

Redundancy Payment Approved Worker Entitlement Fund 1

Consolidated Trust Deed and Trustee Determinations

As at 31 October 2014

Dated 10 March 2004

Redundancy Payment Approved Worker Entitlement Fund 1 Consolidated Trust Deed

PARTIES

MASTER BUILDERS ASSOCIATION OF VICTORIA (“MBAV”)

CONSTRUCTION FORESTRY MINING AND ENERGY UNION

COMMUNICATIONS ELECTRICAL AND PLUMBING UNION

REDUNDANCY PAYMENT CENTRAL FUND LIMITED

ACN 007 133 833

PLEASE NOTE:

This is an unexecuted consolidated working copy of the trust deed for the Redundancy Payment Approved Worker Entitlement Fund 1 incorporating all amendments effected by amending deeds up to and including a deed of amendment dated 29 November 2012, and by:

- **a deed of amendment dated 24 June 2014.**

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DEED OF TRUST made 10 March 2004

- PARTIES** **MASTER BUILDERS ASSOCIATION OF VICTORIA**
of 332 Albert Street, East Melbourne
("MBAV")
- AND** **CONSTRUCTION FORESTRY MINING AND ENERGY UNION**
of 500 Swanston Street, Melbourne
("CFMEU")
- AND** **COMMUNICATIONS ELECTRICAL AND PLUMBING UNION**
of 52 Victoria Street, Carlton South
("CEPU")
- AND** **REDUNDANCY PAYMENT CENTRAL FUND LIMITED**
ACN 007 133 833
of 80 Drummond Street, Carlton
("Trustee")

INTRODUCTION

- A.** The Trustee is the trustee of the Redundancy Payment Central Fund set up under the Redundancy Pay Agreement.
- B.** As a consequence of the *Taxation Laws Amendment Act (No. 4) 2003*, the Industry Parties have agreed to establish a fund or scheme to provide benefits to Workers who become entitled to Redundancy Payments in accordance with the terms of the Redundancy Pay Agreement or in accordance with the terms of their respective Contracts of Employment, and which is an Approved Worker Entitlement Fund under the Act.
- C.** As a consequence of the agreement referred to in Introduction B, the Industry Parties have also agreed to pay to the Trustee the Settled Sum on the execution of this Deed of Trust.
- D.** The Trustee has consented to become the trustee of the Fund on the terms and subject to the powers and provisions of this Deed of Trust.

IT IS AGREED

1. Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires:

- (1) "**Accounting Period**" means any one of the following periods:
- (a) the period from the date of this Deed of Trust to 30 June next;

- (b) each following period of 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
- (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date;

but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and the reference to 30 June and 1 July is in those circumstances altered accordingly;

- (2) "**Act**" means *Fringe Benefits Tax Assessment Act 1986*;
- (3) "**Administrator**" means in relation to a Compatible Fund the person, body, association, union or other entity by which that Fund is managed and administered or which has power to transfer its funds or assets to or to accept transfers of funds from the Fund, or both;
- (4) "**Application Form**" means the application form for membership of the Fund, a copy of which is annexed as **Schedule 2**;
- (5) "**Apprentice**" means an employee of an employer (other than a trainee) who is registered as an apprentice with the Victorian Learning and Employment Schools Commission and undertaking a course of training approved by that Commission;
- (5A) "**Approved Worker**" has the meaning in clause 6A;
- (6) "**Approved Worker Entitlement Fund**" has the same meaning as in the Act;
- (7) "**Associate**" has the same meaning as in the Act;
- (8) "**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or payment is to be made;
- (9) "**Compatible Fund**" means any scheme, fund or arrangement by whatever name called, the objects or purposes of which include the making of redundancy, severance or other termination payments or benefits to persons employed in the Industry, and which is:
 - (a) deemed by the Trustee to be a scheme or fund comparable to the Fund;
 - (b) not precluded by its constitution or constituent documents or by law from transferring its funds or assets to or from accepting transfers of funds from the Fund, or both; and
 - (c) an Approved Worker Entitlement Fund.

- (10) **"Contract of Employment"** includes any agreement arrangement or understanding (and whether documented or not) under or pursuant to which a Worker is employed by a Member and is or may become entitled to Redundancy Payments in accordance with its terms, and an Industrial Employment Agreement which applies to the Member;
- (11) **"Contribution"** means a contribution which a person makes to the Fund in respect of the same or another person, being a Worker;
- (12) **"Contributor"** means a person making a Contribution;
- (13) **"Contributor's External Administrator"** has the same meaning as in the Act;
- (14) **"Control"** has the same meaning as in the Act;
- (15) **"CPI Adjusted Contribution Rate"** means the adjusted rate referred to in clause 4.2(2);
- (16) **"Deed of Trust"** means this Deed of Trust and includes any variation or amendment to it;
- (17) **"Determination"** means a determination made in any of the ways listed in clause 21;
- (18) **"Distributable Capital"** at any time means so much of the Trust Fund as does not comprise Contributions or Net Income at that time;
- (19) **"Employed in the Industry"** means, in relation to a Worker, a person who is employed by an employer whose business or activities, in the opinion of the Trustee, relate to the Industry;
- (20) **"Entitlements"** has the same meaning as in the Act;
- (21) **"Forfeited Benefits"** means a Worker's entitlement to a Redundancy Payment forfeited under clause 11;
- (22) **"Fund"** means the Redundancy Payment Approved Worker Entitlement Fund 1 established by this Deed of Trust;
- (22A) **"Fund No. 1 Trust Deed"** means the trust deed constituting the Redundancy Payment Central Fund referred to in Introduction A;
- (22AA) **"Genuine Redundancy Account"** means the account which a Worker's Account converts into in accordance with clause 9A, subject to clause 9A.14;
- (22B) **"Industrial Authority"** means the Australian Industrial Relations Commission or its successor and any person with power to certify, approve or register an Industrial Instrument;
- (22C) **"Industrial Employment Agreement"** means an agreement:

- (a) between an employer or an employer association and a union of employees; or
- (b) between an employer and its employees;

whether or not it has been certified by, approved by or registered with an Industrial Authority; or

- (c) an Industrial Instrument,

(22D) "**Industrial Instrument**" has the same meaning as in the Act;

(23) "**Industry**" means the building and construction industry;

(24) "**Industry Parties**" means MBAV and the Unions;

(25) "**ITAA**" means the *Income Tax Assessment Act* 1936 and the *Income Tax Assessment Act* 1997;

(26) "**Member**" means a person which has been admitted to participation in the Fund, and has not ceased to participate in the Fund as provided by this Deed of Trust, and in relation to a Worker means the person for the time being employing him or her;

(27) "**Net Income**" means the amount calculated as the net income of the Trust Fund for an Accounting Period in accordance with section 95(1) of the ITAA including:

- (a) any net capital gain included in the assessable income of the Trust Fund by virtue of the ITAA; and
- (b) to the extent allowable, any taxation credits available to the Trustee under the ITAA including but not limited to:
 - (i) foreign tax credits;
 - (ii) prescribed payment tax credits; and
 - (iii) dividend imputation credits;

unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income produced from the investment of the Trust Fund calculated in accordance with established accounting principles and trust law. In respect to any Accounting period, Net Income does not include the net income of the Trust Fund for any prior Accounting Period;

(28) "**Perpetuity Period**" means the perpetuity period mentioned in clause 34;

(29) "**Reasonable Administrative Expenses**" has the same meaning as in the Act;

(30) "**Reciprocating Fund**" - means any other trust fund deemed by the Trustee to be a fund comparable to the Fund which is authorised by its trust deed to transfer funds to the Fund from time

to time and to accept transfers of funds from the Fund from time to time and which is an Approved Worker Entitlement Fund;

- (31) **"Redundancy Pay Agreement"** means the 1987 Building Industry Redundancy Pay Agreement between MBAV, the Unions, the Victorian Trades Hall Council and the State of Victoria as amended, modified, altered or varied by any amendments, modifications, alterations or variations or any subsequent agreement which each of the parties to this Deed of Trust agree is to be regarded as being in substitution for that Agreement including such subsequent agreements as amended, modified, varied or altered;
- (32) **"Redundancy Pay Contributions"** means Contributions to be made to the Fund by Members under clause 4;
- (33) **"Redundancy Payments"** means payments to be made to Workers pursuant to clause 9 or clause 9A of this Deed of Trust;
- (34) **"Settled Sum"** means the amount of \$20.00;
- (35) **"Trainee"** means a Worker (other than an Apprentice) who is undertaking any course of training;
- (36) **"Trust"** means the trusts created by this Deed of Trust;
- (37) **"Trust Fund"** means:
 - (a) the Settled Sum;
 - (b) Contributions paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
 - (c) all other money and property paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
 - (d) the accumulations of income directed or empowered to be made by this Deed of Trust;
 - (e) all accretions and additions to the Trust Fund from any source (including Forfeited Benefits); and
 - (f) the investments and property representing the Settled Sum, Contributions, money, property, accumulations, accretions and additions;
- (38) **"Trustee"** means the trustee or the trustees (if more than one person) for the time being of the Trust, whether originally appointed or substituted;
- (39) **"Unions"** means:
 - (a) CFMEU (in its own right and on behalf of its Construction and General Division);

- (b) CFMEU (in its own right and on behalf of its Federated Engine Drivers and Fireman's Association (Victorian Division Branch)); and
 - (c) CEPU (in its own right and on behalf of its Plumbing Division);
- (40) **"Vesting Date"** means:
- (a) the last day of the Perpetuity Period; or
 - (b) such earlier date as the Trustee may appoint;
- (41) **"Worker"** means:
- (a) an employee of an employer engaged in working on a project in the Industry; and
 - (b) an employee in respect of whom the employee's employer has agreed to be treated as a Worker for the purposes of this Deed of Trust by notifying the Trustee in such manner and form as is prescribed by the Trustee,
- and includes a Approved Worker and a Trainee, but does not include an Apprentice (unless the Apprentice is an Approved Worker);
- (42) **"Worker Entitlement"** has the same meaning as in the Act;
- (43) **"Worker's Account"** means the account established by the Trustee in its books of account in respect of each Worker to be credited in accordance with clause 7.1.

1.2 Interpretation

- (1) Reference to:
- (a) *"interest"* includes any interest, contingent interest or expectant interest of any nature and whether liable to be defeated or diminished by the exercise of any power or by reason of any other matter;
 - (b) *"pay"* includes transfer, convey and assign;
 - (c) *"set aside"*, in relation to a person, includes placing sums to the credit of that person in the books of account of the Fund; and
 - (d) *"income"* is not limited to *"assessable income"* as defined in the ITAA.
- (2) The powers and discretions conferred on the Trustee may be exercised by the Trustee at any time and from time to time.
- (3) Reference to:

- (a) one gender includes the other genders;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
- (d) a party includes the party's executors, administrators, successors and permitted assigns;
- (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (4) If a party consists of more than one person this Deed of Trust binds them jointly and each of them severally.
- (5) "**Corporation**" has the same meaning as in the *Corporations Act 2001*.
- (6) The schedules form part of this Deed of Trust.
- (7) Headings are for convenience only and do not affect the interpretation, or form part, of this Deed of Trust.
- (8) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (9) Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed of Trust.
- (10) Where not inconsistent with the context and without derogating from each of the Unions in its own right being a party to this Deed of Trust, references to a Union are to be primarily construed as a reference to the division or branch of that Union on whose behalf the Union has purported to enter into and execute this Deed of Trust.
- (11) Reference to:
 - (a) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged; and
 - (b) a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body.

