

**THE TREASURER OF THE STATE OF NEW SOUTH WALES  
(Treasurer)**

**and**

**ENERGY INDUSTRIES SUPERANNUATION SCHEME PTY LTD  
(Trustee)**

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**ENERGY INDUSTRIES SUPERANNUATION SCHEME  
TRUST DEED  
CONSOLIDATION AS AT 20 August 2011**

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Original Deed dated 30 June 1997

This Consolidation encompasses the following amendments:

Amendment No. 1 dated 27 April 1998

Amendment 2 dated 20 October 2000 (*amended Schedules only*)

Amendment 3 dated 11 January 1999 (*added Schedule 6 only*)

Amendment 4 dated 30 June 1999

Amendment 5 dated 30 June 1999 (*amended Schedules only*)

Amendment 6 dated 1 October 1999

Amendment 7 dated 4 May 2000

Amendment 8 dated 14 August 2000

Amendment 9 dated 28 March 2001

Amendment 10 dated 21 November 2000

Amendment 11 dated 28 September 2000

Amendment 12 dated 30 April 2001

Amendment 13 dated 29 March 2001

Amendment 14 dated 20 September 2002

Amendment 15 dated 8 September 2002

Amendment 16 dated 25 October 2002

Amendment 17 dated 22 November 2002

Amendment 18 dated 5 February 2003

Amendment 18A dated 17 July 2003

Amendment 19 dated 5 September 2003

Amendment 20 dated 1 June 2003

Amendment 21 dated 21 November 2003

Amendment 22 dated 24 September 2004

Amendment 23 dated 18 February 2005

Amendment 24 dated 21 September 2005

Amendment 25 dated 22 June 2007

Amendment 26 dated 28 March 2008

Amendment 27 dated 22 March 2010

Amendment 28 dated 19 March 2009

Amendment 29 dated 11 March 2011



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## ENERGY INDUSTRIES SUPERANNUATION SCHEME

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DEED dated

1997 by:

1. **THE TREASURER OF THE STATE OF NEW SOUTH WALES** (*Treasurer*)
2. **ENERGY INDUSTRIES SUPERANNUATION SCHEME PTY LTD (ACN 077 947 285)** of Level 12, 83 Clarence Street, Sydney, NSW 2000 (*Trustee*).

### RECITALS:

- A. The New South Wales Parliament has enacted the Superannuation Administration Act 1996 (*Administration Act*).
- B. Under the Administration Act, the Minister (being the Treasurer) may approve the preparation of a trust deed providing for a superannuation scheme for the benefit of state public sector employees, or a class or classes of state public sector employees (including employees of a local authority or a public authority) or other employees, or a class or classes of other employees, of employers under FTC or STC schemes (being employees associated with or involved in local government or local government activities, or associated with or involved in the electricity industry). Before approving the preparation of the trust deed the Minister must consult with the Labor Council of New South Wales.
- C. The Minister has consulted with the Labor Council of New South Wales and has approved the preparation of a trust deed providing for a superannuation scheme for the benefit of certain employees employed in the local government sector and regulations have been made under section 128 of the Administration Act for that purpose.
- D. The Minister has determined to appoint the Trustee as trustee of the superannuation scheme to be established by this Deed and to be known as the Energy Industries Superannuation Scheme and the Trustee has consented to that appointment.

**IT IS DECLARED** as follows.

### 1. INTERPRETATION

#### 1.1 Definitions

In this Deed and Rules, unless the contrary intention appears:

*Accounts* means one or more accounts established and maintained by the Trustee in accordance with this Deed whether such account is referred to as an account or a reserve;

*Actuary* means an actuary appointed by the Trustee under sub-clause 6.5;

**Administration Act** means the Superannuation Administration Act 1996;

**Adjustment Amounts** means;

- (a) estimated costs and expenses of realising the investments of the Division;
- (b) allowances for future losses in respect of any investment for which the market value cannot be fairly or accurately assessed;
- (c) allowance for the averaging of the earnings of the Division whether on income or capital account, to take into account possible or actual periodic fluctuations in those earnings and any losses of the Division not otherwise deducted; and
- (d) allowances for any other purpose or purposes that the Trustee considers desirable or necessary;

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Application Price** means the price per unit calculated in accordance with Clause 3.4A.8;

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Appointed Day** means the date of commencement of the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Amendment Regulation 1999*.

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Auditor** means the Auditor-General of New South Wales for the 1997-1998 financial year ending 30 June 1998, and, for subsequent financial years means, an approved auditor appointed by the Trustee;

**Basic Death or Invalidity Benefit** has the same meaning as it has in rule 1.1 of Division A;

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Basic Death Invalidity Premium** has the same meaning as it has in rule 1.1 of Division A;

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Basic Death or Temporary Salary Continuance Benefit** has the same meaning as it has in rule 1.1 of Division N;

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Basic Death or Temporary Salary Continuance Premium** has the same meaning as it has in rule 1.1 of Division N;

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Beneficiary** means a Member, Deferred or Preserved Member, Pensioner or any other person who is a transferred member under the Transfer Regulation;

**Benefit** means any amount payable or which may become payable to or in respect of a Beneficiary from the Fund;

**Benefit Account** means one or more accounts in respect of an Employer or Beneficiary established and maintained by the Trustee in accordance with this Deed;

**Binding Nominations** means the nomination made by the Member under clause 14.17A.1;

*[inserted by Deed of Amendment No.[24] operative 24/10/05]*

**Connell Wagner** means Connell Wagner Pty Limited, its administrators, successors and permitted assigns;

*[inserted by Deed of Amendment No.18 operative 5/2/03]*

**Connell Wagner Reserve** means the reserve containing the following amounts:

*[inserted by Deed of Amendment No.18 operative 5/2/03]*

- (a) the Employer reserve for Connell Wagner consisting of the following amounts;
- the Connell Wagner reserve created under Rule 2.4 of Division B;
  - the Connell Wagner reserve created under Rule 2.2 of Division C;
  - the Connell Wagner reserve created under Rule 2.4 of Division D;
- (b) a Contributor reserve consisting of that part of the Contributors Reserve in Division D that is attributable to Contributors who are or were employees of Connell Wagner (other than such amounts transferred to a non Connell Wagner reserve);

**Contribution** means any amount paid to the Fund by or on behalf of an Employer or a Member and includes any amount transferred to the Fund in respect of a Beneficiary;

**Custodian Trustee** means a custodian which satisfies the requirements of Superannuation Law;

**Death, Invalidity, and Temporary Salary Continuance Benefit Management Reserve** means the Death, Invalidity and Temporary Salary Continuance Benefit Management Reserve established under this Deed;

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Deed** means this Deed and the Rules set out in the Schedules together with any amendments made to this Deed or Rules including those effected by the establishment of a new Division of the Fund;

**Deed of Adherence** means the Deed of Adherence set out in Annexure B or such similar deed as the Trustee may from time to time approve;

**Deferred or Preserved Member** means a Member who has a Benefit which in accordance with the Rules is deferred or preserved;

**Defined Benefit** means a Benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
  - (i) the Member's salary at a particular date, being the date of the termination of the Member's employment or of the Member's retirement or an earlier date; or
  - (ii) the Member's salary averaged over a period before retirement; or
- (b) a specified amount,

but does not include such a Benefit which is only payable on the death or disability of a Beneficiary;

**Dependant** has the same meaning as defined in the *Superannuation Industry (Supervision) Act, 1993*;  
*[inserted by Deed of Amendment No.[24] operative 24/10/05]*

**Division** means a division of the Fund established under clause 3;

**Due Date** means any date for payment of contributions agreed to between the Trustee and the Employer and otherwise fourteen days after the end of the month in which salary or wages the subject of contributions to the Fund were paid to the Employee;

**EISS Employer** means an employer responsible for making contributions for the benefit of the employee under any of Divisions B, C or D of the Fund;  
*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**EISS Payment Deed** means the Deed made in February 2003 between the Treasurer of New South Wales, Energy Industries Superannuation Scheme Pty Limited and Connell Wagner Pty Limited whereby the Treasurer agreed to be responsible for certain risks associated with the difference between actual investment returns of Pool B and certain assumed investment returns;  
*[inserted by Deed of Amendment No.18 operative 5/2/03]*

**Election** means an election under clause 12A to exercise a Transfer Option;  
*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Electors** means a person eligible to exercise a Transfer Option under clause 12A;  
*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Eligible Fund** means a complying superannuation fund, a complying ADF or a roll-over annuity, an eligible annuity, an annuity complying with the standards prescribed under Superannuation Law or such other fund, annuity or source of payment which the Trustee determines to be a fund or body the acceptance of moneys or assets from or the payment or transfer of moneys or assets which would not in the opinion of the Trustee jeopardise the status of the Fund as a complying superannuation fund in any year of income;

**Employee** means a person who is an employee within the meaning of the *Superannuation Industry (Supervision) Act 1993* and is employed by an Employer or in respect of whom an Employer is required to make superannuation contributions;

**Employer** means any person which has been admitted to participation in the Fund as an Employer but does not include any person which has ceased to be an Employer in the Fund. When used in relation to an Employee or Beneficiary it means the Employer or former Employer of that person;

**Expert Adviser** means any accountant, auditor, actuary, barrister, solicitor, medical practitioner, other professional person, expert or adviser;

**Family Court Order** means a court order issued by the Family Court of Australia;  
*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Family Law Act** means the Family Law Act 1975 and the regulations thereunder;  
*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Family Law Spouse Amount** means the amount of the payment split determined in accordance with a Family Court order, Superannuation Agreement or Flag Lifting Agreement and the rules applying for each Division;  
*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Flag** means a 'payment flag' as defined in section 90MD of the Family Law Act;  
*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Flag Lifting Agreement** has the meaning ascribed to that term in section 90MD of the Family Law Act;  
*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Former Funds** means the STC schemes (as defined in the Administration Act) being part of the amalgamated fund as continued under the Administration Act and the FTC schemes as defined in the Administration Act;

**Fund** means each/both of the superannuation funds being the funds constituted by Pool A and Pool B, established by this Deed as the context requires;

**Government Entity** means:

- (a) any government or semi-government or any government person or entity of Australia or any State or Territory of Australia; or
- (b) any person or entity whose obligations are secured by a guarantee or indemnity of any person or entity specified in paragraph (a) of this definition;

**GST** means any goods and services tax, consumption tax, value-added tax or any similar impost or duty which is or may be levied or becomes payable in connection with the supply of goods or services;  
*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Income Tax Acts** means the Tax Act, the Income Tax Rates Act 1986 and any other Act relating to the imposition, collection and administration of Tax and any regulations made under those Acts;

**Industrial Relations Commission** means the Industrial Commission of New South Wales in court session;

**Insured Benefit** means a death or disability Benefit (or part of such a Benefit) where the entitlement to the Benefit (or part of the Benefit) is determined by the terms of an insurance policy other than an insurance policy the purpose of which is to protect the Fund or the Trustee in respect of the Fund's liability to pay a Benefit. *Insured Benefit* does not include any Benefit or part of a Benefit payable from a Benefit Account to, or in respect of, a Beneficiary on the death or disability of the Beneficiary;

**Invalidity** means a Member who ceases to be employed and the Trustee is satisfied that the cessation of employment is on the ground of permanent incapacity or permanent invalidity (not caused by any act or default of the Member intended to produce that incapacity or invalidity);

*[inserted by Deed of Amendment No.18A operative 17/7/03]*

**Investment Direction** means a written direction issued by a Member to the Trustee directing the Trustee as to the investment of the contributions made in respect of the Member;

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**LGSS** means the superannuation scheme established by Deed of Settlement made on 30 June 1997 by LGSS Pty Limited and the Treasurer of New South Wales and known as the Local Government Superannuation Scheme;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**LGSS Employer** means an employer responsible for making contributions for the benefit of the employee under any of Divisions B, C or D of the LGSS;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Mandated Contributions** means:

*[inserted by Deed of Amendment No.4 operative 1/7/97]*

- (a) contributions that reduce the employer's potential liability for superannuation guarantee charge;
- (b) contributions that are payments of shortfall component;
- (c) contributions required by an obligation under an agreement certified, or an award made by an industrial authority;

**Member** means an Employee or other person who is a member under the rules of a Division who has been accepted for membership of the Fund and who has not ceased to be a Member;

*[amended by Deed of Amendment No.[1] operative 27/4/98]*

**Minister** means the Minister responsible for the administration of the Administration Act or such other Minister determined by the Premier of New South Wales;

**Net Asset Value** means, at any time (as the case may be), the amount determined by the Trustee according to Australian accounting principles (as referred to in Section 272-5(2) of Schedule 2F of the Income Tax Assessment Act 1936 to be equal to the total value of the Division or the portion of the Division allocated to a Pool determined in accordance with Clause 3.4A at that time less the liabilities of the Division or Pool at that time;

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Nominated Beneficiary** means the legal personal representative nominated by the Member under clause 14.17A.1;

*[inserted by Deed of Amendment No.[24] operative 24/10/05]*

**Non-Member Spouse** has the meaning ascribed to that term in section 90MD of the Family Law Act;

*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Operative Time** has the meaning ascribed to it in section 90MD of the Family Law Act;

*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Pensioner** means a person who has become entitled to, and who has not ceased to be entitled to receive a pension under the Rules;

**Police Superannuation Scheme** means the superannuation Scheme established under the *Police Regulation Superannuation Act 1906*;

*[inserted by Deed of Amendment No.16 operative 1/7/97]*

**Pool** means any pool of assets referred to in Clause 3.4A.1.1;

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Pool A** means the pool of assets established under clause 3.4(a);

**Pool B** means the pool of assets established under clause 3.4(b);

**Prescribed Public Sector Employer** has the meaning given by the *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Amendment Regulation 1999*;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Relevant Date** has the meaning ascribed to that term in regulation 3 of the Family Law (Superannuation) Regulations 2001;

*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**Rules** means those rules governing each Division established by the Trustee under sub-clause 3.2 or 3.7 and contained in the Schedules to this Deed;

**Secretary of the Fund** means the person appointed to that office by the Trustee under clause 6.4;

**Splittable Payment** has the meaning as ascribed to that term in section 90MD of the Family Law Act;

*[inserted by Deed of Amendment No.[21] operative 28/12/02]*

**State Authorities Non-contributory Superannuation Scheme** means the superannuation scheme established under the *State Authorities Non-contributory Superannuation Act 1987*;

[inserted by Deed of Amendment No.6 operative 1/10/99]

**State Authorities Superannuation Scheme** means the superannuation scheme established under the *State Authorities Superannuation Act 1987*;

[inserted by Deed of Amendment No.6 operative 1/10/99]

**State Superannuation Scheme** means the superannuation scheme established under the *Superannuation Act 1916*;

[inserted by Deed of Amendment No.6 operative 1/10/99]

**STC Employer** means an employer responsible for making contributions under a superannuation scheme of which STC is trustee;

[inserted by Deed of Amendment No.6 operative 1/10/99]

**STC Scheme** means a superannuation fund or superannuation scheme established or constituted under any of the following Acts:

- (a) *Superannuation Act 1916*,
- (b) *State Authorities Superannuation Act 1987*,
- (c) *State Authorities Non-contributory Superannuation Act 1987*;

[inserted by Deed of Amendment No.6 operative 1/10/99]

**Superannuation Agreement** has the meaning ascribed to that term in section 90MD of the Family Law Act;

[inserted by Deed of Amendment No.[21] operative 28/12/02]

**Superannuation Authority** means any person or body appointed under any Superannuation Law who is empowered under that legislation or some other legislation to exercise any discretion, give any consent or approval or otherwise give effect to and administer the Superannuation Law;

**Superannuation Contributions Surcharge** means the Superannuation Contribution Surcharge imposed under the *Superannuation Contributions Impositions Act 1997*;

[inserted by Deed of Amendment No.[1] operative 27/4/98]

**Superannuation Guarantee Shortfall** has the meaning ascribed to that term in the *Superannuation Guarantee (Administration) Act 1992*;

