

DATED 19 June 1990

AUSTRALIAN POSTAL CORPORATION  
("the Corporation")

- and -

RAE MARTIN TAYLOR  
ANGUS JAMES MCKENZIE  
FRANCIS CHARLES O'FARRELL  
BRIAN KEITH BAULK  
PETER ANTHONY NORMAN  
and  
EDWARD JOHN MINNIS  
("the Trustees")

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AUSTRALIA POST SUPERANNUATION SCHEME  
TRUST DEED

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**THIS TRUST DEED** is made the

19<sup>th</sup>

day of June

1990

**BETWEEN:** **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")

of the one part

**AND:** **RAE MARTIN TAYLOR, ANGUS JAMES MCKENZIE, FRANCIS CHARLES O'FARRELL, BRIAN KETH BAULK, PETER ANTHONY NORMAN and EDWARD JOHN MINNIS** ("the Trustees")

of the other part

**WHEREAS:**

- 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 Insurance and Superannuation Commissioner.
- B. The Trustees have consented to act as the initial trustees of the Scheme as is indicated by their execution hereof.

**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 Trustees 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 Trustees 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.

## 2. DEFINITIONS

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

**"Accrued Productivity 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; and
- (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;

**PROVIDED THAT** the period of Service for the purposes of this paragraph shall be reduced by such period as is determined by the Trustees 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; and
- (c) 3% of the Member's Final Average Salary for any period of Membership where the Member did not contribute to the Scheme

**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 shall be multiplied by the Service Fraction for that period.

**"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's 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) where the Member contributed to the Scheme, 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's Contributions as a percentage of Salary were at the level set out in Column B

| Column A                             | Column B   |
|--------------------------------------|--|
| (percentage of Final Average Salary) | (Member's 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   |

**PROVIDED THAT** the maximum amount determined under this paragraph (a)(v) shall not exceed as an average 14.3% of the



Member's Final Average Salary over the period in years of Membership (and pro rata for each day any part of the period is less than a complete year) where the Member contributes to the Scheme,

**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 (i)) shall be multiplied by the Service Fraction for that period; and

(b) the Accrued Productivity Benefit.

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

**"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.

**"Approved Arrangement"** means a complying superannuation fund for the purposes of the Standards Act, an approved deposit fund within the meaning of the Standards Act, or a Deferred Annuity.

**"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 independent registered auditor within the meaning of the Standards Act and, for any particular purpose under this Deed, "the Auditor" means the person or firm of persons appointed for the time being by the Trustees 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 person (including a Member) who is presently entitled to receive a benefit under the Scheme in accordance with this Deed.

**"Child"** includes an adopted child, an ex-nuptial child, a foster child or a ward either of a Member or of a Spouse of a Member or a minor who in the opinion of the Trustees is under the care custody or control of a Member or Spouse of a Member.

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

**"Class A Productivity Member"** means an Employee:

- (a) who has applied for and been admitted to the Scheme as a Class A Productivity Member; and
- (b) who is not a member of the Commonwealth Superannuation Scheme.

**"Class B Productivity Member"** means an Employee:

- (a) who has applied for and been admitted to the Scheme as a Class B Productivity Member; and
- (b) who is a member of the Commonwealth Superannuation Scheme; or
- (c) who is a member of some other superannuation or similar arrangement that in the opinion of the Trustees makes the Employee ineligible to become a Class A Productivity Member.

**"Contributory Member"** means an Employee who:

- (a) has applied for and been admitted to the Scheme as a Class A Productivity Member;
- (b) has completed six months service with an Employer;
- (c) is not eligible to become a Full Member;
- (d) elects to contribute to the Scheme; and
- (e) continues to contribute to the Scheme.

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

**"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.

**"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 [x%] 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.

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

**"Deferred Annuity"** means an annuity which is issued on terms and conditions which comply with the relevant requirements of the Standards Act in relation to deferred annuities.

**"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:

- (i) the Spouse or Child of a Member or Beneficiary; and
- (ii) any other person whom in the opinion of the Trustees is, or in the case of a deceased Member or Beneficiary was at the time of his or her death, in any way dependent on the Member or Beneficiary.

**"Employee"** means a person who is in the employ of an Employer.

**"Employer"** means:

- (i) the Corporation;
- (ii) any Associated Employer; and
- (iii) 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.

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

**"Employer Trustees"** means trustees of the Scheme appointed or deemed to be appointed by the Corporation pursuant to sub-clause 5.1.2.

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

- (i) in respect of any period of Full-Time Service, the Member's Salary; and
- (ii) 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.

**"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 Trustees with the consent of the Corporation **PROVIDED THAT:**

- (i) 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;

- (ii) 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;
- (iii) 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
- (iv) for the purposes of determining the retirement benefit under Rule 4.1 and the Accrued Productivity 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.

**"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 Trustees.

**"Full Member"** means 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 Trustees pursuant to this Deed.

**"Guidelines"** means the guidelines (if any) which apply to the provision of benefits for or in relation to Employees of the Corporation determined by the Minister for Finance under Section 153AC(3) of the Superannuation Act 1976.

**"Independent Trustee"** means the trustee (if any) for the time being appointed pursuant to sub-clause 5.1.3.

**"Insurance and Superannuation Commissioner"** means the commissioner within the meaning of the Standards Act or the person for the time being acting as the commissioner under the Standards Act.

**"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 Trustees 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 but does not include:

- (i) a Deferred Beneficiary;
- (ii) a person who has died; or
- (iii) 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 Trustees as representing contributions of a Member together with interest thereon pursuant to sub-clause 11.10.

**"Member's Contributions"** means contributions to the Scheme by a Member (if any).

**"Member Trustees"** means trustees of the Scheme appointed or deemed to be appointed by the Unions pursuant to sub-clause 5.1.2.

**"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.

**"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.

**"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 Trustees determine.

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

**"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 Trustees 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 Trustees 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 the **AUSTRALIA POST SUPERANNUATION SCHEME** established by this Deed.

"**Secretary**" means any Secretary for the time being appointed by the Trustees pursuant to sub-clause 7.2.

"**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.