1.3 Vesting within Perpetuity Period

All powers and dispositions made by or under this Deed of Trust which, but for this provision, would or might be exercisable, vest or take effect after the expiration of the Perpetuity Period are exercisable only until the end of the last day of the Perpetuity Period or vest or take effect on the last day of the Perpetuity Period.

1.4 **Severance**

If any provision or part of a provision of this Deed of Trust is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed of Trust but the remainder of this Deed of Trust continues in full force and effect and is unaffected by the severance.

2. **Membership of the Fund**

2.1 An employer may apply to become a Member of the Fund by:

- (1) completing an application form in the same form as the Application Form or in a form as near to it as circumstances admit;
- (2) lodging the completed Application Form with the Trustee; and
- (3) providing to the Trustee all of the information (if any) requested by the Trustee in any document which accompanies the Application Form.

2.2 Upon completion of the matters referred to in clause 2.1 to the satisfaction of the Trustee and the Trustee approving the application, the employer becomes a Member of the Fund and is bound by the terms and conditions of this Deed of Trust.

2.3 Despite clauses 2.1 and 2.2, where an employer has not completed an Application Form and lodged that Form with the Trustee, but has nevertheless made Redundancy Pay Contributions to the Trustee in accordance with this Deed of Trust, then:

- (1) if the employer is a member of the Redundancy Payment Central Fund that employer shall be and be deemed to be a Member and is bound by the terms and conditions of this Deed of Trust;
- (2) in any other case, the employer shall be and be deemed to be a Member for the period or periods to which the payment of Contributions relates.

2.4 Despite anything else in this clause 2, the Trustee may in its discretion:

- (1) approve or reject any application from an employer to become a Member of the Fund; and
- (2) refuse to accept contributions from an employer, which, in its opinion, should not be admitted as a member of the Fund and any contributions made by such an employer prior to being advised of the rejection of its application may, if so resolved by the Trustee, be refunded to that employer.

2.5 A Member must to the extent permitted by law, provide all information requested by the Trustee for the proper and efficient administration of the Fund within the time (if any) specified by the Trustee in making the request including details concerning the Workers employed by the Member.

2.6 If any question arises as to:

- (1) the date on which a person entered or left the employ of a Member;
- (2) whether or not a Worker is employed by the Member; or
- (3) the terms of a Worker's employment generally,

a certificate of the Member on the matter is prima facie evidence of the facts contained in the certificate for the purposes of this Deed of Trust.

3. Cessation of Membership

3.1 A Member ceases to be a Member of the Fund if the Member is expelled from the Fund.

3.2 If an allegation is made to the Trustee (and whether by a Member, a Worker or any other person) that a Member of the Fund has:

- (1) persistently refused or neglected to comply with the provisions of this Deed of Trust or any resolution or decision of the Trustee made under it; or
- (2) has persistently or wilfully acted in a manner prejudicial to the interests of any one or more of the Industry, the Fund, any Worker of the Member, other Members or Workers (**Relevant Conduct**); the Trustee must:
 - (a) give notice of the Relevant Conduct to the Member;
 - (b) give the Member at least 14 days after the service of the notice within which to make submissions (which may be written or oral or both) to the Trustee in connection with the Relevant Conduct;
 - (c) take into consideration any submissions made by the Member in connection with the allegation.

3.3 The Trustee may by resolution expel the Member as a Member of the Fund (or suspend the Member from membership of the Fund) if, after considering the Relevant Conduct and any submissions made in connection with the Relevant Conduct, it is satisfied that the Relevant Conduct occurred.

3.4 If the Trustee expels or suspends a Member, the Trustee must within 7 days after that action is taken advise the Member in writing of the action taken. The Trustee is not obliged to give any reasons for having taken that action.

- 3.5 The decision of the Trustee is final and the Member has no right of appeal or review.

4. **Contributions to the Fund**

- 4.1 All Contributions made by a member to the Fund become part of the Trust Fund.

- 4.2 Subject to clause 6, each Member must make the following weekly Redundancy Pay Contribution to the Fund in respect of each Worker:

- (1) from 1st April 2004 to 30th September 2004, the sum of \$54.40; and
- (2) after that, for each subsequent year commencing 1st October an amount per week being the amount payable under clause 4.2(1) adjusted as at each 1 October for any increase in the Consumer Price Index (all Groups) Melbourne (or if that Index is not current or its reference base is changed another equivalent index selected by the Trustee), during the period commencing 1 July 2003 and ending 30 June immediately preceding that 1 October and rounded to the nearest 10 cents.

- 4.3 Members must continue to contribute to the Fund at the then current weekly contribution rate or the CPI Adjusted Contribution Rate as the case may be until such time as the Trustee notifies them of the latest CPI Adjusted Contribution Rate.

- 4.4 The CPI Adjusted Contribution Rate calculated in accordance with clause 4.2 must be notified to Members by the Trustee as soon as practicable after 1st October each year and the Trustee must then advise the Members of the adjusting contribution payment that must be made by Members for the period 1st October until the date of determination of the latest CPI Adjusted Contribution Rate.

- 4.5 Despite anything in clauses 4.2-4.4, if and only if the amount of the Contribution to the Fund which a Member is required to make in respect of a Worker or Workers under that Workers' Contract of Employment is higher than the contribution to the Fund which the Member would have been required to make under clauses 4.2 and 4.3-4.4 but for this clause, that Member must make Contributions to the Fund in respect of that Worker or those Workers at the weekly contribution rate contemplated by the relevant Contract of Employment.

- 4.6 If a Member makes Redundancy Pay Contributions to the Trustee and is for the period to which the payment of those Contributions relates also a member of the Redundancy Payment Central Fund, those Redundancy Pay Contributions will to the same extent reduce or satisfy (as the case may be) that Member's obligation to make redundancy pay contributions for the same period to the Redundancy Payment Central Fund.

5. **Determination by Trustee**

- 5.1 Where this Deed of Trust or a Worker's Contract of Employment or the Redundancy Pay Agreement does not deal with, or, in the opinion of the Trustee, adequately deal with a particular matter, the Trustee may at any time or times lay down and determine further or other terms and conditions in compliance with which one or some or all Members (being the Members to which the Determination relates) must make Redundancy Pay Contributions.
- 5.2 In making a Determination under clause 5.1 the Trustee is at liberty to have regard to such matters as it considers to be in the best interests of Workers and Members.
- 5.3 If the Trustee makes a Determination under this clause the Trustee must give each Member affected by it as soon as practicable after that notice of the Determination and the date on which it was made.
- 5.4 If there is any inconsistency between a Determination made by the Trustee under this clause and this Deed of Trust or a Worker's Contract of Employment or the Redundancy Pay Agreement as the case may be, the Determination prevails.
- 5.5 A Determination by the Trustee under this clause is binding on Members to which it relates from the date on which it was made.

6. **Payment of Redundancy Pay Contributions**

- 6.1 Subject to clauses 6.3 and 6.4, the weekly Redundancy Pay Contribution payable under clause 4 must be paid for any week of Monday to Friday in which a Worker is entitled to be paid wages by the Member in respect of the work performed on a construction site.
- 6.2 Each Member must pay these Contributions monthly in arrears for a Contribution period consisting either of 4 or 5 weeks, Monday to Friday and pro-rated if a Worker's employment terminates during the Contribution period.
- 6.3 The Member is not liable to pay the weekly Contributions in respect of any five (5) consecutive working days during a Contribution period in which a Worker was absent without pay.
- 6.4 The weekly Contribution is payable in respect of a Worker who commences with a Member on a Tuesday, Wednesday, Thursday or Friday.
- 6.5 No Contribution in respect to a Worker is payable in respect of a week where the Worker ceases employment on a Monday, Tuesday, Wednesday or Thursday.
- 6.6 The Contributions payable by a Member to the Trustee under this Deed of Trust must be paid to the Trustee in the manner, at the times, and by such arrangements advised to the Member by the Trustee from time to time for the purposes of this clause **provided that** such arrangements are

consistent with clause 4 and not materially inconsistent with this clause 6, or with clause 6A in the case of Approved Workers.

- 6.7 Each Contribution paid to the Trustee by a Member in respect of a Worker under this Deed of Trust must be accompanied by a statement setting out details of the basis upon which the Contribution has been calculated.
- 6.8 Where a Member does not pay Redundancy Pay Contributions when required to do so under this clause or clause 6A, the Member is liable to pay to the Trustee all costs necessarily incurred by the Trustee in seeking to obtain, and obtaining, any unpaid Contributions owing to the Trustee.
- 6.9 If a Member fails to pay any amount to the Trustee on the due date for payment, that Member must pay to the Trustee interest at the Default Rate on that amount, calculated and payable daily, computed from the due date until the amount is paid in full.
- 6.10 The **Default Rate** is (X + 5% per annum) where X is the interest rate quoted by Commonwealth Bank of Australia ("**Bank**") as its Overdraft Index Rate ("**Published Rate**") or, should there cease to be a Published Rate, the rate which the Bank designates as being an appropriate substitute for the Published Rate ("**Substitute Rate**"). A certificate signed by a manager or other officer of the Bank stating the Published Rate or the Substitute Rate at a particular date is conclusive evidence of the rate at the particular date.

6A. Approved Workers

- 6A.1 Clauses 4.2 - 4.4 and clause 6.1 - 6.5 are subject to this clause.
- 6A.2 This clause sets out the circumstances in which a Member may make Contributions on a basis which differs from that set out in clause 4 or clause 6 or both, and also deals with the benefits to which the Workers (or Apprentices, if applicable), in respect of whom those Contributions are made, become entitled.
- 6A.3 A Member or an employer which is not a Member may apply to the Trustee for approval to make Contributions in respect of Workers (or a class of Workers) or Apprentices (or a class of Apprentices) under this clause by:
 - (1) completing an application in writing (in the form (if any) from time to time approved by the Trustee);
 - (2) lodging the application with the Trustee; and
 - (3) providing to the Trustee details of the Workers or Apprentices in respect of whom the application is made and all other information (if any) requested by the Trustee in relation to the application.
- 6A.4 An application to the Trustee under this clause may only be made by an employer which is not a Member if, and at the same time as, the employer applies to become a Member of the Fund under clause 2.

- 6A.5 An application to the Trustee under this clause may only be made by a Member or employer if, under an Industrial Instrument:
- (1) Contributions in respect of Workers to be made by the Member or employer are calculated or computed other than weekly or on a weekly basis (as set out in clause 6); or
 - (2) the amount of the Contribution which the Member or employer is required to make is different from the amount which a Member is required to make under clause 4; or
 - (3) Contributions are to be made by the Member or employer in respect of Apprentices.
- 6A.6 (1) The Trustee may in its discretion approve or reject in whole or in part any application from a Member or employer under this clause.
- (2) To the extent that an application is rejected, this Deed of Trust, other than this clause, applies to the Member or employer and their Workers (but not to their Apprentices).
 - (3) To the extent that an application is approved, this Deed of Trust, including this clause, applies to the Member or employer and their Workers and Apprentices in respect of whom the application is made.
- 6A.7 A Member to which this clause applies must in respect of each Worker and Apprentice in respect of whom the application for approval was made to and approved by the Trustee (**Approved Worker**) make Redundancy Pay Contributions to the Trustee of the amount payable under and otherwise in accordance with the terms and conditions of the Industrial Instrument.
- 6A.8 If under the Industrial Instrument Redundancy Pay Contributions are to be calculated or computed weekly:
- (1) the weekly contribution payable under clause 6A.7 must be paid for any week of Monday to Friday in which an Approved Worker is entitled to be paid wages by the Member in respect of work performed on a construction site;
 - (2) each Member must pay these Contributions monthly in arrears for a Contribution period consisting either of 4 or 5 weeks, Monday to Friday and pro-rated if an Approved Worker's employment terminates during the Contribution period;
 - (3) the Member is not liable to pay the weekly Contribution in respect of any five (5) consecutive working days during a Contribution period in which an Approved Worker was absent without pay;
 - (4) the weekly Contribution is payable in respect of an Approved Worker who commences with a Member on a Tuesday, Wednesday, Thursday or Friday; and

- (5) no Contribution in respect of an Approved Worker is payable in respect of a week where the Worker ceases employment on a Monday, Tuesday, Wednesday or Thursday.
- 6A.9 Each Member must, by the last day of each month (or another time advised to Members by the Trustee under clause 6.6), pay Redundancy Pay Contributions payable under clause 6A.7 to the Trustee in accordance with that clause for that month or for the Contribution period of 4 or 5 weeks substantially covered by that month.
- 6A.10 Clauses 6.6 - 6.10 apply to Contributions which a Member must make under clause 6A.7.
- 6A.11 Clauses 6A.8 and 6A.9 are subject to the terms of the Industrial Instrument. If there is any inconsistency between those terms and the terms of this Deed of Trust, the Industrial Instrument prevails.
- 6A.12 (1) A Member must notify the Trustee if, and as soon as, each of the conditions in clauses 6A.5(1) and 6A.5(2) ceases to apply to that Member.
- (2) The Approved Workers of that Member affected by that Member's notification under clause 6A.12(1) cease to be Approved Workers and this clause ceases to apply to that Member, as from the date on which those conditions ceased to apply.
- 6A.13 No benefits under clause 3E of the Fund No. 1 Trust Deed accrue to an Apprentice at any time during which that Apprentice is an Approved Worker.