**Superannuation Guarantee Charge Acts** means the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Act 1992* and any other Act relating to the imposition, collection and administration of the superannuation guarantee charge and any regulations made under the foregoing Acts;

**Superannuation Interest** has the meaning ascribed to that term in section 90MD of the Family Law Act;

[inserted by Deed of Amendment No.[21] operative 28/12/02]

**Superannuation Law** means requirements in any of the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Entities (Taxation) Act 1993*, the Tax

Act, the Superannuation Guarantee Charge Acts and regulations made under those Acts and all other requirements, whether legislative or otherwise including:

- (a) any administrative guidelines issued by a Superannuation Authority; or
- (b) statements by government advising changes and proposed changes to Superannuation Law,

in each case with which the Fund must comply (or which, in the reasonable opinion of the Trustee, the Fund ought comply) in order to be a complying superannuation fund;

**Tax** means income tax (including any tax on the disposal of assets), contributions tax, surcharge including Superannuation Contributions Surcharge, withholding tax, stamp, financial institutions and other duties, tax and other taxes, levies, imposts, deductions and charges whatsoever (including in respect of any duty imposed on receipts or liabilities of financial institutions any amounts paid in respect thereof to another financial institution) together with any interest and penalties and charges, fees or other amounts made on or in respect of them;

*[amended by Deed of Amendment No.[1] operative 27/4/98]*

**Tax Act** means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997;

**Transfer Day** means 1 July 1997;

**Transfer Option** means a transfer option exercised in accordance with clause 12A;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Transfer Regulation** means the Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997, the Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Amendment Regulation 1997 and any other Regulation made under section 128 of the Administration Act in relation to the transfer of employers or members to this Fund;

**Transfer Regulation** means:

- (a) *Superannuation Administration (Electricity Superannuation Scheme Transitional Provisions) Regulation 1997;*
- (b) *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997;*

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Transferee Scheme** means the superannuation scheme to which a person elects to transfer in accordance with clause 12A;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Transferor Scheme** means the superannuation scheme from which a person elects to transfer in accordance with clause 12A;

*[inserted by Deed of Amendment No.6 operative 1/10/99]*

**Trustee** means the Trustee named in this Deed and any other Trustee appointed in accordance with the provisions of this Deed;

**Units** means a unit created under the provisions of this document;  
*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

**Unit Value** means the value determined in accordance with the provisions of Clause 3.4A  
*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

## 1.2 Definitions from Superannuation Industry (Supervision) Act

In this Deed and in any document issued by the Trustee under this Deed, unless the contrary intention appears, the following terms shall have the same meaning as they have in the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations and if any definition of such a term is amended that term shall have the amended meaning on and from the date that amendment takes effect unless either before or after that date the Trustee resolves to the contrary:

*Annuity*

*APRA*

*approved auditor*

*approved deposit fund*

*ASIC*

*associate*

*Commissioner*

*compassionate grounds*

*condition of release*

*constitutional corporation*

*disqualified person*

*eligible rollover fund*

*investment manager*

*legal personal representative*

*preservation age*

*regulated superannuation fund*

*severe financial hardship*

*spouse*

*successor fund*

*Superannuation Complaints Tribunal*

*superannuation fund*

*year of income.*

*[amended by Deed of Amendment No.[1] operative 27/4/98; by Deed of Amendment No.7 operative 4/5/00; amended by Deed of Amendment No.[26] operative 01/07/07, amended by Deed of Amendment No.[29] operative 01/07/07]*

## 1.3 Definitions from Tax Act

In this Deed and in any documents issued by the Trustee under this Deed, unless the contrary intention appears, the following terms shall have the same meaning as they have in the Tax Act and if any definition of such a term is amended the term shall

have the amended meaning on and from the date the amendment takes effect unless either before or after that date the Trustees resolve to the contrary:

*complying ADF*

*complying superannuation fund*

*eligible annuity*

*employment termination payment*

*registered organisation*

*superannuation lump sum*

*[amended by Deed of Amendment No.[26] operative 01/07/07]*

#### **1.4 Definitions in the Regulation**

In this Deed and in any document issued by the Trustee under this Deed, unless the contrary intention appears, the terms defined in the Transfer Regulation shall have the same meaning as they have in the Transfer Regulation.

#### **1.5 Payment in respect of a Beneficiary**

In this Deed, unless the contrary intention appears, a payment in respect of a Beneficiary includes a payment or transfer of assets from the Fund in satisfaction of any obligation to or in respect of a Beneficiary and, without limitation, includes a payment or transfer of assets:

- (a) to or for the benefit of a Beneficiary;
- (b) to or for the benefit of another person specified in the Rules applying to the Beneficiary .

#### **1.6 Interpretation**

In this Deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) references to a person include a corporation, a body corporate, an unincorporated body or other entity, including any Government Entity and vice versa;
- (e) headings are for convenience only and shall not affect interpretation;
- (f) references to any party to this Deed or any other agreement or document include the party's successors and permitted assigns;

- (g) references to any agreement or document include references to such agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Deed; and
- (h) references to any legislation or to any provision of any legislation include any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments under it.

## **2. DUTY TO ELECT**

The Trustee shall elect that from the Transfer Day the Fund shall be a regulated superannuation fund and any election made under this clause may not be revoked.

## **3. THE FUND**

### **3.1 Establishment of the Fund**

On the date of this Deed, the Treasurer appoints the Trustee as trustee of the Fund and for that purpose settles the amount of \$2 on the Fund to be held on behalf of the Minister and for \$1 to be applied to Pool A and \$1 to be applied to Pool B as a Contribution to each Pool upon the Trustee electing that the Fund become a regulated superannuation fund. On that election the Fund is established as a superannuation fund which is:

- (a) intended to be a complying superannuation fund; and
- (b) established for the purpose of providing superannuation benefits to or in respect of Beneficiaries on their retirement, death, disablement or on reaching a particular age or for any other purpose which may be permitted under Superannuation Law.

The Trustee shall hold the assets, including all contributions or other moneys paid or payable to the Trustee in respect of Pool A and of Pool B in trust for the persons who are or will be entitled to Benefits under the Divisions of the Fund to which each Pool relates.

### **3.2 Initial divisions**

As at the Transfer Day five Divisions are established, and:

- (a) Division A has the Rules set out in Schedule 1 to this Deed;
- (b) Division B has the Rules set out in Schedule 2 to this Deed;
- (c) Division C has the Rules set out in Schedule 3 to this Deed;
- (d) Division D has the Rules set out in Schedule 4 to this Deed; and
- (e) Division E has the Rules set out in Schedule S to this Deed.

### **3.3 Transferred Employers and Members**

Each Division has the Employers and Beneficiaries being the transferred employers and the transferred members specified in the Transfer Regulation on and from the date they are transferred to the Fund under the Transfer Regulation. The Trustee may treat a Beneficiary as not having been transferred to the Fund or as having been transferred to the Fund if clause 14 of the Transfer Regulation which takes effect on 1 July 1997 applies and may do such things as may be necessary or convenient to give effect to that Transfer Regulation. In addition any Beneficiary incorrectly allocated to a particular Division may be allocated to the correct Division.

The Trustee shall give effect to the Transfer Regulation which takes effect on 1 July 1997 and the transfer agreement referred to in clause 16 of the Transfer Regulation.

### **3.4 Assets of the Fund**

As at the Transfer Day, the Trustee shall establish two pools of assets within the Fund:

- (a) Pool A, which shall comprise the assets held by the Trustee for the purpose of providing the benefits specified in the Rules of Division A and Division E; and
- (b) Pool B, which shall comprise the assets held by the Trustee for the purpose of providing the benefits specified in the Rules of Divisions B to D inclusive.

#### **3.4A Units**

*[inserted by Deed of Amendment No.[26] operative 01/07/07]*

3.4A.1.1 The Trustee may (but need not do so) divide the interest in Pool A and/or Pool B into a separate class or separate classes of Units. If the Trustee does so divide the interest in Pool A and/or Pool B then the provisions of this Clause 3.4A.1 shall apply accordingly.

3.4A.1.2 All Units of a class of Units shall rank pari passu with all other Units of the Pool and each Unit of a class shall;

- (a) represent an undivided interest in the Pool referable to that class of Units in the Division that shall be equal to that conferred by every other Unit of that class; and
- (b) have an equal Unit Value to each other Unit of that class.

3.4A.1.3 The Trustee shall not issue any certificates for Units.

#### **3.4A.2 Investment policy for pools**

3.4A.2.1 Subject to clause 3.6, the general investment policy of each Pool shall be determined by the Trustee. The Trustee may at any time alter any general investment policy for any Pool.

#### **3.4A.3 Segregation of assets**

3.4A.3.1 Every asset shall be allocated to one or more of the Pools constituted pursuant to this Deed, provided that the Trustee may maintain and operate a payments Account for the Division as a whole, and shall maintain in that account the amount of cash which constitutes an asset of each Pool.

#### **3.4A.4 Liabilities**

3.4A.4.1 All assets of the Division shall be available to meet any liability of the Division. A Pool is not a separate trust.

3.4A.4.2 Subject to clause 3.6, the Trustee may allocate and designate the liabilities in whole or in part to any Pool as liabilities referable to that Pool. The cost of any asset may be paid by the Trustee out of the Division and shall be allocated by the Trustee as a Unit liability to the Pool to which the asset was or is to be allocated as a Unit asset.

3.4A.4.3 Subject to clause 3.6, any liability not specifically allocated and designated to a Pool may be apportioned by the Trustee between Pools as the Trustee determines provided that at all times the liabilities shall be fully allocated between Pools.

#### **3.4A.5 Deductions from member accounts**

3.4A.5.1 The Trustee may allocate to Member Accounts and discharge, whether by way of deduction from contributions or redemption of Units, the following liabilities relating to a Member;

- (a) any amounts payable for the benefit of any cover under any insurance policy;
- (b) any fees and charges pursuant to this document;
- (c) any tax;
- (d) any costs and disbursements relating more particularly to the Member than the Scheme as a whole; and
- (e) any Adjustment Amount arising from the Units held by that Member (including any contingent liability not satisfied from the relevant Pool).

#### **3.4A.6 Creation of units**

3.4A.6.1 When contributions are applied for the creation of Units in a class of Units, the contribution shall be applied to the Pool referable to that class of Units and additional Units of the same class shall be thereby created.

#### **3.4A.7 Number of units**

3.4A.7.1 The number of additional Units of a class that are created shall be that number determined by dividing the amount or value of the contributions applied for Units of the class by the Application Price of the Units of that class at that time.

#### **3.4A.8 Application price**

3.4A.8.1 For the purpose of this subclause the Application Price of Units shall be the aggregate of:

- (a) the Unit Value of the Units as last declared by the Trustee on or prior to the day the Units are deemed to be created; and
- (b) any transaction cost not taken into account in determining Net Asset Value which in the opinion of the Trustee may be payable on or in respect of a contribution or the creation or issue of Units or the conversion of contributions to investments including any stamp duty, receipt duty, transaction tax, GST or any other tax, impost and any costs, fees, brokerage or commissions,

and the Application Price of a Unit may be rounded down to the fourth decimal point of a cent as determined by the Trustee.

### **3.4A.9 Valuation of contributions made by transfer of investments**

3.4A.9.1 Where the Trustee agrees to accept investments as contributions then for the purpose of determining the number of Units to be created the value of the investment shall be ascertained at the date of the creation of Units in respect of the contribution using the same method of valuation as prescribed in this Deed for such investments and after deduction any transaction costs and taxes which may become payable in respect of the acquisition by the Division of the investments.

### **3.4A.10 Time of creation of units**

3.4A.10.1 If the Trustee accepts a contribution, then the Units so applied for shall be deemed to be created on the next business day or such other time as is determined by the Trustee.

### **3.4A.11 Payment out of contributions account**

3.4A.11.1 Upon acceptance of a contribution:

- (a) if the Trustee has deposited the moneys relating to that contribution into the payments Account, those moneys shall be withdrawn from the payments Account;
- (b) the moneys relating to that contribution (less any fees and charges and taxes relating to the contribution) and any premiums for insurance benefits will be an asset of the Division and shall be applied to that Pool or Pools referable to the class or classes of Units for which the contribution is to be applied in accordance with Investment Directions.

### **3.4A.12 Inadequate Direction from Member**

3.4A.12.1 In default of any Investment Direction or in default of any direction which the Trustee considers suitable, or where the amount is less than the minimum amount required for a valid Investment Direction, the Trustee may apply contributions as it in its absolute discretion determines.

3.4A.12.2 The Trustee may in its discretion refuse to comply with any Investment Direction which the Trustee considers invalid and in such case invest in accordance with the default strategy in respect of the Investment of that Member's interest in the Division.

### **3.4A.13 Rebalancing**

3.4A.13.1 Where a Member gives an Investment Direction which requires allocation of contributions between Pools, that Investment Direction shall be deemed to apply in respect of each contribution received during any year (or such lesser period as the Trustee determines), notwithstanding that the proportions of Units held by the Member may vary by reference to changes in the Unit Value of Units in any Pool during that period.

3.4A.13.2 The Trustee may reapply the Investment Direction as at the end of each such period to ensure that the Units held in a Member Account comply with the proportion required by the Investment Direction and the Trustee shall be entitled to redeem any Units in a Pool and apply for any Units in another Pool then required by the Investment Direction.

### **3.4A.14 Minimum Amounts**

3.4A.14.1 Subject to Superannuation Law the Trustee may from time to time specify:

- (a) the minimum amount which the Trustee will invest in Units in accordance with an Investment Direction;
- (b) the minimum number of Units which a Member may acquire pursuant to an Investment Direction or may hold as a result of giving effect to an Investment Direction; or
- (c) the minimum amount to be credited to a Member Account before the Trustee will give effect to an Investment Direction.

### **3.4A.15 Request to pay a Benefit**

3.4A.15.1 The Trustee shall, subject to the provisions of this Deed, upon a Benefit becoming payable cause the redemption of the Units which relate to such Benefit.

### **3.4A.16 Trustee entitlement to redemption**

3.4A.16.1 Where under this Deed the Trustee becomes entitled to redeem Units then such entitlement to redeem Units shall be deemed to be a notice of redemption given by the Trustee for the purpose of this Deed.

### **3.4A.17 Calculation and payment**

3.4A.17.1 On receipt of a request for payment, the Trustee shall in respect of each Unit referable to the request for payment calculate the amount equal to the aggregate of the Unit Value of each Unit the subject of the request for payment as next declared by the Trustee after the business day on which the request for payment is taken to be

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received by or given by the Trustee or on such other date as reasonably determined by the Trustee.

3.4A.17.2 The redemption price of a Unit shall be an amount determined by the Trustee from time to time by dividing the sum of the Net Asset Value of the Pool to which that class of Units are allocated. From the amount so calculated will be adjusted as follows:

- (a) By an amount to allow for any transaction cost not taken into account in determining Net Asset Value which in the opinion of the Trustee may be payable on or in respect of a contribution or the creation or issue of Units or the conversion of contributions to investments including any stamp duty, receipt duty, transaction tax, GST or any other tax, or impost and any costs, fees, brokerage or commissions;
- (b) by an amount to round to the nearest fourth decimal place of \$1.00 (or by such other amounts determined by the Trustee).

3.4A.17.3 The Trustee shall pay to the person entitled to receive the proceeds of the redemption calculated in accordance with this subclause.

3.4A.17.4 Unless otherwise agreed with the Member, the Trustee may select what class of Units are redeemed in order to meet any payment of a Benefit, premiums payable in respect of any insurance benefit, costs and disbursements, fees and charges or tax.

### **3.4A.18 Cancellation of Units**

3.4A.18.1 The Units the subject of a notice of redemption shall be cancelled on the date on which the Trustee makes the redemption calculation.

### **3.4A.19 Request to Switch**

3.4A.19.1 A member may request on a quarterly basis or such more frequent basis as the Trustee permits in such form as is determined from time to time by the Trustee that Units of one class held by the Member, be converted into Units of another class. The provisions as to redemption shall apply as if that request was a request for redemption of Units.

