

ARTHUR
ROBINSON
&
HEDDERWICKS

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DATED 29 June 1994

AUSTRALIAN POSTAL CORPORATION

AUSTRALIA POST SUPERANNUATION SCHEME
DEED OF MODIFICATION NO. 3

ARTHUR ROBINSON & HEDDERWICKS

Solicitors
530 Collins Street
MELBOURNE VIC 3000

Tel: 614 1011
Ref: HG

**AUSTRALIA POST SUPERANNUATION SCHEME
DEED OF MODIFICATION NO. 3**

THIS DEED is made the 29TH day of JUNE 1994

BY: AUSTRALIAN POSTAL CORPORATION

("the Corporation")

WHEREAS:

- A. By a Trust Deed made the 19th day of June 1990 (which Trust Deed as amended is called "the Trust Deed") a superannuation scheme known as the Australia Post Superannuation Scheme ("the Scheme") was established.
- B. Clause 12 of the Trust Deed provides, subject to certain restrictions set out in sub-clause 12(e), so far as is at present relevant that:

"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 [the Trust] Deed or the Rules, including the provisions of this Clause."

- C. Sub-clause 12(e) of the Trust Deed provides as follows:

- "(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."

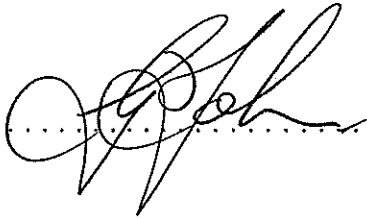
- D. The Corporation desires to alter the Trust Deed in the manner hereinafter appearing and has consulted with the Australian Council of Trade Unions, in a manner required by sub-clause 12(f) of the Trust Deed.
- E. The Corporation is satisfied that all relevant provisions of the Guidelines are satisfied in relation to the proposed alterations, additions and repeals herein contained.
- F. The Actuary has determined that the proposed alterations herein contained shall not reduce the amount of any 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 of this Deed.

NOW THIS DEED WITNESSES that:

- 1. The Corporation **HEREBY ALTERS, ADDS TO OR REPEALS** the provisions of the Trust Deed in the manner set out in the Schedule hereto with effect on and from 1 July 1994 and immediately after the appointment of PostSuper Pty Ltd (ACN 064 225 841) as Trustee of the Scheme on that date.
- 2. Unless the context otherwise requires, words, terms and expressions defined in the Trust Deed will when used in this Deed (including the Schedule) have the respective meanings given to them in the Trust Deed.
- 3. This Deed is governed by the laws of the State of Victoria.

IN WITNESS whereof this Deed was executed on the day and year first written above.

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

A handwritten signature in black ink, appearing to be 'G. P. H.', is written over a horizontal dotted line. A second horizontal dotted line is positioned directly below the first one.

SCHEDULE

AUSTRALIA POST SUPERANNUATION SCHEME

AMENDMENTS TO THE TRUST DEED AND RULES

1. Clause 1 is amended by inserting the following as new paragraph (i):

"(i) Any provision of this Deed which is void, prohibited or unenforceable in any jurisdiction (whether by reason of any Superannuation Law or otherwise) is ineffective as to that jurisdiction to the extent that the provision is void, prohibited or unenforceable. The fact that a provision of this Deed is ineffective by reason of this paragraph does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction. Subject to Superannuation Law, where a provision is ineffective by operation of this paragraph, the Trustee shall determine the effect and interpretation of the remaining provisions of this Deed and the Trustee's determination shall be final, conclusive and binding on all interested persons."

2. Clause 2 is amended by:

- (a) deleting the following definitions:

"Accrued Productivity Benefit";

"Act";

"Approved Arrangement";

"Auditor";

"Child";

"Class A Productivity Member";

"Class B Productivity Member";

"Contributory Member";

"Deferred Annuity";

"Employee";

"Employer";

"Employer Trustees";

"Independent Trustee";
"Insurance and Superannuation Commissioner";
"Member Trustees";
"Spouse";
"Standards Act";
"Trustees"; and
"Unions";

(b) inserting the following definitions in alphabetical order:

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

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

- (b) in respect of a Member who was at the Commencement Date covered by the Interim Arrangement Act but did not transfer from the Commonwealth Superannuation Scheme to the Scheme as at the Transfer Date - 3% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of the period from the Commencement Date to the Member's Admission Date;
- (c) 3% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a year) of Membership where the Member did not contribute to the Scheme;
- (d) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Productivity Member from 1 July 1992; and
- (e) 1% of the Member's Final Average Salary for each year (and pro rata for each day any part of the period is less than a complete year) of Membership as a Class A Productivity Member from 1 January 1993,

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

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

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

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

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

"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 person in respect of whom, in the opinion of the Trustee, a Member or a Spouse of a Member stands in loco parentis.

"Class A Productivity Member" means an Employee who being eligible has applied for and been admitted to membership as a Class A Productivity Member.

"Class B Productivity Member" means an Employee who being eligible has applied for and been admitted to membership as a Class B Productivity Member.

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

"Contributory Member" means an Employee who being eligible has applied for and been admitted to membership as a Contributory Member.

"Corporations Law" has the meaning given to that term in the Corporations (Victoria) Act 1990 and includes any regulations prescribed thereunder.

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

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

"Employer" means:

- (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 (the term **"employing"** bearing both its ordinary meaning and, if the Corporation so determines, either generally or in respect of any particular provision of this Deed, any expanded meaning provided in any Superannuation Charge Law).

