

# Consolidated Trust Deed

BT Institutional Retirement PST

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BT Funds Management Limited (**Trustee**)

# Table of Contents

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<b>Clause No</b>	<b>Heading</b>	<b>Page No.</b>
1.	PRELIMINARY .....	1
3.	DEFINITIONS.....	1
4.	CONSTITUTION OF THE FUND.....	10
7.	CREATION, ISSUE AND CANCELLATION OF UNITS .....	10
7A.	STATUS OF UNIT HOLDERS .....	11
10.	CANCELLATION.....	15
11.	VALUE OF THE FUND .....	18
14.	INCOME.....	19
14A.	ELECTION BY TRUSTEE.....	21
15.	CAPITAL PROFITS.....	22
15A.	TAXATION OF THE FUND .....	23
15B.	PRESENT ENTITLEMENT .....	24
15C.	GENERAL POWERS .....	25
15D.	CONSEQUENCES OF ELECTION TO BE TAXED .....	26
16.	CAPITAL LOSSES .....	26
17.	REGISTERS .....	27
18.	[DELETED].....	27
19.	TRANSFER OF UNITS .....	28
20.	MANAGEMENT OF FUND.....	29

24. INVESTMENTS OF THE FUND .....30

25. LIMITATION ON INVESTMENT .....32

26. EXERCISE OF VOTING AND OTHER POWERS.....32

28. LIMITATION OF RIGHTS OF UNIT HOLDERS .....32

29. TRUSTEE AND MANAGER POWERS INDEMNITIES AND COVENANTS .....33

30. COVENANTS BY THE TRUSTEE .....37

31. COVENANTS BY THE MANAGER.....38

32. REMUNERATION .....39

34. RETIREMENT OF MANAGER.....42

35. RETIREMENT OF TRUSTEE .....43

36. ACCOUNTS AND AUDIT .....43

38. PAYMENTS TO UNIT HOLDERS.....44

40. DETERMINATION OF TRUST.....45

43. ALTERATION OF DEED .....46

44. MEETING OF UNIT HOLDERS.....47

49. DELETED .....48

50. MISCELLANEOUS .....48

51. ARBITRATION .....48

52. LIABILITY OF UNIT HOLDERS .....49

53. OCCUPATIONAL SUPERANNUATION STANDARDS .....49

58. RELATED PARTY DEALINGS .....49

59. APPLICATION OF ACCOUNTING PRINCIPLES AND STANDARDS .....50

FEE SCHEDULE.....53

PRICING SCHEDULE.....55

# Operative Provisions

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## **PRELIMINARY**

1.
  - (a) The Fund shall be known as "The B.T. Institutional Retirement PST".
  - (b) The Fund shall come into operation on the commencement date (hereinafter defined) and shall subject to the provisions hereinafter contained continue in operation until the expiration of twenty-one years from the death of the last survivor of the lineal descendants now living of His Late Majesty King George V. The period of the Trust as hereinbefore stated shall be known as "the Perpetuity Period".
  - (c) Notwithstanding anything in this Deed, no variation of this Deed shall be effective to create trusts or discretionary powers which would or might operate after the expiry of the Perpetuity Period other than trusts for the immediate distribution of the trust property on such expiry among persons then absolutely entitled thereto.
  - (d) Every variation of this Deed creating trusts or discretionary powers shall be considered for the purposes of this Deed as intended to operate only during the Perpetuity Period.
  - (e) This Deed is made with the intention that the benefits and obligations hereunder may enure not only to the Trustee but also to the extent provided herein to every Unit Holder who agrees to be bound by the provisions of this Deed.
2. The headings and marginal notes shall not affect the construction hereof.

## **DEFINITIONS**

3. In this Deed unless there be something in the subject or context inconsistent therewith the expressions following shall have the meanings hereinafter mentioned that is to say:

"Accounting Period" means a year ending on the 30th day of June in each year, provided that the period commencing on the date hereof and ending on the 30th day of June next shall be an Accounting Period and the period beginning with the 1st day of July preceding the date of termination of the Trust and ending on that date of termination shall also be an Accounting Period.

"Adjusted Investment Value of a Unit" shall be an amount which would be determined as the Investment Value of a Unit in accordance with the definition of the Investment Value of a Unit hereinbefore set forth if paragraphs (i) and (ii) of that definition were deleted and the following words were substituted in lieu thereof:

"deducting all sums owing by the Fund on any account, any provisions and any charges or expenses accrued or unpaid and such provisions against future losses in respect of any investment of which the Market Value is in the opinion of the Trustee incorrect or cannot fairly or accurately be determined or for such other purposes as the Trustee thinks fit from the aggregate of the Market Value (as at the relevant date or if the relevant date is not a business day, as at the last business day prior to the relevant date) of all the investments listed on a Stock Exchange comprised in the Fund, the Market Value of all other properties so comprised, the amount of cash so comprised and all moneys recoverable or receivable by the Trustee."

"Adjusted Net Asset Value of a Unit" shall be an amount which would be determined as the Net Asset Value of a Unit in accordance with the definition of the Net Asset Value of a Unit hereinbefore set forth if the words "such sum as would have been incurred for the brokerage, stamp duty, transfer fees and other usual charges (if any) on such day in the sale or disposal of the investments comprised in the Fund", were deleted from that definition.

"Approved Fund" means a fund or scheme which is eligible to hold units in a Pooled Superannuation Trust under the provisions of the Relevant Law which without limiting the generality of the foregoing shall include:

- (i) any Complying Entity;
- (ii) virtual PST assets of a life insurance company within the meaning of the Income Tax Assessment Act 1997 (Cth); and
- (iii) segregated exempt assets of a life insurance company within the meaning of the Income Tax Assessment Act 1997 (Cth);

provided that no entity or fund shall be an Approved Fund for the purposes of this Deed unless the Fund will continue to be a qualifying Pooled Superannuation Fund after that entity or fund has become a Unit Holder.

"Approved Auditor" has the meaning specified in the Relevant Law.

"Approved Valuer" means any person approved by the Trustee as duly qualified to value any property comprised in the Fund.

"Authorised Investments" in respect of the Fund means any real or personal property whether tangible or intangible including, and without limiting the generality of the foregoing:

- (i) Trustee Investments;
- (ii) loans to or deposits, whether with or without security, with a Bank or any Eligible Money Market Dealer;
- (iii) Securities issued, secured or guaranteed by, or loans to or deposits with, or loans, deposits or Securities guaranteed by the Government of Australia or any State or Territory thereof or by any instrumentality of any such Government or by any municipal corporation or other local governing body, or by any public authority or statutory body constituted by, under or pursuant to any act of the Parliament of Australia or the legislature of any State or Territory thereof;
- (iv) Securities issued, secured or guaranteed by, or loans to or deposits with, or loans, deposits or Securities guaranteed by any government sovereign, ruler or authority, supreme, local or municipal of any foreign country;
- (v) certificates of deposit, certificates of indebtedness or any other evidence of indebtedness issued by any Company;
- (vi) "public securities" as that term is defined by the Income Tax Assessment Act 1936 (Cth);
- (vii) the purchase leasing or other acquisition or development of an interest in Land or real property of every description and all improvements (if any) erected or to be erected thereon (including all furniture, carpets, fittings, machinery, plant and other goods or equipment installed or to be installed in any building or used in connection therewith) and including any rights, franchises and licences in relation thereto and the laying out of moneys for the purpose of erecting buildings thereon making improvements thereto or developing, improving or otherwise exploiting the same;
- (viii) any investment of money on security (whether by way of mortgage, sub-mortgage, charge, transfer, assignment or otherwise) of any Authorised Investment other than an Authorised Investment referred to in this paragraph for a term not exceeding the unexpired portion of the Trust and in an amount not exceeding eighty per cent (80%), or, in the case where all amounts from time to time outstanding in respect of the loan are insured by a policy of mortgage insurance issued by an insurer acceptable to the Trustee, ninety per cent (90%), of the Market Value of that Authorised Investment;

- (ix) cash or deposits at call or for any term with or loans to, any Company or trust fund;
- (x) holding deposits for Authorised Investments which it is proposed to purchase on behalf of the Fund;
- (xi) any Security or right to any Security issued or guaranteed by any Company;
- (xii) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by any Bank or by any Company, country, state, territory or governmental organisation, body or instrumentality (whether discounted or otherwise);
- (xiii) mortgages or charges secured by any real estate or other Authorised Investment of the Fund;
- (xiv) the acquisition and acceptance of any equity of redemption;
- (xv) the taking or giving of options to purchase or sell any investment which is an Authorised Investment;
- (xvi) units, sub-units or other investments in any Unit Trust Scheme, mutual fund, venture capital fund or similar undertaking or scheme;
- (xvii) any dealing in Futures Contracts;
- (xviii) any contracts, agreements or arrangements to underwrite or sub-underwrite issues of any Authorised Investments where the Trustee intends to subscribe for securities to be issued;
- (xix) Market Traded Options;
- (xx) any investment, interest, unit or share, undivided or not, in any Commodity;
- (xxi) foreign currency or rights (whether to buy or sell at the present or in the future or otherwise) thereto or interests therein;
- (xxii) interest rate and currency swap contracts;

(xxiii) investments in Securities of or deposits with any building society, friendly society, permanent building society, or credit union.

"Bank" means:

- (i) with respect to Australia, a body corporate authorised under the Banking Act 1959 (Cth) or under any law of any State or Territory in Australia to carry on banking business in Australia; and
- (ii) with respect to any other country, a body corporate authorised to carry on banking business therein.

"BTA Fund" means any fund constituted by a trust deed and whether in the nature of a Pooled Superannuation Trust or trust in which any person may hold units managed by the Trustee or any Related Body Corporate of the Trustee.

"BTA Switch" means:

- (a) the cancellation of any Unit in this Fund, the proceeds of which are used to acquire units in another BTA Fund in accordance with the provisions of this Deed; or
- (b) the issue of any Unit in this Fund where the price for the issue of that Unit is satisfied from the proceeds of redemption or cancellation of units in another BTA Fund in accordance with the provisions of this Deed.

"Business Day" means any day other than Saturday, Sunday, Bank Holiday or Public Holiday in the State of New South Wales.

"Cash" includes cheques, Australian currency, Bank deposits or other investments traded by authorised money market dealers that can be invested and disposed of within a Business Day without the Trustee thereby incurring any acquisition or disposal expenses.

"Commencement Date" means the first occasion on which the Trustee accepts an application for Units in accordance with Clause 8 of this Deed.

"Commodity" includes raw materials, minerals, livestock, foodstuff, products, interest rates, bonds, currencies, indices, rates and all other tangible and intangible things offered for trade or traded at any Commodity Exchange.

"Commodity Exchange" includes any exchange or market in Australia or elsewhere at which trading in a Commodity takes place or is offered.

"Commodity Investment" means an interest or a right or option to acquire an interest, whether as buyer or seller, in respect of a contract (including without limitation a hedging contract) in relation to a Commodity, and the acquisition or disposition of any Commodity in the course of or pursuant to the making or performance of any contract in relation to a Commodity.

"Company" includes any body corporate, whether or not formed or incorporated within or outside New South Wales or Australia, a public authority or any instrumentality or agency of the Crown or of a government or any other organisation or body having a separate legal entity and for the purposes of the definition of "Authorised Investments" includes any partnership or joint venture.

"Complying Entity" means:

- (i) a complying superannuation fund;
- (ii) a complying ADF; or
- (iii) a pooled superannuation trust,

within the meaning of the Relevant Law.

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

"Corporations Act" means the Corporations Act 2001 (Cth) and includes any enactment amending or replacing that legislation.

"Deposit" means a payment (whether described as a deposit or margin or otherwise) required to be made by the Trustee pursuant to the rules and regulations of a Futures Exchange or otherwise under any Futures Contract.

"Eligible Investor Statement" means a statement to the Trustee by a Unit Holder or person requesting to be issued with Units, in a form approved by the Trustee from time to time, setting out such information and statements as the Trustee may require, including any information or statement which must be included in such a statement pursuant to the Relevant Law.

"Eligible Money Market Dealer" means a body corporate in respect of which a declaration is in force under the Corporations Act.

"Fund" means the trust fund constituted by the deed dated 30 August 1971 and the investments thereof from time to time and the proceeds of sale of such investments or any part thereof and any cash or contributions or other funds in the hands of the Trustee or held on its behalf whether awaiting investment or not and all moneys recoverable or receivable by the Trustee together with all additions or accretions (if any) thereto which may arise by any bonus or reconstruction or distribution received by the Trustee or its nominee or nominees in respect of any investments and held by them in accordance with the provisions of this Deed.

"Fund Trustee" means the trustee or trustees of an Fund, and includes any natural person, corporation, corporation sole, partnership, association, firm or body of persons whether resident, incorporated, constituted or otherwise formed in Australia or elsewhere or any public body or authority or instrumentality or agency of any Australian or foreign government (whether or not the Crown) who or which has or have established to the satisfaction of the Trustee that he or they is or are the trustee or trustees of an Approved Fund or any person acting as trustee, representative or nominee for an Approved Fund (and in the case of a Complying Entity in accordance with the governing rules of the fund) and any trustee of any Unit Trust Scheme all the units of which are held solely by or on behalf of an Approved Fund.

"Futures Contract" means a contract the effect of which is that-

- (i) the parties will make an adjustment between them at a specified future time in a specified currency according to whether a specified bond rate, interest rate or bill rate at that time is greater or less than that bond rate, interest rate or bill rate (as the case may be) at the time of the making of the contract, the difference being determined in accordance with the business rules of the market, exchange or other place at which the contract is made; or
- (ii) the parties will make an adjustment between them at a specified future time in a specified currency according to whether a specified quantity of a specified Commodity is worth more, or worth less, in that currency at that time than it was worth in that currency at the time of the making of the contract, the difference being determined in accordance with the business rules of the market, exchange or other place at which the contract is made; or
- (iii) the parties will make an adjustment between them at a specified future time in a specified currency according to whether a specified amount of another specified currency is worth more, or worth less, than it was worth in the firstmentioned currency at the time of the making of the contract, the difference being determined in accordance with the business rules of the market, exchange or other place at which the contract is made;

- (iv) the parties will make an adjustment between them at a specified future time in a specified currency according to whether a specified index figure of any of the above at that time is greater or less than that index figure at the time of the making of the contract, the difference being determined in accordance with the business rules of the market, exchange or other place at which the contract is made; or
- (v) any futures contract or right traded on a Futures Exchange.

"Futures Exchange" means any market or exchange (whether in Australia or elsewhere) from time to time selected by the Trustee upon which Authorised Investments in Futures Contracts are permitted to be made.

"Investment Value of a Unit" shall be the quotient derived by dividing the number of units in issue at the date at which the Investment Value of a Unit is to be ascertained ("the relevant date") into such sum as is from time to time ascertained and fixed by the Trustee by:

- (i) adding to the aggregate of the Market Value (as at the relevant date or, if the relevant date is not a business day, as at the last business day prior to the relevant date) of all the investments listed on a Stock Exchange comprised in the Fund the Market Value of all other property so comprised the amount of cash so comprised and all moneys recoverable or receivable by the Trustee such sum as would have been incurred for the brokerage stamp duty transfer fees and other usual charges (if any) on such day in the purchase or acquisition of the investments comprised in the Fund, and
- (ii) deducting therefrom all sums owing by the Fund on any account, any provisions and any charges or expenses accrued or unpaid and such provisions against future losses in respect of any investment of which the Market Value is in the opinion of the Trustee incorrect or cannot fairly or accurately be determined or for such other purposes as the Trustee thinks fit;

PROVIDED THAT in respect of a Unit being issued on the relevant date pursuant to a BTA Switch the Trustee may determine to calculate the Investment Value of a Unit without the addition of the sum as would have been incurred for the brokerage, transfer fees and other usual charges (if any) on such day in the purchase or acquisition of the investments comprised in the Fund referred to in sub-paragraph (i) PROVIDED THAT, in respect of any decision not to include those amounts, the Trustee is reasonably satisfied that:

- (1) the amount of Cash which will be received by the Fund upon the issue of those Units will be held as an Authorised Investment under this Deed and is not otherwise required to meet the obligations of the Trustee upon the acquisition of other Authorised Investments in respect of which any cost or expense of the kind described would apply;

- (2) the number of Units to be issued does not represent in aggregate such a payment for the issue of the Units as to be significant in terms of the proper administration of the Fund; and
- (3) the Trustee is otherwise of the opinion that such a decision will not adversely affect the existing Unit Holders,

and the Trustee's statement of the Investment Value of a Unit shall be final and binding on all parties.

"Land" means land as defined in the Trustee Act 1925 (NSW).

"Market Traded Options" means put and call options traded on any Stock Exchange.

