

**RETIREMENT BENEFITS FUND**

**STATE FIRE COMMISSION  
SUPERANNUATION SCHEME**

**AMENDING DEED**

## **AMENDING DEED RECITALS**

DATE:

PARTIES:

The Hon Peter Gutwein MP, Treasurer, ("Minister") being and as the Minister administering the *Public Sector Superannuation Reform Act 2016* ("Act")

and

The Retirement Benefits Fund Board, constituted as a corporate trustee under the *Retirement Benefits Act 1993* ("the Board")

RECITALS

- A. The *Fire Brigade Regulations 1965* established a superannuation scheme now known as the State Fire Commission Superannuation Scheme ("the Former Scheme") to provide retirement and disablement benefits for officers of the State Fire Commission and death benefits for the families, widows and dependants of those officers.
- B. Pursuant to the *Fire Service Act 1979*, the Board executed a declaration of trust dated 17 January 1995 (as amended to the date of this trust deed) to govern the administration of the Former Scheme.
- C. The *Retirement Benefits Act 1970* established a superannuation scheme now known as The Retirement Benefits Fund to provide retirement and other benefits to certain employees of the State of Tasmania and State authorities.
- D. In 2006, the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* was enacted, which provided, among other things:
  - i. that the defined benefit component of the Former Scheme would continue as a sub-fund of the Retirement Benefits Fund ("the Scheme");
  - ii. for the creation of a trust deed to govern the Scheme ("the Trust Deed") that must include certain prescribed matters; and
  - iii. that the Trust Deed could be amended or revoked and substituted by way of a deed, subject to the Minister being satisfied that the State Fire Commission and the United Firefighters' Union of Australia (Tasmanian Branch) had been consulted in respect of a draft of the deed and that the draft deed complied with, and was consistent with the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* and the *Superannuation Industry (Supervision) Act 1993* (Cth) ("the SIS Act").
- E. In 2016, the *Public Sector Superannuation Reform Act 2016* was enacted, which, among other things:
  - i. repealed the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005*;
  - ii. provided for the continuation of the Scheme as a sub-fund of the Retirement Benefits Fund to be administered in accordance with the Trust Deed; and
  - iii. provided that the Trust Deed could be amended or revoked and substituted by way of a deed, subject to the Minister being satisfied that the State Fire Commission and the United Firefighters' Union of Australia (Tasmanian Branch) had been consulted in respect of a draft of the deed and that the draft deed complied with, and was consistent with the Act and the SIS Act.
- F. The parties to this deed wish to, pursuant to section 45 of the Act, amend the Trust Deed in accordance with the provisions of this deed.
- G. The Minister has approved a draft of this deed and is satisfied that the State Fire Commission and the United Firefighters' Union of Australia (Tasmanian Branch) have been consulted in respect of the draft, and is satisfied that the draft trust deed complies with, and is consistent with, the Act and the SIS Act, as required by section 45 of the Act.

THIS DEED WITNESSES that on and from 1 April 2017, the Trust Deed dated 17 January 1995 (as amended) governing the State Fire Commission Superannuation Scheme (as established under the *Fire Brigade Regulations 1965* and continued as a sub-fund of the Retirement Benefits Fund under the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* and the *Public Sector Superannuation Reform Act 2016*) is amended by deleting the existing provisions of the Trust Deed and replacing them with provisions contained in the Appendix to this amending deed.

## **APPENDIX**

This is the Appendix referred to in the amending deed to which this Appendix is annexed and contains the amended Trust Deed governing the Scheme. The table of contents contained in this Appendix is for information purposes only and does not comprise part of the Trust Deed.

## TABLE OF CONTENTS

<b>1</b>	<b>PRELIMINARY .....</b>	<b>8</b>
1.1	CONSTITUTION OF THE SCHEME .....	8
1.2	APPLICATION OF COMMONWEALTH AND STATE LAW .....	8
1.3	INTERPRETATION.....	9
<b>2</b>	<b>ADMINISTRATION.....</b>	<b>13</b>
2.1	POWERS AND FUNCTIONS OF COMMISSION .....	13
2.2	ADMINISTRATION OF THE SCHEME.....	14
2.3	DELEGATION .....	14
<b>3</b>	<b>ESTABLISHMENT OF FUND .....</b>	<b>15</b>
3.1	OPERATION OF FUND .....	15
3.2	INVESTMENT OF FUND .....	16
3.3	ACCOUNTS AND RECORDS .....	17
3.4	TAXATION PROVISION ACCOUNT .....	17
3.5	INVESTMENT INCOME RESERVE ACCOUNT.....	18
<b>4</b>	<b>MEMBERSHIP.....</b>	<b>18</b>
4.1	MEMBERSHIP OF SCHEME.....	18
4.2	ESTABLISHMENT OF MEMBER ACCOUNTS .....	18
4.3	DEATH AND INCAPACITY COVER.....	19
<b>5</b>	<b>CONTRIBUTIONS .....</b>	<b>19</b>
5.1	COMMISSION SUPERANNUATION CONTRIBUTIONS.....	19
5.2	OBLIGATION OF MEMBERS TO CONTRIBUTE.....	20
5.3	TIME AND MANNER OF PAYING CONTRIBUTIONS .....	20
5.4	LEAVE OF ABSENCE .....	20
5.5	PART-TIME EMPLOYEES.....	21
<b>6</b>	<b>BENEFITS .....</b>	<b>22</b>
6.1	BENEFIT PAYMENT STANDARDS.....	22

6.2	OUTWARD PORTABILITY .....	23
6.3	MINIMUM BENEFIT .....	23
6.4	REDUCTIONS IN SALARY .....	23
6.5	NORMAL RETIREMENT BENEFIT .....	24
6.6	LATE RETIREMENT BENEFIT .....	24
6.7	EARLY RETIREMENT BENEFIT.....	24
6.8	LEAVING THE SERVICE.....	24
6.9	ENTITLEMENT TO A DEATH OR PERMANENT INCAPACITY BENEFIT .....	26
6.10	TEMPORARY INCAPACITY PENSION.....	26
6.11	SPLIT OF BENEFITS IN ACCORDANCE WITH FAMILY LAW ACT 1975.....	27
6.12	FORMER SCHEME BENEFIT.....	28
7	THIS CLAUSE IS INTENTIONALLY BLANK .....	28
8	FINANCIAL PROVISIONS .....	29
8.1	FIXING OF INTEREST RATES.....	29
8.2	COST OF ADMINISTRATION .....	29
8.3	TIME AND MANNER OF BENEFIT PAYMENTS.....	29
8.4	TAXATION OF CONTRIBUTIONS AND LUMP SUM BENEFITS .....	29
8.4A	NOTIONAL TAXED CONTRIBUTIONS .....	30
8.5	ESTABLISHMENT OF SURCHARGEABLE CONTRIBUTIONS DEBT ACCOUNT.....	30
8.6	PROVISION OF CERTAIN INFORMATION BY THE COMMISSION .....	31
8.7	SCHEME SOLVENCY CERTIFICATE.....	32
9	GENERAL PROVISIONS .....	32
9.1	THIS CLAUSE IS INTENTIONALLY BLANK.....	32
9.2	PAYMENT ON DEATH OR PERMANENT INCAPACITY.....	32
9.3	POLICIES AND PROCEDURES TO BE ADOPTED BY THE COMMISSION.....	33
9.4	COMMISSION TO PROVIDE INFORMATION .....	33
9.5	DUTIES OF RESPONSIBLE OFFICER.....	33
9.6	CLAIMANT TO PROVIDE INFORMATION .....	34
9.7	MAKING OF ELECTIONS, DIRECTIONS, CLAIMS OR APPLICATIONS.....	35

<b>9.8</b>	<b>ASSIGNMENT OF BENEFIT .....</b>	<b>35</b>
<b>9.9</b>	<b>RECOVERY OF MONEY OWING TO THE SCHEME.....</b>	<b>36</b>
<b>9.10</b>	<b>PAYMENT WITHOUT GRANT OF PROBATE .....</b>	<b>36</b>
<b>9.11</b>	<b>RESTORATION OF LOST RIGHT UNDER DEED .....</b>	<b>37</b>
<b>9.12</b>	<b>PAYMENT WHERE MEMBER INCAPABLE.....</b>	<b>37</b>
<b>9.13</b>	<b>UNCLAIMED BENEFITS.....</b>	<b>37</b>
<b>9.14</b>	<b>PAYMENT WHERE BENEFICIARY BANKRUPT .....</b>	<b>37</b>
<b>9.15</b>	<b>SERVICE OF NOTICES BY THE COMMISSION .....</b>	<b>37</b>
<b>9.16</b>	<b>MARKETING AND PROMOTION .....</b>	<b>38</b>
<b>9.17</b>	<b>PROVISION OF INFORMATION TO THE MINISTER .....</b>	<b>38</b>
<b>10</b>	<b>REVIEW OF COMMISSION DECISIONS .....</b>	<b>38</b>
<b>10.1</b>	<b>COMMISSION NOT SUBJECT TO DIRECTION .....</b>	<b>38</b>
<b>10.2</b>	<b>HEARING BEFORE THE COMMISSION.....</b>	<b>38</b>
<b>10.3</b>	<b>POWER TO APPLY TO SUPREME COURT FOR DECLARATION AS TO VALIDITY .....</b>	<b>39</b>
<b>10.4</b>	<b>APPEAL AGAINST DECISION, DETERMINATION OR ORDER OF COMMISSION .....</b>	<b>40</b>
<b>10.5</b>	<b>DUTY TO ESTABLISH ARRANGEMENTS FOR DEALING WITH INQUIRIES OR COMPLAINTS 40</b>	
<b>11</b>	<b>AMENDMENTS TO DEED .....</b>	<b>41</b>

## 1 PRELIMINARY

### 1.1 CONSTITUTION OF THE SCHEME

- 1.1.1 This **Deed** has effect from the **transfer date** and it is directed by the **Minister** and declared by the parties that the **Commission** will hold the **Fund** from the **transfer date** on the terms and conditions of this **Deed**.
- 1.1.2 The **Scheme** continues the **Defined Benefit Component** of the **Former Scheme**.
- 1.1.3 Subject to the terms and conditions of this **Deed** and the **Act**, the **Commission** must act as trustee of the **Scheme** and the **Fund**.
- 1.1.4 The **Fund**:
- a) is to form part of the Retirement Benefits Fund; and
  - b) is to be administered by the Commission as a sub-fund of the Retirement Benefits Fund.
- 1.1.5 The **Fund** and any money received by the **Commission** in respect of the **Scheme** shall be held by the **Commission** in accordance with the terms and conditions of this **Deed**.
- 1.1.6 The **Commission** has been established under section 6 of the Act.
- 1.1.7 The **Commission**:
- a) is a body corporate with perpetual succession and has a seal, or if a notice under section 6(5)(a) of the Act declaring that the Commission is a corporation sole is in force – a corporation sole;
  - b) may sue and be sued in its corporate name;
  - c) may acquire, hold and dispose of real and personal property;
  - d) has the functions imposed, and the powers conferred, on it by this **Deed**, the **Act**, the Regulations or any other Act or regulations; and
  - e) may do all other things that a body corporate may do and that are necessary or convenient to be done in relation to the performance or exercise of the functions or powers of the Commission under this or any other Act.
- 1.1.8 A **Member**, a **Member's** dependants and a **Member's** beneficiaries, as the case may be, shall have an interest in the **Fund** that is conferred on that person under the provisions contained in this **Deed** but shall not have any interest in any particular part of the **Fund** or in any particular investment of the **Fund**.

### 1.2 APPLICATION OF COMMONWEALTH AND STATE LAW

- 1.2.1 The Retirement Benefits Fund is an exempt public sector superannuation scheme for the purposes of the **SIS Act**.
- 1.2.2 The **Scheme** is to be administered in accordance with the requirements of the standards prescribed for the purposes of the **SIS Act**, or any other law of the Commonwealth or **State** as amended from time to time relating to superannuation which is applicable to matters arising under this **Deed** and shall have effect in relation to those matters as if they were included in this **Deed**.
- 1.2.3 Notwithstanding sub-clause 1.2.2, this **Deed** may provide for **Benefits** in excess of those requirements of the standards prescribed for the purposes of the **SIS Act**.
- 1.2.4 The relevant provisions of the Act and the Regulations apply in respect of an employee who becomes a **Member** of the **Scheme**, except to the extent of any inconsistency with this **Deed**.



