordance with Superannuation Law, transfer or rollover to an Approved Arrangement:

- (a) the credit balance of an account maintained in respect of a Spouse; or
 - (b) if an account has not yet been established in respect of the Spouse, any amount which would constitute the credit balance if there were to be no transfer or rollover and an account was established in respect of the Spouse,
- after the deduction of all relevant costs and expenses (if any).

11A.13 Disclosure upon opening account

If an account is established in respect of a Spouse under this Clause 11A, the Trustee will provide the Spouse with such information and disclosure documents relating to the Scheme and their account as may be required under Superannuation Law.

11A.14 Status of Spouse

A Spouse in respect of whom an account is maintained by the Trustee under this Clause 11A will only have the rights and entitlements which are contemplated by this Clause 11A. A Spouse will not otherwise enjoy any of the rights and entitlements of Members under any other provision of the Deed, and will not be a Member for any purpose unless:

- (a) the Spouse has made an application for Membership in accordance with the Deed and that application has been accepted by the Trustee; or
- (b) the Trustee has made a determination to the contrary and the Spouse agrees, or is deemed by the Trustee to have agreed, to comply with any conditions specified in the determination (as amended from time to time).

11B MySuper Provisions

11B.1 Authority to offer a MySuper Product

- (a) The Trustee is authorised to offer a MySuper Product under MySuper Law.
- (b) The Trustee must comply with each requirement of MySuper Law it is required to comply with, and may comply with any requirement of MySuper Law which it is permitted but not required to comply with, in relation to each Member who is a MySuper Member in relation to their MySuper Interest in the Scheme.
- (c) The Trustee has power to adjust, in such manner as it thinks fit, the operation of any provision of this Trust Deed or the Rules otherwise applicable to a MySuper Member in relation to their MySuper Interest, which in the absence of adjustment would or may in the opinion of the Trustee cause this Trust Deed, the Rules, the Trustee, or the Scheme to be in breach of, or fail to comply with or satisfy, MySuper Law.
- (d) It is the intention that a MySuper Interest will be held, subject to this Trust Deed and the Rules otherwise applicable, as adjusted to comply with MySuper Law.

11B.2 MySuper Members

- (a) This Clause applies in respect of any MySuper Product or MySuper Interest offered and/or provided by the Trustee, and to the membership of any person who holds, or is to hold, a MySuper Interest in the Scheme, for so long as that person holds a MySuper Interest in the Scheme.
- (b) For the avoidance of doubt, the provisions of this Deed or the Rules relevant to a Member based on their particular type of membership shall continue to apply in full, except to the extent of any inconsistency in respect of a MySuper Interest of a MySuper Member.

11B.3 MySuper Contributions

Subject to Clause 11B.9:

- (a) the Trustee:
 - (i) must accept contributions made by, or on behalf of, a MySuper Member in respect of their MySuper Interest to the extent required by MySuper Law; and
 - (ii) may accept any other contributions made by, or on behalf of, a MySuper Member in accordance with arrangements made by the Trustee with the MySuper Member and/or the Employer;
- (b) a MySuper Member:
 - (i) may, but is not required to, contribute in respect of their MySuper Interest; and
 - (ii) who makes contributions in respect of their MySuper Interest must comply with any terms and conditions set by the Trustee; and

- (c) a limitation on the source or kind of contributions made by or on behalf of Members who hold a MySuper Interest is permitted for the purposes of this clause if:
 - (i) the limitation is of a prescribed kind under MySuper Law; or
 - (ii) the limitation is imposed by or under the general law or another law of the Commonwealth.

11B.4 MySuper Insurance

- (a) The Trustee must offer and provide the following insured benefits for each MySuper Member if, and to the extent, required under, and otherwise in accordance with, MySuper Law:
 - (i) a Total and Permanent Disablement benefit;
 - (ii) a death benefit; and
 - (iii) an insured benefit that is payable only in any other circumstances required under MySuper Law.
- (b) The Trustee may offer and provide for any MySuper Member any other insured benefit it is permitted, but not required, to provide to a MySuper Member under MySuper Law (including, without limitation, benefits payable in relation to a Member upon suffering a Terminal Medical Condition or Temporary Incapacity) in accordance with terms and conditions set by the Trustee having regard to the applicable requirements of MySuper Law.
- (c) The Trustee must comply with the requirements applicable to insured benefits under MySuper Law in relation to the offering, the provision and the opting out of insured benefits in respect of MySuper Members.

11B.5 MySuper Investments

- (a) The Trustee must exercise its investment powers to invest the assets of the Scheme attributable to MySuper Interests in a single diversified investment strategy that may form part of one or more of the Sub-funds.
- (b) For the purpose of exercising its powers under the Rules in relation to attributing amounts to MySuper Members in relation to their MySuper Interest held for MySuper Members, the Trustee:
 - (i) must not stream gains or losses that relate to any assets held for MySuper Members to only some MySuper Members; and
 - (ii) must ensure that the same process is adopted in attributing amounts to MySuper Members,except to the extent permitted under MySuper Law.

11B.6 Fees for MySuper Members

Notwithstanding any other provision of this Trust Deed or the Rules, the Trustee must comply with the General Fee Rules, and the Fee Rules in relation to fees charged to MySuper Interests.

11B.7 Restrictions on Dealing with MySuper Investments

Notwithstanding any other provision of this Deed or the Rules, the Trustee must not:

- (a) pay, rollover or transfer all or any part of a MySuper Member's MySuper Interest; or
- (b) pay all or any part of a MySuper Interest to or in relation to a MySuper Member in the form of a pension,

except to the extent permitted under MySuper Law.

11B.8 MySuper Rules

The Trustee may from time to time prescribe rules (**MySuper Rules**) relating to MySuper Products or MySuper Interests under the Scheme and shall have power to amend, delete or revoke all or any MySuper Rules.

11B.9 Characteristics of a MySuper Product

- (a) Notwithstanding any other provision of this Trust Deed or the Rules, any MySuper Product offered and/or provided by the Trustee under this Trust Deed must satisfy the following requirements:
 - (i) a single diversified investment strategy is to be adopted in relation to assets of the Scheme, to the extent that they are attributed to the MySuper Product;
 - (ii) all Members who hold a MySuper Interest are entitled to access the same options, benefits and facilities except to the extent that a benefit is provided by taking out risk insurance;
 - (iii) amounts are attributed to Members in relation to their MySuper Interest in a way that does not stream gains or losses that relate to any assets of the Scheme to only some of those Members, except to the extent permitted under a lifecycle exception (as defined below);
 - (iv) the same process is to be adopted in attributing amounts to Members in relation to their MySuper Interest, except to the extent that a different process is necessary to allow for fee subsidisation by Employers;
 - (v) if fee subsidisation by Employers is permitted, that subsidisation does not favour one Member who holds a MySuper Interest and is an employee of a subsidising employer over another such Member who is an employee of that Employer;
 - (vi) the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a MySuper Interest are those permitted under this clause;
 - (vii) a MySuper Interest cannot be replaced with a beneficial interest of another class in the Scheme, unless:
 - (A) the person who holds the interest consents in writing to that replacement no more than 30 days before it occurs; or

- (B) the person who holds the MySuper Interest has died and the MySuper Interest is replaced with a beneficial interest of another class in the Scheme of a kind and in the circumstances as permitted under MySuper Law;
 - (viii) a MySuper Interest (the **old interest**) cannot be replaced with a beneficial interest (the **new interest**) in another superannuation entity unless:
 - (A) the replacement is permitted, or is required, under a law of the Commonwealth; or
 - (B) the person who holds the old interest consents in writing to the replacement with the new interest no more than 30 days before it occurs;
 - (ix) to the extent that assets of the Scheme are attributed to MySuper Interests, a pension is not payable out of those assets by the Trustee on the satisfaction of a condition of release of benefits specified in a Standard made under section 31(2)(h) of SIS by a person who holds a MySuper Interest, unless the payment is derived from a benefit of the kind mentioned in section 62(1)(b)(ii) of SIS provided to the Scheme by an Insurer;
 - (x) no Member who holds a MySuper Interest is precluded from holding a beneficial interest of another class in the Scheme because of that fact; and
 - (xi) no Member is precluded from holding a MySuper Interest because the Member holds a beneficial interest of another class in the Scheme.
- (b) A **lifecycle exception** is a rule under this Deed that allows gains and losses from different classes of asset of the Scheme to be streamed to different sub-classes of the Members of the Scheme who hold a MySuper Interest:
- (i) on the basis, and only on the basis, of the age of those Members;
 - (ii) on the basis of the age of those Members and other prescribed factors; or
 - (iii) on the basis of the age of those Members and other prescribed factors in prescribed circumstances.

12. Amendment

- (a) The Corporation may after consultation with the Australian Council of Trade Unions at any time and from time to time by deed or resolution of the directors of the Corporation alter, add to or repeal all or any of the provisions contained in this Deed or the Rules, including the provisions of this Clause, to the extent only that:
 - (i) such alteration, addition or repeal relates to the contributions that an Employer will, after such alteration, addition or repeal comes into force, be required or permitted to pay to the Fund;
 - (ii) such alteration, addition or repeal relates solely to termination of the Scheme;or

- (iii) the circumstances in which such alteration, addition or repeal is made are permitted under Superannuation Law,
- and otherwise the Corporation may after consultation with the Australian Council of Trade Unions and with the consent of the Trustee at any time and from time to time by deed or resolution of the directors of the Corporation alter, add to or repeal all or any of the provisions contained in this Deed or the Rules, including the provisions of this Clause.
- (b) The Trustee with the prior consent of the Corporation may at any time and from time to time by deed or resolution alter, add to or repeal all or any of the provisions contained in this Deed or the Rules in such manner and to such extent as the Trustee considers necessary or desirable to ensure that the Scheme complies with any relevant requirement of Superannuation Law or the Tax Act in respect of complying superannuation funds.
- (c) Any alteration, addition or repeal:
- (i) so made shall come into force on the execution of such deed or the making of such resolution and shall take effect as from that date or as from such earlier or later date as may be specified for that purpose in such deed or resolution; and
- (ii) so made and for the time being in force shall be of the same validity as if it had been originally contained in this Deed or the Rules and may in like manner be altered, added to or repealed.
- (d) The Trustee shall in accordance with the relevant requirements of Superannuation Law notify each Member of such alteration, addition or repeal and all Members shall be bound thereby. No accidental failure or omission to give any such notification shall prejudice or invalidate the relevant alteration, addition or repeal.
- (e) No alteration, addition or repeal as aforesaid shall be made unless:
- (i) if the alteration, addition or repeal would have the effect of permitting a natural person or natural persons to be appointed as trustee or trustees of the Scheme, after the alteration, addition or repeal became effective the Scheme would have as its sole or primary purpose the provision of old-age pensions within the meaning of paragraph 51(xxiii) of the constitution of the Commonwealth of Australia; and
- (ii) all relevant provisions of the Prescribed Requirements are satisfied; and
- (iii) the Actuary (whose decisions shall be final) determines that such alteration, addition or repeal shall not reduce the amount of the benefits presently or prospectively payable in respect of any Member or Beneficiary to the extent that such benefits have accrued in respect of the period up to the date the alteration, addition or repeal is effected; or
- (iv) such alteration, addition or repeal is approved by the Regulator in writing; or

- (v) such alteration, addition or repeal is approved in writing by each Member or Beneficiary whose benefits are reduced in the manner anticipated by paragraph (iii) hereof and by such other person or persons (if any) whose approval or consent is required under Superannuation Law.
- (f) For the purposes of paragraph (a) hereof, a consultation with the Australian Council of Trade Unions shall be deemed to have occurred:
 - (i) if at least seven clear days notice of the proposed alteration, addition or repeal has been given to the Secretary of the Australian Council of Trade Unions; and
 - (ii) if the Secretary of the Australian Council of Trade Unions requests a meeting to discuss the proposed alteration, addition or repeal within the seven clear days period referred to in sub-paragraph (i) hereof and that meeting is held within thirty clear days of the giving of the notice referred to in sub-paragraph (i) hereof or the thirty clear day period expires without a meeting being convened; or
 - (iii) the Secretary of the Australian Council of Trade Unions certifies that a consultation has occurred or that a consultation is not necessary.