"Market Value" or "market value" of an investment listed on a Stock Exchange means:

- (i) the "last sale" price quoted on the relevant date or, if the relevant date is not a business day, the last business day prior to the relevant date for that investment in the Official List of any Stock Exchange from time to time in relation to that investment nominated by the Trustee, provided that
  - (A) if such last sale price is greater than the price so quoted for the latest seller on such day, then such latest seller price shall be the Market Value, and
  - (B) if such last sale price is less than the price so quoted for the latest buyer on such day then such latest buyer price shall be the Market Value;

provided further that if in the opinion of the Trustee the Market Value so determined does not represent a fair Market Value the Market Value shall be such fair market value as the Trustee in its absolute discretion determines.

- (ii) If there is no such "last sale" price - whichever is the higher of the "latest seller" price so quoted on the relevant date, or if the relevant date is not a business day, the last business day prior to the relevant date or the "latest buyer" price so quoted (if any) on the relevant date, or if the relevant date is not a business day, the last business day prior to that day PROVIDED HOWEVER that if in the opinion of the Trustee the Market Value so determined does not represent a fair market value, the Market Value shall be such fair market value as the Trustee in its absolute discretion determines;

"Market Value" or "market value" of property comprised in the Fund other than investments listed on a Stock Exchange and investments comprising loans to the Trustee or a company deemed to be related to the Trustee means the fair market value of such property as fixed by the Trustee at the relevant date. The Trustee may rely on the valuation of any Approved Valuer in fixing the fair market value of any such property.

"Market Value" or "market value" of an investment comprising a loan to the Trustee or to a company deemed to be related to the Trustee means the principal amount thereof and any interest accrued in respect thereof but unpaid.

"Net Asset Value of a Unit" or "net asset value of a unit" shall be the quotient derived by dividing the number of Units in issue at the date at which the Net Asset Value of a Unit is to be ascertained ("the relevant date") into such sum as is from time to time ascertained and fixed by the Trustee by deducting from:

- (i) the aggregate of the "Market Value" (on the relevant date, or if the relevant date is not a business day, the last business day prior to the relevant date) of all the investments listed on a Stock Exchange comprised in the Fund the Market Value of all other property so comprised the amount of cash so comprised and all moneys recoverable or receivable by the Trustee;
- (ii) such sum as would have been incurred for the brokerage stamp duty transfer fees and other usual charges (if any) on such day in the sale or disposal of the investments comprised in the Fund, all sums owing by the Fund on any account, any provisions and any charges or expenses accrued or unpaid and such provisions against future losses in respect of any investment of which the Market Value is in the opinion of the Trustee incorrect or cannot fairly or accurately be determined or for such purposes as the Trustee thinks fit.

PROVIDED THAT in respect of a Unit being cancelled on the relevant date pursuant to a BTA Switch the Net Asset Value of a Unit shall be calculated without deducting such sum as would have been incurred for the brokerage, transfer fees and other usual charges (if any) on such day in the sale or disposal of the investments comprised in the Fund referred to in sub-paragraph (ii) if the Trustee is reasonably satisfied that:

- (1) the amount payable to the Unit Holder on such cancellation in respect of those Units does not exceed 50% of the amount of Cash otherwise available to the Trustee for the purposes of investment under the terms of this Deed;
- (2) the payment to the Unit Holder on such cancellation is paid out of Cash;
- (3) there is no resolution passed or proposed nor any proposal for the winding up of the Trust or of the Trustee or for the determination of the Trust in accordance with this Deed;

- (4) the number of Units to be cancelled is not of such a size as to be significant in terms of the proper administration of the Fund; and
- (5) the Trustee is otherwise of the opinion that such a decision will not adversely affect existing Unit Holders.

"Pooled Superannuation Fund" means a pooled superannuation trust as defined in Section 267 of the Income Tax Assessment Act 1936 (Cth).

"Related Body Corporate" means and includes a company which is a related body corporate within the meaning of that expression under the Corporations Act.

"Relevant Authority" means the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission, the Commissioner of Taxation and any other regulatory body which has responsibility for the administration and/or regulation of superannuation from time to time.

"Relevant Law" means means the SIS Act, the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) and the Corporations Act and any other act relating to superannuation with which the Trustee must comply or which provides for the concessional taxation of superannuation funds and all regulations made under those Acts (as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by the Relevant Authority) and, where the Trustee deems appropriate, any announcement of a proposed change to any of the above Acts or regulations, whether or not the change is to have retrospective effect and any circular, guideline, ruling, announcement or advice given by the Relevant Authority.

"Security" includes any fully or partly paid ordinary, convertible, preferred, deferred, contributing or any other class of shares, stocks, bonds, debentures, debenture stock, unsecured notes, promissory notes, options, rights, letters of allotment, obligations or like security or any right, interest or entitlement in respect of any of them.

"Share" includes ordinary preferred deferred contributing and any other class of shares stocks debentures (convertible or otherwise) debenture stock (convertible or otherwise) unsecured notes (whether registered or not) options certificates rights letters or allotment and variable interest stock bonds or obligations.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993 (Cth) including any regulations made under it.

"Stock Exchange" means the Australian Stock Exchange Limited and any other stock exchange (whether in Australia or elsewhere) approved by the Trustee.

"Tax" includes all income tax (including any tax on the disposal of assets or investments), withholding tax, stamp, financial institutions and other duties, bank accounts debits tax and other taxes, levies, imposts, deductions and charges whatsoever (including in respect of any duty imposed on receipts or liabilities of financial institutions any amounts paid in respect thereof to another financial institution) together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof.

"Tax Acts" means the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth), the Taxation Rating Acts, the Taxation Administration Act 1953 (Cth) and any other Commonwealth Tax legislation as amended or enacted from time to time and any regulations enacted promulgated or made thereunder.

"Transaction Date" means:

- (a) in respect of any application for Units,
  - (i) if an application form in a form satisfactory to the Trustee is received by the Trustee before 4.00 pm on any Business Day, that Business Day;
  - (ii) if an application form in a form satisfactory to the Trustee is received by the Trustee at or after 4.00 pm on any Business Day or is received by the Trustee on a day not being a Business Day, the next succeeding Business Day;
- (b) in respect of the cancellation of any Unit,
  - (i) if a request for cancellation is received by the Trustee before 4.30pm (or such later time as the Trustee in its absolute discretion may determine) on any Business Day, that Business Day;
  - (ii) if a request for cancellation is received by the Trustee on or after 4.30pm (or such later time as the Trustee in its absolute discretion may determine) on any Business Day or is received by the Trustee on any day not being a Business Day, the next succeeding Business Day.

"Trust" includes the trusts hereby constituted and any further trusts constituted pursuant hereto.

"Trustee" means and includes the Trustees or Trustee for the time being hereof and any delegate or nominee of the Trustee.

"Trustee Investments" means any investments in which trustees for the time being are authorised by the laws of any State or Territory of the Commonwealth of Australia to invest trust moneys.

"Unit" or "unit" means an undivided part or share in the Trust Fund as described in Clause 5 of this Deed.

"Unit Holder" or "unit holder" means the person for the time being registered under the provisions of this Deed as the holder of a unit and includes persons jointly so registered.

"Units in Issue" means all units issued and not cancelled.

"Unit Trust Scheme" means any fund, scheme, undertaking, enterprise, contract or arrangement made for the purpose of or having the effect of providing facilities for the participation by persons, as beneficiaries under a trust, in any profits, income or capital growth arising from the acquisition, holding, management or disposal of any property or assets pursuant to that trust and includes units in any unit trust scheme of which the Trustee (or a related body corporate) is manager or trustee, including the trusts known as the BTA Property Trust, the BTA No. 3 Property Trust, or the BTA Investment Trust.

"Valuation Day" means any day on which the Trustee causes the value of the Fund to be determined in accordance with clause 11.

(Interpretation): Words importing the masculine gender shall include the feminine gender the plural shall include the singular and reference to bodies corporate shall include persons and vice versa and wherever any Act or statute is referred to the reference shall be deemed to include every amendment, re-enactment or provision thereof and every statute substituted therefore and references to any time are references to Sydney time.

## **CONSTITUTION OF THE FUND**

4. (a) BT Funds Management Limited is the trustee of the Fund for the Unit Holders.  
  
(b) [*Clause 4(b), not deleted but not restated here.*]
  
5. (a) (Division into Units): The beneficial interest in the Trust Fund shall be divided into units. Every unit shall confer an equal interest in the Fund but shall not confer any

interest in any particular part of the Fund or in any investment but only such interest in the Fund as a whole as is conferred on a unit under the provisions contained in this Deed.

- (b) (All Units of Equal Value): At any given date all the units into which the beneficial interest in the Fund is for the time being divided shall be of equal value.
- (c) (Division of Units): The Trustee may at any time in its discretion divide the Fund into any number of units other than the number into which the Fund is already divided but shall maintain as between unit holders the same ratio of units after such division as the ratios subsisting between such unit holders before such division.

6. [Deleted]

### **CREATION, ISSUE AND CANCELLATION OF UNITS**

- 7. (a) (Application for Units): The Trustee may accept applications for units subject to the conditions hereinafter appearing in such manner as it shall from time to time determine.
- (b) (Application only from Fund Trustee): Unless until otherwise determined by the Trustee, no application will be accepted from and no units will be issued to any person other than a Fund Trustee who has furnished the Trustee with an Eligible Investor Statement.
- (c) (Investment Fee): The Trustee may require an applicant for units to pay in addition to the investment value of the units applied for an investment fee not exceeding seven per centum (7%) of the amount of the investment value of the units applied for, which fee shall be retained by the Trustee, for its own benefit.
- (d) (Minimum Subscription): The Trustee may from time to time fix a minimum amount which may be lodged in cash or authorised investments with an application for units.
- (e) (SIS Act): The Trustee will offer and issue units in accordance with the relevant requirements (if any) of the SIS Act.

### **STATUS OF UNIT HOLDERS**

- 7A. (a) (Evidence as to Status): In accepting applications for units from any Fund Trustee, the Trustee may require that any application be accompanied by evidence that the

Approved Fund of which the applicant is a Fund Trustee is and continues to be a superannuation fund or an approved deposit fund as defined under the Income Tax Assessment Act and may from time to time require copies of any notice given by the Relevant Authority in relation to the Approved Fund under the Relevant Law confirming that the Relevant Authority is satisfied that the Approved Fund satisfied the superannuation fund conditions or the approved deposit fund conditions in relation to the last Accounting Period (as applicable). Notwithstanding any notice issued by the Relevant Authority in respect of any preceding period, if the Trustee has reason to believe that an applicant has not satisfied any condition required of an Approved Fund, it shall hold the application until it is satisfied that such condition has been complied with or waived.

- (b) (Warranty by Fund Trustee): Each Unit Holder warrants that it is and will remain a Fund Trustee and covenants with the Trustee that it shall promptly, on being aware of any alteration in its status for the purposes of the Income Tax Assessment Act as a Fund Trustee inform the Trustee in writing thereof.
  
- (c) (Cessation as Fund Trustee): Where any person is issued Units and in the opinion of the Trustee (whose opinion shall be final) ceases to be a Fund Trustee of an Approved Fund of the type described in paragraph (a) above at any time, unless the Trustee otherwise determines, any moneys submitted by that person will be held by the Trustee and shall be deemed to have been held from the date of application for Units or the date of cessation as a Fund Trustee of an Approved Fund of the type described in paragraph (a) above (as the Trustee determines), in a separate fund and trust with power (but no obligation on the part of the Trustee) to invest the same in such manner as the Trustee determines in Authorised Investments until the person directs the Trustee to account for such moneys together with any income thereon, but nothing herein shall constitute such moneys as part of the Fund and no Units shall be issued by the Trustee in respect thereof (or, if purported to be issued shall not be regarded for any purpose as a Unit issued hereunder and shall be cancelled abinitio by the Trustee or, if the Trustee so determines in its absolute discretion, shall be cancelled as from the end of the year of income of the Fund in respect of which the Unit Holder was last a Complying Entity) .
  
- (d) (Presumption): Where the Trustee accepts an application for Units from any person who has furnished an Eligible Investor Statement, it shall be entitled to presume that the information set out in the Eligible Investor Statement is true and correct in every respect and that the applicant is a Fund Trustee unless the Trustee has been informed otherwise by the Unit Holder in writing.
  
- (e) (Deficiency of Applicant): The Trustee shall not be held liable for any loss or damage suffered by any Unit Holder as a consequence of there being a deficiency in the status of any applicant for Units as a Fund Trustee or any Unit Holder not being at all times a Fund Trustee.

- (f) (Evidence of Complying Entity): Where the applicant for Units is a Fund Trustee of an Approved Fund of a type other than as described in paragraph (a) above, the Trustee may require such evidence of the status of the Fund Trustee as a Complying Entity as the Trustee deems necessary.
8. (a) (Creation of Units): All applications for the creation of units shall be accompanied by payment in cash to the Trustee as the Trustee shall from time to time direct of a sum equal to the product of the investment value of a unit as certified by the Trustee as at the last day of the previous calendar month multiplied by the number of units the creation of which is applied for (and rounded off if necessary to the next whole cent) and payment to the Trustee of the investment fee (if any) charged by the Trustee PROVIDED THAT the price at which units shall be issued pursuant to applications therefore accepted by the Trustee on the commencement date shall be One dollar (\$1.00) per unit and PROVIDED FURTHER THAT the Trustee may in its discretion accept payment for units in the form of authorised investments and the amount of the value at which the Trustee accepts such authorised investments shall be deemed to have been paid to the Trustee in cash.
- (b) (Price of Units): Applications for units accepted by the Trustee on the commencement date shall be accepted at the price of One dollar (\$1.00) per unit and thereafter the Trustee shall accept applications for units at the Investment value per unit calculated pursuant to Sub-clause (a) of this clause on the last day of the previous calendar month.
- (ba) (Payment for Units): Except in respect of applications actually received by the Trustee before the first day of January 1977 the provision of Sub-clauses (a) and (b) of this clause shall cease to operate and apply and the following provisions shall operate and apply in lieu thereof on and from that date:

Applications for the creation of units will be accepted to be effective only on the Valuation Day occurring after the application was received or on the Transaction Date, if Clause 10(ga) applies and units will only be issued to take effect as if the issue had been made on the Valuation Day occurring after the relevant application was received or on the Transaction Date, if Clause 19(ga) applies. Payment for units to be issued shall be made prior to the issue of the units in cash or, where the Trustee in its discretion so determines, in the form of authorised investments at a value determined in accordance with Clause 8(e) hereof. The price for the issue of units shall be as follows:

- (i) where payment for those units is made in cash, the price shall be a sum equal to the product of the investment value of a unit as certified by the Trustee as at the Valuation Day occurring after the application was received or the investment value of a unit as certified by the Trustee referable to the Transaction Date, if Clause 10(ga) applies multiplied by the number of units the creation of which is applied for (and rounded off if necessary to the next whole cent); or

- (ii) where payment for those units is made in authorised investments, the price shall be a sum equal to the product of the adjusted investment value of a unit as certified by the Trustee as at the Valuation Day occurring after the application was received or the adjusted investment value of a unit as certified by the Trustee referable to the Transaction Date, if Clause 10(ga) applies multiplied by the number of units the creation of which is applied for (and rounded off if necessary to the next whole cent).
- (c) (Transfer to Trustee): The Trustee shall forthwith on accepting an application for units pay or transfer to the Trustee all such moneys or all such authorised investments, as the case may be, but excluding the investment fee (if any).
- (d) (Time of Creation of Unit): Following such payment of cash to or vesting of the authorised investments in the Trustee the number of units the creation of which is applied for shall ipso facto be created on the Valuation Day occurring after the application was received by the Trustee or on the Transaction Date, if Clause 10(ga) applies and the applicant shall be registered as holder thereof.
- (e) (Value of Authorised Investments): The value at which the Trustee accepts authorised investments shall be such sum not exceeding the market value of such investments, less brokerage, stamp duty, transfer fees and other charges incurred or to be incurred in transferring such investments as may be agreed between the Trustee and the owner of such authorised investments.
- (f) [Deleted]
- (g) (Application Switch):
  - (i) Where the Trustee accepts applications for units where payment for those units will be made from a BTA Fund the provisions of this paragraph will apply. Such applications may be for a specified or an unspecified number of units.
  - (ii) Where an application is for a specified number of units the Trustee shall inform the manager of the other BTA Fund of:
    - (A) the price of the issue of units specified in the application, which amount will be determined in accordance with paragraph (a) above; and
    - (B) the amount of any investment fee.