7. Application of Contributions

- 7.1 Each Contribution made by a Member in respect of a Worker must be credited to that Worker's Worker's Account or, where that Worker's Worker's Account has been converted into a Genuine Redundancy Account pursuant to clause 9A (but subject to clause 9A.14), to that Worker's Genuine Redundancy Account.

8. Taxes, Costs and Expenses

- 8.1 The Trustee must (in the case of paragraphs 8.1(1) and 8.1(2) of this clause), and may (in the case of paragraphs 8.1(3), 8.1(4) and 8.1(5) of this clause), debit from the Worker's Account of each Worker:
 - (1) any Redundancy Payment or other benefit paid from the Account in accordance with this Deed of Trust;
 - (2) any benefit transferred from the Account in accordance with clause 20.1;
 - (3) such amount (if any) as is determined by the Trustee from time to time having regard to any tax, levy, stamp duty, settlement duty, revenue duty or any other impost, duty or charge and any similar or related amounts which in the opinion of the Trustee have or may

be assessed against the Worker , or the Fund in respect of the Worker (including, without limitation, any such amount payable in respect of a Redundancy Payment or other benefit payable from the Fund in respect of the Worker or applied or set aside for the benefit of the Worker), and in respect of which no adjustment has been made under other provisions of this Deed of Trust;

- (4) such amount (if any) as is determined by the Trustee from time to time having regard to the costs incurred in administering the Scheme, and in respect of which no adjustment has been made under other provisions of this Deed of Trust; and
- (5) such other amounts (if any) which the Trustee determines from time to time are appropriate or equitable to debit to the Account.

8.2 The Trustee must make the debits required to be made to Accounts under clause 8.1 as at the date:

- (1) in the case of paragraph 8.1(1) – the relevant benefit is paid;
- (2) in the case of paragraph 8.1(2) – the relevant benefit is transferred in accordance with clause 20.1; or
- (3) in the case of paragraphs 8.1(3), 8.1(4) and 8.1(5) – determined by the Trustee from time to time.

8.3 Where the balance of an Account is required to be determined on a date other than the last day of an Accounting Period any debits required to be made under clause 8.1(3), or 8.1(4) will be made on a pro-rata basis in a manner determined by the Trustee.

9. **Benefits Payable to Workers – Worker's Account**

9.1 Where the employment of a Worker (other than an Approved Worker) is terminated for any reason then, upon the Trustee receiving a written request from the Worker or a person claiming through or under the Worker (in the case of the Worker's death) at or after the time of termination of employment in a form prescribed by the Trustee and the Worker is still out of work at the time the Worker submits the written request to the Trustee, the Trustee must pay to the Worker or person claiming the lesser of:

- (1) a redundancy benefit not exceeding the maximum initial payment benefit as prescribed from time to time in the Redundancy Pay Agreement; and
- (2) a redundancy benefit equal to the amount standing to the credit of that Worker in his or her Worker's Account as at the date the request is made.

9.1A Where the employment of a Worker (being an Approved Worker) is terminated for any reason then, upon the Trustee receiving a written request at or after the time of termination of employment, in a form prescribed or approved by the Trustee, from the Worker or a person claiming through or under the Worker in the case of the Worker's death,

the Trustee must pay to the Worker or person claiming such redundancy benefit as the Trustee determines to be appropriate having considered the relativity of the amount of the Redundancy Pay Contribution payable by a Member under clause 4 and the amount of the Redundancy Pay Contributions to the Fund contributed in respect of that Approved Worker, but so that:

- (1) subject to clause 9.1A(2), the redundancy benefit will not be less than 50% of the benefit payable under clause 9.1(1); and
- (2) the redundancy benefit is no more than the amount standing to the credit of the Approved Worker in his or her Worker's Account as at the date the request is made.

9.2 If a Worker has remained out of work for four (4) consecutive weeks commencing the date after termination of his or her employment, the Worker is entitled to withdraw the balance (if any) of his or her Account after providing the Trustee with such evidence as the Trustee may require that the Worker is registered with Centrelink.

9.3 Where a Worker ceases to be employed in the Industry he or she may withdraw the balance (if any) of his or her Account in a lump sum, thirty nine (39) weeks after the last contribution was paid on behalf of that Worker .

9.4 Where a Worker retires from the workforce, he or she may withdraw the balance (if any) of his or her Account in a lump sum provided he or she is over fifty-five years of age.

9.5 The Trustee may require a Worker to satisfy the Trustee as to the matters in clauses 9.2-9.4 by way of statutory declaration or other form acceptable to the Trustee.

9.6 (1) Where the employment of a Worker is terminated by death then the Trustee may pay the balance standing to the credit of the relevant Worker's Account for one or more of the following purposes:

- (a) To make a payment to or for the benefit of one or more of the persons specified in clause 58PB(4)(c)(i) of the Act.
- (b) For any other purpose or purposes set out in section 58PB(4) of the Act.

(2) The Trustee may make a payment to a person under clause 9.6(1)(a), or for a purpose under clause 9.6(1):

- (a) in such manner and proportions; and
- (b) subject to such conditions,

as the Trustee determines.

9.7 For the purposes of this clause the employment of a Worker is not terminated if the Worker is to be regarded as having been employed by one employer, within the meaning of clause 9.8 or as having been

continuously employed within the meaning of clause 9.9. The question whether the employment of a Worker is or is not terminated must be determined by the Trustee. The Trustee must, in making a determination that the employment of a Worker is not terminated:

- (1) give notice of the proposed determination to the Worker;
- (2) give the Worker at least 7 days after the service of that notice to make submissions (which may be written or oral or both) to the Trustee;
- (3) take into account any submissions made.

If the Trustee makes a final determination that the employment of a Worker is not terminated, it must advise the Worker of that determination.

Any determination by the Trustee under this clause is final and the Worker has no right of appeal or review.

9.8 This clause sets out several situations in which an employee is to be regarded, for the purposes of clause 9, as having been employed by the one employer, even though the employee may have worked over the relevant period of time for more than one employer in a strict legal sense:

- (1) If an employee is employed by a corporation, he or she is to be regarded as having been employed by that corporation during any period that:
 - (a) he or she was employed by a related corporation of that corporation (within the meaning of the Corporations Act); or
 - (b) he or she was employed by another corporation and -
 - (i) the directors of that other corporation and the employee's present employer were substantially the same; or
 - (ii) that other corporation and the employee's present employer were under substantially the same management.
- (2) If the ownership of a business employing an employee changes but the employment of the employee continues, the employee is to be regarded as having been employed by one employer from the date on which the employee started his or her employment with that business.
- (3) If for any reason the employment of an employee by the owner of a business terminates, but the ownership of the business changes and the Trustee believes that the new owner intends to employ the employee within 14 days after the termination, the employee is to be regarded as having been employed by the one employer from the date on which the employee first started employment at that business (unless the new owner does not so employ the employee).

- (4) If an employee performs duties in connection with any assets used in the carrying on of a business of his or her employer and those assets are transferred to another employer who continues the employment of the employee, the employee is to be regarded as having been employed by one employer from the date on which the employee started his or her employment at that business.
- (5) If an employee performs duties in connection with any assets used in the carrying on of a business of an employer and -
 - (a) the employment of an employee by that employer terminates for any reason; and
 - (b) those assets are transferred to another employer; and
 - (c) the Trustee believes that the other employer intends to employ the employee within 14 days after the date of the termination to perform duties in relation to those assets, or other assets of a similar kind,

the employee is to be regarded as having been employed by one employer from the date on which the employee first started employment at that business (unless the other employer does not so employ the employee).

- (6) In this clause -

"assets" includes land, plant and equipment;

"business" includes a trade, process or occupation and any part of a trade, process or occupation and also includes any part of a business;

"transfer" includes a transmission, conveyance, assignment or succession, whether by agreement or by operation of law.

- 9.9 This clause sets out situations in which an employee is to be regarded as having been continuously employed even though in a strict legal sense it could be said that the employee's employment was interrupted. An employee's employment is to be regarded as being continuous despite any interruption or ending of the employment by the employer or by the employee (or both) if the interruption or ending is not bona fide and is made with the intention (or with an intention which includes the intention) of creating an entitlement in the employee under this clause.

- 9.10 (1) The Trustee may at any time or times lay down and determine further or other terms and conditions consistent or inconsistent with the terms and conditions of this clause 9 as to the entitlement of particular Workers or of particular categories of Workers to benefits.
- (2) In making a Determination under clause 9.10 the Trustee is at liberty to have regard to such matters as it considers to be in the best interest of Workers and Members.

- (3) If there is any inconsistency between a Determination made by the Trustee under this clause and this Deed of Trust, the Determination prevails.
- (4) If the Trustee makes a Determination under this clause the Trustee must give each Member as soon as practicable after that notice of the Determination and the date on which it was made.
- (5) A Determination by the Trustee under this clause is binding on Members and Workers to which it relates from the date on which it was made.

9A. Benefits Payable to Workers - Genuine Redundancy Account

- 9A.1 A Worker may at any time make an election, by giving the Trustee written notice in a form prescribed or approved by the Trustee, to convert his or her Worker's Account to a Genuine Redundancy Account. The Worker may, within 14 days after he or she gives the Trustee such notice of that election to convert, revoke that election to convert by giving the Trustee written notice of the revocation in a form prescribed or approved by the Trustee.
- 9A.2 If a Worker gives the Trustee written notice of an election made pursuant to clause 9A.1 in respect of the Worker's Worker's Account, that Worker's Account will be converted, as a result of such notice of that election to convert being given, into a Genuine Redundancy Account on the date (**Conversion Date**) which is 15 days after the Worker gave the Trustee such notice of that election to convert, unless the Worker revokes that election to convert in accordance with clause 9A.1.
- 9A.3 Notwithstanding any other provisions of this Deed, the Worker or a person claiming through or under the Worker (in the case of the Worker's death) may make a claim or withdraw the balance of his or her Genuine Redundancy Account after the Conversion Date only in accordance with the provisions of this clause.
- 9A.4 For the avoidance of doubt:
 - (1) from the Conversion Date a Worker or a person claiming through or under the Worker (in the case of the Worker's death) may not, other than in the circumstances contemplated in clauses 9A.6, 9A.7, 9A.9, 9A.10 and 9A.11, make a claim or withdraw the balance of his or her Genuine Redundancy Account except where the employment of the Worker is terminated by reason of genuine redundancy and such termination occurred after the Conversion Date; and
 - (2) if the employment of a Worker is terminated for any reason, including by reason of genuine redundancy, and such termination occurred before the Conversion Date, the provisions of clause 9 will apply, mutatis mutandis notwithstanding that the Worker's Worker's Account has been converted into a Genuine Redundancy Account.

