

Consolidated trust deed

Westpac Personal Superannuation Fund

Westpac Securities Administration Limited (Trustee)

Signed: 
Director

Date: 1 March 2006

Signed: 
Director

Date: 1 March 2006

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THIS DEED is made 14th July, 1994

BY WESTPAC SECURITIES ADMINISTRATION LIMITED
A.C.N. 000 049 472

RECITALS:

- A. By a trust deed dated 26th November 1987 as amended from time to time (“**Deed**”) a superannuation fund known as the Westpac Personal Superannuation Fund (“**Fund**”) was established.
- B. The Trustee is the trustee fro the time being of the Fund.
- C. Clause 19 empowers the Fund’s trustee to add to, amend or alter the Deed in any respect provided certain conditions are satisfied.
- D. The Trustee by this Deed wished to consolidate all the provisions of the Deed and to make certain further amendments to the provisions of the Deed.
- E. The Trustee is satisfied that the amendments as set out in this Deed are in accordance with the requirements of Clause 19.

THIS DEED WITNESSES:

- 1 From the date of this deed, the Deed (including the rules of the Fund) is added to, repealed, amended or altered in the manner set out in this Deed.
- 2. All the provisions of the Deed are repealed and replaced by the provisions of the Schedule to this deed, except as follows:
 - (i) any provisions constituting the Fund are not repealed; and
 - (ii) the Fund is to continue in existence and no provision of this deed is to be construed as constituting a new Fund. The assets of the Fund continue to be vested in the Trustee to be applied in the manner set forth in the schedule to this Deed.

SCHEDULE

INTERPRETATION

1.1 Definitions

Unless a contrary intention appears:

“**Benefit**” means the amount paid or payable (as the case may be) from the Fund to or in respect of a Member including without limitation the matters referred to in Clauses 1.4 and 1.5 of the Rules and the Member’s Specifications.¹

“**Binding Death Benefit Payment Instruction**” means a Death Benefit Payment Instruction received by the Trustee prior to the Member’s death in circumstances where:

it is valid under Rule 5.6; and

the Trustee has conditionally consented to it under Rule 5.7; and

(c) the Trustee has not revoked that consent under Rule 5.8;² “**Child**” includes a step child, ex nuptial, a legally adopted child and a person recognised by the Trustee as an adopted child.

“**Commencement Date**” means the first day on which the Trustee accepts contributions to the Fund.

“**Complying Superannuation Fund**” means a complying superannuation fund for the purposes of Part IX of the Income Tax Assessment Act and the SIS Legislation.

“**Contribution**” means any contribution paid to the Fund by or on behalf of a Member or Employer.

“**Death Benefit Instruction Commencement Date**” means 16 March 2000;³

“**Death Benefit Payment Instruction**” means the most recent instruction given to the Trustee by the Member which the trustee is able to understand and which:

- (a) nominates one or more of the Member’s Dependants or Legal Personal Representative as the beneficiaries of the Death Benefit;
- (b) specifies the amount or proportion of the Death Benefit that each nominee is to receive;

¹ Definition of Benefit inserted by amending deed dated 15/12/1997

² Definition of “Binding Death Benefit Payment Instruction” inserted by amending deed dated 17 March 2000.

³ Definition of “Death Benefit Instruction Commencement Date” inserted by amending deed dated 17 March 2000.

- (c) if invited by the Trustee, specifies the mode of payment of the Death Benefit including by reference to a taxation component of the Benefit⁴ to each nominee;

appears to be signed and dated by the Member;

contains any other information required or permitted by the Trustee;

- (f) is in a form approved by the Trustee; and

- (g) has not been revoked by the Member under Rule 5.4

“Deed” means this Trust Deed by which the Plan has been established as amended from time to time and to which the Rules are attached and form part.

⁶“Dependant” in relation to a Member or former Member has the same meaning as this term has in the *Superannuation Industry (Supervision) Act 1993*.

“Eligible Fund” means a Superannuation Fund, an Approved Deposit Fund, and Eligible Rollover Fund, a Rollover Annuity or any like fund or Annuity or any other entity which the Trustee determines to be an Eligible Fund in respect of which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not, in the opinion of the Trustee, be in breach of the Relevant Requirements.

“Employee” means a person who is in the employment of an Employer.

“Employer” means any employer or any other person who is entitled to make contributions to a Complying Superannuation Fund in respect of an Employee.

“Insurer” means AMPAC Life Limited

⁷“Legal Personal Representative” has the meaning given to that term in SIS and, for the purposes of the Rules, a deceased Member or Beneficiary may be deemed not to have a Legal Personal Representative if:

- (a) the Death Benefit is greater than the Probate Limit and, to the Trustee’s knowledge:

- (i) the Member or Beneficiary died with a valid will; and

⁴ Phrase “including by reference to a taxation component of the Benefit” inserted by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

⁵ Definition of “Death Benefit Payment Instruction” inserted by amending deed dated 17 March 2000.

⁶ Amended by Deed of Amendment effective 1 July 2005

⁷ Definition of “Legal Personal Representative” inserted by amending deed dated 24 February 2006.

- (ii) probate has not been granted within 6 months of the Member's or Beneficiary's death; or
- (b) the Trustee has a reasonable belief that the Member or Beneficiary died without a valid will and letters of administration have not been issued within 6 months of the Member's or Beneficiary's death.

However, the Trustee may alter, either generally or for a particular benefit, the periods of 6 months referred to in paragraphs (a) and (b) of this definition.

"Life Policy" means a policy of insurance issued by the Insurer.

"Member" means:

- (a) an Employee who has been accepted for membership of the Fund;
- (b) a person who has applied for and has been accepted for membership of the Fund;
- (c) such other person who may become a Member of the Fund under SIS Legislation and who has applied for and has been accepted for membership of the Fund,

being a person who has not ceased to be a Member of the Fund.

"Member Specifications" means in relation to each Member the details of the following:

- (a) the level of Contributions by the Member;
- (b) the level of Contributions by an Employer in relation to the Member (if any);
- (c) the amount of Death Benefit;
- (d) the amount of Permanent Disablement Benefit;
- (e) the amount of Temporary Disablement Benefit;
- (f) such other matters and things as the Trustee considers desirable. Members Specifications do not, however, include a Death Benefit Payment Instruction.⁸

"Non-Member Spouse" means a person who is a Spouse or former Spouse of a Member and in respect of whom the Trustee has received notice of a Payment Split.⁹

Words "Members Specifications do not, however, include a Death Benefit Payment Instruction." Inserted by amending deed dated 17/3/2000

⁹ Inserted by Amending Deed dated 17/12/2002.

“Payment Split” has the meaning given to that expression in the Family Law Act.¹⁰

“Preservation Requirements” means any requirement imposed by SIS Legislation that requires that a Benefit not be paid to a Member until the occurrence of certain events or be paid only in a certain manner or form or to an Eligible Fund the non-compliance with which requirement would result or may result in the Fund failing to be a Complying Superannuation Fund in any Year of Income.

“Probate Limit” means, in respect of a Death Benefit, the limit set by the Trustee, either generally or for a particular Benefit, up to which the Trustee will pay all or part of the Death Benefit to a deceased Member’s Legal Personal Representative without a grant of probate. If no limit has been set, the Probate Limit is deemed to be zero;¹¹

“Relevant Member” means the Member whose Contribution to the Fund resulted in the Trustee being assessed as liable for Surcharge.¹²

“Relevant Requirements” mean:

- (a) the SIS Legislation and the Family Law Act, 1975¹³; and
- (b) any other legislation, or the requirements of the Responsible Authority or any other competent authority which must be satisfied for the Fund to qualify for the most favourable taxation treatment available for superannuation funds; and
- (c) the Statutory Requirements.

“Residual Death Benefit” means the whole, or any part, of a Death Benefit which the Trustee cannot pay under Rule 5.5.¹⁵

“Responsible Authority” means the Insurance and Superannuation Commissioner within the meaning given to that term by the SIS Legislation or such other person or body empowered to administer the Relevant Requirements.

“Rules” means the rules attached to and forming part of this Deed as amended from time to time.

“Section” means a Clause or group of Clauses in the Deed and the Rules identified by the same initial number.¹⁶

“SIS Legislation” means:

¹⁰ Inserted by Amending Deed dated 17/12/2002.

¹¹ Definition of “Probate Limit” inserted by amending deed dated 17 March 2000.