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

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

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

"Insurance and Superannuation Commissioner" means the commissioner appointed under the Insurance and Superannuation Commissioner Act 1987 of the Commonwealth of Australia or a person for the time being acting in that position or capacity under the Insurance and Superannuation Commissioner Act.

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

"officer" means for the purposes of sub-clauses 6.5, 6.6 and 7.13 a director, secretary, executive officer or employee of the relevant entity.

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

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

- (i) legally married to the deceased Member; or
- (ii) not legally married to the deceased Member and in the opinion of the Trustee ordinarily living with the deceased Member as his wife or her husband on a permanent and bona fide domestic basis.

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

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

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

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

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

"Superannuation Law" means Superannuation Requirements in any of:

- (a) SIS;
- (b) the Superannuation Entities (Taxation) Act 1993;
- (c) the Tax Act;
- (d) the Superannuation Charge Laws of the Commonwealth of Australia;
- (e) any other present or future law of the Commonwealth of Australia or any State or Territory of it which the Trustee

with the approval of the Corporation determines to be a Superannuation Law for the purposes of this Deed;

- (f) regulations and statutory instruments made or issued under any of the acts specified in paragraphs (a) to (e) (inclusive) and all other requirements, whether legislative or otherwise, including (without limitation):
 - (i) any administrative guidelines, rulings or determinations made or laid down by a Superannuation Authority; and
 - (ii) statements by the government of the Commonwealth of Australia or any State or Territory (as the case may be) advising changes and proposed changes to Superannuation Law; and
- (g) a statutory instrument which replaces any of the acts specified in paragraphs (a) to (e) (inclusive) or regulation specified in paragraph (f), or has the same effect, in whole or in part (whether or not passed or approved by the same legislative or other relevant authority and whether or not incorporating or adopting any law previously in force).

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

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

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

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

- (c) deleting both provisos appearing at the end of sub-paragraph (a)(v) of the definition of "**Accrued Retirement Benefit**" and replacing them with the following:

"**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

PROVIDED THAT the maximum amount determined under paragraph (a)(v) in respect of a Member shall not exceed the amount determined in accordance with the following formula:

$$14.3\% \times \text{FAS} \times \text{CM} \times \text{TWSF}$$

where

FAS is the Final Average Salary of the Member,

CM is 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, and

TWSF is the time weighted Service Fraction of the Member; and";
and

(d) deleting the word "Membership" and replacing it with "membership" where appearing in each of the following places:

- (i) the definitions of "Admission Date", "Full Member", "Member" and "Membership" in Clause 2;
- (ii) Sub-clause 9.2;
- (iii) Paragraph (e) of Sub-clause 9.3;
- (iv) Sub-clause 13.1;
- (v) Rule 2; and
- (vi) Paragraphs (d) and (f) of Rule 3.2.

3. Each occurrence in the Trust Deed of:

- (a) "Act" (other than where appearing as part of the name of an act of parliament, or in paragraph (f) of Clause 1) is replaced with "Tax Act";
- (b) "the Standards Act" is replaced with "Superannuation Law"; and
- (c) "Trustees" is replaced with "Trustee";

and, in connection with the replacement of the words "the Standards Act" and "Trustees", where necessary to retain the grammatical meaning of the sentence, associated words are replaced with their appropriate grammatical form.

4. The following is inserted after Clause 2 as new Clause 2A:

"2A. OVERRIDING PRUDENTIAL REQUIREMENTS

2A.1 Election of Superannuation Law

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

may be made pursuant to this Clause even though the election may be irrevocable.

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

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

2A.3 Inconsistency of provisions

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

2A.4 Power to comply with Superannuation Law

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

- (a) equal representation;
- (b) proceedings of the Trustee;
- (c) maintaining reserves of the Fund;
- (d) borrowing money or maintaining an existing borrowing;
- (e) investing the assets of the Fund;
- (f) in-house assets;

- (g) acquiring assets from Members or their relatives;
- (h) providing financial assistance to Members or their relatives;
- (i) appointing investment managers and custodian trustees;
- (j) requiring investment managers to provide information to the Trustee;
- (k) establishing procedures for dealing with enquiries into, or complaints about, the operation and management of the Scheme;
- (l) keeping and retaining records and reports in relation to the Scheme;
- (m) reporting significant adverse events in relation to the Scheme;
- (n) preparing statements in relation to the Scheme;
- (o) providing information about the Scheme to Members, Employers, the Insurance and Superannuation Commissioner, members of staff of the Insurance and Superannuation Commissioner and other persons;
- (p) complying with notices and requests in relation to the Scheme;
- (q) acceptance of contributions by the Scheme;
- (r) payment of benefits, including (without limitation) payment of unclaimed benefits and payment of benefits to an eligible rollover fund;
- (s) collection of tax file numbers;
- (t) any mergers of the Scheme with other superannuation funds;
- (u) payments out of the Scheme to an Employer; and

(v) winding up of the Scheme."

5. Clause 5 is deleted and replaced with the following:

"5. TRUSTEESHIP

5.1 Eligibility and Appointment

5.1.1 Eligibility

The Trustee shall be a Constitutional Corporation.

5.1.2 Appointment and Removal

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

(b) The Corporation shall not intentionally appoint a Disqualified Person as Trustee.

5.1.3 Compliance with Superannuation Law

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

5.1.4 Termination of Trusteeship

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

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

5.1.5 Retirement of Trustee

- (a) If the office of Trustee becomes vacant the Corporation shall subject to Superannuation Law after prior consultation with the Australian Council of Trade Unions by deed appoint another Constitutional Corporation to act as Trustee in accordance with this Clause.