- 9A.5 Where the employment of a Worker is terminated by reason of genuine redundancy on or after the Conversion Date and notice of such redundancy has not been given before the Conversion Date then, if the Trustee received a written request from the Worker on a form prescribed by the Trustee within 30 days after the date of such termination or within such longer period as the Trustee may accept, the Trustee must pay to the Worker a redundancy benefit equal to the amount standing to the credit of that Worker in his or her Genuine Redundancy Account.
- 9A.6 Where, on or after the Conversion Date, the employment of a Worker is terminated for any reason after the Worker has attained sixty-five years of age then, if the Trustee received a written request from the Worker on a form prescribed by the Trustee within 30 days after the date of such termination or within such longer period as the Trustee may accept, the Trustee must pay to the Worker a benefit equal to the amount standing to the credit of that Worker in his or her Genuine Redundancy Account.
- 9A.7 Where both of paragraphs (1) and (2) of this clause 9A.7 apply to a Worker on or after the Conversion Date, he or she may withdraw the balance (if any) of his or her Genuine Redundancy Account in a lump sum:
- (1) the Worker stops being gainfully employed before the Worker's last retirement day because he or she suffered from ill-health (whether physical or mental); and
 - (2) two legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the Worker can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.
- 9A.8 The Trustee may require a Worker to satisfy the Trustee as to the matters in clauses 9A.5 - 9A.7 and clause 9A.11 by way of statutory declaration or other form acceptable to the Trustee.
- 9A.9
- (1) Where the employment of a Worker is terminated by death then the Trustee may pay the balance standing to the credit of the relevant Genuine Redundancy Account for one or more of the following purposes:
 - (a) To make a payment to or for the benefit of one or more of the persons specified in clause 58PB(4)(c)(i) of the Act.
 - (b) For any other purpose or purposes set out in section 58PB(4) of the Act.
 - (2) The Trustee may make a payment to a person under clause 9A.9(1)(a), or for a purpose under clause 9A.9(1):
 - (a) in such manner and proportions; and
 - (b) subject to such conditions,
 as the Trustee determines.

- 9A.10 (1) Where a Worker dies and at the time of death the Worker is unemployed, then the Trustee may pay the balance standing to the credit of the relevant Genuine Redundancy Account for one or more of the following purposes:
- (a) To make a payment to or for the benefit of one or more of the persons specified in clause 58PB(4)(c)(i) of the Act.
 - (b) For any other purpose or purposes set out in section 58PB(4) of the Act.
- (2) The Trustee may make a payment to a person under clause 9A.10(1)(a), or for a purpose under clause 9A.10(1):
- (a) in such manner and proportions; and
 - (b) subject to such conditions,
- as the Trustee determines.

9A.11 Where, on or after the Conversion Date, a Worker has attained sixty-six years of age then, if the Trustee received a written request from the Worker on a form prescribed by the Trustee within 30 days of the Worker's sixty-sixth birthday, or within such longer period as the Trustee may accept, the Trustee must pay to the Worker a benefit equal to the amount standing to the credit of that Worker in his or her Genuine Redundancy Account.

9A.12 For the purposes of this clause 9A, "gainfully employed" and "last retirement day" have the meanings given to them in section 995-1 of the Income Tax Assessment Act 1997.

9A.13 For the purposes of this clause 9A the question whether the employment of a Worker is or is not terminated by reason of genuine redundancy is to be determined by the Trustee. The Trustee must, in making a determination that the employment of a Worker is not terminated by reason of genuine redundancy:

- (1) give notice of the proposed determination to the Worker;
- (2) give the Worker at least 7 days after the service of that notice to make submissions (which may be written or oral or both) to the Trustee; and
- (3) take into account any submissions made.

If the Trustee makes a final determination that the employment of a Worker is not terminated by reason of genuine redundancy, it must advise the Worker of that determination.

Any determination by the Trustee under this clause is final and the Worker has no right of appeal or review.

9A.14 If:

- (1) a Worker's Worker's Account is converted into a Genuine Redundancy Account in accordance with clauses 9A.1 and 9A.2; and
- (2) subsequently, the whole of the amount standing to the credit of that Worker in his or her Genuine Redundancy Account is paid out by the Trustee under this clause 9A,

that Genuine Redundancy Account will, immediately after such amount is paid out, automatically convert back into a Worker's Account, and will, from that time, be deemed to be a Worker's Account again for the purposes of this Deed of Trust (including, without limitation, for the purposes of clauses 9A.1 and 9A.2).

- 9A.15 The provisions of this Deed of Trust will apply, with the necessary changes, to take into account the conversion of a Worker's Account into a Genuine Redundancy Account, subject to clause 9A.14. Where relevant, subject to such a conversion having occurred in respect of a Worker, and subject to clause 9A.14, references to that Worker's Worker's Account will be read as references to his or her Genuine Redundancy Account. If there is any doubt as to the interpretation of any provision of this Deed of Trust, the Trustee may, by Determination, determine the interpretation and such Determination is binding on any Workers or Members to which it relates.

10. Payments to Workers First Out of this Fund

- 10.1 If a Worker is at any time entitled to a Redundancy Payment and is at the same time entitled to a redundancy benefit from the Redundancy Payment Central Fund, the Redundancy Payment is payable and must be paid to the Worker before the entitlement to that redundancy benefit is paid, and if the redundancy benefit to which the Worker is entitled is a benefit under clause 3DD.1(1) or 3DDA of the Fund No. 1 Trust Deed, the amount of that benefit is reduced by the amount of the Redundancy Payment.

11. Forfeited Benefits

11.1 If:

- (1) 2 years have elapsed from the date on which a Member last made a Contribution in respect of a Worker; and
- (2) the Trustee, having taken all steps which, in the opinion of the Trustee, are reasonably necessary to locate the Worker (including posting to the last known address of the Worker a notice that the Worker may be entitled to a Redundancy Payment from the Fund and requesting the Worker to contact the Trustee) is unable to do so,

then, upon the Trustee resolving that the Worker cannot be located, the balance standing to the credit of the Worker's Account of that Worker is forfeited to the Fund and, subject to clause 11.2, forms part of the

Distributable Capital of the Fund unless the Trustee resolves to deal with the forfeited balance in any other way.

- 11.2 (1) Any amount forfeited under clause 11.1 after 30 June 2014 must be transferred by the Trustee to an account within the Fund designated as a "Forfeited Balances Account".
- (2) The Trustee may only make a payment from, or otherwise apply, amounts standing to the credit of the Forfeited Balances Account for any one or more of the purposes set out in section 58PB(4) of the Act.

12. Declaration of Trust

- 12.1 The Trustee declares that it will hold the Trust Fund on the trusts, and with and subject to, the powers and provisions contained in this Deed of Trust.

13. Name of Fund

- 13.1 The Trust created by this Deed is to be known as the Redundancy Payment Approved Worker Entitlement Fund 1.

14. Application of Trust Fund

- 14.1 Subject to the provisions of this Deed of Trust, so much of the Trust Fund as represents Redundancy Pay Contributions must be maintained exclusively for making Redundancy Payments to Workers.
- 14.2 The Trustee must establish a Worker's Account in its books of account in respect of each Worker. The Trustee must credit and debit amounts to each Worker's Account in accordance with clauses 7.1 and 8, subject to any conversion of such a Worker's Account into a Genuine Redundancy Account in accordance with clause 9A (but subject to clause 9A.14).
- 14.3 Where a Worker becomes entitled to a Redundancy Payment, the Trustee must deal with that entitlement in accordance with clause 9 or clause 9A, if that Worker's Worker's Account has been converted into a Genuine Redundancy Account pursuant to clause 9A (but subject to clause 9A.14).
- 14.4 Despite any other provisions of this Deed of Trust, the Trustee's liability to make any Redundancy Payment to a Worker is limited to the amount standing to the credit of the relevant Worker's Account at the date when the liability arises.

15. Distribution of Capital on the Vesting Date

- 15.1 Subject to clause 35.3, as from the Vesting Date, the Trustee holds the Trust Fund and its income as follows:
 - (1) As to the aggregate amount standing to the credit of Worker's Accounts, for each Worker to the extent of the amount standing to the credit of the relevant Worker's Account;

- (2) As to the Distributable Capital of the Trust Fund and its income, for the Industry Parties in existence at the Vesting Date and if more than one, then as to 50% for MBAV and as to the balance for the Unions (equally between them); and
- (3) As to the balance of the Trust Fund, in accordance with clause 19.3 (as to Contributions, if any) and in accordance with clause 19.4 (as to Net Income, if any).

16. Advancement of Distributable Capital and Benefits

16.1 The Trustee may:

- (1) determine that any real or personal property for the time being forming part of the Distributable Capital of the Trust Fund or that any part of the Distributable Capital of the Trust Fund is held for the benefit of an Industry Party absolutely;
- (2) transfer the whole or any part of the Distributable Capital of the Trust Fund or pay out of the Distributable Capital of the Trust Fund any sum to an Industry Party for that Industry Party's own use and benefit in such manner as the Trustee thinks fit and, for that purpose, may raise the sum out of the Distributable Capital of the Trust Fund in such manner as the Trustee thinks fit.

16.2 The Trustee may appropriate any part of the Trust Fund or any asset of the Trust Fund in specie or in the actual condition or state of investment of that asset in or towards the satisfaction of the whole or any part of any sum which the Trustee may determine to pay or apply to or for the benefit of an Industry Party under clause 16.1.

16.3 In making an appropriation under clause 16.2, the Trustee may estimate the value of the component parts of the Trust Fund or employ another person to make the valuation.

16.4 Every valuation and appropriation made under clauses 16.2 and 16.3 is final and binding on all persons interested in the Trust Fund.

16.5 Unless all Industry Parties agree otherwise, any amounts paid, applied, transferred or lent to the Industry Parties under this clause by the Trustee must be paid, applied, transferred or lent to the Industry Parties equally as between MBAV and the Unions.

16.6 The Trustee may use all or part of the Distributable Capital in or towards the exercise by the Trustee of any of its powers.

16.7 All persons claiming an interest in the Distributable Capital are deemed to take it with and subject to notice of the rights of the Trustee under this clause.