- (iii) Where an application is for an unspecified number of units totalling a specified sum the Trustee shall determine the number of units to be issued (rounded down to the nearest unit if necessary) by:
  - (A) where payment for those units is made in cash, dividing the amount of the payment (less any investment fee) by the investment value of a unit as certified by the Trustee as at the Valuation Day occurring after the application was received or the investment value of a unit as certified by the Trustee referable to the Transaction Date, if Clause 10(ga) applies; or
  - (B) where payment for those units is made in authorised investments, dividing the value of the authorised investments, as determined in accordance with paragraph (d) above, (less any investment fee) by the adjusted investment value of a unit as certified by the Trustee as at the Valuation Day occurring after the application was received or the adjusted investment value of a unit as certified by the Trustee referable to the Transaction Date, if Clause 10(ga) applies.
- (iv) Where an application is for an unspecified number of units the payment of which is to be made from the proceeds of a cancellation of a specified number of units in a BTA Fund, the Trustee shall, once it has been informed by the manager of the other BTA Fund the amount payable in respect of the unit holder, determine the number of units to be issued (rounded down to the nearest unit if necessary) in the manner determined in accordance with subparagraph (iii) above.
- (v) The issue of units pursuant to this clause shall always occur on the date on which the Trustee receives the payment for those Units from the BTA Fund. If for any reason the redemption of units in the BTA Fund or the issue of the Units is deferred, by reason of an inability to calculate the Investment Value of a Unit or the redemption price of the units in the BTA Fund, then the BTA Switch shall be deferred to a date which is a Transaction Date for the purposes of this Deed and for the BTA Fund.
- (vi) The Trustee shall forthwith on accepting payment for units pursuant to this paragraph pay or transfer to the Trustee all such money or all such authorised investments, as the case may be, but excluding the investment fee (if any).
- (vii) The provisions of paragraphs (c) and (e) above shall also apply to applications made pursuant to this paragraph.

9. (Vesting of Assets in Trustee):

- (a) Authorised investments shall be deemed vested in the Trustee as soon as:
- (i) the authorised investments have been registered in the name of the Trustee or its nominee; or
  - (ii) transfers in favour of the Trustee or its nominee in respect thereof (duly stamped where necessary) and certified as registerable in accordance with any relevant provisions of the Corporations Act or accompanied by appropriate certificates therefore have been delivered to the Trustee; or
  - (iii) contract notes by brokers evidencing the purchase in the name of the Trustee or its nominee of authorised investments have been delivered to the Trustee accompanied by cash or a cheque sufficient to complete such purchase and transfer and including stamp duty (if any).
- (b) Nothing in this clause shall be deemed to exonerate the Trustee from liability to have transferred to or vested in the Trustee or its nominee the investments of the Fund until the same have actually been registered in the name of the Trustee or its nominee.
- (c) Cash shall be vested in the Trustee when paid to it or to a bank account in its name.

## **CANCELLATION**

10. (a) (Cancellation Request): A unit holder may at any time request the Trustee to cancel on any Valuation Day not less than fifteen days (or such lesser period as the Trustee may permit) after such request all or any of the units then held by him. Any such request shall be in writing in such form as the Trustee may prescribe from time to time and, if required by the Trustee in its absolute discretion, shall be made not less than fifteen (15) days prior to the last day of the calendar month in which the request was made.
- (b) (Certificate): Within five (5) days from the relevant Valuation Day the Trustee shall furnish to to all holders of units being cancelled on that day a certificate stating the net asset value at the relevant Valuation Day of the units to be cancelled on that day and the amount payable to the unit holder on such cancellation (which subject to Sub-clause 10(da) hereof shall be the net asset value of the units to be cancelled) and the Trustee shall within five (5) days from receipt of such certificate pay the amount

so certified to the holder of the units cancelled or to the Trustee on behalf of such holder.

- (c) (Cancellation on Payment): On such payment being made to the holder of the units cancelled, the said units shall ipso facto be cancelled and the appropriate entry shall forthwith be made in the Register.
- (d) (Transfer of Assets): Where the net asset value of the units included in any single application for cancellation exceeds the sum of Ten thousand dollars (\$10,000) the Trustee may in its discretion transfer specific assets out of the investments of the Fund in satisfaction of the amount payable on cancellation of the units (the value of the assets transferred being calculated at market value and the cost of any brokerage stamp duty transfer fees and other charges incurred in transferring such assets to be borne by the Trustee) and such transfers shall be executed and delivered to the Trustee within seven (7) days from the relevant Valuation Day or the Transaction Date, if Clause 10(ga) applies and be deemed payment within the meaning of Paragraph (b) of this clause.
- (da) (Value of Assets Transferred): Where specific assets are transferred in satisfaction of the amount payable to a unit holder in respect of any units the amount so payable shall be the adjusted net asset value of those units.
- (e) (Cessation as Approved Fund): If at any time any units cease to be held by a Fund Trustee or if being held by a Fund Trustee, the fund of which he is Trustee ceases to be an approved fund, then the Trustee may forthwith cancel such units by notice to the unit holder and thereupon the provisions of this clause shall apply as if the unit holder had requested the Trustee to cancel such units on the next Valuation Day.
- (ea) (Cessation as Eligible Investor) If at any time any Fund Trustee ceases to be eligible to hold units under the Relevant Law by reason of its failure to provide an Eligible Investor Statement or otherwise, the Trustee shall forthwith cancel such Units upon the expiration of any period of notice to the Unit Holder or following the exercise of any discretion by the Trustee prescribed or authorised by the Relevant Law and thereupon the provisions of this clause shall apply as if the Unit Holder had requested the Trustee to cancel such units on the next Valuation Day.
- (f) [Deleted]
- (g) (Further Cancellation): Notwithstanding anything hereinbefore contained, a unit holder may at any time request the Trustee to cancel at the net asset value of the units the subject of the request on the Valuation Day immediately preceding such request or, as the Trustee so determines in his absolute discretion, on the date on which such request was made by the Unit Holder, or the next succeeding Valuation Day (if such date is not more than five (5) business days after such request), up to 15% of the

units held by such unit holder as at that Valuation Day or at the date the request is made (as the Trustee thinks appropriate) PROVIDED THAT the unit holder provides evidence to the reasonable satisfaction of the Trustee that the amount payable to the unit holder on such cancellation is required for the payment of a benefit under the approved fund of which the unit holder is Fund Trustee or for the payment of Taxes for which the Unit Holder is liable as Fund Trustee or for such other purposes as the Trustee may approve. Any such request shall be in writing in such form as the Trustee may prescribe from time to time. Within five (5) business days from receipt of such application for cancellation:

- (i) the Trustee shall furnish to the holder of units being cancelled a certificate stating the net asset value of the units to be cancelled and the amount payable to the unit holder on such cancellation and ensure that cash is available to the Trustee to make any payments so certified; and
- (ii) the Trustee shall upon receipt of such certificate pay the amount so certified to the holder of the units cancelled or to the Trustee on behalf of such holder,

PROVIDED THAT if at any time the Trustee determines that the Net Asset Value of the Units on the Valuation Day immediately preceding such request does not properly reflect the Net Asset Value of the Units at that time and it is impracticable to determine the Net Asset Value of the Units prior to the next succeeding Valuation Day, the Trustee may refuse all requests to cancel Units until the next succeeding Valuation Day.

On such payment being made the said units shall ipso facto be cancelled and the appropriate entries shall forthwith be made in the Register.

- (ga) (Daily Pricing): If the Trustee elects pursuant to Clause 11, in its absolute discretion, to calculate the value of the Fund and thereby the Investment Value of a Unit and the Net Asset Value of a Unit on each Business Day:
  - (a) the Trustee shall, subject to Clause 10(gb), issue any Units at the Investment Value of a Unit or Adjusted Investment Value of a Unit each referable to the relevant Transaction Date and to cancel any Units at the Net Asset Value of a Unit referable to the relevant Transaction Date; and
  - (b) the Trustee shall give to each Unit Holder fourteen days prior notice of any election to cease calculating that value of the Fund, Investment Value of a Unit and Net Asset Value of a Unit on each Business Day.

For the purpose of the issue or cancellation of any Units:

- (a) the Investment Value of a Unit or the Adjusted Investment Value of a Unit referable to the Transaction Date means the Investment Value of a Unit or Adjusted Investment Value of a Unit, as the case may be, calculated by reference to the number of Units in issue, Market Values, charges and expenses referred to in the relevant definition for that Transaction Date; and
  - (b) the Net Asset Value of a Unit referable to the Transaction Date means the Net Asset Value of a Unit calculated by reference to the number of Units in issue, Market Values, charges and expenses referred to in the definition of Net Asset Value of a Unit for that Transaction Date.
- (gb) (Other cancellations): If Clause 10(ga) applies, a Unit Holder may at any time request cancellation of any or all of the Units at the aggregate Net Asset Value of a Unit referable to the Transaction Date PROVIDED THAT:
- (a) if at any time the Trustee determines that the value of the Fund on the Transaction Date does not properly reflect the value of the Fund at that time;
  - (b) the Trustee would be required to realise Authorised Investments of the Fund (other than Cash) to meet such a request for cancellation; or
  - (c) the Trustee is of the opinion that such a cancellation would adversely affect the remaining Unit Holders,

the Trustee may refuse all requests to cancel Units pursuant to Clause 10(ga) until a Transaction Date which is not less than fifteen days (or such lesser period as the Trustee may permit) after receipt by the Trustee of the request for cancellation in respect of the Units and may treat the request for cancellation as a request to cancel at the Net Asset Value of a Unit referable to that Transaction Date. The Net Asset Value of a Unit for the Units is subject of the request for cancellation shall be rounded down to the nearest cent.

- (h) (Cancellation Switch):
- (i) Notwithstanding the above provisions of this Clause, a unit holder may at any time request the Trustee to cancel, on any Valuation Day not less than fifteen days (or such lesser period as the Trustee may permit) after such requestor on any Transaction Date, if Clause 10(ga) applies:
    - (A) a specified number of units;

- (B) an unspecified number of units the proceeds of which total a specified sum; or
- (C) an unspecified number of units the proceeds of which are required to purchase a specified number of units in a BTA Fund,

where payment in respect of those Units is to be made to the manager of a BTA Fund for the purpose of purchasing units. Any such request shall be in writing in such form as the Trustee may prescribe from time to time and shall, if required by the Trustee in its absolute discretion, be made not less than five (5) days prior to the last day of the relevant calendar month.

- (ii) Within five (5) days from the relevant Valuation Day or within 5 days from the Transaction Date, if Clause 10(ga) applies the Trustee shall furnish to the Trustee, to all holders of units being cancelled on that day, pursuant to this paragraph, and to the relevant managers of the other BTA Funds a certificate stating:

- (A) where a cancellation request is for a specified number of units, the Net Asset Value of the Units at the relevant Valuation Day or referable to the relevant Transaction Date, if Clause 10(ga) applies to be cancelled on that day and the amount payable in respect of the unit holder on such cancellation (which subject to sub-paragraph (v) of this paragraph shall be the Net Asset Value of the Units to be cancelled); or

- (B) where a cancellation request is for an unspecified number of units the proceeds of which total a specified sum, the number of units at the relevant Valuation Day or at the relevant Transaction Date, if Clause 10(ga) applies to be cancelled (this number shall be determined by dividing the specified sum by the Net Asset Value of a Unit at the relevant Valuation Day or referable to the relevant Transaction Date, if Clause 10(ga) applies and the Trustee shall, if necessary, increase the sum specified in the cancellation request), the Net Asset Value of the Units at the relevant Valuation Day or referable to the relevant Transaction Date, if Clause 10(ga) applies to be cancelled on that day and the amount payable in respect of the unit holder on such cancellation (which subject to sub-paragraph (v) of this paragraph shall be the Net Asset Value of the Units to be cancelled); or

- (C) where a cancellation request is for an unspecified number of units the net asset value of which is required to purchase a specified number of units in a BTA Fund, the amount the manager of the other BTA Fund informed the Trustee was required to purchase the specified number of units in that fund (including any investment fee), the number of units at the relevant Valuation Day or at the relevant Transaction Date, if Clause

10(ga) applies to be cancelled (this number shall be determined by dividing the abovementioned amount by the Net Asset Value of a Unit at the relevant Valuation Day or referable to the relevant Transaction Date, if Clause 10(ga) applies and the Trustee shall, if necessary, increase the sum specified in the cancellation request), the Net Asset Value of the Units at the relevant Valuation Day or referable to the relevant Transaction Date, if Clause 10(ga) applies to be cancelled on that day and the amount payable in respect of the Unit Holder on such cancellation (which subject to sub-paragraph (v) of this paragraph shall be the Net Asset Value of the Units to be cancelled),

and the Trustee shall within five (5) days from receipt of such certificate pay the amount so certified to the manager of the other BTA Fund on behalf of the holder of the units.

- (iii) On such payment being made in respect of the holder of the units cancelled the units shall ipso facto be cancelled and the appropriate entry shall forthwith be made in the Register.
- (iv) The provisions of paragraph (d) above apply to any cancellation request made pursuant to this paragraph.
- (v) Where specific assets are transferred in satisfaction of the amount payable in respect of a unit holder in relation to any units the amount so payable shall be the Adjusted Net Asset Value of those Units.
- (vi) Where a payment is made to the manager of a BTA Fund in respect of a unit holder, the Trustee may, in its absolute discretion, make an additional payment to that manager on behalf of that unit holder by way of distribution from the Fund as at the Valuation Day on which those Units were redeemed being an amount equal to the amount of interest which would have accrued if interest had been paid on the amount of the payment between the Valuation Day occurring after the application was made and the date the payment was made to that BTA Fund.

## **VALUE OF THE FUND**

- 11. (a) The Trustee shall ascertain the value of the Fund on any day it thinks fit but at least on one day of each calendar month whenever reasonably requested to do so by the Trustee and shall without delay forward a certified copy of each such valuation to the Trustee. In addition the Trustee shall have the right to cause valuation of the Fund to be made at any reasonable time and from time to time.
- (b) In ascertaining the value of the Fund the Trustee shall:

- (i) take the aggregate of the "market value" of the investments comprised in the Fund and all cash in the hands of the Trustee and all money recoverable or receivable by the Trustee, less any sums owing on any account any provisions and any charges or expenses accrued or unpaid;
  - (ii) make such provisions as they shall in their absolute discretion deem prudent for the purpose of making provision against future losses in respect of any investment of which the market value cannot in the Trustee's opinion be fairly or accurately assessed or for such other purposes as they consider desirable;
  - (iii) deduct the aggregate amount of the provisions referred to in Sub-clause (ii) above from the sum arrived at under Sub-clause (i) above; and
  - (iv) the net result shall be the value of the Fund at the time of valuation.
- (c) In determining the market value of an investment listed on a Stock Exchange for the purposes of this clause, the expression "market value" shall have the same meaning as in Clause 3 hereof.
- (d) For the purpose of ascertaining any value of the Fund, where any Authorised Investment of the Fund is valued by reference to a particular day or date (including the Valuation Day) then that day or date or Valuation Day may be any period of 24 hours approved by the Trustee on the recommendation of the Trustee.
12. (Investment Value): The Trustee shall calculate the investment value of a unit on each Valuation Day and shall forward to the Trustee a certified copy of each such valuation.
13. (Realisation Value): The Trustee shall calculate the net asset value of a unit on each Valuation Day and shall forward to the Trustee a certified copy of each such valuation.

## **INCOME**

14. (a) (Monthly Accounting Period): Each Accounting Period shall be divided into monthly accounting periods ("Monthly Accounting Periods") each commencing on the first day of each calendar month contained in the Accounting Period and ending on the last day of that calendar month PROVIDED THAT in respect of the Accounting Period ending on the date of termination of the Trust the last Monthly Accounting Period shall terminate on that date. Accounting Period shall terminate on that date.

- (b) (Income of Fund): The income (which wherever referred to in this Deed includes realised capital profits) of the Fund for each Accounting Period shall be determined in accordance with generally accepted accounting principles or such accounting principles as the Trustee may from time to time adopt with the approval of the auditor of the Fund PROVIDED THAT all periodic income of the Fund shall be deemed to accrue from day to day and shall be brought to account by the Trustee as arising on a daily basis. The income of the Fund for each Monthly Accounting Period shall be determined upon the same principles and in the same manner as the income of the Fund for the Accounting Period of which that Monthly Accounting Period forms part is determined PROVIDED ALWAYS that the sum of the incomes of the Fund for all Monthly Accounting Periods together constituting an Accounting Period shall equal the income of the Fund for that Accounting Period.
- (c) (Collection of and Payments out of Income): The Trustee shall in each Accounting Period collect receive and get in all interest and other income from the investments of the Fund. The Trustee in each Accounting Period:-
- (i) shall pay out of the income of the Fund all costs and disbursements, commissions, fees, Taxes (including land tax and income tax) insurance premiums, management charges and other proper outgoings in respect of the investments of the Fund (which are properly chargeable against the income of the Fund in accordance with generally accepted accounting principles or are deductible from income in accordance with the Income Tax Assessment Act 1936 (Cth)) and the expenses of managing and administering the Fund, including the costs to the Trustee of maintaining the Register, preparing accounts, keeping books of account, preparing and despatching income distribution cheques and otherwise managing and administering the Fund;
  - (ii) shall pay thereout the remuneration, fees, interest, expenses and costs of the Trustee payable in accordance with the provisions of this Deed; and
  - (iii) may at its discretion, allocate thereout to a provision or provisions such amount or amounts (if any) as the Trustee deems proper for meeting anticipated expenses or obligations (other than income tax obligations).
- (d) (Net Accounting Income): The balance of the income of the Fund determined pursuant to this Clause for an Accounting Period (as reduced by any provision made in pursuance of Clause 15A(c), Net Accounting Losses (as hereinafter defined) carried forward from a previous Accounting Period and any realised capital losses in respect of the Accounting Period) shall be deemed the "Net Accounting Income" in respect of that Accounting Period. Where the balance of the income of the Fund for an Accounting Period determined and reduced as aforesaid is negative such balance shall constitute the Net Accounting Loss for such Accounting Period.
- (e) (Net Monthly Accounting Income):

- (A) The Trustee shall determine the Net Monthly Accounting Income for each Monthly Accounting Period by applying against the income of the Fund for that Monthly Accounting Period:
- (i) so much of the costs, disbursements commissions, fees, Taxes, insurance premiums, management charges and other proper outgoings in respect of the investments of the Fund and the expenses of managing and administering the Fund referred to in Clause 14(c)(i);
  - (ii) so much of the remuneration, fees, interest, expenses and costs referred to in Clause 14(c)(ii);
  - (iii) so much of any amount which the Trustee has or considers should be allocated to a provision in accordance to Clause 14(c)(iii);
  - (iv) so much of any provision against the income of the Fund which the Trustee has made or considers should be made under Clause 15A(c) (after taking Clause 15A(d) into account); and
  - (v) so much of any realised capital loss,

in relation to the Accounting Period of which the Monthly Accounting Period forms part as the Trustee considers properly relate (in accordance with generally accepted accounting principles or such other principles as the Trustee, with the approval of the auditor of the Fund, may have adopted) to such income, and there shall also be applied against such income any Net Monthly Accounting Loss (as hereinafter defined) carried forward from a preceding Monthly Accounting Period forming part of the relevant Accounting Period and in respect of the first Monthly Accounting Period of any Accounting Period any Net Accounting Loss carried forward from a previous Accounting Period. The balance of the income of the Fund for the Monthly Accounting Period remaining after such applications shall constitute the Net Monthly Accounting Income for that Monthly Accounting Period PROVIDED ALWAYS that where the amount applied as aforesaid against the income of the Fund for the Monthly Accounting Period exceeds the amount of such income the negative balance shall be the Net Monthly Accounting Loss for that Monthly Accounting Period.

