

SCHEDULE 3
DIVISION C – (SANCS)

This document incorporates the following amendments

- Amendment 1 dated 27 April 1998
- Amendment 2 dated 20 October 2000
- Amendment 3 dated 11 January 1999 (*Division F*)
- Amendment 4 dated 30 June 1999
- Amendment 5 dated 30 June 1999
- Amendment 6 dated 1 October 1999 (*Deed*)
- Amendment 7 dated 4 May 2000
- Amendment 8 dated 14 August 2000
- Amendment 9 dated 28 March 2001
- Amendment 10 dated 21 November 2000 (*Division D*)
- Amendment 11 dated 28 September 2000 (*Division F*)
- Amendment 12 dated 30 April 2001
- Amendment 13 dated 29 March 2001 (*Division F only*)
- Amendment 14 dated 20 September 2002 (*Division B*)
- Amendment 15 dated 8 September 2002 (*Division A only*)
- Amendment 16 dated (*Deed only*)
- Amendment 17 dated (*Division A only*)
- Amendment 18 dated 5 February 2003
- Amendment 18A dated 17 July 2003 (*Deed and Division A*)
- Amendment 19 dated 5 September 2003 (*Division F*)
- Amendment 20 dated 1 June 2003 (*Division N*)
- Amendment 21 dated 21 November 2003
- Amendment 22 dated 24 September 2004
- Amendment 23 dated 18 February 2005 (*not Division C*)
- Amendment 24 dated 21 September 2005
- Amendment 26 dated 28 March 2008

**SCHEDULE 3
DIVISION C – (SANCS)**

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SCHEDULE 3

DIVISION C - (SANCS)

These are these Rules governing Division C of the Fund. As at the Transfer Day, the Rules of Division C are intended to reflect the rights, benefits and entitlements of members of the State Authorities Non-Contributory Superannuation Scheme, established under the *State Authorities Non-Contributory Superannuation Act 1987*, as at the time immediately before the Transfer Day.

1. INTERPRETATION

1.1 Definitions

In these Rules:

Attributed Salary, in relation to a Member at any time, means:

- (a) where the Member is a Full-Time Employee at that time, the Salary of the Member at that time, or
- (b) where the Member is a Part-Time Employee at that time, the Salary that would be payable to the Member at that time if employed as a Full-Time Employee.

Basic Benefit means the Basic Benefit referred to in rule 4.2.

Chief Executive Officer has the same meaning as in Division E.

Contribution Period means a named month or such other period as may be determined by the Trustee in relation to any class of persons or circumstances.

Co-contribution Amount means the Contributions made by the Government.

[inserted by Deed of Amendment No.[22] operative 24/9/04]

Co-contribution Member means a Member in respect of whom the Trustee receives a Co-Contribution Amount.

[inserted by Deed of Amendment No.[22] operative 24/9/04]

Executive Officer means an Employee who is:

- (a) a Chief Executive Officer, or
- (b) a Senior Executive Officer,
- (c) an office holder nominated for the purposes of section 11A of the *Statutory and Other Offices Remuneration Act 1975*;
- (d) an eligible person.

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

Exit Date in relation to a Member, means the day on which the Member ceases employment with an Employer, that cessation of employment being:

- (a) the only such cessation; or
- (b) where there has been more than one such cessation of employment of the Member the later or latest of those cessations of employment.

Final Average Salary, in relation to a Member, means the average of the Attributed Salaries paid or payable to the Member at the rates applicable:

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

- (a) on the Member's Exit Date;
- (b) on 31 December (or such other date as the Trustee may determine) last preceding the Member's Exit Date; and
- (c) on 31 December (or such other date as the Trustee may determine) last preceding the date referred to in paragraph (b).

Final Salary, in relation to a Member, means the rate of Attributed Salary paid or payable to the Member on the Member's Exit Date.

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

Full-Time Employee means a Member whose Salary Ratio is 1.

Other Contributions Account means the account established pursuant to subrule 2.2A.

[inserted by Deed of Amendment No.[22] operative 24/9/04]

Part-Time Employee means a Member whose Salary Ratio is less than 1 but at least 0.1.

Public Sector Executives Superannuation Scheme means the superannuation scheme established under *Public Sector Executives Superannuation Act 1989*, and when used in these Rules means Division E.

Reserve means an Account.