17. Distribution of Income

- 17.1 Before the expiration of any Accounting Period, the Trustee may determine in respect of all or any part of the Net Income for that Accounting Period:
- (1) to pay, apply or set aside the same to or for any one or more of the persons or purposes mentioned or referred to in clause 19.2 to the exclusion of the others of them and in such proportions as the Trustee thinks fit; or
 - (2) to accumulate the same.
- 17.2 The Trustee may exercise the discretion contained in clause 17.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts a person in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.
- 17.3 If the Trustee does not exercise the discretion contained in clauses 17.1(1) and 17.1(2) (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee is taken to have determined to and must accumulate the Net Income for the Accounting Period.
- 17.4 The following provisions apply to any Determination made under this clause 17:
- (1) A Determination to pay, apply or set aside any part of the Net Income may be effectually made and satisfied by:
 - (a) placing the amount to the credit of a person in the books of account of the Trust;
 - (b) drawing a cheque for the amount made payable to or for the credit or benefit of a person;
 - (c) a resolution of the Trustee that a sum out of or portion of the Net Income or the whole of Net Income for the Accounting Period be paid, applied or set aside to or for a person or otherwise dealt with for the benefit of a person specified in the resolution; or
 - (d) any other method provided by clause 21.
 - (2) Subject to clause 17.4(6) any resolution of the Trustee under clause 17.4(1)(c) is irrevocable and the Net Income must be dealt with as required by that resolution.
 - (3) The Trustee may:
 - (a) identify and segregate income from different sources or of different natures for the purpose of dealing with it separately; and

- (b) where the income of an Accounting Period is directly or indirectly derived from different sources, in making a Determination to pay, apply or set aside income for a person or to accumulate the same, determine from what source that income is derived.
 - (4) The Trustee may make separate Determinations to pay, apply or set aside any amount of a particular nature or character or from a particular source in the manner described in clause 17.1(1).
 - (5) The validity of any Determination to accumulate income is conditional upon the law in force in relation to this Deed of Trust permitting the accumulation at the end of the Accounting Period to which the Determination relates and except as provided in clause 17.4(6) is irrevocable.
 - (6) If at the end of any Accounting Period the amounts in respect of which Determinations have been made under clause 17.1 exceed the Net Income for that Accounting Period, the amount of the excess must be deducted from those amounts which the Trustee has determined to accumulate and only the balance of the amounts is accumulated. If any deficiency remains, the Trustee may amend the Determinations so as to eliminate the deficiency, except that, to the extent to which the amount has already been paid to or for the benefit of a person, the Trustee is deemed to have applied either the Distributable Capital of the Trust Fund to the person under clause 16 or Contributions to the person under clause 19.3, or both, as and to the extent that the Trustee determines.
 - (7) A Determination to pay, apply or set aside any part of the Net Income to or for a class of persons mentioned or referred to in clause 19.2 may be made in favour of any one or more of the persons in that class to the exclusion of the others of them and in such proportions and on any basis as the Trustee thinks fit.
- 17.5 (1) The Trustee may create a separate account in respect of:
- (a) any particular type or source of Net Income including but not limited to:
 - (i) income attributable to capital gains included in the assessable income of the Trust Fund for the purposes of the ITAA;
 - (ii) income derived from carrying on or being engaged in the business of primary production as defined in the ITAA;
 - (iii) income attributable to dividends whether generally or of a particular corporation or franked (including any amount included in the assessable income of the Trust Fund under section 160AQT(1) of the ITAA) or unfranked or otherwise;

- (iv) income derived from rental of property;
 - (v) interest;
 - (vi) income which is foreign source income for the purposes of the ITAA; and
 - (vii) income not falling within any other class;
- (b) any taxation credits available to the Trustee under the ITAA including but not limited to foreign tax credits, prescribed payment tax credits and dividend imputation credits,
- and upon receipt of that type or source of Net Income or taxation credit, the Trustee may pay the money into or apply the credit against the appropriate separate account.
- (2) Any amount paid, applied or set aside to or for a person out of such a separate account:
- (a) retains its character; and
 - (b) is of the same type, nature and substance in the hands of the person as it was in the hands of the Trustee.
- (3) The Trustee may determine the particular type or source of the Net Income or account against which the losses and outgoings incurred in deriving the Net Income paid into the separate account or capital loss calculated under division 102 or division 104 of the ITAA are set-off.
- 17.6 The powers granted to the Trustee by clauses 17.4(3), 17.4(4) and 17.5 do not cease and are not diminished or rendered ineffective in their exercise or effect by virtue of any income of the Trust Fund which has or is capable of having some special status or character for the purposes of the ITAA having been derived by or coming into the possession of the Trustee and having been mixed mingled or joined with other income of the Trust Fund, so long as it can be traced in equity.
- 17.7 Any income which the Trustee accumulates is and must be dealt with as an accretion to the capital of the Trust Fund and forms part of the Distributable Capital of the Trust Fund, but if it has been identified and segregated as income of a particular nature or character or from a particular source it retains its character and the Trustee may pay or apply the whole or any part of it as if it had not been accumulated and remained part of the Net Income for the current Accounting Period.
- 17.8 The following amounts do not form part of the Trust Fund:
- (1) any amount set aside for a person; or
 - (2) any amount held by the Trustee in a separate trust for a person under clause 17.9.
- 17.9 Upon setting aside an amount for a person, that amount is held by the Trustee as a separate trust fund in trust for that person absolutely.

17.10 Pending payment over to a person of the amount held by the Trustee in accordance with clause 17.9, the Trustee has power:

- (1) to invest, apply or deal with the whole or any part of that fund or any resulting income from it in the manner provided for in clause 22; and
- (2) to exercise all the other powers referred to in clause 22.

17.11 The person (if any) for whom income is held or to whom the income is distributed or paid or for whom it is applied or set aside in accordance with the provisions of this clause 17 is or is deemed to be presently and absolutely entitled to that income.

18. Recoupment of Losses

18.1 Where the Trustee suffers a loss for taxation purposes in any Accounting Period arising from or in relation to allowable deductions claimed or claimable under sections 79E, 79DA, 79F, division 36 or division 375 of the ITAA or otherwise, the Trustee is not required to recoup that loss out of the corpus of the Trust Fund.

18.2 Losses which relate to previous Accounting Periods may be recouped out of profits or corpus or both, as and to the extent that the Trustee determines.

19. Payments from Contributions and Income

19.1 Payments from Contributions to the Fund must be made only for the following purposes:

- (1) to pay Redundancy Payments and other Worker Entitlements to persons in respect of whom Contributions are made;
- (2) to make investments to generate income from the assets of the Fund;
- (3) to reimburse Contributors who have paid entitlements directly to persons in respect of whom Contributions are made;
- (4) to return Contributions to Contributors;
- (5) to pay, for the benefit of a person in respect of whom Contributions are made, an eligible termination payment (within the meaning of section 27A of the Income Tax Assessment Act 1936) into a complying superannuation fund (within the meaning of section 45 of the Superannuation Industry (Supervision) Act 1993), a complying approved deposit fund (within the meaning of section 47 of the Superannuation Industry (Supervision) Act 1993) or a retirement savings account (within the meaning of the Retirement Savings Account Act 1997);
- (6) to transfer Contributions to another Approved Worker Entitlement Fund;

- (7) to pay the Reasonable Administrative Expenses of the Fund;
- (8) to pay amounts to a Contributor's External Administrator that would otherwise be payable as mentioned in subparagraph (3) or (4) to the Contributor; and
- (9) to pay interest on, or to repay, money lent to the Fund.

19.2 Payments from the Net Income of the Fund must be made only for the following purposes:

- (1) a purpose mentioned in clauses 19.1(2)-19.1(9);
- (2) to make payments to Contributors to the Fund; and
- (3) to make payments to other persons where the payment is specified in subsection (5) of section 58PB of the Act.

19.3 Subject to any other clause of this Deed of Trust restricting the Trustee's right to do so, the Trustee may determine that the whole or any part of Contributions be:

- (1) paid or applied to or for; or
- (2) held for or for the benefit of,

any one or more of the persons or purposes mentioned in clause 19.1, to the exclusion of the others of them and in such proportions as the Trustee thinks fit.

19.4 Subject to any other clause in this Deed of Trust restricting the Trustee's right to do so, the Trustee may determine that the whole or any part of the Net Income be:

- (1) paid or applied to or for; or
- (2) held for or for the benefit of,

any one or more of the persons or purposes mentioned in clauses 19.1(2)-19.1(9) or any one or more of the persons mentioned in clauses 19.2(2) and 19.2(3), to the exclusion of the others of them and in such proportions as the Trustee thinks fit.

19.5 Without limiting either of clauses 19.3 or 19.4, where the whole or any part of Contributions or the Net Income is to be paid or applied to or for, or held for the benefit of a class of persons, the Trustee may further determine that the whole or part (as the case may be) is to be paid or applied to or for, or held for the benefit of any one or more of the persons which are members of that class of persons to the exclusion of the others of them and in such proportions as the Trustee thinks fit.

20. Transfers of Funds from and to Reciprocating or Compatible Funds

20.1 Subject to clause 20.4, the Trustee on receiving a written request from an employee covered by a Reciprocating Fund or a Compatible Fund ("other

Fund") together with a written request from the trustee of the other Fund may make or carry into effect an arrangement with the trustee or Administrator of the other Fund under which the entire sum standing to the credit of that particular employee in the other Fund is transferred from the other Fund and paid into or transferred to the Fund.

- 20.2 Subject to clause 20.4, the Trustee may on receiving a written request from a Worker in the following form or to the effect of the following:

The Trustee Redundancy Payment Approved Worker Entitlement Fund 1 (**"Fund"**)

**REQUEST TO TRANSFER WORKER'S ACCOUNT BALANCE TO A
RECIPROCATING OR COMPATIBLE FUND**

I _____ of _____ being a Worker as defined by the Fund's Deed of Trust request that the entire balance standing to the credit of my Worker Account in the Fund forthwith be transferred to the [.....] Fund which is a Reciprocating or Compatible Fund located at _____

SIGNED _____ this _____ day of _____ 20 _____ .

SIGNATURE

transfer the entire amount standing to the credit of that Worker's Worker's Account to the trustee of a Reciprocating Fund or to the Administrator of a Compatible Fund but only if the trustee of the Reciprocating Fund or the Administrator of the Compatible Fund consents to the transfer of the amount.

- 20.3 The receipt by the trustee of the Reciprocating Fund or the Administrator of the Compatible Fund for the amount transferred to the Reciprocating or Compatible Fund pursuant to sub-clause 20.2 is a complete discharge to the Trustee in respect of any liability to the Worker or to persons claiming through a Worker which the Trustee may have in relation to the amount transferred.
- 20.4 Transfers of funds from and to Reciprocating or Compatible Funds are not permitted where the relevant Worker's Account has been converted into a Genuine Redundancy Account pursuant to clause 9A (but subject to clause 9A.14), except for a transfer to or from such a Genuine Redundancy Account of a Worker from or to an account in respect of that Worker within, or which is part of, a Reciprocating Fund or Compatible Fund which account, in the Trustee's opinion, is an equivalent account. For the purposes of this clause 20.4, "equivalent account" means an account from which a payment may be made or an amount may be withdrawn or claimed only in the same or substantially the same circumstances as a payment may be made, or an amount withdrawn or claimed, from a Genuine Redundancy Account in accordance with clause 9A. The Trustee may require a Worker to provide the Trustee with such

information (including, without limitation, by way of statutory declaration or other form acceptable to the Trustee) as the Trustee may require in order for it to form an opinion as to whether or not an account is an equivalent account.

21. Determinations and Proceedings of Trustee

21.1 Any Determination by the Trustee in exercise of any power, discretion or authority conferred on the Trustee by this Deed of Trust may be made:

- (1) in writing signed by the Trustee;
- (2) by a resolution duly passed at a meeting of the Trustee;
- (3) in the case of a corporate trustee, in the manner set out in clause 21.2; or
- (4) by payment to or for the benefit of a person with the intention of distributing to the person the share of income or capital of the Trust represented by the payment.

21.2 A Trustee being a corporation may exercise or concur in exercising any discretion or power conferred on the Trustee by a resolution of the corporation or of its directors or governing body or (not being a sole Trustee) by its representative appointed for the purpose of attending meetings of the Trustee.

21.3 A sole Trustee may act as Trustee irrespective of whether previously there had been more than one Trustee.

21.4 As between the Trustee and a Union, any thing (including executing and if necessary delivering documents) done or which purports to be done by or in the name or on behalf of the division or branch of that Union (or by or in the name or on behalf of an officer of that division or branch) on whose behalf the Union has purported to enter into and execute this Deed of Trust, binds the Union, and the Trustee may act or rely on that thing as having been done by the Union in its own right.

