

*X 29*  
Dated: ...../...../2012

## **DEED OF AMENDMENT**

### **REDUNDANCY PAYMENT CENTRAL FUND**

**REDUNDANCY PAYMENT CENTRAL FUND LTD.**

**THE MASTER BUILDERS ASSOCIATION OF VICTORIA**

**THE AUSTRALIAN WORKERS' UNION**

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (ON BEHALF OF ITS CONSTRUCTION AND GENERAL DIVISION)**

**COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA (ON BEHALF OF ITS PLUMBING DIVISION)**

## **MASON SIER TURNBULL**

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Ref: MBC:DJC:1201833

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This deed is made on

*X 29th NOVEMBER*

2012

Between

**Redundancy Payment Central Fund Ltd.** (ACN 007 133 833) of 1 Pelham Street, Carlton, Victoria (Trustee)

and

**The Master Builders Association of Victoria** (ACN 004 255 654) of 332 Albert Street, East Melbourne, Victoria (MBAV)

and

**The Australian Workers' Union** of c/- 685 Spencer Street, West Melbourne, Victoria (AWU)

and

**Construction, Forestry, Mining and Energy Union** (on behalf of its Construction and General Division) of 500 Swanston Street, Carlton South, Victoria (CFMEU)

and

**Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia** (on behalf of its Plumbing Division) of c/- 52 Victoria Street, Carlton South, Victoria (CEPU)

#### RECITALS

- A. By deed of trust made on 10 April 1989 between MBAV, Amalgamated Society of Carpenters and Joiners of Australia (Victorian Branch) (ASC&JA), Building Workers Industrial Union of Australia (Victoria) (BWIU), Victorian State Building Trades Union (VSBTU) and the Trustee, as that deed was subsequently varied (**Trust Deed**), a trust fund known as the Redundancy Payment Central Fund (**Fund**) was established.
- B. In the Trust Deed, the ASC&JA, BWIU and VSBTU are specifically identified as "participating Unions", and the following employee organisations or associations, being eligible to become participating Unions, became participating Unions by agreeing to be bound by the Trust Deed in accordance with it:
- (a) The Federated Engine Drivers and Firemen's Association of Australia;
  - (b) The Operative Painters and Decorators Union of Australia (Victorian Branch);
  - (c) Plumbers and Gasfitters Employees' Union of Australia (Victorian Branch);  
and
  - (d) The Slaters, Tilers and Roofing Industry Union of Victoria.
- C. As at the date of this deed, each of the AWU, CFMEU and CEPU is any one or more of the following and, as such, executes this deed in that capacity or in those capacities:

- (a) A successor in title to an original party to the Trust Deed.
  - (b) A successor in title to, or agent of, one or more participating Unions referred to in recital B.
- D. Clause 20.1 of the Trust Deed provides that the parties to the Trust Deed (now being the parties to this deed), with the consent of all of the participating Unions (now being AWU, CFMEU and CEPU) may at any time and from time to time by deed add to, vary or revoke all or any of the terms of the Trust Deed and, without limiting the generality of this power, may by the same or any deed or deeds declare any new or other powers or discretions for the administration and operation of the Fund provided that any addition, variation or revocation shall not affect the beneficial entitlements of MBAV, participating Unions and the members of the Fund.
- E. The parties to this deed:
- (a) have determined to exercise their power under clause 20.1 of the Trust Deed to amend the Trust Deed as set out in this deed; and
  - (b) believe that the amendments set out in this deed do not affect the beneficial entitlements of MBAV, participating Unions or the members of the Fund.

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION**

In this deed, headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:

- (a) a reference to a word includes the singular and the plural of the word and vice versa;
- (b) a reference to a gender includes any gender;
- (c) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) a term which refers to a person includes a person in any capacity, a body corporate, an unincorporated body (for example a society or association), a trust, a partnership, a sovereign state, a government or a government department or agency;
- (e) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (f) a reference to a recital, clause, paragraph, schedule, annexure or other part is a reference to an item of that type in this deed; and
- (g) a reference to a party is a reference to a party to this deed and includes a reference to that party's successors and permitted assigns.