Resign, in relation to a Member, means cease to be employed by an Employer before reaching the age of 55 years, otherwise than on account of:

- (a) death, or
- (b) invalidity, where the Trustee is satisfied:
 - (i) that the ceasing to be employed was due, directly or indirectly to the permanent physical or mental incapacity of the Member (not caused by any act or default of the Member intended to produce that incapacity; and
 - (ii) that the Member is permanently unable, by reason of that incapacity, to be engaged in, or to be employed in, any remunerative occupation in which, in the opinion of the Trustee, it would otherwise be reasonable to expect the Member to engage.

Retire means cease (otherwise than by reason of death) in any manner to be employed by an Employer on or after reaching the age of 55 years.

Retrenchment, in relation to a Member, means the termination of the employment of the Member with an Employer where the employment is expressed by the Employer to be:

- (a) compulsorily terminated by the Employer on the ground that:
- (i) the Employer no longer requires the Member's services and, on termination of the Member's employment, does not propose to fill the Member's position; or
 - (ii) the work that the Member was engaged to perform has been completed; or
 - (iii) the amount of work that the Employer requires to be performed has diminished and, due to that fact, it has become necessary to reduce the number of persons employed by the Employer; or
- (b) terminated as a result of the acceptance by the Member of an offer by the Employer of terms of retrenchment made on a ground specified in paragraph (a).

Salary, in relation to a Member, means Salary of the Member, determined in accordance with rule 1.2 or 1.4 and expressed as an annual rate.

Salary Ratio, in relation to a Member at any time during a Contribution Period, means the number ascertained by dividing the Salary of the Member at the commencement of that Contribution Period by the Attributed Salary of the Member at that commencement.

Same-sex Partner means a person of the same gender as the Member or former Member who was living with the Member or former Member immediately prior to the death of the Member as a member of a couple on a genuine domestic basis and who is also a dependant.

[inserted by Deed of Amendment No.12 operative 1/7/01]

Senior Executive Officer has the same meaning as in Division E.

Spouse of a deceased Member or deceased former Member means:

- (a) the widow or widower, as the case may be, of the Member or former Member; or
[amended by Deed of Amendment No.[1] operative 1/7/97]
- (b) if the Member or former Member was a man and, at the time of his death, he was living with a woman as her husband on a bona fide domestic basis the woman with whom he was so living; or
- (c) if the Member or former Member was a woman and, at the time of her death, she was living with a man as his wife on a bona fide domestic basis, the man with whom she was so living; or
- (d) a Same-sex Partner of the member or former Member.
[(d) inserted by Deed of Amendment No.12 operative 1/7/01]

1.2 Definition of Salary

1.2.1 For the purposes of these Rules, **Salary**, in relation to a Member (other than an Executive Officer) means the sum of:

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- (a) the remuneration, salary or wages payable in money to the Member in the Member's capacity as an Employee, as reported to the Trustee from time to time by the Member's Employer, including:
- (i) a loading in respect of any shift allowance, as determined in accordance with rule 1.3;
 - (ii) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment; and
 - (iii) weekly workers compensation paid to the Member, as from the date the weekly workers compensation commences to be paid,

but not including the excluded amounts or allowances referred to in subrule 1.2.3, and
- (b) if approved employment Benefits are provided to the Member, the cost of providing the approved employment Benefits, as determined by the Trustee.

1.2.2 The weekly workers compensation to be treated as Salary for the purposes of these Rules does not include any amount by which the aggregate of:

- (a) the weekly workers compensation paid to an injured Member; and
- (b) the salary actually paid to the Member while partially incapacitated,

exceeds the salary that the Member would probably have been earning but for the injury (assuming the Member had continued to be employed in the same or some comparable employment).

1.2.3 The excluded amounts or allowances are:

- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime;
- (b) except to the extent determined in accordance with rule 1.3, as referred to in subrule 1.2.1, an amount paid as shift allowance;
- (c) except to the extent that this rule 1.2 otherwise provides, a relieving allowance;
- (d) an expense allowance or an allowance for travelling, subsistence or other expenses;
- (e) an equipment allowance;
- (f) an amount paid for rent or as a residence, housing or quarters allowance; and
- (g) an amount of weekly workers compensation excluded by subrule 1.2.2.