- (b) Upon termination of office under sub-clause 5.1.4 of this Clause, the Trustee shall subject to sub-clause 5.1.6 of this Clause be deemed to be discharged from the trusts of this Deed and the duties and obligations of a Trustee under this Deed at the time and on the date of termination of office.
- (c) Upon termination of office under sub-clause 5.1.4 of this Clause, the Trustee shall thereupon do everything necessary to vest the Fund in the Trustee appointed in its stead and shall forthwith deliver all records and documents held by it in relation to the Scheme to the new Trustee.

5.1.6 Antecedent breach by Trustee

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

5.1.7 Consultation with Australian Council of Trade Unions

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

- (i) if at least seven clear days notice of the proposed appointment or removal (as the case may be) has been given to the Secretary of the Australian Council of Trade Unions;
- (ii) if the Secretary of the Australian Council of Trade Unions requests a meeting to discuss the proposed appointment or removal (as the case may be) within the seven clear days period referred to in sub-paragraph (i) hereof and that meeting is held within thirty clear days of the giving of the notice referred to in sub-paragraph (i) hereof or the thirty clear day period expires without a meeting being convened; or

- (iii) if the Secretary of the Australian Council of Trade Unions certifies that a consultation has occurred or that a consultation is not necessary.

5.2 Articles of Association of Trustee

5.2.1 Provision in Articles

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

5.2.2 Equal Representation

- (a) The board of directors of the Trustee shall consist of a minimum of six directors and shall, subject to sub-clause 5.2.3, be composed of equal numbers of representatives of the Corporation and representatives of the Members, of whom:
 - (i) three shall be appointed by the Corporation;
 - (ii) one shall be appointed by the board of directors of the Trustee at the direction of the Communication Workers' Union of Australia in accordance with the Appointment Rules;
 - (iii) one shall be appointed by the board of directors of the Trustee at the direction of the Public Service and Broadcasting Union Australian Government Employment in accordance with the Appointment Rules; and
 - (iv) one shall be appointed by the board of directors of the Trustee at the direction of the Australian Council of Trade Unions in accordance with the Appointment Rules as representing Employees whose interests are represented by unions other than the Unions referred to in sub-paragraphs (ii) and (iii) hereof.

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

5.2.3 Independent Director

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

5.2.4 Initial Directors upon Trustee Commencing to Hold Office

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

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

5.2.5 Term of Office of Directors

A director shall hold office until the earliest of:

- (a) in the case of an Employer Representative Director:
 - (i) his or her retirement from office by notice in writing to the board of directors and to the Corporation;
 - (ii) the expiration of the term for which he or she was appointed by the Corporation;
 - (iii) his or her being removed by notice in writing to the Trustee from the Corporation;
- (b) in the case of a Member Representative Director:
 - (i) his or her retirement from office by notice in writing to the board of directors and to the Union at whose direction he or she was appointed;
 - (ii) the expiration of the term for which he or she was appointed under the Appointment Rules;
 - (iii) his or her appointment being terminated in such manner as is provided in the Appointment Rules;
- (c) in the case of an Independent Director:
 - (i) his or her retirement from office by notice in writing to each of the other directors;
 - (ii) the expiration of the term for which he or she was appointed by the board of directors;
 - (iii) his or her being removed from office by the Trustee upon the Employer Representative Directors or Member

Representative Directors (as the case may be) who requested his or her appointment requesting the board of directors by notice in writing to remove him or her from office;

- (iv) his or her ceasing to be eligible to be an independent director for the purposes of Superannuation Law;
- (d) the director's death;
- (e) the director's suffering mental or physical incapacity; or
- (f) the director's becoming a disqualified person within the meaning of Superannuation Law.

5.2.6 Re-appointment

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

5.2.7 Alternate directors

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

5.2.8 Chairman of Directors

- (a) If there is an Independent Director, then he or she shall be chairman and shall act as chairman of meetings of the board of directors of the Trustee. If the Independent Director is not present at a meeting or is unwilling to act as chairman then the directors shall choose one of their number to be chairman for that meeting.
- (b) If there is not an Independent Director, then the directors shall choose one of their number to be chairman and the directors shall

have power from time to time to remove any chairman so appointed and appoint another in his or her stead.

- (c) The Independent Director (whether or not acting as chairman) shall have a deliberative but not a casting vote at meetings.

5.2.9 Decisions of the Directors

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

5.2.10 Directors' Meetings and Decisions

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

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

- 6. Sub-clause 6.2 is re-titled "**Decisions, Directions and Discretions**" and is re-numbered sub-clause 6.2.1 and the following are inserted immediately thereafter as new sub-clauses 6.2.2 and 6.2.3:

"6.2.2 Trustee not to be subject to direction

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

6.2.3 Exercise of discretion by person other than the Trustee

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

7. Sub-clause 6.3 is amended by inserting the following at the end of the first sentence before the full stop:

"and except to the extent that they consist of remuneration paid to the Trustee, in which case they shall be met by the Corporation".

8. Sub-clauses 6.4 and 6.5 are deleted and replaced with the following:

"6.4 Remuneration

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

6.5 No Conflict

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

9. Sub-clause 6.8 is amended by deleting the words "with the approval of the Corporation" where appearing in two places.

10. Sub-clause 6.11 is deleted and replaced with the following:

"6.11 Actuarial Investigation

The Trustee shall cause the Actuary to make an actuarial investigation of the Scheme and valuation of the Fund at such intervals as may from time to time be required by Superannuation Law, or at such shorter intervals as the Trustee may require. The Trustee, each Employer, 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 Trustee a report in writing as to the investigation, valuation and financial position of the Scheme. The report of the Actuary shall be in such form and shall include such matters as required by Superannuation Law."