21.5 Without limiting clause 21.4, any receipt for payment given by or in the name or on behalf of the division or branch of a Union on whose behalf the Union has purported to enter into and execute this Deed of Trust is a complete discharge to the Trustee for that payment.

22. Powers of Trustee

22.1 General Power

The Trustee has all the powers over and in respect of the Trust Fund and the assets of the Trust Fund including carrying on business on behalf of the Trust and using the assets and credit of the Trust and doing anything else on behalf of the Trust which it could exercise and do if it was the absolute and beneficial owner of the Trust Fund and the assets of the Trust Fund, except that:

- (1) no more than 5% of the total assets of the Fund must be invested in an entity Controlled by a Contributor or an Associate of a Contributor; and
- (2) the assets of the Fund must not be used to provide or facilitate any form of financial assistance, including a loan, to a Contributor, a person in respect of whom Contributions are made or an Associate of a Contributor or an Associate of a person in respect of whom Contributions are made.

22.2 Particular Powers

- (1) Without limiting the general power contained in clause 22.1 the Trustee has the particular powers referred to in **Part 1 of Schedule 1**.
- (2) In addition to the other powers conferred on the Trustee under this Deed of Trust and the powers conferred on trustees by law, the Trustee also has the powers relating to:
 - (a) insurance; and
 - (b) undertaking activities in the best interests of the Industry in Victoria,
 referred to in **Part 2 of Schedule 1**.
- (3) The Trustee has power to make application to any relevant authority for the Fund to become an Approved Worker Entitlement Fund and to seek prescription of the Fund under section 58PB(2) of the Act.

22.3 Statutory Powers

- (1) The Trustee has the powers conferred by the *Trustee Act* 1958 or otherwise by law except where they are inconsistent with the powers conferred by this Deed of Trust.
- (2) Where a power is conferred by this Deed of Trust which is similar to, but larger than, a power conferred by the *Trustee Act* 1958, it operates and is exercisable without any limitation or restriction imposed by the *Trustee Act* 1958 on that statutory power.

22.4 Dealings with Trustee

The Trustee may:

- (1) sell, transfer, hire, lease or dispose of any real or personal property of the Trust Fund or lend or advance any money to the Trustee in its personal capacity or as trustee of any other trust fund or to any corporation or partnership even though the Trustee is a shareholder, director, member or partner of the corporation or partnership;
- (2) buy, transfer, acquire, hire or lease any real or personal property or borrow any money from the Trustee in its personal capacity or

as trustee of any other trust fund or from any corporation or partnership even though the Trustee is a shareholder, director, member or partner of the corporation or partnership;

- (3) carry on or carry out any profit making undertaking or scheme in partnership with the Trustee in its personal capacity or as trustee of any other trust fund or with any corporation or partnership even though the Trustee is a shareholder, director, member or partner of the corporation or partnership;
- (4) generally deal with the Trustee in its personal capacity in all respects as if there were two separate parties to the dealings; and
- (5) sell to itself in its capacity as trustee of any other trust fund, either for cash or upon terms, any assets being shares or a joint or undivided interest in property where other shares in the same property are held by the Trustee in that other capacity and divide assets in specie between the Trust Fund and the other trust funds in such manner as the Trustee thinks fit.

22.5 No Account to Beneficiaries

Neither the Trustee nor the other party to any transaction referred to in clause 22.4 is required to account to any other person for any profit arising out of the transaction and the other party is not a trustee for any other person of any property or interest the subject of the transaction.

22.6 Joining Funds

The Trustee is not obliged to join the Trust Fund with any other trust fund referred to in any other deed of settlement so as to cause any two or more trust funds to become one trust fund but the Trustee may keep the Trust Fund entirely separate and distinct from any other trust fund.

22.7 Clauses 22.2-22.4 are subject to clauses 19 and 22.1.

23. Accounts and Records

- 23.1 The Trustee must keep complete and accurate books of account and records of all receipts and expenditures on account of the Trust Fund.
- 23.2 Promptly after the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures and the law) for the period which must include a statement of income and expenditure and a balance sheet.
- 23.3 The accounting report must be audited by a person or firm (being a registered company auditor under the Corporation Act) appointed by the Trustee from time to time.
- 23.4 A copy of the audited accounting report and the financial statements for the immediately preceding Accounting Period and a list of the assets held at the close of the Accounting Period, including the names and addresses

of all persons having custody of the assets, must be given upon request to any of the Industry Parties and to any Member.

23.5 Without limiting anything else in this clause:

- (1) an account must be kept for each person in respect of whom Contributions to the Fund are made; and
- (2) the account must be kept in a manner that enables entitlements in respect of the person to be calculated.

24. Confidentiality of Trustee's Deliberations

24.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:

- (1) any document disclosing any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee by this Deed of Trust or disclosing the reasons for any particular exercise or non-exercise of any power or discretion or the material upon which those reasons were or might have been based;
- (2) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed of Trust (not being legal advice obtained by the Trustee at the cost of the Trust Fund); or
- (3) any reason for any exercise or non-exercise of any power or discretion.

25. Remuneration of Trustee

25.1 Any Trustee may charge and retain out of the Trust Fund such trustee's commission as is reasonable or as is usually charged by trustees.

25.2 A Trustee being a solicitor, accountant or other professional person:

- (1) may be employed to transact any business or do any act required to be done in connection with the Trust; and
- (2) is entitled to be paid all proper costs, charges and expenses for any professional business or act done by him or her or his or her firm in relation to the execution of the Trust which he or she would have been entitled to receive in respect of the business if he or she had not been a Trustee.

25.3 The Trustee, and where the Trustee is a corporation, an officer of the Trustee:

- (1) may be appointed to act as director or other officer of any corporation or unit trust in which money forming part of the Trust Fund is invested; and

- (2) is entitled to receive and retain for the Trustee's or officer's own use all sums paid by way of remuneration and reimbursement of expenses by the corporation or unit trust for acting in the capacity of director or other officer.

26. Liability of Trustee

26.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Trust Fund or to any person by:

- (1) the exercise of any discretion or power conferred by this Deed of Trust or by law on the Trustee or any failure to exercise any of those discretions or powers, unless it is proved to have exercised or not exercised in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
- (2) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively.

26.2 All persons claiming any interest in the income, the capital, the Distributable Capital or the Net Income of the Trust Fund are deemed to take it with and subject to notice of the protection conferred by this clause 26.

26.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

26.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed of Trust or any document or statute or any matter concerning the administration of the Trust, the Trustee is not liable to any person in respect of any act done or omitted to be done by the Trustee in accordance with the advice.

26.5 Under no circumstances will any of the persons named below be in any way liable or responsible if the Trust Fund at any time or times is insufficient to provide benefits specified in or contemplated by this Deed of Trust, or any part of them:

- (1) the Trustee;
- (2) any director or officer of the Trustee;
- (3) either or both of the Industry Parties.

27. Indemnity for Trustee

27.1 Subject to clause 26.1(2), the Trustee and each director and officer of the Trustee is entitled to be indemnified out of the Trust Fund against liabilities incurred by the Trustee or by him or her in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions of this Deed of Trust or by

virtue of being the Trustee of the Trust or a director or officer of the Trustee of the Trust.

- 27.2 The Trustee is not entitled to be indemnified by the Industry Parties or by any person personally in respect of any liabilities, expenses, debts or other matters referred to in this Deed of Trust or applicable by law.
- 27.3 The Trustee is entitled to be reimbursed from the Trust Fund for all money expended and debts incurred in or about the administration of the Trust.
- 27.4 The Trustee may apply the Trust Fund or any money or property comprising the Trust Fund as it may decide to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.
- 27.5 Each indemnity conferred under this Deed of Trust is a continuing obligation and will survive the termination of this Deed of Trust.
- 27.6 It is not necessary for any person entitled to the benefit of an indemnity under this Deed to incur expense, or make payment, before enforcing a right of indemnity conferred by this Deed of Trust.

28. Trustee May Appoint Delegates and Agents

- 28.1 Without limiting clause 22.2, the Trustee may delegate any trust or power exercisable by the Trustee (including one which the Trustee may have a duty to exercise or perform and the power of delegation) to any person in such manner and upon such terms and conditions as the Trustee thinks fit. The Trustee may vary or revoke any such delegation as the Trustee thinks fit. The Trustee may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.
- 28.2 The Trustee is not bound in any case to act personally but is at full liberty to engage a contractor, manager, solicitor, accountant, clerk, workman, employee, servant or agent to transact all or any business of whatever nature required to be done in respect of the affairs of the Trust including the receipt and payment of money and the Trustee may in its discretion determine the remuneration to be allowed and paid and the charges and expenses to be reimbursed to a person so engaged.
- 28.3 Subject to this Deed of Trust, the Trustee may:
 - (1) appoint from time to time such one or more persons, firms or companies as the Trustee thinks fit to act either as custodian or investment manager or both subject to such conditions as the Trustee may from time to time determine;
 - (2) delegate to, and confer upon, each custodian or investment manager those authorities, powers and discretions as the Trustee thinks fit; and
 - (3) remove from time to time any custodian or investment manager appointed under clause 28.3(1).

28.4 The Trustee is not:

- (1) liable or responsible for any act, omission, error of judgment, negligence or breach of trust of any custodian or investment manager appointed under clause 28.3(1); and
- (2) bound to take proceedings against any custodian or investment manager in respect of the matters referred to in clause 28.4(1).

28.5 The Trustee may pay out of the Trust Fund to any custodian or investment manager appointed under clause 28.3(1) such remuneration for his, her, its or their services as the Trustee considers proper.

28.6 No custodian or investment manager appointed under clause 28.3(1) will be entitled to take part in the proceedings or deliberations of the Trustee.

29. **Exercise of Discretions and Powers**

29.1 Except where otherwise specified in this Deed of Trust, every discretion vested in the Trustee is absolute and uncontrolled.

29.2 Every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.

29.3 The Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed of Trust.

30. **Retirement of Member**

30.1 The participation of a Member in the Fund may be terminated upon the Member giving twelve (12) months' (or such lesser period as is agreed between the Member and the Trustee) notice in writing to the Trustee of its intention to cease participation in the Fund but only if the Member is not in arrears in respect of its Contributions.

30.2 The Trustee must accept that termination if it considers the reason for the Member terminating its membership reasonable. The Trustee may reject the termination if the Member is terminating its membership for the purpose of joining a similar fund to the Fund and such termination is, in the opinion of the Trustee, not in the best interest of the relevant Workers.

30.3 The participation in the Fund by such a Member shall cease as from the expiration of the twelve (12) month (or such lesser period as is agreed between the Member and the Trustee) notice period.

30.4 In the event of the termination of the participation of a Member in the Fund:

- (1) no further Workers of that retiring Member shall be admitted to the Fund; and

- (2) no further contributions shall be made by the Member except Contributions which were due on or before the date of cessation as a Member.

30.5 Notwithstanding that an employer has previously ceased to be a Member, that employer shall, if it wishes to be a Member, apply to be readmitted as a Member and must comply with all of the requirements of clause 2.

31. Variation of Trust

31.1 The Trustee (with the consent of the Industry Parties) may by Determination (revocable or irrevocable) revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed of Trust (or the trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed of Trust) and may, by the same or any other Determination, declare any new or other trusts, powers, terms and conditions concerning the whole or any part of the Trust Fund.

31.2 The Determination may state the date from which the various alterations or additions take effect. This date may be earlier or later than the date on which the Determination is made, and the variations, alterations or additions take effect from the date so stated. If no date is stated then the variations, alterations or additions take effect from the date the Determination is made.