¹² Definition of Relevant Member inserted by amending deed dated 15/12/1997

¹³ Inserted by Amending Deed dated 17/12/2002.

¹⁴ Sub-clause (c) inserted by amending deed dated 15/12/1997

¹⁵ Definition of “Residual Death Benefit” inserted by amending deed dated 17 /3/2000.

¹⁶ Definition of Section inserted by amending deed dated 15/12/1997

- (1)
 - (a) the Superannuation Industry (Supervision) Act 1993;
the Superannuation (Financial Assistance Funding) Levy Act 1993;
 - (c) the Superannuation (Resolution of Complaints) Act 1993;
 - (d) the Superannuation (Rolled-Over Benefits) Levy Act 1993;
 - (e) the Superannuation Industry (Supervision) Consequential Amendments Act 1993;
 - (f) the Superannuation Supervisory Amendment Act 1993; and
 - (g) the Occupational Superannuation and Standards Amendment Act 1993.
- (2) any regulations made under the above Acts; and
- (3) all other requirements whether legislative or administrative including:

any administrative guidelines issued by the Responsible Authority; or

- (b) statements by government advising changes and any proposed changes to the SIS Legislation,

with which the Fund must comply or in the opinion of the Trustee ought to comply in order to be a Complying Superannuation Fund or not to be in contravention or breach of the SIS Legislation.

“Superannuation Guarantee Charge” or “SGC” means a charge or tax imposed on employers for not making certain superannuation contributions.

“Surcharge” means the superannuation contributions surcharge tax and the termination payments surcharge, if any, assessed against the Trustee under the Statutory Requirements including the advance instalment and interest payable in relation thereto.¹⁷

“Statutory Requirements” means the Superannuation Contributions Tax (Assessment and Collection) Act 1997, the Superannuation Contributions Tax Imposition Act 1997, the Superannuation Contributions and Terminations Payments Taxes Legislation Amendment Act 1997, the Termination Payments Tax Imposition Act 1997, and the Termination Payments Tax (Assessment and Collection) Act 1997 and regulations made thereunder as amended, supplemented, varied or replaced from time to time.¹⁸

¹⁷ Definition of Surcharge inserted by amending deed dated 15/12/1997

¹⁸ Definition of Statutory Requirements inserted by amending deed dated 15/12/1997

“Tax” means income tax (including any tax on the disposal of assets), Surcharge,¹⁹ withholding tax, stamp, financial institution and other duties, and any other tax in relation to this Deed or the Fund.

“Trustee” means the trustee for the time being of the Fund.

“Year of Income” means:

- (a) a year ending on 30 June or any part of such a year occurring at the commencement of termination of the Fund;
- (b) any other period determined by the Trustee.

1.2 Definitions from the SIS Legislation

Unless a contrary intention appears the following terms have the same meaning have from time to time in the SIS Legislation.

“Actuary”

“Annuity”

“Approved Auditor”

“Approved Deposit Fund”

“Civil Penalty Order”

“Beneficiary”

“Constitutional Corporation”

“Eligible Rollover Fund”

“Gainfully Employed”

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“Regulated Superannuation Fund”

“Retirement”

“Spouse”

“Superannuation Fund”

1.3 Definitions from the Income Tax Assessment Act

Unless a contrary intention appears, the following terms have the same meaning they have from time to time in the Income Tax Assessment Act:

¹⁹ Word “Surcharge” inserted by amending deed dated 15/12/1997

²⁰ Definition of “Legal Personal Representative” deleted from clause 1.2 by amending deed dated 17/3/2000

“Complying ADF”

“Complying Superannuation Fund”

“Eligible Termination Payment”

“Rollover Annuity”

1.4 Definitions from Life Policy

Unless a contrary intention appears the following terms have the same meaning they have from time to time in the Life Policy.

“Death Benefit”

“Insurance”

“Investment Account”

“Permanent Disablement Benefit”

“Total and Permanent Disablement”

“Total and Temporary Disablement”

1.5 Payment in Respect of a Member

Unless a contrary intention appears, a payment on respect of a Member includes a payment or transfer of assets from the Fund in satisfaction of any obligation to a Member and, without limiting the generality of the foregoing, includes a payment or transfer of assets:

- (a) to or for the Benefit of a Member;
- (b) to or for the Benefit of a Dependant of a Member;
- (c) to another person at the direction of a Member or the Legal Personal Representative of a Member; or
- (d) to or for the Benefit of the Legal Personal Representative of a Member.

1.6 Interpretation

Unless a contrary intention appears:

- (a) if any part of the Deed or Rules is invalid, that does not affect the validity of the remainder of the Deed or Rules;

- (b) in so far as the Rules are inconsistent with the provision of the Deed the provision of the Deed prevail;
- (c) a reference to the Deed or the Rules or any other document includes any variation or replacement of them;

a reference to the Deed is deemed to include a reference to the Rules;

a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) headings do not affect interpretation of the Deed or Rules;
- (g) singular includes the plural;
- (h) words denoting any gender shall include all genders;
- (i) “person” includes a firm, body corporate, an unincorporated association or an authority;
- (j) references to any party to this Deed or any other agreement or instrument shall include the party’s successors and permitted assigns;
- (k) references to any term which is defined in a Life Policy shall have the meaning ascribed to that term in that Life Policy as amended from time to time; and
- (l) words and phrases defined in the Statutory Requirements have a similar meaning in the Rules.²¹

References to an act, omission, knowledge and understanding of a person include acts and omissions by, and the knowledge and understanding of, another person acting on behalf of the person.²²

2. THE FUND

2.1 Nature of the Fund

Unless otherwise determined by the Trustee, the Fund is to continue to be a Complying Superannuation Fund established for the purpose of providing superannuation Benefits to or in respect of Members on their retirement, death or on reaching a particular age and for all other purposes which may be permitted under SIS Legislation.

2.2 Assets of the Fund

²¹ Sub-clause (l) inserted by amending deed dated 15/12/1997

²² Sub-clause (m) inserted by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

The assets of the Fund shall continue to be vested in the Trustee and shall be applied in the manner set forth on this Deed.

2.3 Appointment of Administrator and Advisers

The Trustee may appoint any person or organisation as an actuary, investment manager, custodian, solicitor, counsel, broker, agent, consultant, administrator of the Fund, and such other advisers as the Trustee considers to be appropriate. Subject to the Relevant Requirements, the appointment of an administrator or adviser will be in such manner and upon such terms and conditions as the Trustee thinks fit.²³

3. MEMBERS

3.1 Application

A person entitled under SIS Legislation to join a Regulated Superannuation Fund may make application to become a Member of the Fund written application in such form and containing such information as the Trustee may require and if accepted by the Trustee on the date specified by the Trustee or, if no date is so specified, on acceptance by the Trustee, the person shall become a Member of the Fund on such terms and conditions as the Trustee and the person may agree. The Trustee may, in its absolute discretion, accept or refuse any application and the Trustee shall not be required to assign any reason or ground for any such refusal.

3.2 Notice of Acceptance or Refusal

The Trustee shall notify the applicant of its decision to accept or refuse its application and the accidental failure by the Trustee to give such notification shall not invalidate a Member's membership of the Fund.

Creation of interest under Family Law Act

If the Trustee creates an interest in the Fund for a Non-Member Spouse in accordance with the Family Law Act, the Non-Member Spouse will become a Member of the Fund.²⁴

Cessation of Membership

A Member shall cease to be a Member of the Fund upon:

- (a) the payment of the whole of the Member's Benefits to or in respect of the Member;
- (b) the transfer of the whole of the Member's Benefit to another Eligible Fund in accordance with Clause 8.3;

²³ Clause 2.3 replaced by amending deed dated 30/6/2000

²⁴ Inserted by Amending Deed dated 17/12/2002.

- (c) the payment of part of the Member's Benefit to or in respect of a Member and the transfer of the balance of the Member's Benefit to another Eligible Fund in accordance with Clause 8.3; or
- (d) the Member no longer being entitled to a Benefit from the Fund.

3.4 Member to Provide Information

Each Member or person to whom a Benefit may become payable shall provide to the Trustee information in relation to the Member or that person or the Member's membership of any other Eligible Fund or like fund or Annuity or any other information that the Trustee may reasonably require in order to satisfy itself that it is complying with the Relevant Requirements when requested to do so.

3.5 Register of Members

The Trustee shall keep or cause to be kept a register of all Members ("Register of Members") and there shall be entered into that register.

