

24 June 2015

BUSS (Queensland) Pty Ltd

Deed of Variation to the Trust Deed of the Building Unions Superannuation Scheme (Queensland)

Date

Parties

BUSS (Queensland) Pty Ltd ACN 065 081 281 of Ground Floor, 52 McDougall Street, Milton, Queensland (**Trustee**)

Background

- A The Building Unions Superannuation Scheme (Queensland) ("**Fund**") was established by a trust deed dated 30 November 1984 as amended. The terms of the trust deed currently regulating the Fund were adopted by a deed made on 17 May 2000 which replaced the terms of the trust deed in their entirety. The terms of the trust deed as amended, and as replaced by the deed made on 17 May 2000 and subsequently amended on 18 December 2002, 15 December 2004, 31 August 2005, 16 February 2006 and 1 February 2013, are referred to in this document as the "**Trust Deed**".
- B The Trustee wishes to amend the Trust Deed in the manner set out in this document.
- C For the purposes of clause 16.2 of the Trust Deed, the Trustee is of the opinion that the amendments set out in this document are a valid exercise of the power of amendment and do not:
- (a) permit the appointment of a person other than a Constitutional Corporation as trustee; or
 - (b) adversely affect a Member's right or claim to accrued benefits, or the amount of those accrued benefits.
-

Agreed terms

1 Effect of this document

1.1 Document is supplemental

This document is supplemental to and constitutes an amendment of the Trust Deed, and the Trust Deed shall be construed and take effect as amended in this document, on the dates set out in **clause 1.2**.

1.2 Date of effect

- (a) The amendments in **clause 2.1** take effect on 1 July 2013.
- (b) The amendments set out in **clause 2.2** take effect on 1 October 2014

1.3 Definitions in Trust Deed

Words defined in the Trust Deed have the same meaning in this document (including the background).

2 Terms of amendments

The Trust Deed is amended in the following manner:

2.1 Amendments effective 1 July 2013

The following new clauses 4A.3 and 4A.4 are inserted after clause 4A.2:

"4A.2 No Member who holds a beneficial interest in a MySuper Class is precluded from holding a beneficial interest of another class in the Fund because of that fact.

4A.3 No Member is precluded from holding a beneficial interest in a MySuper Class because the Member holds a beneficial interest of another class in the Fund."

2.2 Amendments effective on execution

Clause 7.10 is replaced with the following:

"7.10 Form of benefit payments

A benefit is payable as a lump sum, unless:

- (a) the benefit is a reversionary pension;
- (b) the person entitled to the benefit requests and the Trustee agrees that all or part of the benefit is to be paid as a pension; or
- (c) the Trustee decides that all or part of the benefit is to be paid as a pension.

Executed as a deed.

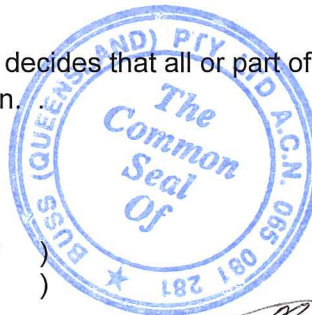
Executed by **BUSS (Queensland) Pty Ltd**

.....
Company Secretary/Director

LINDA VICKERS
.....
Name of Company Secretary/Director
(print)

.....
Director

ROBERT J HETTE
.....
Name of Director (print)



BUSS (QUEENSLAND) PTY LTD

**THE BUILDING UNIONS SUPERANNUATION
SCHEME (QUEENSLAND)
CONSOLIDATED TRUST DEED**

ESTABLISHED BY TRUST DEED DATED 30 NOVEMBER 1984

CONSOLIDATION COMPRISING:

Provisions adopted by Deed of Variation dated 17 May 2000

AS AMENDED BY:

Deed of Variation dated 18 December 2002

Deed of Variation dated 15 December 2004

Deed of Variation dated 31 August 2005

Deed of Variation 16 February 2006

Deed of Variation dated 1 February 2013

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1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions from SIS

In this Deed unless the contrary intention appears, the following expressions have the meanings given to them in SIS:

- “Activity Fee”;
- “Administration Fee”;
- “Associate”;
- “Buy-Sell Spread”;
- “Compassionate Ground”;
- “Civil Penalty Order”;
- “Constitutional Corporation”;
- “Eligible Rollover Fund”;
- “Exit Fee”;
- “Gainfully Employed” and “Gainful Employment”;
- “Insurance Fee”;
- “Investment Fee”;
- “Large Employer”;
- “Legal Personal Representative”;
- “MySuper Product”;
- “Preservation Age”;
- “Prudential Standards”;
- “Registrable Superannuation Entity”;
- “Regulated Superannuation Fund”;
- “Severe Financial Hardship”;
- “Spouse”;
- “Switching Fee”.

1.2 Definitions

In this Deed unless the contrary intention appears, the following expressions have the meanings given to them in this **clause 1.2**.

“**Account Balance**” in relation to a Member or former Member means the balance standing to the Member’s credit in the Member’s Member Account.

“**Administrator**” means a person appointed to administer the Fund pursuant to **clause 10.3(a)**.

“**amend**” includes delete or replace.

“**Assets of the Fund**” means any form of property including cash held by the Trustee on trust in accordance with the terms of this Deed.

“**Auditor**” means a person or persons eligible to act as an auditor in accordance with Superannuation Law or a firm of such persons appointed by the Trustee under **clause 14.4(a)**.

“**Authorised Investments**” means the investments more particularly described in **clause 11.3** and any of them.

“**Award**” means a prescribed agreement or award applicable to the terms of a Member’s employment with an Employer.

“**Binding Nomination**” means a notice given to the Trustee, by a Member or by a person making application for Membership who subsequently becomes a Member, which:

- (a) requires the Trustee to provide any benefits in respect of the Member on or after the Member’s death to a person or persons nominated in the notice, being the Legal Personal Representative or a Dependant or Dependents of the Member;
- (b) is in accordance with any standards prescribed by Superannuation Law;
- (c) is in a form acceptable to the Trustee for notifying binding nominations.

“**Charging Rules**” means all of the rules set out in Superannuation Law prescribing the manner in which fees and charges payable in respect of a Member who holds a MySuper Interest may or must be calculated and allocated to Members holding MySuper Interests.

“**Child**” in relation to a person includes:

- (a) a child being the person’s issue;
- (b) a lawfully adopted child; and
- (c) a step-child,

but does not include a child whom the person gave up for adoption and who has been lawfully adopted by another person.

“**Commodities**” means any tangible personal property, currency, interest rate, financial index or indices (including any share index) or such other tangible or intangible thing determined by the Trustee for the purposes of this definition.

“**Custodian**” means any person appointed under **clause 10.3(c)** to perform the functions of custodian of part or all of the Fund.

“**Deed**” means this document as amended from time to time, and includes any schedules.

“**Dependant**” of a Member means any person who is or was at the relevant time:

- (a) a Dependant of the Member as that expression is defined in SIS;
- (b) *[DELETED]*
- (c) any person, whether or not related to the Member or former Member by blood or marriage, who, in the opinion of the Trustee, is or was wholly or partially dependent on the Member or former Member at the time of the Member’s death or of any other event in respect of which an entitlement to a benefit may arise or who has or had at the relevant time a legal right to look to the Member or former Member for support.

“**Derivative**” means any financial instrument or arrangement whose economic performance is dependent on any change in interest rate, currency value or exchange rate or the economic performance of another security or Commodity.

“**Eligible Person**” means a person who is eligible under Superannuation Law to join, and remain a member of, a Regulated Superannuation Fund.

“**Employee**” has the meaning given to that term in section 15A of SIS, and in relation to any Participating Employer means an employee of that Participating Employer.

“**Employer**” has the meaning given to that term in section 15A of SIS, and in relation to a Member, or former Member, at any time, means an employer of that Member at that time.

“**equitable share**” means an amount equitably determined by the Trustee, and “**amount equitably determined**” has a corresponding meaning.

“**Expenses**” means the expenses listed in **clause 13.1**.

“**Financial Year**” means each successive period of 12 Months commencing on 1 July and ending on 30 June, or any part of such period that may occur at the commencement or termination of the Fund.

“**Fund**” means the superannuation trust fund constituted by this Deed.

“**Index Linked Securities**” means any investment whose economic performance is dependent on changes in any index.

“**Insurance Company**” means such insurer, insurers or re-insurance companies as the Trustee may from time to time determine.

“**Insurance Investments**” means any investment offered by an Insurance Company, whether the same involves a deposit, a loan, payment of premiums, acquisition of a right or

interest in or arising out of insurance or life policies, or in a statutory fund or any similar investment.

“Investment Manager” means a person appointed as an investment manager pursuant to **clause 10.3(b)**.

“Investment Portfolio” means a portfolio established by the Trustee under **clause 11.2(a)**

“Large Participating Employer” has the meaning given to that term in **clause 4A.2(a)(i)**.

“leaves the industry” has the meaning given to that expression by the Trustee and **“leaving the industry”** has a corresponding meaning.

“Lifecycle Exception” means, in relation to a MySuper Investment Portfolio, that gains and losses from different classes of asset may be streamed to different subclasses of Members who hold a MySuper Interest:

- (a) on the basis, and only on the basis, of the age of those Members;
- (b) on the basis of the age of those Members and other factors prescribed under Superannuation Law; or
- (c) on the basis of the age of those Members and other factors prescribed in circumstances prescribed under Superannuation Law.

“Member” means any Eligible Person who:

- (a) has been admitted as a Member; and
- (b) has not ceased to be a Member.

“Member Account” means an account maintained for a Member under **clause 6.5**.

“Month” means a calendar month.

“MySuper Class” has the meaning given to that term in **clause 4A.1**.

“MySuper Interest” of a Member means a beneficial interest of the Member in a MySuper Class.

“MySuper Investment Portfolio” has the meaning given to that term in **clause 4A.1(a)**.

“Offer Document” means any document issued by the Trustee offering membership of the Fund.