11. Sub-clause 7.4 is amended by re-designating the text as paragraph (a) of sub-clause 7.4 and by inserting the following immediately thereafter as new paragraph (b):

"(b) The Trustee shall have power to effect or take out at the expense of the Fund from time to time one or more policies or contracts with one or more insurance companies or reinsurance companies to protect:

(a) the Fund; and

(b) each of the directors and other officers of the Trustee in respect of liabilities incurred by them or any of them in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed,

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

12. Sub-clause 7.6 is deleted and replaced with the following:

"7.6 Power to borrow

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

13. Sub-clause 7.7 is amended by:

(a) amending the heading to read

"Power to deduct tax, levies"; and

- (b) re-designating paragraph (b) as paragraph (c) and inserting the following as new paragraph (b):

"(b) The Trustee shall make any levy payment or other payment out of the Fund as is required by Superannuation Law from time to time to be made and shall have power to deduct any amount in respect of any such levy payment or other payment of any nature or description as is assessed, imposed or otherwise payable, or in the opinion of the Trustee is likely to be assessed, imposed or otherwise become payable in relation to the Fund and shall have power to debit such an amount to any account in the books of the Fund, or deduct such an amount from any moneys held in the Fund or any benefit payable from the Fund and to credit the amounts so deducted to an account in the books of the Fund pending payment thereof to the relevant government authority and the Trustees shall be released and discharged in respect of the amount so deducted and paid."

- 14. Sub-clause 7.9 is amended by deleting the words "with the consent of the Corporation" where appearing in two places.

- 15. Sub-clause 7.13 is amended by:

- (a) in paragraph (a), deleting the words "The Trustees and if the Trustee is a body corporate, the" and replacing them with "The", and deleting the comma after "Trustee" where appearing in the paragraph for the second time;

- (b) in paragraph (d), deleting the words "the Trustees or" in the first line and deleting the words "a corporate" and replacing them with "the"; and

- (c) inserting the following as new paragraphs (e) and (f):

"(e) This Clause is subject to Superannuation Law. Accordingly, notwithstanding the foregoing provisions of this Clause:

- (a) no lien shall be exercised pursuant to this Clause to the extent that in the opinion of the Trustee to do so will or may contravene any requirement of Superannuation Law; and
 - (b) any exemption from, or indemnification against, liability is subject to sub-clause (f) of this Clause.
- (f) Any exemption from, or indemnification against, liability provided in this Deed shall not apply to the extent prohibited by Superannuation Law. In particular, but without limiting the generality of the foregoing, no Trustee and no director or other officer of the Trustee shall be exempted from, or indemnified against:
- (a) liability for breach of trust if the Trustee or that director or other officer (as the case may be):
 - (i) fails to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or director or other officer was required to exercise; or
 - (b) liability for a monetary penalty under a civil penalty order (the term "civil penalty order" bearing the meaning given to that term in SIS).".

16. Sub-clause 8.1 is amended by:

- (a) inserting the following sub-heading for the sub-clause: **"Investment power"**; and
- (b) in paragraph (a), deleting the words "sub fund" and replacing them with "Sub-fund", and inserting the following at the end of the paragraph after the full stop:

"Notwithstanding the generality of the foregoing, the Trustee shall have power exercisable in such manner as the Trustee shall in its absolute discretion think fit to enter into (whether for the purpose of hedging the investments of the Scheme or otherwise) and carry out and perform obligations under agreements relating to or otherwise acquire rights in respect of any options, futures or forward market, any index traded on an options, futures or forward market, currency hedging arrangements, interest rate swaps, derivative transactions and any other similar transactions of whatsoever nature, and to undertake any other activity for the purpose of making a profit or gain."

17. Sub-clause 8.2 is amended by:

(a) inserting the following at the end of paragraph (a) after the full stop:

"Notwithstanding the generality of the foregoing, the Trustee shall not appoint or continue the appointment of any custodian trustee or investment manager which is prohibited by Superannuation Law from being or acting as a custodian trustee or as an investment manager (as the case may be).";

(b) deleting the words "with the consent of the Corporation" where appearing in paragraphs (a) and (d); and

(c) inserting the following as new paragraph (f):

"(f) Notwithstanding anything contained in paragraphs (a) and (d) of this sub-clause, the Corporation may from time to time give to the Trustee written notice stating that, on and from the date specified for the purpose in that notice, the Trustee shall not without the consent of the Corporation make any appointment pursuant to paragraph (a) of this sub-clause or effect any removal pursuant to paragraph (d) of this sub-clause. Such a notice shall be binding on the Trustee and shall remain in effect until it is revoked by a further written notice given by the Corporation to the Trustee."