## 2. AMENDMENTS TO TRUST DEED

### 2.1. Exercise of power to amend

In exercise of the power conferred on them by clause 20.1 of the Trust Deed, the parties to this deed add to, vary or revoke the terms of the Trust Deed:

- (a) as shown in the document set out in annexure "A" to this deed (**Consolidated Trust Deed**), where deletions are crossed out and insertions are underlined; and
- (b) by replacing the table of contents of the Trust Deed with the table of contents of the Consolidated Trust Deed.

### 2.2. Consent of participating Unions

AWU, CFMEU and CEPU, being all of the participating Unions as at the date of this deed, consent to each addition to, and variation and revocation of, the Trust Deed effected under clause 2.1.

## 3. EFFECTIVE DATE

This deed takes effect on the date on which it is last executed by a party or parties (being the date of this deed).

## 4. CONFIRMATION AND RATIFICATION

Subject to this deed, the parties:

- (a) confirm and ratify the Trust Deed; and
- (b) agree the Trust Deed is in full force and effect according to its terms.

## 5. GOVERNING LAW AND JURISDICTION

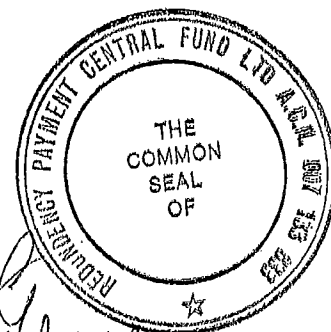
This deed is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

Executed as a deed

THE COMMON SEAL of  
REDUNDANCY PAYMENT  
CENTRAL FUND LTD. (ACN 007  
133 833) was affixed in accordance with  
its constitution in the presence of:

.....  
Signature of director

.....  
Name of director



.....  
Signature of director/company secretary

.....  
Name of director/company secretary

THE SEAL of THE MASTER  
BUILDERS ASSOCIATION OF  
VICTORIA (ACN 004 255 654)  
was affixed in accordance with its  
constituent documents in the presence of: )

*[Signature]*  
Signature of president *director*

*HEDLEY DAVIS*  
Name of president *director*



*[Signature]*  
Signature of executive director

*BRIAN WELCH*  
Name of executive director

THE SEAL of THE AUSTRALIAN  
WORKERS' UNION was affixed in  
accordance with its constituent  
documents in the presence of: )

*[Signature]*  
Signature of authorised officer

**CESAR MELHEM**  
Victorian Branch Secretary  
The Australian Workers' Union  
Name and office held Melbourne VIC 3003

Signature of authorised officer

Name and office held

THE SEAL of CONSTRUCTION,  
FORESTRY, MINING AND  
ENERGY UNION was affixed in  
accordance with its constituent  
documents in the presence of: )

Construction and General Division:

*WOL*  
Signature of authorised officer

*WILLIAM OLIVER*  
Name and office held

Signature of authorised officer

Name and office held

THE SEAL of COMMUNICATIONS, )  
 ELECTRICAL, ELECTRONIC, )  
 ENERGY, INFORMATION, )  
 POSTAL, PLUMBING AND ALLIED )  
 SERVICES UNION OF AUSTRALIA )  
 was affixed in accordance with its )  
 constituent documents in the presence of: )

**Plumbing Division:**

.....*Earl Setches*.....  
 Signature of General Secretary (Plumbing Division)

.....EARL SETCHES.....  
 Name of General Secretary (Plumbing Division)