13. Associated Employers

13.1 Admission of Employers

The Trustee with the approval of the Corporation may enter into a Deed of Participation in the form or to the effect of the form set out in Schedule 2 with any person which the Corporation and the Trustee deem is desirable and convenient to include in the Scheme as an Employer. Such Employees of an Employer as become eligible as provided in this Deed or in the said Deed of Participation shall apply for membership of the Scheme.

13.2 Release of Employer

- (a) The Trustee shall at the request of an Employer or in respect of an Employer which is not related to the Corporation at the request of the Corporation and with effect on a date determined by the Corporation (hereinafter called the **Release Date**) release the Employer and the Members employed by such Employer as at the Release Date (other than a Member who is then or immediately thereafter becomes employed by another Employer) upon such terms and conditions as the Trustee considers to be fair and equitable after having obtained the advice of the Actuary, **PROVIDED THAT** the Trustee may but shall not be obliged to comply with a request made by an Employer or by the Corporation pursuant to this paragraph (a) where the request is made in circumstances such that, if this Deed were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law.
- (b) The Actuary shall certify what proportion of the Fund including any arrears of contributions is properly attributable to Members who were in the employ of the

Employer at the Release Date having regard to tax and other liabilities and the costs associated with the release of the Employer from the Fund; and

- (c) The Trustee shall apply that proportion of the Fund to provide benefits for and in respect of the released Members in such manner and form (whether cash, insurance policies, annuities or otherwise howsoever), by way of such arrangements (whether within or without the Fund) and subject to such conditions as the Trustee thinks fit. Benefits so provided shall be in lieu of and in full satisfaction of benefits which would or might have been or become payable from the Fund to or in respect of the released Members.

13.3 Winding up of an Employer

- (a) If:
- (i) where an Employer is or includes a body corporate, a resolution is passed or an order is made for the winding up thereof or a scheme of arrangement providing for the dissolution thereof is approved by a court;
 - (ii) where an Employer is or includes a partnership, that partnership is dissolved;
 - (iii) where an Employer is or includes a natural person or natural persons, that person becomes or any of those persons become bankrupt; or
 - (iv) an Employer ceases to carry on business,

then, without prejudice to any notice of termination or suspension of contributions which has already taken effect in respect of the Employer under sub-clause 13.4, the Trustee shall be deemed to have received on the date the relevant event, specified in paragraph (a) hereof, occurs (hereinafter called the **Relevant Date**) a notice from the Employer pursuant to sub-clause 13.4 that it had decided to indefinitely suspend all of its contributions to the Fund with effect on the Relevant Date.

- (b) If in the opinion of the Trustee:
- (i) an event specified in paragraph (a) hereof occurs for the purpose of amalgamation or reconstruction of an Employer or otherwise for the purpose of the replacement of an Employer by a successor; or
 - (ii) an Employer ceases to carry on business by reason of the disposal of its business undertaking to another person,

the Trustee with the approval of the Corporation may enter into an agreement with the person whom the Trustee considers succeeds the Employer for that successor to take the place of the Employer under this Deed and the Rules. Such an agreement shall be in a form acceptable to the Trustee and shall be binding on the Trustee and all Employers, Members and other interested persons under the Scheme.

- (c) Without limiting the provisions of sub-clause 13.4, if no such agreement is entered into within 90 days after the Relevant Date (or within such other period as the Trustee thinks fit), the Trustee shall be deemed to have received on the last day of such period a notice from the Employer pursuant to sub-clause 13.4 that it had decided to terminate all of its contributions to the Fund with effect on that last day.

13.4 Termination reduction or suspension of Employer Contributions

- (a) Notwithstanding anything expressed or implied to the contrary in this Deed or the Rules, an Employer may with the consent of the person or persons concerned or in any other case after consultation with the Australian Council of Trade Unions by written notice to the Trustee and either generally or in respect of any person or persons named or described, or falling within a group of persons named or described, in such notice:
- (i) terminate its obligations to contribute in accordance with the Rules; or
 - (ii) reduce or suspend its contributions to the extent and either indefinitely or for the period specified in that notice,
- and any such notice shall take effect on the date (hereinafter called the **Notice Date**) which is the later of the date that notice is received by the Trustee and the date specified therein for such purpose, but nothing herein shall affect the Employer's liability in respect of contributions due in respect of a period prior to the Notice Date.
- (b) On and after the Notice Date:
- (i) no Employee shall be admitted as a Member during any period when an Employer's contributions are terminated or suspended pursuant to this sub-clause 13.4;
 - (ii) the Trustee may subject to such terms as the Trustee thinks fit permit a Member in respect of whom an Employer's contributions are being reduced to reduce the Member's future contributions to an extent which the Trustee considers to be consistent with the reduction of the Employer's contributions;
 - (iii) subject to sub-clause 11.1, the Trustee may adjust any benefit which is or becomes or may become payable to or in respect of any person named or described in such notice and any other person whom the Trustee considers is affected by such notice to such extent and in such manner as the Trustee considers fair and equitable after having obtained the advice of the Actuary and the adjusted benefits shall be substituted for the benefits otherwise payable or to be provided and the provisions of this Deed shall apply mutatis mutandis to such adjusted benefits;
 - (iv) unless otherwise determined by the Trustee, no benefit shall be paid from the Fund (including a benefit which became payable before the Notice Date) until the Trustee has determined whether or not any such adjustment is necessary and, if so, has effected such adjustment to the Trustee's satisfaction; and
 - (v) the Trustee shall as soon as possible notify a person affected by any such adjustment but failure so to do shall not affect the validity of any such adjustment.
- (c) Subject to this Deed and to such terms and conditions as the Trustee considers appropriate, an Employer may by a further written notice given to the Trustee revoke or vary in whole or in part any such notice previously given by such Employer and, in the event of such a revocation or variation, the Trustee may adjust the rights,

obligations and benefits of and in respect of the persons affected by such revocation or variation to such extent and in such manner as the Trustee considers appropriate and equitable after having obtained the advice of the Actuary.

- (d) If an Employer fails to contribute an amount to the Fund as and when required under this Deed or the Rules, the Trustee may determine that while that amount remains unpaid no benefit shall be paid from the Fund to or in respect of any person whom the Trustee considers to be affected by such failure and, if any amount to be contributed by an Employer under this Deed remains unpaid for more than sixty days after it became payable (or such lesser period as the Trustee thinks fit either generally or in any particular case), then the provisions of paragraph (b) hereof shall apply as if:
- (i) the Employer had decided to suspend all of its contributions to the Fund with effect on the last day of such period; and
 - (ii) the Trustee had on that day received written notice from the Employer of that intention.
- (e) All decisions of the Trustee in relation to the application or effect of this sub-clause or any such notice either generally or in respect of any person or any benefit and the manner and extent of any adjustment of or in relation to a benefit shall be final and binding on all interested persons. Without limiting the generality of the foregoing, in adjusting any benefit the Trustee may determine that such benefit shall be replaced in whole or in part by a benefit payable in another manner and form.
- (f) For the purposes of paragraph (a) hereof, a consultation with the Australian Council of Trade Unions shall be deemed to have occurred:
- (i) if at least seven clear days notice of the proposed alteration, addition or repeal has been given to the Secretary of the Australian Council of Trade Unions; and
 - (ii) if the Secretary of the Australian Council of Trade Unions requests a meeting to discuss the proposed alteration, addition or repeal within the seven clear days period referred to in sub-paragraph (i) hereof and that meeting is held within thirty clear days of the giving of the notice referred to in sub-paragraph (i) hereof or the thirty clear day period expires without a meeting being convened; or
 - (iii) the Secretary of the Australian Council of Trade Unions certifies that a consultation has occurred or that a consultation is not necessary.

14. Return of surplus

14.1 Return of surplus - general provision

- (a) Whenever requested by the Corporation, the Actuary shall investigate the Fund and shall report to the Corporation and to the Trustee as to the Total Fund Value and Total Accrued Benefit Value as at the date on which such investigation is made (the **Valuation Date**).

- (b) The Trustee shall take all reasonable steps necessary to facilitate such investigation and shall provide to the Actuary such information as the Actuary may require in relation to such investigation.
- (c) If the Actuary's report reveals that the Total Fund Value exceeds the Total Accrued Benefit Value as at the Valuation Date and within 45 days after such report is given to the Corporation, a written request for payment from the Corporation is given to the Trustee, the Trustee shall, as soon as practicable but in no event later than 90 days, cause such part of the excess of the Total Fund Value over the Total Accrued Benefit Value which is attributable in the opinion of the Actuary to Employer Contributions to the Fund as shall be requested by the Corporation to be paid out of the Fund to the Corporation or as the Corporation may by notice in writing direct.
- (d) The Trustee shall comply with any request given to the Trustee under paragraph (c), unless prior to the payment out of the Fund as requested by the Corporation, the Actuary certifies that due to a material change in circumstances, either:
 - (i) the Total Fund Value is less than the Total Accrued Benefit Value; or
 - (ii) the proposed payment pursuant to the request by the Corporation would exceed the part of the Total Fund Value over the Total Accrued Benefit Value which is attributable in the opinion of the Actuary to Employer contributions to the Fund.

In the case referred to in (i) above, the Trustee shall be under no obligation to make the payment to the Corporation and in the case referred to in (ii) above, the Trustee shall reduce the payment to the part referred to in (ii) above.
- (e) In the exercise of any power under this sub-clause, the Trustee and the Corporation shall comply with any requirements imposed by Superannuation Law and this sub-clause shall be read and construed subject to the relevant provisions of Superannuation Law which, to the extent required by Superannuation Law and as necessary to give full effect to this sub-clause, shall be taken to be incorporated into this sub-clause.