3.4A.19.2 For the purpose of such switching the Trustee may establish procedures as to the basis upon which the Trustee will accept any such request and as to the time or intervals on which such request shall be processed.

### **3.4A.20 Number of Units to be Redeemed**

3.4A.20.1 In calculating the number of Units to be converted pursuant to a request under this subclause, the amount shall be the aggregate of the Unit Value of each Unit the subject of the conversion request as next declared by the Trustee after the business day on which the request is received and accepted by the Trustee, and the amount payable shall not be paid to the Member but shall be applied by the Trustee on behalf of the Member in the purchase of Units of the class specified in the request at a price calculated as if it were a request for a payment of a benefit. The Trustee may waive

the deduction or addition of the transactions costs, if appropriate, having regard to the number and type of Units subject to the switch.

### **3.4A.21 Date of Redemption**

3.4A.21.1 the redemption of the Units shall be effected on the day on which the redemption amount is calculated.

### **3.4A.22 Valuation of Units**

3.4A.22.1 The Trustee shall ascertain the Net Asset Value of Units of each Pool at least weekly on a day of the week determined by the Trustee or the immediately preceding business day if that day is not a business day and at any other time in each month as the Trustee in its discretion may select (including on a daily basis).

3.4A.22.2 For the purposes of any valuation of the Net Asset Value of Unit assets where any Unit assets are valued by reference to a day or date then that day or date may be any period of 24 hours approved by the Trustee. For the purpose of calculating the number of business days after the 24 hour period, the 24 hour period shall be deemed to be the day or date on which the period commences.

## **3.5 Transfer of Assets**

On or after the Transfer Day, the Trustee shall accept into the Fund from the Former Funds the assets referred to in the Transfer Regulation which takes effect on 1 July 1997 (and the transfer agreement made under clause 16 of that Transfer Regulation) which:

- (a) in case of assets transferred from an FTC scheme the assets shall be allocated to Pool A; and
- (b) in the case of assets transferred from an STC scheme being part of the amalgamated fund, the assets shall be allocated to Pool B.

The Trustee may at any time reallocate the assets allocated to a Pool to correct any misallocation occurring at the time of transfer of the assets to the Fund.

## **3.6 Application of Assets**

The assets comprised in Pool A shall only be applied for the purpose of Division A and Division E and shall not be available to meet any liabilities in respect of Divisions B to D inclusive, and the assets comprised in Pool B shall only be applied for the purposes of Divisions B to D inclusive and shall not be available to meet any liabilities in respect of Division A or Division E.

### **3.6A Establishment and operation of the Connell Wagner Reserve**

*[inserted by Deed of Amendment No.18 operative 5/2/03]*

- (a) The Trustee will create an Employer reserve for Connell Wagner under rule 2.4 of Division B, rule 2.2 of Division C and rule 2.4 of Division D, determine that part of the assets (including the benefit of the EISS Payment

Deed) in the Employee Reserve that are attributable to Connell Wagner, determine that part of the Contributors Reserve in Division D that is attributable to Contributors who are or were employees of Connell Wagner (other than such amounts transferred to a non Connell Wagner reserve) and establish the Connell Wagner Reserve in Pool B.

- (b) The Connell Wagner Reserve is to be kept separate from all other reserves and the assets comprised in the Connell Wagner Reserve are available to be applied for the purposes of paying Benefits to Members or Contributors of Pool B who have accrued benefits in Pool B because of employment by Connell Wagner and will not be available to meet any liabilities in respect of benefits payable to other Contributors or Members of Pool B.
- (c) If any Member or Contributor of Pool B employed by Connell Wagner ceases employment with Connell Wagner and commences employment with another Employer, the Member's share of the Connell Wagner Reserve will be transferred to such other reserves of the Pool B as is appropriate and the Member will cease to have any right to payment out of the Connell Wagner Reserve.
- (d) The Benefits of Members or Contributors whose entitlements are payable out of the Connell Wagner Reserve may not be increased without the written consent of Connell Wagner unless such increase is required by Superannuation Law.
- (e) Once there are no Members or Contributors who have any right to payment of Benefits out of the Connell Wagner Reserve, any surplus in the Connell Wagner Reserve may be applied to meet any liabilities in Pool B.

### **3.6B No rights to other Reserves**

*[inserted by Deed of Amendment No.18 operative 5/2/03]*

No Benefit payable from the Connell Wagner Reserve shall be payable from any other reserve in the event that the Benefit is not paid from the Connell Wagner Reserve.

### **3.7 Constitution of new divisions**

The Trustee may establish other Divisions of the Fund (other than a Division which is to provide Defined Benefits, which may only be established with the approval of the Minister) by executing a memorandum of commencement constituting the new Division of the Fund, containing the following particulars:

- (a) the name of the Division;
- (b) the Rules for that Division;
- (c) the pool of assets from which benefits may be provided (and for this purpose the Trustee may create a new pool but may not without the approval of the Minister apply Pool B for this purpose);

- (d) any other matters the Trustee determines,

and that memorandum of commencement shall take effect upon the date stated in the memorandum of commencement.

### **3.8 Beneficial interest in Division**

Each Beneficiary is entitled to have the assets held in respect of the Division under which the person is a Beneficiary applied to provide the Benefit to which that person is entitled under the Rules but that shall not:

- (a) entitle the Beneficiary other than as provided for in this Deed or permitted by law to:
- (i) interfere with the rights or powers of the Trustee in respect of the Division or Fund;
  - (ii) exercise any rights, powers or privileges in respect of any assets of the Division or Fund; or
  - (iii) require the transfer to such Beneficiary of any assets of the Fund or held in respect of a Division; or
- (b) confer any interest in any particular asset of the Fund or held in respect of a Division.

### **3.9 Membership of more than one Division**

A Beneficiary may be a Beneficiary in more than one Division and where the Employer so requires it a Beneficiary shall be a Beneficiary of more than one Division.

### **3.10 Certain Divisions closed**

Other than by the admission of Beneficiaries pursuant to a Transfer Regulation to:

- (a) Division B;
- (b) Division C; or
- (c) Division D,

those Divisions shall be closed to new Beneficiaries and no new Beneficiaries shall be admitted to any of those Divisions, except that a Member under Division D who was entitled to elect under section 2C of the *State Authorities Superannuation Act 1987* to contribute to the fund established under that Act may elect to cease to be a Member under Division D and become a Member under Division B.

### **3.11 Closure of Division or part of Division**

The Trustee may close a Division or a part of a Division and thereafter no new Beneficiaries shall be admitted to the Division. The Trustee may reopen a Division or part of the Division previously closed (other than a Division closed under clause 3.10).

### **3.12 Rules of initial Divisions**

At the Transfer Day the Rules of:

- (a) Division A are intended to reflect the rights, benefits and entitlements of transferred members under the First State Superannuation Fund established under the *First State Superannuation Act 1992*;
- (b) Division B are intended to reflect the rights, benefits and entitlements of transferred members under the State Authorities Superannuation Scheme established under the *State Authorities Superannuation Act 1987* and insofar as they apply to a transferred member the provisions of the following Acts or Regulations:
  - (i) New South Wales Retirement Benefits Act 1972;
  - (ii) Local Government & Other Authorities (Superannuation) Act 1927;
  - (iii) Public Authorities Superannuation Act 1985;
  - (iv) Transport Employees Retirement Benefits Act 1967, and
  - (v) Part 2, 3 and 6 of the State Authorities Superannuation (Transitional Provisions) Regulations 1988.
- (c) Division C are intended to reflect the rights, benefits and entitlements of transferred members under the State Authorities Non-Contributory Superannuation Scheme established under the *State Authorities Non-Contributory Superannuation Act 1987*;
- (d) Division D are intended to reflect the rights, benefits and entitlements of transferred members under the State Superannuation Scheme established under the *Superannuation Act 1916*;
- (e) Division E are intended to reflect the rights, benefits and entitlements of transferred members under the Public Sector Executives Superannuation Scheme established under the *Public Sector Executives Superannuation Act 1989*,

as at the time immediately before the Transfer Day, and where any person is transferred under a Transfer Regulation to the Fund after the Transfer Day then the rights, benefits and entitlements of that transferred member under the Rules shall reflect the rights, benefits and entitlements of any of the Acts or Regulations mentioned in this clause as at the date of the transfer of that transferred member.

### **3.13 Protection of Transferred Members**

Subject to any contrary provision of the Superannuation Industry (Supervision) Act 1993, this Deed and the Rules are taken to include provisions to ensure that on the date of transfer of the transferred member, a right that a transferred member had under a scheme from which the transfer was made pursuant to the Transfer Regulation is not removed or restricted and the Trustee shall apply Deed and Rules as if any provision required to ensure this was so incorporated in the Deed and Rules.

### **3.14 Application of Rules**

Any right, entitlement or obligation including any Benefit in respect of a transferred employer or transferred member which is granted, imposed or calculated by reference to any date or period of time shall be granted, imposed or calculated from the date or by reference to the period which that right, entitlement or obligation was granted, imposed or calculated prior to the date of transfer under the Act or Regulations which applied to that transferred employer or transferred member as if the transfer had not occurred.

### **3.15 No increase of rights**

This Deed and the Rules are not to be taken to increase or create any rights which a transferred member or transferred employer had or did not have under a Former Scheme from which a transfer was made pursuant to the Transfer Regulation and the Trustee shall apply the Deed and Rules on that basis.

### **3.16 Superannuation Law to Prevail**

Notwithstanding any of the provisions of this clause, the Trustee may apply and administer the Deed and Rules in a manner and to the extent that they comply with the requirements of Superannuation Law, and where Superannuation Law prohibits the doing of any act or thing or requires the doing of any act or thing then notwithstanding the requirements of the Deed or Rules the Trustee may refuse to do that act or thing or do that act or thing as the case requires.

## **4. THE TRUSTEE**

### **4.1 Eligibility**

The Trustee shall be a constitutional corporation.

### **4.2 Term of Office**

The Trustee shall hold office until:

- (a) it is a disqualified person or it is otherwise disqualified from that office by operation of law; or
- (b) it retires from that office by giving 60 days written notice to the Minister (or such lesser period as the Minister may agree).

#### **4.3 Retirement of Trustee**

- (a) If the office of Trustee becomes vacant the Minister shall by deed appoint another constitutional corporation (which shall execute that Deed) to act as Trustee in accordance with this clause within 90 days of the day on which the vacancy occurs.
- (b) Upon retirement, the Trustee shall 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 retirement.
- (c) If the Trustee has retired from office, the Trustee shall do all such things as may be necessary to give proper effect to such retirement from office and the transfer or assignment to or otherwise the vesting of the assets of the Fund in the new Trustee.

#### **4.4 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.

#### **4.5 Remuneration**

The Trustee may be reimbursed from the Fund for remuneration paid by the Trustee to a director of the Trustee, for an amount not exceeding:

- (a) the maximum payable to directors or members of Governing Boards (Category B) within the appropriate Band as set out in Memorandum (Memorandum to all Ministers) No.93-43 issued by the Premier on 24 December 1993 and the attached Guidelines, as amended, by Memorandum (Memorandum to all Ministers) No.95-30 issued by the Premier on 25 August 1995 and as amended by any subsequent Memorandum or direction by the Premier; or
- (b) an amount approved by the Minister.

The Trustee may be reimbursed from the Fund for all reasonable expenses incurred by it in carrying out its duties in relation to the Fund.

### **5. PROCEEDINGS OF TRUSTEE**

A Trustee may act by resolution of its board of directors or by any person appointed for the purpose by resolution of its directors, whether or not the exercise of a discretion is involved.

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## 6. POWERS AND DUTIES OF THE TRUSTEE

### 6.1 General powers

Subject to this Deed and Superannuation Law, the Trustee shall have power to do all acts and things which it considers necessary, desirable or expedient for the administration, maintenance and preservation of the Fund or any part of it. In the exercise and performance of its powers and obligations under this Deed, and without limitation, the Trustee may:

- (a) provide receipts, releases or discharges for money or other assets payable or transferable to the Fund or for claims by or against the Fund;
- (b) open and operate on bank accounts or accounts with cash management trusts or other financial institutions as it thinks fit and all cheques and other negotiable instruments and all receipts for money paid to the Fund shall be signed, drawn, accepted and endorsed or otherwise executed in such manner as the Trustee thinks fit;
- (c) enter into all contracts, deeds and documents and do all acts and things which it considers necessary or desirable for the purpose of carrying out the trusts of this Deed;
- (d) settle, compromise or submit to arbitration any claims or matters relating to this Deed, the Fund or the rights of any Beneficiary or other person claiming to have rights;
- (e) commence, carry on or defend any proceedings in relation to this Deed, the Fund or any Beneficiary or any other person making any claim in respect of the Fund or any entitlement under it;
- (f) effect or acquire policies of insurance of any kind on or relating to any risk, contingencies, liabilities of the Fund or the life or lives of any person or otherwise to insure the payment of the Benefits or any part thereof payable under this Deed;
- (g) pay all insurance premiums, rates, Taxes, rents and other outgoings in connection with any real or personal property included in the Fund or any expenses of or incidental to the management or administration of the Fund;
- (h) accept and receive as part of the Fund any property whether real or personal which may be conveyed, transferred, paid and accepted by the Trustee by way of addition or accretion to the Fund;
- (i) instruct, at the expense of the Fund, and act upon the advice of, any Expert Adviser whether or not their advice was obtained by the Trustee;
- (j) authorise one or more persons to exercise all or any of its powers and duties;
- (k) make rules and adopt procedures in relation to determining when a member ceases to be employed by an Employer, the calculation and rounding off of

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Contributions, Benefits, amounts debited or credited to any account, the valuation of assets or any other matters as shall be necessary or convenient for the Fund;

- (l) subject to Superannuation Law, borrow moneys from any person, firm or company upon such terms and conditions and upon giving such security as the Trustee in its absolute discretion may determine and invest any moneys so borrowed as part of the Fund and to mortgage, charge or encumber the whole or any part of the trust property from time to time to secure repayment of the moneys borrowed and interest on those borrowings;
- (m) employ managers, servants, agents and contractors irrespective of whether such person has any beneficial interest, whether direct or indirect, in the Fund or any parts thereof and to pay out of the Fund any person or persons to do any act or acts (including the receipt of money) in connection with or arising out of the exercise of the powers under this deed and including, without limitation, acts which the Trustee could perform personally;
- (n) delegate to any person, firm or corporation, including any firm or corporation in which the Trustee may be interested, any of its discretions, powers and authorities including the receipt or payment of money for such period and subject to such conditions or restrictions as the Trustee shall in its absolute discretion deem fit and to pay to any such person out of the Fund all proper fees, charges, commissions and disbursements;
- (o) appoint by deed or otherwise any person to act as its attorney in any place in the world, to do any acts in connection with or arising out of the exercise of the trusts, powers and discretions under this Deed and in relation to all or any part of the Fund in the same manner as the Trustee could do personally. Such attorney may be given such ancillary powers and be subject to such provisions and restrictions as the Trustee thinks fit including a power to appoint substitutes. The Trustee shall not by reason only of having made the appointment be responsible for any loss arising thereby;
- (p) take on lease or hire and make improvements to any real or personal property on such terms and conditions as the Trustee shall in its absolute discretion determine;
- (q) deduct and pay as required all taxes, charges and levies payable on contributions made to the Fund and on benefits payable from the Fund and to charge for the costs and expenses directly or indirectly attributable to administering such tax, charge or levy;
- (r) to the extent permitted by the Administration Act and Superannuation Law, where appropriate, to charge fees for the provision of information required to be provided under Superannuation Law; and
- (s) incur expenses or other liabilities jointly in respect of Pool A and Pool B and allocate those expenses and liabilities equitably between each of the Pools.