- (a) the name and address of each Member;
- (b) the date of acceptance of each Member;
- (c) the name of the Employer (if any) in relation to a Member;
- (d) the balance of each Member's Investment Account;
- (e) the Member's Specifications for each Member;
- (f) the amount of the Contributions made in respect of each Member;
- (g) the date upon which any Member ceases to be a Member; and
- (h) such other matters and things as the Trustee considers desirable.

3.6 Inspection of Register

Any Member shall be entitled free of charge to inspect any entry in respect of the Member in that register at any time during business hours of the Trustee.

4. THE TRUSTEE

4.1 Trustee Must be Constitutional Corporation

- (a) The Trustee must be a Constitutional Corporation, as defined in the SIS Legislation.
- (b) A Constitutional Corporation is only eligible to be the Fund's Trustee if it complies with the Relevant Requirements.

- (i) any limitation on who may be a director; and
- (ii) any requirements that directors consent to act in that capacity.

4.2 Vacancy

The office of the Trustee shall become vacant if:

- (a) a resolution is passed or order is made for the winding up of the Trustee;

the Trustee resigns by giving notice to AMPAC Life Limited of its resignation.

4.3 Vacancy – New Trustee

If the office of the Trustee becomes vacant a new Trustee shall be appointed within sixty (60) days of the date of such vacancy.

4.4 Retirement of Trustee

If the Trustee has retired or has been removed from Office the Trustee shall thereupon or at any time thereafter (if called upon by then Trustee so to do) do, sign and execute all such things, papers, writings, documents, deeds and other instruments as may be necessary to give proper effect to such retirement or removal from office and the transfer or assignment to or otherwise the vesting of the assets comprised in the Fund in the new Trustee.

4.5 Antecedent Breach by Trustee

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

4.6 Telephone Meetings

A meeting of directors may be held by telephone or other similar means if:

- (a) all directors have been given written or oral notice of the meeting; and

a quorum of the directors (in accordance with the articles of association of the Trustee) take part in the meeting and each is able to hear of the others.

4.7 Minutes and Other records Relating to the Trustee

- (a) The Trustee must maintain:

- (i) minutes of the resolutions and proceedings of its directors in a book kept for that purpose; and
 - (ii) records of any change of Trustee, and of all changed of directors; and
those minutes and any other records must be kept for 10 years, or any other period specified in the Relevant Requirements.
- (b) Minutes are evidence of the matters recorded in them if they are confirmed at the next meeting and signed by the chairman.

4.8 Fund Records

- (a) The Trustee must keep records for the Fund of Members, assets and liabilities, income and expenditure, and all other matters specified by the Relevant Requirement, and retain them for the period specified by the Relevant Requirements.

The Trustee must keep:

- (i) copies of reports to all Members;
- (ii) copies of reports to all Members or a particular class.

These documents must be retained for any period specified in the Relevant Requirements.

The Trustee must maintain any other records required by the Relevant Requirements.

4.9 Fund Auditor

The Trustee must appoint an Auditor who meets the Relevant Requirements.

4.10 Annual Accounts Required

For each Year of Income, the Trustee must prepare an income and expenditure account and a statement of net assets of the Fund.

4.11 Annual Audit Required

The Trustee must ensure that, for each Year of Income, the Auditor:

- (i) audits the accounts and records of the Fund; and
- (ii) reports in writing to the Trustee,

within the time specified by the Relevant Requirements

Significant Adverse Events

If the Relevant Requirement require it, the Trustee must notify the Responsible Authority of any event having a significant adverse effect on the financial position of the Fund. That notice must be given in a manner that is consistent with the Relevant Requirements.

Information to Members

The Trustee must give each Member:

- (a) as soon as practical but within 3 months after the person becomes a Member;
- (b) as soon as practicable and not more than 6 months after the end of each Year of Income;
- (c) as soon as practicable but within 1 month after that person ceases to be a Member;
- (d) on any other occasion,

the information required under the Relevant Requirements at that time.

Information to Employers

The Trustee must give each Employer any information which must be given under the Relevant Requirements.

5. POWERS OF THE TRUSTEE

5.1 General

- (a) The Trustee must invest in a manner which is consistent with the Relevant Requirements.
- (b) The Trustee may do anything it considers appropriate to administer the Fund and comply with or that is permitted by the Relevant Requirements, including:
 - (i) making any election it considers appropriate under the SIS Legislation.
 - (ii) complying with any direction or requirement of the Responsible Authority or any court or tribunal;
 - (iii) applying to any court or tribunal for any order it considers appropriate.

Delegation

The Trustee may delegate any power vested in it to any person in such manner and upon such terms and conditions as it thinks fit and without limiting the generality of the foregoing the Trustee may delegate any or all of the following functions and powers:

- (a) the establishment and maintenance of any Accounts;

the receipt of Contributions, payments to any other Insurer, and the payment of Benefits;

the establishment and maintenance of any records, registers or other information required to be maintained by this Deed;

the power to accept or reject applications by Members to join the Fund;

the power to do all things necessary in relation to the payment of Tax in respect of the Fund; and
- (f) such other matters relating to the administration and operation of the Fund as the Trustee may determine.

5.2 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.

5.3 Investment in Life Policy

Subject to the Relevant Requirements, the Trustee shall apply all Contribution to the Fund to acquire or maintain Life Policies as it considers suitable to provide the Benefits and the Trustee may effect the same or different types of Life Policies or separate Life Policies in respect of different Members as it in its absolute discretion determines. The Trustee shall have full and absolute power to deal with, vary, cancel or withdraw moneys from any Life Policy from time to time in all respects as if it was the absolute owner and beneficially entitled to those Life Policies.

5.4 Investments to be at Arm's Length

The Trustee may only invest Fund money if the Trustee and the other party to the transaction are dealing with each other at arm's length in respect of the transaction.

However, this Clause does not apply if the Relevant Requirements do not compel the Trustee to act in this way.

5.5 Financial Assistance to Members or Relatives

The Trustee may only provide financial assistance to Members or Relatives of Members if it is consistent with the Relevant Requirements.

5.6 Trustee No to Intentionally Acquire Assets from Members or Relatives.

The Trustee must not intentionally acquire any assets from a Member or Relative of a Member unless it is consistent with the Relevant Requirements.

5.7 Borrowing

- (a) The Trustee may borrow or raise money in any manner and on terms it thinks fit, provided:
 - (i) the borrowing will enable the trustee to make a payment to a Beneficiary which the Trustee is required to make;
 - (ii) the Trustee would not be able to make that payment apart from the borrowingto borrowing does not exceed 90 days; and
if the borrowing takes place, the total amount borrowed will not exceed 10% of the value of the Fund's assets.

5.8 Nominees

The Trustee may appoint nominees to hold investments. The appointment must be consistent with the Relevant Requirements.

5.9 Investment Manager

- (a) Any appointment of an investment manager for the Fund must be in writing.
- (b) The Trustee must ensure that every investment management agreement relating to the Fund contains any terms required by the Relevant Requirements, including terms which enable the Trustee to require the investment manager to:
 - (i) provide appropriate information as to the making of and return on investments; and

- (ii) provide any information which is necessary to enable the trustee to assess the capability for the investment manager to manage the Fund's investments.
- (c) The Trustee must ask the investment manager to provide the information specified in Clause 5.10 (b) whenever the Trustee considers it necessary or desirable to do so.

5.10 Trustee Covenants

If the Relevant Requirements require it, the Trustee must comply with any covenants which the Relevant Requirements impose in it, including the covenants that it:

- (a) act honestly in all matters concerning the Fund;
- (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Beneficiaries;

keep the money and other assets of the Fund separate from any money and assets, respectively:

- that are held by the Trustee personally; or
- that are money or assets, as the case may be, of an employer-sponsor, or an associate of an employer-sponsor, of the Fund;

not enter into any contract, or do anything else, that would prevent the trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;

- (f) formulate and give effect to an investment strategy for the Fund that has regard to the whole of the circumstances of the Fund including, but not limited to:
 - the risk involved in making, holding and realising, and the likely return from the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;

- the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - the ability of the Fund to discharge its existing and prospective liabilities.
- (g) if there are any reserves of the Fund, formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) allow a Beneficiary access to any information or any documents prescribed under the SIS Legislation.

If the Relevant Requirements require it, the directors must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the covenants.