## 1.3 INTERPRETATION

1.3.1 In this **Deed**, unless the contrary intention appears:

“**Act**” means the *Public Sector Superannuation Reform Act 2016*;

“**Actuary**” means:-

- a) a person who is a Fellow of either the Institute of Actuaries (Australia), the Institute of Actuaries (London) or the Faculty of Actuaries (Edinburgh); or
- b) an organisation which employs such persons, that is appointed by the **Minister** for the purposes of the *Retirement Benefits Act 1993*, and the person appointed as **Actuary** pursuant to the **Former Trust Deed**;

“**Assessable Income**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Award**” means an agreement or award certified or made on or after 1 July 1987 or any other arrangement which the **Commission** and the **Commission** agree should be treated as an **Award**;

“**Benefit**” means any entitlement paid, or authorised to be paid, by the **Commission** out of the **Fund** pursuant to this **Deed** to, or in respect of, a **Member** subject to Commonwealth taxation where applicable;

“**Commission**” means the Superannuation Commission established under section 6 of the **Act**;

“**Commissioner of Taxation**” means the person who is holding office as, or acting in the office of, the Commissioner of Taxation under the Commonwealth’s *Taxation Administration Act 1953*;

“**Complying Superannuation Plan**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Concessional Contributions**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Date of Admission**” means the date upon which an **Employee** became a member of the **Former Scheme**;

“**Deed**” means this Trust Deed as amended, revoked or substituted in accordance with section 45 of the **Act** and clause 11 of this **Deed**;

“**Defined Benefit Component**” means the part of the **Former Scheme** that is not the total of all Accumulated Credits (as defined in the **Former Trust Deed**) provided for under the **Former Trust Deed**;

“**Directed Termination Payment**” has the same meaning as in section 82.10F of the *Income Tax (Transitional Provisions) Act 1997* of the Commonwealth;

“**Element Taxed in the Fund**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Element Untaxed in the Fund**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Employee**” means a person appointed or employed under the *State Service Act 2000* to perform functions for the purposes of the *Fire Service Act 1979*;

“**Employer Contributions**” means:

- a) contributions paid to the **Scheme** by the **Commission** in accordance with clause 5.1 of this **Deed**; and
- b) includes contributions paid in respect of a **Member** by the **Commission** in accordance with sub-clause 5.2.2 of the **Deed**;

“**Fire Brigades Scheme**” means the Fire Brigades Commission of Tasmania Retiring Allowance Death and Disablement Benefit Scheme established under the provisions of the *Fire Brigades Regulations 1965* as in force immediately before 1 October 1973;

“**Former Interest Rates**” means the interest rates declared from time to time by the **Former Trustee** pursuant to the **Former Trust Deed**;

“**Former Scheme**” means the State Fire Commission Superannuation Scheme as administered by the **Former Trustee** immediately before the 1 May 2006;

“**Former Trust Deed**” means the Deed of Trust executed by the **Commission** on 17 January 1995 to govern the administration of the **Former Scheme** and includes all amendments to it;

“**Former Trustee**” means the State Fire Commission Superannuation Scheme Pty Ltd (ACN 067 921 760) in its capacity as trustee of the **Former Scheme**;

“**Fund**” means the assets and liabilities of the **Scheme**;

“**Gainful Employment**” or “**Gainfully Employed**” means employment for gain or reward in any business, trade, profession, vocation, calling, occupation or employment and does not include voluntary or unpaid employment;

“**Gazette**” means the publication known as the *Tasmanian Government Gazette*;

“**Guarantee Act**” means as the case requires either the *Superannuation Guarantee (Administration) Act 1992* or the *Superannuation Guarantee Charge Act 1992* both of the Commonwealth;

“**Incapacity**” means **Permanent Incapacity** or **Temporary Incapacity**; “**Initial Accrual**” in relation to a **Member** means the multiple of his or her **Salary** determined by the **Actuary** at the **Member’s Date of Admission** and from time to time thereafter in respect of any credit made to the **Scheme** resulting from an agreement by the **Member** or by the trustees of a **Previous Plan** to the termination of benefits thereunder;

“**Interest Rates**” means the **Former Interest Rates** and the interest rates determined by the **Commission** from time to time under sub-clause 8.1;

“**Legal Personal Representative**” means the executor or executrix of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal incapacity, the administrator of a person appointed pursuant to the *Guardianship and Administration Act 1995* or a person who holds an enduring power of attorney granted by a person in relation to matters generally pertaining to this **Deed**;

“**Member**” means a person who has been admitted to the **Scheme** by operation of Part 4 of this **Deed** and retains an interest in the **Fund** which is conferred on that person under the provisions contained in this **Deed**;

“**Member Contributions**” means contributions paid in accordance with sub-clause 5.2.1 of this **Deed**;

“**Minimum Requisite Benefit**” in relation to a **Member** means the minimum benefit required to be vested in the **Member** by the **SIS Act**;

“**Minister**” means the Minister responsible for the administration of the **Act**;

“**Non-Concessional Contributions**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Non-Member Spouse**” has the meaning given by section 90MD of the *Family Law Act 1975*;

“**Normal Retirement Date**” means the day on which a **Member** reaches age 65;

“**Permanent Incapacity**” means “totally and permanently disabled” or suffering “total and permanent disablement” or any expression of similar import as defined in any insurance policy continued or effected by the Commission which provides Group Life or similar insurance to the **Commission** in respect of Members and beneficiaries;

“**Preservation Age**” means the preservation age as defined in the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth.

“**Previous Plan**” means any superannuation plan approved by the **Former Trustee** in which a **Member** participated before being accepted as a member of the **Former Scheme** from which moneys or other assets were credited to the **Former Scheme**;

“**Rate of Accrual**” in relation to a **Member** means the rate determined by the **Actuary** at the **Member’s Date of Admission** and from time to time thereafter having regard to the **Member’s Initial Accrual** as the rate (expressed as a proportion of the **Member’s Salary**) at which that **Member’s** normal retirement benefit is deemed to accrue during the period between the **Member’s Date of Admission** and **Normal Retirement Date**;

“**Redundancy**” means termination of a **Member’s** employment for reason that:

- a) his or her service, office or position is unnecessary;
- b) the work for which he or she was engaged is finished;
- c) diminution of work necessitates a reduction in the number of employees; or
- d) he or she is retired under a voluntary redundancy program;

“**Regulations**” means the regulations made under the Act;

“**Resignation**” means cessation of **Gainful Employment** with the **Commission** prior to attaining the **Preservation Age**, for any reason other than death, **Incapacity**, **Retirement** or **Redundancy**;

“**Responsible Officer**” means a person employed by the **Commission** to whom is assigned the duty of conducting the business of the **Commission** relating to the **Scheme**;

“**Retirement**” means cessation of **Gainful Employment** with the **Commission** on or after attaining the **Preservation Age** for any reason other than **Resignation**, **Redundancy**, death or **Incapacity**;

“**Roll-over Superannuation Benefit**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Salary**” means the gross annual wage or salary paid and/or payable by the **Commission** to or on behalf of a **Member** including payments and allowances other than allowances for rent and overtime work PROVIDED THAT during any period of absence without wage or salary the **Member’s Salary** shall be adjusted in accordance with any relevant express provisions contained in this **Deed** PROVIDED FURTHER THAT the **Member’s Salary** shall be deemed to continue unaltered throughout any period during which the **Member** suffers a **Temporary Incapacity**;

“**Scheme**” means the **State Fire Commission Superannuation Scheme** established under the *Fire Brigade Regulations 1965* and continued as a sub-fund of the Retirement Benefits Fund under the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005* and the **Act**, and the **Deed**;

“**Service**” means the most recent uninterrupted period of continuous employment with the Tasmania Fire Service in respect of which the **Member** concerned receives **Salary** and includes any period during which a **Benefit** is paid to a **Member** pursuant to sub-clause 6.10.1 PROVIDED THAT in respect of any period of absence from employment without **Salary** the **Member’s Service** shall be adjusted in accordance with any relevant provisions in this **Deed** PROVIDED FURTHER THAT a **Member** shall be deemed to have ceased employment if:

- a) the age and terms of employment of the **Member** preclude his or her continued eligibility for membership of the **Scheme**; or
- b) having regard to the age of the **Member**, the **Commission** is satisfied that the **Benefit** in respect of the **Member** may be released and the **Commission** at the **Member’s** request has in its discretion permitted such release.

“**SIS Act**” means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

“**Spouse**” includes the person with whom a **Member** is in a significant relationship, within the meaning of the *Relationships Act 2003*;

“**State**” means the State of Tasmania;

“**State Fire Commission**” means the State Fire Commission established under Section 7 of the *Fire Service Act 1979*;

“**Superannuation Benefit**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Superannuation Contributions**” means **Employer Contributions** and **Member Contributions**;

“**Surviving Partner**” means a person who the **Commission** is satisfied that, at the time of a **Member’s** death –

- a) a person was the **Spouse** of the **Member** who was living with the **Member** on a genuine domestic basis and was receiving significant financial support from the **Member**; or
- b) if there is no person referred to in paragraph a), a person was the **Spouse** of the **Member** and was living with the **Member** on a genuine domestic basis; or
- c) if there is no person referred to in paragraphs a) or b), a person was the **Spouse** of the **Member** who was not living with the **Member** on a genuine domestic basis but was receiving significant financial support from the **Member**;

“**Tax Free Component**” has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

“**Temporary Incapacity**” means “totally but temporarily disabled” or suffering “total but temporary disablement” or any expression of similar import as defined in any insurance policy continued or effected by the Commission which provides Group Salary Continuance or similar insurance to the **Commission** in respect of Members and beneficiaries;

“**Transfer Amount**” means, in respect of a **Transferring Member**, the amount transferred to the **Scheme** from the **Former Scheme** in respect of that **Member**;

“**transfer date**” has the same meaning as in the *Public Sector Superannuation Reform Act 2016*;

“**Transferring Member**” means any person who immediately before 1 May 2006 was a member of the **Former Scheme** whose **Date of Admission** was before 1 July 2005 and who is not classified as temporary under the Tasmanian Fire Fighting Industry Employees Award.

1.3.2 In this **Deed** unless the contrary intention applies:

- a) if all or part of any provision in this **Deed** is void or invalid for any reason whatsoever or would otherwise result in all or part of the **Deed** being void or invalid, the provision or part thereof shall be severed from this **Deed** and shall not affect the validity or operation of all or part of any other provision of this **Deed**;
- b) a reference to any Act, Regulation, agreement or document is to that Act, Regulation, agreement or document and where applicable, any of its provisions as amended, novated, supplemented or replaced from time to time;
- c) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- d) where an obligation in this **Deed** is binding on more than one party to the **Deed** the obligation is binding jointly and severally and nothing in the **Deed** and no action by the recipient of the obligation shall affect the right of the recipient to make any claim or commence any action or proceedings against any or all of the parties under the obligation;
- e) where an expression is defined in the singular, the plural form of that expression has a corresponding meaning;
- f) a reference to an Act, whether Commonwealth or State, in this **Deed** means that Act as amended from time to time;
- g) words and expressions used in this **Deed** which are defined in the *Acts*

*Interpretation Act 1931* are to be construed as if this **Deed** were an Act;

- h) where a word is in bold type, that word has the meaning prescribed in sub-clause 1.3.1, otherwise the word has its ordinary meaning; and
- i) a reference in this **Deed** to a period expressed in years includes, where appropriate, a reference to a period expressed in years together with a fraction of a year, that is expressed in days.

## 2 ADMINISTRATION

### 2.1 POWERS AND FUNCTIONS OF COMMISSION

#### 2.1.1 The functions of the **Commission** are to -

- a) manage the **Scheme** and the **Fund** so as to maximise the return earned on the **Fund** having regard to the need to:
  - i) exercise reasonable care and prudence so as to maintain the integrity of the **Fund**; and
  - ii) provide for payments out of the **Fund**;
- b) establish policies and procedures to administer the collection and receipt of contributions and the payment of **Benefit** entitlements having due regard to the need for equity among **Members**, their dependants and beneficiaries;
- c) establish policies in respect of the administration of this **Deed** and the investment of money standing to the credit of the **Fund** and to adopt strategies designed to achieve those policies;
- d) ensure its operations are conducted in an efficient, cost-effective and economic manner; and
- e) take, purchase, lease, hold, sell, exchange and dispose of real and personal property for the purposes of this **Deed**.