## 6.2 Investment powers

*[amended by Deed of Amendment No.[22] operative 1/11/03]*

Subject to Superannuation Law, the Trustee shall invest the Fund on an arm's length basis, but otherwise in such manner as it shall in its absolute discretion determine. Despite any statutory provisions or any rule of law or equity to the contrary and in addition to all other powers conferred on it under this Deed, by statute or rule of law or equity, the Trustee has full and absolute powers of investing and transposing moneys and buying, selling or otherwise acquiring or dealing with property (both real and personal) and varying all or any part of the investments of the Fund from time to time in all respects as if it were the absolute owner of and beneficially entitled to those investments. The Trustee's power to invest shall not be restricted by any legislation relating to trustee investments. Without limiting the generality of the absolute powers given to it, the Trustee shall in particular have the following powers:

- (a) to invest in any investment for the time being authorised by the laws of the Commonwealth of Australia or any Australian State or Territory for the investment of trust funds;
- (b) to purchase, hold, deal in, sell and mortgage shares of any description (whether fully paid or contributing) in any company or corporation whether public, private or otherwise and wherever situated, and in any security, undertaking or venture of any kind;
- (c) to purchase, lease, hire or in any other way acquire any real or personal property of any nature and kind and wherever situate including without limitation, freehold, leasehold or conditionally purchased land whether such property is obtained subject to mortgage or otherwise;
- (d) to purchase or in any other manner, hold, deal in, sell and mortgage units, sub-units or other interests in any unit trust or similar scheme;
- (e) to invest in any mortgage or charge over land or any personal property of any kind and wherever situate;
- (f) to invest in any of the public stocks or funds or government securities of any country, kingdom, republic or any state anywhere in the world;
- (g) to deposit moneys with any bank or company and to place moneys on deposit fixed or on call with or without interest in any bank or public or private company anywhere in the world;
- (h) to invest, enter into or deal in any derivative, futures contract, any underwriting or sub-underwriting, options, foreign currency or rights or interests in relation thereto, interest rate or currency swap contracts or other like investments, contracts or dealings;
- (i) to apply the whole, or any part, of the Fund to or for the purpose of and to apply the same to commence, carry on, manage, control, direct or otherwise participate in any company, undertaking, profit making venture, or other

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activity wherever situate as the Trustee in its absolute discretion may deem fit;

- (j) to sell, call-in or otherwise convert any assets or investments comprised in the Fund at any time or from time to time for such consideration, on such terms and by such method as the Trustee determines and to re-invest or apply the proceeds in accordance with the trusts and discretions contained in this Deed;
- (k) to invest any of the assets or moneys of the Fund in a common pool with the moneys of any other superannuation fund or other fund and to make such arrangements for determining the proportion of the investments so held which is attributable to the Fund and to such other superannuation fund or other fund as it considers just and equitable;
- (l) to invest in ships, aircraft and chattels of any description and any shares or interest therein;
- (m) to lend or advance money with or without security;
- (n) to enter into securities lending arrangements;
- (o) to invest in any reversionary or deferred property or rights of any description wheresoever situate or enforceable and whether by way of original creation or assignment or otherwise;
- (p) to invest part of the Fund in assets for the purposes of capital gain only or which may be of a wasting nature;
- (q) to invest or expend any part of the Fund in any annuity or policy on the life of any Beneficiary or the happening of any other event;
- (r) to invest all or part of the Fund in one or more superannuation policies or pooled superannuation trusts;
- (s) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (t) to enter into bill facility or promissory note agreements; and
- (u) to do any act or thing or enter any contract which the Trustee considers to be incidental to or necessary or convenient to any of the foregoing.

### **6.3 Investment managers and Custodian Trustees**

- (a) Prior to the Transfer Day, and in accordance with clause 18 of the Transfer Regulation the Trustee shall appoint Axiom Funds Management Limited as the first investment manager of the assets of Pool B.

- (b) Subject to paragraph (a), Superannuation Law and the Transfer Regulation, the Trustee shall appoint one or more bodies corporate to act as investment manager and one or more bodies corporate to act as Custodian Trustee to hold on its behalf title to some or all of the assets of the Fund subject to such conditions as the Trustee determines and may delegate to and confer upon such investment manager or Custodian Trustee such powers as the Trustee may think fit.
- (c) Subject to Superannuation Law, the Trustee shall not be liable or responsible for any act, omission, error of judgement, negligence or breach of trust of any such investment manager or Custodian Trustee and shall not be bound to take proceedings against any investment manager or Custodian Trustee in respect thereof.
- (d) The Trustee may pay out of the Fund to any such investment manager or Custodian Trustee such remuneration for its services as the Trustee has agreed or considers proper and subject to clause 6.10 may remove such investment manager or Custodian Trustee or agree to alter the terms of its appointment as it sees fit.
- (e) Any powers, discretions or authorities of the Trustee which an investment manager or Custodian Trustee is authorised to exercise may be exercised by that investment manager or Custodian Trustee alone or jointly with the Trustee as the Trustee in its discretion shall agree or determine, but in any event must be exercised on behalf of the Trustee.

#### **6.4 Appointment of Secretary**

The Trustee may appoint a Secretary of the Fund on such terms as the Trustee thinks fit and the Trustee may remove a Secretary and appoint another person as Secretary of the Fund. The Secretary shall perform the duties and have the powers set out in this Deed and such other powers and duties as the Trustee may determine from time to time.

#### **6.5 Appointment of Actuary**

The Trustee may from time to time appoint as Actuary to the Fund a person satisfying any requirements specified in Superannuation Law, on such terms as the Trustee thinks fit. The Trustee may remove any Actuary it has appointed and appoint another person as Actuary to the Fund. The Trustee may instruct the Actuary to perform such actuarial investigations in relation to the Fund or any Division as it considers necessary or desirable.

#### **6.6 Appointment of Administrator**

Subject to paragraph (a), Superannuation Law and the Regulation:

- (a) Prior to the Transfer Day, the Trustee shall appoint the Superannuation Administration Authority as the first administrator of the Fund, in accordance with clause 17 of the Regulation.

- (b) Subject to paragraph (a), the Trustee may appoint in writing, on such terms as it thinks fit, including the granting of any indemnity reasonably required, one or more bodies corporate to act on behalf of the Trustee in the administration of the Fund.
- (c) Subject to Superannuation Law, the Trustee shall not be liable or responsible for any act, error, omission, error of judgment, negligence or breach of trust of any such administrator of the Fund and shall not be bound to take proceedings against any administrator in respect thereof.
- (d) The Trustee may pay out of the Fund to any administrator such remuneration for its services as the Trustee has agreed or considers proper and subject to clause 6.10 may remove such administrator or agree to alter the terms of its appointment as it sees fit.
- (e) Any powers, discretions or authorities of the Trustee which an administrator is authorised to exercise may be exercised by that administrator alone or jointly with the Trustee as the Trustee in its discretion shall agree or determine, but in any event, must be exercised on behalf of the Trustee.

## **6.7 Expenses**

The Trustee shall pay out of the Pool B all expenses of or incidental to the establishment of the Fund. The Trustee shall pay out of the Fund all expenses of and incidental to the management and administration of the Fund, including any insurance premiums in relation to the Fund or the directors of the Trustee in the discharge of their duties as directors of the Trustee and shall allocate those payments as between Pool A and Pool B in a fair and equitable manner as determined by the Trustee.

## **6.8 Superannuation Law**

The Trustee may do all things considered by it as necessary or convenient to comply with any provision of Superannuation Law and without limitation the Trustee may:

- (a) require Employers, Beneficiaries, dependants of Beneficiaries or other persons entitled to a Benefit or making Contributions to the Fund to provide such information as the Trustee may require in order to satisfy it that any provision of Superannuation Law or this Fund is complied with, to determine whether any Tax is payable or to calculate any Benefit;
- (b) refuse to accept any Contribution or refuse to pay any Benefit to any person where acceptance of the Contribution or the payment of the Benefit may in the reasonable opinion of the Trustee result in the Fund ceasing to be a complying superannuation fund or where information sought under paragraph (a) has not been provided; and
- (c) lodge any returns or other documents required by Superannuation Law, make objection to any assessment or seek review of any determination of any Superannuation Authority or to pursue any objection or review by way of legal or other proceedings.

## **6.9 Regulation and Transfer Agreement**

- (a) The Trustee shall do all things considered by it as necessary or convenient to comply with any provision of the Transfer Regulation and without limitation the Trustee shall do all things required to be done by it by the Transfer Regulation.
- (b) On or before the Transfer Date the Trustee shall enter a transfer agreement as required by clause 16 of the Transfer Regulation to deal with the transfer of transferred employers, transferred members and assets and the costs of the transfer and the establishment of this Fund with the STC and the FTC and shall give effect to that transfer agreement.

## **6.10 Minister's Consent**

The Trustee may not without the Minister's consent:

- (a) terminate any investment management agreement entered into pursuant to the Transfer Regulation or clause 6.3(a); or
- (b) terminate any administration agreement entered into pursuant to the Transfer Regulation or clause 6.6(a),

prior to the end of the initial term of either agreement.

## **6.11 Authorisation**

The Trustee may authorise one or more persons to exercise any power vested in it in such manner and upon such terms and conditions as it thinks fit including:

- (a) the establishment and maintenance of any Accounts;
- (b) the receipt of Contributions and the payment of Benefits;
- (c) the establishment and maintenance of any records, registers or other information required to be maintained by this Deed;
- (d) the power to do anything or obtain any approval that may be necessary or convenient in order to comply with Superannuation Law or the Income Tax Acts;
- (e) the power to accept or reject applications by Employers or Members to join the Fund; and
- (f) such other matters relating to the administration and operation of the Fund as the Trustee may determine.

## **6.12 Exercise of powers and discretions**

The Trustee in the exercise of any power, discretion or authority under this Deed or otherwise vested in the Trustee shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, discretions or authorities from time to time or at any time and may refrain from exercising any of those powers, discretions or authorities from time to time or at all.

### **6.13 Disputes**

Subject to Superannuation Law and any Transfer Regulation if there is any dispute or difference as to the effect or interpretation of this Deed the decision of the Trustee shall be final and binding.

### **6.14 Accounts**

Subject to Superannuation Law, the Trustee may establish and maintain such accounts within the Fund as are, in the Trustee's opinion necessary or convenient for the operation or administration of the Fund or any Division of the Fund. The Trustee may:

- (a) credit to any account any amount that is required or permitted by or under the Deed or Rules to be credited to it; and
- (b) debit to any account any amount that is required or permitted by or under the Deed or Rules to be debited to it,

and the Trustee may designate those accounts as Benefit Accounts, reserve accounts or by such other titles as the Trustee may determine.

#### **6.14A. Death, Invalidity and Temporary Salary Continuance Benefit Management Reserve**

*[inserted by Deed of Amendment No.[18A] operative 17/7/03]*

6.14A.1 The Trustee may establish and maintain a death, Invalidity and Temporary Salary Continuance Benefit Management Reserve or other equivalent reserve in respect of one or more Divisions of Pool A.

### **6.15 Payments of levies**

The Trustee may make any levy or other payment out of the Fund as is required by Superannuation Law to be made and may allocate the levy or payment to such accounts as it determines.

### **6.16 Related party dealings**

Subject to Superannuation Law, the Trustee may enter into any financial, banking, insurance, agency or other transaction or any contract which it is empowered to enter into under the Deed or Rules with a related body corporate on arm's length terms. The question of whether a body corporate is related to the Trustee shall be determined in accordance with the Corporations Law.

## **7. ACCOUNTS, AUDIT AND INFORMATION**

**7.1 Records and Accounts**

The Trustee shall maintain or cause to be maintained proper accounts and records of the Fund and its administration as may be required by Superannuation Law or the Income Tax Acts and as the Trustee may otherwise determine.

**7.2 Provision of information**

Subject to sub-clause 7.7, the Trustee shall provide Employers and Beneficiaries with such information in relation to the Fund as is required by Superannuation Law or as the Trustee otherwise determines.

**7.3 Annual statements**

The Trustee shall prepare in respect of each year of income those accounts and financial statements required by Superannuation Law.

**7.4 Audit**

The Auditor for the 1997/1998 financial year ending 30 June 1998 shall be the Auditor-General of New South Wales. For subsequent financial years, the Trustee shall appoint an Auditor approved for the purposes of Superannuation Law. The Trustee shall have the Fund audited by the Auditor in each year of income.

**7.5 Information to Minister**

The Trustee must promptly furnish to the Minister the following information (other than to the extent the Minister waives this requirement):

- (a) copies of returns to the Superannuation Authority and the annual accounts of the Fund;
- (b) copies of any reports to the Auditor or Actuary;
- (c) copies of any agreement with any investment manager, custodian, scheme administrator, investment adviser, other adviser or expert or any other similar agreement;
- (d) copies of any correspondence to or from the Superannuation Authority (other than correspondence relating to a particular Beneficiary);
- (e) any decision of the Resolution of Complaints Tribunal or of any other tribunal or court relating to the Fund; or
- (f) information relating to the general administration and operation of the Fund as the Minister may from time to time require but such information should not include information relating to an individual Beneficiary without that Beneficiary's consent.

**7.6 Accounts evidence payment**

The accounts of the Fund shall be sufficient evidence of all payments shown in them to have been made to or for the benefit of any person. The receipt of the Trustee for any property, the payment of any moneys or for any stock, shares, funds or securities of any kind transferred to it shall effectually discharge the person or persons paying or transferring the same in respect of any such obligation and from being bound to see to the application, or being answerable for the loss or misapplication, of such property.

## **7.7 Confidentiality**

Subject to this Deed, the Trustee shall not be required to disclose to any person other than the Minister or Employer any information relating to a present or former Employer or Beneficiary unless that disclosure:

- (a) is reasonably necessary or convenient for the purpose of obtaining advice by the Trustee in relation to any matter pertaining to the Fund or is required by an insurer for the purpose of effecting or maintaining any insurance policy;
- (b) is required by law;
- (c) is authorised by the person in respect of whom the information relates;
- (d) is to a Beneficiary or a person who has an interest in a Member's entitlement in a Division and is of information relating to that Division of the Fund of which the person is a Beneficiary or under which the Beneficiary is or was a Beneficiary so long as the information does not include information relating to Benefits of other Beneficiaries or personal information pertaining to other Beneficiaries of the Fund.

Before disclosing any information, the Trustee may require that the consent of persons about whom the information relates is obtained and that the person to whom the information is provided gives such undertakings as to the use of the information or confidentiality of the information as the Trustee may require.

## **8. VALUATIONS**

### **8.1 Valuations**

Unless otherwise provided in the Rules, the Trustee shall cause a valuation of all assets of the Fund to be made at least once in each year of income of the Fund and at such other dates, by such persons and using such methods as the Trustee may determine.

### **8.2 Excess amount**

Where the value of the assets of a Pool or part of a Pool or in an account established under the Deed or Rules in respect of a particular Employer (*Employer's reserve*) is more than the value of the liabilities of the Pool, part of the Pool or supported by that Employer's reserve (as the case may be) (*excess amount*), the Trustee may, on the advice of the Actuary apply the excess amount to reduce Contributions otherwise

payable by an Employer or, with the consent of the Minister and on the advice of the Actuary, determine to apply all or part of the excess amount for any purpose agreed by the Trustee and the Minister and in accordance with Superannuation Law.

## **9. LIABILITY OF TRUSTEE**

### **9.1 Liability for acts or omission**

The Trustee shall not be liable to the Fund nor to any person whatsoever to an extent greater than the assets of the Fund.

### **9.2 Indemnity**

Subject to Superannuation Law, the Trustee and each director of the Trustee shall be indemnified by the Fund in respect of any liability incurred while acting as the Trustee or as director of the Trustee (as the case may be) except where the liability arises from a breach of trust where the Trustee or director:

- (a) fails to act honestly in a matter concerning the Fund;
- (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence required to be exercised,

or the liability is for a monetary penalty under a civil penalty order imposed under Superannuation Law. The indemnity shall extend to all legal and other costs, charges and expenses of administering or winding up the Fund and otherwise of performing any trusts, powers, authorities and discretions under this Deed. The indemnity provided to the Trustee and the directors of the Trustee under this clause shall be in addition to any other indemnity allowed by law or given under this Deed.