18. Sub-clause 8.4 is deleted and replaced with the following:

"8.4 Investment in Sub-funds

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

19. Sub-clause 8.5 is amended by deleting the words "relating to investments".

20. Paragraph (a) of sub-clause 10.1 is deleted and replaced with the following:

- "(a) Subject to sub-clause 10.3 but notwithstanding any other power conferred on the Trustee hereunder, the Trustee may with the approval of the Corporation make and carry into effect an arrangement with the trustee or responsible authority of an Approved Arrangement and any person who participated in an Approved Arrangement, whereby an agreed sum or agreed assets shall be paid or transferred to the Fund and such person shall, if not already a Member or a Deferred Beneficiary, be admitted as a Member (if necessary) and the amount paid or transferred to the Fund in respect of such Member:
 - (i) shall be applied so as to provide such additional benefits as shall be determined by the Trustee after obtaining the advice of the Actuary and with the approval of the Corporation; and
 - (ii) may to the extent that the amount represents an employer financed accumulation in respect of the Member, with the consent of the Member be credited to an Employer Financed Accumulation Account established and maintained in respect of the Member pursuant to Rule 9."

21. Sub-paragraph (a)(iv) of sub-clause 10.2 is amended by:

- (a) deleting the words "at the direction of the Corporation and"; and
- (b) deleting the words "approved by the Corporation" and replacing them with "approved by the Trustee".

22. Sub-clause 10.2 is amended by inserting the following as new paragraph (d):

- "(d) if the Beneficiary so requests with the consent of the Corporation and the Trustee, the Trustee shall transfer an amount representing the value of an immediate benefit or a preserved benefit payable from the Fund some time after the Member has left the employ of the Employer, to which the Beneficiary is entitled, to a Beneficiary's Account established and maintained pursuant to Rule 8."

23. Sub-clause 10.3 is amended by deleting the words "relating to the provision, preservation or portability of benefits".
24. Paragraph (g) of sub-clause 11.1 is amended by inserting the following at the end of the paragraph before the full stop:

", **PROVIDED THAT** the Trustee may but shall not be obliged to comply with a direction given by the Corporation pursuant to this paragraph (g) where the direction is given in circumstances such that, if this Deed were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law."

25. Paragraph (h) of sub-clause 11.1 is deleted and replaced with the following:

"(h) If the Trustee is required by Superannuation Law to:

- (i) pay or commence to pay a benefit under the Fund in respect of a Member or other person at or by a certain time; or
- (ii) otherwise pay or deal or commence to pay or deal with a benefit under the Fund in respect of a Member or other person,

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

26. Sub-clause 11.2 is amended by inserting the following at the end of the paragraph before the full stop:

"or to receive any benefit from the Scheme whilst remaining in Service, other than in circumstances where Superannuation Law requires a benefit to be paid."

27. Sub-clause 11.4 is amended by redesignating the text as paragraph (a) of sub-clause 11.4, deleting the references in paragraph (a) to "sub-clause 11.4" and replacing them with references to "paragraph (a)", and inserting the following as new paragraph (b):

"(b) Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), a Member or other person shall not be entitled to be paid a benefit if the Trustee has not:

- (i) in the case of paragraph (h) of sub-clause 11.1 determined to pay a benefit; or
- (ii) in any other case - received a claim from the Member or other person (as the case may be), and the requirements set out in paragraph (a) have been fully complied with."

28. Paragraph (c) of sub-clause 11.10 is deleted and replaced with the following:

"(c) Notwithstanding paragraph (a), where the assets of the Fund are invested in Sub-funds as referred to in clause 8.4, the Trustee may, after obtaining the advice of the Actuary, determine a separate rate in respect of any such Sub-fund and may credit that rate in lieu of the rate referred to in paragraph (a) where interest is required to be credited pursuant to the provisions of this Deed either generally or in respect of any particular provision as the Trustee may think fit, and the Trustee shall also have power in a similar manner to determine an interim rate in respect of such a Sub-fund in respect of any period prior to the determination of the actual earning rate for the Sub-fund for that period, **PROVIDED THAT** the Corporation may from time to time give to the Trustee written notice stating that, on and from the date specified for the purpose in that notice, the Trustee shall not without the approval of the Corporation determine a separate rate in respect of a sub fund in accordance with this paragraph, and such a notice shall remain in effect until it is revoked by a further written notice given by the Corporation to the Trustee."

29. Paragraph (b) of sub-clause 11.13 is amended by inserting the following at the end of the paragraph before the full stop:

"PROVIDED THAT notwithstanding the generality of the foregoing this paragraph shall not apply to any interest or benefit to which the Member or Beneficiary (or any person claiming under, or in respect of, him or her) is absolutely entitled or (in the case of a Member or Beneficiary who becomes bankrupt, commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under the Bankruptcy Act 1966) to the beneficial interest (within the meaning of the Bankruptcy Act 1966) of the relevant person."

30. Clause 12 is amended by:

- (a) in paragraph (a), inserting the following at the end of the paragraph before the full stop:

" , to the extent only that:

- (i) such alteration, addition or repeal relates to the contributions that an Employer will, after such alteration, addition or repeal comes into force, be required or permitted to pay to the Fund;
- (ii) such alteration, addition or repeal relates solely to termination of the Scheme; or
- (iii) the circumstances in which such alteration, addition or repeal is made are permitted under Superannuation Law,

and otherwise the Corporation may after consultation with the Australian Council of Trade Unions and with the consent of the Trustee at any time and from time to time by deed or resolution of the directors of the Corporation alter, add to or repeal all or any of the provisions contained in this Deed or the Rules, including the provisions of this Clause"; and

- (b) in paragraph (e):

- (i) redesignating sub-paragraphs (i) to (iv) inclusive as sub-paragraphs (ii) to (v) inclusive; and

(ii) inserting the following as new sub-paragraph (i):

"(i) if the alteration, addition or repeal would have the effect of permitting a natural person or natural persons to be appointed as trustee or trustees of the Scheme, after the alteration, addition or repeal became effective the Scheme would have as its sole or primary purpose the provision of old-age pensions within the meaning of paragraph 51(xxiii) of the constitution of the Commonwealth of Australia; and."