“Participating Employer” means any person who:

- (a) is admitted as a Participating Employer to the Fund; and
- (b) has not ceased to participate in the Fund,

and where used in relation to a Member or former Member, means the Employers by whom the Member or former Member is for the time being or was at the relevant time employed.

“Participation Agreement” has the meaning given to that term in **clause 4A.2(e)**.

“Permitted Fees” means, in relation to a MySuper Class, fees and charges as provided in **clause 13.3(c)(i)**.

“Permitted Limitation” means a limitation on the source or kind of contributions that is:

- (a) a prescribed limitation for a MySuper Product under Superannuation Law; or
- (b) imposed by or under the general law or another law of the Commonwealth.

“person” includes partnerships, associations or corporations as the context may require.

“policy of insurance” means any policy of insurance or assurance of any kind covering a Member, or a group of Members.

“Preserved Benefit” means:

- (a) the amount of any benefit or any part of a benefit; or
- (b) in relation to a Member who has not become entitled to a benefit, the balance in the Member’s Member Account or any part of it,

which comprises the amount of the Member’s Preserved Benefit for the purposes of SIS, or as otherwise determined by the Trustee, and which has not become unrestricted non-preserved benefits under SIS.

“Regulations” means the regulations to SIS.

“Repos” means agreements, arrangements or understandings with a person whereby any Investments are transferred to or Investments are acquired from that person on the basis that the transaction will be reversed on a predetermined rate and at an agreed price.

“Reserve Account” means an account kept pursuant to **clause 6.1**.

“Retire” has the meaning assigned to that expression in SIS and **“Retires”**, **“Retired”** and **“Retirement”** have corresponding meanings.

“Reversionary Beneficiary” means, in relation to a Member, a person:

- (a) whom the Member nominated on commencement of the Member’s pension benefit, in a form acceptable to the Trustee, as a person entitled to receive the Member’s pension benefit on the Member’s death; and
- (b) who:
 - (i) where the Member’s benefit is an allocated pension, is a Dependent of the Member (at the time of the nomination and at the time of the Member’s death) and, where the Reversionary Beneficiary is the Member’s Spouse at the time of the nomination, is the Member’s Spouse at the time of the Member’s death;
 - (ii) where the Member’s Benefit is a market linked pension, is the Member’s Spouse at the time of the nomination and at the Member’s death.

“RITS” means the Reserve Bank Information & Transfer System.

“Shortfall Component” has the meaning given to that expression in the Superannuation Guarantee (Administration) Act 1992.

“SIS” means the Superannuation Industry (Supervision) Act 1993 and includes the Regulations to it.

“Superannuation Entity” means any entity which may under Superannuation Law receive a transfer or rollover of a Member’s benefit or from which the Trustee may accept a transfer or rollover of benefits. A Superannuation Entity includes an Eligible Rollover Fund.

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

“Superannuation Law” means any requirement of a law or a Superannuation Regulator:

- (a) prescribed for the operation of Regulated Superannuation Funds; or
- (b) which must be complied with in order to:
 - (i) obtain the most favourable taxation treatment available to Regulated Superannuation Funds; or
 - (ii) avoid any penalty, detriment or disadvantage

and includes any proposed requirement which the Trustee believes will have retrospective effect.

“Superannuation Regulator” means the government body or bodies responsible for the regulation of, or the administration of tax concessions available to, superannuation funds in Australia, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities & Investments Commission; and
- (c) the Australian Taxation Office.

“Tax” means all taxes, duties, governmental imposts and surcharges together with interest, penalties, charges, fees and other amounts payable on or in respect of them.

“Termination Date” means the date set by the Trustee under **clause 15.1**.

“Total and Permanent Disablement” in relation to a Member means:

- (a) in relation to a benefit to be provided under a policy of insurance, the definition of “total and permanent disablement” or a corresponding term in the policy of insurance; or
- (b) otherwise, disablement of a Member resulting from an illness, accident or injury to the Member which commenced or occurred whilst a Member and as a result of which:

- (i) the Member has been precluded for a period of six (6) consecutive months after the date of occurrence of such event from following any occupation for which the Member is reasonably suited by training, education or experience; and
- (ii) the Member will, in the opinion of the Trustee after consideration of medical evidence satisfactory to it, continue to be so disabled to such an extent as to render the Member unlikely ever again to resume work in or attend to any such occupation,

and “**Totally and Permanently Disabled**” has a corresponding meaning.

“**Trustee**” means the person or persons for the time being acting as trustee of the Fund.

1.3 Statutes

- (a) References in this Deed to any statutory enactment include, and shall be construed as, references to the enactment as amended, modified, consolidated, replaced or re-enacted from time to time.
- (b) References in this Deed to a section, regulation or other specific provision of a statute, ordinance, code, law or statutory instrument includes the equivalent section, regulation or provision in any consolidation, amendment, re-enactment or replacement of that statute, ordinance, code or statutory instrument.

1.4 Plurals and Genders

Words importing the singular number include the plural and vice versa and words importing any gender include all genders.

1.5 Clauses, Schedules and Rules

Any reference in this Deed to a Clause, Schedule or Rule is a reference to the corresponding Clause, Schedule or Rule of this Deed.

1.6 Headings and Sub-Headings

The use of headings in this Deed is for convenience only, and headings do not form part of, and are not to be used in the interpretation of, any provision of this Deed.

1.7 Bodies and Associations

References to authorities, institutes, associations and bodies whether statutory or otherwise, in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or its powers or functions being transferred to any other authority, institute, association or body, is deemed to refer respectively to the authority, institute, association or body established or constituted to replace it or succeeding to its powers or functions or any of them.

2 CONSTITUTION OF TRUST

2.1 Commencement Date

The date of the Fund’s commencement was 1 January 1985.

2.2 Declaration of Trust

The Trustee declares that it will hold on the trusts set out in this Deed:

- (a) any contributions paid to and accepted by it for the purposes of the Fund; and
- (b) any property acquired by it on the investment of contributions made to the Fund.

2.3 Name of Fund

The superannuation trust fund constituted under this Deed is known as “**The Building Unions Superannuation Scheme (Queensland)**”.

2.4 Fund

The trust fund of the Fund includes:

- (a) the initial investment settled on commencement of the Fund;
- (b) such contributions as may be made from time to time by Participating Employers, Members and other persons;
- (c) all assets, property, benefits or policies in which the Fund is from time to time invested; and
- (d) all earnings from time to time arising from contributions or investments.

2.5 Purpose

The Fund must be maintained solely for one or more of the core or ancillary purposes identified in SIS as the purposes for which a Regulated Superannuation Fund must be solely maintained.

2.6 Compliance

- (a) The Trustee may comply with a requirement of Superannuation Law notwithstanding that:
 - (i) compliance with the Superannuation Law conflicts with an express provision of this Deed;
 - (ii) the Superannuation Law is not required under SIS or otherwise to be included in this Deed.
- (b) The Trustee does not commit any breach of trust by virtue of any act or thing done to comply with any Superannuation Law.
- (c) Notwithstanding any other provision in this Deed:
 - (i) the Trustee in the exercise of its powers under this Deed is not subject to the direction of any other person except where the Superannuation Law permits the direction to be given to the Trustee by that person; and
 - (ii) where any provision of the Deed would permit any person to give a direction to the Trustee other than as permitted by the Superannuation

Law the Trustee must disregard any direction given by that person, and the Trustee may alone exercise the power, authority or discretion which is by the terms of this Deed subject to the direction of that other person.

- (d) Notwithstanding any other provision in this Deed, where any discretion under this Deed may be exercised by a person other than the Trustee:
 - (i) the person on whom the discretion is conferred may not exercise that discretion in any case unless the Trustee consents to the exercise of the discretion in the manner in which the person proposes to exercise the discretion;
 - (ii) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
 - (iii) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.
- (e) This Deed is to be construed as containing covenants in the terms prescribed under SIS as covenants that are taken to be contained in the governing rules of a Registrable Superannuation Entity.

3 PARTICIPATING EMPLOYERS

3.1 Admission of Participating Employer

- (a) An Employer may in the form determined by the Trustee apply to the Trustee to be admitted as a Participating Employer for the purpose of making contributions for any of its Employees who become Members.
- (b) The Trustee may determine to accept an Employer as a Participating Employer, notwithstanding that a duly completed Application has not been received, on such terms and conditions and effective from such date as the Trustee determines, where the Employer has:
 - (i) nominated Employees for whom the Employer wishes to contribute to the Fund; and
 - (ii) delivered to the Trustee a contribution for the credit of those Employees or any of them.

3.2 Trustee may reject application for Participation

The Trustee may:

- (a) accept or reject an application to become a Participating Employer without giving any reason;
- (b) impose any conditions when accepting an application; and
- (c) at any time, remove or vary any condition so imposed.

3.3 Date of Admission

An applicant becomes a Participating Employer on the date determined by the Trustee.

3.4 Information to be given to Employers or prospective Employers

The Trustee must give a new or prospective Participating Employer such information as is prescribed by the Superannuation Law.

3.5 Terms of Participation

- (a) Each Participating Employer is bound by this Deed.
- (b) The Trustee may regard any instruction given or purported to be given by an officer of a Participating Employer as a valid instruction.

3.6 Termination of Participation

- (a) A Participating Employer ceases to participate in the Fund if a written notice to that effect is given by:
 - (i) the Employer to the Trustee;
 - (ii) the Member to the Trustee; or
 - (iii) the Trustee to the Employer.

The Trustee may disregard such a notice from a Participating Employer if it determines at any time in its absolute discretion that the notice was given as part of a concerted campaign and with the intention of supporting any superannuation fund which is or is likely to be in competition with the Fund.

- (b) A Participating Employer ceases to participate in the Fund if:
 - (i) where a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for the winding up thereof or a scheme of arrangement providing for the dissolution thereof is approved by a court other than for the purposes of amalgamation or reconstruction; or
 - (ii) where a Participating Employer is or includes a partnership, the partnership is dissolved other than for the purposes of a reconstruction or reconstitution; or
 - (iii) where a Participating Employer is or includes a natural person or natural persons not in partnership, that person or any of those persons becomes bankrupt; or
 - (iv) a Participating Employer ceases to carry on business.
- (c) The Participating Employer ceases to participate in the Fund with effect on the date determined by the Trustee.