"**Spouse**" means a person who at the date of death of a Member was in the opinion of the Trustees:

- (i) legally married to the deceased Member and living with him or her on a permanent and bona fide domestic basis;
- (ii) legally married to the deceased Member and in the opinion of the Trustees substantially financially dependent upon him or her; or
- (iii) not legally married to the deceased Member and in the opinion of the Trustees ordinarily living with the deceased Member as his wife or her husband on a permanent and bona fide domestic basis and who was nominated as a Spouse by the deceased Member to the Trustees in such form as the Trustees may from time to time decide.

"**Standards Act**" means the Occupational Superannuation Standards Act 1987 of the Commonwealth of Australia and includes any regulations prescribed thereunder.

**"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.

**"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 in relation to a Member disablement due to illness or injury as a result of which:

- (a) 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
- (b)
  - (i) 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 Trustees from time to time either generally or in any particular case; and
  - (ii) the Trustees receive 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,

**PROVIDED THAT** where pursuant to this Deed the Trustees have 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 Trustees 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, **PROVIDED FURTHER 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 Trustees has been inflicted, incurred or aggravated for the purposes of obtaining a benefit under the Scheme.

**"Transfer Date"** means 1 July 1990 or such other date as the Trustees 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 Trustees and the Commonwealth Superannuation Scheme in respect of his or her membership of the Commonwealth Superannuation Scheme.

**"Trustees"** means the trustees for the time being of the Scheme 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 the unions referred to in sub-clause 5.1.2 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 Trustees from time to time and approved by the Corporation and the Insurance and Superannuation Commissioner.

### 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 Dependents; and

- (b) such ancillary purposes as approved by the Insurance and Superannuation Commissioner.

#### 4. **CONSTITUTION OF THE FUND**

The Fund shall consist of:

- (a) all investments, cash and other assets transferred to the Trustees 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 Trustees;
- (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 **Natural Persons as Trustees**

##### 5.1.1 Application of sub-clause

This sub-clause 5.1 shall apply where natural persons act as Trustees.

##### 5.1.2 Equal Representation

There shall be a minimum of six Trustees of whom:

- (a) three shall be appointed by the Corporation;
- (b) one shall be appointed by the Australian Postal and Telecommunications Union;

- (c) one shall be appointed by the Public Service and Broadcasting Union; and
- (d) one shall be appointed by the Australian Council of Trade Unions as representing Employees whose interests are represented by unions other than the Unions referred to in paragraphs (b) and (c) hereof.

#### 5.1.3 Independent Trustee

An Independent Trustee shall be appointed by the Trustees if such an appointment is requested by the Employer Trustees or the Member Trustees.

#### 5.1.4 Initial Trustees

For the purposes of this sub-clause:

- (a) Rae Martin Taylor, Angus James McKenzie and Francis Charles O'Farrell shall be deemed to have been appointed by the Corporation under paragraph (a) of sub-clause 5.1.2;
- (b) Brian Keith Baulk shall be deemed to have been appointed by the Australian Postal & Telecommunications Union under paragraph (b) of sub-clause 5.1.2;
- (c) Peter Anthony Norman shall be deemed to have been appointed by the Australian Public Sector and Broadcasting Union. Australian Government Employment under paragraph (c) of sub-clause 5.1.2;
- (d) Edward John Minnis shall be deemed to have been appointed by the Australian Council of Trade Unions under paragraph (d) of sub-clause 5.1.2;

Brian Keith Baulk, Peter Anthony Norman and Edward John Minnis shall cease to hold office on appointment by the relevant Union of their successors.

#### 5.1.5 Number of Trustees

The Corporation shall have the power, **PROVIDED THAT** the number of Member Trustees and Employer Trustees shall be equal, to:

- (a) increase the number of Trustees to a maximum of thirteen Trustees; and if the number of Trustees is increased the method of appointing additional Member Trustees shall be determined by the Corporation after consultation with the Australian Council of Trade Unions; and
- (b) reduce the number of Trustees to no less than seven; and (if required)
  - (i) after consultation with the Australian Council of Trade Unions to determine which Member Trustees will vacate their offices; and
  - (ii) to determine which Employer Trustees will vacate their offices.

#### 5.1.6 Employer Trustees

- (a) The power of removing an Employer Trustee or appointing an Employer Trustee shall be exercisable by the Corporation.
- (b) Upon the request of an Employer Trustee the Corporation shall have the power to appoint an alternate Employer Trustee upon such terms as the Corporation thinks fit **PROVIDED THAT** such appointment is made in writing with the written consent of such alternate Employer Trustee.
- (c) At all times at least two thirds of the Employer Trustees must be Members.

#### 5.1.7 Member Trustees

- (a) The power of removing a Member Trustee and appointing another in his or her stead shall be exercisable by the Union which appointed that Member Trustee.
- (b) A Member Trustee may nominate a person to act as his or her alternate for a period of less than six months **PROVIDED THAT** such appointment is made in writing with the written consent of the Union which appointed that Member Trustee, the appointee and the other Member Trustees.
- (c) At all times at least two thirds of the Member Trustees must be Members.

#### 5.1.8 Method of Appointment

The appointment and removal of Trustees shall be effected by an instrument in writing, a copy of which shall be given to the relevant Trustee prior to the effective date of the appointment or removal.

#### 5.1.9 Period of Appointment

Each Trustee shall hold office for a maximum period of three years for each appointment. At the end of such period of office a Trustee shall automatically cease to be a Trustee but shall be eligible for re-appointment.

#### 5.1.10 Term of Office

A Trustee shall hold office until the earliest of:

- (a) in the case of an Employer Trustee or a Member Trustee his or her retirement from office by notice in writing to the chairman of Trustees and, in the case of an Employer Trustee, to the Corporation and, in the case of a Member Trustee, to the Union that appointed him or her;
- (b) in the case of an Independent Trustee, his or her retirement from office by notice in writing to each of the other Trustees;
- (c) the expiration of a period of three years;
- (d) the Trustee's death;
- (e) in the case of a Member Trustee, his or her appointment is terminated by notice in writing from the Union that appointed him or her;
- (f) in the case of an Employer Trustee, his or her appointment is terminated by notice in writing from the Corporation;
- (g) in the case of an Independent Trustee, his or her appointment is terminated by notice in writing from the other Trustees with the prior written consent of the Corporation;
- (h) his or her bankruptcy or commitment of an act of bankruptcy; and

- (i) his or her coming under a legal disability or becoming incapable for any reason of managing his or her own affairs.