14.2 Return of surplus where SIS applies

- (a) During any period in which SIS applies in relation to a payment to an Employer or a related body corporate of an Employer from the Fund, the Corporation may by notice in writing to the Trustee, in addition to any other power the Corporation may have under the Deed, request the Trustee to pay an amount out of the Fund to the Corporation or to an Employer nominated by the Corporation. The request may be for a specific amount or for an amount calculated in accordance with a formula set out in the notice. The Trustee may not pay out of the Fund pursuant to this sub-clause 14.2 an amount in excess of the amount by which the Total Fund Value exceeds the Total Accrued Benefit Value. Where the notice requests a payment of an excess amount, the amount in the notice shall be deemed to be an amount equal to the excess of the Total Fund Value over the Total Accrued Benefit Value.

- (b) Whenever required by the Corporation or the Trustee, the Actuary shall investigate the Fund and shall as soon as practicable report in writing to the Corporation and the Trustee as to the Total Fund Value and the Total Accrued Benefit Value as at the date at which such investigation is made (the *effective date*). The Trustee shall make all reasonable efforts to facilitate such an investigation and shall provide to the Actuary such information as the Actuary may require to complete such investigation. The Actuary shall also certify in writing to the Trustee his or her opinion as to whether or not the Fund would remain in a satisfactory financial position if the amount requested by the Corporation were paid out of the Fund.
- (c) If the report of the Actuary reveals that the Total Fund Value exceeds the Total Accrued Benefit Value as at the effective date and the Actuary certifies in the manner specified in paragraph (b) of this sub-clause and the Trustee is satisfied that the payment of the amount is reasonable having regard to the interests of the Corporation and any relevant Employer and the Members and Beneficiaries of the Fund and such other matters as the Trustee considers relevant, the Trustee may, by resolution, declare its intention to make a payment of or payments totalling the amount out of the Fund to the Corporation or the Employer nominated by the Corporation pursuant to paragraph (a) of this sub-clause and the Trustee will then give notice in writing to all the Members:
- (i) stating that the Trustee intends so to pay such amount;
 - (ii) stating that the Actuary has given a certificate in the terms required by SIS; and
 - (iii) setting out particulars of the changes (if any) that are proposed to be made to the Deed if the amount were paid out of the Fund.
- (d) Within seven days after the expiration of three months after the notice referred to in paragraph (c) was given to the Members the Trustee after considering the advice of the Actuary as to the financial position of the Fund at that time shall consider a resolution determining to make the payment or payments referred to in paragraph (c) of this sub-clause out of the Fund.
- (e) If the resolution referred to in paragraph (d) of this sub-clause is passed then the Trustee shall as soon as practicable make the payment or payments out of the Fund as specified in that resolution.

15. Termination of the Scheme

15.1 Termination

If:

- (a) it shall appear to the Trustee that the Scheme is insolvent or if the Trustee shall be advised by the Actuary to that effect;

- (b) the Corporation shall give thirty day's notice in writing to the Trustee that it is of the opinion that the Scheme has failed to fulfil its purpose or that it is inconvenient or impracticable for the Scheme to continue; or
- (c) the Corporation shall at any time fail to pay to the Trustee any amount for which it is liable within 42 days (or such further period as the Trustee may think reasonable) after the date on which the Trustee may require such amount to be paid or shall fail to observe and perform any other of its obligations under this Deed,

then the Trustee shall determine a date within a reasonable period (hereinafter called the **Termination Date**) on which the Scheme will terminate, **PROVIDED THAT** the Trustee may but shall not be obliged to determine such a date upon receipt of a notice from the Corporation given under paragraph (b) of this sub-clause where the notice is given in circumstances such that, if this Deed were to oblige the Trustee to make such a determination, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law.

15.2 Procedures on termination

As from the Termination Date:

- (a) the Trustee shall promptly give notice in writing to the Employers and the Members that the Scheme shall be wound up;
- (b) no further persons shall be admitted as Members;
- (c) no further contributions shall be made by Members or the Employers other than arrears of contributions due up to the Termination Date;
- (d) any arrears of contributions of the Members and the Employers shall be called in immediately;
- (e) after making such allowance as the Trustee considers appropriate for the costs and expenses incurred or likely to be incurred in connection with the Fund, the Trustee shall after obtaining the advice of the Actuary make such provisions from the assets of the Fund as the Trustee considers appropriate to provide benefits not exceeding:
 - (i) in the case of a Member, the greater of Member's Accrued Retirement Benefit and the Member's MRB; and
 - (ii) in the case of a Beneficiary, the benefit to which he or she was entitled at the Termination Date,in lieu of the benefits which are payable and which would or might have been or become payable under the Scheme but for the operation of this Clause 15;
- (f) unless the Trustee with the approval of the Corporation otherwise determines the following priority for the provision of benefits shall apply:
 - (i) benefits which have become payable in respect of Members who have ceased Service prior to the Termination Date;
 - (ii) benefits which are required to be preserved in respect of Members who have ceased Service prior to the Termination Date;

- (iii) benefits which are to become payable to or in respect of Members in the Service on the Termination Date; and
- (g) when there are no Members or Beneficiaries and in the opinion of the Trustee all benefits which could become payable from the Fund have been paid, then any moneys and other assets remaining in the Fund after payment of any expenses incurred by the Fund shall be realised and the proceeds distributed to the Employers in such shares as the Corporation shall direct, **PROVIDED THAT** in the exercise of any power under this paragraph the Trustee and the Corporation shall comply with any requirements imposed by Superannuation Law and this paragraph shall be read and construed subject to the relevant provisions of Superannuation Law which, to the extent required by Superannuation Law and as necessary to give full effect to this paragraph, shall be taken to be incorporated into this paragraph.

15.3 Form of benefits

The benefits to be provided pursuant to paragraph 15.2(f) shall be:

- (i) subject to sub-clause 11.1, of such amount and provided in such form (whether cash, insurance policies, annuities or otherwise howsoever), by way of such arrangements (whether within or without the Scheme) and subject to such conditions as the Trustee thinks fit; and
- (ii) in lieu of and in full satisfaction of the benefits which would or might have been or become payable from the Fund but for the operation of this Clause.

15.4 Trustee's decision final

All decisions of the Trustee regarding the application and operation of this Clause 15 generally and, in particular, as to whether or not a benefit is to be provided in respect of a person hereunder and, if so, the amount, form and basis of provision thereof shall be final and binding on all interested persons.

16. Government Scheme

- (a) If during the continuance of the Scheme any Federal or State Government scheme for the provision of superannuation, retiring allowances, pensions or any other benefit similar to a benefit provided by the Scheme for, inter alia, Members of the Scheme and/or their Dependants be introduced or improved and if any Employer or a Member is compelled or elects to pay either directly or indirectly any portion of the contributions, premiums or other costs of such introduction or improvement the Corporation if it so desires may give written notice to the Trustee requiring that from a specified date the benefits provided by the Scheme be reduced for all or any of such Members and/or their Dependants to an extent determined by the Corporation with the approval of the Trustee not exceeding in value the value of the benefits provided for such Members and/or their Dependants under the Government scheme pursuant to such introduction or improvement **PROVIDED THAT** if the benefits payable under the Scheme are of a different form or nature to the benefits payable under the

Government scheme the extent to which the benefits payable under the Scheme may be reduced shall be determined by the Corporation with the approval of the Trustee after obtaining the advice of the Actuary, **PROVIDED FURTHER THAT** no such reduction shall be made:

- (i) without the consent in writing of the Regulator unless the Trustee is satisfied that the proposed reduction will not cause the Scheme to fail to comply with any relevant requirement of Superannuation Law ; or
- (ii) without the consent in writing of the Minister of Finance unless the Trustee and the Corporation are satisfied that the proposed reduction will not cause the Scheme to fail to comply with any relevant requirement of the Prescribed Requirements.

Notwithstanding anything contained in this paragraph, the Trustee may but shall not be obliged to comply with a requirement of the Corporation notified to it pursuant to this paragraph (a) where the requirement is notified to the Trustee in circumstances such that, if this Deed were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law. The Trustee shall advise the affected Members of the reduction in their benefits.

- (b) In the event of a reduction in the benefits provided by the Scheme, pursuant to paragraph (a), any Members obliged to contribute to such Government scheme shall be relieved of their obligation to contribute under the Rules to an extent (if any) determined by the Corporation with the approval of the Trustee, after obtaining the advice of the Actuary, but such relief shall not exceed the extent of the contributions or additional contributions which they are compelled to pay under the new or improved Government scheme in respect of which benefits have been reduced. The Trustee shall advise the Members of the extent of the relief granted to them under this paragraph (b).
- (c) Any reduction in the benefits provided by the Scheme pursuant to paragraph (a) and any reduction in the contributions payable by the Members pursuant to paragraph (b) shall be evidenced by a deed amending this Deed. Such deed shall be executed or made by the Corporation and the Trustee and any amendment made thereby shall notwithstanding anything contained in Clause 12 be valid and binding on the Corporation, the Associated Employers, the Trustee and the Members.

17. Miscellaneous

17.1 Powers of Employer not affected

- (a) Nothing in this Deed shall be deemed to affect prejudice or alter in any way the powers of an Employer with regard to the dismissal or remuneration of or any dealings whatsoever with any of its Employees. Any benefits to which a Member or other person may be or may claim to be entitled under this Deed shall not be used or alleged or claimed as damages or as grounds for increasing damages in any action or claim by the Member or by anyone claiming through or under the Member against an Employer in respect of any such dismissal or dealing or otherwise.

- (b) Except to the extent expressly provided in this Deed or the Rules, when acting in its capacity as an Employer under this Deed or the Rules an Employer is in no sense under a fiduciary or other duty and has in relation to the exercise, non-exercise or partial exercise of any power vested in it an absolute and uncontrolled discretion and is not required to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of such a power.
- (c) If any doubt or dispute arises as to the date on which a person entered or left the employ of an Employer, a certificate by the Employer on the matter shall be final and binding on all interested persons.

17.2 Appointment of receiver

If at any time a receiver, receiver and manager, liquidator or trustee in bankruptcy is appointed in respect of an Employer or over the property of an Employer or if an Employer is placed under the official management of a person or a committee of management (such receiver, receiver and manager, liquidator, trustee or person or committee appointed as official manager being hereinafter in this sub-clause called the **Receiver**) then notwithstanding anything expressed or implied to the contrary in this Deed or the Rules, all the powers vested in or exercisable by that Employer in any capacity shall be deemed to be vested in or exercisable by the Receiver until the Receiver is discharged from or otherwise ceases to hold office and references in this Deed or the Rules to that Employer shall be deemed to be references to the Receiver until the Receiver is discharged from or otherwise ceases to hold office.