- (d) A Member may remain a Member despite their Participating Employer ceasing to participate in the Fund.

3.7 Substituted Employer

- (a) Where:
 - (i) the whole or substantially the whole of the assets of a Participating Employer's business are acquired by another person; or
 - (ii) another person commences to employ all or any Members formerly employed by a Participating Employer,

the Trustee may elect to accept the performance by that other person of the obligations of the Participating Employer under this Deed in place of the performance of those obligations by the Participating Employer.
- (b) Acceptance by the Trustee of performance of a Participating Employer's obligations by another person discharges the Participating Employer from any further obligations under this Deed.

3.8 Consequences of termination

On termination of a Participating Employer's participation taking effect:

- (a) no persons shall be admitted as Members as Employees of the former Participating Employer;
- (b) the former Participating Employer must not make further contributions to the Fund except contributions due prior to the date of termination.

3.9 Rights of Employer maintained

Nothing in this Deed in any way prejudices, affects or alters the right of a Participating Employer to dismiss any Employee or to vary the terms of an Employee's employment, and nothing renders a Participating Employer liable or responsible, and a Participating Employer is not liable or responsible in any way, for any act or omission of the Trustee or any Participating Employer or Employee or other person in connection with the Fund. Any benefit that becomes payable or would or might have become payable may not be used as grounds for granting or increasing damages in any action brought by any Employee against the Participating Employer whether in respect of any dismissal or otherwise.

3.10 Payment to Participating Employer

The Trustee must not pay any part of the Fund to a Participating Employer if to do so would breach the Superannuation Law.

4 MEMBERS

4.1 Eligibility

- (a) An Employee who is an Eligible Person and who has been nominated for membership of the Fund by a Participating Employer, may apply to become a Member in a form approved by the Trustee.

- (b) An Eligible Person (other than an Employee of a Participating Employer) may otherwise apply to become a Member in a form approved by the Trustee.
- (c) Where the Trustee considers that special or extenuating circumstances exist the Trustee may, subject to the Superannuation Law and such specific terms, conditions and restrictions as the Trustee considers appropriate, deem a person who is or was an Employee of a Participating Employer and eligible to become a Member, or is or was otherwise eligible to become a Member, but who has not actually made such an application, to have been admitted as a Member with effect on a date determined by the Trustee, not being earlier than the date on which the person first became eligible to apply for membership.

4.2 Applicant to provide information

An Eligible Person who wishes to become a Member must:

- (a) have any medical examination; and
 - (b) provide any information or take any other steps,
- which the Trustee requests in relation to the application.

4.3 Membership despite position held

A director, officer or employee of a Participating Employer or Trustee is eligible to be a Member regardless of their position.

4.4 Admission to membership

- (a) The Trustee may:
 - (i) accept or reject an application to become a Member without giving any reason;
 - (ii) impose any conditions when accepting an application; and
 - (iii) at any time remove or vary any condition so imposed.
- (b) The Trustee must reject an application unless the applicant is an Eligible Person.

4.5 Date of admission

An applicant becomes a Member on the date determined by the Trustee, or if the Trustee makes no determination, the date of acceptance of the application.

4.6 Information to be given to Members

The Trustee must:

- (a) provide to prospective Members, prior to accepting an application for membership, such information as is prescribed by Superannuation Law;
- (b) provide such information to a new Member as is prescribed by Superannuation Law.

4.7 Subsequent failure to provide information

If a Member fails after admission to provide information or evidence as and when required by the Trustee and to its satisfaction, the Trustee may refuse to accept any further contributions by or for that Member.

4.8 Members bound

Each Member is bound by this Deed.

4.9 Interest in the Fund

A Member has a beneficial interest in the Fund, but is not entitled to:

- (a) interfere with the exercise of the Trustee's powers or discretions;
- (b) exercise any rights in relation to any of the Assets of the Fund; or
- (c) require the transfer to the Member of any of the Assets of the Fund;

except as expressly provided in this document.

4.10 Termination of Membership

A person ceases to be a Member on the first to occur of:

- (a) the Member's benefit being paid in full;
- (b) transfer of the full amount of the Member's Member Account to another Superannuation Entity; and
- (c) the Member's entitlement to benefits being terminated.

4A MYSUPER

4A.1 MySuper Classes

The Trustee may establish one or more classes of membership (**MySuper Class**) that must have the following terms and conditions:

- (a) the Trustee must determine the Investment Portfolio applicable in respect of the MySuper Class as a single diversified investment strategy ("**MySuper Investment Portfolio**");
- (b) all Members who hold a MySuper Interest must be entitled to access the same options, benefits and facilities, except that:
 - (i) different terms and conditions may apply in respect of benefits under a policy of insurance; and
 - (ii) access to options, benefits and facilities may otherwise be different if permitted under Superannuation Law;

- (c) net earnings of the MySuper Investment Portfolio must be allocated to MySuper Interests in a way that does not stream gains or losses to only some of those Members, except to the extent permitted under a Lifecycle Exception;
- (d) the same process is to be adopted in attributing amounts to Members in respect of their MySuper Interest, except to the extent that a different process is necessary to allow for fee subsidisation by Participating Employers;
- (e) if fee subsidisation by Participating Employers is permitted, that subsidisation does not favour one Member who holds a MySuper Interest and is an Employee of a subsidising Participating Employer over another such Member who is an Employee of that Participating Employer;
- (f) there are no limitations on the source or kind of contributions made by or on behalf of Members who hold a MySuper Interest, other than Permitted Limitations;
- (g) a MySuper Interest cannot be replaced with an interest in another class of membership in the Fund unless:
 - (i) the replacement is with an interest in another MySuper Class within the Fund;
 - (ii) the Member consents in writing to the replacement within the time period prescribed under Superannuation Law; or
 - (iii) the MySuper Interest is replaced with a beneficial interest of another class in the Fund of a kind, and in the circumstances, permitted under Superannuation Law;
- (h) a Member's MySuper Interest cannot be replaced with a beneficial interest in another Superannuation Entity ("**New Interest**") unless:
 - (i) the New Interest is a MySuper Product and the replacement with the New Interest is permitted under a law of the Commonwealth;
 - (ii) the replacement is otherwise permitted, or is required, under a law of the Commonwealth; or
 - (iii) the Member consents in writing to the replacement with the New Interest;
- (i) to the extent that assets of the Fund are attributable to the MySuper Class, a pension is not payable out of those assets (other than a benefit payable as an income under a policy of insurance, on the Member's inability to work due to ill-health).

4A.2 Employer's MySuper Classes

- (a) The Trustee may establish a MySuper Class in respect of a Participating Employer ("Employer's MySuper Class") where:
 - (i) the Participating Employer is a Large Employer, or the Trustee is satisfied that the Participating Employer will become a Large Employer

- within a period determined by the Trustee and prescribed by a Superannuation Regulator (“**Large Participating Employer**”);
- (ii) the Employer is specified in the Participation Agreement as a Large Participating Employer; and
 - (iii) the Trustee is authorised by a Superannuation Regulator to establish the Employer’s MySuper Class.
- (b) A person is not entitled to hold a MySuper Interest in an Employer’s MySuper Class unless the person is:
- (i) an Employee or former Employee of:
 - (A) the Large Participating Employer; or
 - (B) an Associate of the Large Participating Employer; or
 - (ii) a relative or Dependant of such a person.
- (c) Subject to **clause 4A.2(d)**, where an Employer’s MySuper Class is established for a Large Participating Employer and:
- (i) the Large Participating Employer or an Associate contributes to the Fund (or would contribute apart from a temporary cessation of contributions) for an Employee of the Large Participating Employer, any Employee of the Large Participating Employer is eligible to hold a MySuper Interest in that Employer’s MySuper Class;
 - (ii) the Large Participating Employer or an Associate contributes to the Fund (or would contribute apart from a temporary cessation of contributions) for an Employee of an Associate, any Employee of that Associate is eligible to hold a MySuper Interest in that Employer’s MySuper Class.
- (d) An Employee of a Large Participating Employer is not eligible to hold a MySuper Interest in that Employer’s MySuper Class where:
- (i) under Superannuation Law, the governing rules of the Employer’s MySuper Class cannot permit that Employee to be eligible to hold a MySuper Interest; or
 - (ii) the Employee is not eligible under the Participation Agreement to hold a MySuper Interest in the Employer’s MySuper Class, and Superannuation Law does not require that the Employee is so eligible.
- (e) An agreement between the Trustee and a Large Participating Employer in relation to the terms of Membership applicable to Members of that Employer’s MySuper Class (“**Participation Agreement**”) forms part of the governing rules of the Fund applicable to those Members.

5 CONTRIBUTIONS

5.1 Member contributions

- (a) A Member may contribute any amount, which the Trustee accepts.
- (b) A Member is not required to contribute during any period when the Member is on leave of absence without pay. The Member may, however, contribute during any such period on a basis agreed between the Member and the Trustee or, in the absence of agreement, a basis determined by the Trustee.

5.2 Contributions by Participating Employers

- (a) Subject to this Deed, each Participating Employer must contribute to the Fund in respect of:
 - (i) each Member employed by it and admitted to this Fund; and
 - (ii) each week or part thereof from the commencement of that person's membership of the Fund whichever of the following amounts apply:
 - (A) such amount as the Trustee from time to time determines; or
 - (B) such amount (whether or not calculated by reference to a percentage or rate of salary, wage or earnings) as the Participating Employer is required by an Award or any site agreement applicable to the terms of the Member's employment to contribute to a superannuation fund for that Member's benefit,

provided that such amount shall not be less than the amount required to avoid the Superannuation Guarantee Charge.
- (b) The number of weeks in respect of which a Participating Employer is required by **clause 5.2(a)** to make contributions in respect of a Member shall be reduced by one:
 - (i) for each period of 5 consecutive normal working days that the Member is absent without pay from active employment by the Participating Employer; and
 - (ii) for each week of concurrent membership by the Member of any one of the superannuation funds known as Construction and Building Unions Superannuation or Allied Unions Superannuation Trust (Queensland) respectively or of any other superannuation fund which the Trustee in its discretion determines. The Trustee may revoke any determination and a certificate issued by or on behalf of the Trustee as to membership or approval of a superannuation fund shall be conclusive evidence as to the facts set out in such certificate.