#### 5.1.11 Vacancies

Where the office of a Trustee becomes vacant a person shall be appointed to fill that vacancy, by whichever of the Corporation or the Unions which appointed the relevant Trustee, within sixty days after the day on which the vacancy occurs.

#### 5.1.12 Vesting of Fund

On ceasing to hold office as a Trustee a person shall do everything necessary to vest the Fund in the remaining Trustees and the Trustee appointed in his or her stead and shall forthwith deliver all records and documents held by him or her in relation to the Scheme to the Secretary.

#### 5.1.13 Chairman of Trustees

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

#### 5.1.14 Decisions of the Trustees

A decision of the Trustees shall require not less than two-thirds or such greater proportion of the Trustees as prescribed by the Standards Act to have voted in favour of the decision.



## 5.2 **Trustees Meetings and Decisions**

### 5.2.1 Notice of Meetings

Any Trustee may at any time convene a meeting of the Trustees to be held during the hours of business of the Corporation by giving 48 hours notice, or such notice as the Trustees may decide from time to time, to each of the other Trustees such notice stating the time and place for the meeting.

### 5.2.2 Meetings of Trustees

- (a) The Trustees shall comply with any relevant requirements of the Standards Act in relation to meetings of Trustees but otherwise may meet together for the despatch of business and adjourn or otherwise regulate their meetings as they think fit.
- (b) Two thirds of the Trustees shall constitute a quorum for a meeting of Trustees.
- (c) At a meeting of Trustees each Trustee shall have only one vote.

### 5.2.3 Minutes

The Trustees 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.

### 5.2.4 Resolutions in Writing

A resolution in writing signed by all the Trustees at the relevant time in Australia, being at least two-thirds of all Trustees, shall be as valid and effective as a resolution passed at a duly convened meeting of the Trustees and it may consist of several documents in a like form each signed by one or more of the Trustees.

### 5.3 Sole Corporate Trustee

#### 5.3.1 Application of sub-clause

This sub-clause 5.3 shall apply where a body corporate is appointed as sole Trustee.

#### 5.3.2 Appointment

The Trustees may at any time with the consent of the Corporation appoint a limited liability company to be sole Trustee in place of all the Trustees at the time thereof **PROVIDED THAT** the articles of association of such company provide that:

- (a) the board of directors shall be composed of equal number of representatives of the Corporation and representatives of the Members which will be appointed in accordance with the substantive terms of sub-clause 5.1.2;
- (b) an independent director may be appointed in accordance with the substantive terms of sub-clause 5.1.3;
- (c) the retirement and removal of directors shall be in accordance with the substantive terms of sub-clause 5.1.10; and
- (d) the chairman of directors and decisions of the directors are in accordance with the substantive terms of sub-clauses 5.1.13, 5.1.14 and 5.2 respectively.

#### 5.3.3 Term of Office of Corporation as Trustee

The Trustee appointed under this sub-clause 5.3 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 with the prior consent of the Unions;
- (c) 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;
- (d) the Trustee entering into a compromise, arrangement or scheme of arrangement with or for its creditors or any class of them; and
- (e) the lodgment 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,

and, upon a body corporate so ceasing to hold office, the Corporation, with the prior consent of the Unions, shall appoint another body corporate as sole Trustee **PROVIDED THAT** the articles of association of such body corporate complies with the requirements of sub-clause 5.3.2 or shall arrange for natural persons to be appointed as Trustees in accordance with Clause 5.1.2.

## 6. **ADMINISTRATION**

### 6.1 **Management and Administration**

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

### 6.2 **Decisions of the Corporation or an Employer**

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 Trustees 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.

### **6.3 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. Where the Trustees are 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**

- 6.4.1 The Trustees appointed under sub-clause 5.1.2 shall not be entitled to any remuneration from the Scheme whether direct or indirect for acting as a Trustees of the Scheme.
- 6.4.2 The Independent Trustee appointed under sub-clause 5.1.3 shall be entitled to be remunerated by the Trustees from the Scheme at a rate to be determined from time to time by the Trustees with the approval of the Corporation.

### **6.5 No Conflict**

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

**6.6 Officers**

The Trustees shall with the prior consent of the Corporation be entitled to appoint as officers or servants of the Scheme such persons as the Trustees 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**

The Trustees 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.

**6.8 Auditor**

The Trustees shall with the approval of the Corporation appoint an Auditor to the Scheme on such terms and conditions and for such period as the Trustees think fit. The Trustees may with the approval of the Corporation remove the Auditor and appoint another in his or her stead. The Trustees 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 Trustees 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 Trustees 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 Trustees. 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 Trustees shall contain such information (if any) as is required by the Standards Act.

#### **6.10 Actuary**

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

#### **6.11 Actuarial Investigation**

The Trustees shall cause the Actuary to make an actuarial investigation of the Scheme and valuation of the Fund at intervals of not more than three years or at such shorter intervals as the Trustee may require. The first such investigation shall take place no later than as at the 1st day of July 1993. The Trustees, each Employer, the Secretary and each Member shall supply the Actuary with all such accounts and information as the Actuary may require. The Actuary shall furnish to the Trustees a report in writing as to the investigation, valuation and financial position of the Scheme.

#### **6.12 Receipts**

The receipt of the Trustees 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**

The Trustees shall comply with the requirements of the Standards Act in relation to the provision of information and documents including extracts of documents to Members and other persons entitled to receive the same.

### **7. TRUSTEES' POWERS**

#### **7.1 Committees**

The Trustees may appoint one or more committees on which the Trustees may confer such duties as the Trustees from time to time think fit. The members of any such committee shall be removable from office by the Trustees 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 Trustees. The Trustees 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 Secretary**

The Trustees may with the approval of the Corporation appoint any person as Secretary on such terms and conditions and for such period as the Trustees think fit. The Trustees may with the approval of the Corporation remove the Secretary and appoint another in his or her stead. Pending the appointment of a Secretary or in his or her absence or during his or her inability to act the Trustees may with the approval of the Corporation appoint an acting secretary. The Secretary shall perform such duties as the Trustees may direct.