17.3 Notices

- (a) A notice, cheque or any other written matter (all of which are hereinafter collectively referred to as **notice**) may be given to an Employee, Member, Beneficiary or any person claiming a benefit from the Fund by handing it to him or her personally or by leaving it at his or her address last known to the Trustee or by sending it to that address by ordinary prepaid post.
- (b) A notice may be given under this Deed:
 - (i) to an Employer, by leaving it at the registered or principal office of that Employer; or
 - (ii) to the Trustee by leaving it at the office of the Trustee,
or, in any such case, by sending it in an envelope addressed as aforesaid by ordinary prepaid post.
- (c) Any notice referred to in paragraphs (a) or (b) hereof shall be deemed to have been received, in the case of a notice given or served by hand, at the time of delivery and, in the case of a notice given or served by post, at the expiration of two days after posting.
- (d) In proving service of any notice sent by post, it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted.

18. Overriding provisions applicable to pensions and annuities

18.1 Terms and conditions of pensions and annuities

Notwithstanding any provision of this Deed, where a benefit is payable in the form of a pension or an annuity under this Deed the Trustee shall pay such pension or annuity (as the case may be) on the basis of such terms and conditions as shall in the opinion of the Trustee be necessary or desirable in order to comply with the requirements of Superannuation Law relating to the payment of pensions and annuities. In order to comply with this sub-clause, the Trustee shall have power to:

- (a) adjust in such manner as the Trustee thinks fit the operation of such provisions of this Deed as the Trustee considers necessary or desirable having regard to the intention of this sub-clause and the advice of the Actuary; and
- (b) establish, having regard to the advice of the Actuary, rules which prescribe the terms and conditions on which a pension or an annuity is payable pursuant to this sub-clause and at any time and from time to time to amend, having regard to the advice of the Actuary, any such rules provided that such rules or amendments are not inconsistent with this sub-clause or Superannuation Law.

18.2 Commutation of pensions

Notwithstanding any provision of this Deed, the Trustee:

- (a) shall not commute, or agree to or arrange for the commutation of, any pension payable under this Deed in any manner which in the opinion of the Trustee will or may prejudice the taxation concessions available in respect of the Scheme or cause the Scheme, this Deed or the Trustee to be in breach of, or to fail to comply with or satisfy, Superannuation Law; and
- (b) shall commute any pension payable under this Deed in the circumstances and manner and on such terms and conditions (if any) as in the opinion of the Trustee are required in order that the taxation concessions available in respect of the Scheme are not prejudiced and in order not to cause the Scheme, this Deed or the Trustee to be in breach of, or to fail to comply with or satisfy, Superannuation Law.

19. Superannuation Law covenants taken to be included in Deed

19.1 Covenants taken to be included

Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), the Trustee covenants to comply with the covenants required from time to time by Superannuation Law to be contained in this Deed and those covenants are taken to be contained in this Deed subject to any exemption granted, or modification made, by the Regulator to the extent such exemption or modification (as the case may be) is available in respect of this Deed, the Fund or the Trustee or all or any of them.

19.2 Covenants applicable from 1 July 1994

For the sole purpose of assisting readers of this Deed, the covenants which the Trustee is required to give under sub-clause 19.1 with effect on and from 1 July 1994 are specified in Schedule 3 of this Deed. Accordingly, it is acknowledged that in respect of any date after 1 July 1994 the covenants specified in the Schedule may not reflect the then current covenants required to be given by the Trustee under Clause 19.1 as at that date.

19.3 Covenant by Trustee's directors

- (a) Each covenant specified in sub-clause 19.1 of this Clause operates:
- (i) as a covenant by each of the directors of the Trustee to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the covenant; and
 - (ii) as if the directors of the Trustee were parties to this Deed.
- (b) The reference in paragraph (a) of this sub-clause to "a reasonable degree of care and diligence" is a reference to the degree of care and diligence that:
- (i) unless sub-paragraph (ii) applies - a reasonable person in the position of director of the Trustee would exercise in the Trustee's circumstances; or
 - (ii) where Superannuation Law specifies a meaning different to that specified in sub-paragraph (i) of this paragraph (b) - that definition.

20. Compliance with directions made under Superannuation Law

The Trustee shall comply with any direction in relation to the Fund made under Superannuation Law by the Regulator or the Superannuation Complaints Tribunal.

21. Trustee not in contravention

The Trustee shall not be taken to be in contravention of this Deed or to be in breach of trust if it does anything, or fails to do anything, which is in contravention of Superannuation Law if:

- (a) the contravention is approved by the Regulator, or the person or persons (if any) specified for that purpose, in accordance with Superannuation Law; or
- (b) the contravention is rectified within 30 days, or (where applicable) such other period allowed by Superannuation Law, from the date the Trustee became aware of the contravention.

22. Modification or exemption

22.1 Power to seek modifications and exemptions

Subject to Superannuation Law, the Trustee may seek modification of, or exemption from, the requirements of Superannuation Law.

22.2 Effect of modifications and exemptions

If any modification or exemption is granted or becomes or is available in respect of this Deed, the Fund or the Trustee or all or any of them by the Regulator pursuant to Superannuation Law (whether in consequence of an application by the Trustee under sub-clause 22.1 of this Clause or otherwise), the Trustee is relieved from compliance with those provisions of this Deed and Superannuation Law expressed in that modification or exemption (as the case may be) subject to any conditions in that modification or exemption.

22.3 Determination of disputes

If any question arises in relation to the existence, meaning, application or effect of:

- (a) any Superannuation Requirement;
- (b) Superannuation Law; or
- (c) any provision deemed by sub-clause 2A.2 or sub-clause 19.1 to be included in this Deed,

the Trustee shall determine that question. Any determination made by the Trustee pursuant to this Clause shall, to the extent permitted by Superannuation Law, be final, conclusive and binding on all interested persons.

Schedule 1

Rules

1. Eligibility

- 1.1 An Employee will be eligible to be admitted to membership of the Scheme as:
- (a) a Class A Statutory Benefit Member – an Employee who:
 - (i) is an Employee in respect of whom an Employer is required to provide a Statutory Benefit; and
 - (ii) is not:
 - (A) a member of the Commonwealth Superannuation Scheme; or
 - (B) a Full Member;
 - (b) a Class B Statutory Benefit Member – an Employee who:
 - (i) is an Employee in respect of whom an Employer is required to provide a Statutory Benefit; and
 - (ii) is a member of:
 - (A) the Commonwealth Superannuation Scheme; or
 - (B) some other superannuation or similar arrangement that in the opinion of the Trustee makes the Employee ineligible to become a Class A Statutory Benefit Member; or
 - (c) a Full Member – an Employee who:
 - (i) is a permanent or probationary full-time or part-time Employee who has completed three months Service; or
 - (ii) has been admitted to membership of the Scheme as a Class A Statutory Benefit Member, has completed three months Service and has applied for membership as a Full Member in place of membership as a Class A Statutory Benefit Member.
- 1.2 In respect of an Employee who was a member of the Commonwealth Superannuation Scheme or entitled to a Statutory Benefit under the Interim Arrangement Act immediately prior to the Transfer Date the eligibility requirements relating to service shall be waived.
- 1.3 Subject to Superannuation Law, the Corporation may by notice in writing to the Trustee alter or waive the eligibility requirements for any particular Employee or class of Employees.

2. Admission to Membership

- (a) In order to be admitted to membership an eligible Employee will:
 - (i) complete an application form approved by the Trustee; and
 - (ii) comply with such other requirements as the Trustee may from time to time impose.
- (b) An Employee who complies with the requirements set out in paragraph (a) will upon acceptance of his or her application for membership by the Trustee be admitted to membership as a Full Member, a Class A Statutory Benefit Member or a Class B Statutory Benefit Member (as the case requires) from a date specified by the Trustee.
- (c) Each Class A Statutory Benefit who is a permanent or probationary Employee who becomes eligible for membership as a Full Member as provided in sub-rule 1.1(c)(ii) will as soon as practicable comply with such requirements as the Trustee may from time to time impose.
- (d) An Employee who is admitted to membership will be bound by the Deed and these Rules as altered, added to or repealed and for the time being in force.

2A. Withdrawal from Membership

2A.1 Election to withdraw from Scheme Membership

- (a) A Member may elect to withdraw from membership of the Scheme by written notice to the Trustee and the Employer.
- (b) A Member who has selected another fund as a chosen fund under the Superannuation Charge Law shall be deemed to have elected to withdraw from membership of the Scheme and provided written notice to the Trustee and the Employer in accordance with sub-rule 2A.1(c).
- (c) An election made under this sub-rule 2A.1 will be in a form specified or approved by the Trustee.

2A.2 Withdrawal date and withdrawal period

- (a) Unless otherwise agreed by the Trustee and the Employer, a Member's election to withdraw from the Scheme will take effect from the date determined by the Trustee and notified to the Member and the Employer (the **Withdrawal Date**).
- (b) A Member's **Withdrawal Period** commences on the Withdrawal Date and ends on the day (if any) before the Member's membership recommences in accordance with sub-rule 2A.4.

2A.3 Consequences of withdrawal

- (a) As from the Withdrawal Date, the Member's membership of the Scheme will cease and the Withdrawal Period will be excluded from the Member's Membership.
- (b) The Trustee will not accept any contributions by, or in respect of, the Member during the Withdrawal Period.

- (c) During the Withdrawal Period the Member's benefits under the Scheme will be payable, and otherwise dealt with, in accordance with the provisions of the Deed and these Rules.

2A.4 Re-commencement of Scheme Membership

- (a) A Member may, with the consent of the Trustee and the Employer, elect to re-commence membership of the Scheme.
- (b) An election made under this sub-rule 2A.4 will be in a written form specified or approved by the Trustee and must be delivered to the Trustee with a copy to the Employer.
- (c) Where consent is given under this sub-rule 2A.4, the Member's membership of the Scheme will re-commence on terms and conditions agreed by the Trustee and the Employer and notified to the Member.

2A.5 Withdrawal and re-commencement Rules

The Trustee may:

- (a) prescribe rules for the purposes of this Rule 2A; and
- (b) amend any rules prescribed under paragraph (a),

PROVIDED THAT such rules or amendments are not inconsistent with the provisions of this Rule 2A or Superannuation Law.

3. Contributions

3.1 Member Contributions

- (a) A Member is not required to contribute to the Scheme.
- (b) A Member may elect to make:
 - (i) periodic contributions to the Scheme of an amount or at a rate, at times and otherwise in a manner agreed between the Member and the Trustee; and/or
 - (ii) one or more lump sum contributions to the Scheme with the consent of the Trustee and on such terms and conditions as may be agreed by the Trustee.
- (c) A Member may elect to vary the amount or rate of any contributions to the Scheme under Rule 3.1(b)(i) or to cease such contributions.
- (d) Any election made under this Rule will be in such form as the Trustee may specify or approve and except as otherwise expressly provided will take effect from the date determined by the Trustee.

3.2 Deduction of Member Contributions

Subject to the provisions of Rule 3.4, periodic Member Contributions under sub-rule 3.1(b)(i) will:

- (a) generally be payable at the end of each pay period;

- (b) (i) where legally possible, be deducted from each regular payment of salary or wages by the Employer, or;
- (ii) if paragraph (i) does not apply, be payable by the Member to the Trustee as and when they are due and payable; and
- (c) be paid to the Trustee as soon as practicable and in any event within such period as may be required by Superannuation Law.