(c) In this **clause 5.2**:

“**active employment**” means active continuous attendance by a Member to his or her normal duties as an employee of a Participating Employer at his or her usual place of employment and “**actively employed**” has a corresponding meaning;

“**employed**” in relation to a member, includes each period in respect of which accident pay is payable and each period of leave in respect of which the Member is entitled to be paid;

“**week**” means the consecutive days beginning on a Monday and ending on a Friday; and, in relation to a Member:

- (i) reference to part of a week does not apply to any week other than a week in which employment commences; and
 - (ii) reference to a week of employment does not apply to any week in which employment ceases unless employment of a Member ceases on a Friday after being actively employed for each of the previous days in the week.
- (d) Where a Participating Employer is contributing to the Fund in respect of a Member who is receiving compensation under the WorkCover Queensland Act 1996 (“**WorkCover Act**”) the Participating Employer shall continue to contribute to the Fund in respect of that Member for such period during which the Member is in receipt of such compensation at the initial rate at which the same is payable under the WorkCover Act provided that the contribution by the Participating Employer referred to in this **clause 5.2(d)** shall only be made whilst the Member is an employee of the Participating Employer and provided further that the contribution by the Participating Employer hereunder shall cease when the compensation received by the Member under the WorkCover Act is reduced from such initial rate or is ceased.
- (e) In addition to the contributions payable by the Participating Employer pursuant to this **clause 5.2**, the Participating Employer may contribute such further amounts as is agreed with the Trustee from time to time.
- (f) In addition to and not in derogation of any obligation imposed by statute or otherwise, in the event of default by a Participating Employer in making the contributions due pursuant to this **clause 5.2**, the Participating Employer must pay to the Trustee interest at a rate and in a manner determined by the Trustee from time to time together with any charges and expenses to which the Trustee becomes liable for in consequence of or in connection with such default.
- (g) The contributions payable by a Participating Employer in respect of a Member must be paid to the Fund in the manner and at the times determined by the Trustee.
- (h) A Participating Employer’s liability to contribute ceases when the Member ceases to be employed by the Participating Employer or attains an age at which Superannuation Law prohibits the acceptance of those contributions.

5.3 Contributions by other persons

If Superannuation Law permits, the Trustee may accept contributions for a Member from any other person.

5.4 Shortfall Component

The Trustee may accept as a contribution in respect of a Member a Shortfall Component.

5.5 Payment of contributions

- (a) A contribution may be paid in cash or by transfer of assets, which are Authorised Investments to the Fund.
- (b) The Trustee may debit any expenses in connection with the transfer from the Member's Contribution Account or make other arrangements with the Member for payment of those expenses.
- (c) A contribution may be made directly to a delegate of the Trustee.
- (d) A Participating Employer may without further authority than this **clause 5.5(d)** retain out of the actual remuneration paid to each Member employed by it the amount of a Member's contribution. The amount so retained is to be held by the Participating Employer upon trust for the Fund to be paid to the Fund in such manner as the Trustee determines.

5.6 Discretion to refuse contributions

The Trustee may refuse to accept all or any part of a contribution from any person without giving any reason.

5.7 Cessation of contributions

Contributions must cease to be made for a Member when the Member:

- (a) ceases to be a Member; or
- (b) attains an age at which Superannuation Law prohibits the acceptance of those contributions.

6 ACCOUNTING FOR MEMBER BENEFITS

6.1 Establishment of Reserve Account

- (a) The Trustee must maintain a Reserve Account for the Fund.
- (b) The Trustee may maintain sub-accounts of the Reserve Account for specified purposes, including an administration reserve or an operational risk reserve.
- (c) The Trustee must formulate, review regularly and give effect to a strategy for the prudential management of the Reserve Account and any sub-accounts, consistently with the Fund's investment strategies and the capacity of the Fund to discharge liabilities (whether actual or contingent) as and when they fall due.

6.2 Crediting of Reserve Account

The Trustee must credit to the Reserve Account:

- (a) such proportion of contributions made under **clause 5.2** as the Trustee may from time to time determine to be necessary for payment of the Expenses of the Fund;
- (b) all income earned on the Fund's investments;
- (c) any gains on the realisation of any of the Fund's investments, and any other accretions to or arising out of the Fund's investments;
- (d) any other amounts which are payable to the Reserve Account under this Deed or in accordance with Superannuation Law; and
- (e) any moneys not required for the payment of benefits in accordance with the Deed.

6.3 Debiting of Reserve Account

The Trustee must debit to the Reserve Account:

- (a) any losses on realisation of any of the Fund's investments;
- (b) any amounts applied by the Trustee in accordance with **clause 6.4**.

6.4 Application of Reserve Account Credit

The Trustee may apply the Reserve Account for any of the following purposes:

- (a) in payment of Expenses;
- (b) by allocation of interest to Members' Member Accounts;
- (c) to augment retirement benefits for Members in proportion to their respective interests in the Fund;
- (d) to provide additional individual benefits other than retirement benefits for all Members on an equitable basis;
- (e) to avoid large fluctuations in the investment returns in accordance with any reserving policy determined by the Trustee from time to time; and
- (f) for any other purpose permitted by Superannuation Law.

6.4A Administration reserve

The purposes of an administration reserve may include:

- (a) retaining provision for anticipated Expenses;
- (b) retaining an ongoing balance to provide for contingencies and operational risks, as the Trustee considers appropriate.

6.4B Operational risk reserve

- (a) The purposes of an operational risk reserve may include meeting the Trustee's operational risk financial requirement prescribed under a Prudential Standard.
- (b) The Trustee may allocate all or part of an administration reserve to an operational risk reserve.

6.5 Establishment of Member Account

The Trustee must maintain for each Member an account referred to as the Member Account.

6.6 Crediting and Debiting of Member Account

- (a) The Trustee must credit to each Member Account maintained in respect of a Member:
 - (i) any contributions made by or for the benefit of the Member;
 - (ii) Shortfall Components received for the Member;
 - (iii) the proceeds of any policy of insurance received in respect of the Member;
 - (iv) allocations of net earnings of the Fund (if positive) pursuant to **clause 6.7**;
 - (v) any amount applied by the Trustee for the benefit of the Member pursuant to **clause 6.4**;
 - (vi) any amounts transferred to the Fund for the credit of the Member;
 - (via) any contribution or part of a contribution made for the credit of another Member, which that other Member has requested or directed is to be allocated to the Member's Member Account (where Superannuation Law permits the allocation, and the Trustee determines to make the allocation);
 - (vii) any other amount held or applied for the Member's benefit pursuant to this Deed.
- (b) The Trustee must debit to each Member Account:
 - (i) the amount of any benefit paid in respect of the Member;
 - (ii) the amount paid to another Superannuation Entity in respect of the Member;
 - (iia) any amount allocated to another person at the request or direction of the Member (where Superannuation Law permits the allocation, and the Trustee determines to make the allocation);

- (iii) any insurance premiums payable in respect of the Member which the Trustee decides to debit to the account;
- (iv) any Expenses which the Trustee decides to debit to the account;
- (v) the Member's share of any Expenses which the Trustee decides to debit to the account;
- (vi) any Expense the Trustee determines is properly attributable to the Member's Member Account; and
- (vii) allocations of net earnings of the Fund (if negative) pursuant to **clause 6.7**.

6.7 Allocation of income and profits

- (a) The Trustee may from time to time allocate to each Member's Member Account a proportion of the net earnings of the Fund determined by the Trustee.
- (b) In determining the net earnings of the Fund for a period, the Trustee may take into account such of the following matters in relation to the period as the Trustee considers relevant:
 - (i) earnings on the Fund's investments;
 - (ii) expenses, and any provision for Expenses, of the Fund;
 - (iii) capital gains and losses on realisation of any of the Fund's investments;
 - (iv) unrealised gains and losses arising on revaluation of any of the Fund's investments;
 - (v) allowance for capital appreciation and depreciation on any of the Fund's investments;
 - (vi) the credit in the Reserve Account;
 - (vii) any other factors which the Trustee considers relevant and Superannuation Law permits.
- (c) Where the Trustee offers a MySuper Product, the Trustee must allocate net earnings of the Fund in respect of the MySuper Investment Portfolio in accordance with the requirements of Superannuation Law for a MySuper Product.

6.8 Portfolio earning rates

Where the Trustee has established 2 or more Investment Portfolios, the net earnings allocated to Members' Member Accounts for any period must be determined on the basis of the Investment Portfolio or Investment Portfolios applicable to each Member.

6.9 Negative earnings

Where for any period the Trustee determines that the net earnings of the Fund, or of any Investment Portfolio, are negative, the Trustee may allocate the loss, or any part of the loss, to Members' Member Accounts in proportions determined by the Trustee.

6.10 Revaluation of assets

The Trustee may at any time revalue any of the Fund's investments.

6.11 Segregation of assets

The Trustee may treat any part of the Fund as a separate trust fund for any purpose.

6.12 Other Accounts

The Trustee may maintain any other accounts as the Trustee considers appropriate.

7 BENEFITS

7.1 Benefits payable to Members

A benefit becomes payable in respect of a Member when the Member:

- (a) Retires on or after attaining the Preservation Age;
- (b) attains age 65 and asks the Trustee to pay the benefit;
- (c) asks the Trustee to pay the benefit and the Superannuation Law permits payment of the benefit;
- (d) attains an age at which the Superannuation Law requires the benefit to be paid to the Member;
- (e) dies;
- (f) ceases to be Gainfully Employed because of Total and Permanent Disablement;

or where Superannuation Law otherwise permits payment of the benefit and the Trustee agrees to pay the benefit.

7.2 Amount of benefit payable

Where a benefit is payable in respect of a Member, the amount of the benefit is the balance in the Member's Member Account which will include the proceeds of any policy of insurance received in respect of the Member's death or Total and Permanent Disablement.