## **7.3 Contracts**

The Trustees may enter into and execute all contracts, deeds and documents and do all acts, matters and things which the Trustees 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 Trustees by this Deed.

## **7.4 Power to effect policies**

The Trustees 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 Trustees may think fit. The Trustees 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.

## **7.5 Bank accounts**

The Trustees may open and operate such bank and other accounts as they think 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 Trustees from time to time determine.

**7.6 Power to borrow**

The Trustees shall with the approval of the Corporation have power whenever they think 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 Trustees think fit **PROVIDED THAT** the Trustees shall comply with the relevant requirements of the Standards Act in relation to borrowings.

**7.7 Power to deduct tax**

- (a) The Trustees shall have power to deduct any amount in respect of any tax which in the opinion of the Trustees 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 Trustees shall be released and discharged in respect of the amount so deducted and paid.
- (b) The Trustees shall have power to deduct from any benefit payable under the Scheme such amount as the Trustees consider 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 Trustees shall be released and discharged in respect of the amount so deducted and paid.

**7.8 Powers and Discretions**

The Trustees in the exercise of the authorities, powers and discretions conferred upon the Trustees 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.



## **7.9 Delegation by Trustees**

The Trustees may with the consent of the Corporation delegate any trust, authorities, powers and discretions exercisable by the Trustees (including one which the Trustees 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 Trustees think fit. The Trustees may with the consent of the Corporation vary or revoke any such delegation as the Trustees think fit and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

## **7.10 Legal Proceedings**

The Trustees 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.

## **7.11 Arbitration**

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

## **7.12 Trustees may act on advice**

The Trustees 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 Trustees) and shall not be responsible for any loss occasioned by so acting.

## **7.13 Indemnity**

- (a) The Trustees and if the Trustee is a body corporate, 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 Trustees by this Deed.

- (b) The Trustees shall have a lien on and may use any moneys for the time being in their 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 Trustees 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 Trustees or the Trustee, the officers of a corporate Trustee or the members of any committee established by the Trustees 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.

## 8. INVESTMENTS

- 8.1 (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 Trustees shall in their absolute discretion think fit as if the Trustees 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.
- (b) The Trustees 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 Trustees' 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 Trustees with the consent of the Corporation shall have power to appoint from time to time such one or more persons, firms or companies as the Trustees think fit to act either as custodian trustee or investment manager or both subject to such conditions as the Trustees 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 Trustees think fit.
- (b) The Trustees 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 Trustees 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 Trustees consider proper.
- (d) The Trustees shall with the consent of the Corporation 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 Trustees.

## 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 Trustees or by one or more custodian trustees or investment managers as aforesaid as the Trustees may from time to time determine.

## 8.4 Investment in Sub Funds

- (a) The Trustees may with the approval and shall at the direction of the Corporation establish and invest the assets of the Fund in one or more

sub funds designated in such manner as the Corporation may from time to time approve of or determine.

- (b) In respect of any sub fund which represents Employer contributions to the Fund the Trustees 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.

#### **8.5 Overriding provision relating to Investments**

The Trustees 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 Trustees ensure that the Scheme complies with any relevant requirement of the Standards Act relating to investments.

### **9. INFORMATION TO TRUSTEES**

#### **9.1 Medical Examinations**

- (a) The Trustees may require applicants for membership of the Scheme to undertake such medical examinations including blood tests from medical practitioners nominated by the Trustees and provide such statements of medical history in such form as the Trustees may specify or require.
- (b) The Trustees may require any Contributory Member or Class A Productivity Member who is eligible to become a Full Member to undertake such medical examinations including blood tests from medical practitioners nominated by the Trustees and provide such statements of medical history in such form as the Trustees may specify or require.
- (c) Any Employee, Full Member, Contributory Member or Class A Productivity 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 Trustees 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 Trustees may determine and notify to the Employee, Full Member, Contributory Member or Class A Productivity Member and his or her Employer. The Trustees 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 Trustees after obtaining the advice of the Actuary which results from any such variation or removal.

## 9.2 **Misleading Statements**

Where the Trustees 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 Trustees may reduce or adjust any benefit payable to or in respect of the Member in such manner as the Trustees may determine.

## 9.3 **Information to Trustee and Confidentiality**

- (a) Each Employer shall supply to the Trustees such details concerning the Members employed by it as the Trustees shall from time to time require for the purposes of the Scheme.
- (b) If called upon by the Trustees the Employer shall issue to the Trustees a certificate in respect of such details and the Trustees 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 Trustees) as the Trustees shall require from time to time for the purposes of the Scheme.
- (d) The Trustees, the Secretary and each officer, servant and delegate of the Trustees 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 sub-clause 10.3 but notwithstanding any other power conferred on the Trustees hereunder, the Trustees 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, <sup>as a Dependent Beneficiary (if necessary)</sup> be admitted as a Member and shall be granted such additional benefits as shall be determined by the Trustees after obtaining the advice of the Actuary with the approval of the Corporation.
- (b) Notwithstanding anything expressed or implied to the contrary in this Deed, the Trustees 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 Trustees think 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.

### 10.2 Transfers to Approved Arrangements

- (a) Subject to sub-clause 10.3, 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 Trustees may with the consent of the Beneficiary pay or transfer to an Approved Arrangement an amount representing the value of the benefit as determined by the Trustees after obtaining the advice of the Actuary; or
  - (iv) at the direction of the Corporation and in the absence of a consent from the Beneficiary within 60 days of the first date upon which consent could have been given the Trustees shall pay or transfer to an Approved Arrangement approved by the Corporation an amount representing the value of the benefit determined by the Trustees after obtaining the advice of the Actuary.
- (b) The Trustees shall have the power to impose such conditions relating to the amount transferred as provided in paragraph (a) hereof as the Trustees shall think fit including, without limitation, such conditions as shall be necessary or desirable in order to comply with the requirements of the Standards Act in relation to the preservation and portability of benefits.
  - (c) Upon completion of the transfer in respect of a Member or Beneficiary under paragraph (a) hereof, the Trustees shall be released and discharged in respect of the Member or Beneficiary and the persons claiming through or under them respectively.