31. Paragraph (a) of sub-clause 13.3 is amended by deleting the word "of" in the fourth line of the part of the paragraph appearing after the numbered sub-paragraphs.

32. Paragraph (a) of sub-clause 13.2 is amended by inserting the following at the end of the paragraph before the full stop:

“, **PROVIDED THAT** the Trustee may but shall not be obliged to comply with a request made by an Employer or by the Corporation pursuant to this paragraph (a) where the request is made in circumstances such that, if this Deed were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law".

33. Clause 14 is amended by:

(a) redesignating the Clause as sub-clause 14.1, and inserting the heading **"Return of Surplus - General Provision"**;

(b) deleting the word "that" appearing at the beginning of sub-paragraph (d)(ii) of sub-clause 14.1 (as re-designated);

(c) inserting the following as new paragraph (e):

"(e) In the exercise of any power under this sub-clause, the Trustee and the Corporation shall comply with any requirements imposed by Superannuation Law and this sub-clause shall be read and construed subject to the relevant provisions of Superannuation Law

which, to the extent required by Superannuation Law and as necessary to give full effect to this sub-clause, shall be taken to be incorporated into this sub-clause."; and

- (d) inserting the following as new sub-clause 14.2:

"14.2 Return of Surplus Where SIS Applies

- (a) During any period in which SIS applies in relation to a payment to an Employer or a related body corporate of an Employer from the Fund, the Corporation may by notice in writing to the Trustee, in addition to any other power the Corporation may have under the Deed, request the Trustee to pay an amount out of the Fund to the Corporation or to an Employer nominated by the Corporation. The request may be for a specific amount or for an amount calculated in accordance with a formula set out in the notice. The Trustee may not pay out of the Fund pursuant to this sub-clause 14.2 an amount in excess of the amount by which the Total Fund Value exceeds the Total Accrued Benefit Value. Where the notice requests a payment of an excess amount, the amount in the notice shall be deemed to be an amount equal to the excess of the Total Fund Value over the Total Accrued Benefit Value.
- (b) Whenever required by the Corporation or the Trustee, the Actuary shall investigate the Fund and shall as soon as practicable report in writing to the Corporation and the Trustee as to the Total Fund Value and the Total Accrued Benefit Value as at the date at which such investigation is made (the "effective date"). The Trustee shall make all reasonable efforts to facilitate such an investigation and shall provide to the Actuary such information as the Actuary may require to complete such investigation. The Actuary shall also certify in writing to the Trustee his or her opinion as to whether or not the Fund would remain in a satisfactory financial position if the amount requested by the Corporation were paid out of the Fund.

- (c) If the report of the Actuary reveals that the Total Fund Value exceeds the Total Accrued Benefit Value as at the effective date and the Actuary certifies in the manner specified in paragraph (b) of this sub-clause and the Trustee is satisfied that the payment of the amount is reasonable having regard to the interests of the Corporation and any relevant Employer and the Members and Beneficiaries of the Fund and such other matters as the Trustee considers relevant, the Trustee may, by resolution, declare its intention to make a payment of or payments totalling the amount out of the Fund to the Corporation or the Employer nominated by the Corporation pursuant to paragraph (a) of this sub-clause and the Trustee will then give notice in writing to all the Members:
 - (i) stating that the Trustee intends so to pay such amount;
 - (ii) stating that the Actuary has given a certificate in the terms required by SIS; and
 - (iii) setting out particulars of the changes (if any) that are proposed to be made to the Deed if the amount were paid out of the Fund.
- (d) Within seven days after the expiration of three months after the notice referred to in paragraph (c) was given to the Members the Trustee after considering the advice of the Actuary as to the financial position of the Fund at that time shall consider a resolution determining to make the payment or payments referred to in paragraph (c) of this sub-clause out of the Fund.
- (e) If the resolution referred to in paragraph (d) of this sub-clause is passed then the Trustee shall as soon as practicable make the payment or payments out of the Fund as specified in that resolution."

34. Sub-clause 15.1 is amended by inserting the following at the end of the sub-clause before the full stop:

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

35. Paragraph (g) of sub-clause 15.2 is amended by inserting the following at the end of the sub-clause before the full stop:

", **PROVIDED THAT** in the exercise of any power under this paragraph the Trustee and the Corporation shall comply with any requirements imposed by Superannuation Law and this paragraph shall be read and construed subject to the relevant provisions of Superannuation Law which, to the extent required by Superannuation Law and as necessary to give full effect to this paragraph, shall be taken to be incorporated into this paragraph".

36. Clause 16 is amended by:

- (a) In paragraph (a), deleting all of the words from "Corporation not exceeding" to "consultation with the Trustees" inclusive and replacing them with the following:

"Corporation with the approval of the Trustee not exceeding in value the value of the benefits provided for such Members and/or their Dependants under the Government scheme pursuant to such introduction or improvement **PROVIDED THAT** if the benefits payable under the Scheme are of a different form or nature to the benefits payable under the Government scheme the extent to which the benefits payable under the Scheme may be reduced shall be determined by the Corporation with the approval of the Trustee after obtaining the advice of the Actuary",

and inserting the following as an additional sentence immediately before the final sentence of the paragraph:

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

- (b) in paragraph (b), deleting the words "determined by the Corporation, after obtaining the advice of the Actuary and consultation with the Trustees", and replacing them with the following:

"determined by the Corporation with the approval of the Trustee, after obtaining the advice of the Actuary".