1.2.4 If a Member's Employer, or a person authorised to do so on behalf of the Employer, certifies in writing to the Trustee that a relieving allowance to be, or being, paid to the Member in the Member's capacity as an Employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from:

- (a) the date on which the certificate is lodged with the Trustee; or

- (b) the date from which the allowance becomes payable,
whichever is the later, Salary for the purposes of these Rules.
- 1.2.5 If a relieving allowance has been paid to a Member in the Member's capacity as an Employee for a continuous period of 1 year that ends after 1 April 1988 and, during that period, the allowance has not been treated as part of the Member's Salary in accordance with subrule 1.2.8, the allowance shall, as from the expiration of that period of 1 year, be treated as part of the Member's Salary while its payment to the Member continues.
- 1.2.6 If a Member is on secondment to another Employer, the Salary of the Member for the purposes of these Rules is the Salary paid or payable to the Member by the other Employer.
- 1.2.7 The Employer may by notice in writing to Trustee determine, unconditionally or subject to conditions, that subrule 1.2.8 applies:
- (a) to a particular Member who is on secondment but not to another Employer; and
- (b) generally during the period of that secondment, or during such other period as is determined, being, in either case, a period commencing before, on or after the date of the determination.
- 1.2.8 During the period in which this subrule 1.2.8 is declared pursuant to subrule 1.2.7 to apply to a Member on secondment, the Member's Salary shall, for the purposes of these Rules, be that paid or payable in respect of the employment to which he or she is seconded.
- 1.2.9 In this rule 1.2:

approved employment benefit means a Benefit provided to a Member at the cost of the Member's Employer (being a Benefit of a private nature) that is approved by the Trustee, for the purposes of this rule 1.2 in relation to the Member or a class of Members of which the Member is a member.

shift allowance means an allowance paid to a Member in respect of shift work performed by the Member, and includes amounts paid as penalty rates.

weekly workers compensation, in relation to a Member, means weekly payments of compensation under the *Workers Compensation Act 1987* (or the provisions of the *Workers Compensation Act 1926* as applied by that Act) payable to the Member because the Member is partially incapacitated for work through injury.

1.3 Determination of loading in respect of shift allowance

- 1.3.1 In this rule 1.3:

base salary in relation to a Member, means the remuneration, salary or wages payable to the Member under an award of an industrial tribunal or under an industrial or enterprise agreement, but excluding all allowances payable to the Member;

relevant period in relation to a Member, means the period of 12 months ending with 31 December immediately preceding the date on which the Salary of the Member is to be calculated for the purposes of these Rules;

relevant shift means a shift worked by a Member in respect of which a shift allowance is payable by an Employer;

trade union means:

- (a) an industrial organisation of employees registered or recognised as such under the *Industrial Relations Act 1991*; or
- (b) an association of employees registered as an organisation under the *Industrial Relations Act 1988* of the Commonwealth.

1.3.2 For the purposes of subrule 1.2.1(a), the loading (if any) to be treated as part of a Member's Salary for the purposes of these Rules must be determined by reference to subrule 1.3.3, 1.3.4 or 1.3.5, according to whichever is appropriate to the Member.

1.3.3 If:

- (a) there is in force an agreement between, or a practice accepted by, a trade union and the Employer of a Member which was in force immediately before 18 December 1987; and
- (b) the effect of the agreement or practice is that amounts that the Employer pays to the Member as shift allowances for relevant shifts that the Member works during a relevant period are treated as a loading for superannuation purposes; and
- (c) the total of those amounts is greater than that which would be determined under subrule 1.3.4 for that year in respect of the Member,

then, for the purposes of subrule 1.2.1(a), that total is the Member's loading for those shift allowances.

1.3.4 Subject to subrule 1.3.3 or 1.3.5 if a Member is paid shift allowances for shifts worked by the Member during a relevant period, then, for the purposes of subrule 1.2.1(a), the Member's loading for those allowances is to be determined by reference to the number of shifts the Contributor is taken to have worked (as calculated in accordance with subrule 1.3.6) during the relevant period. The loading is:

[amended by Deed of Amendment No.5 operative 30/6/99]

- (a) if during the relevant period the Member is taken to have worked not more than 104 relevant shifts - no amount; or
[amended by Deed of Amendment No.5 operative 30/6/99]
- (b) if during the relevant period the Member is taken to have worked more than 104 but not more than 156 relevant shifts - an amount equal to 10% of the Member's base salary for that period; or
[amended by Deed of Amendment No.5 operative 30/6/99]
- (c) if during the relevant period the Member is taken to have worked more than 156 but not more than 208 relevant shifts - an amount equal to 20% of the Member's base salary for that period; or

[amended by Deed of Amendment No.5 operative 30/6/99]

- (d) if during the relevant period the Member is taken to have worked more than 208 relevant shifts - an amount equal to 20% of the Member's base salary for that period.