### 10.3 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 Trustees, 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 the Standards Act relating to the provision, preservation or portability of benefits or with the Guidelines.

## 11. BENEFITS: GENERAL PROVISIONS

### 11.1 Overriding provision relating to Benefits

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

(a) the Trustees shall not be obliged to pay or otherwise provide any benefit from the Fund which the Trustees consider 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 Trustees may defer or reduce the benefit otherwise payable to the Member for such period or by such amount as the Trustees think 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 Trustees so to do will or may prejudice the granting or continuance of taxation concessions for or in respect of the Scheme or under the Act or cause the Scheme to be in breach of or fail to comply with any requirement of the Standards Act or with the Guidelines or any other law or regulation governing complying superannuation funds within the meaning of the Act;

(c) no benefit:

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

(ii) exceed the maximum benefit which in the opinion of the Trustees 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 Act are not prejudiced or that the Scheme is not in breach of or fails to comply with any requirement of the Standards Act or with the Guidelines or any other law or regulation governing complying superannuation funds within the meaning of the Act;

- (d) No contributions shall be received into the Fund if in the opinion of the Trustees so to do will or may prejudice the granting or continuance of taxation concessions for or in respect of the Scheme or under the Act or cause the Scheme to be in breach of or fail to comply with the Guidelines or any other law or regulation governing complying superannuation funds within the meaning of the Act.
- (e) In order to ensure compliance with paragraphs (b), (c) and (d) hereof, the Trustees 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 Trustees 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 Trustees;
- (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 Trustees 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; and

- (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 Trustees 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 Trustees after obtaining the advice of the Actuary think appropriate having regard to the value of the benefit provided from such other fund or scheme.

#### **11.2 No benefit while in Service**

Except as provided in this Deed or the Rules, no Member shall be entitled to withdraw from the Scheme whilst the Member remains in Service.

#### **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**

Every Member and person claiming or in receipt of a benefit under the Scheme shall furnish to the Trustees such information, documents and evidence and undergo such medical examinations including blood tests as the Trustees shall consider necessary for the purpose of properly administering the Scheme. Failure to comply with any request of the Trustees under this sub-clause 11.4 shall entitle the Trustees to suspend payment of the benefit or consideration of any claim thereto, as the case may require, until the requirements of this sub-clause 11.4 are complied with.

#### **11.5 Proofs**

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

## 11.6 Payment of Death Benefits

- (a) Any benefit payable from the Fund on the death of a person who was a Member at the time of his or her death shall be paid or applied by the Trustees to or for the benefit of such one or more of:
  - (i) the Member's Dependants;
  - (ii) the Member's legal personal representative; and
  - (iii) if a surviving Dependant of the Member dies before the Trustees exercise the discretion hereby conferred, the Dependants and legal personal representative of the deceased Dependant,

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 Trustees shall determine.
- (b) In ascertaining the Dependants or legal personal representative of a Member the Trustees shall not be under any legal obligation to locate establish or identify all the persons who might possibly qualify and the Trustees may act upon such information as they think fit to locate establish and identify persons as the Dependants or legal personal representative of that Member.
- (c) If after reasonable enquiry the Trustees determine 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 Trustees, 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 Fund for the general purposes of the Scheme **PROVIDED THAT** if at any time the Trustees receive a claim from a person whom the Trustees accept as a Dependant or the legal personal representative of the Member, the Trustees may in the absolute discretion of the Trustees 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.

### **11.7 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 Trustees shall from time to time determine having regard to the respective needs of those persons and to such other matters as the Trustees consider relevant.

### **11.8 Beneficiary Under Legal Disability**

- (a) If it appears to the Trustees 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 Trustees 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 Trustees 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 Trustees may think fit; and
  - (iii) without limiting the generality of paragraph (b) hereof, to a person who appears to the Trustees to be a trustee for (including a trustee appointed by the Trustees under a separate trust established by the Trustees, which trust may be subject to such trusts and powers as the Trustees 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 Trustees are authorised to make any payment under this sub-clause shall be a full and sufficient discharge to the Trustees and the Trustees shall not be bound or concerned to see to the application of such payment.
- (c) The Trustees 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 Trustees may have actual notice of any infirmity, lack of fitness or other relevant matter provided for herein.

#### 11.9 Insured Benefits

- (a) Where the Trustees have 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 Trustees 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 Trustees to reimburse the Fund in respect of the amount of insurance so declined or refused.
- (b) Where the Trustees are of the opinion that had the Trustees 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 Trustees shall reduce the amount of the benefit otherwise payable to or in respect of the Member by the amount which the Trustees believe the Insurer would have declined or refused unless the Employer enters into an agreement acceptable to the Trustees 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 Trustees shall be entitled but not obliged to rely on a certificate from a proper officer of an insurance company selected by the Trustees as to whether or not an Insurer would have declined or reduced cover in the relevant circumstances.

#### **11.10 Interest**

- (a) Where the Trustees are required to credit interest in respect of any period, the Trustees 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 Trustees 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 Trustees may, after obtaining the advice of the Actuary and with the approval of the Corporation, 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 Trustees may think fit.
- (d) The Trustees shall comply with the relevant requirements of the Standards Act in determining any rate or rates of interest for the purposes of the Scheme.

#### **11.11 Discharge of Trustees**

The receipt of a Beneficiary, legal personal representative or any person acting on behalf of a Beneficiary shall be a complete discharge to the Trustees in respect of the amount paid to that person and the Trustees 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.

(c) In the event of the determination of an interest or a right to a benefit under paragraph (b), the Trustees may (but it shall not be incumbent on the Trustees so to do) pay or apply as the Trustees 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 Trustees 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 Trustees 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 Trustees may determine is owing to the Trustees 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 Trustees may consider necessary to reimburse or compensate the Trustees 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 Trustees may consider appropriate.