3.3 Employer Contributions

- (a) Each Employer shall contribute to the Fund in respect of Members employed by it such amount or rate of contributions (if any) as may be determined from time to time by the Corporation after obtaining the advice of the Actuary and consultation with the Trustee.
- (b) As soon as practicable, after determination as aforesaid the Trustee shall advise each Employer of the amount or rate of contributions payable by that Employer from time to time and of any change therein.
- (c) The contributions payable by an Employer shall be paid to the Fund in the manner and at the times reasonably determined by the Trustee after consulting that Employer. Contributions payable by one Employer may be paid by another Employer.
- (d) The Trustee may, subject to the provisions of sub-clause 11.1, accept into the Fund:
 - (i) any additional contribution which may be made by an Employer for the purpose of securing the solvency of the Fund or of improving the provision of benefits prescribed by the Rules; and
 - (ii) in respect of a Member such additional contributions (if any) as the Employer may from time to time agree with the Member to contribute to the Fund in respect of that Member.
- (e) Notwithstanding anything expressed or implied to the contrary in this Deed and the Rules, if at any time an Employer is required to or does pay to another superannuation fund or like fund contributions in respect of a Member, in accordance with a Prescribed Agreement or a Superannuation Agreement or legislation, then the Employer may give notice to the Trustee that it is reducing its contributions to the Fund in respect of that Member by an amount not exceeding the contributions the Employer is required to or does make to the other superannuation fund or like fund and the Trustee shall reduce the benefit that shall become payable to or in respect of such Member by such amount as the Trustee determines to be fair and equitable after obtaining the advice of the Actuary.

3.4 Absence from service without pay

If a Member shall be granted leave of absence without pay by the Employer the following provisions shall apply.

- (a) Subject to paragraph (e) of this Rule, the Member shall remain eligible for death and Total and Permanent Disablement benefits should he or she die or become Totally and Permanently Disabled during the period of leave.
- (b) Subject to paragraphs (d) and (e) of this Rule, the period of leave will be included in the period of the Member's Membership for the purpose of calculating any benefit that may become payable to or in respect of the Member.
- (c) For the purposes of this sub-rule, calculation of Member Contributions and benefits payable shall be based on the Member's Salary immediately prior to the commencement of the leave or such other amount as determined by the Trustee with the approval of the Corporation.
- (d) Subject to paragraphs (e) and (f) of this Rule, but notwithstanding any other provisions of the Deed and these Rules, the maximum continuous period or periods of leave of absence without pay that may be counted for the purpose of calculating Previous Membership and Membership shall not exceed:
 - (i) where the period of leave of absence ends prior to 1 July 2014, 12 months (or such other period as the Trustee may prescribe from time to time with the prior consent of the Corporation);
 - (ii) where the period of leave of absence ends on or after 1 July 2014, 12 months in the following cases:
 - (A) a Member who, immediately prior to 1 July 2014, is on any type of approved leave of absence without pay, in respect of that period of leave;
 - (B) a Member who, immediately prior to 1 July 2014, is on paid adoption, maternity or paternity leave, in respect of the period of approved adoption, maternity or paternity leave of absence without pay immediately after the period of such paid leave; or
 - (C) a Class B Statutory Benefit Member;
 - (iii) where the period of leave of absence ends on or after 1 July 2014, in the case of a Member who is on approved adoption, maternity or paternity leave of absence without pay and sub-paragraph (d)(ii) of this Rule does not apply:
 - (A) 12 months, if the Member had no paid adoption, maternity or paternity leave (as applicable) immediately preceding the leave without pay; or
 - (B) otherwise, the period ending 12 months after the commencement of the Member's paid adoption, maternity or paternity leave;
 - (iv) in any other case, 28 days.
- (e) Notwithstanding paragraph (d) of this Rule, but subject to paragraph (f), a Member who is eligible for benefits on death and/or Total and Permanent Disablement at the time of commencing any approved leave of absence without pay, shall continue to be eligible for such benefits for a period of 12 months from the date of the

commencement of the approved leave of absence without pay and will cease to be eligible for such benefits at the expiration of that period.

- (f) The maximum periods referred to in paragraph (d) and (e) of this Rule:
 - (i) are subject to Superannuation Law; and
 - (ii) may be adjusted as follows:
 - (A) the period of 12 months, referred to in sub-paragraphs (d)(ii) and (iii), may instead be such other period as the Trustee may prescribe from time to time with the prior consent of the Corporation;
 - (B) the period of 28 days, referred to in sub-paragraph (d)(iv), may instead be such other period as the Trustee may prescribe from time to time with the prior consent of the Corporation whether generally or in a particular case;
 - (C) subject to paragraph (g), the periods referred to in sub-paragraphs (d)(ii), (iii) and (iv) and paragraph € may instead be such longer period as the Corporation may determine, whether generally or in a particular case or for Members in particular circumstances.
- (g) The Trustee is not obliged to:
 - (i) include in the period of a Member's Membership, under sub-paragraph (f)(ii)(C) of this Rule, any period of leave of absence without pay additional to the periods referred to in sub-paragraphs (d)(ii), (iii) and (iv); or
 - (ii) provide a benefit on death or Total and Permanent Disablement after the period of 12 months referred to in paragraph (e) has expired, where the Corporation has determined a longer period under sub-paragraph (f)(ii)(C) of this Rule,

unless the Corporation agrees to pay any additional contributions that the Actuary advises are expected to be necessary to fund the applicable additional benefit.

3.5 Government Co-Contributions

Subject to Superannuation Law,

- (a) the Trustee may accept into the Fund in respect of a Member any co-contribution or similar payment and may credit or treat any such co-contribution or similar payment as a voluntary contribution by the Member concerned.
- (b) the Trustee may pay the Australian Taxation Office or other proper authority an amount determined by the Trustee in respect of any co-contribution or similar payment which has been received into the Fund in respect of a Member and which the Australian Taxation Officer or other proper authority considers has been incorrectly paid and the Trustee may reduce the Member's account in the Fund or the benefit payable to or in respect of the Member by the amount which the Trustee has paid to the Australian Taxation Office or other proper authority under this sub-rule.

- (c) The Trustee may refuse to accept any co-contribution or similar payment in such circumstances as it may from time to time determine.

3.6 Splitting of Contributions

- (a) Subject to Superannuation Law and any rules prescribed by the Trustee, upon receipt of an election by the Member the Trustee may with the prior approval of the Corporation:
 - (i) allocate within the Fund; and/or
 - (ii) rollover or transfer to the Fund (as the case may require),an amount for the benefit of the Member's Spouse, that is equal to the nominated amount of splittable contributions made by or in respect of the Member.
- (b) Where the Member has elected to split contributions in accordance with Rule 3.6(a), the Trustee shall have power to reduce the Benefit payable to or in respect of the Member in such manner or on such basis as the Trustee shall determine either generally or in relation to any particular Member or category of Member.
- (c) The Trustee shall have power by resolution from time to time to prescribe rules for the purposes of facilitating the splitting of contributions under this clause and shall have power by resolution to amend or revoke any such rules.

4. Benefits

Subject to the provisions of the Deed and these Rules benefits shall be payable out of the Fund as follows.

4.1 Retirement benefit

A Member who ceases to be in Service on or after his or her Minimum Retirement Age otherwise than by Total and Permanent Disablement or death shall be entitled to receive a Retirement Benefit of an amount equal to the greater of his or her Accrued Retirement Benefit and MRB.

4.2 Death benefits

On the death of a Member while in Service if the Member was:

- (a) other than a Full Member the death benefit payable shall be an amount equal to the greater of the Accrued Retirement Benefit and the MRB;
- (b) a Full Member who was less than age sixty years at the date of death the death benefit payable shall be an amount equal to the greater of the Potential Retirement Benefit and the MRB;
- (c) a Full Member who was age sixty years or more at the date of death the death benefit payable shall be an amount equal to the greater of the Accrued Retirement Benefit and the MRB,

PROVIDED THAT:

- (i) in respect of a Member who dies in Service after the Minimum Retirement Age the death benefit will not be less than the benefit payable under Rule 4.1; and
- (ii) the benefit payable under this Rule in respect of a Member who had withdrawn from membership of the Scheme under Rule 2A as at the date of death shall be an amount equal to the greater of the Accrued Retirement Benefit and the MRB.

4.3 Total and Permanent Disablement

A Member who ceases to be in the Service by reason of Total and Permanent Disablement shall be entitled to receive a lump sum benefit equal to:

- (a) in the case of a Member who had withdrawn from, and not resumed, membership of the Scheme before the date of cessation of Service – the greater of the Accrued Retirement Benefit and the MRB; and
- (b) in any other case – the Death Benefit.

4.4 Withdrawal benefits

A Member who ceases to be in the Service of an Employer and who is not entitled to receive any other benefit under these Rules shall be entitled to receive a withdrawal benefit calculated as at the date the Member ceases to be in the Service of an amount equal to the greater of his or her Accrued Retirement Benefit and MRB.

4.5 Benefit Whilst in Service

- (a) Subject to Superannuation Law, the Trustee may at the request of a Member who is still in Service:
 - (i) pay or commence to pay (in whole or in part) the accrued Member Financed Benefit in respect of the Member, where permitted under and in accordance with Superannuation Law;
 - (ii) pay or commence to pay (in whole or in part) the balance of the Member's 'Rollover Account' (as defined in the rules prescribed by the Trustee from time to time pursuant to Rule 8 of Schedule 1), where permitted under and in accordance with Superannuation Law; and
 - (iii) pay or commence to pay amounts attributable to the accrued Employer Financed Benefit in respect of the Member, where permitted under Superannuation Law and in accordance with Superannuation Law and the rules prescribed by the Trustee from time to time for the purpose of this Rule 4.5.
- (b) Where the Trustee pays or commences to pay an amount in respect of a Member under Rule 4.5(a), the Trustee will reduce the benefits provided for or otherwise payable to or in respect of the Member in such manner or on such basis as the Trustee determines.
- (c) The Trustee may by resolution:
 - (i) establish rules for the purpose of this Rule 4.5; and
 - (ii) at any time and from time to time amend or revoke such rules,

and any such amendment or revocation will take effect as from the date of the Trustee's approval or such earlier or later date as may be specified in the relevant rules or resolution.

5. Alternative benefits

- 5.1 Notwithstanding anything expressed or implied to the contrary in this Deed and these Rules, the Trustee may, with the consent of the Corporation, in the absolute discretion of the Trustee:
- (a) in the case of a Member who had withdrawn from, and not resumed, membership of the Scheme within 60 days of that person's qualification therefor or such further period as the Trustee may think fit; or
 - (b) at their own initiative in special or exceptional circumstances,
- in lieu of such lump sum benefit provide:
- (i) a pension from the amount held in respect of a Member being an allocated pension or a market-linked pension in accordance with the Rules prescribed by the Trustee; or
 - (ii) an annuity or annuities purchased by the Trustee after obtaining the advice of the Actuary of such amount or amounts payable on such terms and conditions as the Trustee shall determine as can be purchased by the lump sum benefit.
- 5.2 The purchase of an annuity or annuities by the Trustee pursuant to sub-rule 5.1 shall release the Trustee in respect of the Member or other person entitled to the lump sum benefit and persons claiming through or under such Member or other persons.