7.2A Benefits under a policy of insurance

The benefits that are available under a policy of insurance, to Members holding a MySuper Interest, must comply with the requirements of Superannuation Law.

7.3 Death Benefit

- (a) On the death of a Member, the Trustee must pay a benefit equal to the amount in the Member's Member Account:
 - (i) where the Trustee has a current Binding Nomination provided by the Member, to or for the benefit of such of the Member's Dependants or the Member's Legal Personal Representative, and in such proportions, as is specified in the Binding Nomination;
 - (ii) where the Trustee does not have a current Binding Nomination (or to the extent to which a current Binding Nomination does not comprise the full amount of the benefit), and there is no Reversionary Beneficiary, to or for the benefit of any one or more of the Member's Dependants and the Member's Legal Personal Representative, and to the exclusion of the other or others of them, in such proportions, as the Trustee determines.
- (b) The Trustee may invite Members (other than a Member in receipt of a pension who has a Reversionary Beneficiary), and persons who have made application to become a Member, to submit Binding Nominations. A Member may:
 - (i) submit a Binding Nomination where the Trustee has invited the Member to do so;
 - (ii) at any time revoke or replace the Binding Nomination previously submitted.
- (c) If, after making reasonable enquiries, the Trustee has not found either a Dependant or Legal Personal Representative of a deceased Member, the Trustee may:
 - (i) pay the benefit to any individual who in the Trustee's opinion has a fair claim to the benefit, where the benefit can be paid to that person in accordance with Superannuation Law; or
 - (ii) retain the amount of the benefit in the Fund, if Superannuation Law permits.
- (d) If a person dies while in receipt of a pension from the Fund, payment of a benefit (if any) on that person's death is governed by **clause 7.12**.
- (e) If a Member dies after a benefit has become payable to the Member but before the benefit is paid, the amount of the benefit is an asset of the Member's estate

7.4 Required Payment Date

The Trustee must pay or commence to pay a benefit if Superannuation Law requires.

7.5 Other grounds for payment of benefits

The Trustee may pay an amount from the Fund to or for the benefit of the Member or the Member's Dependants where:

- (a) the Member has requested payment of the amount;

- (b) the Trustee is satisfied that:
 - (i) the Member is in Severe Financial Hardship; or
 - (ii) the amount is required on a Compassionate Ground; or
 - (iii) payment of the amount is otherwise justified; and
- (c) Superannuation Law permits.

7.6 Incapacity

Where a person to whom a benefit is payable is under a legal disability or is in the Trustee's opinion incapable of managing their own affairs for any reason, the Trustee may if Superannuation Law permits:

- (a) pay the person's benefit to another person on trust, or otherwise to be used for the benefit of, the person entitled to the benefit; and
- (b) accept the other person's receipt as a valid discharge to the Trustee of its obligations in respect of the payment of that benefit.

7.7 Deferral of benefit payments

- (a) If a Member requests, the Trustee may defer payment of all or part of the Member's benefit.
- (b) Where payment of a Member's benefit is deferred, the Trustee may continue to accept contributions for the Member (if Superannuation Law permits).
- (c) If a Member requests, the Trustee must pay all or any part of the Member's deferred benefit (if Superannuation Law permits).

7.7A Restrictions on partial payments

Despite any other provision of this **clause 7** but subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial payment of benefits, including (for example):

- (a) limits on how often partial payments are made;
- (b) a minimum amount for a partial payment;
- (c) a minimum balance that must remain in the Member Account after a partial payment.

7.8 Payment of rolled over amounts

The Trustee may pay to a Member any amount, which was paid to the Fund for the Member from another Superannuation Entity if:

- (a) the Member requests payment; and
- (b) Superannuation Law permits.

7.9 Benefit payment standards

- (a) Despite any other provision of this Deed, the Trustee must not pay a benefit in respect of a Member unless, and to the extent that, Superannuation Law permits.
- (b) Any benefit which cannot be paid from the Fund as a result of **clause 7.9(a)**:
 - (i) may be paid to another Superannuation Entity in accordance with **clause 8.2**;
 - (ii) may be used to purchase a non-commutable life pension or life annuity in accordance with Superannuation Law; or
 - (iii) must be retained in the Fund.

7.10 Form of benefit payments

A benefit is payable as a lump sum. However, if a person who is entitled to the benefit requests, the Trustee may pay all or any part of the benefit as a pension.

7.11 Payment of lump sum benefits

Where a benefit is payable as a lump sum, the Trustee:

- (a) must pay the benefit as soon as practicable after it becomes payable unless **clause 7.7** applies; and
- (b) may pay the benefit in more than one instalment.

7.12 Payment of pension benefits

- (a) Where a benefit is payable as a pension, the Trustee may:
 - (i) pay the pension from the Fund; or
 - (ii) use the benefit to purchase a pension or an annuity.
- (b) A pension paid from the Fund may be any form of pension which the Trustee is permitted under Superannuation Law to provide, and must comply with Superannuation Law applicable to that form of pension. The Trustee may offer the person entitled to the pension benefit such options in relation to:
 - (i) the annual amount of the pension;
 - (ii) the frequency of pension payments;
 - (iii) the term for which the pension is payable,

as Superannuation Law permits for that form of pension, and the person may select from the options offered.
- (c) The amount of and frequency of the instalments of a pension, and the terms on which payment is made, may be varied from time to time by the Trustee in accordance with any standards prescribed by Superannuation Law for that form of pension.

- (d) The Trustee may commute to a lump sum all or part of a pension as permitted by Superannuation Law for that form of pension, but must comply with any standards prescribed by Superannuation Law which impose restrictions on commutation of that form of pension. On commutation on any part of a pension, the Trustee must adjust the amount of the subsequent pension payments to take account of the commutation.
- (e) On the death of a Member in receipt of a pension:
 - (i) where there is a Reversionary Beneficiary, the Trustee must pay a pension to the Reversionary Beneficiary of the same type as the pension payable to the Member in accordance with the rules applicable to that pension;
 - (ii) where there is no Reversionary Beneficiary, the Trustee must pay the balance in the Member's Member Account in accordance with **clause 7.3**.
- (f) On the death of a Reversionary Beneficiary (other than a Spouse in receipt of a market linked pension), the Trustee must pay the remaining balance of the Member's Member Account as a benefit payable on the death of the Member.
- (g) On the death of a Spouse in receipt of a market linked pension, the Trustee must pay the remaining balance in the Member Account either:
 - (i) as a death benefit of the Member; or
 - (ii) to one or more of the Spouse's Dependents (and if more than one in proportions determined by the Trustee) or to the Spouse's Legal Personal Representative.
- (h) Except where a pension is payable to a Reversionary Beneficiary, a benefit on the death of a person in receipt of a pension is payable as a lump sum unless:
 - (i) the recipient requests and the Trustee agrees that the benefit is payable as a pension; and
 - (ii) Superannuation Law permits payment of the benefit as a pension.

7.13 Payment by transfer of assets

- (a) If a person who is entitled to a benefit requests, the Trustee may satisfy all or any part of the person's benefit by transferring any Assets of the Fund to that person.
- (b) Any Assets of the Fund transferred must be equivalent in value to the amount of the benefit entitlement to be satisfied by the transfer.
- (c) The Trustee must calculate the value of any Assets of the Fund transferred at market value, and any Taxes and expenses incurred as a result of the transfer must be paid by that person or deducted from the benefit.

7.14 Payment from the Fund

The Trustee may satisfy an entitlement to a benefit by paying the benefit to another Superannuation Entity in accordance with **clause 8.2**.

7.15 Benefit Information

- (a) A person who is, or may become, entitled to a benefit must:
 - (i) have any medical examination; and
 - (ii) provide any information or take any other steps,
 which the Trustee requests in relation to their benefit entitlement.
- (b) If the person does not comply with the request, the Trustee may withhold the payment of their benefit.

7.16 Deduction of Tax from Benefits

The Trustee may deduct from any benefit any amount on account of Tax paid or payable in relation to the benefit of the Member as the Trustee determines, and the recipient is entitled to receive only the net benefit after deduction of any such Tax.

7.17 Discharge to Trustee

- (a) The payment or reduction of any benefit in accordance with this **clause 7** is a complete discharge to the Trustee of its obligations in respect of the benefit as against any person claiming an interest in the benefit.
- (b) The payment by the Trustee of an amount in good faith to a person believed by the Trustee to be entitled to receive it, is a complete discharge to the Trustee of its obligations in respect of the payment of that amount.

8 PAYMENTS TO AND FROM THE FUND

8.1 Payment to Fund

- (a) The Trustee may arrange with any:
 - (i) Member;
 - (ii) Participating Employer;
 - (iii) employer or former employer of a Member; or
 - (iv) Superannuation Entity,
 for a Superannuation Entity to pay to the Fund an amount to be allocated to the credit of any Member.
- (b) The arrangement may include that the Trustee will provide benefits for a Member which differ from the benefits set out in this Deed.

- (c) The payment to the Fund may be made without the consent of the Member if Superannuation Law permits.
- (d) The payment may be made in cash or by the transfer of assets to the Fund as the Trustee determines.

8.2 Payment to another fund

- (a) If a Member is, or is eligible to become, a member of another Superannuation Entity, the Trustee may pay to the Superannuation Entity all or any part of the Member's Member Account.
- (b) The payment may be made without the consent of the Member if Superannuation Law permits.
- (c) The payment may be made in cash or by the transfer of any Assets of the Fund as the Trustee determines.
- (d) The Trustee may determine that any Taxes or expenses associated with the payment to the Superannuation Entity must be paid by the Member or deducted from the payment.
- (e) The receipt of the payment by the Superannuation Entity satisfies the Member's entitlement to benefits in respect of the amount paid. The Trustee is not responsible for the manner in which the payment is dealt with by the Superannuation Entity.

8.3 Restrictions on partial transfers

Subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial transfers, including (for example):

- (a) limits on how often partial transfers are made;
- (b) a minimum amount for a partial transfer;
- (c) a minimum balance that must remain in the Member Account after a partial transfer.