Member Inquiries and Complaints

- (a) If the Relevant Requirements require it, the Trustee must make arrangements under which:
- (i) Members and Dependants may inquire or complain about the operation or management of the Fund; and
 - (ii) inquiries or complaints are properly considered and dealt with within 90 days after being made.

Those arrangements must be consistent with the Relevant Requirements.

- (b) The Trustee may change the arrangements.
- (c) If the Relevant Requirements require it, all inquiries and complaints from Members and Dependants must be dealt with in accordance with those arrangements.

No Assignment or Charges

The Trustee must not recognise, encourage or sanction an assignment of or charge over a Member's Benefits unless permitted by the Relevant Requirements.

Redemption During Cooling Off Period

If the Relevant Requirements require it:

- (a) a Member may by written notice to the Trustee within 14 days after an interest in the Fund has been issued to him or her, ask the Trustee to redeem the interest;

- (b) the Trustee must redeem that interest as soon as practicable after receiving the request, at a price (“redemption price”) required by the Relevant Requirements; and
- (c) in addition to the redemption price, the Trustee must pay any amounts required by the Relevant Requirements. The Trustee cannot be indemnified out of the assets of the Fund for that amount.

5.14 Trustee Not Subject To Direction

- (a) The Trustee (except to the extent that the Relevant Requirements permit) in the exercise of its powers is not subject to the direction of any other person.
- (b) A provision in this Trust Deed which requires the Trustee to follow or comply with the direction of another party (except that the Relevant Requirements permit) is to be interpreted as a provision which enables the other party to make a request to the Trustee which the Trustee is not bound or required to comply with or follow.

5.15 Discretions Only to be Exercised by Trustee

If a provision of this Trust Deed would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee’s consent for the exercise of the discretion.²⁵

LIABILITY OF THE TRUSTEE

6.1 Trustee’s Liability

The Trustee is only liable for:

- (a) failing to act honestly in a matter concerning the Fund: or
- (b) wilfully or recklessly failing to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (c) any liability for a monetary penalty order under a Civil Penalty Order made against the Trustee.

6.2 Lien on Assets of Fund

The Trustee may recover from the Fund any expenditure or loss incurred in relation to the Fund unless it:

- (a) results from failing to act honestly in a matter concerning the Fund:
or

²⁵ Clause 5.16 replaced by amending deed dated 17/3/2000

- (b) results from wilfully or recklessly failing to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (c) is liability for a monetary penalty order under a Civil Penalty Order made against the Trustee.

6.3 Indemnity

The indemnities provided by Clauses 6.1 and 6.2 also apply to:

- (a) any directors of the Trustee;
- (b) any employees of the Trustee;
- (c) any Fund secretary;
- (d) any other person nominated in writing by the Trustee;
- (e) a former Trustee or person who previously fell within (a) to (d).

7. CONTRIBUTIONS

7.1 Limitation on Contributions

The Trustee:

must not accept Contributions contrary to the Relevant Requirements;

may refuse to accept Contributions if it considers it necessary to comply with the Relevant Requirements.

Where the Trustee does not accept Contributions in accordance with this Clause, the Trustee may adjust the Benefits of Members as it considers appropriate.

7.2 Refund of Payments

If any moneys paid by a person to the Trustee would, or may in the opinion of the Trustee, jeopardise the status of the Fund as a Complying Superannuation Fund or is found to have been paid to the Trustee by reason of a mistake (whether of fact or law), the Trustee shall refund those moneys to the person who paid them to the Fund but unless required by the Relevant Requirements the Trustee shall not be required to pay any interest or income on the moneys so refunded and that person shall not be or be deemed to be a Member by reason of that payment.

7.3 Employer Contributions

An employer shall make Contributions in respect of an employed Member of such amount (if any) in such manner and at such time as specified by the Member's Specifications or in any subsequent notice to the Trustee and to which the Trustee may agree.

7.4 Member Contributions

A Member shall make contributions to the Fund in accordance with this Deed, Member's Specifications or any other arrangement with the Trustee and any Member may authorise his or her Employer to deduct contributions due by the Member from the Member's remuneration and to pay those moneys to the Fund on behalf of the Member.

7.5 Distribution of Contributions

Each Member or Employer as the case may be shall notify the Trustee in a form approved by the Trustee at the time of making Contributions of the proportions in which the Contributions are to be credited to Accounts and such other information as the Trustee requires.

7.6 Application of Contributions

All Contributions received by the Trustee shall be applied as premiums for a Life Policy and shall be allocated in accordance with the terms of this Deed the Member's Specifications and relevant Rules.

7.7 Payment to Insurer

Contributions shall be deemed to have been received by the Trustee if they are paid in accordance with a direction of the Trustee to the Insurer.

7.8 Unpaid Contributions

Unless required by the Relevant Requirements, the Trustee shall not be required to take any action to recover any unpaid Contributions from an Employer who has agreed to make Contributions to the Fund in respect of a Member.

7.9 Termination, Reduction or Suspension of Contributions

The Trustee may permit a Member or Employer to terminate, reduce or suspend his Contributions to the Fund and with the consent of the Insurer the Trustee may adjust any Benefits in respect of the relevant Member.

7.10 Additional Contributions

A Member or Employer may make such additional Contributions to the Fund as the Trustee from to time permits and those Contributions shall be dealt with by the Trustee as the Member or Employer as the case may be notifies.

8. TRANSFER TO AND FROM OTHER FUNDS

8.1 Transfer In

If permitted by the Relevant Requirements, the Trustee may accept into the Fund:

- (a) moneys from another Eligible Fund (the “other fund”) under an arrangement with the trustee, member or members of that other fund where the member or members of the other fund are or proposed to become Members of the Fund; and
- (b) Eligible Termination Payments where the person becomes a Member of the Fund,

and the amount of the moneys paid shall be applied to Accounts in this Fund in accordance with the arrangements (if any) relating to the payment as agreed by the Trustee.

8.2 Preserved Transfers

If any moneys are transferred from an Eligible Fund which are subject to Preservation Requirements, the Benefits represented by the moneys so transferred may not be paid to the member otherwise than in accordance with the Preservation Requirements.

8.3 Transfer Out

- (a) Where a Member is or becomes eligible for membership of another Eligible Fund then at the request of the Member the Trustee may, subject to such conditions as the Trustee may decide (including a condition that the fund into which the Benefit is to be paid complies with Preservation Requirements) pay all or part of a Member’s Benefit to such other fund.
- (b) The Trustee:
 - (i) may transfer any Benefit to another Eligible Fund or entity if the Relevant Requirements permit; and
 - (ii) must transfer a Benefit to another Eligible Fund or entity if the Relevant Requirements compel the Trustee to do so.
- (c) The Trustee may pay all or part of a Benefit to another Eligible Fund or entity without the consent of the person entitled to it if the Relevant Requirements permit.

8.4 Receipt of Trustee of Another Fund

Where an amount is paid to the trustees of an Eligible Fund pursuant to Clause 8.3 the receipt of the trustees of the Eligible Fund (including in the case of an Annuity effected in respect of a Member, the body providing that

Annuity) given is a full discharge in respect of the amount paid to the Trustee and the Insurer of all their respective obligations to or in respect of the Member under this Deed and any Life Policy and neither the Trustee nor the Insurer shall be in any way responsible for or liable in respect of the application or disposal of such money by such trustee or other person.

9. LIFE POLICIES

9.1 Life Policies Effected by Trustee

The Trustee may effect Life Policies in its own name by a separate Life Policy or as part of the Insurance provided in respect of a number of Members under a group or master policy issued to the Trustee.

9.2 Operation of Life Policy

Any Benefit shall be subject to the terms of the Life Policy under which it is provided and the Insurer shall determine pursuant to a Life Policy whether and if so on what terms and to what extent it will provide a Benefit.

9.3 Cover Declined

If the Insurer declines any application for Insurance then the Trustee shall not be required to arrange any other or alternative Life Policy.

9.4 Advice of Benefit

The Trustee shall advise each Member of the Insurance accepted or declined under a Life Policy with the Insurer.

9.5 Maintenance of Benefits

The Trustee shall only be required to effect or maintain a Life Policy in accordance with its terms.

9.6 Benefits Conditional Upon Evidence

In respect of any death or disability Benefit the obligations of the Trustee under the Clause shall be conditional upon the Member submitting to such medical examination and providing such information and evidence as the Insurer or the Trustee requires.