6. Deferment of benefits

- (a) Where the Trustee is of the opinion that a Member has ceased to be in the Service of an Employer in circumstances where it is likely that the Member will rejoin the Service of an Employer within a period of six months or such other period as the Trustee may determine in any particular case, the Trustee may defer the payment of the benefit otherwise payable to the Member subject to such terms and conditions as the Trustee may think fit.
- (b) If the Member rejoins the Service of the Employer within the period specified in paragraph (a) hereof, the Trustee shall count the period of Membership prior to the Member ceasing to be in the Service as continuous with the period of the Membership after the Member rejoins the Service of the Employer for the purposes of calculating benefits payable to or in respect of the Member from the Scheme.
- (c) If the Member fails to rejoin the Service of an Employer within the period specified in paragraph (a) hereof, the Member shall be entitled to receive the benefit which the Member would have otherwise been entitled to receive on ceasing to be in the Service subject to adjustment pursuant to the terms and conditions imposed by the Trustee under paragraph (a) hereof.

- (d) If a Member dies during the period specified in paragraph (a) hereof without rejoining the Service of an Employer, the benefit which the Member would have been entitled to receive on ceasing to be in the Service subject to adjustment pursuant to the terms and conditions imposed by the Trustee under paragraph (a) hereof shall be payable under the Scheme pursuant to Clause 11.6.

7. Minimum benefit - Government requirements

- (a) Notwithstanding anything expressed or implied to the contrary in Rule 4, where a Member ceases to be in the Service of an Employer and a Federal or State law requires the Employer to provide a certain minimum level of superannuation benefit to or in respect of the Member, or where a Federal or State law imposes a charge, levy or tax upon the Employer if a minimum level of superannuation benefit is not provided, the Corporation may require the benefit otherwise payable from the Scheme to or in respect of the Member to be increased (if necessary) so that it is not less than the minimum level of superannuation benefit or such part of that minimum level of superannuation benefit as the Corporation specifies, **PROVIDED THAT** the Trustee may but shall not be obliged to comply with a requirement of the Corporation pursuant to this paragraph (a) where the requirement is notified to the Trustee in circumstances such that, if these Rules were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law.
- (b) The benefit otherwise payable from the Scheme shall not be increased in accordance with paragraph (a) of this Rule unless and until the Corporation notifies the Trustee in writing of its requirements under paragraph (a) of this Rule including what part of the minimum level of superannuation benefit is to be provided by the Scheme and details of the Members in relation to whom such requirements apply.
- (c) Where the Corporation notifies the Trustee in writing in accordance with paragraph (b) of this Rule, the Trustee shall provide a copy of that notification to the Actuary and the amount of the increase in the benefit otherwise payable from the Scheme to or in respect of Members in relation to whom the requirements apply shall be calculated by the Actuary or by reference to a formula determined by the Actuary and certified in writing to the Trustee for the purposes of this Rule.
- (d) Where benefits are increased in accordance with this Rule, each Employer shall contribute to the Fund in accordance with Rule 3.3 such additional amount or rate of contributions (if any) in respect of the increase in benefits as the Trustee determines after obtaining the advice of the Actuary and with the approval of the Corporation.
- (e) Any notice in writing given by the Corporation in accordance with paragraph (b) of this Rule may be withdrawn by the Corporation by notice in writing to the Trustee.

8. Beneficiary accounts

- (a) The Trustee shall, with the prior consent of the Corporation, have power to make available to Beneficiaries generally, or one or more Beneficiaries or classes of Beneficiaries, one or more categories of account each of which is to be known as a "Beneficiary Account". The Trustee may determine a name or number by which a category of Beneficiary Account is to be known.
- (b) Each category of Beneficiary Account shall be made available on the terms and conditions of this Rule and in a manner consistent with Superannuation Law.
- (c) In order to give effect to this Rule 8, where a category of Beneficiary Account is made available to one or more Beneficiaries in accordance with paragraph (a) of this Rule, the Trustee shall have power to:
 - (i) comply with any relevant requirement or provision of Superannuation Law;
 - (ii) prescribe, having regard to the advice of the Actuary, rules relating to the operation of that category of Beneficiary Account (including, without limitation, rules prescribing for the purposes of paragraphs (d) and (e) of this Rule the time as at which credits and debits will be made to Beneficiary Accounts, rules prescribing for the purposes of paragraph (h) of this Rule the form in which benefits are payable from that category of Beneficiary Account under paragraphs (g), (i) and (j) of this Rule and rules prescribing for the purposes of paragraph (r) of this Rule the terms and conditions on which pensions are payable on the death of a Beneficiary) and at any time and from time to time to amend, having regard to the advice of the Actuary, any such rules **PROVIDED THAT** such rules or amendments are not inconsistent with the provisions of this Rule 8 or Superannuation Law;
 - (iii) establish a Sub-fund or Sub-funds in accordance with the provisions of sub-clause 8.4 in respect of contributions and assets represented by that category of Beneficiary Account; and
 - (iv) do such other acts and things, establish such procedures and make such arrangements, as may in the opinion of the Trustee be necessary or desirable in order to give effect to this Rule **PROVIDED THAT** such acts, things, procedures and arrangements are not inconsistent with the provisions of this Rule 8 or Superannuation Law.
- (d) The following amounts shall be credited to a Beneficiary Account:
 - (i) such amount as is transferred to the Beneficiary Account by the Trustee pursuant to sub-clause 10.3;
 - (ii) such contributions (if any) made by the Beneficiary to the Fund with the consent of the Trustee and in accordance with any rules, procedures or arrangements made by the Trustee from time to time in accordance with this Rule;

- (iii) such amounts, or the value of such assets (if any), paid or transferred to the Scheme in respect of the Beneficiary from an Approved Arrangement with the consent of the Trustee and subject to such terms and conditions which the Trustee may impose or accept;
- (iv) positive interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Beneficiary Account up to the date the amount is paid out of the Beneficiary Account;
- (v) the amount of any adjustment, credit or refund of any surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which in the opinion of the Trustee has been made in favour of or received in respect of the Beneficiary Account, being an adjustment, credit or refund in respect of a surcharge, tax, charge, impost, advance instalment or associated amount (as the case may be) previously debited from that Beneficiary Account pursuant to sub-paragraph (e)(iii) of this Rule; and
- (vi) subject to sub-paragraphs o(iii) and p(iii) of this Rule, any other amount required or permitted to be credited to the Beneficiary Account pursuant to the Deed or these Rules.

The Trustee shall credit each Beneficiary Account in accordance with this paragraph at such time or times as apply under any rules, procedures or arrangements made by the Trustee in accordance with this Rule or otherwise as the Trustee thinks fit from time to time.

- (e) The following amounts shall be debited to a Beneficiary Account:
 - (i) negative interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Beneficiary Account up to the date the amount is paid out of the Beneficiary Account;
 - (ii) such costs (if any) incurred by the Trustee in relation to the administration and maintenance of the Beneficiary Account as the Trustee considers to be appropriate including (where applicable in the case of a Beneficiary Account which forms part of a Sub-fund of the type referred to in sub-clause 8.4(g)) such amount (if any) required to be debited to the Beneficiary Account from time to time in accordance with rules (if any) established under sub-clause 8.5(c)(ii);
 - (iii) such amount (if any) as the Trustee considers appropriate from time to time on account of any surcharge, tax, charge or impost (however described) and any advance instalment and associated amount which in the opinion of the Trustee have or may be assessed against the Fund in respect of the Beneficiary, or in connection with a contribution made or deemed to be made to the Fund in respect of the Beneficiary, from time to time on account of or attributable to the Beneficiary Account and in respect of which no adjustment has been made under other provisions of the Deed or the Rules to the benefits accruing under or payable from the Fund in respect of the Beneficiary pursuant to this Rule 8;

- (iv) any amount paid from the Beneficiary Account in accordance with this Rule;
and
- (v) any other amount required or permitted to be paid out of, or deducted from,
the Beneficiary Account pursuant to the Deed or these Rules.

The Trustee will debit each Beneficiary Account in accordance with this paragraph at such time or times as apply under any rules, procedures or arrangements made by the Trustee in accordance with this Rule or otherwise as the Trustee thinks fit from time to time.

- (f) Notwithstanding anything expressed or implied to the contrary in the Deed or these Rules, the Trustee shall, in connection with amounts credited to a Beneficiary Account pursuant to sub-paragraph (d)(iii) of this Rule, or amounts transferred to an Approved Arrangement pursuant to the provisions of this Rule, have power to give undertakings to, or enter into preservation or portability arrangements with, the trustee or responsible authority of an Approved Arrangement on such terms and conditions as the Trustee thinks fit, and (in the case of amounts credited to a Beneficiary Account pursuant to sub-paragraph (d)(iii) of this Rule) any benefits or other rights granted to a Beneficiary under the Scheme shall be subject to the terms and conditions of any undertaking or arrangement as aforesaid and the terms and conditions of any such undertaking or arrangement shall not be set aside by any alterations, additions or repeals made pursuant to Clause 12.
- (g) The Trustee shall from time to time upon receiving a written request for payment from a Beneficiary in accordance with rules, procedures or arrangements made by the Trustee from time to time pursuant to this Rule, and where otherwise required from time to time pursuant to such rules, procedures or arrangements:
 - (i) pay (less any amount deducted by the Trustee pursuant to sub-clause 7.6(c)) to the Beneficiary; or
 - (ii) transfer (less any amount deducted by the Trustee pursuant to sub-clause 7.6(c)) to an Approved Arrangement on such terms and conditions as the Trustee thinks fit,all or such part of the amount standing to the credit of the Beneficiary Account or Beneficiary Accounts maintained in respect of that Beneficiary as is specified by the Beneficiary in that written request.
- (h) The balance, or (where applicable) the part of the balance referred in sub-paragraph (v), of a Beneficiary Account (less any amount deducted by the Trustee pursuant to sub-clause 7.6(c)) shall be payable in accordance with rules, procedures and arrangements made by the Trustee from time to time pursuant to this Rule, on the first to occur of:
 - (i) the attainment by the Beneficiary of the maximum age (if any) applicable under Superannuation Law from time to time;
 - (ii) subject to paragraphs (r) and (s) of this Rule to the extent that those paragraphs apply in respect of the Beneficiary, the death of the Beneficiary;

- (iii) the Beneficiary making a payment election in accordance with sub-paragraph (o)(v) of this Rule;
- (iv) the withdrawal and termination of the Beneficiary Account in accordance with paragraphs (m) and (p) of this Rule; and
- (v) Superannuation Law requiring the balance, or any part thereof, to be paid or commence to be paid,

PROVIDED THAT no amount shall be paid out of a Beneficiary Account if in the opinion of the Trustee to do so would or may prejudice the taxation concessions available in respect of the Scheme or cause the Scheme, this Deed or the Trustee to be in breach of, or fail to comply with or satisfy, Superannuation Law.