#### 2.1.2 The **Commission** covenants -

- a) to act honestly in all matters concerning the Scheme;
- b) to exercise, in relation to all matters affecting the Scheme, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to an entity of which it is trustee and on behalf of the beneficiaries of which it makes investments;
- c) to perform the **Commission's** duties and exercise the **Commission's** powers in the best interest of the **Members**;
- d) where there is a conflict between the duties of the **Commission** to the **Members**, or the interests of the **Members**, and the duties of the **Commission** to any other person or the interests of the **Commission**:
  - i) to give priority to the duties to and interests of the **Members** over the duties to and interests of other persons; and
  - ii) to ensure that the duties to the **Members** are met despite the conflict; and
  - iii) to ensure that the interests of the **Members** are not adversely affected by the conflict;
- e) to keep the money and other assets of the **Fund** separate from any money and assets that are held personally by the members of the **Commission**;
- f) not to enter into any contract, or do anything else, that would prevent the **Commission** from, or hinder the **Commission** in, properly performing or exercising its functions and powers pursuant to this **Deed**;
- g) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the **Fund** including, but not limited to, the

following:

- i) the risk involved in making, holding and realising, and the likely return from, the **Fund's** investments having regard to its objectives and its expected cash flow requirements;
  - ii) the composition of the **Fund's** investments, where appropriate, as a whole, including the extent to which the investments are diverse or involve the **Fund** in being exposed to risks from inadequate diversification;
  - iii) the liquidity of the **Fund's** investments, having regard to its expected cash flow requirements; and
  - iv) the ability of the **Commission** to discharge the **Fund's** existing and prospective liabilities as and when they become due and payable;
- h) if there are any reserves of the **Fund**, to formulate and give effect to a strategy for the prudent management of those reserves; and
- i) to allow a **Member** access to any information or any documents prescribed under an Act of the Commonwealth or State that may be relevant to the **Member** but not including information referred to in sub-clause 2.1.3.

2.1.3 In performing its functions, the **Commission** must have regard to the need to protect information, the disclosure of which could adversely affect the financial position or the commercial or other operations of the **Commission**.

2.1.4 The **Commission** may:

- a) appoint agents and attorneys;
- b) act as an agent for other persons;
- c) engage consultants;
- d) appoint investment managers, custodians, insurers and consultants; and
- e) act on the advice of the above persons with respect to the management and administration of the **Scheme** and **Fund**.

2.1.5 The **Commission** shall, as part of the requirement to keep proper accounts and records of the transactions and affairs of the **Commission** under regulation 12 of the **Regulations**, include in its annual report:

- a) a report on the operations of the **Fund** during the financial year; and
- b) an audited statement of the financial position of the **Fund**.

## 2.2 ADMINISTRATION OF THE SCHEME

2.2.1 The management of the **Scheme** shall be undertaken by the **Commission**.

2.2.2 The **Commission** may engage an independent contractor or contractors to undertake all or any part of the administration of the **Scheme**.

## 2.3 DELEGATION

2.3.1 The **Commission** may, by an instrument of delegation, delegate to a member of staff of the Commission, or a person or organisation engaged on contract under the Act, any power or duty of the **Commission** under this **Deed** other than the power of delegation.

2.3.2 A duty or power, the performance or exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.

2.3.3 A delegation under this clause may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.

2.3.4 Notwithstanding any delegation, the **Commission** may continue to perform or exercise

all or any of the functions or powers delegated.

- 2.3.5 Any act or thing done by or to a delegate while acting in the exercise of a delegation under this clause shall have the same force and effect as if the act or thing had been done by or to the **Commission** and shall be deemed to have been done by or to the **Commission**.
- 2.3.6 Any act or thing done by or to a delegate while acting in the exercise of a delegation under this clause shall be reported to the **Commission** at its next ordinary meeting, or as otherwise determined by the **Commission**.
- 2.3.7 An instrument purporting to be signed by a delegate of the **Commission** in his or her capacity as such a delegate shall be deemed to be an instrument signed by the **Commission** under this clause.

### 3 ESTABLISHMENT OF FUND

#### 3.1 OPERATION OF FUND

- 3.1.1 On and from the **transfer date**, the **Commission** shall maintain the **Fund** and the **Fund** shall comprise such accounts and reserves as, in the opinion of the **Commission**, are necessary or convenient for the administration of the **Scheme**.
- 3.1.2 As prescribed by section 46 of the **Act**:
- a) the **Scheme** is a superannuation scheme which is incorporated into the Retirement Benefits Fund as constituted under the *Retirement Benefits Act 1993*; and
  - b) the **Fund** is a sub-fund of the Retirement Benefits Fund.
- 3.1.3 The **Commission** may, where appropriate, cause to be paid to the **Fund**:
- a) contributions made by the **State Fire Commission**;
  - b) contributions made by **Members**;
  - c) **Roll-over Superannuation Benefits** or transferred **Superannuation Benefits** received on behalf of **Members**;
  - d) **Directed Termination Payments** or other money authorised to be paid into the **Fund**;
  - e) income derived from investments of the **Fund**, including any profit made from the realisation of any investments of the **Fund**;
  - f) any other income derived from the operation of any clause of this **Deed**; and
  - g) any other amount that the **Commission** considers appropriate and is allowable under the law of the Commonwealth or the **State**.
- 3.1.4 Money that is to be paid into the **Fund** is to be paid to the **Commission**.
- 3.1.5 The **Commission** shall, where appropriate, cause to be met from the **Fund**:
- a) administration costs and any other management charges as determined by the **Commission** arising from either administering this **Deed** or meeting any obligation arising as a consequence of this **Deed**;
  - b) the **Benefits** payable under this **Deed**;
  - c) expenses associated with the investment of money standing to the credit of the **Fund**; and
  - d) any audit, insurance or actuarial costs incurred in the administration and management of this **Deed**.

- 3.1.6 The **Commission** may, where appropriate, cause to be met from the **Fund** the payment of any tax, duty, impost or surcharge liability imposed under the law of the Commonwealth or **State** on the **Fund** or in respect of any **Benefits** payable by the **Commission** from the **Fund**.
- 3.1.7 To the extent that a deduction pursuant to sub-clause 3.1.6 is directly attributable to a contribution to the **Scheme** then upon such contribution being received by the **Commission** or at such other time as the **Commission** in its absolute discretion considers expedient in the circumstances the **Commission** may deduct or cause to be deducted from such contribution or relevant **Member** account such amount as it considers appropriate to provide for the relevant amount of tax, duty, surcharge, impost, fee or charge and may retain such amount within the **Scheme** until the **Commission** gives effect to the provisions of sub-clause 3.1.6.
- 3.1.8 The **Commission** shall not make any payments from the **Fund** to the **Commission** or the **State Fire Commission** except for:
- a) expenses incurred in the administration of the **Scheme**;
  - b) a refund of overpaid contributions; or
  - c) such payments as are permitted by the **SIS Act**.

## **3.2 INVESTMENT OF FUND**

- 3.2.1 The **Commission** must ensure that the assets of the **Fund** are invested in a manner that is consistent with the standards prescribed for regulated superannuation funds in accordance with the **SIS Act**.
- 3.2.2 Money standing to the credit of the **Fund** may be invested by the **Commission** in any manner in which the **Commission** thinks fit.
- 3.2.3 For the purposes of clause 3.2.2, the **Commission** may:
- a) investigate, negotiate for, promote, create, acquire, underwrite, sub-underwrite, dispose of, transfer, collect, realise, alter, convert, improve, exploit, insure, extend, reconstruct, develop, manage and otherwise deal with and turn to account any property and any right, contract, option or like in respect of property in any manner, with or without security or liability to any conditions acceptable to the **Commission**;
  - b) exercise all powers appertaining or incidental to any manner or form of property and discharge from the **Fund** all costs of and incidental to the powers of the **Commission** under this **Deed**, including without limitation, costs of the investigation of and negotiation for property which does not become part of the **Fund**;
  - c) issue, acquire or participate in and perform any obligation under or in respect of any synthetic investment or transaction including without limitation a futures contract, hedge contract, swap contract or option contract whether or not related to any other property forming part of the **Fund**;
  - d) acquire any property either alone or in conjunction with any other person, including without limitation the **Commission** acting as trustee or manager of another trust or scheme, and mix money or property forming part of the **Fund** with any other money or property, including without limitation money or property held or administered by the **Commission** as trustee or manager of another trust or scheme, but so long as at all times separate and distinct records are maintained in order to enable ready identification of the moneys and property attributable to the **Fund**; and
  - e) cause or allow any property to be acquired and held in the name of the **Commission** or of another person acceptable to the **Commission**, whether



or not that other person acts for the **Commission** alone or for the **Commission** and another person.

- 3.2.4 The **Commission** may authorise an investment manager or custodian to perform powers and duties of the **Commission** with respect to all or part of the moneys of the **Fund** available for investment.
- 3.2.5 The **Commission** must determine an investment strategy or strategies as soon as possible after the **transfer date** and shall review at least annually its investment strategy or strategies and the management and performance of its investments.
- 3.2.6 The **Commissioner** must advise **Members** at least annually of its investment strategy or strategies and performance and of any changes to those investment strategy or strategies.

### **3.3 ACCOUNTS AND RECORDS**

- 3.3.1 The **Commission** must ensure that there are proper accounts and records kept of the transactions and affairs of the **Commission** and any other record as shall sufficiently explain the financial operations and position of the **Fund**.
- 3.3.2 The **Commission** is to:-
  - a) ensure that all money payable to the **Commission** in relation to this **Deed** is properly collected;
  - b) ensure that all money expended by the **Commission** in relation to this **Deed** is properly authorised;
  - c) ensure that adequate control is maintained over assets owned by or in the custody of the **Commission**;
  - d) ensure that all liabilities incurred by the **Commission** are properly authorised;
  - e) develop and maintain adequate budgeting and accounting systems;
  - f) develop and maintain adequate internal audit and corporate governance systems;
  - g) develop and maintain adequate performance management and continuous improvement systems; and
  - h) ensure that the accounts of the **Fund** are properly audited by the Auditor appointed in accordance with this clause.

3.3.3 The **Commission** must include a statement of the operation and the financial position of the **Fund** as at the end of each financial year in the annual report of the **Commission** for the purposes of regulation 12 of the **Regulations**.

3.3.4 As soon as practicable after 30 June each year, the **Commission** must prepare the statement of accounts of the **Fund** in accordance with the Australian Accounting Standards.

3.3.5 The Auditor of the **Fund** shall be the Auditor-General as appointed pursuant to the *Financial Management and Audit Act 1990*.

3.3.6 The cost of auditing the **Fund** is to be met from the **Fund**.

### **3.4 TAXATION PROVISION ACCOUNT**

3.4.1 The **Commission** may establish within the **Fund** a taxation provision account for **Fund** accounting purposes.

3.4.2 Where a taxation provision account has been established under sub-clause 3.4.1, the

**Commission** is to credit to the taxation provision account any tax deducted from **Members'** accounts and any taxation provision applicable to the **Fund's** investment earnings.

- 3.4.3 Where a taxation provision account has been established under sub-clause 3.4.1, the **Commission** is to debit to the taxation provision account all or part of the tax paid to the **Commissioner of Taxation** pursuant to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*, applicable to the **Fund**.
- 3.4.4 If, at the end of the financial year, the taxation provision account is in surplus or deficit, the **Commission** must determine whether or not to:
- a) distribute the surplus to, or recover the deficit from, **Members** by way of:
    - i) adjusting investment returns; or
    - ii) a transfer to or from the **Fund**; or
  - b) carry forward the provision to the next financial year.