9 TRUSTEE

9.1 Constitutional Corporation

The Trustee must be a Constitutional Corporation.

9.2 [Deleted]

9.3 Discretions Absolute

The Trustee (and any delegate of the Trustee under **clause 10.2**):

- (a) has an absolute and uncontrolled discretion in the exercise of its powers, authorities and discretions;

- (b) may exercise or refrain from exercising all or any of those powers, authorities and discretions at any time; and
- (c) is not bound to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of any such power.

9.4 Change of Trustee

A Trustee ceases to be the Trustee when:

- (a) the Trustee retires after appointing its replacement; or
- (b) as required under Superannuation Law.

9.5 Appointment of new Trustee

The appointment or retirement of a Trustee must comply with the Superannuation Law.

9.6 Vesting of Fund in New Trustee

A retiring Trustee must do all acts and execute all documents necessary to transfer the Assets of the Fund to the new trustee. The retiring Trustee must deliver to the new trustee all books, documents, records and other property whatsoever relating to the Fund. The costs and expenses incidental to this are an Expense of the Fund.

9.7 Defects in Appointment

Any act of a new Trustee is valid despite any defect in the Trustee's appointment.

9.8 Covenants by new trustee

- (a) A new trustee must execute upon appointment a deed which provides that the new trustee undertakes to be bound by all the covenants and obligations on the part of the Trustee from the date of appointment.
- (b) From the date of appointment of a new trustee:
 - (i) the retiring trustee is absolved and released from all covenants and obligations under this Deed except for liability for any breach prior to the new appointment;
 - (ii) the new trustee is entitled to exercise all the powers and rights and, is subject to all the covenants and obligations, of the Trustee in all respects as if the new trustee had been originally named as a party to this Deed.

9.9 Member may be a Director

A Member may be a director of the Trustee and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member of the Fund.

9.10 Equal Representation

The constitution of the Trustee must ensure that:

- (a) the board of directors of the Trustee comprise equal numbers of persons appointed or elected to represent the Participating Employers and the Members; and
- (b) the Board of Directors of the Trustee in making decisions in relation to the Fund comply with the Superannuation Law relating to decisions by Trustees.

9.11 Indemnity to Trustee

- (a) Except as provided in **clause 9.11(b)**, the Trustee:
 - (i) is not liable for its acts or omissions as Trustee; and
 - (ii) is entitled to be indemnified from the Assets of the Fund in respect of any liability incurred while acting as trustee.

except where the liability arises from an act or omission of the Trustee involving the Trustee's fraud or wilful misconduct, wilful neglect or wilful default.
- (b) **Clause 9.11(a)** does not apply to any liability for:
 - (i) breach of trust if the Trustee:
 - (A) fails to act honestly in a matter concerning the Fund; or
 - (B) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee was required to exercise in relation to a matter affecting the Fund; or
 - (ii) a monetary penalty under a Civil Penalty Order.
- (c) **Clauses 9.11(a)** and **(b)** extend to each of the following persons, if Superannuation Law permits, as if a reference to the Trustee was a reference to that person:
 - (i) a director, officer or employee of the Trustee acting in that capacity;
 - (ii) a director, officer or employee of a Participating Employer who is engaged in the administration or management of the Fund.

9.12 Limitation of Indemnity

Despite **clause 9.11**, the Trustee is liable for, and cannot recover from the Fund, any liability for:

- (a) a breach of trust where the Trustee:
 - (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise the degree of care and diligence that the Trustee was required to exercise in relation to a matter affecting the Fund; or
- (b) a monetary penalty under a Civil Penalty Order.

9.12A Further limitation of Indemnity

Clause 9.11 does not allow the Trustee to be indemnified:

- (a) out of the assets of the Fund for any amount expended out of the capital of the Trustee managed and maintained by the Trustee to cover the operational risk of the Fund; or
- (b) out of any assets of the Fund that do not form part of an operational risk reserve, for any amount that relates to the operational risks the Trustee has determined are to be covered by the operational risk reserve, without first exhausting the operational risk reserve and any other financial resources managed and maintained by the Trustee to cover the risk.

9.13 Trustee not liable for actions Trustee is obliged to perform

The Trustee is not liable to any person for:

- (a) doing or performing any act or thing which the Trustee is required to do or perform; or
- (b) failing to do or perform any act or thing which the Trustee is hindered, prevented or forbidden from doing or performing,

by any statutory provision or a decree, order or judgment of any court of competent jurisdiction.

10 MANAGEMENT AND ADMINISTRATION

10.1 Powers of Trustee

The Trustee may do anything, which it considers necessary to administer the Fund and to comply with Superannuation Law including:

- (a) purchasing plant, equipment and fittings;
- (b) leasing and accepting surrenders of leases (or agreeing so to do) with power to compromise with lessees and others;
- (c) conducting and settling legal proceedings;
- (d) settling, compromising or submitting to arbitration any claims relating to the Fund or the Trustee;
- (e) developing, improving, subdividing, repairing, managing and otherwise dealing with any investment;
- (f) borrowing and giving security for that borrowing over any of those Assets of the Fund in accordance with Superannuation Law;
- (g) insuring any risks;
- (h) electing to be bound by legislation; and

- (i) doing such other things as may appear to the Trustee to be incidental to any or all of the above powers.

10.2 Delegation of Trustee powers

- (a) The Trustee may delegate any functions, authorities, discretions or powers exercisable by the Trustee (including a power which the Trustee has a duty to exercise) to any person upon such terms and conditions as it determines.
- (b) The Trustee may:
 - (i) revoke any delegations;
 - (ii) exercise any delegated function, authority, discretion or power itself concurrently with or to the permanent or temporary exclusion of a delegate.
- (c) A Member may be a delegate of the Trustee and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member of the Fund.

10.3 Appointment of service providers

- (a) The Trustee may:
 - (i) appoint in writing on such terms as it determines a person ("**Administrator**") to administer the Fund;
 - (ii) delegate to an Administrator such matters as it determines from time to time related to the administration of the Fund.
- (b) The Trustee may:
 - (i) appoint on such terms as it determines one or more bodies corporate ("**Investment Managers**") to manage the investments of the Fund or any part of the Fund;
 - (ii) only appoint an Investment Manager if the following conditions are satisfied:
 - (A) the appointment is in writing;
 - (B) the Investment Manager is eligible under the Superannuation Law to be appointed to act;
 - (C) the terms of the appointment comply with any applicable Superannuation Law.
- (c) The Trustee may:
 - (i) appoint in writing on such terms as it determines any person eligible for appointment in accordance with Superannuation Law as a custodian ("**Custodian**"), to receive, hold and retain registration of any of the Assets of the Fund (whether or not those assets are located in Australia).

- (ii) by the terms of appointment of a Custodian, allow the Custodian to appoint and remove agents or sub-Custodians to carry out the Custodian's duties or any of those duties.
- (d) The Trustee may engage accountants, actuaries, bankers, brokers, barristers, claims assessors, solicitors, consultants, medical practitioners, valuers and such other professional advisers from time to time, to give such advice, as the Trustee determines.
- (e) Subject to **clause 9.11**:
 - (i) the Trustee is not liable for the neglect, default or misconduct of any person appointed or engaged by it, nor for allowing trust funds or securities to remain in the custody or control of any person so appointed or engaged for any time; and
 - (ii) the Trustee is not bound to take proceedings against any such person.

10.4 Reliance on advice

The Trustee may act on the advice or opinion of any broker, barrister, claims assessor, solicitor, consultant, medical practitioner or other professional person and, subject to **clause 9.11**, the Trustee is not responsible for any loss occasioned by acting on this advice.

10.5 Remuneration of Delegates and Advisers

The Trustee may pay from the Fund, as an Expense, such remuneration as it considers proper to any delegate appointed by it or adviser engaged by it.

10.6 Remuneration of Trustee

The Trustee is entitled to pay itself from the Fund from time to time reasonable remuneration for its services as trustee.

10.7 Disputes

The Trustee must establish such procedures to deal with enquiries and complaints in relation to the Fund by Members and other persons as it determines necessary to comply with Superannuation Law.

10.8 Proofs and presumptions

When determining questions of fact, the Trustee may act upon any proofs or presumptions it considers appropriate, whether or not they are strictly legal proofs or presumptions.

10.9 Disclosure of information

Without limiting the Trustee's powers under any other clause and in addition to any powers conferred on the Trustee by law, the Trustee may disclose information about the Fund or any Member to any person where, in the opinion of the Trustee, the disclosure of the information:

- (a) is in relation to the administration of the Fund;

- (b) will facilitate:
 - (i) the provision of services to Members in relation to their superannuation benefits; or
 - (ii) the payment of benefits to a Member; or
- (c) (to avoid doubt) is required to comply with Superannuation Law or any other law.

11 INVESTMENT AND BORROWING

11.1 Investment

The Trustee must set investment objectives for the Fund and formulate an investment strategy to achieve those objectives having regard to the whole of the circumstances of the Fund including, but not limited to, the matters prescribed under Superannuation Law.

11.1A Investment for MySuper Product

Where the Trustee offers a MySuper Product, the Trustee must:

- (a) determine and review the investment objectives and investment strategy for the MySuper Investment Portfolio; and
- (b) determine earning rates for the MySuper Investment Portfolio,

in accordance with the requirements of Superannuation Law for a MySuper Product.

11.2 Investment directions from Member

Despite **clause 11.1**, the Trustee may:

- (a) set different investment objectives for 2 or more Investment Portfolios;
- (b) formulate an investment strategy for each Investment Portfolio which is designed to achieve the investment objectives of the Investment Portfolio;
- (c) divide the Assets of the Fund between the different Investment Portfolios consistent with the investment strategy for each Investment Portfolio;
- (d) invite Members to nominate one or more Investment Portfolios for the investment of the whole or any part of their Contribution Account and future contributions;
- (e) set rules regarding:
 - (i) when, how and in what manner Members may change their nominations;
 - (ii) the minimum amount that may be invested in an Investment Portfolio; and
 - (iii) any other matters which the Trustee considers appropriate;
- (f) change the investment objectives, strategies, Investment Portfolios and the Assets of the Fund which comprise the Investment Portfolios as the Trustee determines.