[amended by Deed of Amendment No.5 operative 30/6/99]

1.3.5 If the amounts actually paid or payable to a Member as shift allowances for shifts that the Member has worked during a relevant period are less than the loading determined for that period in respect of the Member in accordance with subrule 1.3.4, then, for the purposes of subrule 1.2.1(a), the total of those amounts is the Member's loading for those allowances.

1.3.6 For the purposes of subrule 1.3.4, the number of shifts a Contributor is taken to have worked during a relevant period, being shifts for which a shift allowance is paid, is the number calculated as follows:

$$N = \frac{H}{H_o} \times S$$

where:

N is the number of such shifts the Contributor is taken to have worked during the relevant period.

H is the number of hours per shift regularly required to be worked in such shifts during the relevant period.

H_o is the smallest number of hours per shift regularly required to be worked (whether by the Contributor or any comparable worker) in such shifts during any calendar year after 1987, including the relevant period.

S is the number of such shifts the Contributor actually worked during the relevant period.

[inserted by Deed of Amendment No.5 operative 30/6/99]

1.4 Salary of Executive Officers

1.4.1 For the purposes of these Rules, the Salary of an Executive Officer is the salary as last nominated or changed in accordance with this rule 1.4.

1.4.2 An amount of Salary for the purposes of these Rules must be nominated to an Executive Officer's Employer by the officer, on, or as soon as practicable after, being appointed as an Executive Officer. An amount may also be nominated to the Employer by the officer on, or as soon as practicable after, being reappointed, or appointed to another position, as an Executive Officer.

1.4.3 The amount nominated is to be not less than the monetary remuneration payable to the Executive Officer at the date of nomination and not more than the total value of the remuneration package paid to the officer (less the cost of providing Employer's contributions to superannuation and any performance-related incentive payment).

1.4.4 If an Executive Officer fails to nominate an amount of Salary within 28 days of first being appointed as an Executive Officer or within such further period as the Trustee

may allow, the officer is taken to have nominated an amount of Salary that is equal to the monetary remuneration payable to the officer at the end of the applicable period.

- 1.4.5 An Executive Officer may, from time to time, by notice to the officer's Employer elect to reduce the amount of Salary nominated under this rule 1.4, but not so that the amount is less than the monetary remuneration payable to the officer at the date of the election.
- 1.4.6 An Executive Officer may, from time to time, by notice to the officer's Employer elect to increase the amount of Salary nominated under this rule 1.4, but not so as to increase the amount nominated by a percentage of that amount that is more than the percentage by which the remuneration package of the officer has increased since the amount of Salary was last nominated or changed.
- 1.4.7 An Employer must notify the Trustee of a nomination or election under this rule 1.4. Any such nomination or election takes effect on the date of notification to the Trustee or on such other date as the Trustee may determine with the consent of the Executive Officer concerned.
- 1.4.8 Nothing in this rule 1.4 requires the nominated amount of salary to be increased if, because of a variation in the remuneration package of an Executive Officer or in the proportions of the remuneration package comprising monetary remuneration and employment Benefits of the officer, the amount of Salary as last nominated or changed for the purposes of this rule 1.4 is less than the monetary remuneration of the officer.
- 1.4.9 In this rule 1.4, the monetary remuneration payable to an Executive Officer is:
- (a) if the officer is a Chief Executive Officer or Senior Executive Officer, within the meaning of the Public Sector Management Act 1988, the monetary remuneration payable in accordance with the *Public Sector Management Act 1988*; or
 - (b) if the officer is an office holder nominated for the purposes of section 11A of the *Statutory and Other Officer's Remuneration Act 1975*, the remuneration payable to the officer as reduced under that section by the cost of employment benefits provided to the officer; or
 - (c) if the officer is an Employee of an Employer to whom Division E applies, the monetary remuneration payable to the officer.