9.7 Restrictions on Insurance

If the Trustee effects or seeks to effect Insurance or an increase in the Insurance provided by a Life Policy with the Insurer in respect of a death or disability Benefit and the Insurer for any reason whatsoever fails to provide, increase or maintain or reduces, terminates or withholds Insurance

or does not admit or defers a claim in whole or in part, then the Benefit shall be determined by the terms of the Life Policy and the Trustee may adjust the Benefit in such manner as it deems appropriate.

9.8 Benefits Not Payable Until Proceeds Paid

The Trustee shall not be required to pay a Benefit to or in respect of a Member until the proceeds of Insurance under the Life Policy are paid by the Insurer to the Trustee.

Life Policy Proceeds in Full Satisfaction

The payment of the proceeds of the Life Policy, including the proceeds of Insurance by the Trustee to or in respect of a Member shall be in full satisfaction of the Benefit payable to or in respect of the member and, in the case of a Relevant Member, shall be net of Surcharge paid or payable in respect of that Relevant Member.²⁶

Contributions Pending Acceptance of Insurance

If a person makes a Contribution prior to the acceptance of the person's application for Insurance then the Trustee may, subject to the Relevant Requirements:

- (a) itself hold the moneys received in a suspense account established for that purpose; or
- (b) pay the moneys to the Insurer to be held by it in a suspense account established for that purpose,

and if for any reason the application is not accepted in respect of that person the Trustee shall repay those moneys to that person within two months of the date on which the Trustee becomes aware that the application has not been accepted in respect of the person but unless required by the Relevant Requirements the Trustee shall not be required to pay any interest or income on the moneys so refunded and that person shall not be or be deemed to be a Member by reason of the receipt of those moneys.

10. BENEFITS

Member's Specifications

The Member's Specifications applicable to a Member shall be confirmed by the Trustee upon acceptance of the Member's application.

Variations of Member's Specifications

²⁶ Words "and, in the case of a Relevant Member, shall be net of Surcharge paid or payable in respect of that Relevant Member" inserted by amending deed dated 15/12/1997

The Member's Specifications applicable to a Member may be varied by the Trustee giving at least 14 days written notice to the Member but no variation of Member's Specifications which adversely affects any Benefits of a Member shall be made by the Trustee without the prior approval of the Member.

Effective Date of Variations

A variation of Member's Specifications under Clause 10.2 shall become effective from the date specified in the written notice from the Trustee to the Member.

Payment of Benefits

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

10.5 Claim for Benefits

Upon the Trustee being notified of a claim for a Benefit the Trustee shall, as soon as practicable, lodge a claim with the Insurer and upon receiving payment of such Benefit from the Insurer shall promptly pay such Benefit to the Member or cause the Insurer to pay the Benefit to the Member.

Notice of Claim

A Member or other person who may be entitled to receive payment of a Benefit in respect of a Member shall promptly advise the Trustee of any event which would entitle a Member to receive a Benefit in such form as is required by the Trustee.

Pre-Conditions for Payment of Benefits

- (a) The payment of any Benefit is subject to the person claiming that Benefit producing such evidence, doing such acts and executing such documents as the Trustee reasonably requires.
- (b) The Trustee in paying a Benefit may act on any proofs or presumptions it considers appropriate, even if they are of no legal effect.
- (c) The Trustee may postpone the payment of any Benefit until the requirements of Clause 10.7(a) have been met to the satisfaction of the Trustee>

Compulsory Preservation

If the Trustee considers that all or any part of a Benefit must be preserved in order to comply with the Relevant Requirements, the Trustee must:

- (a) pay that part of the Benefit to an Eligible Fund (in accordance with Clause 8.3) whose governing rules require the preservation of such Benefit under the Relevant Requirements; or
- (b) retain that part of the Benefit, including earnings, until the Relevant Requirements permit it to be paid; or
- (c) otherwise deal with such Benefit in accordance with the Relevant Requirements.

Voluntary Preservation

If a Member who is entitled to a Benefit requests deferral of payment, the Trustee may, if the Relevant Requirements permit, defer payment of all or part of that Benefit.

10.10 Unrestricted Non-Preserved Benefits

A Member's Unrestricted Non-Preserved Benefits (within the meaning of the SIS Legislation) are only payable to the Member in accordance with the other provisions of the Deed applicable to payment of Benefits unless the Trustee otherwise in its sole discretion determines in respect of:

- (a) all Members;
- (b) any group or class of Members; or
- (c) any particular Member.

Adjustment of Benefit if Incomplete or Incorrect Information

The Trustee may modify the Member's Benefits as it considers appropriate, if any information given to it in respect of a Member is incomplete or incorrect.

10.12 Legal Disability of Person

If the Trustee forms the opinion that a Member 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 Member or other person;
- (b) for or towards the maintenance, education, advancement or otherwise for the Benefit of the Member, Dependant of the Member or other person in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and
- (c) without limiting the generality of sub-clause (b), to a person who appears to the Trustee to be a trustee for a parent or guardian of or

to have for the time being the care or custody of the Member, Dependant of the Member or other person or to have the financial expenses of the care or custody of the Member, Dependant of the Member or other person.

10.13 Permitted Payment Date

A Member who is a Member on a date at which the Relevant Requirements permit a Member's Benefit to be paid or commence to be paid and requests payment is entitled to receive a Benefit in accordance with the Deed.

10.14 Required Payment Date

A Member who is a Member on a date at which a Member's Benefit must be paid or commence to be paid to satisfy the Relevant Requirements, is entitled to receive a Benefit in accordance with the Deed.

10.15 Trustee May Require Proof of Continued Employment

The Trustee may by notice to a Member require the Member to provide evidence satisfactory to the Trustee that the Member is still Gainfully Employed on a full-time or part-time basis or is otherwise not entitled to be paid a Benefit and if the Member has reached the Required Payment Date and the Trustee is not satisfied that the member is Gainfully Employed on a full-time or part-time basis as applicable or is otherwise prohibited from receiving a Benefit then the Trustee must pay the Benefit to the Member.

10.16 Place and Manner of Payment

Subject to this Deed, Benefits shall be payable at the place and in the manner as determined or approved by the Trustee and the Trustee may make payment by cheque or cause the Insurer to draw and pay by cheque on behalf of the Trustee and the Trustee or the Insurer may mail the cheque to the payee at the last address know to the Trustee of that payee.

10.17 Transfer of Assets

If a Member requests, the Trustee may pay all or part of a Benefit by transferring assets of equivalent value. The Trustee may only do so if the Relevant Requirements permit.

10.18 Tax on Benefits

The Trustee may deduct from any Benefit payable any tax that is payable in respect of it.

10.19 Trustee Discharge

The Trustee is discharged from all liability in respect of a Benefit where it pays it in good faith:

- (a) (i) to a person, or

- (ii) to another person, on behalf of the person, it believes is entitled to it; or
- (b) in accordance with the provisions of Clause 10.12.

10.20 Unclaimed Moneys

Where a Member has reached the Required Payment Date and the Trustee is unable to locate the Member, the Trustee must deal with that Benefit in accordance with the Relevant Requirements.

10.21 No Duplication of Benefits

The amount of any Benefit paid to or in respect of a Member (the first paid Benefit) is deducted from any Benefit which may later become payable to or in respect of the Member (the second paid Benefit) to the extent that the first paid Benefit might otherwise be included in the second paid Benefit.

10.22 Net balance of a Benefit Account

For the purposes of determining a Benefit to be paid to or in respect of a Relevant Member or Beneficiary, the net balance of a Relevant Member's Benefit is to be determined by taking the balance of the Relevant Member's Benefit, and deducting from the said balance the aggregate of any amounts deductible under this Deed or the Rules, including without limitation the amount of applicable Surcharge.²⁷

10.23 Refunds

A refund of Surcharge previously paid by the Trustee in respect of a Relevant member and received by the Trustee shall be credited to the Relevant Member's Benefit provided that the Relevant Member is a current Member of the Fund.²⁸

10A. FAMILY LAW ADJUSTMENT OF BENEFIT²⁹

Interest in Fund not created

10A.1 If the Trustee has received notice of a Payment Split and if a separate interest in the Fund is not created for the Non-Member Spouse, the Trustee will record the Non-Member Spouse's entitlement in the records of the Fund. In those circumstances, the Trustee will not owe any fiduciary duties to the Non-Member Spouse, except to the extent required by law.