**ANNEXURE "A"**  
**CONSOLIDATED TRUST DEED**



**CONSOLIDATED TRUST DEED  
THE REDUNDANCY PAYMENT CENTRAL FUND**

**Dated 10 April 1989**

Parties

**MASTER BUILDERS' ASSOCIATION OF VICTORIA  
("MBAV")**

**AMALGAMATED SOCIETY OF CARPENTERS AND JOINERS OF  
AUSTRALIA (VICTORIAN BRANCH)  
("ASC&JA")**

**BUILDING WORKERS INDUSTRIAL UNION OF AUSTRALIA  
(VICTORIA)  
("BWIU")**

**VICTORIAN STATE BUILDING TRADES UNION  
("VSBTU")**

**REDUNDANCY PAYMENT CENTRAL FUND LIMITED  
("Trustee")**

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**PARTIES: MASTER BUILDERS' ASSOCIATION OF VICTORIA** of 332 Albert Street, East Melbourne ("MBAV")

**AND: AMALGAMATED SOCIETY OF CARPENTERS AND JOINERS OF AUSTRALIA (VICTORIAN BRANCH)** of 76-78 Victoria Street, Carlton South ("ASC&JA")

**BUILDING WORKERS INDUSTRIAL UNION OF AUSTRALIA (VICTORIA)** of 500 Swanston Street, Carlton ("BWIU")

**VICTORIAN STATE BUILDING TRADES UNION** of 121 Drummond Street, Carlton ("VSBTU")

**AND: REDUNDANCY PAYMENT CENTRAL FUND LTD.** of 6 Paterson Street, Abbotsford ("the Trustee")

#### **INTRODUCTION**

- A.** MBAV and the Unions are parties to the Redundancy pay Agreement which commenced to operate on 1st October 1987.
- B.** Under the terms of the Redundancy pay Agreement, participating employers of workers who are engaged on a building project are required to set aside a specific amount per worker per week to be contributed to a redundancy pay scheme under which a worker will be entitled to benefits upon termination of employment.
- C.** In June 1988 MBAV established the MBAV Redundancy Payment Plan ("the MRP Plan") to enable employers to participate conveniently in the redundancy pay scheme by contributing to the MRP Plan which is administered by MBAV in accordance with the Redundancy Pay Agreement.
- D.** In May 1988 the VSBTU also established a redundancy pay scheme to which employers of union members have been contributing ("the Union Plan").
- E.** MBAV and the Unions have agreed to establish a joint fund ("the Redundancy Payment Central Fund" or "the Fund") to provide benefits to workers who become entitled to redundancy payments in accordance with the terms of the Redundancy Pay Agreement and to reimburse certain employers in respect of certain payments made by such employers to workers under the terms of the Redundancy Pay Agreement.

- F. As a consequence of the agreement referred to in E above MBAV and the Unions have further agreed to take all necessary action to:
- (1) cease the operations of both the MRP Plan and the Union Plan;
  - (2) withdraw all moneys presently held under both the MRP Plan and the Union Plan (being the amounts set out in Schedule A hereof) ("the Settled Sum") and upon the execution of this Deed of Trust transfer the Settled Sum to the Trustee to hold upon the trusts and with and subject to the powers and provisions hereafter set forth;
  - (3) obtain the consent of the members of the MRP Plan and the Unions to become Members of the Fund; and
  - (4) actively promote and seek membership of the Fund from employers eligible to participate in the Fund.
- G. The Trustee has consented to become the Trustee hereof upon the trusts and with and subject to the powers and provisions hereinafter set forth.