31.3 No revocation, addition or variation may:

- (1) affect the beneficial entitlement to any amount set aside for any person prior to the date of the variation, alteration or addition;
- (2) have the effect of extending the Vesting Date beyond the Perpetuity Period; or
- (3) affect the status of the Fund as an Approved Worker Entitlement Fund (if and so long as it has that status).

31.4 Subject to clause 31.3 any revocation, addition or variation may vary all or any of the powers or provisions contained in this Deed of Trust (or in any variation of this Deed of Trust).

31.5 Where in the opinion of the Trustee a material amendment is made to the Deed of Trust the Trustee must give to each Member, as soon as practicable after the amendment, a statement in writing explaining the nature and purposes of the amendment.

32. Interest of Directors of Trustee Corporation

32.1 If the Trustee is a corporation, any person being a director or shareholder of the corporation may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed of Trust without affecting the validity of the exercise of the powers and discretions.

33. **Interest of Trustee**

33.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed of Trust or otherwise by law conferred even though:

- (1) the Trustee or any person being a director or shareholder of the Trustee (being a corporation) may:
 - (a) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (b) benefit either directly or indirectly as a result of the exercise of the power or discretion; and
- (2) the Trustee is the sole Trustee.

34. **Perpetuity Period**

34.1 The Perpetuity Period applicable to all dispositions made by this Deed of Trust is whichever is the shorter of:

- (1) the period of 80 years commencing on 1 April 2003; or
- (2) the period expiring 21 years from the death of the last survivor of the descendants now living of His Late Majesty King George VI.

35. **Determination and Winding Up of Fund**

35.1 The Fund commences on the date of this Deed of Trust and, subject to the provisions of this Deed of Trust, determines on the Vesting Date.

35.2 Despite clauses 35.1 a party ("**Proposer**") may at any time by notice in writing to each of the other parties request that each of the other parties consents to the dissolution or determination of the Fund. Each of the other parties has 6 months from the date of service of the notice in which to consider the request and notify the Proposer of their decision. If a party fails to notify the Proposer of its decision then it is deemed to have agreed to the proposed dissolution or determination of the Fund. If all the parties agree (or are deemed to agree) the Fund will be determined or dissolved upon the expiration of six (6) months after the unanimous agreement to dissolve or determine the Fund has been reached.

35.3 Upon the determination or dissolution of the Fund a full and general account in writing shall be taken of all assets, credits, property, effects, debts and liabilities and of all transactions, matters and things usually comprehended in a general account of like nature then belonging to or due to or owing by the Fund and a proper valuation shall be made of all the particulars included in such account which require and are capable of valuation and immediately after such last mentioned account shall have been taken and settled all the debts, assets and effects then belonging to or due to the Fund shall be realised and sold to the best advantage and

the monies arising from such sale and all other monies of the Fund shall be applied in the following manner:

firstly - in payment of the costs and expenses of the winding up of the Fund and realising its assets;

secondly - in the payment of the debts and liabilities of the Trustee including any debts owing by the Trustee to any of the parties or members;

thirdly – the remaining moneys and assets (other than any insurance policies effected by the Trustee under clause 22.2(2)(a) in respect of health benefits provided to Workers or the proceeds of such policies (the **Health Insurance Policies**)) must be applied as follows:

- (1) if the moneys and value of the assets equal or exceed the sum of the aggregate amount credited to Workers' Accounts;
 - (a) by providing each Worker with a benefit in accordance with clause 35.4 equal to the amount credited to their respective Account; and
 - (b) by holding the balance (if any) in accordance with clauses 15.1(2) and 15.1(3);
- (2) if clause 35.3(1) does not apply – by providing each Worker with a benefit in accordance with clause 35.4 equal to the proportion of the amount credited to their respective Account which the remaining moneys and value of the assets bears to the aggregate amount credited to Workers' Accounts.

The Trustee may make such arrangements in respect of the Health Insurance Policies (which may, without limitation, include payments to the Workers covered by such Health Insurance Policies) as it thinks equitable having regard to the circumstances.

35.4 The benefits provided by the Trustee to Workers under clause 35.3 will be:

- (1) provided in such form and by way of such arrangements and subject to such conditions as the Trustee determines; and
- (2) in lieu of, and in full satisfaction of, the benefits which would or might have been or become payable from the Fund but for the operation of this clause.

35.5 Nothing in this clause limits the right of the Trustee to appoint a date earlier than the last day of the Perpetuity Period as the Vesting Date.

35.6 On termination or dissolution of the Fund the Trustee, the Industry Parties and each Member must execute such release or releases (if any) in favour of the others of them in respect of claims on account of the Fund as is (in the opinion of the Trustee) usual in such cases.

36. Notices

- 36.1 A notice or other communication connected with this Deed of Trust ("**Notice**") has no legal effect unless it is in writing.
- 36.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
 - (2) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
 - (3) sent by facsimile to the facsimile number of the addressee;
 - (4) sent by electronic mail to the electronic mail address of the addressee; or
 - (5) delivered at the address for service of the addressee.
- 36.3 A certificate signed by a person giving a Notice or by an officer or employee of that person stating the date on which that Notice was sent or delivered under clause 36.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 36.4 If the Notice is sent or delivered in a manner provided by clause 36.2, it must be treated as given to and received by the person to which it is addressed:
- (1) if sent by post from within Australia to an address in Australia, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (2) if sent by post to an address outside Australia or sent by post from outside Australia, on the 5th Business Day (at the address to which it is posted) after posting;
 - (3) if sent by facsimile or electronic mail before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (4) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 36.5 Despite clause 36.4(3):
- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;

- (2) an electronic mail message is not treated as given or received if the sender's computer reports that the message has not been delivered; and
 - (3) a facsimile or electronic mail message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 36.6 If a Notice is served by a method which is provided by law but is not provided by clause 36.2, and the service takes place after 5 p.m. on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.
- 36.7 A Notice sent or delivered in a manner provided by clause 36.2 must be treated as validly given to and received by the person to which it is addressed even if:
- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - (2) the Notice is returned unclaimed; or
 - (3) in the case of a Notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- 36.8 The address for service of a person which is a party to this Deed of Trust is the address of that person set out in this Deed of Trust.
- 36.9 The address for service of a person which is not a party to this Deed of Trust is the address of that person in the records of the Trustee (and if a person has more than one address in those records, the most recently notified address of that person).
- 36.10 A person may change its address for service, facsimile number or electronic mail address by giving Notice of that change to the Trustee.
- 36.11 If the person to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that party if given to any of those persons.
- 36.12 Any Notice by a person may be given and may be signed by its solicitor.
- 36.13 Any Notice to a person may be given to its solicitor by any of the means listed in clause 36.2 to the solicitor's business address, facsimile number or electronic mail address.

37. Law of Trust

- 37.1 Subject to the provisions of clause 37.2, this Deed of Trust is governed by the law of Victoria.

37.2 The Trustee may by deed declare that the Trust takes effect from the date of the declaration in accordance with the law of some other state, territory or part of the world but not if under the law of that other state, territory or part of the world:

- (1) any of the trusts, powers and provisions declared in this Deed of Trust and contained would not be enforceable or capable of being exercised and so take effect; and
- (2) the Trust would not be able to be changed.

37.3 As from the date of the declaration, the law of the state, territory or part of the world named in the declaration is the law applicable to the Trust and the courts of that state, territory or part of the world are the forum for the administration of the Trust but subject to the powers conferred by this clause 36 and until any further declaration is made under this clause 36.

Schedule 1

Part 1

1. Invest

To invest money which forms part of the Trust Fund in any investments, whether involving liabilities or not, with or without security and upon such terms and conditions as the Trustee thinks fit even though those investments are:

- 1.1 not income producing;
- 1.2 of a wasting or speculative nature; or
- 1.3 not by law authorised for the investment of trust money.

2. Borrow

- 2.1 To raise or borrow money, either alone or jointly with others, from any person upon such terms and conditions as the Trustee thinks fit.
- 2.2 To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Trust as the Trustee may decide.
- 2.3 No lender is concerned to enquire:
 - (a) as to whether the necessity for any borrowing has arisen;
 - (b) as to the purpose for which it is required;
 - (c) as to the application of the money borrowed; or
 - (d) that no more than is wanted is raised.

3. Limit Liability

To enter into any agreement to limit the present or future liability of the Trust including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

4. Give Guarantees

- 4.1 To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person.

- 4.2 To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Trust Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- 4.3 No lender is concerned to enquire as to:
- (a) the necessity for or propriety of any guarantee or indemnity;
 - (b) the purpose for which it is given; or
 - (c) the application of any money borrowed.

6. Attorney

To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

7. Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed of Trust on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

Part 2

1. Insurance Powers

For the purposes of clause 22.2(2)(a), the Trustee has power to effect policies of insurance in the name of the Trustee, or pursuant to arrangements established with the Industry Parties for this purpose, to cover liability for health insurance benefits provided to Workers including personal accident insurance, emergency transport cover and dental cover and any other type of insurance benefit determined from time to time by the Trustee.

2. Undertaking Activities in the Best Interests of the Industry

For the purposes of clause 22.2(2)(b), the Trustee has the following powers:

- (1) to determine, projects and activities which are considered to be beneficial to the interests of the Industry in Victoria having regard to the interests of Members and Workers or beneficial to the interests of Members or Workers;
- (2) to undertake and conduct projects and activities of the kind specified in Item 1, and to make any payments (including donations) or incur expenses or liabilities or otherwise to apply such funds as it may have available in or towards projects and activities of the kind specified in Item 1 or to assist in the conduct of those projects or activities; and

- (3) to make payments (including donations) and to dispose of any real or personal property of the Trust Fund to a person which is complying with Item 1 or to enable the person to do so (without seeing or being bound to see to their application).

Schedule 2

Application Form

EXECUTED as a deed:

[The signatures of parties to the Trust Deed appear in the original document]

Redundancy Payment Approved Worker Entitlement Fund 1

Copies of Trustee Determinations

Trustee Determinations made on:

- **16 July 2008;**
- **20 June 2012; and**
- **15 October 2014.**

FUND 4

Redundancy Payment Approved Worker Entitlement Fund 1

Determination by Trustee pursuant to Clause 5.1 of the Deed of Trust dated
10 March 2004

1. The Trustee has, under clause 5.1 of the Deed of Trust, power to lay down and determine terms and conditions governing the making of Redundancy Pay Contributions, where the Deed of Trust or a Worker's Contract of Employment or the Redundancy Pay Agreement does not deal with, or in the opinion of the Trustee, adequately deal with a particular matter.
2. In this Determination capitalised expressions not defined have the same meaning as in the Deed of Trust.
3. The Deed of Trust imposes obligations to make Redundancy Pay Contributions in respect of each "Worker". The Deed of Trust defines a "Worker" as (a) an employee of an employer engaged in working on a project in the Industry; and (b) an employee in respect of whom the employee's employer has agreed to be treated as a Worker for the purposes of this Deed of Trust by notifying the Trustee in such manner and form as prescribed by the Trustee. It includes an Approved Worker and a Trainee, but does not include an Apprentice (unless that Apprentice is an Approved Worker). "Industry" is defined as "the building and construction industry".
4. The Trustee wishes to clarify the position in relation to a "foreman" employed by a Member.
5. The Trustee has resolved to exercise its power under clause 5.1 of the Deed of Trust and HEREBY DETERMINES and LAYS DOWN the following:

"If a member wishes to make Redundancy Pay Contributions in respect of a foreman employed by that Member, the Member may do so by notifying the Trustee in such manner and form as prescribed by the Trustee that the foreman is an employee in respect of whom the Member has agreed to be treated as a Worker for the purposes of the Deed of Trust."