- (i) Where all or part of the balance of a Beneficiary Account becomes payable in accordance with the provisions of paragraph (h) of this Rule the balance or part thereof (as the case may be) shall:
 - (i) in the case of sub-paragraphs (h)(i), (h)(iii) or (h)(iv) of this Rule, be paid by the Trustee to the relevant Beneficiary or, upon the written request of the relevant Beneficiary, be transferred to an Approved Arrangement on such terms and conditions as the Trustee thinks fit;
 - (ii) in the case of sub-paragraph (h)(ii) of this Rule, be paid or applied by the Trustee to or for the benefit of such one or more of:
 - (A) the Beneficiary's Dependants;
 - (B) the Beneficiary's legal personal representative; and
 - (C) if applicable, any other person but only on the terms and in the circumstances permitted under Superannuation Law,to the exclusion of the others or other of them or in such proportions between them and in such form, manner and subject to such terms and conditions as the Trustee shall determine; and
 - (iii) in the case of sub-paragraph (h)(v) of this Rule, be paid or applied by the Trustee in such manner, and on such terms and conditions, determined by the Trustee from time to time (whether in relation to Beneficiary Accounts or a category of Beneficiary Account generally or in relation to one or more Beneficiary Account or class of Beneficiary Account), being a manner, terms and conditions which in the opinion of the Trustee comply with Superannuation Law.
- (j) Subject to Superannuation Law and the Deed and these Rules, amounts paid from a Beneficiary Account to, or in respect of, the Beneficiary concerned in accordance with this Rule may be paid in such form (including, without limitation, lump sums and pensions annuities or any combination thereof) as the Trustee may determine from time to time (whether in relation to Beneficiary Accounts or a category of Beneficiary Account generally or in relation to one or more Beneficiary Account or class of Beneficiary Account).

- (k) This paragraph applies in respect of a Beneficiary who is not an Employee at the time one or more Beneficiary Accounts are established for that Beneficiary in accordance with this Rule but who subsequently becomes an Employee. Where this paragraph applies in respect of a Beneficiary each of the person's Beneficiary Accounts will continue to be maintained on the terms and conditions of this Rule notwithstanding the recommencement of employment unless the Beneficiary elects with the consent of the Trustee to close such of his or her Beneficiary Accounts as are specified in the election and to apply the balance thereof to other benefits in accordance with paragraph (l) of this Rule.
- (l) Where a Beneficiary makes an election in accordance with paragraph (k) of this Rule, the Beneficiary shall be entitled to such benefits from the Fund in such circumstances and on such terms and conditions as shall be determined by the Trustee after obtaining the advice of the Actuary and having regard to Superannuation Law.
- (m) The Trustee may at any time with the prior consent of the Corporation, and shall upon the direction of the Corporation at any time if such direction is permitted under Superannuation Law:
- (i) close to Beneficiaries any category of Beneficiary Account;
 - (ii) temporarily suspend the operation of any category of Beneficiary Account; or
 - (iii) withdraw and terminate any category of Beneficiary Account,
- with effect on and from the date determined by the Trustee, being the **Closure Date** (in the case of sub-paragraph (i)) the **Suspension Date** (in the case of sub-paragraph (ii)) or the **Withdrawal Date** (in the case of sub-paragraph (iii)).
- (n) Where a category of Beneficiary Account is closed in accordance with paragraph (m) of this Rule:
- (i) no new Beneficiary Accounts of that category shall be established on or after the Closure Date in respect of any Beneficiary;
 - (ii) each Beneficiary Account of that category established prior to the Closure Date shall continue to be maintained in accordance with this Rule after the Closure Date; and
 - (iii) the Trustee may with the approval of the Corporation at any time with the prior consent of the Corporation re-open that category of Beneficiary Account to new or existing Beneficiaries, in which case Beneficiary Accounts of that category shall be established and maintained in accordance with this Rule as from the date determined by the Trustee.
- (o) Where a category of Beneficiary Account is temporarily suspended in accordance with paragraph (m) of this Rule:
- (i) the Trustee will promptly give notice in writing to each Beneficiary in respect of whom a Beneficiary Account of that category is established and maintained advising that the operation of the Beneficiary Account has been suspended as from the Suspension Date until further notice;

- (ii) no new Beneficiary Accounts of that category shall be established during the period of the suspension in respect of any Beneficiary;
- (iii) the Trustee may with the approval of the Corporation determine that no contributions, transfers from Approved Arrangements or any other amounts will be accepted in respect of any Beneficiary Account of that category during the period of the suspension;
- (iv) subject to sub-paragraph (v) hereof, the Trustee may in its discretion suspend the making of payments from Beneficiary Accounts of that category under paragraphs (g), (h) and (i) of this Rule as from the Suspension Date until the category of Beneficiary Account is re-opened or withdrawn and terminated under sub-paragraph (vi) hereof;
- (v) notwithstanding sub-paragraph (iv) hereof, a Beneficiary who has a Beneficiary Account of that category may during the period of suspension elect, subject to Superannuation Law, to be paid in accordance with rules, procedures and arrangements made by the Trustee from time to time pursuant to this Rule the entire balance standing to the credit of the person's Beneficiary Account or to transfer that amount to an Approved Arrangement in accordance with sub-clause 10.2; and
- (vi) the Trustee may at any time with the prior consent of the Corporation, and shall upon the direction of the Corporation at any time if such direction is permitted under Superannuation Law, either:
 - (A) re-open that category of Beneficiary Account in which case each existing Beneficiary Account of that category shall continue to be maintained, and new Beneficiary Accounts of that category shall be established, in accordance with this Rule as from the date determined by the Trustee; or
 - (B) withdraw and terminate that category of Beneficiary Account with effect on and from the date determined by the Trustee (which date shall be the **Withdrawal Date** for the purposes of paragraph (p) of this Rule) in which case each Beneficiary Account of that category shall be dealt with in accordance with paragraph (p) of this Rule.
- (p) Where a category of Beneficiary Account is withdrawn and terminated in accordance with paragraph (m) of this Rule or sub-paragraph (o)(vi)(B) of this Rule:
 - (i) the Trustee will promptly give notice in writing to each Beneficiary in respect of whom a Beneficiary Account of that category is established and maintained advising that the Beneficiary Account is withdrawn and terminated as from the Withdrawal Date;
 - (ii) no new Beneficiary Accounts of that category shall be established on or after the Withdrawal Date;

- (iii) the Trustee will not accept any further contributions, transfers from Approved Arrangements or any other amount in respect of any Beneficiary Account of that category on or after the Withdrawal Date;
 - (iv) the Trustee may make such arrangements as it thinks fit in respect of any Sub-fund or Sub-funds established in respect of that category of Beneficiary Account in accordance with sub-clause 8.4; and
 - (v) after making such deductions as the Trustee considers appropriate pursuant to paragraph (e) of this Rule and sub-clause 7.6(c), the Trustee shall pay the balance standing to the credit of each Beneficiary Account of that category to, or in respect of, the relevant Beneficiary.
- (q) The benefits provided under sub-paragraph (p)(v) of this Rule will be:
- (i) provided in such form (including, without limitation, cash, insurance policies, pensions (including, without limitation, pensions payable on the death of the Beneficiary in accordance with paragraphs (r) and (s) of this Rule), annuities, or otherwise), by way of such arrangements (whether within the Scheme or not) and subject to such conditions as the Trustee thinks fit; and
 - (ii) in lieu of, and in full satisfaction of, the benefits which would or might have been payable from the Fund but for the operation of this paragraph.
- (r) This paragraph applies in respect of a Beneficiary who, with the consent of the Trustee, elects in writing (in accordance with any rules, procedures or arrangements made by the Trustee from time to time pursuant to this Rule) that this paragraph is to apply in respect of all or part (as the case may be) of the balance (if any) credited as at the date of the Beneficiary's death to such of his or her Beneficiary Accounts (if any) as are nominated in the election (referred to in this paragraph and paragraph (r) as the **nominated balance**). Where this paragraph applies in respect of a Beneficiary, the Trustee shall, subject to Superannuation Law, provide a pension from the nominated balance to the person or persons (as the case may be) nominated in the relevant election who survive the Beneficiary and, where more than one person is nominated, in such proportions between them as is specified in the election and otherwise in such manner and subject to such terms and conditions as the Trustee thinks fit from time to time (whether in relation to Beneficiary Accounts or a category of Beneficiary Account generally or in relation to one or more Beneficiary Account or class of Beneficiary Account). Any such pension or pensions shall commence to be payable on and from the date of the Beneficiary's death. Any amount credited to a Beneficiary Account which does not form part of a Beneficiary's nominated balance shall be applied and dealt with in accordance with the applicable provisions of this Rule 8.
- (s) If the person, or all persons, in respect of whom a pension is provided under paragraph (r) of this Rule die before the nominated balance is paid in full the balance shall, subject to the terms and conditions upon which such pension is provided, be applied by the Trustee in accordance with the applicable provisions of paragraphs (g), (i) and (j) of this Rule.
- If:

- (i) a person nominated by a Beneficiary in an election dies before the Beneficiary;
 - (ii) the proportion or proportions specified in an election do not equal 100%; or
 - (iii) an election is (in the opinion of the Trustee) otherwise defective,
- upon the death of the relevant Beneficiary the balance of the nominated Beneficiary Accounts shall be paid or applied in such manner as the Trustee thinks fit which may include (without limitation) in accordance with the applicable provisions of paragraphs (g), (i) and (j) of this Rule.
- (t) Any requests or elections of whatever description made by a Beneficiary for the purposes of this Rule or sub-clause 10.3 must comply with any rules, procedures or arrangements made by the Trustee in accordance with this Rule.
 - (u) This Rule is subject to Superannuation Law. In order to give effect to the intention of this paragraph, the Trustee shall have power to adjust in such manner as it thinks fit the operation of any provision of this Rule which in the absence of adjustment in accordance with this paragraph would or may in the opinion of the Trustee prejudice the taxation concessions available in respect of the Scheme or cause the Scheme, this Deed or the Trustee to be in breach of, or to fail to comply with or satisfy, Superannuation Law.