11.3 Authorised Investments

The Trustee may only invest in the following Authorised Investments:

- (a) in any investment in which by the laws of Queensland or any State or Territory of Australia trustees are authorised to invest;
- (b) deposits (whether for a term or at call) with any financial institution (with or without interest) or with any person, including short term money market investments;
- (c) in stock, bonds, shares, notes, options, debentures, loan securities or any other securities of any corporation or securities of any government, semi-governmental body or public authority, whether in Australia or any other country, and whether or not listed on a securities exchange in Australia or any other country;
- (d) in Commodities;
- (e) in the purchase, lease or other acquisition of real property and any improvements, fixtures and fittings erected or installed or to be erected or installed, or rights conferring options, rights of first refusal or otherwise relating to the acquisition of real property;
- (f) in the purchase, lease, hire or other acquisition of any personal property and any share or estate or interest in personal property;
- (g) in units or sub-units or other rights or interests (however described) in any trust, managed investment scheme or other mutual or common fund or pooled superannuation trust;
- (h) in bills of exchange, promissory notes and other negotiable instruments whether purchased or discounted which have been either drawn, issued, endorsed or accepted by a corporation;
- (i) in any Derivative including but not limited to any one or more of:
 - (i) a futures contract including share price index futures contracts;
 - (ii) a currency futures contract;
 - (iii) a swap, cap, floor or collar;
 - (iv) a swaption;
 - (v) a spot or forward foreign exchange agreement;
 - (vi) an option; or
 - (vii) options over any of the above Derivatives;

whether or not entered into or acquired for the purpose of hedging against or minimising any loss concerning Authorised Investments held by the Trustee;
- (j) in Insurance Investments;

- (k) in the investment of money on security (by way of a registrable or registered first mortgage) of any real property;
- (l) in discounting of loans, mortgages or leases;
- (m) in the purchase of a secondary mortgage market security;
- (n) in RITS in respect of investments mentioned elsewhere in this definition and included in RITS;
- (o) in Repos;
- (p) in Index Linked Securities;
- (q) in the lending of securities to a bank as defined in the Banking Act 1959 (Commonwealth);
- (r) in the making of any other investments the Trustee considers to be appropriate in the circumstances.

11.4 Underwriting of Authorised Investments

The Trustee may:

- (a) underwrite or sub-underwrite, or join with others in underwriting or sub-underwriting, the subscription of any Authorised Investment;
- (b) delegate to any Investment Manager general authority to enter into and carry out underwriting or sub-underwriting agreements and the like, whether for the Fund alone or for the Fund in conjunction with other funds and institutions.

11.5 Borrowing

- (a) Subject to **clause 11.5(b)**, the Trustee may borrow any sum or sums of money, whether with or without security, on such terms and conditions in all respects as it determines, and in particular may draw, accept, endorse, discount and issue promissory notes, bills of exchange and other negotiable or transferable instruments without any qualification as to bank acceptance or otherwise.
- (b) The Trustee shall not borrow otherwise than as permitted under Superannuation Law.

11.6 Dealings with Members

The Trustee must not:

- (a) lend money of the Fund, or give any other financial assistance using the resources of the Fund, to any Member or an associate of any Member;
 - (b) intentionally acquire an asset from a Member, or an associate of a Member,
- except as permitted under Superannuation Law.

11.7 Loans to Participating Employers

The Trustee must not lend any moneys of the Fund to, or invest any moneys of the Fund in, any Participating Employer or an associate of a Participating Employer, except to the extent that the loan or investment complies with the restrictions on the in-house assets prescribed by the Superannuation Law.

11.8 Arm's length

The Trustee must not make any investment unless:

- (a) the Trustee and the other party to the investment are dealing with each other at arm's length; or
- (b) where the investment is not at arm's length, it complies with Superannuation Law.

11.9 Not to prejudice Employers

The power of investment referred to in this **clause 11** must not be exercised in a manner calculated to prejudice a particular Employer.

11.10 Registration in name of nominee or custodian trustee

The title to any property forming part of the Fund may be registered in the name of a custodian, nominee or other delegate of the Trustee.

12 INSURANCE

12.1 Power to insure

The Trustee has the power to effect or take out at the expense of the Fund from time to time one or more policies of insurance with one or more Insurance Companies in regard to the Fund and to continue or renew or arrange for the continuance or renewal of all or any of such policies for such period as the Trustee thinks fit. The Trustee may also agree from time to time with the Insurance Company concerned for any policy to be varied.

12.2 Terms of policy of insurance

A policy of insurance shall be on such terms and conditions as may be approved by the Trustee and the Trustee must pay all premiums, and receive from the Insurance Company all payments, refunds and other moneys, in respect of the policy of insurance and account for those moneys so received in accordance with this Deed.

12.3 Where Insurance not available

If at any time:

- (a) the Trustee is of the opinion that it is not reasonably practicable to obtain life insurance or an increase in life insurance or to maintain life insurance in respect of a Member under a policy of insurance on terms acceptable to the Trustee; or
- (b) pursuant to the policy of insurance, the Insurance Company for any reason whatsoever fails to provide or increase, or reduces, terminates or withholds life

insurance in respect of a Member or refuses to admit a claim for the whole or part of the life insurance effected in respect of the Member,

any benefit payable to or in respect of the Member pursuant to this Deed shall be reduced to the extent that life insurance is not obtained, increased or maintained or is not provided or increased or is reduced or terminated or that claim is not admitted in respect of the Member or where life insurance is withheld, will be adjusted accordingly.

13 EXPENSES AND FEES

13.1 Expenses

The Expenses of the Fund comprise such of the following costs, charges and expenses as are reasonably and properly incurred in or about the administration of the Fund:

- (a) the costs of establishing the Fund and such other costs as the Trustee determines have been reasonably incurred in establishing the Fund;
- (b) the costs of keeping and auditing the books of account required by this Deed;
- (c) the costs of establishing and maintaining any registers;
- (d) disbursements in connection with the acquisition, sale, collection, maintenance, distribution of or other dealing with any Authorised Investment including legal fees, consultant fees, stamp duties, brokerage and commission;
- (e) without limiting paragraph (d), expenses incurred by the Trustee in ascertaining, examining and satisfying itself from time to time in connection with the attempted or proposed acquisition or disposal of, or on the suitability of possible Authorised Investments;
- (f) the costs of acquiring, establishing and developing computer hardware and software systems required for the administration of the Fund;
- (g) the fees and disbursements payable to any managing agents or collection agents not exceeding the prevailing commercial rates chargeable by managing agents or collection agents for services performed by them;
- (h) fees payable to any Administrator, Investment Manager, Custodian, consultant or any other delegate or adviser;
- (i) advertising expenses relating to the sale of property;
- (j) fees and charges imposed by financial institutions, and duties, levies and other imposts imposed by governments or governmental bodies in relation to financial transactions;
- (k) stamp duties and similar imposts;
- (l) fees payable to and expenses in connection with any dealing with, the Superannuation Regulator or other government entity;
- (m) costs of preparing, printing and issuing of confirmations, accounts, other statements, taxation information, cheques, notice or any other document or report

sent to Members or Participating Employers in accordance with the provisions of this Deed or the Superannuation Law;

- (n) costs of postage of all cheques, accounts, notices and other documents posted to Participating Employers and Members;
- (o) disbursements and costs incurred by or on behalf of the Trustee or in connection with the retirement of the Trustee under this Deed and the appointment of a new trustee and anything ancillary or incidental to such retirement or appointment;
- (p) except where the court otherwise directs, disbursements and costs by or on behalf of the Trustee in or in connection with the initiation, carriage and settlement of any court proceedings (including any negotiations and demands relating to any such proceedings) arising in respect of the operation of the Fund;
- (q) costs and disbursements incurred in amending this Deed;
- (r) all rates, taxes, charges, surcharges, assessments and impositions whatsoever (whether parliamentary, municipal or otherwise and whether assessed, charged or imposed by or under Federal or State law or by Federal, State or Local Authorities and whether on a capital or revenue value or any other basis and even though of a novel character) which are assessed, charged or imposed (or the Trustee determines may be assessed, charged or imposed) in respect of the Fund, any part of the Fund or the provision of any goods and services to the Fund;
- (s) costs of the preparation and lodgment of any statutory returns;
- (t) any remuneration payable to the Trustee;
- (u) the cost of premiums payable under any policy of insurance effected by the Trustee for the purpose of indemnifying the Trustee or its directors against any personal liability that any of them may incur in the administration or investment of the Fund;
- (v) costs of preparing, printing, lodging and issuing any brochures or Offer Document advertising the Fund and otherwise incurred in marketing and advertising the Fund including, without limitation, legal, accounting, consulting and other fees;
- (w) any other disbursements properly incurred in the administration of the Fund.

13.2 Payment of Expenses

- (a) The Trustee may pay (or reimburse itself or any other party for) any Expenses from the Fund's assets.
- (b) Subject to **clause 13.2(c)**, the Trustee may account for the Expenses paid or payable from the Fund by:
 - (i) deducting any Expenses from income of the Fund which has not been allocated;
 - (ii) debiting the Reserve Account;

(iii) debiting amounts from Member Accounts,

as determined by the Trustee from time to time, for Expenses generally or for any particular Expense or class of Expenses.

(c) The Trustee must not:

- (i) deduct Expenses from income of the Fund in respect of a MySuper Class;
- (ii) debit amounts for Expenses from Member Accounts in respect of a Member's MySuper Interest,

where Superannuation Law does not permit those Expenses to be charged in respect of a MySuper Product.