1.5 Determination of Eligible Service

- 1.5.1 The eligible service accrued by a Member for any day is such proportion of a day as is equal to the Salary Ratio of the Member on that day.
- 1.5.2 A Member who is on leave without pay that is not prescribed leave has a Salary Ratio of 0 in respect of that leave.
- 1.5.3 A continuous period of leave without pay is not to be regarded as leave without pay for the purposes of this rule 1.5 if the period is not prescribed leave and the period is 5 days or less.
- 1.5.4 For the purposes of subrules 1.5.2 and 1.5.3:

leave without pay, in relation to a Member, means a period of leave from employment with an Employer (otherwise than on secondment as referred to in rule 1.2) during which the Member is not entitled to receive payment of Salary from the Employer;

prescribed leave, in relation to a Member, means leave without pay during which the Member on leave is absent from employment with an Employer:

- (a) because of a grant of sick leave; or
- (b) for a period during which the Member receives periodic payments under an Act providing compensation for workers' injuries; or
- (c) because of a grant of maternity leave; or
- (d) under an agreement with the Employer for the secondment of the Member to employment that is not employment with a person who is not an Employer within the meaning of these Rules; or
- (e) for the purpose of enabling the Member to perform trade union duties unless, in a particular case, the Employer certifies to the Trustee in writing that this paragraph is not to apply; or
- (f) for the purpose of enabling the Member to perform duties that the Employer certifies to the Trustee in writing to be in the interests of the Employer or the State; or
- (g) while on service with the naval, military or air forces of the Commonwealth; or
- (h) in other circumstances decided by the Trustee for the purposes of this rule 1.5.

2. MAINTENANCE AND ADMINISTRATION OF THIS DIVISION

2.1 Establishment and maintenance of funds

2.1.1 The Trustee shall cause to be held in Pool B, in respect of this Division:

- (a) contributions made by Employers;
- (b) income derived from investment of assets held in respect of this Division, and any profit made from realisation of those investments, and
- (c) money borrowed for the purposes of this Division.

2.1.2 The Trustee shall cause to be paid from Pool B, in respect of this Division:

- (a) administration costs incurred by the Trustee;
- (b) any Tax; and
- (c) the Benefits payable under these Rules.

2.2 Reserves for Employers

- 2.2.1 The Trustee shall establish and maintain a separate employer reserve, or separate employer reserves as the case may be.
- 2.2.2 There shall be credited to such employer reserve the Contributions made by the Employer or Employers to whom the reserve relates.
- 2.2.3 There shall be debited to such employer reserve:
- (a) the amount of any Benefit paid to, or in relation to, a Member who, immediately before the Benefit became payable, was an Employee of the Employer or an Employer to whom the reserve relates; and
 - (b) administration costs incurred by the Trustee in relation to the Employer or an Employer to whom the reserve relates.
- 2.2.4 The Trustee may, after obtaining actuarial advice, adjust the amount credited to an employer reserve by crediting or debiting an amount, if it appears to the Trustee appropriate to do so because of a change in the constitution or nature of an Employer.
- 2.2.5 Subrule 2.2.4 does not apply to a change in the constitution or nature of an Employer because of a Government privatisation initiative.

2.2A Co-contributions and other contribution amounts

[inserted by Deed of Amendment No.[22] operative 24/9/04]

- 2.2A.1 The Trustee shall establish a separate reserve in relation to co-contributions and other contributions and within that reserve an Other Contributions Account in respect of each Member.
- 2.2A.2 The Trustee shall credit to each Other Contributions Account:
- (a) the Co-contribution Amount in relation to each Co-contribution member; and
 - (b) any other amounts or contributions in respect of the Member; and
 - (c) any income derived from the investment of assets attributable to the Other Contributions Account, and any profit made from realisation of those investments.
- 2.2A.3 The Trustee shall debit from each Other Contributions Account:
- (a) administration costs incurred by the Trustee;
 - (b) any Tax; and
 - (c) the Benefits payable under these Rules.

2.3 Adjustment of reserves and accounts for interest etc

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

- 2.3.1 Whenever appropriate, the Trustee must fix a rate of interest for the purposes of subrule 2.3.2 after having regard to:
- (a) the income in respect of this Division;

- (b) any Tax in respect of the investment of assets held to provide Benefits under this Division; and
- (c) such other matters as it considers relevant.