#### NOW THIS DEED WITNESSETH:

##### Part 1 Definitions

- 1.1 Unless the subject matter or context requires otherwise, in this Deed including the Introduction, Schedules and Appendices (if any) the following words and expressions whether commencing with capital letters or not shall have the meanings respectively assigned to them below:
- (1) **"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 Redundancy Payment Central Fund, or both.
  - (1A) **"Application Form"** means the application form for membership of the Fund, a copy of which is annexed hereto as Schedule B;
  - (2) **"Apprentice"** means an employee of an employer (other than a trainee) who is registered as an apprentice with the Victorian Learning and Employment Skills Commission and undertaking a course of training approved by that Commission;

- (3) **"Apprentice and Former Apprentice Payments Account"** means the account established under Clause 4.1;
- (3A) **"apprentice levy"** means the term referred to in sub-Clause 3B.1(1);
- (4) **"building project"** means all building projects in the State of Victoria on which a participating employer is the head contractor other than engineering construction projects and the cottage/housing industry;
- (4A) **"Contract of Employment"** includes any agreement arrangement or understanding (and whether documented or not) **under** or pursuant to which a worker is employed by an employer and is or may become entitled to redundancy payments in accordance with its terms;
- (4AA) **"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 Redundancy Payment Central Fund; and
  - (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 Redundancy Payment Central Fund, or both.
- (4AA) **"CPI adjusted contribution rate"** means the adjusted rate referred to in sub-Clause 3A.1(2);
- (5) **"corporation"** means any body corporate, whether formed or incorporated within or outside the State of Victoria and includes any company;
- (6) **"this Deed of Trust"** means this Deed of Trust as amended, modified, varied by any amendments, modifications, alterations or variations lawfully made hereto;
- (6A) **"EBA"** means the "Employee's Basic Account";
- (6AA) **"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;
- (6B) **"ESA"** means the "Employee's Supplementary Account";

- (7) **"Former Apprentice"** means a person who has completed service under the terms of an indenture or has completed an approved course of training under a training agreement other than in engineering, construction projects or in cottage/housing industries;
- (7A) **"Funded Apprentice"** means an apprentice in respect to whom a member has given notice to the Trustee under Clause 3DDD.1.
- (7B) **"Funded Apprentice Account"** means the account established by the Trustee in its books of account in respect to each Funded Apprentice, to be credited in accordance with Clause 3DDD.8.
- (7BB) **"Genuine Redundancy Account"** means the account which a Worker's Account converts into in accordance with Part 3DDA, subject to clause 3DDA.14;
- (7C) **"Industry"** means the building and construction industry;
- (8) **"member"** means a member of the Fund;
- (9) **"MRP Plan"** means the fund established by MBAV in June 1988 to enable participating employers to participate conveniently in the redundancy pay scheme and which is to be terminated by MBAV upon entering into this Deed of Trust;
- (10) **"participating Employers"** means those employers who have agreed to participate in the redundancy pay scheme;
- (11) **"participating Unions"** means the ASC&JA, the BWIU, the VSBTU and those employee organisations or associations whose names are set out in Schedule C and who have agreed to be bound by the terms of this Deed of Trust by executing a "Notice of Agreement to be bound" in the form set out in schedule D hereof;
- (11A) **"Reciprocating Fund"** - means any other trust fund deemed by the Trustee to be a fund comparable to the Redundancy Payment Central Fund which is authorised by its trust deed to transfer funds to the Redundancy Payment Central Fund from time to time and to accept transfers of funds from the Redundancy Payment Central Fund from time to time";
- (11AA) **"Payment Procedures Variation Commencement Date"** means 1 July 1994

- (12) **"redundancy payments"** means payments to be made to workers pursuant to Parts 3D, 3DDA and 3E of this Deed of Trust;
- (13) **"the 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 agree is to be regarded as being in substitution thereof including such subsequent agreements as amended, modified, varied or altered;
- (14) **"redundancy pay contributions"** means the contributions to be made to the Fund by members;
- (15) **"redundancy pay scheme"** means the redundancy pay scheme established under Parts 3A to 3E of this Deed of Trust;
- (16) **"the Redundancy Payment Central Fund"** and **"the Fund"** means the fund established by this Deed of Trust;
- (17) **"securities"** means shares stock debentures debenture stock bonds notes funds option units and securities of any kind;
- (18) **"the Settled Sum"** means the amount set out in Schedule A;
- (18A) **"Trainee"** means a worker (other than a apprentice) who is undertaking any course of training;
- (18B) **"Training Agreement"**, in relation to an apprentice, means the contract of training (as that expression is used in the *Vocational Education and Training Act 1990*) under which the apprentice's employer undertakes to train the apprentice;
- (19) **"the Trust Fund"** means:-
- (a) the Settled Sum
  - (b) redundancy pay contributions as may hereinafter be paid or transferred to and accepted by the Trustee as additions to the Trust Fund; and
  - (c) the investments and other property from time to time representing the said sums of money Investments real and personal property or any part or parts thereof respectively;