13.3 Charges

- (a) The Trustee may in its discretion from time to time levy charges for entry into the Fund, exit from the Fund, the administration of the Fund, the switching of investment strategies or for any other purpose determined by the Trustee.
- (b) Any charges levied may be applied, as determined by the Trustee:
 - (i) as remuneration of the Trustee;
 - (ii) to cover any Expense (partly or wholly).
- (c) Despite **clause 13.3(a)**, in respect of a MySuper Class the Trustee must:
 - (i) only impose fees and charges of one or more of the following kinds:
 - (A) Administration Fee;
 - (B) Investment Fee;
 - (C) Buy-Sell Spread;
 - (D) Switching Fee;
 - (E) Exit Fee;
 - (F) Activity Fee;
 - (G) Insurance Fee; and
 - (H) any other fee or charge permitted under Superannuation Law; and
 - (ii) only charge an amount of each of the Permitted Fees calculated in accordance with, and in the circumstances prescribed in, the Charging Rules.
- (d) The Trustee may charge lower Administration Fees in respect of a sub-plan of a Participating Employer than are charged in respect of other Members holding MySuper Interests in the same MySuper Class where:

- (i) the arrangement between the Participating Employer and the Trustee in relation to the Participating Employer's terms of participation specifies the lower Administration Fees; and
- (ii) the lower Administration Fees are charged in accordance with the Charging Rules.

14 RECORDS, ACCOUNTS AND AUDIT

14.1 Records

The Trustee must keep or cause to be kept, including (but not limited to):

- (a) a complete record of all Members containing all the information which is necessary to administer the Fund;
- (b) accounting records which correctly record and explain the transactions and financial position of the Fund;
- (c) minutes of all meetings of directors of the Trustee;
- (d) changes of Trustee or the directors of the Trustee;
- (e) reports to Members; and
- (f) entry and withdrawal of Members.

14.2 Accounting records

The Trustee must:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the Fund;
- (b) keep the accounting records so as to enable:
 - (i) the preparation of accounts, statements and returns of the Fund as prescribed by Superannuation Law;
 - (ii) the accounts, statements and returns to be conveniently and properly audited.

14.3 Accounts

The Trustee must:

- (a) prepare such accounts, statements and returns of the Fund as are required by Superannuation Law;
- (b) make such arrangements as are necessary to enable those accounts to be audited.

14.4 Audit

- (a) The Trustee must from time to time appoint an Auditor to audit the accounts and statements of the Fund.

- (b) The Trustee must ensure that, for each Financial Year, the Auditor audits the accounts and statements of the Fund and reports in writing to the Trustee within the time specified in the Superannuation Law.
- (c) The Trustee shall fix the remuneration of the Auditor, and that remuneration is payable as an Expense.
- (d) The Trustee may at any time remove an Auditor from office.
- (e) The Auditor may retire from office on 1 Month's notice to the Trustee, but must not retire within a period of 3 Months before or after the end of a Financial Year without the consent of the Trustee.

14.5 Auditor's access

The Trustee must allow the Auditor access at all reasonable times to all the books and records under the Trustee's control, and give to the Auditor such information and explanations as the Auditor requires for the performance of the Auditor's duties.

15 TERMINATION OF THE FUND

15.1 Termination by Trustee

The Trustee may terminate the Fund with effect from a date the Trustee determines.

15.2 Notice of termination

If the Trustee resolves to terminate the Fund, the Trustee must give notice in writing to that effect to the Participating Employers and the Members.

15.3 Contributions on termination

From the Termination Date, the Trustee must not accept contributions from any Employer or Member, other than arrears of contributions.

15.4 Distribution

As soon as practicable after the Termination Date, the Trustee must:

- (a) pay any outstanding liabilities of the Fund excluding benefits;
- (b) provide for any anticipated liabilities of the Fund excluding benefits;
- (c) pay the following amounts in the following order of priority:
 - (i) benefits which became payable to or in respect of any person prior to the Termination Date but which have not yet been fully paid;
 - (ii) benefits which were required to be preserved in the Fund in respect of Members who ceased service prior to the Termination Date;
 - (iii) minimum benefits which are required to be paid in respect of Members under the Superannuation Law in respect of contributions by an

Employer made in satisfaction of the Superannuation Guarantee (Administration) Act 1992;

- (iv) all benefits (excluding any amount payable under paragraph (iii) above) which would be payable in respect of Members assuming all Members were eligible to retire on the Termination Date; and
- (v) such additional benefits (if any) as the Trustee determines.

15.5 Deceased Member

If a Member dies before receiving a benefit under **clause 15.4**, the benefit must be paid in accordance with **clause 7.3**.

15.6 Surplus on termination

- (a) If after making the payments provided for in **clause 15.4** a surplus remains in the Fund, the Trustee may distribute the surplus to the Members or at the Trustee's sole discretion to such former Members as the Trustee deems to be fair and equitable.
- (b) If, notwithstanding the preceding provisions of this **clause 15**, the Fund or any provisions made as aforesaid should at any time prove to be insufficient to provide in full the benefits described in **clause 15.4**, all benefits then remaining unpaid shall be reduced, in such manner and proportions, as the Trustee deems to be fair and equitable.

15.7 Payments

- (a) A benefit payable under this **clause 15** must be paid in accordance with **clause 7**.
- (b) A payment to a Participating Employer may be made in cash or by transfer of Assets of the Fund.

16 AMENDMENT OF DEED

16.1 Permitted amendments

The Trustee may at any time amend all or any of the provisions of this Deed (other than **clause 16.2(b)**).

16.2 Prohibited amendments

No amendment must be made which:

- (a) permits the appointment of a person other than a Constitutional Corporation as trustee unless Superannuation Law permits; or
- (b) adversely affects a Member's right or claim to accrued benefits, or the amount of those accrued benefits, unless it is consistent with Superannuation Law.

16.2A Limitation on amendments for MySuper Class

Where the Superannuation Regulator has authorised the Trustee to establish a MySuper Class in accordance with clause 4A, any amendment must not alter the matters set out in **clause 4A** unless the amendment is permitted under Superannuation Law.

16.3 Amendments

Notwithstanding **clause 16.2**, the Trustee may, subject where necessary to the consent of the Superannuation Regulator, amend this Deed in order to comply with Superannuation Law.

16.4 Date of effect

An amendment may take effect from a date before or after it is made.

16.5 Form of amendment

An amendment may be made by deed or a written or oral resolution of the Trustee.

16.6 Notice to Members

The Trustee must notify each Participating Employer and Member of every amendment in accordance with Superannuation Law. A failure to comply with this requirement does not however render the amendment void, voidable or unenforceable.

17 TAXATION

17.1 Dealing with Tax

In addition to any other powers conferred by this Deed or otherwise, where the Trustee is, or believes that it will become, liable for any Tax in respect of:

- (a) the receipt of contributions, deemed contributions or transfers to the Fund;
- (b) the holding or disposal of the Assets of the Fund;
- (c) the receipt of income or gains of the Fund;
- (d) any transaction or document concerning the Fund; or
- (e) any payment out of the Fund,

the Trustee may:

- (i) deduct an amount equal to the Tax or an amount which is a fair and reasonable estimate of the Tax from those contributions, transfers, assets, income, gains or payments as it thinks proper; and
- (ii) set aside and retain the Tax in the Fund upon trust for ultimate payment, or pay the Tax, to the relevant authority.

17.2 Discharge to Trustee

Upon payment of Tax to the relevant authority under **clause 17.1(ii)** the Trustee will be released and discharged in respect of the retention and payment of the Tax.

17.3 Adjustment

Any amount which would otherwise be or be deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Member or other person shall be reduced or otherwise adjusted in the manner and to the extent that the Trustee determines to be appropriate in taking account of the Tax referred to in **clause 17.1**.

17.4 Reduced Benefits

Notwithstanding any other provision of this Deed the Trustee may, if applicable and subject to Superannuation Law, reduce any benefits which are payable or may become payable from the Fund to or in respect of a Member, or any other person, to take account of:

- (a) any Tax; or
- (b) any other matter relating to Tax that the Trustee considers fair and reasonable to take into account in respect of particular Members or Members generally; and

to the extent that no adjustment has been made in respect of that Tax or other matter under any other provision of this Deed.

18 GENERAL PROVISIONS

18.1 Notices

- (a) Any notice which is required to be or which may be given to any Participating Employer or Member may be delivered to the Participating Employer or Member personally or sent through the post addressed to the Participating Employer or Member at the address according to the records of the Trustee.
- (b) If sent by post a notice is deemed to have been delivered 3 days after the posting of the notice.

18.2 Governing Law

- (a) All matters arising in relation to this Deed and the interpretation thereof shall be governed by the law of the State of Queensland ("**Governing Law**") provided that in the event of a conflict between the Superannuation Law and a law of the State of Queensland, the Superannuation Law will prevail.
- (b) This Deed is to be interpreted so that it complies with the Governing Law. If any provision of this Deed does not comply with such law then the provision must be read down to give effect to the provision as far as possible. If it is not possible to give effect to the provision then it shall be deemed to be severed from the rest of the Deed.

18.3 Workers' Compensation not affected

- (a) Nothing in this Deed in any way affects the right of a Member or Legal Personal Representative or other person to claim damages or compensation for any accident arising out of and in the course of a Member's employment or payment for long service leave.
- (b) An amount payable under this Deed shall not be reduced by reason of any payment that may be made in respect of damages or compensation or for sick leave, but this **clause 18.3(b)** does not affect the terms of any policy of insurance under which a benefit is payable.

18.4 National Superannuation

If the Trustee considers that by reason of any government or legislative action or proposed action the benefits provided by the Fund are or will be no longer necessary whether wholly or in part for the welfare of the Members, the Trustee may arrange for:

- (a) a cessation of contributions of all Participating Employers; and
- (b) a reduction of contributions, whether of Members or of Participating Employers, to such extent as the Trustee considers appropriate

and will take any other action that the Trustee considers appropriate.

18.5 Miscellaneous

- (a) If any dispute or doubt whatsoever arises as to the interpretation of this Deed or as to the rights of a Member, a Participating Employer or any other person under this Deed, the decision of the Trustee is final and conclusive against all persons.
- (b) Whenever it is necessary for the Trustee to decide questions of fact, whether for the purposes of **clause 18.5(a)** or otherwise, it may act upon such proofs or presumptions as it thinks fit whether they are legal proofs or presumptions or not.