2.3.2 Whenever appropriate, the Trustee must adjust each of the reserves and any accounts established under this Part 2 by applying the rate of interest that is currently fixed under subrule 2.3.1

2.3.3 The Trustee may fix a rate of interest for the purpose only of enabling specific reserves or accounts to be adjusted.

2.4 Source of administration costs payments

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

The administration costs payable in respect of this Division are to be debited to the Employer Reserves and such other reserves and accounts in the Fund as the Trustee considers appropriate.

2.5 Funds, accounts and reserves generally

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

2.5.1 The Trustee must:

- (a) credit to this Division or, as the case may be, to the appropriate reserve or account any amount that is required by or under the Deed or Rules to be debited to this Division or to that reserve or account; and
- (b) debit to this Division or to the appropriate reserve or account any amount that is required by the Deed or Rules to be debited to this Division or to that reserve or account.

2.5.2 The Trustee may:

- (a) credit to this Division or, as the case may be, to the appropriate reserve or account any amount that is permitted by or under the Deed or Rules to be credited to this Division or to that reserve or account; and
- (b) debit to this Division or to the appropriate reserve or account any amount that is permitted by or under the Deed or Rules to be debited to this Division or to that reserve or account.

3. CONTRIBUTIONS BY EMPLOYERS

3.1 Contributions

3.1.1 If an Employee is employed by an Employer, the Employer must pay at such times as the Trustee may require, Contributions at a rate determined by the Trustee.

3.1.2 The rate is to be determined by the Trustee after obtaining actuarial advice.

3.1.3 In determining the contributions payable by an Employer, the Trustee is to have regard to the amount required to meet the full costs of the liabilities under these Rules of all Employers.

- 3.1.4 The Trustee may require any such Employer to pay into the fund additional Contributions for a specified period if it appears to the Trustee that there is insufficient money in the reserve for Employers to meet the Employers' liabilities under these Rules.

3.2 Acceptance of contributions

The Trustee may determine, for the purposes of Superannuation Law, that it must not accept contributions by or in respect of a Member. The period during which such Contributions may not be made is not included as eligible service for the purposes of calculating the Basic Benefit.

3.3 Transfer of Members

- 3.3.1 The Trustee shall determine the value of the Basic Benefit at the date of cessation of employment with a former Employer and shall if the Trustee has separate employer reserves:

- (a) debit the Employer reserve of the former Employer with that value; and
- (b) credit the Employer reserve of the new Employer with that value.

4. BENEFITS

4.1 Definitions

- 4.1.1 In Part 4:

Final Average Salary, in relation to a Member, means the average of the Attributed Salaries paid or payable to the Member at the rates applicable:

- (a) on the Member's Exit Date;
- (b) on 31 December (or such other date as the Trustee may determine) last preceding the Member's Exit Date; and
- (c) on 31 December (or such other date as the Trustee may determine) last preceding the date referred to in paragraph (b).

Final Salary, in relation to a Member, means the rate of Attributed Salary paid or payable to the Member on the Member's Exit Date.

- 4.1.2 Different dates may be determined by the Trustee for the purposes of the definition of Final Average Salary in subrule 4.2.1, so as to apply differently according to different classes of Members.

4.2 Basic Benefit

- 4.2.1 The Basic Benefit provided by these Rules for a Member is an amount equal to the amount calculated in accordance with the formula:

$$B = (0.03 \times F \times Y) + C$$

[formula amended by Deed of Amendment No.[22] operative 24/9/04]

where:

B represents the amount to be ascertained,

F represents:

- (a) in the case of the Member's death or Retrenchment, or the Member ceasing to be employed because of physical or mental incapacity, before reaching the age of 55 years the Member's Final Salary; or
- (b) in any other case the Member's Final Average salary; and

Y represents the years of eligible service on a daily basis, commencing on or after 1 April 1988.

C represents the amount standing in the Other Contributions Account on the Member's Exit Date.

[inserted by Deed of Amendment No.[22] operative 24/9/04]

4.2.2 If the Trustee makes a determination under rule 4.8 in relation to a Basic Benefit to be provided by this rule 4.2, the amount of that Benefit is reduced by the amount specified in the Trustee's determination.