### **3.5 INVESTMENT INCOME RESERVE ACCOUNT**

- 3.5.1 The **Commission** may establish within the **Fund** an investment income reserve account.
- 3.5.2 Any surplus or deficit investment income may be credited to, or debited from, the investment income reserve account and distributed to, or deducted from, **Members'** accounts.
- 3.5.3 If at the end of each financial year the investment income reserve account is in surplus, the **Commission** must determine, on the advice of the **Actuary**, whether or not to distribute all or part of the surplus to **Members** by way of an adjustment to investment returns or by way of a transfer to the **Fund**.
- 3.5.4 If at the end of each financial year the investment income reserve account is in deficit, the **Commission** must, on the advice of the **Actuary**, either reduce **Members'** account balances by way of adjustment to investment returns or make up the deficit by way of a transfer from the **Fund**.

## **4 MEMBERSHIP**

### **4.1 MEMBERSHIP OF SCHEME**

- 4.1.1 Every person who is both a **Transferring Member** and an **Employee** appointed or employed prior to 1 July 2005 shall be a member of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions contained in this **Deed**. For the avoidance of doubt, an **Employee** appointed or employed on or after 1 July 2005 is not entitled to be or become a **Member** of the **Scheme**.
- 4.1.2 A **Member**, a **Spouse** or **Surviving Partner** of a **Member**, or a **Legal Personal Representative** of a **Member** shall be entitled to receive **Benefits** in accordance with this **Deed**.

### **4.2 ESTABLISHMENT OF MEMBER ACCOUNTS**

- 4.2.1 The **Commission** may establish such accounts and determine such administrative policy and terms and conditions that are necessary for the efficient and effective administration of **Members'** accounts.
- 4.2.2 Following the establishment of **Members'** accounts:

- a) the **Commission** must credit to such accounts, where appropriate:
  - i) all **State Fire Commission** superannuation contributions paid on behalf of **Members**;
  - ii) all contributions paid by **Members**;
  - iii) investment returns determined according to the interest rates calculated pursuant to clause 8.1; and
  - iv) any other amount authorised by this **Deed** and considered appropriate by the **Commission**;
- b) the **Commission** may debit to such accounts, where appropriate:
  - i) surcharge liability payments, taxation provisions or any other amounts required by the law of the Commonwealth or **State**;
  - ii) the cost of providing cover for **Benefits** on the death or **Incapacity** of a **Member** as provided by this **Deed**;
  - iii) administration and management charges as provided by this **Deed**; and
  - iv) any other amount authorised by this **Deed** and considered appropriate by the **Commission**.

### 4.3 DEATH AND INCAPACITY COVER

4.3.1 The **Commission** is hereby authorised and empowered to arrange cover for death and **Incapacity Benefits** and to receive and give full and effectual receipts releases and discharges in respect of the payment of any moneys under any such cover as may be required from it and which it thinks proper having regard to the circumstances. Any such cover shall be effected in the name of the **Commission** and remain under the control of the **Commission** during the time it is subject to the provisions of this **Deed**. The **Commission** only shall be entitled to enforce any rights remedies or contract in connection with any such cover or incidental thereto and shall be solely entitled to the full benefits and advantages thereof and no **Member** or any person claiming through or under the **Member** shall have or claim any right title or interest in or to any such cover or contract or in respect of the moneys payable thereunder.

4.3.2 If in respect of any part of a **Member's Benefit** which is insured, the insurer:

- a) does not accept the **Member** on its standard terms; or
- b) restricts the level or scope of insurance; or
- c) for any reason does not pay the whole or any part of a claim,

then the **Commission** shall modify the **Member's Benefit** as it considers appropriate so long as this is not contrary to law or the requirements imposed in similar circumstances on regulated superannuation funds by the **SIS Act**.

## 5 CONTRIBUTIONS

### 5.1 COMMISSION SUPERANNUATION CONTRIBUTIONS

5.1.1 Unless otherwise agreed between the **Commission** and the **State Fire Commission** having regard to the advice of the **Actuary**, the **State Fire Commission** shall contribute to the **Scheme** such percentage of the **Salaries** of **Members** who are **Employees**, or such other amount, as the **Actuary** shall recommend from time to time. Such contributions shall be made for so long as the **Actuary** recommends.

5.1.2 The **State Fire Commission** shall contribute to the **Scheme** such additional amounts as the **Minister**, on the recommendation of the **Actuary**, may direct so as to enable the

**Commission** to meet its liabilities under the **Deed**.

## **5.2 OBLIGATION OF MEMBERS TO CONTRIBUTE**

- 5.2.1 A **Member** who is an **Employee** must contribute at the rate of 5% of **Salary** until the earlier of **Normal Retirement Date** or the day on which the **Member** ceases to be an **Employee** PROVIDED THAT no contributions shall be payable by a **Member** while he or she suffers a **Temporary Incapacity** and is in receipt of **Benefits** pursuant to sub-clause 6.10. The contributions which would otherwise be payable by the **Member** but for this proviso shall for the purposes of this **Deed** be deemed to have been paid by the **Member**.
- 5.2.2 A **Member** who is an **Employee**, the **Commission**, and the **State Fire Commission** may agree that rather than deducting that **Member's** contributions from the **Member's Salary**, an amount equal to those contributions after allowing for contributions tax, and any other tax agreed between the **Member** and the **State Fire Commission**, is paid to the **Commission** by the **State Fire Commission** in respect of the **Member** in lieu of **Salary**.
- 5.2.3 Any deductions from a **Member's Salary** by the **State Fire Commission** and paid to the **Commission**, or amounts paid to the **Commission** in lieu of **Salary**, which do not comply with sub-clauses 5.2.1 or 5.2.2 (as the case may be) or with the **Member's** instructions are deemed not to be contributions pursuant to this **Deed** and are to be repaid to the **Member**.
- 5.2.4 Unless otherwise agreed pursuant to sub-clause 5.2.2, a **Member** shall have his or her regular contributions automatically deducted from his or her **Salary** by the **State Fire Commission**.

## **5.3 TIME AND MANNER OF PAYING CONTRIBUTIONS**

- 5.3.1 Unless otherwise approved by the **Commission**, the **State Fire Commission** shall cause to be shown as separately identifiable amounts on each pay-slip of every **Member** the amount of **State Fire Commission** additional employer contributions made to the **Fund** on the **Member's** behalf and the amount of **Member** contributions deducted from the **Member's Salary**.
- 5.3.2 The **Responsible Officer** must certify and forward, within 7 days of the relevant pay day, a return to the **Commission**, in such manner as determined by the **Commission**, detailing the total amount for that pay period of **State Fire Commission** superannuation contributions, additional employer contributions and **Member** contributions paid on behalf of each **Member**.
- 5.3.3 Contributions, including additional employer contributions, payable by the **State Fire Commission** or deducted from the **Member's salary** are to be forwarded to the **Commission** within 7 days of the relevant payday.

## **5.4 LEAVE OF ABSENCE**

- 5.4.1 The provisions of this sub-clause shall come into effect if the **State Fire Commission** grants a **Member** unpaid leave of absence.
- 5.4.2 During the period of leave:
- a) the **Member's Salary** shall for the purposes of this **Deed** be deemed to continue unaltered;
  - b) the **Member** shall not be required to contribute but may make such contributions (if any) as the **Commission** permits having regard to the law

prescribed for regulated superannuation funds by the **SIS Act**;

- c) the **State Fire Commission** shall not be required to contribute in respect of the **Member** except to such extent:
  - i) as the **Commission** may require in connection with any administration charges payable by it in relation to the **Member**; and
  - ii) as required by the **Guarantee Act** so that the **State Fire Commission** does not incur an individual superannuation guarantee shortfall (as defined in the **Guarantee Act**) in relation to the **Member**; and
- d) notwithstanding the provisions of this **Deed** the **Commission** may at its discretion take such action as shall cause death and **Incapacity** cover in respect of the **Member** to be discontinued and in consequence thereof any death or **Incapacity Benefit** payable in respect of the **Member** shall be adjusted to such extent (if any) as the **Commission** considers appropriate having regard to the provisions of this **Deed**.

5.4.3 If death and **Incapacity** cover in respect of the **Member** has been discontinued during any period of leave the **Commission** may on cessation of such period require the **Member** to submit such satisfactory evidence of good health as the **Commission** may require in support of an application by the **Commission** for the reinstatement of such cover in respect of the **Member**.

5.4.4 The **Commission** may at its discretion determine that the period of leave shall be wholly or partially excluded in connection with the determination of any **Benefit** which may become payable in respect of the **Member** (whether such **Benefit** arises during such period or upon or after the cessation thereof).

5.4.5 The **Commission** shall as soon as is reasonably practicable notify the **Member** of each and every adjustment or determination which it may make in accordance with this sub-clause and which affects or could affect any **Benefit** which may become payable in respect of the **Member**.

## 5.5 PART-TIME EMPLOYEES

5.5.1 In this sub-clause 'part-time employment' in relation to a **Member** means employment by the **State Fire Commission** where the **Member** is required to be engaged in that employment for less time per week than the standard time per week which is applicable to the **Member's** occupation by reason of an **Award** or a condition of employment specified by the **State Fire Commission** (disregarding overtime or similar arrangements).

5.5.2 In respect of any period of part-time employment or any portion of such a period (whether occurring at the commencement of the **Member's** Service or subsequently) the **State Fire Commission** may in relation to the **Member** request the **Commission** to give effect to the provisions of this sub-clause.

5.5.3 In the event of any material alteration in the circumstances of part-time employment of a **Member** the **Commission** may vary any adjustment made by it in connection with the relevant period of part-time employment pursuant to the provisions of this sub-clause.

5.5.4 The contributions payable by and in respect of the **Member** during the relevant period of part-time employment shall be adjusted to such extent (if any) and in such manner as the **Commission** considers to be reasonable and equitable having regard to:

- a) the time per week for which the **Member** is engaged in part-time employment;
- b) the standard time per week referred to in sub-clause 5.5.1;
- c) any relevant provisions contained in the law prescribed for regulated superannuation funds by the **SIS Act** and the **Guarantee Act**; and

- d) the wishes of the **State Fire Commission**.
- 5.5.5 The basis of determination of any **Benefit** in respect of the **Member** (whether such **Benefit** arises during the relevant period of part-time employment or upon or after the cessation thereof) shall be adjusted to such extent (if any) and in such manner as the **Commission** considers to be reasonable and equitable having regard to:
- a) the extent by which the contributions payable by or in respect of the **Member** have been adjusted pursuant to sub-clause 5.5.4; and
- b) the matters referred to in sub-clause 5.5.4.
- 5.5.6 The **Commission** may seek to adjust any amount of death and **Incapacity** cover in respect of the **Member** (either for the duration of the relevant period of part-time employment or for the remainder of the period during which the **Member** is covered) to such extent (if any) and in such manner as the **Commission** considers to be appropriate in the circumstances.
- 5.5.7 Upon the cessation of the relevant period of part-time employment or in the event of any material alteration in the circumstances of part-time employment of a **Member** the **Commission** may require the **Member** to submit satisfactory evidence of good health in connection with any death and **Incapacity** cover sought by the **Commission** in respect of the **Member**.
- 5.5.8 The **Commission** shall as soon as is reasonably practicable notify the **Member** of each and every adjustment and determination which it may make in accordance with this sub-clause and which affects or could affect any **Benefit** which may become payable in respect of the **Member**.

## 6 BENEFITS

### 6.1 BENEFIT PAYMENT STANDARDS

- 6.1.1 **Benefits** become payable on the happening of any one of the events specified in this Part.
- 6.1.2 **Benefits** payable under this **Deed** may be paid by the **Commission** only where regulated superannuation funds are permitted by the **SIS Act** to make such a payment in similar circumstances.
- 6.1.3 All **Benefits** preserved in accordance with this Part or by the **Commission** under this **Deed** shall be preserved and vested in the **Member** in such accounts as the **Commission** determines having regard to the wishes of the **Member**.
- 6.1.4 A preserved **Benefit** becomes payable when the **Commission** is either notified or becomes aware that the **Member** has satisfied the conditions of release prescribed under the operation of this Part.
- 6.1.5 The **Commission** shall notify the **Member**, or his or her **Surviving Partner**, or his or her **Legal Personal Representative** of the entitlement to a preserved **Benefit** when it becomes payable under this Part by sending a written notice to the last known address of the **Member**, or the **Member's Surviving Partner** or that of his or her **Legal Personal Representative**.
- 6.1.6 Every person in receipt of, or claiming, a **Benefit** from the **Scheme** shall produce to the **Commission** such information, documents and other evidence as may be required by the **Commission** for the purposes of this **Deed**.
- 6.1.7 If a person fails to produce the required information, documents and other evidence, the **Commission** may withhold payment or suspend payment of the **Benefit** or refuse to consider the claim until the requirements of the **Commission** are met.
- 6.1.8 Any **Benefit** payable pursuant to the **Scheme** (except a **Temporary Incapacity Benefit**) must be paid as a lump sum, which, upon becoming payable, is, subject to clause 9.2, to

be transferred, after deduction of any tax liability, to an account in the name of the person entitled to the Benefit, in a superannuation fund elected by the person, or, if an election is not made within a reasonable period of time, as determined by the Commission, to an eligible rollover fund chosen by the Commission.