- (20) **"the Trustee"** means the said Redundancy Payment Central Fund Ltd. or such other trustee or trustees for the time being of this Deed of Trust whether additional or substituted;
- (21) **"Union member"** means a member of one or more of the Unions;
- (22) **"the Union Plan"** means the redundancy pay scheme established by the Victorian State Building Trades Union in May 1988 which participating employers of Union members have been contributing to and which is to be terminated by the Unions upon entering into this Deed of Trust;
- (23) **"the Unions"** means the ASC&JA, the BWIU, the VSBTU and the employee organisations or associations whose names are set out in Schedule C;
- (24) **"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 by notifying the Trustee in such manner and form as prescribed by the Trustee,
 and includes a trainee, but does not include an apprentice;
- (24A) **"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 sub-Clause 3B.1(3).
- (25) **"year of income"** means the period from the date hereof to the next ensuing 30th June and thereafter each twelve (12) months ending on 30th June.

## Part 2 Termination of the MRP Plan and the Union Plan

- 2.1 MBAV hereby agrees to terminate the operations of the MRP Plan forthwith and further agrees to:
  - (1) transfer all monies presently held by MBAV under the MRP Plan (after deducting all establishment costs, administration costs and management costs incurred by MBAV, in establishing and operating the MRP Plan) to the Fund;

- (2) make available to the Trustee all of the information presently held by MBAV relating to the workers employed by the members of the MRP Plan; and
- (3) take all reasonable steps to obtain the consent of the members of the MRP Plan to become members of the Fund.

2.2 The Unions hereby agree to terminate the operations of the Union Plan forthwith and further agree to:

- (1) transfer all monies presently held by the Unions under the Union Plan (after deducting all establishment costs, administration costs and management costs incurred by the Unions in establishing and operating the Union Plan) to the Fund;
- (2) make available to the Trustee all of the information presently held by the Unions relating to the workers employed by the members of the Union Plan; and
- (3) take all reasonable steps to obtain the consent of the members of the Union Plan to become members of the Fund.

2.3 (1) The Trustee agrees to indemnify those members of the MRP Plan who do not become members of the Fund in the event that the MRP Plan has insufficient funds to make any redundancy payments pursuant to part 4 of the Redundancy Pay Agreement to employees of members of the MRP Plan other than:-

- (a) employees engaged in engineering construction projects or in the cottage/housing industry; and
- (b) apprentices;

PROVIDED HOWEVER that this indemnity shall be limited to the amounts transferred to the Fund that relate to that member's contributions to the MRP Plan.

(2) The Trustee agrees to indemnify those members of the Union Plan who do not become members of the Fund in the event that the Union Plan has insufficient funds to make redundancy payments pursuant to part 4 of the Redundancy Pay Agreement to employees of members of the Union Plan other than:-

- (a) employees engaged in engineering construction projects or in the cottage/ housing industry; and
- (b) apprentices

PROVIDED HOWEVER that this indemnity shall be limited to the amounts transferred to the Fund that relate to that member's contributions to the Union Plan.