10A.2 If, on receipt of a notice of a Payment Split, the Trustee does not create an interest in the Fund for the Non-Member Spouse, the Trustee may, on receiving the written request of the Non-Member Spouse to do so, either transfer to an Eligible Fund or, if the Trustee is satisfied that the Non-Member Spouse has satisfied a condition of release under the Relevant

²⁷ Sub-clause 10.22 inserted by amending deed dated 15/12/1997

²⁸ Sub-clause 120.23 inserted by amending deed dated 15/12/1997

²⁹ Clause 10A inserted by Amending Deed dated 17/12/2002.

Requirements, pay to the Non-Member Spouse (or his or her estate), the amount to which the Non-Member Spouse is entitled under the Payment Split notice.

Interest in Fund created

10A.3 After receipt of notice of a Payment Split in relation to a Member, the Trustee may create an interest in the Fund for the Member's Non-Member Spouse and may admit the Non-Member Spouse as a Member without the completion of an application for membership. The Trustee will allocate the amount of the Non-Member Spouse's interest amongst the investment portfolios in the manner provided for in this Deed.

Reduction of Member's Benefit

10A.4 If the Trustee has received notice of a Payment Split and creates an interest in the Fund for a Non-Member Spouse or pays a Benefit from the Fund to a Non-Member Spouse or transfers an amount to another superannuation fund for the Non-Member Spouse in consequence of receiving the Payment Split notice, the Trustee will reduce the Member's Benefit in the manner that the Trustee determines.

Flagging agreement or order

10A.5 If the Trustee receives a flagging agreement or flagging order under the Family Law Act, the Trustee will record the existence of the flagging agreement or order and will defer payment of the Benefit to or in respect of the Member until the flagging agreement or order is lifted.

Fees

10A.6 The Trustee may charge and debit to a Member or a Non-Member Spouse, the fees that the Trustee determines to charge for providing information or processing a transaction under the Family Law Act. The Trustee may debit any such fees to a Benefit or an interest that the Member or Non-Member Spouse has in the Fund. The Trustee may add interest, at a rate that the Trustee determines, to any unpaid fee that the Trustee charges and may debit the interest to a Benefit or an interest that the relevant Member or Non-Member Spouse has in the Fund.

Provision of information

10A.7 A Member or Non-Member Spouse must produce any information or documents required by the Trustee for the purposes of this Deed or the Family Law Act.

11. FORFEITURE OF BENEFITS

11.1 Forfeiture Events

A Member forfeits, to the extent that Relevant Requirements permit, a contingent or prospective or current entitlement to a Benefit if:

- (a) the Trustee determines that the Member has attempted to assign, alienate or charge all or part of that Benefit except in accordance with the Family Law Act³⁰; or
- (b) the Member is declared mentally ill or the Member's affairs are liable to be dealt with under the laws relating to mental health.

Application of Forfeited Benefits

If the Relevant Requirements permit, the Trustee must apply a Benefit forfeited under Clause 11.1 for the Benefit of one or more of the Member and the Member's Dependants as the Trustee determines.

11.3 Cessation of Forfeiture Event

If the Trustee is satisfied that the events specified in Clause 11.1 no longer apply to the Member then the Trustee may apply any Benefit or part of a Benefit not dealt with under Clause 11.2 in such manner as the Trustee would have been entitled to apply it if the events specified in Clause 11.1 had not occurred.

12. EXPENSES AND TAXATION

Payment of Tax

The Trustee shall pay such Taxes or instalments thereof in respect of the Fund as may be determined pursuant to the provisions of the Income Tax Assessment Act or any other Act relating to the information, collection and administration of Tax in accordance with the provisions of the Income Tax Assessment Act or other Acts and the Trustee may realise any asset of the Fund (including any Life Policy, or units or interest under any Life Policy) in whole or in part for the purpose of meeting its liability under this clause.

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 estimates will be payable from time to time by the Fund in respect of the relevant Year of Income.

Adjustments

The Trustee shall pay Taxes for the Fund as determined pursuant to the Income Tax Assessment Act or other 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:

³⁰ Inserted by Amending Deed dated 17/12/2002.

- (a) where the provisions for Taxes made in respect of any Year of Income exceed the Taxes payable in respect of that 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 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).

12.4 Expenses and Obligations

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

- (a) realise any interest under Life Policy; and/or
- (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 such anticipated expenses or obligations as in the opinion of the Trustee should be provided for, including (without limitation) a provision or provisions for Tax.

12.5 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 Insurer which has the effect of transferring to the Insurer all or part of the liability for Tax arising on and in respect of any Contributions to the Fund.

13. 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 of a Member be used as a ground for award damages or compensation or increasing an award to damages or compensation or for conferring any rights on a Member other than those expressly conferred by this Deed.

14. NATIONAL OR OTHER SUPERANNUATION

If any government introduces or varies any scheme including any scheme established by the making or varying of any industrial award for insurance, superannuation, social service, pension or retirement Benefits similar to the Benefits provided under this Deed in respect of which Members may be or become eligible the Trustee may and shall if required by an Employer in such manner as is permitted by the Relevant Requirements agree to vary the Contributions made by the Employer and to vary the Benefit payable to the Member. If the Trustee varies the Contributions of an Employer the Trustee may in like manner agree to vary the Contributions of the Member.

15. AMENDMENT OF TRUST DEED

Amendments

- (a) Subject to Clause 15.2, the Trustee may be Deed entered into by it add to, repeal, amend or alter the Trust Deed in any respect whatsoever which would in the opinion of the Trustee not be to the detriment of the accrued Benefits of Members or their Dependants provided that no addition, repeal, amendment or alteration shall impose any increase in liability on any Member or Employer to contribute to the Fund without that Member's or Employer's consent.
- (b) No amendment may be made which would have the effect of not requiring the Trustee to be a Constitutional Corporation as defined in the SIS Legislation, unless this Trust Deed provides, and continues to provide after the amendment is made, that the primary purpose of the Fund is to provide old-age pensions as defined in the SIS Legislation.
- (c) No amendment may be made unless it is permitted by the Relevant Requirements.
- (d) Any addition, repeal, amendment or alteration shall take effect as and from time in which it is expressed to take effect.
- (e) The Trustee shall notify each Member in accordance with the Relevant Requirements of every addition, repeal, amendment or alteration and all Members shall be bound by that addition, repeal, amendment or alteration.
- (f) Any accidental failure or omission to give any notification as set out in Clause 15.1(e) or its non-receipt shall not prejudice or invalidate the relevant addition, repeal, amendment or alteration.

Amendments in Relation to Relevant Requirements

Notwithstanding the provisions of Clause 15.1, the Trustee shall be entitled to make such amendments to the Trust Deed as may, in its opinion, from time to time be required in order to ensure that the Fund is a Complying

Superannuation Fund but no amendment shall be made so as to reduce any Benefit that has accrued to any Member, or affect the basis of calculating the amounts of a Benefit in a way that reduces that amount with respect to the period of membership of the Fund before the date of the amendment unless,

- (a) the consent of such persons whose consent to such amendment is required under the Relevant Requirements has been obtained; or
- (b) the amendment is otherwise permitted under the Relevant Requirements.

16. COMPLIANCE WITH SIS

SIS Legislation to Prevail over Deed Provisions

If there is a conflict or inconsistency between the provisions of this Deed and the SIS Legislation, the SIS Legislation is to prevail and any provision in this Deed is to be read down, construed and interpreted by the Trustee in such a manner so as to give effect to the SIS Legislation and to enable the Fund to be operated in a manner that is consistent with the SIS Legislation.