## **6.2 OUTWARD PORTABILITY**

6.2.1 A **Member** may elect in writing:

- a) to cash the whole of his or her **Benefit**; or
- b) to have the whole of his or her **Benefit** rolled-over to a **Complying Superannuation Plan**,

but must at the same time provide to the **Commission** a written release from any further liability to the **Member** under the **Scheme** taking effect on the **Commission** giving effect to the election.

6.2.2 Where a **Member** makes an election under this clause his or her **Benefit** is to be calculated as the greater of the benefit entitlement options the **Member** would have had under Part 6 of this **Deed** if he or she had ceased to be an **Employee**, for reasons other than death, ill-health, **Permanent Incapacity** or **Temporary Incapacity**, as at the date of the election.

6.2.3 On receipt of an election and release (in a form satisfactory to the **Commission**) under sub-clause 6.2.1 the **Commission** must, subject to sub-clause 6.2.4, give effect to that election.

6.2.4 Any **Benefit** may be paid by the **Commission** only where regulated superannuation funds are permitted under the **SIS Act** to make such a payment in similar circumstances.

6.2.5 The **Commission** shall not charge any exit fees for any amounts that are rolled over to a **Complying Superannuation Plan**.

6.2.6 Upon giving effect to an election made under this clause, the **Member's** entitlement to any **Benefit** from the **Scheme** is satisfied in full. Where the **Member** has elected to have the whole of his or her **Benefit** rolled-over to a **Complying Superannuation Plan** the **Commission** is not responsible for the manner in which the trustee of the other fund deals with any amount transferred or rolled over.

## **6.3 MINIMUM BENEFIT**

6.3.1 Notwithstanding anything to the contrary expressed or implied in this **Deed**, the minimum benefit payable in respect of a **Member** who ceases to be an **Employee** for whatever reason shall be:

- a) in respect of a **Member** who was a member of the **Former Scheme** at 30 June 1992, the aggregate of:
  - i) the **Benefit** that would have been payable pursuant to this **Deed** had the **Member** ceased to be an **Employee** at 30 June 1992 accumulated with interest from that date at the **Interest Rates**; and
  - ii) the **Minimum Requisite Benefit** accrued from 1 July 1992; and
- b) in respect of a **Member** who became a member of the **Former Scheme** on or after 1 July 1992, the **Minimum Requisite Benefit**.

## **6.4 REDUCTIONS IN SALARY**

- 6.4.1 When a **Benefit** becomes payable to or in respect of a **Member** who is an **Employee** and the **Member's Salary** is less than the highest of the **Member's** previous **Salaries** the amount of **Benefit** payable to or in respect of that **Member** may be increased by such amount as the **Commission** may determine having regard to the advice of the **Actuary**.

## 6.5 NORMAL RETIREMENT BENEFIT

If a **Member** ceases to be an **Employee** at **Normal Retirement Date** the **Commission** shall pay to that **Member** an amount determined as follows:

- a) 15% of **Salary** for each year of **Service** completed on or before 30 June 1990; and
- b) 20% of **Salary** for each year of **Service** completed after 1 July 1990 up to 30 June 2005; and
- c) 16% of **Salary** for each year of **Service** completed on or after 1 July 2005,

PROVIDED THAT the amount payable shall not be less than the amount determined pursuant to sub-clause 6.8.

- 6.5.2 For the purposes of sub-clause 6.5.1, **Service** shall be calculated in years and complete months.

## 6.6 LATE RETIREMENT BENEFIT

- 6.6.1 If a **Member** remains an **Employee** after **Normal Retirement Date** the **Commission** shall pay to that **Member** on his or her ceasing to be an **Employee** an amount equal to the aggregate of:

- a) the **Benefit** which would have been payable at **Normal Retirement Date** in accordance with sub-clause 6.5 had the **Member** retired at that date; and
- b) any contributions made to the **Scheme** from that date by the **Member** or the **Commission** less any amount deducted therefrom pursuant to sub-clause 3.1.7; and
- c) interest on the amounts in (a) and (b) of this sub-clause at the **Interest Rates**.

## 6.7 EARLY RETIREMENT BENEFIT

- 6.7.1 If a **Member** ceases to be an **Employee** :

- a) within ten years before **Normal Retirement Date** ; or
- b) with the consent of the **Commission** at any time before **Normal Retirement Date** on account of ill health which in the opinion of the **Commission** is not **Permanent Incapacity**,

then the **Commission** shall pay to that **Member** an amount which shall be equal to the amount determined by the **Actuary** as having accrued pursuant to sub-clauses 6.5.1 (a), (b) and (c) to the date of ceasing to be an **Employee** having regard to the **Rate of Accrual** applicable to that **Member** and the **Member's Initial Accrual** (if any) PROVIDED THAT the amount payable shall not be less than the amount determined pursuant to sub-clause 6.8.

## 6.8 LEAVING THE SERVICE

- 6.8.1 If a **Member** ceases to be an **Employee** before **Normal Retirement Date** in circumstances in which no other benefit is payable pursuant to the provisions of this Part the **Commission** shall pay to that **Member**:

- a) in respect of a **Member** whose **Date of Admission** is prior to 1 July 1990, the greater of:



- i) an amount equal to the sum of:
  - A the **Transfer Amount**, and all contributions made or deemed to be made by the **Member** to the **Scheme**, less any amounts deducted therefrom pursuant to sub-clause 3.1.7; plus
  - B if the **Member** has not completed 5 years of **Service** as at 1 July 2005, 2.5% of the amount referred to in sub-clause 6.8.1(a)(i)A for each complete year of **Service** as at 1 July 2005; or
  - C if the **Member** has completed 5 years of **Service** as at 1 July 2005 but has not completed 10 years of **Service** as at 1 July 2005, 7.5% of the amount referred to in sub-clause 6.8.1(a)(i)A for each complete year of **Service** as at 1 July 2005; or
  - D if the **Member** has completed 10 years of **Service** as at 1 July 2005 but has not completed 15 years of **Service** as at 1 July 2005, 10% of the amount referred to in sub-clause 6.8.1(a)(i)A for each complete year of **Service** as at 1 July 2005; or
  - E if the **Member** has completed 15 or more years of **Service** as at 1 July 2005, 20% of the amount referred to in sub-clause 6.8.1(a)(i)A for each complete year of **Service** as at 1 July 2005; and
- ii) an amount equal to the sum of:
  - A that element of the **Transfer Amount** comprising contributions made or deemed to be made prior to 1 July 1990 by the **Member** to the **Former Scheme** and the **Fire Brigades Scheme** less any amounts deducted therefrom pursuant to sub-clause 3.1.7 together with interest on that element of the **Transfer Amount** and those contributions calculated from 1 July 1990 at the **Interest Rates**; plus
  - B that element of the **Transfer Amount** comprising contributions made or deemed to be made by the **Member** from 1 July 1990 to the **Former Scheme** and the **Fire Brigades Scheme**, and all contributions made or deemed to be made by the **Member** to the **Scheme**, less any amounts deducted therefrom pursuant to sub-clause 3.1.7 together with interest on that element of the **Transfer Amount** and those contributions at the **Interest Rates**; plus
  - C 10% of the amount referred to in sub-clauses 6.8.1(a)(ii)A and B for each completed year of **Service** but not exceeding 100% of that amount; and
- b) in respect of a **Member** whose **Date of Admission** is on or after 1 July 1990, an amount equal to the sum of:
  - i) the **Transfer Amount**, and all contributions made or deemed to be made by the **Member** to the **Scheme**, less any amounts deducted therefrom pursuant to sub-clause 3.1.7 together with interest on the **Transfer Amount** and those contributions at the **Interest Rates**; and
  - ii) 10% of the amount referred to in sub-clause 6.8.1(b)(i) for each completed year of **Service** but not exceeding 100% of that amount,

PROVIDED THAT

- c) if the **Member** is ceasing to be an **Employee** by reason of dismissal or resignation to avoid dismissal for alleged misconduct or alleged neglect of duty the **Benefit** payable under this sub-clause shall be equal to:
  - i) in respect of a **Member** whose **Date of Admission** is prior to 1 July

1990, the sum of the amounts determined in accordance with sub-clauses 6.8.1(a)(ii)A and B, and

- ii) in respect of a **Member** whose **Date of Admission** is on or after 1 July 1990, the amount determined in accordance with sub-clause 6.8.1(b)(i);
- d) if the **Member** is ceasing to be an **Employee** by reason of Redundancy the amount payable under this sub-clause may be increased to such greater amount as the **Commission**, with the consent of the **State Fire Commission**, having regard to the advice of the **Actuary**, considers to be equitable in the circumstances;
- e) if the **Member** is dismissed or his or her employment is terminated, the **Commission** shall not if the **Member** applies to the appropriate industrial tribunal pay any **Benefit** to or in respect of that **Member** until the application has been heard and determined;
- f) for the purposes of this sub-clause **Service** shall be calculated in years and complete months.

## 6.9 ENTITLEMENT TO A DEATH OR PERMANENT INCAPACITY BENEFIT

6.9.1 If a **Member** who is an **Employee** dies before **Normal Retirement Date** or ceases to be an **Employee** before **Normal Retirement Date** as a result of **Permanent Incapacity**, the **Commission** shall pay:

- a) in respect of a **Member** who at the date of death or **Permanent Incapacity** has not been refused any cover for death and **Permanent Incapacity Benefits**, or in respect of whom no restriction or limitation applies to the amount of such cover, an amount equal to the greater of:
  - (i) 5 times the **Member's Salary**; or
  - (ii) the amount which would have been payable in respect of that **Member** pursuant to sub-clause 6.7 had the **Member** retired on account of ill health with the consent of the **State Fire Commission** on the date of his or her death or **Permanent Incapacity**;
- b) in respect of a **Member** who at the date of death or **Permanent Incapacity** has been refused cover for death and **Permanent Incapacity Benefits** or in respect of whom a restriction or limitation applies to the amount of such cover, an amount equal to the sum of the amount which would have been payable in respect of that **Member** pursuant to sub-clause 6.7 had the **Member** retired on account of ill health with the consent of the **State Fire Commission** on the date of death or **Permanent Incapacity** and any amount of cover credited to the **Scheme** in respect of the **Member** pursuant to the applicable insurance cover PROVIDED THAT the amount determined shall not exceed the amount which would otherwise be payable under sub-clause 6.9.1(a)(i).

6.9.2 If a **Member** dies while in the employment of the **State Fire Commission** on or after **Normal Retirement Date** the **Commission** shall pay for the benefit of that **Member** an amount equal to that which would have been payable pursuant to sub-clause 6.6 had the **Member** retired on the date of his or her death.

## 6.10 TEMPORARY INCAPACITY PENSION

6.10.1 If a **Member** is absent from the employment of the **State Fire Commission** for a continuous period of three months owing to injury or illness before **Normal Retirement Date** and the provider to the **Commission** of Group Salary Continuance or similar insurance is satisfied that the **Member** is suffering a **Temporary Incapacity**, the

**Commission** shall pay to or in respect of the **Member** an annual income equal to 75% of the **Member's Salary**. The amount of the annual income shall be reduced by any amount (expressed as annual amounts) received by the **Member** independently of the **Scheme**:

- a) as periodic income from the **State Fire Commission**;
- b) pursuant to any **Award**;
- c) as periodic income from any personal sickness and accident policy; or
- d) as periodic compensation pursuant to any statute or ordinance (whether by way of workers' compensation, accident compensation, social service payment or otherwise),

which in the opinion of the **Commission** relates to reduced income-earning capacity of the **Member** arising from the inability of the **Member** to work by reason of injury or illness and which relates to the period in respect of which a payment is made pursuant to sub-clause 6.10.3.