### **Part 3 Membership of the Fund**

- 3.1 An employer shall be a member of the Fund Upon:
- (1) completing an application form in the same form as the Application Form or in a form as near thereto 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.
- 3.2 Upon completion of the matters referred to in Clause 3.1 to the satisfaction of the Trustee, the employer shall become a member of the Fund and a participating employer and shall be bound by the terms and conditions of this Deed of Trust.
- 3.3 Notwithstanding Clauses 3.1 and 3.2:
- (1) An employer shall be deemed to have completed an Application Form and lodged such form with the Trustee if:-
    - (a) at least twenty-one (21) days have elapsed since an Application Form was forwarded to that employer; and
    - (b) that employer has not informed the Trustee in writing that that employer does not wish to become a member of the Fund.
  - (2) Where an employer has not completed an Application Form and lodged such form with the Trustee but has nevertheless made redundancy pay contributions to the Trustee in accordance with this Deed of Trust then the employer shall be deemed to be a member for the period or periods to which the payment of contributions relates or relate.
- 3.4 (1) A member shall make redundancy pay contributions to the Trustee of the amount agreed in or payable or contributable under and otherwise in compliance with any terms and conditions laid down from time to time by the Redundancy Pay Agreement.

- (2) Where 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) shall make redundancy pay contributions.
  - (3) In making a determination under 3.4(2) the Trustee is at liberty to have regard to such matters as it considers to be in the best interest of workers and members.
  - (4) If the Trustee makes a determination under this clause the Trustee shall give each member as soon as practicable thereafter notice of the determination and the date on which it was made.
  - (5) If there is any inconsistency between a determination made by the Trustee under this clause and the Redundancy Pay Agreement, the determination prevails.
  - (6) A determination by the Trustee under this clause is binding on members to which it relates from the date on which it was made.
  - (7) A member shall 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.
- 3.5 All contributions made by a member to the Fund become part of the Trust Fund.
- 3.6 Despite anything else in this Clause 3, the Trustee may in its discretion:
- (1) approve or reject any application from an employer to become a member of the Fund and a participating Employer; and
  - (2) refuse to accept contributions from an employer, which, in its opinion, should not be admitted as a member of the Fund and as a Participating Employer 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.

### **Part 3A Contributions to the Fund**

- 3A.1 Subject to Clause 3.4, each member will make the following contributions to the Fund in respect of each worker:
- (1) from 1st October 1991 to 30th September 1992, an amount per week which equals \$40.00 adjusted for any increase in the Consumer Price Index (all Groups) Melbourne, during the period 1st July 1990 to 30th June 1991 and rounded to the nearest 10cents; and
  - (2) thereafter for each subsequent year commencing 1st October an amount per week calculated in accordance with sub-Clause 3A.1(1) as adjusted each 1st October for any increase in the Consumer Price Index (all Groups) Melbourne, during the twelve months ended 30th June immediately preceding that 1st October and rounded to the nearest 10cents; plus
  - (3) for each year commencing on or after 1 April 2005 the sum of 15 cents per week.
- 3A.2 Members will 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.
- 3A.3 The CPI adjusted contribution rate calculated in accordance with Clause 3A.1 will be notified to members by the Trustee as soon as practicable after 1st October each year and the Trustee will 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.
- 3A.4 Despite anything in Clauses 3A.1 - 3A.3, 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 3A.1-3A.3 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.

### **Part 3AA Cessation of Membership**

- 3AA.1 A participating Employer shall cease to be a member of the Fund and a participating Employer if the participating Employer is expelled from the Fund.

3AA.2 If an allegation is made to the Trustee (and whether by a participating Employer, 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 Trust Deed 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 participating Employers 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.

3AA.3 The Trustee may by resolution expel the member as a member of the Fund and as a participating Employer (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.

3AA.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.

3AA.5 The decision of the Trustee is final and the member has no right of appeal or review.