- (B) The total of the Net Monthly Accounting Incomes for the Monthly Accounting Periods constituting together an Accounting Period less any Net Monthly Accounting Loss in respect of the last such Monthly Accounting Period shall

equal the Net Accounting Income or Net Accounting Loss for that Accounting Period.

### **ELECTION BY TRUSTEE**

14A. (a) (Election to be Taxed): Where the Relevant Law permits the Trustee to elect in respect of an Accounting Period being a year of income for the purposes of the Tax Acts whether the Fund shall be liable to Tax as a Pooled Superannuation Fund, the Trustee shall, on the advice of the Trustee, make an election prior to the commencement of that year of income whether the Fund is to be taxed as a Pooled Superannuation Fund. For the purposes of giving effect to that election and where the Relevant Laws permit the Trustee to take such action as will result in the Trust being a pooled superannuation trust in respect of any Accounting Period, being a year of income for the purposes of the Tax Acts the Trustee, on the advice of the Trustee, may -

- (i) take such action or refrain from taking such action including, without limitation, giving the return, certificate and fee described in the Relevant Law, or the taking of such action as will satisfy the Relevant Authority in the manner described in the Relevant Law or, alternatively;
- (ii) take such action so that the Fund will not be a "pooled superannuation trust" within the meaning of the Relevant Law, or will not satisfy the pooled superannuation trust conditions pursuant to the Relevant Law including, without limitation, amending this Deed pursuant to Clause 43 to restrict or regulate the ownership and disposal of Units and the persons who may be Fund Trustees, the financial and actuarial reports to be prepared in relation to the Fund, the disclosure of information to Unit Holders, or any other matter.

In relation to any act, matter or thing done pursuant to this clause, the Trustee need only have regard to the interests of the Fund and need not have regard to any other matters, including the interests of any individual Unit Holder.

(b) (Deemed Election to be Taxed): Where the result of any action taken by the Trustee (whether that action is required by law or otherwise, including, without limitation, any action taken pursuant to sub-clause (a)) is that the Trustee is liable in respect of any Accounting Period being a year of income of the Trust to pay tax on the taxable income of the Trust in respect of that year pursuant to Section 296 of the Income Tax Assessment Act 1936 (Cth), the Trustee shall be deemed in respect of that year to have elected pursuant to this clause that the Fund be liable to Tax as a Pooled Superannuation Fund for the purposes of this Deed.

(c) (Notice to Unit Holders): The Trustee shall inform each Unit Holder of an election pursuant to sub-clause (a), in writing, within 30 days of making such an election

provided that where in any succeeding year the Trustee maintains the status so elected, no further notice need be given to Unit Holders.

- (d) (Trustee may agree with Unit Holders): Where the Trustee elects that the Fund will be taxed in respect of any Accounting Period being a year of income or the Fund is otherwise subject to Tax as a Pooled Superannuation Fund, the Trustee shall be entitled to enter into an agreement or arrangement with any Unit Holder on such terms as the Trustee deems fit (including adjustments to the Investment Value of Units), concerning the assumption of liability for Tax in respect of contributions paid to that Unit Holder as trustee of an Approved Fund, pursuant to which the Trustee may agree to be liable for Tax and deduct from such contributions, and account to the Commissioner of Taxation in respect therefore, the Tax which would otherwise have been payable by that Unit Holder and shall be entitled, in calculating such Tax, to apply any taxation credit or rebate of the kind described in Clause 15A(d) in reduction of such Tax, as the Trustee in its absolute discretion may determine.
- (e) (Clauses 15A and 15B mutually exclusive): For the purposes of this Deed, Clauses 15A and 15B shall be mutually exclusive in their operation in respect of any period.

## **CAPITAL PROFITS**

- 15. (a) (Capital Profits): For the purposes of this Deed, a capital profit is realised when an asset or investment of the Fund is disposed of for a consideration greater in amount than whichever of the following amounts the Trustee in its absolute discretion decides to use:
  - (i) the amount paid or deemed paid or the value given for such asset or investment at the time it became part of the Fund, or
  - (ii) where such asset or investment comprised part only of a group of identical assets or investments of the Fund (each asset or investment in such group being hereinafter referred to as an "Item"):
    - (A) the average per Item of the amount paid or deemed paid or the value given for such identical assets or investments at the time they became part of the Fund; or
    - (B) the amount paid or deemed paid or the value given for such identical assets or investments at the time they became part of the Fund determined on a "first in first out" basis,

whichever the Trustee may consider appropriate in the circumstances multiplied by the number of Items disposed of (the product of such multiplication being hereinafter referred to as "the Average Cost" of the asset or investment disposed of).

- (b) (Question as to Amount): If any question shall arise as to whether a capital profit has been realised or as to the amount of the consideration received on its disposal of an asset or investment or as to the amount paid or deemed paid or the value given for such asset or investment at the time it became part of the Fund or as to the Average Cost of the asset or investment disposed of, then the Trustee shall determine such question as it considers proper and every such determination evidenced in writing shall be final and conclusive and that the Trustee shall act in accordance with such determination provided that no Unit Holder shall have any right or claim against the Trustee personally arising out of such decision or its implementation but shall not by reason of this proviso be debarred from asserting any claim in respect of his interest in the Fund.
  
- (c) (Investment Revaluation Reserve): The Trustee may from time to time create a reserve in respect of accretions to the value of its assets or investments of the Fund (where such accretions are not yet realised) to be called the "Investment Revaluation Reserve" and, notwithstanding any other provision of this Deed, the Trustee may from time to time and at any time deduct, set aside and make a provision for Tax which will or may in the opinion of the Trustee be payable in respect of capital gains which may or might be realised on the realisation or disposal of assets or investments of the Fund.

## **TAXATION OF THE FUND**

- 15A. (a) (Operation of Clause): The provisions of this Clause apply in respect of any Accounting Period being a year of income where the Trustee determines pursuant to Clause 14A that the Fund shall be subject to Tax or the Fund is otherwise taxed as a Pooled Superannuation Fund respect of the year of income commencing 1 July 1988 the Trustee in its absolute discretion otherwise determines.
  
- (b) (Payment of Tax): The Trustee shall pay such Taxes or instalments thereof as may be determined pursuant to the provisions of the Tax Acts in accordance with the provisions of the Tax Acts in respect of any Accounting Period being a year of income for which the Trustee has elected to be taxed as a Pooled Superannuation Fund. The Trustee may realise any investments from time to time held by the Fund to pay such Tax. The Trustee shall, in respect of the amount or amounts of such payments, debit the provision for Taxes made pursuant to Clause 15A(c) in respect of any Accounting Period being a year of income to which such Taxes relate and:
  - (i) where the provision for Taxes made in the Accounting Period (being a year of income) exceeds the Taxes payable in the year of taxation in respect of such

year of income, the Trustee shall credit the provision in respect of the next succeeding year of income with such amount or, if the Trustee so determines, treat such amount (or any part thereof) as income of the Fund for the purposes of Clause 14(b); \*\*and

- (ii) where the provision made for Taxes in respect of any year of income is less than the amount of Taxes payable in the year of tax in respect of that year of income, the Trustee shall be entitled, as the Trustee sees fit, to debit the excess of Taxes to such provision for Tax as the Trustee may have made in respect of the next succeeding year of income of the Fund, and if any balance thereafter remains to debit the same to such account as the Trustee thinks fit.
  
- (c) (Provisions): Notwithstanding any other clause of this Deed, the Trustee may from time to time and at any time deduct, set aside and make provision for such Tax as it in good faith and in its absolute discretion estimates will be payable from time to time by the Fund pursuant to the Tax Acts in respect of that Accounting Period having regard to, if the Trustee so determines, taxation losses accrued in the Fund and, without limitation, in deducting and setting aside and making provision for such Tax the Trustee shall be entitled to have regard to the unrealised capital gains accrued on the investments of that Fund (or any part thereof) and any other matter or thing which the Trustee in good faith and in its absolute discretion considers appropriate. Any such deductions, setting aside or provision may be made from or against such part or parts of the Fund as the Trustee in its absolute discretion deems appropriate.
  
- (d) (Taxation Credits): Subject to the Tax Acts, where the Trustee is in receipt of any income in respect of which there arises any taxation credit or rebate (whether in the nature of an imputation credit or rebate, foreign taxation credit pursuant to the Tax Acts or otherwise) the Trustee shall be entitled to offset such credits or rebates against the provision for Tax established pursuant to Clause 15A(c) and, notwithstanding the time at which such credits or rebates are received, shall be entitled to accrue such credits or rebates as they arise.
  
- (e) (Accumulation of Income): All moneys rights and property which shall be derived by the Trustee by way of payment, distribution or otherwise which are by way of or in the nature of income in respect of any of the assets of the Fund or the equivalent value thereof shall, subject to the provisions of this Clause or any other deduction provided by this Deed to be paid or provided thereout, be invested by the Trustee in Authorised Investments and as an accumulation to the Fund. No Unit Holder shall have any right to participate in or receive from the Fund any payment by way of distribution of the income of the Fund and such income shall be capitalised.

## **PRESENT ENTITLEMENT**

- 15B. (a) (Operation of Clause): The provisions of this Clause apply in respect of such Accounting Period in respect of which the Trustee elects pursuant to Clause 14A not to be taxed or the Fund is not, or is otherwise ineligible as, a Pooled Superannuation Fund.
- (b) (Distributable Income): The Distributable Income of the Fund shall be determined separately in respect of each Monthly Accounting Period and the Net Monthly Accounting Income in respect of a Monthly Accounting Period shall constitute the Distributable Income of the Fund for that Monthly Accounting Period.
- (c) (Present Entitlement): The Unit Holders shall on the last day of each Monthly Accounting Period have an absolute vested interest in and shall be entitled to call for payment of the Distributable Income of that Monthly Accounting Period, provided that until fifteen (15) days' notice in writing has been given to the Trustee to the contrary a Unit Holder shall be deemed to have elected to reinvest his entitlement to the Distributable Income for that Monthly Accounting Period in additional Units and shall be deemed to have so requested prior to the end of that Monthly Accounting Period. The number of additional Units to which a Unit Holder will be entitled on any Income Distribution Date (as hereinafter defined) shall be determined by dividing the Unit Holder's entitlement in the distribution by the Net Asset Value of a Unit on the Income Distribution Date or in the case of the first Income Distribution Date shall be determined by dividing the Unit Holder's entitlement in the distribution by the Net Asset Value of a Unit on the first day of July 1988 (in either case, rounded to the nearest whole number of Units). The Trustee shall be entitled to take all necessary steps, including executing any required forms of application for Units, on behalf of a Unit Holder in order to give full effect to the election of the Unit Holder to reinvest pursuant to this Clause. Any Units issued under this Clause shall be deemed to be issued on the first day following the Income Distribution Date.
- (d) (Distribution to Unit Holders):
- (i) The Trustee shall on the last day of each Monthly Accounting Period (the Income Distribution Date) (or as soon thereafter as may be practicable) distribute to the Unit Holders on the register of Unit Holders to the Income Distribution Date all of the Distributable Income for that Monthly Accounting Period in accordance with the following formula:

$$\begin{array}{rcl}
 \text{Entitlement of} & & \text{Units held} \\
 \text{Unit Holder} & = & \text{by Unit Holder} \\
 & & \text{on Income} \\
 & & \text{Distribution Date} \\
 & & \text{Units in Issue} \\
 & & \text{on the Income}
 \end{array}
 \times
 \begin{array}{r}
 \text{Distributable Income} \\
 \text{for the Monthly} \\
 \text{Accounting Period}
 \end{array}$$

## Distribution Date

- (ii) The distribution to be made in accordance with Clause 15B(d)(i) to each Unit Holder on the register of Unit Holders on the Income Distribution Date shall be subject to the election of a Unit Holder referred to in Clause 15B(c).
- (iii) Where any income of the Fund received by the Trustee carries any withholding taxation credit, imputation credit or rebate or foreign taxation credit or any like credit or rebate, the Trustee may determine which Unit Holders are entitled to the benefit thereof.
- (iv) For the purposes of this Clause, the first Income Distribution Date shall be 31st July, 1988.
- (e) (Receipt): For the purposes of this Clause, the Trustee shall be entitled to treat any amount which it is or has become entitled to receive in respect of the Fund but has not actually received before the Income Distribution Date as actually received before such Income Distribution Date. If any such amount which has been included in the Distributable Income is not subsequently received by the Trustee then, the Trustee will be entitled to recover any such amount which has been distributed, or to which the Unit Holders are otherwise entitled, pursuant to Clause 15B(c), PROVIDED HOWEVER that the Trustee shall not be bound to enforce or pursue any such right of recovery and may at its discretion elect that any amount so distributed shall be treated as a capital loss to the Fund and no claim shall lie against the Trustee at the suit of any Unit Holder or any other person by reason of such distribution having been made or by reason of any loss to the Fund resulting therefrom.

## **GENERAL POWERS**

- 15C. (a) (Trustee's Powers): Notwithstanding anything contained in this Deed the Trustee may in its absolute discretion determine:-
- (i) whether any amount received or receivable is or is to be received on capital or income account, or whether any outgoing, loss, expense, provision or amount is incurred on capital or income account;
  - (ii) whether moneys rights or property constitute Distributable Income;
  - (iii) whether a capital profit or loss has been realised;
  - (iv) the amount of any realised or unrealised capital profit or loss;

- (v) the amount of the consideration received on the disposal of a part of the Fund; or
- (vi) the amount paid or deemed paid or the value given for a part of the Fund at the time it became part of the Fund;

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

- (b) (Liability): The Trustee shall not incur any liability, be liable to account to anyone (including any Unit Holder or former Unit Holder) or be liable for any loss or damage as the result of the exercise of the discretion set out in or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power pursuant to Clauses 14, 14A, 15, 15A, 15B, 15C or 16, notwithstanding any error or miscalculation in any provision made for Tax.
- (c) (Deduction of Tax): In deciding whether to make any deduction in respect of any Tax from the Distributable Income or Monthly Distributable Income payable to any Unit Holder, the Trustee may act upon the opinion or advice of or information obtained from barristers, solicitors or accountants not employed by the Trustee. The Trustee is authorised to deduct from the income to which a particular Unit Holder is entitled Tax which is paid or payable by the Trustee on account of or in respect of the Unit Holder on the amount of the Distributable Income or Monthly Distributable Income of the Trust otherwise to be distributed to the Unit Holder and all amounts deducted shall be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Trustee for the payment thereof or in the payment of the Tax to the person or authority entitled thereto (as the circumstances may require).

### **CONSEQUENCES OF ELECTION TO BE TAXED**

15D. Where and for so long as the Trustee elects that the Fund will be taxed as a Pooled Superannuation Fund, the following provisions shall apply:

- (a) Units in the Fund may only be held by a Fund Trustee on behalf of an Approved Fund;

- (b) subject to Clause 19, Units in the Fund may only be sold, traded, gifted, exchanged or otherwise disposed of (other than by cancellation pursuant to Clause 10) to a Fund Trustee on behalf of an Approved Fund;
- (c) where any Unit Holder ceases to be a Fund Trustee that Unit Holder shall immediately dispose of all Units in the Fund either by transferring or selling such Units to a Fund Trustee or by such Units being cancelled pursuant to Clause 10 and the Trustee shall be entitled after notice in writing to that Unit Holder to cancel such Units as the Unit Holder may hold as at the next succeeding Valuation Day.