### **9.3 Satisfaction of indemnity**

Subject to Superannuation Law, the Trustee shall have a lien on and may dispose of all assets of the Fund in the hands of the Trustee for the purpose of the indemnity set forth in sub-clause 9.2.

### **9.4 Insurance**

The Trustee may effect such insurance for claims against the Trustee and the Trustee's directors as it thinks fit. The cost of such insurance shall be an expense of the Fund.

### **9.5 Information provided to Trustee**

The Trustee shall be entitled to rely upon information provided to it by an Employer or Beneficiary or any other person acting at the request of or on behalf of an Employer or Beneficiary. The Trustee shall be indemnified by the Employer or Beneficiary who provided the information or at whose request or on whose behalf the information was provided in relation to any loss, damage or expense incurred by the Trustee arising as a result of any such information proving to be incorrect or misleading.

## **9.6 Trustee not obliged to pay**

Subject to Superannuation Law and the obligations under this Deed, except in the case of dishonesty or unless the Trustee has failed to show the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the Trustee by this Deed, in no event is the Trustee bound to make any payment to any person in connection with this Deed or the Fund or liable to any person in connection with this Deed or the Fund to any greater extent than:

- (a) where the person is a Beneficiary, the assets of the pool from which that Beneficiary's Benefit is to be provided;
- (b) in any other case, the assets of the Fund.

## **10. EMPLOYERS AND MEMBERS**

### **10.1 Initial Employers**

As at the date of transfer of a transferred member of a transferred employer, each transferred employer in the Schedule to the Transfer Regulation shall be:

- (a) an Employer; and
- (b) bound by the terms of this Deed.

### **10.2 Application to become Employer**

An authority, body or other entity:

- (a) referred to in or established under an Act specified in Part 1 of Annexure A to this Deed, described in Part 2 of Annexure A or to which clause 10.1 applies;
- (b) which is wholly owned or controlled by a transferred employer, or an Employer previously admitted as an Employer of the Fund either under this paragraph or paragraph (a) or by any two or more of those persons; or
- (c) approved, or within a class approved, by the Minister,

may make written application to the Trustee to become an Employer of the Fund in respect of some or all of its employees. The application shall be in the form and contain the information required by the Trustee. The Trustee may accept the duly executed application. On acceptance, the person shall become an Employer of the Fund in such Division or Divisions as the Trustee determines.

### **10.3 Deed of Adherence**

As soon as practicable after the Trustee accepts an application by a person to become an Employer under clause 10.2, the applicant shall execute the Deed of Adherence. Following execution of the Deed of Adherence, this Deed becomes binding on the

person as Employer and the Employees or former Employees of that Employer who become Beneficiaries.

Notwithstanding this requirement if any person who is a transferred member or who is otherwise entitled to be an Employer, makes a contribution to the Fund in respect of a Beneficiary then that contribution may be accepted by the Trustee and upon acceptance the person so contributing shall be deemed to be an Employer and shall be bound by the terms and conditions of this Deed as if that person had executed a Deed of Adherence and that person shall on being requested to do so by the Trustee execute a Deed of Adherence.

#### **10.4 Eligibility for membership**

An Employer may by written notice to the Trustee nominate from time to time Employees whom it wishes to become Members of the Fund. The Employer shall supply to the Trustee such information relating to those Employees as the Trustee requires.

#### **10.5 Application by Employees of an Employer**

Upon being nominated by an Employer, an Employee shall, if required by the Trustee, make written application to the Trustee to become a Member in such form and providing such information as the Trustee requires. Notwithstanding that an Employee who is nominated by an Employer has not made application to the Trustee or provided the required information to the Trustee, the Employee shall become a Member of the Fund. An Employee who becomes a Member shall be admitted as a Member of the Division nominated by the Member's Employer and approved by the Trustee.

#### **10.5A Executive Officer**

*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

An Employer may nominate an Employee as an “eligible person” for the purposes of the definition of “Executive Officer” in the Divisions and the employee will only be eligible to be nominated as such if the person satisfies the following:

- (a) occupies a senior position; and
- (b) is on a fixed term contract of employment.

#### **10.6 Members bound by Deed**

Every person being or becoming a Member and all persons claiming through them shall be deemed to have approved of and to be bound by the Deed and the Rules.

#### **10.7 Ceasing to be Employee**

Each Employer shall promptly give written notice to the Trustee upon a Member ceasing to be an Employee. If any Member is transferred in the Member's employment from one Employer to another Employer then for the purposes of this Fund the Member shall notwithstanding any other provision of this Deed or the Rules

be deemed not to have ceased to be an Employee unless the Trustee determines that the Member has ceased to be an Employee for the purpose of this Deed and the Rules.

#### **10.8 Ceasing to be Beneficiary**

Unless otherwise provided in the Rules, a person shall cease to be a Beneficiary of the Fund upon the earlier of:

- (a) the payment of the whole of the Beneficiary's Benefit to or in respect of the Beneficiary;
- (b) the transfer of the whole of the Beneficiary's Benefit to another Eligible Fund in accordance with sub-clause 12.3;
- (c) the payment of part of the Beneficiary's Benefit to or in respect of a Beneficiary and the transfer of the balance of the Beneficiary's Benefit to another Eligible Fund in accordance with sub-clause 12.3;
- (d) if the Beneficiary ceases to be entitled to a Benefit.

#### **10.9 Beneficiaries to provide information**

*[replaced by Deed of Amendment No.[1] operative 27/4/98]*

Every Beneficiary shall submit:

- (a) a member application in a form approved by the Trustee (other than in the case of a person who is a transferred member under the Transfer Regulation); or
- (b) the name of the person, date of birth, address, and date of commencement of employment; and
- (c) if required, any evidence of health and completed and signed statements as to health required in connection with any insured benefit; and
- (d) details of the persons membership of any other superannuation investment and any other information the Trustee determines to be reasonably necessary to assist in the administration of the plan or determination of the Members' Benefits.

#### **10.10 Employers to provide information**

*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

- (a) An Employer, on joining the Fund, shall supply such information concerning its Employees eligible to join the Fund as the Trustee may reasonably determine.
- (b) Each Employer shall give to the Trustee clear directions as to the entitlement to contributions made by the Employer to the Fund.

### **11. CONTRIBUTIONS**

**11.1 Limit of Contributions**

Employers and Members shall make contributions in accordance with this Deed, the Rules or any other arrangement agreed by the Trustee but the Trustee may refuse to accept any Contribution which may, in the opinion of the Trustee, jeopardise the status of the Fund as a complying superannuation fund.

**11.2 Authority to deduct Member Contributions**

Each Member authorises its Employer to deduct Contributions due by the Member (if any) from the Member's remuneration and to pay those moneys to the Fund on behalf of the Member.

**11.3 Late Contributions**

The Trustee may charge collection costs and interest at a reasonable rate as determined from time to time by the Trustee on any amount not paid by an Employer on or before the Due Date.

**11.4 Additional Contributions**

An Employer or Member may make such additional Contributions to a Division if permitted by the Rules of that Division as the Trustee may from time to time agree. Those Contributions shall be applied by the Trustee as the Employer or Member, as the case may be, directs and as agreed by the Trustee. The Trustee may require that a particular Employer shall make additional contributions in respect of some or all of its Employees or former Employees who are Beneficiaries and the Employer shall comply with that requirement.

**11.5 Refund of payments**

If any moneys paid to the Fund will or may jeopardise the status of the Fund as a complying superannuation fund or, in the opinion of the Trustee, have been paid by mistake (whether of law or of fact), the Trustee may refund those moneys to the person who paid them to the Fund. Subject to the Rules, the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those moneys in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt by the Trustee of those moneys.

**11.6 Acceptance of assets**

The Trustee may agree to accept the transfer of an asset by an Employer as a Contribution to a Division of the Fund. The amount of the Contribution shall be the value of the asset to be transferred as agreed between the Trustee and the Employer, and it shall be applied by the Trustee as a Contribution by or in respect of the Member to whom it relates.

**11.7 Contributions holiday**

The Trustee shall determine as required by the Rules from time to time on the advice of the Actuary and in accordance with the Rules, the Contributions to be made by Employers. The Trustee may, on the advice of the Actuary and in accordance with clause 8.2, permit an Employer or class of Employers to reduce its Contributions otherwise required to be paid under the Rules in respect of all or some of the Employers' Beneficiaries for such time and subject to such conditions as the Trustee on the advice of the Actuary, determines.

## **11.8 Contributions Tax**

If any part of the excess amount referred to in clause 8.2 is applied to reduce the Contributions otherwise payable under the Rules by an Employer, the Trustee may debit the Benefit Account of that Employer's Members by an amount equal to the Tax at the rate of Tax specified, at the time the amount is applied, as payable on those Contributions, or at such lesser rate as the Trustee on the advice of the Actuary may determine, as if it had been paid by the Employer directly to the Fund.

## **11.9 Surcharge**

**11.9.1** Where the Trustee is required to make any payment in satisfaction of any tax, surcharge, levy or other similar amount calculated by reference to the salary, income or other financial circumstances of a Beneficiary (the *Liable Beneficiary*) the Trustee shall adjust the Benefits or Benefit Accounts of that liable beneficiary to reflect the cost to the fund of the payment made including any cost of funding that payment.  
*[numbering amended by Deed of Amendment No.[1] operative 27/4/98]*

**11.9.2** A Beneficiary may, at any time, lodge with the Trustee an election to pay amounts to the Fund in respect of the Superannuation Contributions Surcharge payable in respect of the Beneficiary and:  
*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

- (a) payments may be made on a periodic or a single payment basis;
- (b) an election is to specify the amounts to be paid and the manner in which payment is to be made;
- (c) A Beneficiary may at any time, lodge with the Trustee an election to vary or revoke an election under the section;
- (d) An election under this clause is to be in a form approved by the Trustee for the purposes of this clause;
- (e) An election under this clause remains in force until a subsequent election under this clause takes effect.

## **12. TRANSFER TO AND FROM OTHER FUNDS**

### **12.1 Transfer in**

The Trustee may accept into any Division of the Fund which is not closed to new Members:

- (a) moneys or assets from another Eligible Fund under an arrangement with the trustee, employer or member or members of that Eligible Fund where the member or members of that Eligible Fund are or propose to become Beneficiaries of the Division;
- (b) a superannuation lump sum or employment termination payment of a person under an arrangement between that person and the Trustee where that person proposes to become or is a Beneficiary of the Division; or
- (c) moneys or assets from another Division of the Fund where the Member or Members intend to become Beneficiaries of the Division, and the amount of the moneys or the value of the assets transferred shall be applied by the Trustee in accordance with the arrangements relating to the transfer as agreed by the Trustee, and in accordance with Superannuation Law.

*[amended by Deed of Amendment No.[26] operative 01/07/07]*

## **12.2 Non-acceptance of transfer in**

The Trustee may, in its absolute discretion and without being required to give any reason, decline to accept from:

- (a) another Eligible Fund, any transfer or payment of moneys;
- (b) a person, any superannuation lump sum or employment termination payment; or
- (c) from a Division, any transfer to another Division of the Fund which is not closed to new Members.

*[amended by Deed of Amendment No.[26] operative 01/07/07]*

## **12.3 Transfer In - Regulations**

The Trustee may accept into the Fund, Beneficiaries, Employers and assets on such terms as are set out in a Transfer Regulation or any transfer agreement entered into under that Transfer Regulation.

## **12.4 Transfer out**

In addition to any entitlement under the Rules for a Beneficiary to transfer a Benefit, where a Beneficiary (other than a Beneficiary under Division B, C, D or E) is or becomes eligible for membership of another Eligible Fund then with the consent of the Beneficiary if that consent is required by Superannuation Law, the Trustee may, subject to the Rules and such conditions as the Trustee may decide, pay all or part of a Beneficiary's Benefit to such other fund together with such other amount as the Trustee with the consent of the Employer may agree. A Member in Division B, C, D or E may request the Trustee to pay the Beneficiary's Benefit to another Eligible Fund and if the Beneficiary's Employer consents to the transfer, the Trustee may, subject to

the Rules and such other conditions as it may decide, pay the Beneficiary's Benefit to such other fund.

## **12.5 Receipt from trustees of another fund**

Where an amount is paid to the trustees of an Eligible Fund pursuant to this clause the receipt given by the trustees of the Eligible Fund (including in the case of an annuity effected in respect of a Member, the body providing that annuity) in respect of the amount paid is a full discharge to the Trustee of all its obligations to or in respect of the Beneficiary under this Deed and the Trustee shall not be in any way responsible for or liable in respect of the application or disposal of such money by such trustee or other person.

## **12A MOBILITY BETWEEN SCHEMES**

*[clause 12A inserted by Deed of Amendment No.6 operative 1/10/99]*

### **12A.1 Eligible Employees and Contributors**

The following persons are eligible to exercise a Transfer Option:

- (a) a Category 1 Elector - that is, a person who, on the Appointed Day, was a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme or Police Superannuation Scheme or Division B or D of the LGSS and who, in accordance with clause 12A.2, is taken to have transferred employment;  
*[amended by Deed of Amendment No.16 operative 1/7/97]*
- (b) a Category 2 Elector - a person who, on the Appointed Day, was a contributor to Division B or D of the Fund and who, in accordance with clause 12A.3, is taken to have transferred employment;
- (c) a Category 3 Elector - a person who, on the Appointed Day, held deferred Benefits in both the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or in both Division C and D of the LGSS in relation to the same period of employment and who, in accordance with clause 12A.4, is taken to have transferred employment;
- (d) a Category 4 Elector - a person who, on the Appointed Day, held deferred Benefits in both the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or in both Division B and C of the LGSS in relation to the same period of employment and who, in accordance with clause 12A.5, is taken to have transferred employment;
- (e) a Category 5 Elector - a person who, on the Appointed Day, held deferred Benefits in each of Divisions B and C of the Fund in relation to the same period of employment and who, in accordance with clause 12A.6, is taken to have transferred employment;
- (f) a Category 6 Elector - a person who, on the Appointed Day, held deferred Benefits in each of Divisions C and D of the Fund in relation to the same

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period of employment and who, in accordance with clause 12A.7, is taken to have transferred employment;

### **12A.2 Contributors to SSS or SASS or the LGSS**

A person who is a Category 1 Elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the Appointed Day, to be a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme or to the Police Superannuation Scheme, or to Division B or D of the LGSS and  
*[amended by Deed of Amendment No.16 operative 1/7/97]*
- (b) within 3 months after ceasing to be a contributor to that scheme, the person has become an employee of an EISS Employer.

### **12A.3 Contributors to the Fund**

A person who is a Category 2 Elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the Appointed Day, to be a contributor to Division B or D of the Fund, and
- (b) within 3 months after ceasing to be such a contributor, the person has become an employee of an STC Employer or an employee of a LGSS Employer.

### **12A.4 Holders of deferred Benefits in SSS and SANCSS or the LGSS**

A person who is a Category 3 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or Divisions C and D of the LGSS were deferred, the person has become an employee of an EISS Employer, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of EISS Employers or LGSS Employers or STC Employers (or any combination), with no break in service longer than the Prescribed Time.

In this subclause 12A.4, the *Prescribed Time* means the time allowed for the purposes of section 38C(2) of the *Superannuation Act 1916*.

### **12A.5 Holders of deferred Benefits in SASS and SANCSS or the LGSS**

A person who is a Category 4 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or Divisions B and C of the LGSS

were deferred, the person has become an employee of an EISS Employer, and

- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of EISS Employers or LGSS Employers or STC Employers (or any combination), with no break in service longer than the Prescribed Time.

In this subclause 12A.5, the *Prescribed Time* means the time allowed for the purposes of section 30(2) of the *State Authorities Superannuation Act 1987*.

#### **12A.6 Holders of deferred Benefits in Divisions B and C of the Fund**

A person who is a Category 5 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in Divisions B and C of the Fund were deferred, the person has become an employee of an STC Employer or LGSS Employer, and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of EISS Employers or LGSS Employers or STC Employers (or any combination), with no break in service longer than the Prescribed Time.