9. Employer Financed Accumulation Account

- (a) The Trustee shall establish and maintain an Employer Financed Accumulation Account in respect of each Member in respect of whom a contribution or amount is received into the Fund which is required pursuant to paragraph (b) of this Rule to be credited to an Employer Financed Accumulation Account.
- (b) The following amounts shall be credited to an Employer Financed Accumulation Account:
 - (i) such contributions (if any) as are paid by the Employer pursuant to sub-rule 3.3(d)(ii) in respect of the Member;
 - (ii) such amounts (if any) as are required by paragraph (a) of sub-clause 10.1 to be credited thereto;
 - (iii) positive interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Employer Financed Accumulation Account up to the date the amount is paid out of the Employer Financed Accumulation Account.
- (c) The following amounts shall be debited to an Employer Financed Accumulation Account:
 - (i) negative interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Employer Financed Accumulation Account up to the date the amount is paid out of the Employer Financed Accumulation Account;

- (ii) such costs (if any) incurred by the Trustee in relation to the administration and maintenance of the Employer Financed Accumulation Account as the Trustee considers to be appropriate including (where applicable in the case of an Employer Financed Accumulation Account which forms a part of a Sub-fund of the type referred to in sub-clause 8.4(e)), such amount (if any) required to be debited to the Employer Financed Accumulation Account from time to time in accordance with rules (if any) established under sub-clause 8.5(c)(ii); and
 - (iii) any other amount required or permitted to be paid out of or deducted from the Employer Financed Accumulation Account pursuant to the Deed or the Rules.
- (d) The balance of an Employer Financed Accumulation Account is payable to or in respect of the Member in respect of whom the account is maintained upon an entitlement to a benefit in respect of that Member arising pursuant to Rule 4 **PROVIDED THAT** no amount shall be paid out of an Employer Financed Accumulation Account if in the opinion of the Trustee so to do would or might cause the Scheme to be in breach of or to fail to comply with any requirement of Superannuation Law.

10. Spouse Accounts

- (a) The Trustee, with the prior approval of the Corporation, shall have power to establish in the Fund in respect of persons who become, in the opinion of the Trustee, eligible spouses of the Member and may receive into the Fund and credit to such account:
- (i) any contributions paid by the Member in respect of his or her eligible spouse;
 - (ii) any amount allocated to the eligible spouse under Rule 3.6; and
 - (iii) subject to Superannuation Law, any other amount which the Trustee can accept in respect of the eligible spouse,
- Each account established under this Rule shall be known as a ***Spouse Account.***
- (b) The Trustee with, the prior approval of the Corporation, shall have power to establish accounts in the Fund in respect of persons who are, in the opinion of the Trustee, eligible spouses of Members and may receive into the Fund and credit to such account any contribution paid by the Member in respect of his or her eligible spouse. Each account established under this Rule shall be known as a "Spouse Account".
- (c) Each Spouse Account shall be made available on the terms and conditions of this Rule in a manner consistent with Superannuation Law.
- (d) In order to give effect to this Rule 10, where a Spouse Account is made available in accordance with paragraph (a) of this Rule the Trustee shall have power to:
- (i) comply with any relevant requirement or provision of Superannuation Law in relation to such accounts;
 - (ii) prescribe, having regard to the advice of the Actuary, rules relating to the operation of the Spouse Account (including, without limitation, rules

prescribing the time as at which credits and debits shall be made to Spouse Accounts, rules prescribing the times at which and the form in which benefits are payable from Spouse Accounts and rules prescribing the terms and conditions on which pensions are payable on the death of an eligible spouse) and at any time and from time to time amend, having regard to the advice of the Actuary, any such rules **PROVIDED THAT** such rules and amendments are not inconsistent with the provisions of this Rule 10 or Superannuation Law.

- (e) Subject to Superannuation Law, the Trustee shall pay the amount standing to the credit of the Spouse Account to the eligible spouse or otherwise deal with that amount as requested by the eligible spouse or as required by Superannuation Law.
- (f) Subject to Superannuation Law, if the spouse shall die before the amount standing to the credit of the Spouse Account has been paid or otherwise dealt with in accordance with this Rule, the Trustee shall deal with the amount standing to the credit of the Spouse Account under clause 11.6 as if references to the deceased Member in that clause were references to the deceased spouse and defined terms used in that clause shall be construed accordingly.
- (g) In this Rule 10, Member includes:
 - (i) a former Employee who has one or more Beneficiary Accounts unless the Trustee determines otherwise; and
 - (ii) any other person whom the Trustee nominates for the purposes of this paragraph.

11. Default Fund Benefits – Choice of Funds

11.1 Application of Rule 11

This Rule 11 shall apply:

- (a) in respect of an Employee of an Employer who has nominated the Scheme as its employer fund for the purposes of the *Superannuation Guarantee (Administration) Act 1992*;
- (b) the Employee concerned has not selected another fund for the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act 1992*; and
- (c) the Trustee determines that this Rule shall apply in respect of the Employer concerned.

11.2 Admission to Membership

Where this Rule applies and the Trustee receives a contribution from the Employer in respect of an Employee under this Rule, the Employee shall be admitted to Membership of the Scheme and shall become entitled to benefits under this Rule.

11.3 Contributions in respect of Employees

- (a) The Trustee shall not be obliged to accept a contribution under this Rule unless and until the Trustee has sufficient information in respect of the Employee in relation to whom the contribution is received to establish an account and create appropriate records for the Employee concerned.
- (b) Subject to Superannuation Law, the Trustee may accept into the Scheme, in respect of an Employee admitted to Membership under this Rule:
 - (i) contributions by or in respect of the Member;
 - (ii) co-contributions in respect of the Member;
 - (iii) other amounts in respect of the Member the acceptance of which will not cause the Scheme to breach or fail to comply with any applicable requirement of Superannuation Law.

11.4 Member Account

- (a) The Trustee shall establish and maintain in respect of each Member admitted to Membership under this Rule a Member's Accumulation Account.
- (b) The following amounts shall be credited to the Member's Accumulation Account:
 - (i) contributions or other amounts received in respect of the Member under this Rule;
 - (ii) positive interest pursuant to sub-clause 11.10 (if any) from the date the amount is credited to the Member's Accumulation Account to the date the amount is paid out of the Member's Accumulation Account.
- (c) The following amounts shall be debited to the Member's Accumulation Account:
 - (i) negative interest pursuant to sub-clause 11.10 (if any) from the date the amount is credited to the Member's Accumulation Account to the date the amount is paid out of the Member's Accumulation Account;
 - (ii) the charge determined by the Trustee from time to time under Rule 11.5;
 - (iii) such costs (if any) incurred by the Trustee in relation to the administration and maintenance of the Member's Accumulation Account as the Trustees considers to be appropriate including (whether applicable in the case of a Member's Accumulation Account which forms a part of a Sub-fund of the type referred to in sub-clause 8.4(e)), such amount (if any) required to be debited to the Member's Accumulation Account from time to time in accordance with rules (if any) established under sub-clause 8.5(c)(ii); and
 - (iv) any other amount required or permitted to be paid out of or deducted from the Member's Accumulation Account pursuant to the Deed or the Rules.
- (d) Subject to Superannuation Law, the balance of the Member's Accumulation Account shall be payable:
 - (i) to or at the direction of the Member at the Member's written request; and

- (ii) on the death of the Member in accordance with the provisions of Clause 11.6.

11.5 Death and Total and Permanent Disablement Benefits

- (a) The Trustee may with the prior approval of the Corporation offer to Members entitled to benefits under this Rule either or both death or Total and Permanent Disablement benefits on such terms and conditions as to the level of cover or otherwise as the Trustee shall determine; provided that, where required by Superannuation Law, the Trustee shall provide the minimum level of benefit in respect of death required in relation to an employer fund under the *Superannuation Guarantee (Administration) Act 1992*.
- (b) The Trustee shall deduct from the Member's Accumulation Account a charge determined from time to time by the Trustee in respect of the death and/or Total and Permanent Disablement benefits provided in respect of the Member under this Clause.
- (c) Subject to Superannuation Law, the Trust Deed and this Rule, where a Member entitled to benefits under this Clause dies in the Service or ceases to be in the Service by reason of Total and Permanent Disablement, the Trustee shall pay the amount of the benefit payable under this Rule as an addition to the balance of the Member's Accumulation Account.

12. Flexible Death and Total and Permanent Disablement Benefits

- (a) The Trustee may with the prior approval of the Corporation offer to provide to Members flexible death and/or Total and Permanent Disablement benefits in accordance with Rules prescribed by the Trustee.
- (b) Where a Member elects to receive or is provided with death and/or Total and Permanent Disablement benefits in accordance with the Rules prescribed under paragraph (a) of this Rule, the other benefits payable to or in respect of the Member will be adjusted in the manner set out in those Rules.

13. Increased Death Benefit for Anti-detriment Payments

- (a) Subject to Rule 13(b), where a Member dies on or after the date of execution of Deed of Modification No 17 relating to the Scheme and a lump sum benefit in respect of that Member is paid by the Trustee to a Spouse, former Spouse or a Child of the deceased Member, the lump sum benefit payable in respect of the Member may be increased by an amount determined by the Trustee, having regard to the advice of the Actuary, having regard to the amount (the ***Tax Saving Amount***) the Scheme would have paid had no tax been payable on amounts included in the assessable income of the Scheme under Subclause 295-C of the Tax Act in respect of the lump sum benefit paid in respect of that Member.
- (b) The Trustee shall not pay the Tax Saving Amount referred to in Rule 13(a) unless the Trustee is reasonably satisfied that the Scheme will be allowed a deduction for that amount under the Tax Act.

The Common Seal of PostSuper Pty Ltd
was duly affixed in the presence of:

Director/Secretary

Print Name

Director

Print Name

The Common Seal of [] was duly
affixed in the presence of:

Director/Secretary

Print Name

Director

Print Name

Schedule 3

Clause 19.1 - Deemed Covenants under Superannuation Law

1. Purpose of Schedule

- 1.1 For the sole purpose of assisting readers of this Deed, the covenants which the Trustee is required to give under Clause 19.1 with effect on and from 1 July 1994 are specified in this Schedule.
- 1.2 Accordingly, it is acknowledged that in respect of any date after 1 July 1994 the covenants specified in this Schedule may not reflect the then current covenants required to be given by the Trustee under Clause 19.1 as at that date.

2. Covenants applicable as at 1 July 1994

The covenants referred to in Clause 19.1 of this Deed and Clause 1 of this Schedule are the following covenants by the Trustee:

- (a) to act honestly in all matters concerning the Scheme;
- (b) to exercise, in relation to all matters affecting the Scheme, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries of the Scheme;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Trustee personally; or
 - (ii) that are money or assets (as the case may be) of an Employer, or an associate (within the meaning of SIS) of an Employer of the Fund;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers in relation to the Scheme;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Scheme including, without limitation, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;

- (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary of the Fund access to any information or documents prescribed for the purposes of Superannuation Law; and
- (i) to comply with any other covenant prescribed for the purposes of Superannuation Law.

3. Covenant relating to the hindrance of Trustee's functions and powers

The covenant specified in paragraph (e) Clause 2 of this Schedule does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.

4. Investment strategy covenant

An investment strategy is taken to be in accordance with paragraph (f) of Clause 2 of this Schedule even if it provides for a specified Beneficiary, or a specified class of Beneficiaries, of the Fund to give directions to the Trustee, where:

- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
- (b) the directions are given in circumstances covered by regulations made for the purposes of Superannuation Law.

[Executed by the Australian Postal Corporation and by the first Trustees of the Scheme]