## **CAPITAL LOSSES**

16. (a) (Capital Losses): For the purposes of this Deed, a capital loss is realised when an asset or investment of the Fund is disposed of for a consideration less in amount than whichever of the following amounts, the Trustee in its absolute discretion decides to use:
- (i) the amount paid or deemed paid or the value given for such asset or investment at the time it became part of the Fund, or
  - (ii) where such asset or investment comprised part only of a group of identical assets or investments of the Fund (each asset or investment in such group being hereinafter referred to as an "Item"):
    - (A) the average per Item of the amount paid or deemed paid or the value given for all such identical assets or investments at the time they became part of the Fund; or
    - (B) the amount paid or deemed paid or the value given for such identical assets or investments at the time they became part of the Fund determined on a "first in first out" basis,whichever the Trustee may consider appropriate in the circumstances multiplied by the number of Items disposed of (the product of such multiplication being hereinafter referred to as the "Average Cost" of the asset or investment disposed of).
- (b) (Question as to Amount): If any question shall arise as to whether a capital loss has been realised or as to the amount of the consideration received on the disposal of an asset or investment or as to the amount paid or deemed paid or the value given for such asset or investment at the time it became part of the Fund or as to the Average Cost of the asset or investment disposed of, then the Trustee shall determine such question as it considers proper and every such determination evidenced in writing

shall be final and conclusive and the Trustee shall act in accordance with such determination provided that no Unit Holder shall have any right or claim against the Trustee personally arising out of such decision or its implementation but shall not by reason of this proviso be debarred from asserting any claim in respect of his interest in the Fund.

- (c) (Investment Revaluation Reserve): The Trustee may from time to time debit the "Investment Revaluation Reserve" established pursuant to sub-clause 15(c) with an amount in respect of any diminution of the value of any asset or investment of the Fund and reduce the provision for Tax referred to in that sub-clause which will or may in the opinion of the Trustee be payable in respect of capital gains.

## **REGISTERS**

- 17. (a) (Trustee to Maintain Register): The Trustee shall maintain an up-to-date Register of unit holders in such form and containing such particulars as it shall consider adequate and shall enter therein:
  - (i) the names and addresses of the unit holders;
  - (ii) the number of units held by them respectively;
  - (iii) the date at which the name of each such person was entered in the Register in respect of such units;
  - (iv) the date at which any person ceased to be the holder of any units;
  - (v) the date on which any unit is cancelled; and
  - (vi) the address to which requests for Eligible Investor Statements or any other notice issued pursuant to the Relevant Law may be sent.
- (b) (Reliance on Register): The Trustee shall be entitled to accept a copy of the entries in the Register as being a correct record of the unit holders for the time being and the Trustee shall not be required to enquire further into the authority of the Register and shall not incur any liability or responsibility on account of any mistake in the Register.
- (c) (Inspection of Register): The Trustee shall be entitled at all reasonable times to inspect the Register and any unit holder shall be entitled to inspect the Register free

of charge during the hours of 10 a.m. to 4 p.m. on each day Monday to Friday inclusive but excluding public and bank holidays.

- (d) (Change of Name and Address): Any change of name or address on the part of any unit holder shall be notified to the Trustee who shall alter the Register accordingly.
- (e) (Principal Register): The principal Register shall be established and maintained in respect of the State of New South Wales but the Trustee may at any time and from time to time establish and maintain a separate Register in respect of any State or Territory of the Commonwealth of Australia other than the State of New South Wales on which separate Register there shall be entered particulars relating to those unit holders who request that their names and all or some of the units held by them respectively shall be entered on or transmitted to such separate Register. Except where otherwise expressly stated every reference in this Deed to the Register shall be deemed to include every Branch Register unless it appears from the context that a particular Register is referred to.
- (f) (Branch Register): The Trustee may at the request of the unit holder remove any units and the names of the holders thereof from the Register to a Branch Register or vice versa or from one Branch Register to another.

18. [Deleted]

## **TRANSFER OF UNITS**

- 19. (a) (Transfer): Units shall not be transferable except as provided in Sub-clauses (aa) and (b) below.
  - (aa) (Transfer to Approved Fund): A Unit Holder (transferor) may transfer all or any of its Units by an instrument in writing if:
    - (i) the transfer is to a trustee (transferee) of an Approved Fund;
    - (ii) the transferee provides such evidence as required by the Trustee to satisfy the trustee that a transfer has occurred, that the transfer is to an Approved Fund and that the applicable duty, if any, required to be paid on the transfer has been paid to the appropriate authority; and
    - (iii) an application for Units or such other document containing particulars of the transferee as the Trustee reasonably requires has been completed by the transferee.

- (ab) (Transfer fee): The Trustee may charge the Unit Holder and transferee such reasonable transfer fee as it determines from time to time on the transfer of Units under clause 19(aa).
- (ac) A transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered into the Register of Unit Holders in respect of the Units.
- (ad) (Registration may be Declined): The Trustee may in its absolute discretion decline to register any transfer of Units.
- (ae) (Notice of Non-Registration): If the Trustee refuses to register or cause to be registered any transfer of Units, then it shall give to the transferee written notice, within 10 Business Days after the transfer was lodged for registration, stating that the Trustee has refused to register the transfer.
- (b) (Change of Fund Trustee): Where the unit holder is a Fund Trustee, then on any change of trustee taking place in the Approved Fund of which he is a trustee, the new trustee or trustees shall on written application to the Trustee and on production of such evidence that he sustains the character in respect of which he proposes to act under this clause or of his title to so act as may be reasonably required by the Trustee, be registered by the Trustee as holder of the units registered in the name of the previous trustee of the Approved Fund.
- (c) (Rights of Transferee): Any person becoming entitled to a unit under this clause shall be entitled to receive and may give a discharge for all moneys payable in respect of the unit but shall not be entitled to receive notices of or to attend or to vote at any meetings of unit holders until he shall have become registered as a unit holder in respect of the units.
- (d) (Information as to Approved Fund): Every unit holder who is a Fund Trustee shall on demand by the Trustee made at any time furnish to the Trustee such information relating to the Approved Fund as trustee of which he holds units as the Trustee may require to enable the Trustee to determine to its satisfaction whether or not such fund should continue to be regarded by it as an approved fund. Without limiting the generality of the foregoing, the Unit Holder shall furnish the Trustee with an Eligible Investor Statement at such intervals and within such period as the Trustee shall notify to the Unit Holder in accordance with the requirements of Regulation 23J of the Relevant Law.

## **MANAGEMENT OF FUND**

### 20. (Management of Fund):

- (a) The Fund shall be managed by the Trustee (with full powers of management including, without limiting the generality of the foregoing, the bailment of Authorised Investments comprising Commodities to persons selected by the Trustee whose business includes the maintenance and safekeeping of commodities of similar kinds, and with full power to delegate to its officers and employees or any of them all acts matters and things not requiring or involving the Trustee's judgement or discretion) who hereby agrees to carry out and perform the duties and obligations on its part which are herein contained and which shall be subject to retirement as hereinafter provided. Nothing herein contained shall be construed to prevent the Trustee from establishing or acting as trustee for trusts whether of a nature similar to or different from the trusts of this Deed.
  
  - (b) Without in any way affecting the generality of the foregoing the Trustee may in carrying out and performing the duties and obligations on its part which are herein contained:
    - (i) subject to the prior written authority of the Trustee by power of attorney appoint any person to be attorney or agent of the Trustee for such purposes and with such powers and authorities as it thinks fit with power for the attorney or agent to sub-delegate any such powers authorities or discretions and also to authorise the issue in the name of the Trustee of documents bearing facsimile signatures of the Trustee or of the attorney or agent either with or without proper manuscript signatures of its officers thereon AND PROVIDED FURTHER that the Trustee in any such power of attorney and the attorney or agent by the terms of any such sub-delegation may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as they may think fit;
  
    - (ii) appoint by writing or otherwise any person to be sub-agent of the Trustee as the Trustee may think necessary or proper for such purposes and with such powers authorities and discretions (not exceeding those vested in the Trustee) as it thinks fit and to supersede or suspend any such sub-agent for such cause or reason as the Trustee in its sole discretion thinks sufficient with or without assigning any cause or reason and either absolutely or for such time as it may think proper.
21. (Trustee's Liabilities): At all times when pursuant to this Deed the Trustee is required to make any payment to meet any liability of the Trustee hereunder or in respect of any authorised investment, the Trustee will ensure that funds are available either from cash held in bank or on deposit or by directing the realisation of investments. In default of funds being available to the Trustee at least three days before such payment is required to be made, the Trustee shall be entitled to sell or realise any investments held by it in the Fund and to apply the proceeds of such sale or realisation in meeting the Trustee's liabilities hereinbefore referred to.

22. (Trustee's Power to Borrow): The Trustee may whenever it thinks it desirable in the interests of the unit holders so to do or considers it necessary or desirable to enable the Trustee to meet its liabilities under or in connection with the trusts of this Deed or with any investment comprised in the Fund raise or borrow any sum or sums of money and may secure the repayment of such moneys and interest costs and other charges upon such terms and conditions in all respects as it thinks fit and in particular by charging or mortgaging all or any of the investments for the time being constituting the Fund.
23. (Provisions to Meet Liabilities for Calls): To ensure that at all times there shall be sufficient provisions to meet out of the Fund the uncalled liability of the Trustee in respect of any of the investments the Trustee may set aside such sum as may be determined by the Trustee to be a sufficient sum (calculated at market value) either in cash or in trustee securities to meet such uncalled liability and may retain the same whether during or after the operation of this Deed for one year after the Trustee or its nominees shall have ceased to be registered members of the company in which any investment is held or so long as the Trustee or its nominees are under any liability in respect thereof either under the Corporations Act or any other enactment for the time being replacing the same or otherwise under any similar enactment of any other State or Territory of the Commonwealth of Australia or of any other place whatsoever.

## **INVESTMENTS OF THE FUND**

24. (Investments of Fund): The Trustee shall subject to the provisions of this Deed have absolute and uncontrolled discretion as to the investment in authorised investments of any sums of cash forming part of the Fund and as to the purchase sale transfer exchange or alteration of any of the investments from time to time and the Trustee alone shall be entitled from time to time to effect any transactions which it may consider to be in the best interests of unit holders and the Trustee shall from time to time effect and pay for out of the moneys in the Fund such investments or purchases sales transfers exchanges or alterations of investments and do all things and execute all instruments as may be directed in writing by the Trustee for carrying out the purposes of this instrument PROVIDED ALWAYS that the Trustee shall not except as specifically provided be responsible for the selection of any investment (except to see that the same comes within the description of authorised investments) or for the purchase sale transfer exchange or alteration of any investment AND PROVIDED ALSO that:
- (a) (Investment Only in Authorised Investments): No investment shall be made except in authorised investments.
  - (b) (No Concentration of Investments): The investments of the Fund shall not be concentrated in any one industry or industry group.
  - (c) (Investment in Shares): No investment in the shares of any kind of any company shall be made if as a result thereof:

- (i) the market value (at the date of the investment) of all shares of that company (being shares carrying voting rights) held by the Fund (including the shares comprised in the investment under consideration) would exceed the greater of Fifty thousand dollars (\$50,000.00) or an amount equal to ten per centum (10%) of the market value as at that date of the whole of the assets (including such shares) of the Fund; or
  - (ii) the Fund would thereafter hold more than ten per centum (10%) of the shares of that company (being shares carrying voting rights) for the time being issued; or
  - (iii) the Fund would thereafter hold more than three per centum (3%) of the shares of any investment company (being shares carrying voting rights) for the time being issued.
- (d) (Takeovers): No investment shall be made in the acquisition of shares of any company for the primary purpose of securing control of that company or of the management thereof.
- (f) (No Investment in Company with Unlimited Liability): No investment shall be made in the shares of a corporation having unlimited liability.
- (g) (De-listing of Authorised Investment): It shall not be necessary for the Trustee to sell any share by reason only of the fact that it has been removed from the list of one or more Stock Exchanges and has thereby ceased to be an authorised investment.
- (h) (Deposit with Banks): The Trustee shall be entitled to permit cash to be placed or remain on deposit with any bank determined by the Trustee or with any company or body (investment in which is an authorised investment) so determined for such time as the Trustee shall consider desirable in the interests of the unit holders and also may retain cash received by it pending a decision as to its investment or other disposal.
- (i) (Change of Investments): It shall not be necessary for the Trustee to effect changes of investments merely because owing to appreciations or depreciations of any investment or any reconstruction merger or amalgamation the value or the aggregate of the values of any investments in any one company or body shall exceed the limits hereinbefore prescribed but if at any time such limits shall be exceeded then the Trustee shall not purchase any further amount of the relevant investments until it can do so without carrying that investment above such limits.

## **LIMITATION ON INVESTMENT**

25. The Trustee covenants to the unit holders jointly and each of them severally:
- (a) that no moneys available for investment under this Deed will be invested in or lent to the Trustee or to any company (other than a banking corporation or a corporation declared pursuant to the Corporations Act to be an authorised dealer in the short term money market) which is by virtue of the Corporations Act deemed to be related to the Trustee PROVIDED THAT nothing in this sub-clause shall restrict moneys available for investment under this Deed being lent to the Trustee or to any such company so deemed to be related to the Trustee (whether the Trustee or such company is also the trustee or a company so deemed to be related to the Trustee or not) if as a result thereof the Market Value (at the date of the investment) of all such loans by the Fund would not exceed an amount equal to five per cent (5%) of the Market Value of the assets (including such loans) of the Fund;
  - (b) if at any time the Market Value of all loans referred to in the proviso to Sub-clause 25(a) above held by the Fund exceeds an amount equal to five per cent (5%) of the Market Value as at that date of the whole of the assets (including such loans) of the Fund then the Fund then the Trustee shall procure the repayment of sufficient of such loans so that such limitation is no longer exceeded.

### **EXERCISE OF VOTING AND OTHER POWERS**

26. Except as otherwise expressly provided all rights of voting conferred by any of the assets comprising the Fund shall be exercised in such manner as the Trustee may determine and no unit holder shall have any right to interfere therein and the Trustee shall from time to time execute such proxies or powers of attorney as the Trustee may determine. The Trustee shall not be under any liability or responsibility in respect of the management of any company or body in which the assets of the Fund are invested nor in respect of any vote or action taken or consent given by the Trustee in person or by proxy attorney and neither the Trustee nor the holder of any such proxy or power of attorney shall incur a liability or responsibility by reason of any error of law mistake of fact or any matter or thing done or omitted approval voted or given or withheld by the Trustee or by the holder of such proxy or power of attorney under this Deed and the Trustee shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Trustee or by any such holder of a proxy or power of attorney.
27. No unit holder shall have any right with respect to the Fund or any assets comprised therein to attend meetings of shareholder or debenture holders or note holders or to vote or take part in or consent to any corporate or shareholders' or debenture holders' or note holders' action.

### **LIMITATION OF RIGHTS OF UNIT HOLDERS**

28. Save as by Clause 42 hereof provided no unit holder shall be entitled to require the transfer to him of any of the property comprised in the Fund nor be entitled to interfere with or

question the exercise or non-exercise by the Trustee of any of the trusts powers authorities or discretions conferred upon them or either of them by this Deed or in respect of such property.