In this subclause 12A.6, the *Prescribed Time* means the time allowed for the purposes of section 30(2) of the *State Authorities Superannuation Act 1987*.

#### **12A.7 Holders of deferred Benefits in Divisions C and D of Fund**

A person who is a Category 6 Elector is taken to have transferred employment if:

- (a) within the Prescribed Time after the person's Benefits in Divisions C and D of the Fund were deferred, the person has become an employee of an STC Employer or LGSS Employer; and
- (b) the person has thereafter remained an employee of that employer, or been employed by a succession of EISS Employers or LGSS Employers or STC Employers (or any combination), with no break in service longer than the Prescribed Time.

In this subclause 12A.7, the *Prescribed Time* means the time allowed for the purposes of section 38C(2) of the *Superannuation Act 1916*.

#### **12A.8 Manner and form of exercising option**

An Election to exercise a Transfer Option is to be given in writing to the trustee of the Transferee Scheme, using a form approved by that Trustee.

#### **12A.9 Provision of Information**

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- (a) An Elector must provide such information as may be required to complete the election form, being information that the trustees of the Transferor Scheme or Transferee Scheme may reasonably require to give effect to the Election.
  - (b) Either trustee is entitled to require the other to provide information (including members' files) reasonably necessary to give effect to the Election.
  - (c) The Trustee is entitled to require an Employer, under a scheme for which it is trustee, to provide such information as may be reasonably necessary to the Trustee in order to give effect to the Election.

#### **12A.10 Time within which option may be exercised**

- (a) An Election by a Category 1 or 2 Elector who, in accordance with subclause 12A.2 or 12A.3, is taken to have transferred employment must be made within 3 months after the transfer of employment.
- (b) An Election by a Category 3, 4, 5 or 6 Elector who, in accordance with subclause 12A.4, 12A.5, 12A.6 or 12A.7, is taken to have transferred employment before the Appointed Day, must be made within 12 months after that day.
- (c) An Election by a Category 3, 4, 5 or 6 Elector who, in accordance with subclause 12A.4, 12A.5, 12A.6 or 12A.7, is taken to have transferred employment on or after the Appointed Day, must be made within 12 months after the transfer of employment.
- (d) An Election takes effect when the election form, duly completed, is received by the trustee of the Transferee Scheme.
- (e) However, an Election does not take effect if an Elector has applied for a payment of a benefit (including a deferred benefit) under the Transferor Scheme before the Election is received by the trustee of the Transferee scheme.
- (f) Despite any other provision in this clause, the Trustee of where the Fund is the Transferee Scheme the Trustee may allow an Elector an additional period not exceeding 12 months, in which to make an Election to transfer to the Fund if the Trustee thinks it appropriate in the circumstances.

#### **12A.11 Amounts transferable on exercise of option**

- (a) On exercise by a person of a Transfer Option in which the Fund is the Transferor Scheme, there is payable by the Trustee to the trustee of the Transferee Scheme:
  - (i) a superannuation lump sum calculated in accordance with subclause 12A.12; and

- (ii) the difference between:
  - (1) the sum of the primary and supplementary amounts calculated in accordance with clauses 12A.13 and 12A.14; and
  - (2) the superannuation lump sum referred to in paragraph (i).
- (b) It is the duty of the Trustee to ensure that the payments prescribed by this clause are duly made and credited to the appropriate accounts for the employee concerned in the Transferee Scheme.

*[amended by Deed of Amendment No.[26] operative 01/07/07]*

### **12A.12 Superannuation lump sum**

- (a) For a Category 1 or 2 Elector, the superannuation lump sum is the amount that would have been immediately payable to the person, in accordance with the Rules, on the person's resignation from his or her employment.
- (b) For a Category 3 Elector, the superannuation lump sum is the sum of:
  - (i) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 52I of the *Superannuation Act 1916* or subrule 16.11 of Division C of the LGSS; and
  - (ii) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act 1987* or Division C of the LGSS.
- (c) For a Category 4 Elector, the superannuation lump sum is the sum of:
  - (i) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 43(7) of the *State Authorities Superannuation Act, 1987* or subrule 5.10.10 of Division B of the LGSS; and
  - (ii) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act, 1987* or Division C of the LGSS.
- (d) For a Category 5 Elector, the superannuation lump sum is the sum of:
  - (i) the amount of Benefit to which the person would have been entitled under subrule 5.10.10 of Division B if the person had resigned from employment and had, on the date the election takes effect, made any necessary election under that Schedule; and

- (ii) the amount of Benefit to which the person was entitled on that date under Division C.
- (e) For a Category 6 Elector, the superannuation lump sum is the sum of:
  - (i) the amount of cash termination Benefit to which the person would have been entitled under subrule 16.11 of Division D if the person had resigned from employment and had, on the date the election takes effect, made any necessary election under that Schedule; and
  - (ii) the amount of Benefit to which the person was entitled on that date under Division D.

*[amended by Deed of Amendment No.[26] operative 01/07/07]*

### **12A.13 Primary amount**

- (a) For a Category 1, 3 or 4 Elector, the primary amount is the amount determined by STC or LGSS Pty Limited on actuarial advice to be the value of the person's accrued Benefit in the State Authorities Superannuation Scheme or State Superannuation Scheme or LGSS Division B or LGSS Division D, as the case may be, at the time of the Election.
- (b) For a Category 2, 5 or 6 Elector, the primary amount is the amount determined by the Trustee on actuarial advice to be the value of the person's accrued Benefit in Division B or D, as the case may be, of the Fund at the time of the Election.

### **12A.14 Supplementary amount**

- (a) For a Category 1, 3 or 4 Elector, the supplementary amount is the amount of benefit to which the person was entitled under the State Authorities Non-contributory Superannuation Act, 1987 or Schedule 3 of the LGSS Trust Deed on the date the election takes effect.
- (b) For a Category 2, 5 or 6 Elector, the supplementary amount is the amount of Benefit to which the person was entitled under Division C on the date the election takes effect.

### **12A.15 Duty of trustees to persons eligible to make Election**

- (a) It is the duty of the Trustee under an Election made by an eligible person to transfer to the Fund, to establish the person as a member of or contributor to the Fund.
- (b) An Elector transferring from the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or LGSS Divisions B and C is to be established in Divisions B and C.

- (c) An Elector transferring from the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme or LGSS Divisions C and D is to be established in Divisions C and D.
- (d) An Elector transferring from the Police Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Divisions B and C.  
*[(d) inserted by Deed of Amendment No.16 operative 1/7/97]*

#### **12A.16 Trustees to determine rights of person transferring**

- (a) The Trustee is to determine with actuarial advice, the rights of the Elector in the Fund.
- (b) Regard must also be had to any rights the Elector had in the Transferor Scheme and the rights established in Divisions B and C or Divisions C and D must be as near as possible to them.
- (c) In particular, the Trustee is to take into account the following:
  - (i) the person's accrued Benefits in the Transferor Scheme, as certified by the trustee of that scheme;
  - (ii) the Benefits that the person could have accrued by normal retirement age in the Transferor Scheme;
  - (iii) the person's employment status (including salary and whether full-time or part-time) in the Fund, on commencement or recommencement of membership of Division B or Division D.
  - (iv) the amounts being transferred to the Fund by the Transferor Scheme
- (d) In the case of a Category 3, 4 5 or 6 Elector, the Trustee must also take into account:
  - (i) the period of employment with any employer responsible for making contributions under either the Transferor or Transferee Scheme, in the period between the date the Benefit was deferred and the date that the person again becomes a member of the Transferee Scheme; and
  - (ii) any employer contributions made by any such employer to any complying superannuation fund in respect of the person during that period.

#### **12A.17 Automatic accrual of certain rights**

- (a) A person, who by election, joins or rejoins Division D of the Fund is taken to have met the medical requirements of Rule 3 of Division D.

- (b) A person who was covered for Additional Benefits in the State Authorities Superannuation Scheme or LGSS Division B and who by election joins or rejoins Division B of the Fund is taken to have submitted an application for Additional Benefit cover under Rule 3.2.1 of Division B and the Trustee is taken to have approved that application.
- (ba) A person who was a contributor to the Police Superannuation Scheme on the appointed day and who, by election, joins Division B of the Fund is taken to have submitted an application for Additional Benefit cover under Rule 3.2.1 of Division B and the Trustee is taken to have approved that application.  
*[inserted by Deed of Amendment No.16 operative 1/7/97]*
- (c) Additional Benefit cover imputed by subclause 12A.17 (b) or (ba) may be revoked in accordance with the relevant Rules of the Fund.  
*[amended by Deed of Amendment No.16 operative 1/7/97; Deed of Amendment No.[21] operative 1/7/01]*

### **12A.18 Effect of transfers and appeal rights**

- (a) On the election taking effect, and subject to any appeal rights in this clause, the person who makes the election ceases to have any entitlements, rights and obligations under the scheme from which the person transferred to the extent to which the member is transferred.
- (b) The rights of appeal available to an Elector before a Transfer Option takes effect continue to apply in respect of matters arising before that option takes effect and any matters as to payment from the transferor scheme.
- (c) An elector who transfers to the Fund has, in respect of any determination by the Trustee as to the elector's rights on transfer to Divisions B and C or Divisions C and D, the same rights of appeal as in respect of a determination by the Trustee under the Trust Deed.

## **13. INSURANCE POLICIES**

### **13.1 Insurance policies effected by Trustee**

The Trustee may effect insurance policies in its own name by a separate insurance policy or as part of the insurance provided in respect of a number of Beneficiaries under a group or master policy issued to the Trustee. The terms of an insurance policy in respect of a Beneficiary shall bind the Beneficiary and any person who is or becomes entitled to a Benefit in respect of the Beneficiary.

### **13.2 Operation of insurance policy**

Any Insured Benefit shall be subject to the terms of any insurance policy under which it is provided and no payment shall be required to be made in respect of a Beneficiary in satisfaction of any Insured Benefit of any amount greater than the amount received by the Trustee under the insurance policy less any deductions for Taxes the Trustee is entitled to make under this Deed.

### **13.3 Cover declined**

If the insurer under an insurance policy declines to provide, or will only provide subject to qualifications, insurance for any Insured Benefit under that policy then the Trustee shall not be required to arrange any other or alternative insurance policy.

#### **13.4 Medical examination and availability of insurance policy**

In respect of any Insured Benefit, the obligations of the Trustee to effect an insurance policy under this clause shall be conditional upon the Beneficiary submitting to such medical examination and providing such information as the insurer under an insurance policy requires.

#### **13.5 Establishment of advisory panels**

The Trustee may establish one or more panels comprised of people it considers suitably qualified to advise it on matters arising in relation to any Insured Benefits or under or in relation to any insurance policy, matters in relation to claims for Benefits (including claims for Benefits on disablement) and any other matters it considers necessary or desirable.

### **14. BENEFITS**

#### **14.1 Compliance with Superannuation Law**

The payment of Benefits shall be subject to Superannuation Law and the Trustee shall not be required to pay a Benefit to a Beneficiary, dependant, legal personal representative or any other person other than in accordance with Superannuation Law.

#### **14.2 Compulsory payment of Benefit**

If the Trustee is required to pay a Benefit at or by a certain time by Superannuation Law or is otherwise required to pay a Benefit by Superannuation Law then notwithstanding any provision in the Rules or the fact that a claim has not been made under this clause, the Trustee may pay the Benefit to or in respect of a Beneficiary in accordance with Superannuation Law, less any deduction that is required to be made in respect of any Taxes.

#### **14.3 Treatment of certain Benefits**

Subject to the Rules, if any Benefit (or part of any Benefit) otherwise payable to a Beneficiary is unable to be paid in cash by reason of Superannuation Law then the Benefit may be transferred to another Eligible Fund elected by the Beneficiary and approved by the Trustee.

#### **14.4 Payment of Benefits**

Subject to the Rules, the Trustee may pay the Benefit to or in respect of a Beneficiary by way of lump sum, pension or by purchase of an annuity and otherwise in accordance with the Rules applicable to the Beneficiary.

#### **14.5 Place and manner of payment**

- (a) Subject to this Deed, Benefits shall be payable at the place and in the manner as determined or approved of by the Trustee and the Trustee may make payment by cheque or cause an insurer to draw and pay by cheque on behalf of the Trustee and the Trustee or insurer may mail the cheque to the payee at the last address known to the Trustee of that payee.
- (b) Notwithstanding any other provision of this Deed, a Beneficiary shall not be entitled to be paid a Benefit until the Trustee has:
  - (i) in the case of sub-clause 14.2, determined to pay a Benefit; or
  - (ii) in any other case, received a claim from an Employer or Beneficiary (as the case may be) together with such other information as the Trustee may require,

and in the case where any Insured Benefit is payable, the insurer under an insurance policy has determined to accept and pay the claim.

#### **14.6 Proofs**

Whenever it is necessary for the Trustee to decide questions of fact the Trustees may act upon such proofs or presumptions as it considers satisfactory whether or not they are strictly legal proofs or legal presumptions.

#### **14.7 Payment of Benefit conditional upon evidence**

The Trustee may suspend payment of a Benefit until all information and evidence required by the Trustee is received from the Employer, the Beneficiary or the person to whom the Benefit is to be paid and in particular the Trustee may require any person to whom a Benefit is to be paid to satisfy the Trustee that the person is entitled to receive the Benefit in accordance with Superannuation Law.

#### **14.8 Discharge of Trustee**

The receipt of a person to whom a Benefit is paid shall absolutely discharge the Trustee in respect of the Benefit paid to that person and the Trustee is not bound to see to the application of that Benefit.

#### **14.9 Legal disability of person**

If it appears to the Trustee that a Beneficiary or other person to whom a Benefit would otherwise be payable is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with such Benefit the Trustee may pay or apply the whole or part of any such Benefit in one or more of the following ways:

- (a) to any dependant of the Beneficiary or other person;
- (b) for or towards the maintenance, education, advancement or otherwise for the benefit of the Beneficiary, other person or any dependant of the Beneficiary

or other person in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and

- (c) without limiting paragraph (b), to a person who appears to the Trustee to be a trustee or is willing to act as trustee for or a parent or guardian of or to have for the time being the care or custody of the Beneficiary or other person or to have the financial expense of the care or custody of the Beneficiary or other person.

*[amended by Deed of Amendment No.9 operative 28/3/01]*

In this clause, *dependant* has the same meaning as in Superannuation Law.

#### **14.10 Trustee not obliged**

The Trustee is not obliged to have recourse to clause 14.9 or to consider whether recourse should be had to clause 14.9 notwithstanding that the Trustee may have actual notice of any legal disability of the Beneficiary or other person.

#### **14.11 Claim for Benefits**

Upon the Trustee being satisfied that a claim for an Insured Benefit has arisen, the Trustee shall, as soon as practicable, lodge a claim with the insurer in relation to that Beneficiary and upon receiving payment of such Insured Benefit the Trustee shall promptly pay such Benefit to or in respect of the Beneficiary or cause the insurer to pay the Benefit to or in respect of the Beneficiary.

#### **14.12 Notice of claim**

An Employer or Beneficiary shall promptly advise the Trustee of any event which would entitle a Beneficiary to receive a Benefit in such form as is required by the Trustee.

#### **14.13 Trustee may require proof of continued employment**

The Trustee may by notice in writing to a Beneficiary (other than a Pensioner) require the Beneficiary to provide evidence satisfactory to it that the Beneficiary is gainfully employed to a level required under the Superannuation Law or is otherwise not entitled to be paid a Benefit and if the Beneficiary has reached an age at which a Benefit is payable and the Trustee is not satisfied that the Beneficiary is gainfully employed to a level required under the Superannuation Law or is otherwise prohibited from receiving a Benefit then the Trustee may pay the Benefit to the Beneficiary as if that Beneficiary had become entitled to it on the date of payment.

*[amended by Deed of Amendment No.[23] operative 1/7/04]*

#### **14.14 Deferral of Benefit payment**

Where the Trustee must dispose of any assets of the Fund and convert them to cash in order to pay a Benefit, the Trustee may delay payment of the Benefit for such period as the Trustee sees fit in order to reasonably facilitate the orderly disposal of those assets.