4.2.3 For the purpose of determining the amount of a Basic Benefit provided by rule 4.5 that becomes payable in respect of a person within 12 months after the person:

- (a) has been appointed as a Chief Executive Officer or Senior Executive Officer; or
- (b) has been nominated as an office holder for the purposes of section 11A of the *Statutory and Other Officer's Remuneration Act 1975*,

the person's Salary is taken to be his or her salary as a Member immediately before the appointment or nomination took effect.

4.3 Benefit immediately payable

4.3.1 The Basic Benefit in respect of a person is payable by the Trustee when:

- (aa) the person has satisfied a condition of release which does not have a nil cashing restriction – by transfer of the amount to Division F; or

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

- (a) the person has satisfied a condition of release which has a nil cashing restriction; or
- (b) the person has produced to the Trustee written approval of APRA for payment of the Benefit; or

[amended by Deed of Amendment No7 operative 4/5/00]

- (c) the Trustee has given approval for payment of the Benefit under guidelines established by APRA.

[amended by Deed of Amendment No7 operative 4/5/00]

4.3.2 The Basic Benefit in respect of a person is payable by the Trustee if the person becomes eligible under another Eligible Fund for a Benefit that is of the same kind as

a Benefit provided by these Rules and the Trustee has been requested to pay the Benefit to the other Eligible Fund.

4.3.3 The Basic Benefit in respect of a former Member is payable:

(a) unless the former Member has died, in accordance with rule 4.3.2 or, subject to Superannuation Law, to the former Member; or

(b) if the former Member has died, in accordance with clause 14.17A.

[amended by Deed of Amendment No.9 operative 27/6/01; replaced by Deed of Amendment No. [24] operative 24/10/05]

(c) *[amended by Deed of Amendment No8 operative 1/7/97; amended by Deed of Amendment No.9 operative 27/6/01; deleted by Deed of Amendment No. [24] operative 24/10/05]*

4.3.4 For the purposes of the payment under rule 4.3.1(c) of a Benefit on compassionate grounds, or severe financial hardship the Trustee may only pay the Benefit if the Trustee is satisfied that the circumstances are such that a Benefit would be payable on the grounds of severe financial hardship or compassionate grounds as the case may be.

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

4.3.5 If a person has been paid a benefit on compassionate grounds or on the grounds of severe financial hardship and the person subsequently becomes entitled to another Benefit under this Division, the Trustee must reduce the amount of the subsequent benefit to take into account the Benefit previously paid and associated loss of earnings to the Fund.

[inserted by Deed of Amendment No.[1] operative 27/4/98; amended by Deed of Amendment no. 7 operative 27/4/98 and 4/5/00]

4.4 Benefit on attaining 65

4.4.1 A person who attains 65 years of age may elect to be paid the Basic Benefit to which the person would be entitled on retirement at that age or may elect to defer the whole of the Benefit.

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

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

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

4.4.4 If an amount is deferred under this rule 4.4, it is payable in the same way as a Benefit under rule 4.5.

4.4.5 A person to whom this rule 4.4 applies is not entitled to any other Benefit under these Rules in respect of the same period of service, or to be paid or defer a Benefit under this rule 4.4 more than once.

4.5 Benefit to be Deferred

4.5.1 The Basic Benefit in respect of a person must be deferred by the Trustee if the Benefit is not otherwise payable under these Rules.

4.5.2 The Basic Benefit must also be deferred by the Trustee when:

- (a) a Member who is a Member of Division E ceases to be a contributor to any other superannuation fund established by or under an Act; or
- (b) a Member who is not a member of any other superannuation fund established by or under an Act becomes a Member of Division E; or
- (c) a Member becomes eligible under another superannuation fund for a Benefit that is of the same kind as a Benefit provided by these Rules and the Trustee has not been requested to pay the Benefit to another superannuation fund.

4.5.3 The Basic Benefit deferred under this rule 4.5 must be paid by the Trustee when:

- (a) the person has satisfied a condition of release which has a nil cashing restriction; or
- (b) the person has produced to the Trustee written approval of APRA for payment of the benefit; or
[amended by Deed of Amendment No.7 operative 4/5/00]
- (c) otherwise where the Trustee is required to pay the Benefit under Superannuation.