6.10.2 If a **Member** is absent from the employment of the **State Fire Commission** for a continuous period of three months before **Normal Retirement Date** in circumstances where sub-clause 6.10.1 does not apply, the **Commission** may in its absolute discretion, if, after consideration of such medical evidence it thinks fit, it is satisfied that the **Member** is unable to resume work by reason of the injury or illness, pay to or in respect of the **Member** an annual income of such amount as it determines but not exceeding the amount of annual income which would have been payable pursuant to sub-clause 6.10.1.

6.10.3 The annual income payable pursuant to sub-clauses 6.10.1 or 6.10.2 shall be payable by equal fortnightly instalments on normal pay days for the **Commission**. The first instalment shall fall due on the day immediately following the date on which the said period of three months expires and shall continue to be payable until:

- a) the **Member** returns to active employment with the **Commission**;
- b) the **Member** takes up employment with another employer;
- c) in relation to a **Member** in respect of whom sub-clause 6.10.1 applies, the **Member** ceases to suffer a **Temporary Incapacity**;
- d) in relation to a **Member** in respect of whom sub-clause 6.10.2 applies, the **Commissioner**, after consideration of such medical evidence as it thinks fit, is of the opinion that the **Member** is able to resume work;
- e) the **Member** suffers a **Permanent Incapacity**;
- f) the **Member** dies;
- g) the **Member** reaches **Normal Retirement Date**; or
- h) the **Member** ceases to be in the **Service**,

PROVIDED THAT in relation to a **Member** in respect of whom sub-clause 6.10.2 applies the annual income may cease to be payable from such earlier date as the **Commission** in its sole discretion may determine.

## **6.11 SPLIT OF BENEFITS IN ACCORDANCE WITH FAMILY LAW ACT 1975**

6.11.1 If a **Member's** account is subject to a payment split as defined in section 90MD of the *Family Law Act 1975*, that payment split is to be implemented in accordance with the provisions of:

- a) Part VIII B of the *Family Law Act 1975*;
- b) the *Family Law (Superannuation) Regulations 2001*; and
- c) Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*.

- 6.11.2 If a **Member's** account is subject to a payment flag as defined in section 90MD of the *Family Law Act 1975*, that payment flag is to be applied in accordance with the provisions of:
- a) Part VIIIIB of the *Family Law Act 1975*; and
  - b) the *Family Law (Superannuation) Regulations 2001*.
- 6.11.3 When the **Commission** implements a payment split under sub-clause 6.11.1, it must adjust, vary or reduce any **Benefit** payable or which may become payable from the **Scheme** in respect of the relevant **Member** on such basis and at such times as the **Commission** determines from time to time on the advice of the **Actuary** (including by the establishment of a debt account), where a regulated superannuation fund would be permitted by the SIS Act or the *Family Law Act 1975* to make such an adjustment, variation or reduction in similar circumstances.
- 6.11.4 The **Commission** may formulate and give effect to policies and procedures in relation to:
- a) the timing of the calculation of the value of the interest of a **Non-Member Spouse**;
  - b) the manner in which the **Member's** interest in the **Scheme** following a payment split may be adjusted; and
  - c) other matters relating to the payment split and the **Member's** and **Non-Member Spouse's** interest in the **Scheme**, as it determines from time to time.
- 6.11.5 Where an eligible person, within the meaning of section 90MZB of the *Family Law Act 1975*, has applied to the **Commission** for information in accordance with that section about the superannuation interest of a **Member**, the **Commission** must comply with the requirements of that Act.
- 6.11.6 The **Commission** may impose fees in relation to any:
- a) application for information relating to a superannuation interest;
  - b) payment split or payment flag; or
  - c) other matter;
- relating to Part VIIIIB of the *Family Law Act 1975*, as permitted by that Act.

## 6.12 FORMER SCHEME BENEFIT

- 6.12.1 If a **Member** who was a member of the **Fire Brigades Scheme** for whom there was a special policy in force under the **Fire Brigades Scheme**, the proceeds of which policy were transferred to the **Former Scheme**, retires, dies, suffers a **Permanent Incapacity** or leaves the **Service** for any other reason there shall be payable to or for the benefit of that **Member** in addition to any other **Benefit** an amount determined in accordance with the provisions of this sub-clause.
- 6.12.2 The amount payable under sub-clause 6.12.1 in respect of a **Member** who retires, dies, suffers a **Permanent Incapacity** or resigns from the **Service** shall be an amount equal to the proceeds transferred to the **Former Scheme** from the **Fire Brigades Scheme** in respect of that **Member** increased by the ratio of the **Member's Salary** at the date of his or her retirement, death, **Permanent Incapacity** or **Resignation** to the **Member's Salary** at 1 October 1973.
- 6.12.3 The amount payable under sub-clause 6.12.1 in respect of a **Member** who ceases to be an **Employee** for any reason other than those referred to in sub-clause 6.12.2 shall be an amount equal to the proceeds transferred to the **Former Scheme** from the **Fire Brigades Scheme** in respect of that **Member**.

## 7 THIS CLAUSE IS INTENTIONALLY BLANK

## 8 FINANCIAL PROVISIONS

### 8.1 FIXING OF INTEREST RATES

8.1.1 The **Commission** is to calculate and determine interest rates in respect of each **Member's** account established under this **Deed**, at least annually, having regard to:

- a) the earning rates of the **Fund**;
- b) the **Commissions** investment strategy and policy;
- c) any allowances for unrealised capital gains or losses; and
- d) the cost of administration, investment management, taxation and other expenses the **Commission** has paid or is likely to pay as provided by clause 8.2.

8.1.2 The **Commission** is to credit to a **Member's** account or accounts interest pursuant to this clause at least annually.

### 8.2 COST OF ADMINISTRATION

8.2.1 The costs incurred in connection with the administration and management of this **Scheme** including the costs of administration, marketing and promotion and investment are to be met from the **Fund** in a manner to be determined by the **Commission**.

8.2.2 The **Commission** must at least annually determine and approve a budget for the administration and management of the **Scheme** and the **Fund**.

### 8.3 TIME AND MANNER OF BENEFIT PAYMENTS

8.3.1 The **Commission** is to use its best endeavours to ensure that a **Benefit** payable under this **Deed** is paid as soon as is practicably possible but no later than 20 working days after the **Commission** has received a completed payment instruction form for a **Benefit** from a **Member** or his or her **Legal Personal Representative**.

8.3.2 The **Commission** may at its discretion credit interest at the interest rate determined pursuant to this **Deed** to a **Benefit** which is not paid within this period.

### 8.4 TAXATION OF CONTRIBUTIONS AND LUMP SUM BENEFITS

8.4.1 For the purpose of taxation of **Superannuation Contributions** under the law of the Commonwealth, the **Commission** is to treat-

- a) all **Employer Contributions** as **Concessional Contributions**; and
- b) all **Member Contributions** which have been included in the **Assessable Income** of the **Fund** as **Concessional Contributions**; and
- c) all **Member Contributions** which have not been included in the **Assessable Income** of the **Fund** as **Non-Concessional Contributions**; and
- d) the **Element Untaxed in the Fund** of **Roll-over Superannuation Benefits** as **Assessable Income** of the **Fund**; and
- e) the **Element Untaxed in the Fund** of transferred **Superannuation Benefits** as **Assessable Income** of the **Fund**.

8.4.2 The **Commission**, having regard to the law of the Commonwealth, must –

- a) establish and maintain policies and administrative procedures with respect to the taxation of **Superannuation Contributions** and **Superannuation Benefits**; and
- b) determine, from time to time –

- i) the proportion of a **Superannuation Benefit** that is to be treated by the **Commission** as an **Element Untaxed in the Fund** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
- i) the proportion of a **Superannuation Benefit** that is to be treated by the **Commission** as an **Element Taxed in the Fund** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
- ii) the proportion of a **Superannuation Benefit** that is to be treated by the **Commission** as the **Tax Free Component** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth.

8.4.3 The **Commission**, in accordance with the law of the Commonwealth, must deduct from **Roll-over Superannuation Benefits, Superannuation Contributions and Superannuation Benefits** all amounts required to be paid as taxation under the law of the Commonwealth and remit those amounts to the **Commissioner of Taxation**.

8.4.4 A **Benefit** payable under this **Deed** is to be reduced at the time of payment by the **Commission** in accordance with sub-clause 8.5.12.

#### **8.4A NOTIONAL TAXED CONTRIBUTIONS**

8.4A.1 For the purposes of this **Deed**, the **Commission** must calculate for each **Member** the notional taxed contributions for a financial year having regard to Subdivision 292-D of the *Income Tax Assessment Act 1997* and *Income Tax Assessment Regulations 1997* of the Commonwealth.

#### **8.5 ESTABLISHMENT OF SURCHARGEABLE CONTRIBUTIONS DEBT ACCOUNT**

8.5.1 The **Commission** must calculate for each **Member** a notional contributions surcharge amount having regard to either his or her **Salary** and the notional surchargeable contributions factor provided to the **Commission** by the **Actuary** as required by the law of the Commonwealth and this **Deed**.

8.5.2 The **Commission** must provide the **Commissioner of Taxation**, as required by the law of the Commonwealth, with particulars of the notional contributions surcharge amount in respect of each **Member**.

8.5.3 Where a **Member** so requests, the **Commission** is to give to that **Member** a copy of the particulars given to the **Commissioner of Taxation** under sub-clause 8.5.2 relating to that **Member** together with details of how the notional contributions surcharge amount was calculated.

8.5.4 If a **Member** believes that the amount referred to in sub-clause 8.5.2 is incorrect, the **Member** may by notice in writing to the **Commission**:

- a) request that the calculation of the amount be reviewed; and
- b) request the **Commission** to consider any evidence which the **Member** may submit to it.

8.5.5 If a surchargeable contributions debt or similar account was established for a **Member** by the **Former Trustee**, that account shall continue to have effect after the 1 May 2006 as if it was a surchargeable contributions debt account established by the **Commission** pursuant to this clause 8.5.

8.5.6 Subject to sub-clause 8.5.7, on receipt of an assessment notice from the **Commissioner of Taxation** in respect of a **Member**, the **Commission** must establish a surchargeable contributions debt account in the name of the **Member**, debit it by the amount of any

surcharge contributions tax liability specified in the notice of assessment relating to the **Member**, and pay that amount to the **Commissioner of Taxation**.

- 8.5.7 On receipt of an assessment notice or amended assessment notice from the **Commissioner of Taxation** in respect of a **Member** in circumstances where a surchargeable contributions debt account has already been established for the **Member**, the **Commission** shall not debit the account by the amount of the surcharge contributions tax liability specified in the notice, but shall adjust the balance of the account to reflect the change in the **Member's** surcharge contributions tax liability required by the notice by comparison with the last of such notices previously provided by the **Commissioner of Taxation** in respect of the **Member**, and pay or recover from the **Commissioner of Taxation** the amount by which the surchargeable contributions debt account has been adjusted.
- 8.5.8 If the surchargeable contributions debt account is in debit at the end of a financial year, the **Commission** must, in accordance with the law of the Commonwealth, debit the account with interest.
- 8.5.9 A **Member** may make payments to his or her surchargeable contributions debt account to reduce in full or in part the balance of that account. A payment made under this sub-clause is taken not to be a contribution for the purposes of this **Deed**.
- 8.5.10 A payment made under this clause by the **Commission** on behalf of a **Member** as part of his or her remuneration is taken to be a contribution by the **Commission** for the purposes of this **Deed**.
- 8.5.11 On receipt of a payment under sub-clause 8.5.9 or 8.5.10, the **Commission** must:
- a) credit the surchargeable contributions debt account of the relevant **Member** with that amount; and
  - b) take any other action required under the law of the Commonwealth relating to the surcharge liability.
- 8.5.12 Where a lump sum **Benefit** entitlement becomes payable by the **Commission** to a **Member** whose account established or maintained under this clause is or has been in debit, the **Commission** must reduce the **Benefit** payable by the extent of:
- a) the balance of the **Member's** surchargeable contributions debt account; and
  - b) any foregone investment earnings and associated amounts.
- 8.5.13 The **Commission** must, at least annually, inform each **Member** of the balance of his or her surchargeable contributions debt account and of any debits or credits, including interest, to that account.