**14.15 Maximum liability of Trustee**

Notwithstanding any other provision of this Deed or the Rules, the Trustee shall not be required to make any payment from the Fund in excess of the net realisable assets of the Fund nor shall any Employer or Beneficiary bear any liability for such excess.

**14.16 Discharge by trustee of eligible rollover fund**

The receipt of the trustee of an eligible rollover fund in respect of the Benefit of a Beneficiary paid to that eligible rollover fund shall absolutely discharge the Trustee in respect of the Benefit of that Beneficiary and the Beneficiary shall cease to have any rights against the Fund.

**14.17 Payment of Benefits without grant of probate**

If a Beneficiary dies and:

- (a) a Benefit is, or becomes, payable from the Fund in relation to the Beneficiary;
- (b) production to the Trustee of probate of the will, or letters of administration of the estate, of the Beneficiary has not been arranged;
- (c) the Trustee has not, within the period of 3 months that next succeeds the death of the Beneficiary, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the Beneficiary, and
- (d) the Trustee has not made a determination to pay the Benefit in accordance with the Rules,

subject to Superannuation Law, the Trustee may, if it so decides, make a payment of the whole or any part of the Benefit, being a payment that does not exceed \$20,000 or such other lesser amount as determined by the Trustee.

*[amended by Deed of Amendment No.8 operative 1/7/97; amended by Deed of Amendment No.9 operative 27/6/01]*

**14.17A Binding Beneficiary Nomination**

*[inserted by Deed of Amendment No.9 operative 27/6/0; replaced by Deed of Amendment No.[24] operative 24/10/05]*

**14.17A.1 Nominated beneficiary**

A Member may request the Trustee by notice in a form prescribed by the Trustee that if upon the death of the Member a Benefit becomes payable in respect of that Member then all or a specified part of that Benefit is to be paid to the Nominated Beneficiary. The Trustee shall comply with the requirements of Superannuation Law for the acceptance and continuing operation and validity of Binding Nominations.

**14.17A.2 Payment of Death Benefit where no Binding Death Benefit Nomination**

If there is no Nominated Beneficiary then the Trustee shall pay the Benefit:

- (a) Where the Member is survived by his or her Spouse, to the Member's Spouse.
- (b) Where the Member is not survived by a Spouse, to the legal personal representative of the Member.

#### 14.17A.3 Variation of nomination

If a Member notifies the Trustee in writing of a variation to any previous nomination of a Nominated Beneficiary or any request in relation to a Nominated Beneficiary, then that variation shall not take effect unless and until it is received and accepted by the Trustee and the Trustee is satisfied that it meets the requirements of Superannuation Law for a binding death benefit nomination, and in that event it shall terminate any prior nomination or request given by the Member.

#### **14.18A Competing claims for Spouses' Benefits**

*[inserted by Deed of Amendment No.9 operative 27/6/01]*

- (a) If a Benefit would be payable to more than one person because:
  - (i) a deceased Contributor, Member or pensioner; or
  - (ii) a deceased former Contributor, Member or pensioner, has left more than one Spouse, then, despite any other provision of the Deed or Rules:
    - (iii) the Benefit is payable in accordance with a determination made by the Trustee, and not otherwise; and
    - (iv) the total amount of Benefit payable to those persons at any time is not to exceed the amount of Benefit that would be payable if there were only one Spouse.
- (b) For the purposes of subclause (a), the Trustee may determine in relation to a Benefit:
  - (i) that the Benefit is not payable to such of the persons concerned as it specifies;
  - (ii) that the amount of the Benefit is to be apportioned between the persons concerned in such manner as it specifies; or
  - (iii) to pay part or all of the Benefit to the legal personal representative of the deceased Beneficiary.

#### **14.18 Payment of Benefits – Family Provision Act**

*[deleted by Deed of Amendment No.9 operative 27/6/01]*

**14.19 Payment to legal personal representative**

*[deleted by Deed of Amendment No.9 operative 27/6/01]*

**14.20 Benefit not part of estate**

A Benefit payable on the death of a Beneficiary is not an asset in the Beneficiary's estate, unless it is paid to the estate.

**14.21 Loss of rights, privileges or benefits**

If a person is entitled to exercise a right or enjoy a privilege or benefit under the Rules and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if the Trustee determines (whether subject to conditions or otherwise) that it is just and equitable for the person to do so and gives its consent to the exercise or enjoyment by the person of the right, privilege or benefit.

**14.22 Financial hardship**

The Trustee may determine, and vary:

- (a) a minimum Benefit Account balance which must remain in a Division after payment of an amount to a Beneficiary on the grounds of severe financial hardship; and
- (b) any criteria for eligibility for payment on the grounds of severe financial hardship.

**14.23 Reduction in Pensions and Benefits to offset Tax**

*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

**14.23.1** Whenever:

- (a) a right to a Benefit under this Fund accrues to or in respect of a Beneficiary or former Beneficiary or where a Family Court Order, a Superannuation Agreement or Flag Lifting Agreement applies, and  
*[amended by Deed of Amendment No.[21] operative 28/12/02]*
- (b) the Trustee has paid or is liable to pay an amount of Superannuation Contributions Surcharge in respect of contributions, notional contributions or allocated surplus amounts that are referable to the Beneficiary or former Beneficiary,

the Trustee must, subject to clause 11.9 and subclause 14.23.2, make a determination reducing the employer-financed portion of that Benefit by the amount of debt (including accrued interest) owed for Superannuation Contributions Surcharge in respect of the Contributor or former Contributor, less any payments made by the Contributor or former Contributor towards reduction of the debt.

- 14.23.2** Subclause 14.23.1 does not authorise the reduction of a Benefit as a result of a liability for Superannuation Contributions Surcharge where the benefit is of a kind the Trustee has determined should not be the subject of the reduction.

**14.24 Commutation of pensions for adjustment of benefits**

*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

**14.24.1** If a determination reducing a Benefit that may be taken in the form of a pension is made under clause 14.23, the Trustee may, at its discretion and with the consent of the Contributor or former Contributor concerned, commute part of the pension to a lump sum for the purposes of payment to the Trustee of the amount of the reduction.

**14.24.2** Commutation of part of a pension under this clause:

- (a) does not affect any other right that the Contributor or former Contributor has to commute the pension under the Fund, and
- (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
- (c) is to be done on a basis determined by the Trustee for the purposes of this section.

**14.24.3** the Trustee may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.

**14.24.4** This section has effect despite any other provision of this Deed.

**14.25 Payment of benefits – Family Law Act requirements**

*[Subclause inserted by Deed of Amendment No.[21] operative 28/12/02]*

**14.25.1** Where a person is a Member of Pool A of the Fund, their Non-Member Spouse may direct the Trustee to open a separate account within Pool A of the Fund or else rollover the entitlement to another Eligible Fund. In the absence of any direction, the Trustee shall establish a separate account within Pool A for the Non-Member Spouse. On the opening of the account, the Non-Member Spouse will be accepted as a Member of the Division within Pool A determined by the Trustee.

**14.25.2** Where a person is a Member of Pool B of the Fund, their Non-Member Spouse may direct the Trustee to rollover their entitlement to another Eligible Fund. In the absence of any direction, the Trustee shall rollover the entitlement to an eligible rollover fund.

**14.25.3** The Trustee shall reduce the Member's Superannuation Interest in accordance with the provisions set out in the rules of the Member's Divisions.

**14.25.4** The Trustee shall comply with any Family Law Order made in accordance with section 90MV of the Family Law Act terminating the operation of a Splittable Payment.

**14.25.5** If the Non-Member Spouse dies after the Operative Time for a payment split:

- (a) the payment split nevertheless continues to operate;

- (b) the payment split then operates in favour of the legal personal representative of the deceased Non-Member Spouse and is binding on that legal personal representative; and
- (c) the legal personal representative has all the rights the deceased Non-Member Spouse would have had in respect of the payment split, including the right to serve a waiver notice under section 90MZA of the Family Law Act.

**14.25.6** The Trustee shall calculate the value of a Family Law Spouse Amount in respect of a Member's Superannuation Interest in accordance with the rules applying to the Member's Divisions, as amended from time to time.

**14.25.7** The Trustee may adjust a benefit amount for investment earnings from the Operative Time to the day before the transfer date if a Superannuation Interest is not split until after the Operative Time.

**14.25.8** The Trustee may charge or recover from a person, including a Member and Non-Member Spouse, such fees and costs in relation to any Family law dealings, unless prohibited by law.

**14.25.9** The Trustee shall not be liable for any loss or damage suffered by any person because of things done (or not done) by the Trustee in good faith in reliance on:

- (a) any document served on the Trustee for the purposes of this clause 14.25; or
- (b) a Family Court Order.

## **15. FORFEITURE OF BENEFITS**

The interest in the Fund of a Beneficiary and those entitled to a benefit on the death of the Beneficiary is personal to that person and the Trustee shall not recognise any assignment, claim or charge in respect of that interest unless that assignment, claim or charge is permitted expressly or by necessary implication by Superannuation Law.

## **16. EXPENSES AND TAXATION**

### **16.1 Payment of Tax**

The Trustee shall pay such Taxes or instalments thereof in respect of the Fund as may be determined pursuant to, and in accordance with, the provisions of relevant legislation and the Trustee may allocate the Taxes among Benefit Accounts as appropriate, establish Benefit Accounts for providing for Taxes or reserves for Taxes and realise any asset of the Fund (including any insurance policy, or units or interests under any insurance policy) in whole or in part allocated to those Benefit Accounts for the purpose of meeting its liability under this clause.

### **16.2 Provision for Tax**

Notwithstanding any provision of this Deed, the Trustee may from time to time and at any time deduct, set aside and make a provision or provisions from the Fund for such Tax as it, in good faith, and in its absolute discretion and in accordance with

relevant legislation estimates will be payable from time to time by the Fund in respect of the relevant year of income and, without limitation, in deducting and setting aside and making provision for such Tax the Trustee shall be entitled to have regard to the unrealised capital gains accrued on any investments of the Fund and any other matter or thing which the Trustee in good faith and in its absolute discretion considers appropriate and the Trustee may transfer amounts from any Benefit Accounts to Benefit Accounts established for the purpose of providing for Taxes or reserves for Taxes.

### **16.3 Taxation credits or rebates**

Subject to the Income Tax Acts, where the Trustee is in receipt of any income in respect of which there arises any taxation credit or rebate, the Trustee shall be entitled in its absolute discretion to offset such credits or rebates against any provisions for Tax established pursuant to this Deed and, notwithstanding the time at which such credits or rebates are received, shall be entitled in its absolute discretion to apportion such credits or rebates across the relevant year of income for the purposes of the Income Tax Acts as the Trustee thinks fit.

### **16.4 Adjustments**

The Trustee shall pay Taxes for the Fund as determined pursuant to the Income Tax Acts and shall, in respect of the amount or amounts of such payments debit the provisions for Taxes made pursuant to this Deed in respect of the year of income to which such Taxes relate and:

- (a) where the provisions for Taxes made in respect of any year of income exceed the Taxes payable in the year of taxation in respect of such year of income, the Trustee shall credit the provisions for the Fund in respect of the next succeeding year of income (or part thereof as the Trustee in its absolute discretion determines) with such amount or otherwise deal with it as it considers equitable; and
- (b) where the provisions for Taxes made in respect of any year of income is less than the amount of Taxes payable in the year of taxation in respect of that year of income, the Trustee shall be entitled, as the Trustee sees fit, to debit the excess of Taxes to such provisions for Taxes the Trustee may have made in respect of the next succeeding year of income of the Fund (or part thereof as the Trustee in its absolute discretion determines).

### **16.5 Expenses and obligations**

Notwithstanding anything contained in this Deed, the Trustee may from time to time and at any time:

- (a) realise any asset of the Fund in whole or in part; and
- (b) from the Fund deduct, set aside and make a provision or provisions,

as the Trustee in good faith and in its absolute discretion deems proper for meeting anticipated expenses or obligations as in the opinion of the Trustee should be

provided for, including (without limitation) a provision or provisions for Tax which will or may in the opinion of the Trustee be payable in respect of capital gains which may or might be realised on the disposal of assets of the Fund in succeeding years of income. Such realisation of assets, deduction, setting aside or provision may be made from or against such part of the Fund as the Trustee in its absolute discretion deems appropriate.

#### **16.6 Determination by Trustee**

Notwithstanding anything contained in this Deed the Trustee may in its absolute discretion determine:

- (a) whether any amount received or receivable is or is to be received on capital or income account, or whether any outgoing, loss, expense, provision or amount is incurred on capital or income account;
- (b) whether a capital profit or loss has been realised;
- (c) the amount of any realised or unrealised capital profit or loss;
- (d) the amount of any consideration received on the disposal of a part of the Fund;
- (e) the amount paid or deemed paid or the value given for a part of the Fund at the time it became part of the Fund; or
- (f) whether any Tax is payable and, if so, the amount payable,

and every such determination shall be final and conclusive and no Beneficiary or former Beneficiary shall have any right or claim against the Trustee personally arising out of such decision or its implementation but shall not by reason of this proviso be debarred from asserting any claim in respect of his interest in the Fund.

#### **16.7 Arrangements with other entities**

The Trustee may from time to time and at any time in its absolute discretion and upon such terms as it sees fit enter into an arrangement or arrangements with an insurer under an insurance policy, a registered organisation or a pooled superannuation trust or any other appropriate entity which has the effect of transferring to that entity all or part of the liability for Tax of the Fund.

### **17. CONDITIONS OF EMPLOYMENT NOT AFFECTED**

Nothing in this Deed whether express or implied shall:

- (a) in any way restrict an Employer in varying or terminating any contract of employment or terms of engagement of a Member;
- (b) in any action against an Employer by a Member be used as a ground for awarding damages or compensation or increasing an award for damages or

compensation or for conferring any rights on a Member other than those expressly conferred by this Deed.

## **18. NATIONAL OR OTHER SUPERANNUATION SCHEMES**

### **18.1 Variation of Contributions and Benefits**

Subject to this Deed and Superannuation Law, if any government introduces or varies any scheme (including any scheme to which an Employer becomes obliged to contribute under any prescribed agreement or award) for insurance, superannuation, social service, pension or retirement benefits in respect of which Members may be or become eligible the Trustee may in such manner as is permitted by Superannuation Law reduce or otherwise vary:

- (a) the Contributions made by an Employer and Members employed by that Employer and the basis on which those Contributions are vested; and
- (b) the Benefits payable in respect of those Members under this Deed.

### **18.2 Prescribed Agreements and Awards**

If with the intention of complying with any requirement to provide any superannuation benefits required under any prescribed agreement or award, an Employer or Member makes Contributions to any Division then:

- (a) the Employer or Member must satisfy him, her or itself that the payment of the Contribution and the terms of the Fund meet the requirements of any such prescribed agreement or award;
- (b) the Trustee shall not be liable to the Employer, the Member or any of the Employer's Members for any failure of those Contributions or the Division to which they are applied to satisfy the requirements of any such prescribed agreement or award;
- (c) if the Employer or Member notifies the Trustee that the payment of the Contributions to the Division is in breach of any such prescribed agreement or award then the Trustee may refuse to accept any further Contributions paid in that regard and may transfer the Benefit or part of the Benefit that has arisen from those Contributions to an Eligible Fund that complies with the requirements of the relevant prescribed agreement or award in accordance with the provisions of clause 12.

## **19. RULES**

### **19.1 Inconsistency**

If the Rules are inconsistent with any other provisions of the Deed then the provisions of the Deed shall prevail unless the Rules expressly provide to the contrary.

### **19.2 Express provision in Rules**

A provision in the Rules that deals with the same matter as another provision in the Deed shall not be taken to limit the other provision appearing in the Deed unless it does so expressly.