4.5.4 The Basic Benefit in respect of a former Member is payable:

- (a) unless the former Member has died, in accordance with rule 4.3.2 or, subject to Superannuation Law, to the former Member; or
- (b) if the former Member has died, in accordance with clause 14.17A.
[amended by Deed of Amendment No.9 operative 27/6/01; replaced by Deed of Amendment No. [24] operative 24/10/05]
- (c) *[replaced by Deed of Amendment No.8 operative 1/7/97; amended by Deed of Amendment No.9 operative 27/6/01; deleted by Deed of Amendment No.[24] operative 24/10/05]*

4.6 Deferral of Benefit for Members in certain circumstances

[heading amended by Deed of Amendment No.2 operative 20/10/00]

4.6.1 This rule 4.6 applies to a Member:

- (a) who, as a result of a single reduction of Salary, has undergone a reduction of 20% or more in Attributed Salary; and
- (b) whose Employer certifies the matter referred to in paragraph (a).
[replaced by Deed of Amendment No.2 operative 20/10/00]

4.6.2 The fact that a person undergoes more than one Attributed Salary reduction of 20% or more does not mean that the person ceases to be a person to whom this rule 4.6 applies.

4.6.3 In this rule 4.6, **exit date**, in relation to a Member to whom this rule 4.6 applies, means the day immediately preceding the day of the reduction in Attributed Salary in relation to which the Member makes an election under subrule 4.6.4.

4.6.4 A Member to whom this rule 4.6 applies may elect to defer his or her Benefit under these Rules in accordance with this rule 4.6.

4.6.5 A Member may make only one election under this rule 4.6 but the election may relate to any single reduction in Attributed Salary of 20% or more (not just the first reduction that occurs).

[amended by Deed of Amendment No.2 operative 20/10/00]

4.6.6 The Benefit is deferred from the exit date.

4.6.7 The value of a deferred Benefit in respect of a Member to whom this rule 4.6 applies is to be calculated in accordance with rule 4.2 as if the Member had ceased employment.

4.6.8 A Benefit deferred under this rule 4.6 may only be paid in accordance with rule 4.5.

[amended by Deed of Amendment No.4 operative 1/7/99]

4.7 Competing claims for Spouses' Benefits

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

4.8 Power of the Trustee to reduce Benefits to offset certain Tax liabilities

4.8.1 Whenever:

- (a) a right to a Benefit accrues to or in respect of a Member or former Member; and
- (b) the Trustee has paid or is liable to pay Tax in respect of Employers' contributions under this Division; and
- (c) a portion of that Tax is referable to that Benefit,
 - the Trustee must, subject to subrule 4.9.2:
- (d) calculate the amount necessary to offset the Trustee's liability to pay Tax so far as it is referable to that Benefit; and
- (e) accordingly make a determination reducing the Benefit by the amount so calculated.

4.9 Benefit Reduction Provisions

4.9.1 In this rule 4.9, *taxable rate* means 1 July 1988.

4.9.2 Prescription of Benefits

- (a) The kinds of Benefits to which rule 4.8 applies are the Benefits provided by rules 4.1 and 4.5.
- (b) The Benefits referred to in paragraph (a) do not include a Benefit payable as a result of the death of a Member.

4.9.3 Reduction of Basic Benefit - ordinary cases

- (a) Whenever the Basic Benefit:
 - (i) is payable under rule 4.3 in respect of a Member; or
 - (ii) is preserved in respect of a Member in accordance with rule 4.5,

the reduction in Benefit prescribed for the purposes of rule 4.8 is the amount calculated in accordance with the formula set out in paragraph (b).

- (b) For the purposes of paragraph (a), the formula is:

$$R = 0.03 \times F \times Z \times 0.15$$

where:

R represents the amount of the reduction;

F represents:

- (a) in the case of the Member's resignation or retirement – the Member's Final Average Salary; or
- (b) in any other case - the Member's Final Salary;

Z represents the Member's years of eligible service calculated on a daily basis, commencing on or after the taxable date.

- (c) This subrule 4.9.3 does not apply if the Basic Benefit is payable as a result of the death of a person who was, immediately before death, a Member.

4A SUPERANNUATION INTEREST UNDER THE FAMILY LAW ACT

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

- 4A.1 Where a Family Court Order, a Superannuation Agreement or Flag Lifting Agreement applies, the value of the Non-Member Spouse's entitlement shall be calculated in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act.
- 4A.2 the Member's Superannuation Interest is reduced in accordance with the valuation methodology set out by the Actuary from time to time in accordance with the Family Law Act.