#### 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.
- (b) The Trustees 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 Trustees consider necessary or desirable to ensure that the Scheme complies with any relevant requirement of the Standards Act or the 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 Trustees shall in accordance with the relevant requirements of the Standards Act 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) all relevant provisions of the Guidelines are satisfied; and
  - (ii) 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
  - (iii) such alteration, addition or repeal is approved by the Insurance and Superannuation Commissioner in writing; or
  - (iv) such alteration, addition or repeal is approved in writing by each Member or Beneficiary whose benefits are reduced in the manner anticipated by paragraph (ii) hereof and by such other person or persons (if any) whose approval or consent is required under the Standards Act.
- (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 Trustees 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 Trustees 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 Trustees 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 Trustees consider to be fair and equitable after having obtained the advice of the Actuary.
- (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 Trustees 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 Trustees think 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 Trustees shall be deemed to have received on the date of 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 Trustees:

- (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 Trustees with the approval of the Corporation may enter into an agreement with the person whom the Trustees consider 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 Trustees and shall be binding on the Trustees 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 Trustees think fit), the Trustees 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 Trustees 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 Trustees 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 Trustees may subject to such terms as the Trustees think 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 Trustees consider to be consistent with the reduction of the Employer's contributions;
- (iii) subject to sub-clause 11.1, the Trustees 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 Trustees consider is affected by such notice to such extent and in such manner as the Trustees consider 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 Trustees, no benefit shall be paid from the Fund (including a benefit which became payable before the Notice Date) until the Trustees have determined whether or not any such adjustment is necessary and, if so, have effected such adjustment to the Trustees' satisfaction; and
- (v) the Trustees 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 Trustees consider appropriate, an Employer may by a further written notice given to the Trustees 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 Trustees 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 Trustees consider 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 Trustees 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 Trustees consider 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 Trustees think 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 Trustees had on that day received written notice from the Employer of that intention.
- (e) All decisions of the Trustees 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 Trustees 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

- (a) Whenever requested by the Corporation, the Actuary shall investigate the Fund and shall report to the Corporation and to the Trustees 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 Trustees 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 Trustees, the Trustees 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 Trustees shall comply with any request given to the Trustees 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, that either:

- (i) the Total Fund Value is less than the Total Accrued Benefit Value; or
- (ii) that 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 Trustees shall be under no obligation to make the payment to the Corporation and in the case referred to in (ii) above, the Trustees shall reduce the payment to the part referred to in (ii) above.

## **15. TERMINATION OF THE SCHEME**

### **15.1 Termination**

If:

- (a) it shall appear to the Trustees that the Scheme is insolvent or if the Trustees shall be advised by the Actuary to that effect;
- (b) the Corporation shall give thirty day's notice in writing to the Trustees 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 Trustees any amount for which it is liable within 42 days (or such further period as the Trustees may think reasonable) after the date on which the Trustees may require such amount to be paid or shall fail to observe and perform any other of its obligations under this Deed,

then the Trustees shall determine a date within a reasonable period (hereinafter called "the Termination Date") on which the Scheme will terminate.

### **15.2 Procedures on Termination**

As from the Termination Date:



- (a) the Trustees 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 Trustees consider appropriate for the costs and expenses incurred or likely to be incurred in connection with the Fund, the Trustees shall after obtaining the advice of the Actuary make such provisions from the assets of the Fund as the Trustees consider appropriate to provide benefits not exceeding:

- (i) in the case of a Member, the Member's Accrued Retirement Benefit; 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 Trustees with the approval of the Corporation otherwise determine 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 Trustees 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.

### 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 Trustees think 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 **Trustees' decision final**

All decisions of the Trustees 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 Dependents 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 Trustees 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 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 after obtaining the advice of the Actuary and consultation with the Trustees **PROVIDED FURTHER THAT** no such reduction shall be made:

- (i) without the consent in writing of the Insurance and Superannuation Commissioner unless the Trustees are satisfied that the proposed reduction will not cause the Scheme to fail to comply with any relevant requirement of the Standards Act ; or
- (ii) without the consent in writing of the Minister of Finance unless the Trustees and the Corporation are satisfied that the proposed reduction will not cause the Scheme to fail to comply with any relevant requirement of the Guidelines.

The Trustees 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, after obtaining the advice of the Actuary and consultation with the Trustees, 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 Trustees 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 Trustees and any amendment made thereby shall

notwithstanding anything contained in Clause 12 be valid and binding on the Corporation, the Associated Employers, the Trustees 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 Trustees 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 Trustees or to the Secretary by leaving it at the office of the Secretary,

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.

**SCHEDULE 1****RULES****1. ELIGIBILITY**

1.1 The following Employees shall be eligible to be admitted to Membership of the Scheme as:

- (a) Class A Productivity Members – all Employees in respect of whom an Employer is required to provide a Productivity Benefit pursuant to a Prescribed Agreement, a Superannuation Agreement or legislation, other than Employees who remain members of the Commonwealth Superannuation Scheme or who are for the time being Full Members or Contributory Members.
- (b) Class B Productivity Members – all Employees who remain eligible employees for the purposes of the Superannuation Act 1976 in respect of whom an Employer is required to provide a Productivity Benefit pursuant to a Prescribed Agreement, a Superannuation Agreement or legislation.
- (c) Full Members –
  - (i) all permanent and probationary full or part-time Employees who have completed six months service with an Employer; or
  - (ii) Members who have applied for and been admitted to Membership as a Full Member pursuant to these Rules.
- (d) Contributory Members – Class A Productivity Members who:
  - (i) have completed six months service with an Employer;
  - (ii) are not eligible to become a Full Member;
  - (iii) elect to contribute to the Scheme; and
  - (iv) continue to contribute to the Scheme.

- 1.2 In respect of an Employee who was a member of the Commonwealth Superannuation Scheme or entitled to a Productivity Benefit under the Interim Arrangement Act immediately prior to the Transfer Date the eligibility requirements relating to service shall be waived.
- 1.3 The Corporation may by notice in writing to the Trustees alter or waive the eligibility requirements for any particular Employee or class of Employees.
- 1.4 A Class A Productivity Member who has completed six months or more Service or a Contributory Member may apply to become a Full Member. On the approval of such application by the Trustees and the Corporation, the applicant shall become a Full Member.