## **20. AMENDMENT OF TRUST DEED**

### **20.1 Amendments**

Subject to sub-clauses 20.2 and 20.4, the Trustee may, with the consent of the Minister, at any time by Deed or by oral or written resolution, amend, add to, delete or replace all or any of the provisions contained in this Deed, including the provisions of this clause, and the amendment, addition to, deletion or replacement may be retrospective or take effect on a specified date.

### **20.2 Amendment not to reduce Benefits**

No amendment shall be made under sub-clause 20.1 which would have the effect of adversely altering a Beneficiary's right or claim to accrued Benefits or the amount of those accrued Benefits unless such amendment is permitted by Superannuation Law.

### **20.3 Actuary's advice**

In determining whether or not the effect specified in sub-clause 20.2 will occur the Trustee may rely on the advice of the appointed Actuary (if any).

### **20.4 Amendment not to permit natural person trustee**

No amendment shall be made to the Deed which would have the effect of permitting a natural person to be appointed as trustee of the Fund unless after the amendment the sole or primary purpose of the Fund is the provision of pensions.

### **20.5 Amendments to New Divisions**

*[inserted by Deed of Amendment No.[1] operative 27/4/98]*

The Trustee may, in its absolute discretion, exercise its powers in clause 20.1 without requiring the consent of the Minister, to amend, add to, delete or replace all or any of the provisions of a new Division created in accordance with clause 3.7.

## **21. SUPERANNUATION LAW**

### **21.1 Superannuation Law deemed to be included**

Notwithstanding any provision of this Deed any provision of Superannuation Law that is required to be included in this Deed for the Fund to remain or to be a complying superannuation fund shall be deemed 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.

### **21.2 Inconsistency of provisions**

In the event of any inconsistency between the provisions deemed by sub-clause 21.1 to be included in this Deed and the terms of this Deed, the provisions deemed to be included by sub-clause 21.1 shall prevail.

### **21.3 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 the Superannuation Authority is satisfied that the contravention does not warrant the giving of a notice that the Fund is not a complying superannuation fund in relation to a year of income.

### **21.4 Modification or exemption**

Subject to Superannuation Law, the Trustee may seek modification of or exemption from the requirements of Superannuation Law, and if any modification or exemption is granted by the Superannuation Authority, the Trustee is relieved from compliance with those provisions of the Trust Deed and Superannuation Law expressed in that modification or exemption subject to any conditions in that modification or exemption.

## **22. TERMINATION OF FUND OR DIVISION**

### **22.1 Termination of Fund**

If:

- (a) the Trustee determines that it has become impracticable or inexpedient to continue the Fund; or
- (b) there are no Employers who are responsible to make contributions to the Fund and the Trustee determines that it is not likely that any person will apply to become an Employer,

the Trustee may, with the consent of the Minister, terminate the Fund from a date agreed between the Trustee and the Minister (*Termination Date*).

### **22.2 Consequences of termination**

On and from the Termination Date:

- (a) no further Employees shall be admitted to membership of the Fund; and
- (b) the Trustee shall not accept any further Contributions (other than those due on or prior to the Termination Date) and all outstanding Contributions shall be paid forthwith.

### **22.3 Payments on termination**

Upon termination of the Fund, the Trustee shall make such provision out of the assets of the Fund as is necessary to provide for the following in the following order of priority:

- (a) Tax, whether or not assessed or presently payable;
- (b) expenses of the Fund, including those incurred or to be incurred by the Trustee in connection with the termination of the Fund;
- (c) Benefits which became payable prior to the Termination Date;
- (d) in the case of Division A to E:
  - (i) Benefits which would be payable to each Deferred Member had the Deferred Member's Benefit become payable at the Termination Date; and
  - (ii) an amount equal to the Benefit which would be payable to each Member in accordance with the Rules of the relevant Division if the Member's employment was terminated by the Employer on that date or such greater amount as the Trustee with the consent of the Minister may determine; and
- (e) in the case of Division B, C and D the Trustee shall continue to hold the assets of Pool B on trust for the Beneficiaries and that Division in accordance with this Deed until all Benefits have been paid and any assets remaining shall thereupon be applied as the Trustee, with the consent of the Minister, may determine.

#### **22.4 Surplus**

If after making the provisions set forth in sub-clause 22.3 the Trustee is of the opinion that the value of assets of the Fund exceeds the value of the liabilities then the excess amount may be applied by the Trustee for any of the following purposes:

- (a) to be repaid to an Employer;
- (b) in increasing the provisions made for Beneficiaries of the Fund as at the Termination Date;
- (c) to be paid to the State of New South Wales;
- (d) for such other purposes as the Trustees and Minister may agree.

#### **22.5 Payment of Benefits on termination**

The Benefits payable on termination of the Fund shall be in such form and be provided through such arrangements as the Trustee and the Employer shall determine including by way of transfer to an Eligible Fund nominated by the Employer as the fund to which it will be making contributions in respect of Members after the Termination Date. Each Beneficiary shall accept the Benefits allotted by the Trustee

in full discharge of all claims in respect of the Fund and shall have no further claim whatsoever in relation to the Fund. Any decision by the Trustee in relation to the amount or method of payment of any such Benefits shall be final. In the absence of any agreement with the Employer as to the Eligible Fund to which a Beneficiary's Benefit should be transferred, the Trustee may transfer the Benefit to a successor fund.

## **22.6 Termination of Division**

If the Trustee determines that it has become impracticable or inexpedient to continue a Division, the Trustee may, with the consent of the Minister, terminate the Division from a date agreed between the Trustee and the Minister (*Termination Date*). If a Division is to be terminated, the provisions of clauses 22.2 and 22.3 apply as though references to the "*Fund*" were references to a "*Division*".

## **22.7 Termination of Pool**

If the Trustee determines that it has become impracticable or inexpedient to continue a pool, the Trustee may, with the consent of the Minister, terminate the pool from a date agreed between the Trustee and the Minister (*Termination Date*). If a Pool is to be terminated, the provisions of clauses 22.2 and 22.5 inclusive apply as though references to the "*Fund*" were references to a "*Pool*".

## **22.8 Termination of participation of Employer on occurrence of certain events**

If any of the following events occur, the Trustee may, by notice to an Employer, terminate the participation of that Employer in a Fund:

- (a) if the Employer with the consent of the Minister terminates its Contributions to the Fund;
- (b) the Employer ceases to carry on business or is placed in liquidation; or
- (c) if there ceases to be any Members employed by that Employer in the Fund;
- (d) if a provision as to termination in an Employer's Deed of Adherence applies,

*[(d) inserted by Deed of Amendment No.18 operative 5/2/03]*

Paragraph (a) does not apply where it is provided in the Employer's Deed of Adherence that it does not apply. A provision as to termination in an Employer's Deed of Adherence may also confer on the Employer the right to terminate its participation in the Fund.

*[paragraph inserted by Deed of Amendment No.18 operative 5/2/03]*

## **22.9 Termination procedures**

On termination of participation by an Employer in the Fund pursuant to sub-clause 22.8:

- (a) the Trustee after consultation with the Employer shall specify a date (*Retirement Date*) upon which the Employer shall retire;
- (b) the Employer shall immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) Benefits which have become payable on or before the Retirement Date shall continue to be payable out of the Fund; and
- (d) the Trustee after obtaining the advice of the Actuary shall certify what proportion of the Assets of the Fund, including arrears, if any, of Contributions still to be made pursuant to sub-clause 22.8(b), is properly attributable to Members who were in the employ of the Employer at the Retirement Date.

## **22.10 Consequences of termination of participation of an Employer**

Upon the termination of an Employer's participation in the Fund, the Trustee shall notify all Members employed by that Employer (*Out-Going Members*) and from the date of that notice, the Out-Going Members shall cease to be entitled to contribute to the Fund without the consent of the Trustee.

## **22.11 Provision for Out-going Members**

The Trustee shall appropriate in respect of each Out-Going Member an amount equal to the Benefit which would be payable to the Member in accordance with the appropriate Division of this Deed if the Member's employment was terminated by the Employer on that date or such greater amount as the Trustee may determine (*Appropriated Amount*).

## **22.12 Payment of Appropriated Amount**

The Trustee shall pay or apply the Appropriated Amount in respect of each Out-Going Member to another Eligible Fund with the consent of the Out-Going Member or as otherwise permitted by Superannuation Law.

## **22.13 No further claims**

An Out-going Member to whom an Appropriated Amount has been paid or applied under sub-clause 22.12 shall have no right or claim against the Fund.

## **22.14 Final Accounts**

The Trustee shall cause final accounts of the Fund to be prepared and shall have those accounts audited by the Auditor.

## **23. PAYMENTS TO EMPLOYER**

### **23.1 Payment of surplus or reserve amounts**

Subject to sub-clause 23.2, no amount shall be paid to an Employer under this Deed other than in compliance with Superannuation Law.

### **23.2 Payment for services rendered**

The Trustee may pay an amount to an Employer in respect of services rendered by it in connection with the management or operation of the Fund.

## **24. COMPLAINTS**

### **24.1 Complaints procedure**

The Trustee will establish a complaints procedure to deal with complaints by Beneficiaries in a manner required by Superannuation Law. The procedure will be determined by the Trustee in its absolute discretion.

### **24.2 Appeal from Trustee's decision**

In addition to any right that a Beneficiary who became a Beneficiary pursuant to the Transfer Regulation referred to in clause 3.3 may have to challenge the Trustee's decision under Superannuation Law, such Beneficiary may appeal against any decision of the Trustee to the Industrial Relations Commission. Any appeal to the Industrial Relations Commission must be made within six months after the Beneficiary is notified of the decision or determination of the Trustee or within such further period as the Industrial Relations Commission allows. Any appeal to the Industrial Relations Commission shall be subject to the provisions of section 40 of the Administration Act.

### **24.3 Complaints to delay payment**

The Trustee shall have no obligation to pay any Benefit on the death of a Beneficiary (other than a person who became a Beneficiary pursuant to the Transfer Regulation referred to in clause 3.3) until:

- (a) the time to lodge a complaint or appeal by the persons notified by the Trustee under the Complaints Act has lapsed; and
- (b) any complaint or appeal has been dealt with.

## **25. NOTICES AND ELECTIONS**

### **25.1 Notice by Trustee**

Subject to Superannuation Law, any notice or information required to be given by the Trustee to:

- (a) Beneficiaries under this Deed shall be deemed to have been duly given if given in writing to a Beneficiary by letter addressed to the Beneficiary at the Beneficiary's last known address;

- (b) an Employer shall be deemed to have been duly given if given in writing to the Employer at the address advised in writing to the Trustee.

Any notice given by post shall be deemed to have been served at the time when it was posted and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted and a statement signed by the Trustee that it was so addressed and posted and when it was so posted shall be conclusive of that fact.

## **25.2 Notice to Trustee**

Any notice or information required to be given to the Trustee by a Beneficiary or Employer shall be deemed to be duly given if given in writing to the Trustee at the registered office of the Trustee. Any notice or information given by post shall be deemed to have been served at the time when it was posted and in proving such service it shall be sufficient to prove that the letter containing it was properly addressed and posted and a statement signed by the person giving the notice or information that it was so addressed and posted and when it was so posted shall be conclusive of that fact.

## **25.3 Making an application**

An application or election required to be made to the Trustee under the Rules must be in writing signed by the person making it.

## **25.4 Timing of application**

An election or application under the Rules is validly made if it is received at the registered office of the Trustee:

- (a) if a day is specifically prescribed by or under the Rules or rules of the Trustee for the receipt of an election or application of that class, not later than on that day; or
- (b) in any other case not later than at the end of the period of 2 months that next succeeds the vesting of the right to make the election or application.

## **25.5 The Trustee may accept late election or application**

The Trustee may, subject to such terms and conditions as it may impose, accept an election or application which is not received at the registered office of the Trustee within the time prescribed by or under the Rules or rules of the Trustee if the Trustee is satisfied that, in all the circumstances, it is desirable that the election or application should be accepted. If the Trustee accepts a late election or application the Trustee may deal with it as if it had been received within the time prescribed.

## **25.6 When an election or application takes effect**

An election or application under the Rules takes effect:

- (a) if under the Rules or rules of the Trustee, a day is specifically prescribed for the taking effect of an election of the same class, on that day; or
- (b) in any other case, on a day determined by the Trustee.

**25.7 Amendment or revocation of election or application**

An election or application under the Rules may, with the approval of the Trustee, be amended or revoked subject to such conditions as the Trustee may impose, which may include conditions as to:

- (a) in the case of an amendment of an election, the day or days on which, or the manner in which, the election is to take effect; and
- (b) in the case of revocation of an election, the day on which the revocation takes effect.

**26. COPIES OF TRUST DEED**

A copy of this Deed (but only including those Rules applicable to the Employer or Beneficiary seeking inspection) shall at all times during usual business hours be made available by the Trustee at the principal office of the Trustee for the inspection of Employers and Beneficiaries who shall be entitled to receive from the Trustee a copy of this Deed and those Rules applicable to that Employer or Beneficiary.

**27. MISCELLANEOUS**

**27.1 Currency**

All Benefits are expressed and paid in Australian currency unless expressly otherwise agreed by the Trustee with an Employer or Beneficiary.

**27.2 Governing law**

This Deed shall be governed by and construed in accordance with the law of New South Wales.

**27.3 Indemnities**

Each indemnity in this Deed is a continuing obligation and shall survive the termination of this Deed. It is not necessary for any person entitled to the benefit of an indemnity under this Deed to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

**EXECUTED** as a Deed in Sydney.

**EXECUTED** by  
**ENERGY INDUSTRIES**  
**SUPERANNUATION SCHEME**  
**PTY LTD** under its common seal  
in the presence of:

.....  
Signature

.....  
Print name

.....  
Office held

.....  
Signature

.....  
Print name

.....  
Office held

**SIGNED SEALED and DELIVERED** by  
the **HONOURABLE MICHAEL EGAN**  
**M.L.C., TREASURER** for and on behalf of  
**THE STATE OF NEW SOUTH WALES**  
in the presence of:

.....  
Witness

.....  
Print name

.....  
Signature

.....  
Print name

## ANNEXURE A

### Part 1

Nil

### Part 2

- New South Wales Electricity Transmission Authority
- Australian Inland Energy Water Infrastructure
- Country Energy
- Energy Australia
- Integral Energy Australia
- Electrical Trades Union of Australia (New South Wales Branch)
- Electricity Association of New South Wales
- Snowy Mountains Hydro-Electric Authority
- Pacific Power
- Integral Energy Gas Limited
- Superannuation Services Company Pty Limited
- Energy Industries Superannuation Scheme Pty Limited
- Energy Industry Ombudsman (NSW) Limited
- Integral Energy Appliance Sales Pty Limited
- InfoMet Pty Limited
- Aurecon Australia Pty Ltd (formerly Connell Wagner Pty Limited)
- Coal Services Pty Limited
- Chifley Financial Services Limited
- FuturePlus Financial Services Pty Limited

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**ANNEXURE B**

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**DEED POLL OF ADHERENCE**

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**DEED POLL** dated

by:

1.

*(Employer)*

**RECITALS**

- A. By a deed of trust dated [\*] (*Trust Deed*) a superannuation fund known as [\*] **Superannuation Fund (Fund)** was established for the purpose of the provision of superannuation benefits for those persons who become Members of the Fund.
- B. The Employer wishes to adopt the Fund for the purpose of the provision of superannuation benefits for those of its Employees who become Members of the Fund.

**IT IS DECLARED** as follows:

1. The Employer adopts the Fund for those of its Employees who become Members and agrees that it will in respect of each such Member whilst an Employee of the Employer contribute to the Fund such amounts as it is required to contribute under the Trust Deed and relevant Rules of the Fund.
2. The Employer agrees to be bound by the terms of the Trust Deed and undertakes to observe and perform in accordance with the Trust Deed such of the provisions of the Trust Deed as are applicable to an Employer.
3. The Employer shall pay the amount of all stamp duty due in respect of or as a result of the execution of this Deed of Adherence.
4. All words and expressions defined in the Trust Deed shall when used in this Deed of Adherence have the meaning ascribed to them in the Trust Deed.

EXECUTED as a Deed in .