### **Part 3B      Application of contributions**

3B.1 The contributions to the Fund shall be applied as follows:

- (1) 90 cents (adjusted each 1st October, commencing 1st October 2012, for any increase in the Consumer Price Index (all Groups) Melbourne, during the twelve months ended 30th June immediately preceding that 1st October and rounded to the nearest 1 cent) of each contribution shall be used as an industrial levy to provide benefits to apprentices and shall be

credited to the Apprentice and Former Apprentice Payments Account; and

- (2) In the case of contributions made or required to be made prior to the Payment Procedures Variation Commencement Date the balance of each contribution shall be applied as follows:

(a) \$10.00 shall be credited to each worker's respective ESA; and

(b) the balance shall be credited to each worker's respective EBA;

- (3) In the case of contributions made or required to be made on or after the Payment Procedures Variation Commencement Date, the balance of each contribution shall be credited to each worker's respective Worker's Account or, where that worker's Worker's Account has been converted into a Genuine Redundancy Account pursuant to Part 3DDA (but subject to clause 3DDA.14), to that worker's Genuine Redundancy Account.

- 3B.2 As from the Payment Procedures Variation Commencement Date, the Trustee shall transfer the balances of amounts credited in each worker's ESA and EBA to each worker's respective Worker's Account which shall be credited accordingly and thereafter the ESA and EBA for each worker shall cease to operate.

### **Part 3C      Payments of contributions**

- 3C.1 Subject to Clauses 3C.3 and 3C.4 a weekly contribution shall 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.
- 3C.2 Each member shall pay 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.
- 3C.3 The member shall not be liable to pay a weekly contribution in respect of any five (5) consecutive working days during a contribution period in which a worker was absent without pay.
- 3C.4 A weekly contribution shall be payable in respect of a worker who commences with a member on a Tuesday, Wednesday, Thursday or Friday.
- 3C.5 No contribution shall be payable in respect of a week where a worker ceases employment on a Monday, Tuesday, Wednesday or Thursday.

- 3C.6 Where a member does not pay contributions when required to do so under this Part, the member shall be 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.
- 3C.7 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.
- 3C.8 The **Default Rate** is  $(X + 5\% \text{ per annum})$  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.

**Part 3D Benefits payable to workers other than apprentices prior to the Payment Procedures Variation Commencement Date - Eligible Termination Payment**

- 3D.1 Where the employment of a worker is terminated for whatever reason prior to the Payment Procedures Variation Commencement date then, upon the member receiving a written request from the worker at the time of termination of employment on a form prescribed by the Trustee, the member shall pay to the worker:
- (1) a redundancy benefit of \$500 or such lesser amounts standing to the credit of the worker's EBA; and
  - (2) an additional redundancy benefit equal to the amount standing to the credit of that worker's ESA.
- 3D.2 If a worker has remained out of work for four (4) consecutive weeks commencing the date after termination of his or her employment prior to the Payment Procedures Variation Commencement Date, the worker shall be entitled to withdraw the balance of his or her EBA after providing the Trustee with evidence that the worker is registered with the Commonwealth Employment Service.
- 3D.3 Where a worker ceases to be employed in the industry and the employment of that worker has terminated for any reason prior to the Payment Procedures Variation Commencement Date, the worker may withdraw the balance of his or her EBA in a lump sum, no earlier than thirty-nine (39) weeks after the last contribution was paid on behalf of that worker.



- 3D.4 Where a worker retires from the workforce and the employment of that worker has terminated for any reasons prior to the Payment Procedures Variation Commencement Date, the worker may withdraw the total amount of his or her EBA in a lump-sum provided he or she is over fifty five years of age.