## 2. **ADMISSION TO MEMBERSHIP**

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

### 3. CONTRIBUTIONS

#### 3.1 Contributory and Non-Contributory Membership

- (a) A Full Member shall contribute to the Scheme at a rate specified in sub-rule 3.2.
- (b) A Full Member may at any time elect to vary the rate of his or her contributions in accordance with the rates specified in sub-rule 3.2.
- (c) A Class A Productivity Member who has completed six months Service may at any time elect to make contributions to the Scheme at a rate specified in sub-rule 3.2 and on such election shall from the date prescribed in sub-clause 3.1(g) be classified as a Contributory Member.
- (d) A Contributory Member may at any time elect to vary the rate of his or her contributions in accordance with the rates specified in sub-rule 3.2.
- (e) A Contributory Member may elect to cease his or her contributions to the Scheme and shall on such election from the date prescribed in sub-clause 3.1(g) be reclassified as a Class A Productivity Member.
- (f) A Class B Productivity Member shall not contribute to the Fund.
- (g) Any election made under this Rule shall be in such form as the Trustees may specify or approve and except as otherwise expressly provided shall take effect from the first full pay period following the processing of such election by the Employer or such other date as the Trustees with the approval of the Corporation determine.

#### 3.2 Member Contributions

- (a) A Full Member must within a period and in a manner prescribed by the Trustees elect to contribute to the Scheme at a rate expressed as a simple percentage of the Full Member's Salary and may vary any such election pursuant to sub-rule 3.1 **PROVIDED THAT** the minimum level of Member Contributions at any time shall not be less than 2% of the Full Member's Salary.



- (b) Notwithstanding paragraph (a) hereof, a Full Member will contribute at a rate of 2% of Salary for each full pay period until such time as his or her initial election to contribute has been processed by the Employer.
- (c) A Class A Productivity Member may within a period and in a manner prescribed in sub-rule 3.1 elect to contribute at a rate expressed as a simple percentage of the Class A Productivity Member's Salary at any time or times and shall be reclassified as a Contributory Member. A Contributory Member may vary such an election pursuant to sub-rule 3.1 **PROVIDED THAT** the minimum level of Member Contributions payable at any time by a Contributory Member shall not be less than 2% of the Contributory Member's Salary.
- (d) A Contributory Member or a Class A Productivity Member who becomes eligible for Membership of the Scheme as a Full Member must contribute to the Scheme in accordance with paragraphs (a) and (b) hereof from the first full pay period after the date on which he or she first became eligible for Membership of the Scheme as a Full Member.
- (e) Subject to the provisions of sub-rule 3.4 Member Contributions:
  - (i) shall be due in respect of any period of Membership other than a period of leave of absence and shall generally be payable at the end of each pay period during that period of Membership;
  - (ii) where legally possible shall be deducted from each regular payment of salary or wages by the Employer; and
  - (iii) shall be paid to the Trustees as soon as practicable.

Where it is not possible to deduct Member's Contributions from a Member's Salary it shall be the responsibility of the Member to pay the Member's Contributions to the Trustees as and when they are due and payable.

- (f) A Member who ceases to be eligible for Membership as a Full Member and who continues to contribute to the Fund shall become a Contributory Member. If the Member elects for the time being to cease contributing to the Fund he or she shall become a Class A Productivity Member.

### 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 Trustees.
- (b) As soon as practicable, after determination as aforesaid the Trustees 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 Trustees after consulting that Employer. Contributions payable by one Employer may be paid by another Employer.
- (d) The Trustees may, subject to the provisions of sub-clause 11.1, accept into the Fund 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.
- (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 Trustees 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 Trustees shall reduce the benefit that shall become payable to or in respect of such Member by such amount as the Trustees determine to be fair and equitable after obtaining the advice of the Actuary.

### 3.4 Absence from Service

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) The period of leave shall be excluded from 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 unless the Member contributes to the Fund at a rate of not less than 2% nor more than 5% of the Member's Salary as approved by the Trustees. When a Member contributes at a rate of the Member's Salary approved by the Trustees as aforesaid in respect of part of the period of leave then only that part of the period of the leave shall be counted as Membership for the purposes of calculating benefits from the Fund.
- (c) For the purposes of this sub-rule calculation of Member's 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 Corporation with the approval of the Trustees.
- (d) Notwithstanding any other provision of the Deed and these Rules the maximum continuous period or periods of leave of absence that may be counted for the purpose of calculating Previous Membership and Membership shall not exceed one year.
- (e) Where the period of the leave exceeds 12 months the Member shall cease to be eligible for benefits on death or Total and Permanent Disablement at the expiration of the period of 12 months from the date of the commencement of such leave.

#### 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 shall be entitled to receive a Retirement Benefit of an amount equal to his or her Accrued Retirement Benefit.

##### 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 Accrued Retirement Benefit;
- (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 Potential Retirement Benefit;
- (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 Accrued Retirement Benefit.

**PROVIDED THAT** in respect of a Member who dies in Service after the Minimum Retirement Age the death benefit shall not be less than the benefit payable under Rule 4.1

##### 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 the Death Benefit.

#### 4.4 Withdrawal Benefits

- (a) 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 Service, of an amount being:
  - (i) a Member Financed Benefit equal to the sum of:
    - (A) the Member's Transferred Amount (if any) (other than the Deferred Transfer Value) together with interest pursuant to sub-clause 11.10 on any part received into the Fund from the date received into the Fund up to the date the Member ceased to be in Service; and
    - (B) the aggregate of the Member's Contributions (if any) together with interest pursuant to sub-clause 11.10 up to the date the Member ceased to be in Service; and
  - (ii) an Employer Financed Benefit equal to the sum of:
    - (A) the Accrued Productivity Benefit;
    - (B) In respect of each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Full Member or Contributory Member, 3% of Final Average Salary; and
    - (C) an amount equal to the proportion of the Accrued Retirement Benefit less the amount referred to in paragraph (a)(i)(A) and (a)(i)(B) of this Rule 4.4, the Accrued Productivity Benefit and the amount referred to in paragraph (a)(ii)(B) of this Rule 4.4, calculated in accordance with the following table having regard to the period of the Member's Previous Membership and Membership:

| Period of Previous Membership<br>and Membership | Percentage |
|---|------------|
| 1 year  | 25         |
| 2 years   | 50         |
| 3 years   | 75         |
| 4 or more years                                 | 100        |

**PROVIDED THAT** for the purpose of determining Membership for the purposes of this sub-paragraph (C) any period during which the Member did not contribute to the Fund shall not be counted and **PROVIDED FURTHER THAT** in respect of any period of not exactly a whole year the percentage shall be determined by linear interpolation,

**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.

- (b) Where a Member's Service is terminated by the Employer in circumstances where the Corporation certifies that the Member has been made redundant the Member shall be entitled to a benefit under paragraph (a) and if cessation of Service in such circumstances occurs prior to 1 July 2000 no part of the benefit payable to the Member shall be required to be preserved.