Power to Act in Accordance with SIS Legislation

- (a) The Trustee has the power to do all acts and things or omit to do such acts and things as it considers necessary, desirable or expedient for the Fund to be operated and administered in accordance with the SIS Legislation and to be a Complying Superannuation Fund and for the Trustee, Members, Employers and Beneficiaries not to be in contravention or, in the opinion of the Trustee, any possible or potential contravention of the SIS Legislation.
- (b) The powers conferred upon the Trustee by Clause 16.2(a) without limiting the generality of such powers, include the right to administer and operate the Fund so that:
 - (i) the Fund is operated solely for one or more of the core and ancillary purposes specified in the SIS Legislation;
 - (ii) the Fund is operated to comply with any standards prescribed under the SIS Legislation which are applicable to the Fund;
 - (iii) the Trustee is entitled to provide the Responsible Authority with such returns and information as the SIS Legislation or the Responsible Authority, may require;
 - (iv) the Trustee may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Responsible Authority;

- (v) the Trustee may inform or disclose to, the Responsible Authority such event, omission or thing that the SIS Legislation may require to be disclosed to the Responsible Authority and/or seek the advice ruling or direction of the Responsible Authority as it considers necessary;

the Trustee may pay from the Fund any levy or charge imposed upon the Fund under the SIS Legislation;

- (vii) the Trustee may seek from the Responsible Authority any exemption or modification of the provisions of the SIS Legislation in respect of their application to the Fund; and
- (viii) the Trustee may pay a Member's or a Beneficiary's Benefits or interest in the Fund, in the circumstances prescribed by the SIS Legislation, to the Responsible Authority or an Eligible Rollover Fund even if no claim for such a Benefit has been made by or in respect of the Member or Beneficiary.

16.3 Trustee Not to be in Breach of Trust

- (a) The Trustee is not to be taken to be in contravention of the Deed or in breach of trust if in giving effect to Clauses 16.1 and 16.2, it:

- (i) construes or interprets this Deed;

does such acts or things;

omits to do such acts or things,

which might otherwise be in contravention of the Deed or in breach of trust but which the Trustee considers necessary, desirable or expedient to avoid a contravention of the SIS Legislation.

- (b) The Trustee is not to be taken to be in contravention of this Deed or in breach of trust if it does anything or makes any omission which is in contravention of the SIS Legislation if:

- (a) The Trustee rectifies the contravention within such period as may be allowed by the SIS Legislation or within such further period as the Responsible Authority allows: or

- (b) The Responsible Authority notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

17. TERMINATION

17.1 Notice of Termination of the Fund

The Trustee may terminate the Fund by giving 12 month's written notice to Members.

Consequences of Termination of the Fund

If the Trustee gives a notice in accordance with Clause 17.1 the Trustee shall continue to administer the Fund in accordance with the provisions of this deed except that:

- (a) no further Contributions shall be accepted by the Fund from the Members or Employers;
- (b) when all the Members' Benefits have been paid or applied in accordance with this Deed the Fund shall be deemed to be dissolved and this Deed shall cease to have effect.

Transfer of Benefits on Termination

Upon termination of the Fund the Trustee shall in respect of each Member as at termination pay, in accordance with Clause 8.3, the Member's Benefit as at the date of termination. If any Member fails to nominate an Eligible Fund to which that Member's Benefit should be paid, the Trustee shall pay such Member's Benefit to an Eligible Fund approved by the Trustee if the Relevant Requirements permit.

17.4 Termination on Death of Last Member

In the event of the death of the last Dependant of the last Member, or in the event of the death of the last Member if he has no Dependents, the Fund shall terminate and any remaining assets shall be paid to former Members and the deceased former Member's Dependents in such proportions as the Trustee, in its absolute discretion, considers to be equitable.

18. NOTICES

Any notice required to be given to Members under this Deed shall be deemed to have been duly given in writing to a Member by letter addressed to the Member at the Member's address appearing in the Register of Members. 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.

19. COPIES OF TRUST DEED

A copy of this Deed shall at all times during usual business hours be made available by the Trustee at its registered office for the inspection of Members who shall be entitled to receive from the Trustee a copy of this Deed.

20. PERIOD OF TRUST

The Fund shall be determined or wound up and no further Members shall be admitted to the Fund on or after the earlier of:

25 November, 2067; and

the day immediately preceding the twenty-first anniversary of the death of the last survivor of the lineal descendants of His Late Majesty King George VI living at the date of this Deed,

but if at the relevant time the Trustee is permitted by the operation of all relevant laws so to do the Trustee may determine that the trust shall not determine on either of the dates set forth in (a) or (b) above but shall continue until such later date as the Trustee may determine from time to time.

21. CURRENCY

All Benefits and Contributions are expressed and paid in Australian currency unless expressly otherwise agreed by the Trustee with a Member.

22. SURCHARGE

The powers conferred on the Trustee under this Section shall be in addition to, and not to the exclusion of, any other provision of these Rules. In the event of any inconsistency with the Rules, the provisions of this Section shall prevail.

If any part of this Section is held invalid or unenforceable for any reason (the "Infringing Part"), the Infringing Part shall be read down to the minimum extent possible so as to render the Infringing Part valid and enforceable.

If the Statutory Requirements apply in any way to the Trustee of the Fund, the Trustee may, in its absolute and unfettered discretion determine how to pay the Surcharge. For the avoidance of doubt, the Trustee may to the maximum extent permitted by the Relevant Law:

- (i) recover the Surcharge from the Relevant Member's Benefit; or
- (ii) require the Relevant Member to make a Contribution to the Fund sufficient to enable the Trustee to pay the Surcharge.

If the Trustee determines that Surcharge is payable by or recoverable from the Relevant Member, the Trustee may, for each Relevant Member:

- a) (at any time) debit the amount of Surcharge to the Relevant Member's Benefit;
- b) (at any time) surrender and cash any policy of insurance (whether held in the name of the Trustee or the Relevant Member or jointly including without limitation any group or individual policy of life insurance held for or in respect of the Relevant Member) and use the proceeds to pay Surcharge;
- c) (at any time) reduce the level of insurance cover (whether held either in the name of the Trustee or the Relevant Member or jointly

including without limitation any group or individual policy of life insurance held for or in respect of the Relevant Member) and use the proceeds to pay Surcharge;

- d) retain all or part of the proceeds of any policy of insurance (whether held in the name of the Trustee or the Relevant Member or jointly including without limitation any group or individual policy of life insurance held for or in respect of the Relevant Member) and use the proceeds to pay the Surcharge;
- e) redeem and retain all or part of the proceeds of the redemption of any investment (including units) held for or in respect of the Relevant Member and use the proceeds to pay Surcharge;
- f) establish any provision or reserve for the purposes of meeting an actual or potential Surcharge liability in respect of the Relevant Member and debit, credit, increase or reduce the provision or reserve (as appropriate);
- g) retain all or part of the Relevant Member's Benefit for such period as the Trustee thinks fit until any actual liability of the Trustee in respect of the Relevant Member to pay Surcharge is satisfied in full;
- h) create any actual or notional account in respect of the Relevant Member (and charge interest thereon in such manner and at such rate as the Trustee in its absolute discretion thinks fit), and to debit or reduce the Relevant Member's Benefit until any liability of the Trustee to pay Surcharge in respect of the Relevant Member is satisfied in full. The Trustee may set off the balance of the actual or notional account (including accrued interest) against the Relevant Member's Benefit prior to payment of all or part of the Relevant Member's Benefit to a Relevant Member. For the avoidance of doubt, the Trustee may determine not to pay to the Relevant Member his or her Benefit or any part thereof until the balance of the actual or notional account (including accrued interest) in respect of the Relevant Member is satisfied in full; or
- i) borrow to pay the Surcharge in accordance with the Relevant Requirements.³¹

³¹ Clause 22 inserted by amending deed dated 15/12/1997

RULES FOR THE MANAGEMENT OF THE
WESTPAC PERSONAL SUPERANNUATION FUND

1 **APPLICABILITY OF THESE RULES**

These Rules shall apply to all Members of the Fund and to any Employer who makes Contributions to the Fund in respect of the Member.

2. **ELIGIBILITY**

A person who is entitled to join a Regulated Superannuation Fund is eligible for membership of the Fund.

3. **CONTRIBUTIONS**

3. **Member Contributions**

A Member shall make Contributions as specified in the Member's Specifications and with the consent of the Trustee the Member may make additional Contributions.

3.2 **Employer Contributions**

An Employer shall make the Contributions as specified in the Member's Specifications in respect of the Member and with the consent of the Trustee the Employer may make additional Contributions in respect of the Member.

3.3 **Commencement and Termination**

- (a) A Member shall commence to make Contributions on becoming a Member of the Fund and shall cease to make Contributions when required to by the Relevant Requirements.
- (b) An Employer shall commence to make Contributions as required by the Member's Specifications and shall cease to make Contributions when the member ceases employment or when required by the Relevant Requirements.

3.4 **Allocation of Contributions**

The Trustee shall allocate the Contributions to the Member's Investment Account.