## **TRUSTEE AND MANAGER POWERS INDEMNITIES AND COVENANTS**

29. Without prejudice to any indemnity allowed by law or elsewhere herein given to the Trustee it is hereby expressly declared as follows:

- (a) (Reliance on Notices): The Trustee shall not incur any liability in respect of any action taken or things suffered by the Trustee in reliance upon any notice resolution direction consent certificate receipt affidavit statement certificate of stock plan of reorganisation or other paper or document believed by the Trustee to be genuine and to have been passed or signed by the proper parties.
- (b) (Prohibited Acts): The Trustee shall not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any Ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgement of any competent Court which the Trustee shall be hindered prevented or forbidden from doing or performing.
- (c) (Payments in Good Faith): The Trustee shall not be liable to account to any unit holder or otherwise for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon the Trust Fund or upon any certificate or with respect to any transaction under this Deed notwithstanding that any such payment ought or need not have been made.
- (d) (Trustee may act on Advice): The Trustee may act upon the opinion or advice of or information obtained from barristers or solicitors whether instructed by the Trustee or by any third party and the Trustee may act upon statements of or information obtained from the Trustee or any bankers accountants brokers and other persons believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted and the Trustee shall not be liable for anything done or suffered by it in good faith in reliance upon such opinion advice statement or information.
- (e) [Deleted]
- (f) [Deleted]

- (g) (Misconduct of Agents): The Trustee shall not be responsible for any misconduct mistake oversight error of judgement forgetfulness or want of prudence on the part of any attorney banker receiver barrister solicitor agent or other person acting hereunder as agent or adviser of the Trustee.
- (h) (Exercise of Powers): Except insofar as herein otherwise expressly provided the Trustee shall as regards all the trusts powers authorities and discretions vested in it have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof and in the absence of fraud the Trustee shall be in no wise responsible for any loss costs damages or inconvenience that may result from the exercise or nonexercise thereof.
- (i) (Dealing in Units): Nothing in this Deed shall prevent the Trustee or the Directors or officers of the Trustee or the parent Company of the Trustee or any subsidiary of either of them from subscribing for purchasing holding dealing in or disposing of Units or from otherwise at any time acting in any capacity as representative or agent for or entering into any contract or transaction whatsoever with any other of them or any Unit Holder or any company any part of whose shares forms part of the Trust Fund or from being interested in any such contract or transaction or otherwise and none of them shall be in anywise liable to account either to any other of them or to the Unit Holders or any of them for any profits or benefits howsoever made or derived thereby or in connection therewith.
- (j) (No Prohibition on Trustee): Nothing in this Deed shall be deemed to prohibit any Trustee or the parent or any subsidiary of that parent or any stockholder in an associated company of the Trustee or any Directors or officers thereof (all hereinafter in this clause where the context permits being included in the expression "the Trustee") from being a Unit Holder or from acting in any representative capacity for a Unit Holder and in particular and without prejudice to the generality of the foregoing it is expressly declared that the Trustee may so act on its own account or as executor administrator trustee receiver attorney or agent or in any other fiduciary vicarious or professional capacity nor shall the acting in any such capacity as aforesaid be deemed a breach of the obligations arising out of the fiduciary relationship between the Trustee and the Unit Holders by this Deed established or otherwise imposed or implied by law. The Trustee shall not by reason of its fiduciary capacity be in anywise precluded from making any contracts or entering into any transactions with the Trustee or the parent company of the Trustee or any subsidiary of either of them or with itself as Trustee in the ordinary course of the business of the Trustee or from undertaking any banking financial or agency services for the Trustee or the parent company of the Trustee or a subsidiary of either of them or for itself as Trustee and without prejudice to the generality of these provisions it is expressly declared that such contract and transaction include any contract or transaction in relation to the subscription or placing of or any dealing with any stock shares debenture stock debentures or other security of the Trustee or the parent company of the Trustee or any subsidiary of either of them or of any other company in which any of them is interested and the acceptance of any office of profit from the Trustee or the parent company of the Trustee or any subsidiary of either of them or any contract of loan or deposit or other contract or transaction which any person or company not

being a Trustee of this Deed could or might have entered into with the Trustee or the parent company or the Trustee or any subsidiary of either of them or any such other company or with itself as Trustee including the customary share of brokerage and usual banker's profit and the Trustee shall not be accountable either to the Trustee of the parent company of the Trustee or any subsidiary of either of them or any such other company or the Unit Holders for any profits arising from any such contracts transactions or offices.

- (k) (Trustee's Discretion as to Purchase and Sale): Whenever the Trustee shall be entitled or required to buy any authorised investment or sell an investment or property the Trustee shall have the fullest discretion to prescribe the times and mode of sale and broker (if any) for such purchase or sale including the right to direct postponement of such sale for so long as in its discretion it shall think fit. Such purchase or sale shall (subject to the proviso hereto) be effected on an appropriate Stock Exchange provided that where the Trustee in its discretion determines that it is not possible to effect or that it is not desirable in the interest of unit holders to effect such purchase or sale on an appropriate Stock Exchange the same shall be effected in such manner and at such place or places and times whether by public or private sale as the Trustee may determine. The Trustee is empowered to effect any sale or realisation over a period of time and in such lots or parcels as it considers advisable and to fix and vary reserve prices below which investment may not be sold. The Trustee shall on any account be under any liability to any person by reason of it not having realised a uniform price or on the ground of it not having realised the last market or any specific price in respect of any investment or property sold.
- (l) (Indemnity from Proceeds of Sale): Whenever the Trustee shall sell or transfer any investment or other property it shall be indemnified by the person entitled to the proceeds of sale or to such transfer against all costs charges and expenses (including stamp duty) in connection therewith.
- (m) (Compliance with Deed Impossible): In the event of the liquidation or dissolution of any company or if for any other reason it becomes impossible or impracticable to carry out the provisions of this Deed in respect of such company or otherwise the Trustee shall not be under any liability therefore or thereby nor incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done to them or either of them in good faith hereunder.
- (n) (Trustee Not Liable): The Trustee shall not be under any liability except such liability as may be expressly assumed by it under this Deed nor shall the Trustee (save as herein otherwise appears) be liable for the failure of any person or corporation to carry out any agreement on his or its part nor for any act omission of the Trustee nor for anything except its own wilful breach of duty hereunder.
- (o) (Agents): The Trustee may appoint such persons in any State or Territory in respect of which a Branch Register has been established as it may from time to time decide (whether jointly or severally) to exercise for or on behalf of the Trustee all or any of

the powers and authorities exercisable by the Trustee under the provisions of this Deed.

(p) (Nominees):

(i) The Trustee may:

- (A) cause all or any of the assets constituting the Fund to be vested in a nominee of the Trustee be held by such nominee upon the trusts of the Deed;
- (B) in any case where the Trustee or such nominee is unable to hold any of such assets in its own name or it is considered undesirable that they should be so held vest such assets in employees of the Trustee or other individuals nominated by it;
- (C) appoint such of its employees as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers and authorities exercisable by the Trustee under the provisions of the Deed.

(ii) Notwithstanding the exercise by the Trustee of any of the above powers it will within the limits and subject to the protective clauses in this Deed set out remain directly liable for the due performance of the Trusts hereof and covenants that any nominee or other person referred to above will duly observe and perform the covenants and obligations of this Deed in the same manner as is required of the Trustee and the Trust agrees to indemnify the Trustee and the unit holder against any loss or damage to the Fund the Trustee or the unit holders which may be incurred or sustained in connection with or arising out of any breach default by such nominee or person in the observance or performance of the covenants and obligations of this Deed.

(iii) For all purposes of this Deed investments vested in a nominee or employee of the Trustee shall be deemed to be investments or property held by the Trustee.

(q) (Prudential Requirements): If at any time the Trustee is required by any Federal or State Government or by any statute to lodge approved deposits securities or bonds for the additional protection of unit holders the Trustee as may be so required will provide the same from their own resources and they or either of them shall have no claim on the Trust Fund for such purpose PROVIDED THAT if the Trustee elects not to comply with such requirements then the Trust shall forthwith be terminated.

- (r) (Reliance on Signature): The Trustee shall be entitled to rely on the validity of any signature on any transfer form or application or other instrument and shall not be in anyway liable to make good out of its own funds any loss incurred by any person in the event of such signature being forged or otherwise ineffective which said loss (if any) shall subject to any right of reimbursement from any other person be borne by the Trust Fund.
- (s) (Liability Limited to Fund): The Trustee shall not in any event be liable to the unit holders to any greater extent than in respect of the investments cash and other property actually vested in the trustee or received by it in accordance with the provision of this Deed.
- (t) (One fund): The Trustee shall not be bound to make any apportionment or keep separate accounts of the assets of the Trust Fund and the Trustee shall hold the whole of the Trust Fund for the time being as one trust fund on the trusts of these presents.
- (u) (Calls and Instalments): Should the Trustee purchase for account of the Trust or lodge shares in regard to which there is a liability in respect of calls or instalments or a liability for assessment for further contribution to the assets of the company or body in which such shares are held the Trustee shall have a right of indemnity out of the Trust Fund in respect of any such call instalment or liability. The Trustee shall have a like right of indemnity out of the Trust Fund in respect of any liability to pay Deposits.
- (v) (Duties and Charges): The Trustee shall not be required to effect any transaction or dealing with any certificate transfer or other instrument or with any part of the investments or of the Trust Fund on behalf or for the benefit or at the request of any unit holder or the Trustee unless such unit holder or the Trustee (as the case may require) shall first have paid, in cash or otherwise provided to the Trustee's satisfaction for all duties taxes governmental charges brokerage transfer fees registration fees and other charges (whether similar to the foregoing or not) whether in respect of the certificate transfer or other instrument or the relevant part of the investments or of the Trust Fund or otherwise (herein called collectively "duties and charges") which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing PROVIDED ALWAYS that the Trustee shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the unit holder or the Trustee (as the case may be) and to retain the amount so paid out of any moneys or property to which such unit holder or Trustee may be or become entitled hereunder.
- (w) (Actions): The Trustee shall be indemnified out of the Trust Fund from and against any expense and liability that may be incurred in prosecuting or defending any action or suit in respect of the provisions of this Deed.

- (x) (Discretion as to Exercise of Powers): Except insofar as herein otherwise expressly provided the Trustee shall as regards all the trusts powers authorities and discretions vested in it have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof and in the absence of fraud the Trustee shall be in no wise responsible for any loss costs damages or inconvenience that may result from the exercise or non exercise thereof.
- (y) [Deleted]
- (z) (Dishonesty, Neglect and Default): The Trustee shall not be liable for any loss in respect of the Fund or to any unit holder or other person unless such loss is attributable to the dishonesty of the Trustee or the neglect or default by it.

### **COVENANTS BY THE TRUSTEE**

30. The Trustee hereby to the unit holders jointly and to each of them severally that:

- (a) (Trustee to act Continuously): the Trustee will act continuously as such Trustee under the trusts herein set forth until such trusts are determined as herein provided or it has retired or been removed from the trusts in the manner herein provided;
- (b) (Safe Custody of Fund): the Trustee shall retain the Trust Fund in safe custody and shall hold it as Trustee for the unit holders entitled thereto upon the terms of this Deed;
- (c) (No Encumbrance): except as in this Deed provided the Trustee shall not sell mortgage charge or part with the possession of (or permit a nominee of the Trustee or nominated employees or individual so to do) any of the investments of the Trust Fund;
- (d) (Nominees to Comply): the Trustee hereby covenants that any nominee of the Trustee and any persons referred to in Sub-clauses (o) and (p) of Clause 29 of this Deed will duly observe and perform the covenants and obligations of this Deed in the same manner as is required of the Trustee;
- (e) [Deleted]
- (f) (Due Diligence): the Trustee will exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the unit holders;

- (g) (Books of Account): the Trustee will keep or cause to be kept proper books of account in relation to such units;
- (h) (Auditing): the Trustee will cause those accounts to be audited at the end of each financial year by an Approved Auditor who will provide to the Trustee a report on the audit not later than the date upon which the Trustee must lodge its return under the Relevant Law; and
- (i) (Statement of Accounts): the Trustee will post or cause to be posted in each year a statement of such accounts with the report of a registered company auditor thereon to each unit holder within two months of the end of the financial year.

### **OTHER COVENANTS BY THE TRUSTEE**

31. The Trustee hereby covenants to the unit holders jointly and to each of them severally:

- (a) (Carry out Obligations): that it will carry out and perform the duties and obligations on its part as Trustee of the Trust and in particular will duly perform all engagements entered into by it with any unit holder;
- (b) (Best Endeavours): that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that the undertaking scheme or enterprise to which this Deed relates is carried on and conducted in a proper and efficient manner;
- (c) (Acceptance of Applications): that it will not accept any application for the creation of any unit otherwise than at a price calculated in accordance with the provisions of this Deed;
- (d) (Cancellation): that it will at the request of the holder of and upon compliance with the requirements of Clause 10 of this Deed arrange for the cancellation of any unit and that the realisation value will be a price calculated in accordance with the provisions of this Deed;
- (e) (Statements as to Price): that it will not without the approval of the Trustee publish or cause to be published any advertisement circular or other document containing any statement with respect to the issue price of units or the yield therefrom or containing any invitation to apply for units and that in any letter or circular or other publication not being a notice convening or referring to a meeting of unit holders reference shall be made to the Trustee only in terms approved by the Trustee;

- (f) (Information): that the Trustee will:
- (i) make available to any registered company auditor appointed by it for inspection the whole of the books of the Trustee whether kept at the office of the Trustee or elsewhere; and
  - (ii) give to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking scheme or enterprise of the Trustee or any property (whether acquired before or after the date of this Deed) of the Trustee or otherwise relating to the affairs thereof;
- (g) (Details as to Trust): that it will make available or ensure that there is made available to the Trustee such details as the Trustee requires with respect to all matters relating to the undertaking scheme or enterprise to which this Deed relates;
- (h) (Notice of Meeting): that it will (within twenty-one days after an application is delivered to the Trustee at its registered office being an application by not less than fifty or one-tenth in number whichever is the less of the unit holders):
- (i) by sending notice by post of the proposed meeting at least seven days before the proposed meeting to each unit holder at his last known address or in the case of joint holders to the joint holder whose name stand first in the Register of unit holders; and
  - (ii) by publishing at least fourteen days before the proposed meeting an advertisement giving notice of the meeting in a daily newspaper circulating generally throughout the State of New South Wales and in a daily newspaper circulating generally throughout each other State or Territory of the Commonwealth of Australia in respect of which a separate Register is maintained,

summon a meeting of the unit holders for the purpose of laying before the meeting the accounts and balance sheet which were laid before the last preceding annual general meeting or the Trustee or the last audited statements of account of the Trustee and for the purpose of giving to the Trustee such directions as the meeting thinks proper;

- (i) (Cheques and Notices to Unit Holders): that it shall be the duty of the Trustee (inter alia) to prepare all cheques and all notices to unit holders and to lodge the same with the Trustee prior to despatch so as to afford the Trustee reasonable time to examine and check the same;
- (j) [Deleted]

## REMUNERATION

32. (a) (Management Fee): In addition to the investment fee (if any) referred to in Clause 7(c), the Trustee shall be entitled to receive out of the Fund and retain for its own use and benefit remuneration calculated at the times and in the manner hereinafter appearing:

(i) Within fifteen (15) days from the fifteenth day of each month in each year commencing with the month of July 1974 the Trustee shall raise from the capital and/or income of the Fund such sum as may be necessary to pay to the Trustee the remuneration hereinafter provided and shall pay the said sum to the Trustee as its remuneration for administering the fund in pursuance of this Deed.

(ii) The said remuneration payable to the Trustee for each month shall be a sum equal to 0.04 of one per centum of the average value of the Fund for the relevant month. The "average value of the Fund" shall be such sum as is from time to time ascertained and fixed by the Trustee by:

(A) adding to the aggregate of the Market Value as at the last day of the preceding calendar month of all the investments listed on a Stock Exchange comprised in the Fund the Market Value of all other property so comprised the amount of cash so comprised and all moneys recoverable or receivable by the Trustee such sum as would have been incurred for the brokerage stamp duty transfer fees and other usual charges (if any) on such day in the purchase or acquisition of investments comprised in the Fund, and

(B) deducting therefrom all sums owing by the Fund on any account, any provisions (other than in respect of Tax) and any charges or any expenses accrued or unpaid (other than in respect of remuneration payable to the Trustee for the relevant month) and such provisions (other than in respect of Tax) against future losses in respect of any investment of which the market value is in the opinion of the Trustee incorrect or cannot fairly or accurately be determined or for such other purposes as the Trustee think fit.

The Trustee's statement of the "average value of the Fund" shall be final and binding on all parties.

(b) (Trustee's Fee): The Trustee shall be entitled to receive out of the Fund and retain for its own use and benefit remuneration calculated at the times and in the manner hereinafter appearing:

- (i) Within fifteen (15) days from the fifteenth day of each month in each year commencing with the month of September 1971 the Trustee shall raise from the capital and/or income of the Fund such sum as may be necessary to satisfy the remuneration of the Trustee as herein provided and the Trustee shall retain such sum as its remuneration for acting as Trustee under this Deed.
- (ii) The monthly remuneration payable to the Trustee for each month shall be a sum equal to 0.0125 of one per centum of the average value of the Fund (ascertained as provided in Sub-clause (a)(ii) above) for the relevant month or such lesser remuneration as is agreed to by memorandum or other instrument in writing by the Trustee (whether such memorandum or other instrument is executed before or after the Trustee shall become Trustee).
- (c) (Expenses of Trustee): The expenses of the Trustee (except where otherwise specifically provided for in these presents) shall be borne out of the remuneration referred to in Sub-clause (a) of this clause.
- (d) (Remuneration to Accrue from Day to Day): The remuneration of the Trustee payable hereunder shall be deemed to accrue from day to day.
- (e) (Reimbursement of Trustee): In addition to such remuneration the Trustee shall be reimbursed out of the Fund for all costs charges expenses outgoings reasonably and properly incurred by or on behalf of the Trustee:
  - (i) in or in connection with the perusal approval and execution of this Deed;
  - (ii) in or in connection with the carrying out by the Trustee of any duty right power or privilege by this Deed imposed or conferred upon the Trustee;
  - (iii) in or in connection with any breach or default in the observance or performance by the Trustee of the covenants obligations conditions and provisions of this Deed;
  - (iv) in or in connection with the convening and holding of any meeting of Unit Holders and carrying out any directions or resolutions of any such meeting.