## 5. **ALTERNATIVE BENEFITS**

5.1 Notwithstanding anything expressed or implied to the contrary in the Deed and these Rules, the Trustees may in the absolute discretion of the Trustees:

- (a) at the request of the Member or other person entitled to a lump sum benefit from the Scheme within 60 days of that person's qualification therefor or such further period as the Trustees may think fit; or
- (b) at their own initiative in special or exceptional circumstances,

in lieu of such lump sum benefit provide an annuity or annuities purchased by the Trustees after obtaining the advice of the Actuary of such amount or amounts payable on such terms and conditions as the Trustees shall determine as can be purchased by the lump sum benefit.

- 5.2 The purchase of an annuity or annuities by the Trustees pursuant to sub-rule 5.1 shall release the Trustees 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 Trustees are 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 Trustees may determine in any particular case, the Trustees may defer the payment of the benefit otherwise payable to the Member subject to such terms and conditions as the Trustees may think fit.
- (b) If the Member rejoins the Service of the Employer within the period specified in paragraph (a) hereof, the Trustees 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 Trustees 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 Trustees under paragraph (a) hereof shall be payable under the Scheme pursuant to Clause 11.6.

## SCHEDULE 2

### DEED OF PARTICIPATION FOR ASSOCIATED EMPLOYERS

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:** **AUSTRALIAN POSTAL CORPORATION** a corporation established under the Australian Postal Corporation Act 1989 and having its office at 71 Rathdowne Street, Carlton in the State of Victoria ("the Corporation")  
of the one part

**AND:** [ \_\_\_\_\_ ] ("the Trustees")  
of the second part

**AND:** [ \_\_\_\_\_ ] ("the Employer")  
of the third part

**WHEREAS:**

- A. By a trust deed dated \_\_\_\_\_ 1990 ("the Trust Deed") and made between the Corporation and the persons named therein as the trustees the Australia Post Superannuation Scheme ("the Scheme") was established.
- B. The Trustees are the trustees for the time being of the Scheme.
- C. Sub-clause 13.1 of the Trust Deed provides:

**"13.1 Admission of Employers**

The Trustees 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 Trustees 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."



D. The Corporation and the Trustees desire to admit the Employer as an Associated Employer and the Employer desires to be admitted as such.

**NOW THIS DEED WITNESSES** as follows:

1. The Corporation and the Trustees hereby admit the Employer to participate in the Scheme as an Associated Employer on and from [ ].
2. The Employer hereby covenants that on and from [ ] whilst it is an Associated Employer it shall duly observe and perform such of the provisions of the Trust Deed as are to be observed and performed by an Associated Employer.
3. Except where otherwise defined, the terms used herein shall have the same meaning assigned to them in the Trust Deed.

**IN WITNESS WHEREOF** this Deed has been duly executed on the day and year first hereinbefore written.

**THE COMMON SEAL** of **AUSTRALIAN** )  
**POSTAL CORPORATION** was hereto )  
 affixed in the presence of: )

.....

.....

**SIGNED SEALED AND DELIVERED** by )  
 [ ] in the presence of: )

SIGNED SEALED AND DELIVERED by )  
[ ] in the presence of: )

SIGNED SEALED AND DELIVERED by )  
[ ] in the presence of: )

SIGNED SEALED AND DELIVERED by )  
[ ] in the presence of: )

SIGNED SEALED AND DELIVERED by )  
[ ] in the presence of: )

SIGNED SEALED AND DELIVERED by )  
[ ] in the presence of: )

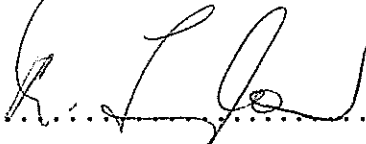
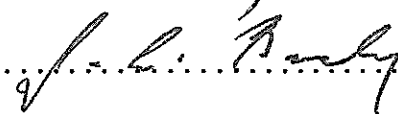
THE COMMON SEAL of [ ] )  
was hereunto affixed in accordance with )  
its Articles of Association in the )  
presence of: )

..... Director

..... Director/Secretary

IN WITNESS WHEREOF this Deed has been duly executed on the day and year first hereinbefore written.

THE COMMON SEAL of AUSTRALIAN )  
POSTAL CORPORATION was hereto )  
affixed in the presence of: )

.....  .....  
.....  .....

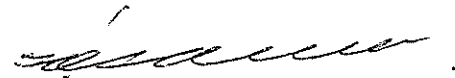
SIGNED SEALED AND DELIVERED by )  
RAE MARTIN TAYLOR in the presence )  
of: J. Fernando.

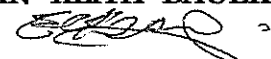


SIGNED SEALED AND DELIVERED by )  
ANGUS JAMES MCKENZIE in the )  
presence of: A Huggins.



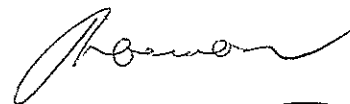
SIGNED SEALED AND DELIVERED by )  
FRANCIS CHARLES O'FARRELL in the )  
presence of: A Huggins.



SIGNED SEALED AND DELIVERED by )  
BRIAN KETH BAULK in the presence )  
of: 



SIGNED SEALED AND DELIVERED by )  
PETER ANTHONY NORMAN in the )  
presence of: A Huggins.



SIGNED SEALED AND DELIVERED by )  
EDWARD JOHN MINNIS in the presence )  
of: A Huggins