## **8.6 PROVISION OF CERTAIN INFORMATION BY THE COMMISSION**

- 8.6.1 The **Commission** must provide the **Actuary** with such information in respect of **Members** as may be necessary for the purposes of this **Deed**.
- 8.6.2 The **Commission** must provide the **Commissioner of Taxation** with such information in respect of **Members** as may be required under the law of the Commonwealth.
- 8.6.3 The **Commission** must, at least annually, distribute to each **Member**:
- a) a report of its operations during the last financial year; and
  - b) a statement of the benefit entitlement of that **Member** and balance of his or

her account, detailing the total interest credited or debited, administration and management charges, death and incapacity premiums deducted and any surcharge or taxation liabilities deducted from the account or accounts; and

- c) a statement of the **Commission's** current investment strategies and performance.

## 8.7 SCHEME SOLVENCY CERTIFICATE

- 8.7.1 The **Commission** must comply with the financial management standards prescribed for regulated superannuation defined benefit funds by the **SIS Act**.
- 8.7.2 The **Commission** must obtain from the **Actuary** all relevant certificates required by the **SIS Act** to be obtained by regulated superannuation funds from actuaries, together with all other certificates required to be obtained by the **Commission** from the **Actuary** by law.

## 9 GENERAL PROVISIONS

### 9.1 THIS CLAUSE IS INTENTIONALLY BLANK

### 9.2 PAYMENT ON DEATH OR PERMANENT INCAPACITY

- 9.2.1 If a **Member** becomes entitled to a **Permanent Incapacity Benefit**, the **Commission** shall pay the **Benefit** to that **Member**, unless in the opinion of the **Commission**, the **Member** is incapable of administering his or her own affairs, in which case the **Commission** shall pay the **Benefit** to the **Member's Spouse** or **Legal Personal Representative**.
- 9.2.2 Except as provided in sub-clause 9.2.3, where a lump sum **Benefit** is payable under this **Deed** on the death of a **Member**, that **Benefit** is to be paid to:
  - a) the **Surviving Partner** of that **Member**; or
  - b) if there is no **Surviving Partner**, the person with whom the **Member** was in a caring relationship which was the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*, which deed was revoked by the death of that **Member**; or
  - c) if there is no person referred to in sub-clause 9.2.2 a) or 9.2.2 b), the estate of that **Member**, subject to the production of grant of probate or letters of administration; or
  - d) a person, where applicable, in accordance with sub-clause 9.10.
- 9.2.3 Notwithstanding sub-clause 9.2.2, a **Member** may, by notice in writing to the **Commission**:
  - a) elect that in the event of his or her death all or part of the **Benefit** payable on his or her death is to be paid to his or her estate; or
  - b) revoke any such election,
  - c) and, where the election is in force, sub-clause 9.2.2 does not apply to any part of the **Benefit** that is subject to the election.
- 9.2.4 This clause does not apply to the **Spouse** of a **Member** at the time of his or her death, who at the time was separated and living apart and was not receiving, in the opinion of the **Commission**, significant financial support from the deceased **Member**.
- 9.2.5 If, upon the death of a **Member**, a question arises as to who is the **Surviving Partner** of that **Member** at the time of his or her death, for the purposes of this **Deed** the question is



to be determined by the **Commission** having regard to such matters as it considers relevant.

9.2.6 If the **Commission** is unable to determine who is the **Surviving Partner** of the **Member** at the time of his or her death, after any enquiry it considers appropriate under this clause, any **Benefit** that would otherwise be payable to the **Surviving Partner** of the **Member** shall be paid to the **Member's Legal Personal Representative**.

9.2.7 When determining a question under sub-clause 9.2.5, the **Commission** must not determine more than one person to be the **Surviving Partner** of a **Member**.

### **9.3 POLICIES AND PROCEDURES TO BE ADOPTED BY THE COMMISSION**

9.3.1 The **Commission** shall formulate and give effect to policies and procedures in relation to, but not limited to the following:

- a) investment strategy and objectives;
- b) income distribution and interest rates;
- c) contribution collection and account administration;
- d) taxation strategy;
- e) the management of reserves;
- f) the determination of and setting of administration and management costs; and
- g) other administrative matters,

that are necessary for the efficient and effective management of the **Scheme** and in the interests of **Members**.

9.3.2 The **Commission** shall maintain a register of the policies and procedures referred to in this clause and make those policies available to **Members**, provided the disclosure of such policies and procedures shall not adversely affect the financial, commercial or other operations of the **Commission**.

9.3.3 If, in the opinion of the **Commission**, there is a significant change in a policy or procedure referred to in this clause and this change may adversely affect **Members** or a class or category of **Members**, the **Commission** must notify such **Members** of the change as soon as practicable given the nature of the change and any requirement arising from the law of the Commonwealth.

### **9.4 COMMISSION TO PROVIDE INFORMATION**

9.4.1 The **Commission** shall submit to the **Commission**, in such manner and form as the **Commission** may determine, such information or evidence, as the **Commission** requires, relating to **Members** who are or were **Employees** of the **Commission**.

9.4.2 Where the **Commission** fails to provide the necessary information or evidence in relation to a **Member**, the **Commission** may defer payment of a **Benefit** to, or in relation to, that **Member** where the information sought is relevant to the payment of the **Benefit**.

### **9.5 DUTIES OF RESPONSIBLE OFFICER**

9.5.1 The **Responsible Officer** must notify the **Commission** in writing, or in a manner approved by the **Commission**, of the following details for **Members** who are **Employees**:

- a) surname and given names;
- b) date of birth;

- c) sex and marital status;
- d) postal address;
- e) private address;
- f) tax file number;
- g) employment status and percentage of full-time equivalent hours;
- h) commencement date of service; and
- i) rate of salary.

9.5.1A Upon a request from the **Commission**, a **Responsible Officer** must provide the **Commission** with the tax file number of a **Member** to enable the **Commission** to administer the **Fund** in accordance with the *Income Tax Assessment Act 1997* of the Commonwealth.

9.5.2 The **Responsible Officer** must:

- a) on being notified by the **Member** of any changes in the information referred to in sub-clause 9.5.1 a), b), c), d), e) or f), immediately notify the **Commission** in writing or in any other manner approved by the **Commission** of those changes;
- b) immediately notify the **Commission** in writing or in any other manner approved by the **Commission** of any changes in the information referred to in sub-clause 9.5.1 g), h) or i) and provide a copy of this notification to the **Member**;
- c) on **Resignation, Redundancy, Retirement** or death of a **Member**, furnish the **Commission** with any documents completed by the Member, that **Member's Surviving Partner** or **Legal Personal Representative** and the **Responsible Officer** that may be necessary to support the payment of **Benefits** accruing under this **Deed**.

9.5.3 On receipt of information referred to in sub-clause 9.5.1 or 9.5.2, the **Commission** must deliver or forward to the **Member** -

- a) any relevant forms, notice of election and brochures required to be provided to the **Member** by this **Deed**; and
- b) information and notices required to be provided to the **Member** under any law of the Commonwealth for the purposes of this **Deed**.

## 9.6 CLAIMANT TO PROVIDE INFORMATION

9.6.1 Any person who submits a claim in relation to this **Deed** does so on the basis that the **Member** to whom the claim relates is deemed to have approved of, and be bound by, the **Deed** in all respects as if the **Member** were an original party to this **Deed**.

9.6.2 The **Commission** may require a **Member** or a claimant for payment of a **Benefit** under this **Deed** -

- a) to provide the **Commission** with specified information or evidence referred to in clause 9.5 in a manner approved by the **Commission**;
- b) to provide the **Commission** with authority to request from a third person any such information or evidence; or
- c) in the case of a claimant for an **Incapacity Benefit**, to undergo any medical examinations by such legally qualified and registered medical practitioners, as may be required by the **Commission** or the insurer.

9.6.3 A requirement under sub-clause 9.6.2 may be made only in relation to information, evidence or medical examinations that is relevant to the assessment of an application made by the claimant for payment of the **Benefit**.

9.6.4 Where -

- a) the **Member** or claimant, to whom a requirement under this clause relates, fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or
- b) a person referred to in this clause fails to provide information or evidence that the **Commission** has been authorised to request from the person or, in purported compliance with the request by the **Commission** for the information or evidence, makes or provides an untrue statement,

the **Commission** may take such action in relation to the **Benefit** concerned as, in the opinion of the **Commission**, would place the claimant as nearly as possible in the same position as the claimant would be if the true information or evidence had been provided.

9.6.5 For the purposes of this clause, "untrue", in relation to a statement, includes:

- a) false or misleading in the form and context in which the statement appears; and
- b) false or misleading by reason of the omission from the statement of matter that is material.

## 9.7 MAKING OF ELECTIONS, DIRECTIONS, CLAIMS OR APPLICATIONS

9.7.1 An election, direction, claim or application under this **Deed**:-

- a) must be in writing signed by the person entitled to make the election, direction, claim or application and in such form as the **Commission** determines;
- b) subject to sub-clause 9.7.2, is not valid unless it is received in the office of the **Commission**;
- c) takes effect when it is received in the office of the **Commission**, except that the **Commission** may, if it thinks fit, accept that an election, direction, claim or application lodged with the **State Fire Commission** takes effect from the date it is so lodged.

9.7.2 Where an election, direction, claim or application is not received in the office of the **Commission** within the time prescribed for the election, direction, claim or application and the **Commission** is satisfied that, having regard to all the circumstances of the case, it is desirable that the election, direction, claim or application should be accepted, the **Commission** may, subject to such terms and conditions as it may impose, accept the election, direction, claim or application and deal with it as if it had been received within the time so prescribed.

9.7.3 For the purposes of this **Deed** the offices of the **Commission** are located at 21 Kirksway Place, Hobart, Tasmania, or such other locations as the **Commission** may determine from time to time.

## 9.8 ASSIGNMENT OF BENEFIT

9.8.1 Except as provided by sub-clause 9.10.1, a **Benefit** payable under this **Deed**:

- a) is not available as security for a loan and is not otherwise subject to any assignment, mortgage, charge, encumbrance or lien; and
- b) on the death of the **Member** so entitled is not, in the absence of a **Surviving**

**Partner**, available as an asset in his or her estate for the payment of his or her debts or liabilities; and

- c) is not capable of being assigned, charged, taken in execution or passed under any law to any person other than the **Member** to whom it is payable.

9.8.2 Nothing in this clause prevents the **Commission** from making, at the request of a person to whom an amount by way of a **Benefit** is payable, a payment of the whole or a part of the amount on behalf of the person as a payment due to the **Commission** pursuant to the **Regulations** and this **Deed**.

9.8.3 Any payment made under this clause shall be deemed to have been made to the person entitled to the **Benefit**.

## **9.9 RECOVERY OF MONEY OWING TO THE SCHEME**

9.9.1 The **Commission** may recover from a **Member**, beneficiary, or other person, any money which was paid in excess of the **Member's Benefit**, together with interest calculated in accordance with this clause, unless the **Commission**, having regard to the circumstances of the **Member**, determines otherwise.

9.9.2 The **Commission** shall recover from the **State Fire Commission** any payments to the **Fund of State Fire Commission** superannuation contributions, additional employer contributions and **Member** contributions that have not been forwarded to the **Commission** within seven days of the relevant pay day and those payments shall attract interest calculated in accordance with this clause.

9.9.3 Payments from the **State Fire Commission** to the **Fund of State Fire Commission** superannuation contributions, additional employer contributions and **Member** contributions are to be credited to the **Members'** accounts as if they were received on the relevant pay day.

9.9.4 The interest determined under sub-clause 9.9.2 is the liability of the **State Fire Commission** and not the **Member**.

9.9.5 Interest is calculated on a daily basis using the Bloomberg's 90 day Bank Bill Swap Reference Rate, as published in the *Australian Financial Review*, on the day the amount became due for payment, plus 4% and is payable on any amount owing to the **Fund** calculated from the date on which the amount becomes due for payment until the date on which the amount, together with interest if applicable, is fully recovered by, or otherwise paid to, the **Commission**.