6. The Trustee has further resolved to notify any Member to which this Determination relates of the Determination.

Signed as a true record of the resolution of the directors of the Trustee passed at a meeting of the directors held on 16 July 2008.

J A S Glasson

Redundancy Payment Approved Worker Entitlement Fund 1

Determination by Trustee pursuant to Clause 5.1 of the Deed of Trust dated 10 March 2004

- 1 The Trustee has, under clause 5.1 of the Deed of Trust, power to lay down and determine terms and conditions governing the making of Redundancy Pay Contributions; where the Deed of Trust or a Worker's Contract of Employment or the Redundancy Pay Agreement does not deal with, or in the opinion of the Trustee, adequately deal with a particular matter.
- 2 In this Determination capitalised expressions not defined have the same meaning as in the Deed of Trust.
- 3 Relevantly, the Deed of Trust contains the following definitions:
 - (1) **"Worker"** means:
 - (a) an employee of an employer engaged in working on a project in the Industry; and
 - (b) an employee in respect of whom the employee's employer has agreed to be treated as a Worker for the purposes of this Deed of Trust by notifying the Trustee in such manner and form as is prescribed by the Trustee,and includes a Approved Worker and a Trainee, but does not include an Apprentice (unless the Apprentice is an Approved Worker);
 - (2) **"Industry"** is defined as "the building and construction industry".
 - (3) **"Member"** means a person which has been admitted to participation in the Fund, and has not ceased to participate in the Fund as provided by this Deed of Trust, and in relation to a Worker means the person for the time being employing him or her;
- 4 The Deed of Trust imposes obligations to make Redundancy Pay Contributions in respect of each "Worker".
- 5 The Trustee wishes to clarify the position in relation to:
 - (1) the circumstances where a Worker (other than an Approved Worker) is entitled to make a claim on the Fund under the Deed of Trust; and
 - (2) the requirement for a Member to make Redundancy Pay Contributions,in circumstances where a Worker is in receipt of payments made to the Worker as required by applicable Workers Compensation legislation ("**WorkCover Benefits**").
- 6 The Trustee has resolved to exercise its power under clause 5.1 of the Deed of Trust and **HEREBY DETERMINES and LAYS DOWN** the following:
 - (1) **WORKERS (OTHER THAN APPROVED WORKERS) IN RECEIPT OF WORKCOVER BENEFITS – CLAIMS THAT MAY BE MADE ON THE FUND**

(a) **Initial Benefit**

When a Worker (other than an Approved Worker) is in receipt of WorkCover Benefits and his/her contract of employment is terminated, the Worker is entitled to request payment of the initial benefit as set out in clause 9.1 of the Deed of Trust.

(b) **Remaining Benefit**

- (i) Whilst a Worker (other than an Approved Worker) is receiving WorkCover Benefits, he/she is not entitled to make a claim on the Fund for the balance remaining in his/her Worker's Account. Once the Worker is no longer in receipt of WorkCover Benefits and his/her employment has been terminated, he/she is entitled to withdraw the balance (if any) of his/ her Account if he/she has not worked for four (4) consecutive weeks commencing on the date the Worker ceases to receive WorkCover Benefits. The Worker must provide the Trustee with such evidence as the Trustee may require that the Worker is registered with Centrelink during that period.
- (ii) The Worker may be permitted to withdraw the balance (if any) of his or her Worker's Account, at the discretion of the Trustee, if there are extenuating circumstances affecting the Worker. For example - the Trustee may consider exercising its discretion if a Worker (other than an Approved Worker):
 - (A) has been in receipt of WorkCover Benefits for more than the maximum compensable period under the Workers Compensation legislation applicable to the Worker,
 - (B) is unlikely to return to work in the foreseeable future or to ever work in the building industry again, and
 - (C) writes a letter to the Trustee giving reasons for wishing to claim, and provides a letter from his/her doctor confirming the situation.

In such circumstances, provided the Worker's employment has been terminated and the Trustee is satisfied as to the bona fide's of the case, then the remaining benefit could be paid.

(2) **WORKERS (OTHER THAN APPROVED WORKERS) IN RECEIPT OF WORKCOVER BENEFITS – REQUIREMENT TO MAKE REDUNDANCY PAY CONTRIBUTIONS**

- (a) When a Worker (other than an Approved Worker) suffers a workplace injury and is accepted by his/her employer's Workers Compensation insurer as qualifying to receive WorkCover Benefits, his/her employer is required to make the weekly Redundancy Pay Contribution to the Fund for the period that the Worker is in receipt of WorkCover Benefits up to a maximum of:

- (i) 26 weeks if the injury occurred prior to and including 30.09.89
- (ii) 52 weeks if the injury occurred after 30.09.89

(the Maximum Benefit Period)

- (b) The requirement in paragraph 6(2)(a) above will continue to apply for the Maximum Benefit Period even if any of the following occurs:
- (i) the Worker's employment is terminated prior to the expiration of 26 or 52 weeks, as is relevant;
 - (ii) the Worker's employer enters into liquidation or winding up (in which case the total of contributions up to the expiration of 26 or 52 weeks forms part of the employer's debt to the Fund);
 - (iii) the Employer ceases to trade (in which case the employer would need to make the Redundancy Pay Contributions up to the expiration of 26 or 52 weeks, as is relevant, either at the time the Employer ceases to trade or on a monthly basis after ceasing to trade).
- (c) Where a Worker (other than an Approved Worker) is injured whilst working for an Employer that is engaged on a mix of commercial/industrial and domestic work the following will apply:
- (i) if the Worker was injured whilst working on a domestic site, no Redundancy Pay Contributions will be payable to the Fund under the Deed of Trust;
 - (ii) if the Worker was injured whilst working on a commercial/industrial site, Redundancy Pay Contributions will be required to be paid up to the end of the Maximum Benefit Period in accordance with paragraphs 6(2)(a) and 6(2)(b) above.

7 The Trustee has further resolved to notify any Member to which this Determination relates of the Determination.

Signed as a true record of the resolution of the directors of the Trustee passed at a meeting of the directors held on 20 June 2012.



J A S Glasson

Redundancy Payment Central Fund Ltd.
(ACN 007 133 833)
(Trustee)

Redundancy Payment Approved Worker Entitlement Fund 1
Determination by Trustee under clause 5.1 of the deed of trust

1. Background

- (a) The Trustee, as trustee of the Redundancy Payment Approved Worker Entitlement Fund 1 (**Fund**), has the power, under clause 5.1 of the deed of trust made on 10 March 2004 establishing the Fund (**Trust Deed**), to lay down and determine terms and conditions governing the making of Redundancy Pay Contributions, where the Trust Deed or a Worker's Contract of Employment or the Redundancy Pay Agreement does not deal with, or in the opinion of the Trustee, does not adequately deal with, a particular matter.
- (b) Terms defined in the Trust Deed have the same meaning in this document, unless the context requires otherwise.
- (c) Members are currently required to lodge periodic returns and other documents with the Trustee in connection with, among other things, the calculation and payment of Redundancy Pay Contributions. Furthermore, the Trustee provides Members with documents such as preliminary invoices in connection with the calculation of their respective Redundancy Pay Contributions.
- (d) Currently, some Members lodge some of the documents referred to in paragraph (c) above through an on-line system set up by the Trustee called EmployerLink, while other Members do so in paper form.
- (e) To increase administrative efficiency and accuracy, the Trustee proposes to move to an entirely on-line system, being an upgraded version of EmployerLink, for the lodgement by Members, and the provision by the Trustee to Members, of the kinds of documents referred to in paragraph (c) above. The Trustee believes that this will potentially lead to cost savings in the administration of the Fund.
- (f) None of the Trust Deed, any Worker's Contract of Employment or any Redundancy Pay Agreement deals with, or in the Trustee's opinion, adequately deals with, the lodgement or provision of documents of the kind referred to in paragraph (c) above.

2. Trustee's determination

- (a) The Trustee has resolved to exercise its power under clause 5.1 of the Trust Deed and hereby lays down and determines the terms and conditions set out in this section 2.
- (b) In this section 2, **EmployerLink Service** means the on-line contributions service operated by the Trustee on its website at www.incolink.org.au, as amended, renamed, upgraded or replaced from time to time.
- (c) Subject to paragraph (e) of this section 2, on and from the date on which the upgrade to the EmployerLink Service next occurs after the date of this determination:
 - (i) Members; and

- (ii) employers proposing to apply to become Members of the Fund,
who are, or will be, required to make Redundancy Pay Contributions must use the EmployerLink Service exclusively to lodge with the Trustee, or receive from the Trustee or access, electronically, the following documents (and without lodging, receiving or accessing them in paper form):
 - (iii) applications to become a Member of the Fund and related documents and forms;
 - (iv) periodic contribution returns relating to Members' obligations to pay Redundancy Pay Contributions;
 - (v) declarations concerning Workers and any other person in respect of whom a Member makes, or at any time made, Redundancy Pay Contributions;
 - (vi) invoices, statements and other documents and notifications the Trustee may be required or choose to give Members in connection with Redundancy Pay Contributions; and
 - (vii) any other notice, form, correspondence or documents in connection with Redundancy Pay Contributions that the Trustee may choose to accept, or that Members may be required to lodge with or give the Trustee, electronically.
- (d) For the purposes of paragraph (c)(vii) of this section 2, the Trustee may notify Members of any notice, form, correspondence or document that the Trustee may choose to accept, or that Members may be required to lodge with or give the Trustee, electronically, by:
 - (i) posting the notification on the EmployerLink Service, so that Members who log in to the service will be able to view it; or
 - (ii) sending the notification to Members by electronic mail.
- (e) The Trustee may, in its discretion, choose to accept from, or to give or send to, a Member or Members any document referred to in paragraph (c) of this section 2 in paper form, instead of electronically through the EmployerLink Service.

Signed as a true and correct record of the determination made by the Trustee by a resolution of the directors of the Trustee passed at a meeting of the directors held on the date specified below:


J A S Glasson

Date meeting held: 15 / 10 / 2014

Redundancy Payment Approved Worker Entitlement Fund 1

Determination by Trustee pursuant to Clause 5.1 of the Deed of Trust as amended and dated 31 October 2014

1. The Trustee has, under clause 5.1 of the Deed of Trust, power to lay down and determine terms and conditions governing the making of Redundancy Pay Contributions, where the Deed of Trust or a Worker's Contract of Employment does not deal with, or in the opinion of the Trustee, adequately deal with a particular matter.
2. In this Determination capitalised expressions not defined have the same meaning as in the Deed of Trust.
3. Clause 9A of the Deed of Trust sets out circumstances when a Worker can apply for and be paid a benefit equal to the amount outstanding to the credit of that Worker in his or her Genuine Redundancy Account.
4. The Trustee wishes to clarify the position in relation to a Worker who qualifies for and participates in an **early retirement scheme** (as that term is defined in the *Income Tax Assessment Act 1997 (Cth)* as amended and wishes to be paid the amount outstanding to the credit of that Worker in his or her Genuine Redundancy Account.
5. The Trustee has resolved to exercise its power under clause 5.1 of the Deed of Trust and HEREBY DETERMINES and LAYS DOWN the following:

*"A Worker who qualifies for and participates in an **early retirement scheme** under the Income Tax Assessment Act 1997 (Cth) as amended may make a written request to the Trustee on a form prescribed by the Trustee for payment of the amount outstanding to the credit of that Worker in his or her Genuine Redundancy Account."*

6. The Trustee has further resolved to notify any Member to which this Determination relates of the Determination.

Signed as a true record of the resolution of the directors of the Trustee passed at a meeting of the directors held on 17 May 2017.


.....
B Welch

17/05/17