- 32A. (1) Notwithstanding the provisions of Clause 32 of this Deed, the management fee otherwise payable to the Trustee pursuant to Clause 32 may be calculated and paid as follows:
- (a) subject to paragraph (e) of this clause, the Trustee may from time to time determine a fee schedule and pay to the Trustee the fee calculated in accordance with that fee schedule;
  - (b) where the Trustee determines a fee schedule, that fee schedule shall be notified to Unit Holders and shall apply to the calculation of fees until such times as the Trustee notifies any amended or varied fee schedule, and shall be deemed to be incorporated in this Deed as the basis of calculation of any remuneration payable to the Trustee;
  - (c) the fee schedule may vary in its application to any particular Unit Holder, by reference to the following matters:
    - (i) the aggregate value of funds managed by the Trustee or a Related Body Corporate of the Trustee for that Unit Holder as designated in the fee schedule (whether in any BTA Fund, under the trust constituted by this Deed or forming part or all of a portfolio subject to a management agreement between the Trustee or a Related Body Corporate of the Trustee and the relevant Unit Holder), whether as of any particular day or when calculated on a day by day basis;
    - (ii) any rebate or reduction of fees otherwise applicable, where the aggregate value of funds managed by the Trustee or a Related Body Corporate of the Trustee for that Unit Holder as designated in the fee schedule (aggregated in the manner described in paragraph (i)) exceeds any specified amount or where such fees exceed any base fee specified in the fee schedule, whether as an amount or a percentage;
    - (iii) the method by which the aggregate value of funds managed by the Trustee or a Related Body Corporate of the Trustee for that Unit Holder determined for the purposes of this clause shall be calculated, including whether the Trustee may aggregate the value of funds managed for various Unit Holders which are related bodies corporate or are otherwise associated in a manner specified by the Trustee in or in relation to the fee schedule;
    - (iv) the time or dates at which such fees shall be calculated in respect of each reporting period pursuant to this Deed; and

- (v) any other matter specified in the fee schedule;
  - (d) where an amount is calculated as the fee attributable to any Unit Holder due to the Trustee under the fee schedule prescribed pursuant to this clause, but that amount is subject to a rebate in accordance with that fee schedule (“the rebate amount”), the rebate amount shall be applied in accordance with subclause (2) or (3);
  - (e) nothing in this clause shall authorise or permit the payment of any fee or remuneration to the Trustee exceeding in aggregate those fees payable to the Trustee determined under Clause 32; and
  - (f) where the fee schedule determined by the Trustee under this clause specifies any amount or threshold from which a fee rebate will apply, that amount or threshold shall be subject to increase from time to time as determined by the Trustee in accordance with increases occurring in the relevant period to the index selected by the Trustee and specified in the fee schedule and any subsequent increase in any such amount determined by the Trustee up to that calculated pursuant to this paragraph shall be deemed not to be a material or adverse change to this Deed or to the imposition of fees under this Deed.
- (2) Subject to subclause (3), the Trustee must pay the aggregate rebate amounts to the Trust. The rebate amount calculated in relation to each Unit Holder shall be applied by the Trustee (after deduction of any Tax attributable to that amount calculated as if income of the Trust) as application moneys for further Units, to be issued at the Investment Value of a Unit applicable as of the date on which the rebate is to be effective and the Trustee is authorised to issue such Units, and the Unit Holder shall be deemed to apply for such Units.
- (3) A Unit Holder may request that the rebate amount calculated in relation to that Unit Holder be paid to the Unit Holder, rather than applied as application moneys for further Units under subclause (2). The Trustee may accept or refuse that request in its absolute discretion.
- (4) Any fee schedule shall apply from the date specified in the fee schedule.
33. **(Reimbursement):** The Trustee shall be indemnified and shall be entitled to reimburse itself out of the Fund in respect of all costs charges and expenses which they may incur in or about the investment realisation collection and distribution of any moneys or property received by them or either of them in respect of the Fund and otherwise in or about the execution or exercise of their duties and powers hereunder other than remuneration payable to employees of the Trustee and costs charges and expenses incurred in the internal administration of the business of the Trustee and for the purpose of such reimbursement

may realise any investments of the Fund in such manner and at such time or times as they respectively think fit.

### **RETIREMENT OF MANAGER**

34. [Deleted]

### **RETIREMENT OF TRUSTEE**

35. (1) The Trustee must be a Constitutional Corporation.
- (2) The Trustee must retire as Trustee if:
- (a) the Trustee ceases to carry on business;
  - (b) the Trustee is not, or is no longer, empowered to act as trustee; or
  - (c) the SIS Act requires.
- (3) The Trustee may retire as trustee at any time.
- (4) On retirement of a corporation as the trustee it must appoint another Constitutional Corporation as Trustee.
- (5) The appointment of a Trustee must comply with the SIS Act.
- (6) A retirement or appointment of Trustee must be made by Deed, which need not be registered.
- (7) On retirement, the retiring Trustee must cause the assets of the Fund to be vested in the new Trustee or its nominee and must deliver to the new Trustee all books, documents, records and other property relating to the Fund.

### **ACCOUNTS AND AUDIT**

36. (a) (Appointment of Auditor): The Trustee shall from time to time with the approval of the Trustee appoint an auditor of the Fund who shall be an Approved Auditor.
- (b) (Retirement of Auditor): The auditor may retire at any time by notice in writing to the Trustee and may at any time be removed from office by the Trustee. The auditor or auditors may also be removed from office by special resolution of unit holders.
- (c) (Remuneration of Auditor): The remuneration of such auditor or auditors shall be fixed by the Trustee and shall be payable out of the Trust Fund.
- (d) (Appointment of New Auditor): In the event of the auditor or auditors being removed from office by reason of a special resolution of the unit holder then unless the Trustee shall have at the time of the passing of such resolution nominated a person or persons to be appointed as auditors in the event of the auditors being so removed the meeting of unit holders passing the said resolution may appoint an auditor or auditors to take office in place of any person removed from office.
37. (a) (Accounts): The Trustee shall having regard to its functions cause true accounts to be kept of all sums of money received and expended by or on behalf of the Fund and the matters in respect of which such receipt and expenditure take place and of all sales and purchases of investments and of the assets and liabilities of the Fund.
- (b) (Accounts to be kept at Registered Office): The books of account shall be kept at the registered office of the Trustee and shall be open to the inspection of the Trustee and the auditor. The auditor shall be entitled to require from the Trustee such information accounts an explanations as may be necessary for the performance of the duty of auditor hereof.
- (c) (Auditing of Accounts): At least once in each year the accounts kept in accordance with Sub-clauses (a) and (b) of this clause shall be examined and their correctness reported upon by the auditor. The auditor shall state in this report:
- (i) that he has conducted the audit;
- (ii) whether or not he has obtained all the information and explanations he has required;
- (iii) whether or not the accounts of the Fund are in his opinion properly kept so as to disclose the state or affairs of the Fund; and

- (iv) whether or not this Deed is in his opinion at the date of his report being complied with and if not the respects in which it is in his opinion not being complied with.
  
- (d) (Trustee's Certificate): The Trustee shall within ten (10) business days from the last days of June and December in each year and on such additional days as it may determine give to the auditor a certificate in writing setting out the investments and cash constituting the Fund at the date of such certificate.

## **PAYMENTS TO UNIT HOLDERS**

- 38. [Deleted]
  
- 39. (a) (Authorised Method of Payment): Any moneys payable by the Trustee to a unit holder under the provisions of this Deed may be paid by cheque sent through the post to the registered address of such unit holder or in the case of joint holders to the registered address of one of the joint holders who is first named on the Register.
  
- (b) (Joint Holders): If two or more persons are entered in the Register as joint holders of any units then without prejudice to the preceding clause hereof the receipt of any one of such persons for the moneys from time to time payable in respect of such units shall be as effective a discharge to the Trustee as if the person signing the said receipt were the sole holder of such units.

## **DETERMINATION OF TRUST**

- 40. (Determination on Liquidation or Default of Trustee): If the Trustee goes into liquidation other than for the purpose of reconstruction or amalgamation or ceases to carry on business or if a Receiver is appointed of the undertaking of the Trustee or any part thereof or if the Trustee fails or neglects after reasonable notice to carry out or satisfy any duty imposed on the Trustee hereunder the Trustee may if it considers it to be in the interest of the unit holders so to do determine the Trust hereby created PROVIDED ALWAYS that the Trustee shall not be bound to determine the Trust and shall not be liable for any failure to determine it.
  
- 41. (a) (Termination by Resolution of Holders): If at a meeting of unit holders duly convened under any of the provisions of Clause 44 a resolution is passed by a majority of not less than seventy-five per centum (75%) of those present (in person or by proxy) that the Trust hereby created shall be determined the Trustee shall determine it accordingly.
  
- (b) (Termination if less than 200,000 Units in Issue): If at any time after the expiration of one year from the date hereof, the Trustee determines that less than two hundred

thousand (200,000) units are held by unit holders and recommends that the Trust hereby created be determined the Trustee may if in its absolute discretion it considers it to be in the interests of the unit holders so to do determine the Trust hereby created.

- (c) (Notice to Unit Holders): Any such determination as aforesaid shall take effect by service on the unit holders in manner hereinafter provided of a notice stating the determination of the Trust the reason therefore and the date thereof.
42. (Procedure on Determination): Upon determination of the Trust under Clauses 40 or 41 hereof the following provisions shall have effect:
- (a) (Notice of Determination): The Trustee shall as soon as practicable after the determination of the Trust give to each unit holder notice of the determination and of the intention to distribute the Fund and such notice shall where applicable draw the attention of the unit holder to his right as herein provided to request that assets be distributed to him in specie.
  - (b) (Realisation of Fund): Subject to Sub-section (c) of this clause the Trustee shall as soon as practicable sell call in and convert into money or cause to be sold called in or converted into money the Fund and shall direct the Trustee to divide the proceeds of sale less all proper costs charges and expenses amongst the unit holders in proportion to the units of which they are respectively registered as the holders upon the execution by such unit holders in favour of the Trustee of such release as may be reasonably required by the Trustee.
  - (c) (Transfer of Assets): Notwithstanding the provisions of Sub-paragraph (b) hereof any person registered as the holder of units having a value in excess of ten thousand dollars (\$10,000.00) may request the Trustee to appropriate specific assets out of the investments of the Fund and to transfer such assets to such unit holder in satisfaction of his entitlement in the distribution of the Fund. Upon any such request the Trustee may determine to transfer specific assets out of the investments of the Fund in satisfaction of the entitlement of the unit holder. The value of the assets so transferred shall be calculated at market value and the costs of any brokerage stamp duty transfer fees and other charges incurred in transferring such assets shall be borne by the unit holder. In directing the appropriation and transfer of any such assets the Trustee shall have power to adjust units either by making or receiving or by directing the Trustee to make or receive cash payments or otherwise and to settle any question arising in relation thereto in any manner which appears to it to be just.
  - (d) (Postponement of Realisation): The Trustee may postpone the sale calling in and conversion of any part of the investments and property of the Fund for such time as it thinks it desirable so to do in the interests of the unit holders and shall not be responsible for any loss attributable to such postponement.

- (e) (Transfer to Trustee of Another Trust): The Trustee may if it thinks fit transfer any investment of the Fund to the trustee of any other trust (whether or not the Trustee is in any way associated with such other trust) on receiving cash equivalent to the market value of such investment at the date of transfer.
- (f) (Retention of Assets): The Trustee may retain in its hands or under its control for as long as it thinks fit such part of the Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Fund or any of the investments thereof PROVIDED THAT any investments or money so retained to the extent that they are ultimately found not to be so required shall remain subject to the Trust for conversion and distribution contained in Paragraph (b).
- (g) (Release): Upon the Trust being determined and distribution being made as aforesaid the Trustee has a full and complete release from this Deed and the trusts and provisions thereof and is indemnified against any claims arising out of its execution of the Trust provided that such claims are not caused by its negligence.
- (h) [Deleted]

### **ALTERATION OF DEED**

- 43. (a) (Trustee Alter Deed): The Trustee may from time to time if in its absolute discretion it shall think fit effect any amendment modification or variation of this Deed (including if thought fit the revocation or restriction of this present clause) which in its opinion may be expedient for the more convenient economical or advantageous working or management or administration of the Trusts or necessary in the opinion of the Trustee upon any change in the Relevant Law (including a change or failure to implement the taxation policies announced by the Treasurer on 25 May 1998, 20 June 1988 and 29 June 1988) or to permit the distribution of income of the Fund or the allocation of income, Taxes or taxation credits or rebates as between Unit Holders in such manner as the Trustee determines in its absolute discretion consequent upon any such change herein declared and contained and which the Trustee may think proper having regard to all the circumstances of the case. Upon such an amendment being made, this Deed shall take effect as modified or varied accordingly.
- (b) (Notice of Variation): After the giving of such assent as aforesaid notice thereof containing a short summary of the effect of the amendment modification or variation shall be sent by the Trustee to the unit holders.
- (c) (Special Resolution): In addition to the powers conferred by Sub-clause (a) hereof the Trustee may from time to time with the consent of the holders of seventy-five per centum (75%) of the units in issue assent to any modification or variation of this Deed (including if thought fit the revocation or restriction of this present sub-clause).

- (d) (Consent may be Oral): Any assent by the Trustee under this clause may be given orally or in such other form as the Trustee may think fit and this Deed may be amended modified or varied by oral declaration of the Trustee made and given as part of its assent under this clause and without any writing or the execution of any Deed of variation being necessary.
- (e) (Constitutional Corporation): No amendment may permit a trustee other than a Constitutional Corporation to be appointed as Trustee unless the SIS Act permits.

43A. Notwithstanding any other provision of this Deed:

- (a) No person who alone or together with any other person is or was previously the Trustee shall be or shall be capable of being a beneficiary under the Trust and no person who is a beneficiary under the Trust shall alone or together with others be appointed the Trustee.
- (b) This Deed shall not be and shall not be capable of being amended to enable:
  - (i) any person who alone or together with any other person is or was previously the Trustee to be or to be capable of being a beneficiary under the Trust; or
  - (ii) any person who is at any time a beneficiary under the Trust at such time to be appointed the Trustee.

## **MEETING OF UNIT HOLDERS**

- 44. (Calling of Meeting): The Trustee may at any time summon a meeting of unit holders for such purposes as it may see fit or as may be authorised from time to time by statute. Notice of every such meeting shall be given as provided in Sub-clause (i) of Clause 31 of this Deed. Inadvertent failure to give notice to a unit holder shall not invalidate the calling of the meeting. The notice shall indicate briefly the purpose of the meeting and the effect of any resolution intended to be proposed thereat.
- 45. (Procedure of Meeting): Meetings of unit holders shall be held at the time and place specified in the notice and advertisement being a time not later than two months after the giving of the notice under the chairmanship of such person as is appointed in that behalf by the unit holders present at the meeting or where no such appointment is made a nominee of the Trustee and shall be conducted in accordance with the provisions of this Deed or insofar as this Deed makes no provision as directed by the Chairman of the meeting.

46. (Consents of Members): Where under the provisions of this Deed the consent or direction of any stated percentage of unit holders is required then such consent or direction may be obtained or given either:
- (a) at a meeting of unit holders convened as aforesaid, or
  - (b) by a written document or series of documents, or
  - (c) partly by one method and partly by the other.
47. (Power Exercisable by Special Resolution): The unit holders shall have power by special resolution:
- (a) to sanction or assent to any modification or variation of the provisions of this Deed; and
  - (b) [Deleted]
  - (c) to require the Trustee to retire;
  - (d) to remove the auditor or auditors of the Fund from office.

A resolution (whether ordinary or special) duly passed shall be binding upon the Trustee and all unit holders whether present or not present at such meeting and each unit holder shall be bound to give effect thereto. The expression "special resolution" when used in this Deed means a resolution passed at a meeting of the unit holders duly convened and held in accordance with the provisions of this Deed by a majority upon a show of hands of not less than three-fourths of the number of unit holders voting at such meeting and if a poll is demanded then by a majority of not less than three-fourths of the votes given on such poll.

48. (a) (Show of Hands): Every question arising at any meeting of unit holders shall be decided in the first instance by a show of hands unless:
- (i) it be a question which under this Deed must be decided by a majority being a percentage of the votes of those present in which case a poll shall be taken; or
  - (ii) a poll be demanded.

- (b) (Poll): A poll may be demanded before or immediately after any question is put to a show of hands.
- (c) (Poll Demanded by Unit Holders): A poll may be demanded by the Trustee or by unit holders not being less than two in number and holding (or representing by proxy) between them not less than two hundred (200) units.
- (d) (One Vote): Upon a show of hands every unit holder who is present in person shall have one vote and upon a poll every unit holder present in person or by proxy shall have one vote for each unit held by him.
- (e) (Votes Personally or by Proxy): Votes may be given either personally or by proxy or in the case of a company by its duly appointed representative. A person appointed a proxy need not be a unit holder.
- (f) (Joint Holders): In the case of joint registered holders any one of such joint holders may vote either personally or by proxy as if he were solely entitled to the units comprised in the joint holding but if more than one of such joint holders be present at any meeting either personally or by proxy that one of the persons so present whose name stands first on the Register in respect of the joint holding shall alone be entitled to vote in respect thereof. Several executors or administrators shall for the purpose of this sub-clause be deemed joint holders.
- (g) (Instruments of Proxy): Every instrument of proxy whether for a specified meeting or otherwise shall as nearly as circumstances admit be in the following form or to the like effect:

I \_\_\_\_\_ being a registered holder of units in The BT Institutional Retirement PST hereby appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me and on my behalf at the meeting of unit holders to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and at any adjournment thereof.