9.9.6 Any interest paid under this clause is to be credited to the investment income reserve account established under clause 3.5.

## **9.10 PAYMENT WITHOUT GRANT OF PROBATE**

9.10.1 If, 3 months after the death of a **Member**, a **Benefit** not exceeding \$50,000 is payable under this **Deed** and the **Commission** has not received:

- a) a certified copy of the probate of the will, or the letters of administration of the estate, of the deceased **Member**; or
- b) a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased **Member**,

the **Commission** may, at its discretion, make a payment of the **Benefit** to that Member's Legal Personal Representative.

## 9.11 RESTORATION OF LOST RIGHT UNDER DEED

9.11.1 Where a person was entitled to exercise a right or enjoy a privilege or benefit under this **Deed** and, without having exercised the right or enjoyed the privilege or benefit otherwise than through his or her own fault, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:

- a) the **Commission**, being satisfied that it is just and equitable to all **Members** of the **Fund** that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the privilege or benefit; and
- b) the person fulfils any conditions imposed, and complies with any requirements made, by the **Commission** in giving its consent.

9.11.2 Where the **Commission** consents to an election, or an application to the **Commission**, being made after the time before which, but for that consent, it should have been made, the **Commission** may, if it thinks fit, deal with the election or application as if it had been made before that time.

## 9.12 PAYMENT WHERE MEMBER INCAPABLE

9.12.1 Notwithstanding anything contained in this **Deed**, where a person entitled to receive a **Benefit** under this **Deed** is unable to make reasonable judgments as to the management of his or her affairs, the **Commission** may withhold payment of the **Benefit** for a period of up to 30 days or for such longer period as may be directed by the Guardianship and Administration Board.

## 9.13 UNCLAIMED BENEFITS

9.13.1 Where the **Commission** has, in accordance with the law of the Commonwealth, written to a **Member** who is aged 65 years or over, advising of a **Benefit** that has become payable under this **Deed** and the period of six months has elapsed without response from the **Member**, the **Benefit** entitlement is deemed to be unclaimed monies.

9.13.2 The **Commission** must complete and forward a statement of unclaimed monies, together with payment in accordance with the *Unclaimed Monies Act 1918*, for the following periods:

- a) in relation to a six month period ending on 30 June, on or before the following 31 October; and
- b) in relation to a six month period ending on 31 December, on or before the following 30 April; or
- c) such other period as allowed by the *Unclaimed Monies Act 1918*.

## 9.14 PAYMENT WHERE BENEFICIARY BANKRUPT

9.14.1 Where the person to whom a **Benefit** is payable is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy, the **Commission** may pay an amount or amounts, not exceeding in total the amount of the **Benefit**, to the person entitled under those laws to administer the bankrupt estate.

## 9.15 SERVICE OF NOTICES BY THE COMMISSION

9.15.1 Where under this **Deed** a notice or other document is required or authorised to be served on a person by the **Commission** and there is no provision for the service of that notice elsewhere in this **Deed**, the notice may be served:-

- a) by delivering it to him or her personally; or

- b) by leaving it at his or her place of residence last known to the **Commission** with someone who apparently resides there, or at his or her place of employment with someone who is apparently employed there, being in either case a person who has, or apparently has, attained the age of 16 years; or
- c) by sending it by post to either his or her place of residence or to his or her place of employment last known to the **Commission**.

9.15.2 A correctly addressed copy of a notice or document kept by the **Commission**, including a copy kept in electronic form, is evidence that the notice or document has been served by the **Commission** on the addressee.

## 9.16 MARKETING AND PROMOTION

9.16.1 The **Commission** may, subject to the law of the Commonwealth, engage in any act or activity directly or indirectly or incidental to:

- a) marketing, promoting and advertising the **Scheme**; and
- b) educating **Members**,

or for any other purpose, which the Commission believes, is in the best interests of **Members**.

9.16.2 The **Commission** may only engage in activities referred to in sub-clause 9.16.1 when the **Commission** has determined that:

- a) the activity is in the interests of **Members**;
- b) the expense of the activity is reasonable having regard to the likely benefits to **Members**; and
- c) the expense of the activity is reasonable having regard to the total assets of the **Fund**.

## 9.17 PROVISION OF INFORMATION TO THE MINISTER

9.17.1 The **Commission** must provide any information pertaining to the **Scheme** or the **Fund** to the **Minister**, upon written request, as may be reasonably required by the **Minister**.

# 10 REVIEW OF COMMISSION DECISIONS

## 10.1 COMMISSION NOT SUBJECT TO DIRECTION

10.1.1 Except as provided in this **Deed**, a person is not to give a direction to the **Commission**, vary a decision of the **Commission** or substitute a decision for a decision of the **Commission** if compliance with the direction, the variation or the substituted decision would be contrary to law or to this **Deed**.

10.1.2 Sub-clause 10.1.1 does not apply to a direction given by:

- a) a court; or
- b) a person that relates to the method of payment of the **Benefit** payable to that person.

## 10.2 HEARING BEFORE THE COMMISSION

10.2.1 In respect of any application or question arising under Parts 6 or 9 of this **Deed**, the **Commission** must:

- a) make a preliminary decision on the matter;
- b) notify the applicant in writing of the preliminary decision; and
- c) advise the applicant that, if he or she does not take any action under this clause within 21 days after the date of written notification, the preliminary decision shall become the final decision of the **Commission**.

- 10.2.2 An applicant may, within 21 days after the date of written notification under sub-clause 10.2.1, elect by notice in writing to the **Commission**:
- a) to appear and be heard before the **Commission**; and
  - b) to submit any relevant medical report or other evidence; or
  - c) make written application to extend the time to make an application under this clause.
- 10.2.3 Before making a final decision on the application or question, the **Commission** may:
- a) require the applicant to undergo a further medical examination by a medical practitioner or practitioners the **Commission** considers appropriate at the **Commission's** cost;
  - b) seek further information from the **State Fire Commission** as the **Commission** considers appropriate;
  - c) seek further information concerning the applicant's capacity and prospects for employment;
  - d) require the applicant to submit any further evidence the **Commission** considers appropriate; and
  - e) take any other action the **Commission** considers appropriate.
- 10.2.4 The **Commission**, in the exercise of its powers under this clause, may impose any terms or conditions that it considers fair and equitable.
- 10.2.5 The **Commission** may reduce or extend the 21 day election period referred to in sub-clause 10.2.2 on the written application of the applicant provided that the written application is received by the **Commission** within the period of 21 days after the date of written notification by the **Commission** under sub-clause 10.2.1.
- 10.2.6 If an election under this clause is not made within the required time, the preliminary decision becomes the final decision of the **Commission**.
- 10.3 POWER TO APPLY TO SUPREME COURT FOR DECLARATION AS TO VALIDITY**
- 10.3.1 If the **Commission** has made a final decision under clause 10.2 adversely to an applicant, he or she may, within 6 months after notification of the final decision, require the **Commission** to apply to the Supreme Court for a declaration in respect of that final decision.
- 10.3.2 Subject to sub-clause 10.3.3, the Supreme Court, on an application under sub-clause 10.3.1, may make a declaration, having regard to facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the determination in respect of which the application is made.
- 10.3.3 The Supreme Court must not make a declaration under sub-clause 10.3.2 in respect of a determination the validity of which cannot be decided at the time when the Court is asked to make the declaration.
- 10.3.4 For the purpose of reviewing a determination by the **Commission**, the Supreme Court has all the powers and discretions that are conferred on the **Commission** by law or under the **Act** or the Regulations.
- 10.3.5 The Supreme Court may make a declaration –

- a) affirming the **Commission's** decision; or
- b) remitting the matter to which the **Commission's** determination relates back to the **Commission** for reconsideration in accordance with the directions of the Supreme Court; or
- c) varying the **Commission's** determination; or
- d) setting aside the **Commission's** determination and substituting a decision for the determination set aside.

10.3.6 Except as provided in sub-clauses 10.3.7 and 10.3.8, the cost of making the application to the Supreme Court is to be met by the **Commission** from the **Fund**.

10.3.7 If a **Member**, a **Member's Surviving Partner** or **Legal Personal Representative** requires the **Commission** to apply to the Supreme Court for a declaration, he or she must pay to the **Commission** at the time of making that request an application fee of 200 fee units, within the meaning of the *Fee Units Act 1997*.

10.3.8 If the Supreme Court is of the view that the request made by the **Member**, the **Member's Surviving Partner** or **Legal Personal Representative** is frivolous or not in good faith, the Court may award costs in full or part against that person.

#### **10.4 APPEAL AGAINST DECISION, DETERMINATION OR ORDER OF COMMISSION**

10.4.1 Notwithstanding clause 10.3, a person may appeal to a judge against any decision, determination or order of the **Commission**.

10.4.2 Subject to sub-clause 10.4.3, an appeal under this clause is to be instituted, heard and determined in accordance with the *Supreme Court Rules 2000* relating to appeals from statutory tribunals other than courts.

10.4.3 Notwithstanding the provisions of the *Supreme Court Rules 2000*, a notice of appeal under this clause is to be served within 21 days after the date of the service on the appellant of the decision, determination or order appealed against, or any extended period a judge allows.

#### **10.5 DUTY TO ESTABLISH ARRANGEMENTS FOR DEALING WITH INQUIRIES OR COMPLAINTS**

10.5.1 The **Commission** must take all reasonable steps to ensure that there are at all times arrangements in force under which:

- a) a **Member** or former **Member** may make an inquiry into, or complaint about, the operation or management of the **Scheme** in relation to that person;
- b) the **Legal Personal Representative** of a former **Member** may make an inquiry into, or complaint about, the operation or management of the **Scheme** in relation to the former **Member**; and
- c) without limiting the generality of sub-paragraph a) or b), any person may make an inquiry into, or complaint about, a decision of the **Commission** that relates to the payment of a death **Benefit** if:
  - i) the person has an interest in the death **Benefit**; or
  - ii) the person claims to be, or is, entitled to death **Benefits** through a person referred to in this clause.

10.5.2 The **Commission** is to properly deal with the inquiry or complaint within 90 days of its receipt in notice in writing to the **Commission**.



- 10.5.3 The **Commission** may charge a fee when dealing with an inquiry or complaint and may waive or reduce the fee if it is satisfied that the applicant's intended use of the information is of general public interest or benefit.
- 10.5.4 The fee that may be charged by the **Commission** in dealing with an inquiry or complaint is not to exceed 400 fee units within the meaning of the *Fee Units Act 1997*.
- 10.5.5 If the **Commission** believes the fee may exceed 25 fee units within the meaning of the *Fee Units Act 1997*, the **Commission** must notify the applicant and inquire whether the applicant wishes to proceed with the inquiry or complaint.

## 11 AMENDMENTS TO DEED

- 11.1.1 This **Deed** may be amended, revoked or substituted as provided by section 45 of the **Act** and this clause.
- 11.1.2 This Deed must not be altered so as to authorise the making of any payment from the Fund to the State Fire Commission other than an expense in the normal course of administration or refund of overpaid contributions.
- 11.1.3 If directed by the Minister, the Commission must prepare and submit to the Minister for approval, a draft of such amendments, revocations or substitutions that are required to be made to the Deed, within a period determined by the Minister.
- 11.1.4 An amendment to, or a revocation and substitution of, this Deed takes effect on the day specified for that purpose pursuant to the Act.
- 11.1.5 If there is an amendment to, or a revocation and substitution of this Deed, the Commission shall notify all Members in accordance with the requirements prescribed for regulated superannuation funds by the SIS Act.

**EXECUTED AS A DEED**

**By the HONOURABLE PETER  
GUTWEIN MP, being and as the  
Minister administering the Act  
in the presence of:-**

)  
).....  
)  
)

**Signature of Witness:** .....

**Name of Witness:** .....

**Address:** .....

**Occupation:** .....

**THE COMMON SEAL of the  
RETIREMENT BENEFITS FUND  
BOARD has been hereunto affixed  
pursuant to a resolution of the said  
Board in the presence of:-**

)  
)  
)  
)  
)

**President of the Board** .....

**Name** .....

**Member of the Board** .....

**Name** .....

**Chief Executive Officer  
of the Board** .....

**Name** .....