37. The following are inserted as new Clauses 18 to 22:

"18. OVERRIDING PROVISIONS APPLICABLE TO ANNUITIES

Notwithstanding any provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), where a benefit is payable in the form of an annuity pursuant to this Deed the Trustee shall pay such annuity on the basis of such terms and conditions as shall in the opinion of the Trustee be necessary or desirable in order to comply with the requirements of Superannuation Law relating to the annuity standards. In order to comply with this Clause, the Trustee shall have power to adjust in such manner as the Trustee thinks fit the operation of such provisions of this Deed as the Trustee considers necessary or desirable having regard to the intention of this Clause and the advice of the Actuary.

19. SUPERANNUATION LAW COVENANTS TAKEN TO BE INCLUDED IN DEED

19.1 Covenants taken to be included

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

19.2 Covenants applicable from 1 July 1994

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

19.3 Covenant by Trustee's Directors

- (a) Each covenant specified in sub-clause 19.1 of this Clause operates:
 - (i) as a covenant by each of the directors of the Trustee to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the covenant; and
 - (ii) as if the directors of the Trustee were parties to this Deed.
- (b) The reference in paragraph (a) of this sub-clause to "a reasonable degree of care and diligence" is a reference to the degree of care and diligence that:

- (i) unless sub-paragraph (ii) applies - a reasonable person in the position of director of the Trustee would exercise in the Trustee's circumstances; or
- (ii) where Superannuation Law specifies a meaning different to that specified in sub-paragraph (i) of this paragraph (b) - that definition.

20. COMPLIANCE WITH DIRECTIONS MADE UNDER SUPERANNUATION LAW

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

21. TRUSTEE NOT IN CONTRAVENTION

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

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

22. MODIFICATION OR EXEMPTION

22.1 Power to seek modifications and exemptions

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

22.2 Effect of modifications and exemptions

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

22.3 Determination of disputes

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

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

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

38. Sub-rule 1.1 is deleted and replaced with the following:

"1.1 An Employee shall be eligible to be admitted to membership of the Scheme as:

- (a) a Class A Productivity Member - an Employee who:
 - (i) is an Employee in respect of whom an Employer is required to provide a Productivity Benefit pursuant to a Prescribed

Agreement, a Superannuation Agreement or legislation;
and

(ii) is not:

(A) a member of the Commonwealth Superannuation Scheme; or

(B) a Full Member; or

(C) a Contributory Member.

(b) a Class B Productivity Member - an Employee who:

(i) is an Employee in respect of whom an Employer is required to provide a Productivity Benefit pursuant to a Prescribed Agreement, a Superannuation Agreement or legislation;
and

(ii) is a member of:

(A) the Commonwealth Superannuation Scheme; or

(B) some other superannuation or similar arrangement that in the opinion of the Trustee makes the Employee ineligible to become a Class A Productivity Member.

(c) a Full Member - an Employee who:

(i) is a permanent or probationary full or part-time Employee who has completed six months Service; or

(ii) has been admitted to membership of the Scheme as a Class A Productivity Member and who has completed six months Service; or

- (iii) has been admitted to membership of the Scheme as a Contributory Member.
 - (d) a Contributory Member - an Employee who has been admitted to membership of the Scheme as a Class A Productivity Member and who:
 - (i) has completed six months Service; and
 - (ii) is not eligible to become a Full Member; and
 - (iii) elects to contribute to the Scheme; and
 - (iv) continues to contribute to the Scheme."
- 39. Sub-rule 1.3 is amended by deleting "The" at the beginning of the sub-rule and replacing it with the following:

"Subject to Superannuation Law, the".
- 40. Sub-rule 1.4 is deleted.
- 41. Sub-rule 2(b) is amended by inserting the words "by the Trustee" immediately after the words "application for Membership".
- 42. Sub-rule 3.1 is amended by:
 - (a) re-lettering paragraph (f) as paragraph (d), inserting that paragraph after paragraph (c), and re-lettering paragraphs (d) and (e) as paragraphs (e) and (f) respectively; and
 - (b) in paragraph (g), deleting the words "with the approval of the Corporation".
- 43. Sub-rule 3.2(e) is amended by inserting the following at the end of paragraph (iii) before the full stop:

"and in any event within such period as may be required by Superannuation Law".

44. Sub-rule 3.4(c) is amended by deleting the words "determined by the Corporation with the approval of the Trustees" and replacing them with the following:

"determined by the Trustee with the approval of the Corporation".

45. Paragraph (d) of Sub-rule 3.3 is deleted and replaced with the following:

"(d) The Trustee may, subject to the provisions of sub-clause 11.1, accept into the Fund:

- (i) any additional contribution which may be made by an Employer for the purpose of securing the solvency of the Fund or of improving the provision of benefits prescribed by the Rules; and
- (ii) in respect of a Member such additional contributions (if any) as the Employer may from time to time agree with the Member to contribute to the Fund in respect of that Member."

46. Sub-rule 4.2 is amended by deleting the full stop at the end of paragraph (c) and replacing it with a comma.

47. Sub-rule 4.4 is deleted and replaced with the following:

"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, being a Member Financed Benefit calculated as provided in paragraph (b) of this Rule 4.4 plus an Employer Financed Benefit calculated as provided in paragraph (c) of this Rule 4.4.