3A. INVESTMENT SWITCHING

3A.1 Member May Make Switch Request

A Member may request the Trustee to alter the basis on which the Member's Benefits are allocated between investment portfolios within their Investment Account.

3A.2 Trustee to Delay Implementation

Despite any other provision of this Deed (other than Clause 16) or a Life Policy held in respect of a Member's Benefits, the Trustee must not implement the Member's request until the later of the date ("Switch Date") on which:

- (a) the Insurer values the assets held in relation to the investment portfolio under the Life Policy from which the Member's Benefits are to be reduced, using their value at the end of the business day in Sydney on which the Trustee receives the Member's request; and
- (b) the Insurer values the assets held in relation to the investment portfolio under the Life Policy to which the Member's Benefits are to be increased, using their values at the end of the business day in Sydney on which the Trustee receives the Member's request.

3A.3 Basis for Implementation

The Trustee must cause the Member's request to be implemented on the basis of:

- (a) the value at the end of the Switch Date of the assets held in relation to the investment portfolio from which the Member's Benefits are to be reduced; and
- (b) the value at the end of the Switch Date of the assets held in relation to the investment portfolio to which the Member's Benefits are to be increased.³²

4. RETIREMENT BENEFIT

- (a) Upon Retirement of a Member the Member's Benefit may be paid to the Member or applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member.

³² Rule 3A inserted by amending deed dated 2/4/2001 from effective date of amending deed dated 22/1/2001.

- (b) If a Member has attained age 65 but not age 70 and is not Gainfully Employed on either a full-time or part-time basis the Member's Benefit shall be paid to the Member or applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member.
- (c) If a Member has obtained age 70 and is not Gainfully Employed on a full-time basis the Member's Benefit shall be paid to the Member or applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member.
- (d) If a Member continues to be Gainfully Employed on a full-time basis the Member's Benefit may be paid to the Member or applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member on or after the Member reaches age 65.
- (e) If the Relevant Requirements permit, a Member who has attained a nominated age may be paid a Benefit or the Benefit applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member.
- (f) If no direction is given by a Member to the Trustee as to the manner in which a Benefit is to be paid, the Benefit shall be paid as a lump sum.

5. DEATH BENEFIT³³

Death Benefit

- 5.1 A Death Benefit is payable on the death of a Member.

Death Benefit Payment Instruction

- 5.2 A Member may give the Trustee a Death Benefit Payment Instruction at any time. A notice given to the Trustee by a Member prior to the Death Benefit Instruction Commencement Date and which the Trustee considers substantially complies with the definition of Death Benefit Payment Instruction is deemed to be a Death Benefit Payment Instruction.³⁴
- 5.3 A Member may replace a Death Benefit Payment Instruction at any time. The Member does so by giving the Trustee a new Death Benefit Payment Instruction.

³³ Rule 5 replace by amending deed dated 17 March 2000.

³⁴ Rule 5.2 amended (phrase deleted) by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

Revoking Death Benefit Payment Instruction

- 5.4 A Member may revoke a Death Benefit Payment Instruction at any time by written notice to the Trustee which:
- (a) is signed and dated by the Member; and
 - (b) is in a form acceptable to the Trustee.

Death of Member with Death Benefit Payment Instruction

- 5.5 On the death of a Member with a Death Benefit Payment Instruction which is a Binding Death Benefit Payment Instruction, the Trustee must, subject to Rule 5.10, pay the Death Benefit in accordance with the instruction.

Validity

- 5.6 A Death Benefit Payment Instruction is valid if, at the time the Trustee considers the instruction under Rule 5.7:
- (a) it appears, on its face, to comply with all of the requirements of the definition of Death Benefit Payment Instruction; and
 - (b) to the Trustee's actual knowledge, the Member has not, since giving the instruction to the Trustee, married, entered into a de facto or like relationship with a person of either gender or separated on a permanent basis from their Spouse or partner.

Consent

- 5.7 As soon as practicable after receiving notice of the death of a Member with a Death Benefit Payment Instruction, the Trustee must consider whether to consent to the Death Benefit Payment Instruction. The Trustee must give its conditional consent if:
- (a) the instruction is valid under Rule 5.6; and
 - (b) the Trustee does not have actual knowledge that when the Member gave the instruction, the Member did not understand the effect of making it under the provisions of this deed having effect when the Member gave it.³⁵
- 5.8 The Trustee's conditional consent to a Death Benefit Payment Instruction under Rule 5.7 becomes absolute on payment of the Death Benefit unless the consent has been previously revoked. The Trustee may only revoke its conditional consent to a Death Benefit Payment Instruction if, prior to payment of any or all of the Death Benefit, the Trustee receives actual notice of any matter which, had the matter existed and been known to the Trustee at the time of considering the Death Benefit Payment Instruction under Rule 5.7, would have caused the Trustee to refuse its conditional

³⁵ Rule 5.7 amended (phrase replaced) by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

consent to the Death Benefit Payment Instruction. If the Trustee revokes its conditional consent, the revocation applies only to that portion of the Death Benefit which has not been paid. That portion is not payable under Rule 5.5 and forms part of the Residual Death Benefit. The Death Benefit Payment Instruction remains a Binding Death Benefit Payment Instruction for any part of the Death Benefit which has already been paid.

5.9 The Trustee:

- (a) must, for the purpose of Rules 5.7 and 5.8, assume that a Member did understand the effect of making a Death Benefit Payment Instruction under the provisions of this deed having effect when the Member gave it, unless it has actual knowledge to the contrary;
- (b) has no duty to seek out evidence with respect to the Member's understanding when an instruction was made or given, or in respect of any other matter relating to this Rule 5; and
- (c) may rely on any evidence it considers appropriate.³⁶

Partially Invalid Death Benefit Payment Instruction

5.10 If the Trustee is or becomes aware prior to its consent becoming absolute under Rule 5.8 that a person nominated in a Death Benefit Payment Instruction:

- (a) has died; or
- (b) is neither a Dependant nor a Legal Personal Representative of the Member or³⁷
- (c) has given the Trustee written notice that the person does not wish to receive the portion of the Death Benefit specified for them,³⁸ the amount nominated in the Death Benefit Payment Instruction as being payable to that person is not payable under Rule 5.5 and will form part of the Residual Death Benefit.

³⁶ Rule 5.9 replaced by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

³⁷ Word inserted by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

³⁸ Sub-rule (c) inserted by amending deed dated 2/4/2001 from effective date of amending deed dated 17/3/2001.

Death of a Member with a Residual Death Benefit

5.1 The Trustee must pay a Residual Death Benefit to:

- (i) the Member's Legal Personal Representative; or
- (b) if there is no Legal Personal Representative:

one or more of the Member's Dependants in proportions determined by the Trustee; or

if none, such other persons as are permitted under the Relevant Requirements.

Manner in which a Benefit is paid

5.12 If a Member has not provided the Trustee with an instruction (at the invitation of the Trustee as to the mode of payment of a Death Benefit in a Binding payment instruction, the Trustee may, in its absolute discretion, pay a Benefit under this Rule 5 as a lump sum, pension or combination of both.

6. PERMANENT DISABLEMENT BENEFIT

- (a) A Member shall be paid a Permanent Disablement Benefit in accordance with the Member's Specifications upon the Member's Total and Permanent Disablement.
- (b) The Benefit may be paid to the Member or applied to purchase an Annuity as directed by the Member or paid in part with the balance being applied to purchase an Annuity as directed by the Member.

7. TEMPORARY DISABLEMENT BENEFIT

A Member shall be paid a monthly Benefit of the amount indicated in the Member's Specifications upon the Member's Total and Temporary Disablement.

8. UNRESTRICTED NON-PRESERVED BENEFIT

With the approval of the Trustee, the Member shall be paid all or part of the Unrestricted Non-Preserved Benefit upon request by the Member. Such amount shall be paid as a lump sum.

9. EARLY RELEASE OF COMPULSORY PRESERVED BENEFIT

If the Relevant Requirements permit or upon the receipt of approval from the Responsible Authority, a Member shall be paid all or part of the Compulsory Preserved Benefit upon request by the Member. Such amount shall be paid as a lump sum.

EXECUTED AS A DEED

**THE COMMON SEAL OF AMP
SUPERANNUATION LIMITED**
is hereby affixed by the authority
of the Board in the presence of:

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Signature of authorised person

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Signature of authorised person

Office Held

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Office Held

Name of authorised person
(block letters)

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Name of authorised person
(block letters)