Signed by the said \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_ in the presence of:

A proxy need not be a unit holder.

- (h) (Deposit of Proxy with Trustee): The instrument appointing a proxy shall be deposited at the office of the Trustee not less than twenty-four hours before the time of holding the meeting or adjourned meeting as the case may be at which the person

named in such instrument proposes to vote. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death insanity or revocation as aforesaid shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the person named in such instrument proposes to vote.

- (i) (Quorum): No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business. The quorum for a meeting shall be unit holders personally present not being less than two (2) in number and holding or representing by proxy between them not less than two hundred (200) units. If within fifteen minutes from the time appointed for any meeting a quorum is not present the meeting shall:
- (i) if called for the purpose of passing an ordinary resolution stand adjourned to the same day in the next week and at the same time and the same place;
  - (ii) if called for the purpose of passing a special resolution stand adjourned for such period as the Chairman shall direct.

At such adjourned meeting the unit holders present in person or by proxy (whatever their number and whatever number of units held or represented by them) shall form a quorum and shall have power to pass such ordinary or special resolution PROVIDED HOWEVER that in the case of a special resolution notice of the proposed special resolution and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting have been given to the unit holders by the Trustee. The Trustee or its duly appointed representatives shall be entitled to attend and address the meeting.

- (j) (Adjournment): The Chairman may with the sanction of the meeting adjourn it to such time and place as he shall determine.
- (k) (Rights of Trustee and Auditor): The Trustee and the Auditor of the Fund shall be entitled to be present by duly authorised representative at every meeting of unit holders and to speak thereat.

49. [Deleted]

## MISCELLANEOUS

50. (a) (Practice of Exchanges): At all times and for all purposes of this Deed the Trustee may rely upon the established practice and rulings of the Australian Stock Exchange

Limited, any relevant Futures Exchange, any clearing organisation and any committees and officials thereof in determining what shall constitute a proper and acceptable course of conduct in relation to such Stock Exchanges, Futures Exchange or clearing organisation and all unit holders and the Trustee shall be bound by and receive the benefit of such practices and rulings.

- (b) (Notice duly given): Any notice required to be given to the unit holders hereunder shall be deemed to have been duly given if given in writing to the unit holders respectively by letter addressed to them at their respective addresses as appearing in the Register. In the case of joint unit holders a notice given to that joint holder whose name stands first on the Register shall be sufficient notice to all such joint unit holders. Any notice given by post shall be sufficient to prove that the letter containing the notice was properly addressed and posted and a statement signed by the Trustee that it was so posted and when shall be conclusive of that fact.
- (c) (Retention of Applications): Applications for units, cancelled certificates, instrument of transfer and transmission shall be retained by the Trustee but on the expiration of six years from the date of each thereof the same may in the absolute discretion of the Trustee be destroyed.
- (d) (Deed Binding on all Parties): The terms and conditions of this Deed shall be binding on the Trustee and each unit holder and all persons claiming through them respectively as if such holder had been party to this Deed.
- (e) (Copies of Deed to be made available): A copy of this Deed shall at all times during usual business hours be made available by the Trustee in its registered office for the inspection of unit holders who shall be entitled to receive from the Trustee a copy of this Deed on payment to the Trustee of the sum of Two dollars (\$2.00) or such smaller sum as the Trustee may from time to time prescribe.

## **ARBITRATION**

51. All differences arising out of this Deed shall (if so required by the Trustee) be referred to a decision of an Arbitrator to be appointed in writing by the parties or if the cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree to an umpire appointed in writing by the Arbitrator before entering upon the reference. The umpire shall sit with the Arbitrators and preside at their meetings. In case such differences shall arise the determination thereof in manner aforesaid (if so required by the Trustee) shall be a condition precedent to the liability of the Trustee hereunder or the commencement of any proceedings against the Trustee at law in equity. The award of the Arbitrator shall be final and binding on the parties. Upon every or any such reference, the costs of and incidental to the reference and award respectively, shall be in the discretion of the Arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or as between

party and party, and shall direct by whom and to whom, and in what manner the same shall be borne and paid.

### **LIABILITY OF UNIT HOLDERS**

52. No Unit Holder shall be personally liable whether by way of indemnity to the Trustee or to any other person, in respect of any debt, loss, liability or outgoings incurred by the Trustee in and about the administration or management of the Trust Fund. The Trustee shall have no right of indemnity against Unit Holders collectively other than to the extent of the Trust Fund and against Unit Holders individually other than to the extent of the value of the Units held by each such Unit Holder.

### **OCCUPATIONAL SUPERANNUATION STANDARDS**

53. "SIS Act" The Trustee may do everything necessary or convenient to meet or carry out the requirements of the SIS Act.

54. "Saving Clause" If a provision in this Deed would otherwise be void because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

55. For the purposes of this Deed, the relationship between BT Funds Management Limited and other entities is taken to be the same as for the immediately preceding Trustee and those entities.

56. [Deleted]

57. [Deleted]

### **RELATED PARTY DEALINGS**

58. Notwithstanding anything else contained in this Deed, even if expressed to apply despite anything else in the Deed, if the Trustee has negotiated the contract, transaction or dealing on an arms length basis and its terms (including without limitation any purchase price, fees

or commissions) are no less favourable than would otherwise be reasonably available to the Trustee in all of the circumstances of the particular contract, transaction or dealing:

- (1) the Trustee or any of its associates may deal with the Trust;
- (2) the Trustee or its associates may be interested in or owe duties in respect of any contract or transaction with the other of them, the Trustee or any Unitholder, or retain for its own benefit any profits or benefit derived from any such contract or transaction; and
- (3) the Trustee may act in the same or similar capacity in relation to any other scheme;

and for the purposes of this Clause 58 “associate” means a related body corporate as defined in the Corporations Act.

#### **APPLICATION OF ACCOUNTING PRINCIPLES AND STANDARDS**

59. (1) Notwithstanding any other provision of this Deed, where:
- (a) the effect of this Deed as at 31 December 2004 was that any value or amount, including values or amounts relating to:
    - (i) the consideration that is to be paid to acquire an interest in the Trust;
    - (ii) the amount to be paid on withdrawal from the Trust;
    - (iii) the amounts to be paid on termination of the Trust;
    - (iv) the fees payable to the Trustee, any agent or any custodian who holds Trust property;
    - (v) the extent of any limitation on borrowings or on the investment of Trust property; and
    - (vi) any amount payable to Unit Holders by way of income or capital;
- was required to be calculated by reference to:

(vii) the value of any Trust property; or

(viii) the amount of any liability that under the Deed may be discharged from that property; and

(b) the effect of the Deed was that the value or amount was to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time;

(c) then, as from 1 January 2005, such values and amounts shall continue to be calculated for Trust operational purposes (but not for the purpose of financial reporting) by applying the accounting principles or methodology set out in accounting standards generally accepted or in force immediately before 1 January 2005.

(2) Notwithstanding any other provision of this Deed, where:

(a) the effect of current generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time is that the Deed should be interpreted (whether because of the existence of a perpetuities clause in the Deed or otherwise) on the basis that liabilities representing interests in, or rights attaching to, Units:

(i) at any time during the life of the Trust;

(ii) on termination of the Trust; or

(iii) on the vesting of any interest in the Trust,

should be treated as a liability in the accounts of the Trust;

then, as from 1 January 2005, such liabilities shall continue to be treated for Trust operational purposes (but not for the purpose of financial reporting) in accordance with the accounting principles or methodology set out in accounting standards generally accepted or in force immediately before 1 January 2005.

- (3) For the purposes of this clause, a reference to:
- (a) **“Trust property”** includes the terms assets or property of the Trust or Trust Fund or Fund or words of similar import;
  - (b) **“Trust”** includes Fund or other similar description; and
  - (c) **"Unit Holder"** includes a Holder, unitholder, member or investor or other similar description.

## **FEE SCHEDULE**

### **BT INSTITUTIONAL RETIREMENT PST (“THE TRUST”)**

1. Effective Date

This fee schedule applies from 1 January 1998.

2. Fee

The management fee for the Trust is 0.6% per annum calculated in accordance with the Deed.

3. Fee Rebate

A fee rebate will apply to a unitholder if, on the last day of each quarter (commencing 31 March 1998):

- (a) if paragraph 3(b) does not apply, the unitholder has investments in the Trust in excess of \$50,000,000; or
- (b) the unitholder is a company fund and the aggregate of investments made by the company fund and other company funds in the same corporate group in the Trust, the BT Stable Capital Fund, BT Stable Growth Fund, BT Exempt Retirement Fund, BT Exempt Stable Capital Fund, BT Australia Charities Trust and any “balanced” investment portfolio managed by the Trustee (“Aggregate Investments”) exceed \$50,000,000. Company funds will be regarded as part of the same corporate group if a majority of shares in each unitholder are owned by a common parent company.

4. Rebate Amount

The rebate amount for each unitholder will be calculated as follows:

- (a) if paragraph 3(b) does not apply, the rebate amount for that unitholder will be one quarter of the amount based on the value of unitholder’s investments in the Trust at the end of each quarter calculated as follows:

- 0.0% for amounts up to \$50,000,000;
- 0.15% for amounts from \$50,000,000 to \$150,000,000;
- 0.20% for amounts from \$150,000,000 to \$250,000,000; and
- 0.25% for amounts in excess of \$250,000,000.

(b) if paragraph 3(b) applies, the rebate amount for that unitholder will be one quarter of the amount calculated as follows:

$$\text{Fee Rebate for Unitholder} = \text{Aggregate Fee Rebate} \times \frac{\text{Value of unitholders investment in the Trust}}{\text{Total value of Aggregate of Investments}}$$

where:

- the Aggregate Fee Rebate is the sum of:
  - 0.0% of the Aggregate Investments up to \$50,000,000;
  - 0.15% of the Aggregate Investments from \$50,000,000 to \$150,000,000;
  - 0.20% of the Aggregate Investments from \$150,000,000 to \$250,000,000;
  - 0.25% of the Aggregate Investments in excess of \$250,000,000.
- the value of the unitholder's investment in the Trust and the total value of the aggregate investments at the end of each quarter are calculated by the Trustee.

#### 5. Application of Rebate Amount

The Trustee will apply the rebate amount attributable to each unitholder in accordance with the Deed.

#### 6. Indexation of Rebate Threshold

The amount or threshold specified above from which a fee rebate will apply is subject to increase from time to time in accordance with increases occurring in the relevant period to the Consumer Price Index (All Sectors).

## PRICING SCHEDULE

### BT INSTITUTIONAL RETIREMENT PST (“THE TRUST”)

#### 1 Overriding Operation

- 1.1 This Schedule forms part of the Deed.
- 1.2 The provisions in this Schedule apply despite anything to the contrary in the Deed.
- 1.3 If there is more than one Fund maintained under the Deed, this Schedule applies severally to each Fund.

#### 2 Interpretation

- 2.1 In this Schedule, unless the contrary appears or context requires otherwise:

“**Allocation Value**” in relation to a Unit means the value of the Unit determined under clause 4.3 or 4.4 of this Schedule;

“**Application**” means an application for the issue of Units under the main body of the Deed.

“**Assets**” means all the property, rights and income of the Fund.

“**Cancellation Value**” in relation to a Unit means the value of the Unit determined under clause 4.5 of this Schedule;

“**Class**” refers to a class of Unit, if any. If there is only one class of Unit for a Fund, it refers to that class.

“**Contribution Transaction Costs**” for an Investment Portfolio means the Trustee’s estimate of the total cost of acquiring all of the Assets of the Investment Portfolio determined under clause 3.5 of this Schedule.

“**Fund**” means the trust fund maintained under the Deed or, if there is more than one trust fund, each trust fund.

**“Investment Portfolio”** in respect of a Class, means the portfolio of Assets to which the Class relates. If there is only one class of Unit, it refers to the Fund.

**“Liability”** means:

- (a) all liabilities of the Fund, including:
  - (i) liabilities accrued but not yet paid; and
  - (ii) amounts payable to the Trustee; and
- (b) any provision which the Trustee considers should be taken into account in determining the liabilities of the Fund;

**“Redemption”** means a request for redemption or cancellation of Units or withdrawal of funds in respect of Units made by a Unit Holder.

**“Superannuation Law”** in respect of a Fund means any requirements under the Superannuation Industry (Supervision) Act 1993 or any other law:

- (a) imposed on trustees of superannuation entities; or
- (b) which must be satisfied for the Fund to qualify for the most favourable taxation treatment available to superannuation entities.

It includes any proposed requirements which the Trustee believes will have retrospective effect.

**“Unit”** of a Fund has the same meaning as Unit in the main body of the Deed.

**“Withdrawal Transaction Costs”** for an Investment Portfolio means the Trustee’s estimate of the total cost of selling all of the Assets of the Investment Portfolio determined under clause 3.5 of this Schedule.

### **3. Valuation Investment Portfolios**

#### **Time**

- 3.1 The Trustee must cause each Investment Portfolio to be valued at times which the Trustee considers appropriate.

#### **Valuer**

- 3.2 The Trustee may instruct a person, who the Trustee considers to be appropriately qualified and experienced, to value any Asset or Liability.

### **Valuation principles**

- 3.3 The Trustee may set down the principles for valuing the whole or any part of an Investment Portfolio (including attributing Liabilities to the Investment Portfolio). Those principles must be consistent with Superannuation Law.

### **Valuation periods**

- 3.4 The Trustee must determine, as it considers appropriate:
- (a) the period during which an Allocation Value is to apply;
  - (b) the period during which a Cancellation Value is to apply; and
  - (c) the time of the valuation under clause 3.1 of this Schedule which is to apply to each of those periods.

### **Transaction Costs**

- 3.5 For each Application or Redemption of Units in a Class, the Trustee must estimate the amount which would be the total cost of acquiring (in the case of an Application) or selling (in the case of a Redemption) all of the Assets of the Investment Portfolio if all of the Assets of the Investment Portfolio were to be acquired or sold at the time of the Application or Redemption.

### **Use of Allocation Value and Cancellation Value**

- 3.6 For each Application which is accepted by the Trustee, the Trustee must issue Units at the Allocation Value which is applicable to the Application or at a value determined under clause 4.6 of this Schedule.
- 3.7 For each Redemption request which the Trustee will satisfy, the Trustee must redeem Units at the Cancellation Value which is applicable to the Redemption or at a value determined under clause 4.6 of this Schedule.

#### 4. Unit Value

##### Units of equal value

4.1 All Units in a Class have an equal value.

##### Unit Value

4.2 The Unit Value of Units in a Class at a particular time is the value determined by the Trustee having regard to:

- (a) the value most recently determined under clause 3.1 of the Investment Portfolio for the Class; and
- (b) the number of Units in the Class relating to that valuation.

##### Allocation Value

4.3 If Units may be issued in different Classes, the Allocation Value of Units in a class on the first day Units are allocated in that Class shall be \$1.00.

4.4 The Allocation Value of Units in a Class for a period determined under clause 3.4(a), other than on the first day Units are allocated in that Class must be determined by the Trustee:

- (a) if the subscription is in cash, based on:

$$\left( \frac{VAP + CTC}{U} \right)$$

where:

VAP = the value of the Investment Portfolio for the Class determined under clause 3.1 and applicable to the period;

CTC = the Contribution Transaction Costs which the Trustee considers appropriate to attribute to the Class;

U = the number of Units in the Class relating to the valuation of that Investment Portfolio; or

(b) if the subscription is not in cash, as being the Unit Value.

### **Cancellation Value**

4.5 The Cancellation Value of Units in a Class for a period determined under clause 3.4(b), other than on the first day Units are allocated in that Class must be determined by the Trustee:

(a) if the withdrawal or payment is in cash, based on:

$$\left( \frac{VAP - WTC}{U} \right)$$

where:

VAP = the value of the Investment Portfolio for the Class determined under clause 3.1 and applicable to the period;

WTC = the Withdrawal Transaction Costs which the Trustee considers appropriate to attribute to the Class;

U = the number of Units in the Class relating to the valuation of that Investment Portfolio; or

(b) if the withdrawal is satisfied other than by cash, as being the Unit Value.

### **Fair and reasonable price**

4.6 In exercising its powers under clauses 3.1 to 4.5 of this Schedule, the Trustee must determine and apply to each Application or Redemption the price which the Trustee believes, on reasonable grounds in the circumstances, to be fair and reasonable as between the person who is being issued Units or whose Units are being redeemed and the other beneficiaries of the Fund.