- (b) The Member Financed Benefit shall be equal to the sum of:
 - (i) 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
 - (ii) 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.
- (c) The Employer Financed Benefit shall be equal to the sum of:
 - (i) the Accrued Productivity Benefit; and
 - (ii) 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
 - (iii) 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 commencing on and from 1 July 1992, 1% of Final Average Salary; and
 - (iv) 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 commencing on and from 1 January 1993, 1% of Final Average Salary; and

- (v) the amount determined by deducting from the Member's Accrued Retirement Benefit the sum of the amounts referred to in paragraph (b) and in sub-paragraphs (c)(i), (ii), (iii) and (iv), and multiplying the result by the percentage set out in the following table, having regard to the period of the Member's Previous Membership and Membership:

Period of Previous Membership 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 (v) 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 for the purposes of this paragraph (c), 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.

- (d) 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 (other

than as may be required by Superannuation Law) be required to be preserved."

48. Rule 7 is amended by:

- (a) in paragraph (a), inserting the following at the end of the paragraph before the full stop:

"**PROVIDED THAT** the Trustee may but shall not be obliged to comply with a requirement of the Corporation pursuant to this paragraph (a) where the requirement is notified to the Trustee in circumstances such that, if these Rules were to oblige the Trustee to comply, the Scheme would be in breach of or would fail to comply with a relevant requirement of Superannuation Law"; and

- (b) in paragraph (d), deleting the words "Corporation determines after obtaining the advice of the Actuary and consultation with the Trustees" and replacing them with the following:

"Trustee determines after obtaining the advice of the Actuary and with the approval of the Corporation".

49. The following are inserted after Rule 7 as new Rules 8 and 9:

"8. BENEFICIARIES' ACCOUNTS

- (a) The Trustee shall establish and maintain a Beneficiary's Account in respect of each Beneficiary who makes a request pursuant to sub-clause 10.2(d), and shall maintain a record of all amounts credited and debited to each such Beneficiary's Account.
- (b) The following amounts shall be credited to a Beneficiary's Account:
 - (i) such amount as is transferred to the account by the Trustee pursuant to sub-clause 10.2(d); and

- (ii) positive interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Beneficiary's Account up to the date the amount is paid out of the Beneficiary's Account;
- (c) The following amounts shall be debited to a Beneficiary's Account:
 - (i) negative interest pursuant to sub-clause 11.10 (if any) from the date an amount is credited to the Beneficiary's Account up to the date the amount is paid out of the Beneficiary's Account;
 - (ii) such costs (if any) incurred by the Trustee in relation to the administration and maintenance of the Beneficiary's Account as the Trustee considers to be appropriate; and
 - (iii) any other amount required or permitted to be paid out of or deducted from the Beneficiary's Account pursuant to the Deed or the Rules.
- (d) The Trustee shall from time to time, upon receiving a written request for payment from a Beneficiary (in such form as the Trustee may reasonably require or accept), pay to the Beneficiary all or such part of the amount standing to the credit of the Beneficiary's Account maintained in respect of that Beneficiary as is specified by the Beneficiary in that written request, and the balance of a Beneficiary's Account shall be payable to the Beneficiary or to the legal personal representatives of the Beneficiary (as the case requires) on the first to occur of:
 - (i) the attainment of age 65 by the Beneficiary; and
 - (ii) the death of the Beneficiary,

PROVIDED THAT no amount shall be paid out of a Beneficiary's Account if in the opinion of the Trustee so to do would or might cause the Scheme to be in breach of or fail to comply with any requirement of Superannuation Law.

9. **EMPLOYER FINANCED ACCUMULATION ACCOUNT**

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

- (iii) any other amount required or permitted to be paid out of or deducted from the Employer Financed Accumulation Account pursuant to the Deed or the Rules.
 - (d) The balance of an Employer Financed Accumulation Account is payable to or in respect of the Member in respect of whom the account is maintained upon an entitlement to a benefit in respect of that Member arising pursuant to Rule 4 **PROVIDED THAT** no amount shall be paid out of an Employer Financed Accumulation Account if in the opinion of the Trustee so to do would or might cause the Scheme to be in breach of or fail to comply with any requirement of Superannuation Law."
- 50. Schedule 2 is amended by:
 - (a) amending the address of the Australian Postal Corporation to read:

"18th Floor, 321 Exhibition Street, Melbourne in the State of Victoria";
 - (b) inserting quotation marks at the end of the quoted material in Recital C; and
 - (c) deleting the execution clauses for individual signatories and replacing them with a corporate execution clause identical with the execution clause last appearing in that Schedule.
- 51. The following is inserted as a new Schedule 3 at the end of the Trust Deed proper immediately before the sealing clauses:

"SCHEDULE 3

CLAUSE 19.1 - DEEMED COVENANTS UNDER SUPERANNUATION LAW

1. PURPOSE OF SCHEDULE

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

2. COVENANTS APPLICABLE AS AT 1 JULY 1994

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

- (a) to act honestly in all matters concerning the Scheme;
- (b) to exercise, in relation to all matters affecting the Scheme, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries of the Scheme;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Trustee personally; or
 - (ii) that are money or assets (as the case may be) of an Employer, or an associate (within the meaning of SIS) of an Employer of the Fund;

- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers in relation to the Scheme;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Scheme including, without limitation, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary of the Fund access to any information or documents prescribed for the purposes of Superannuation Law; and
- (i) to comply with any other covenant prescribed for the purposes of Superannuation Law.

3. COVENANT RELATING TO THE HINDRANCE OF TRUSTEE'S FUNCTIONS AND POWERS

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

4. INVESTMENT STRATEGY COVENANT

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

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