**Part 3DD Benefits payable to workers other than apprentices on or after the Payment Procedures Variation Commencement Date**

- 3DD.1 Where the employment of a worker is terminated for any reason on or after the Payment Procedures Variation Commencement Date then, upon the Trustee receiving a written request from the worker 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 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.
- 3DD.2 If a worker has remained out of work for four (4) consecutive weeks commencing the date after termination of his or her employment on or after the Payment Procedures Variation Commencement Date, the worker shall be entitled to withdraw the balance (if any) of his or her Worker's Account after providing the Trustee with evidence that the worker is registered with the Commonwealth Employment Service.
- 3DD.3 Where a worker ceases to be employed in the industry and the employment of that worker has terminated for any reason on or after the Payment Procedures Variation Commencement Date the worker may withdraw the balance (if any) of his or her Worker's Account in a lump sum, thirty nine (39) weeks after the last contribution was paid on behalf of that worker.
- 3DD.4 Where a worker retires from the workforce and the employment of the worker has terminated for any reason on or after the Payment Procedures Variation Commencement Date, the worker may withdraw the balance (if any) of his or her Worker's Account in a lump sum provided he or she is over fifty-five years of age.
- 3DD.5 For the purposes of this part 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 3DD.6 or as having been continuously employed within the meaning of Clause 3DD.7. 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.

- 3DD.6
- (1) This clause sets out several situations in which a worker is to be regarded, for the purposes of this part, as having been employed by the one employer, even though the worker may have worked over the relevant period of time for more than one employer in a strict legal sense.
  - (2) If a worker 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 Law); or
    - (b) he or she was employed by another corporation and:-
      - (i) the directors of that other corporation and the worker's present employer were substantially the same; or
      - (ii) that other corporation and the worker's present employer were under substantially the same management.
  - (3) If the ownership of a business employing someone changes but the employment of the worker continues, the worker is to be regarded as having been employed by one employer from the date on which the worker started his or her employment with that business.
  - (4) If for any reason the employment of a worker 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 worker within 14 days after the termination, the worker is to be regarded as having been employed by the one employer from the date on which the worker first started employment at that business (unless the new owner does not so employ the worker).

- (5) If a worker 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 worker, the worker is to be regarded as having been employed by one employer from the date on which the worker started his or her employment at that business
- (6) If a worker performs duties in connection with any assets used in the carrying on of a business of an employer and –
  - (a) the employment of a worker 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 worker 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 worker is to be regarded as having been employed by one employer from the date on which the worker first started employment at that business (unless the other employer does not so employ the worker).

- (7) 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.

- 3DD.7 (1) This clause sets out situations in which a worker is to be regarded as having been continuously employed even though in a strict legal sense it could be said that the worker's employment was interrupted.

- (2) A worker's employment is to be regarded as being continuous despite any interruption or ending of the employment by the employer or by the worker (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 worker under this Part.

- 3DD.8 (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 3DD as to the entitlement of particular workers or of particular categories of workers to benefits.
- (2) In making a determination under Clause 3DD.8(1) 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, the determination prevails.
- (4) If the Trustee makes a determination under this clause the Trustee shall give each member as seen as practicable thereafter 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 to which it relates from the date on which it was made.

**Part 3DDA Benefits payable to workers other than apprentices on or after the Conversion Date - Genuine Redundancy Payment**

3DDA.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.

3DDA.2 If a worker gives the Trustee written notice of an election made pursuant to clause 3DDA.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 3DDA.1.

3DDA.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.

3DDA.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 3DDA.6, 3DDA.7, 3DDA.9, 3DDA.10 and 3DDA.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 Part 3DD will apply, mutatis mutandis notwithstanding that the worker's Worker's Account has been converted into a Genuine Redundancy Account.

3DDA.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.

3DDA.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.

3DDA.7 Where both of paragraphs (1) and (2) of this clause 3DDA.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.

3DDA.8 The Trustee may require a worker to satisfy the Trustee as to the matters in Clauses 3DDA.5 - 3DDA.7 and Clause 3DDA.11 by way of statutory declaration or other form acceptable to the Trustee.

3DDA.9 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 to or for the benefit of such one or more of;

- (1) the dependants of the worker;
- (2) the legal personal representative of the worker;
- (3) if a surviving dependant of the worker subsequently dies, the dependants and the legal personal representatives of the deceased dependant; and
- (4) any other person the Trustee thinks fit,

to the exclusion of the other or others of them and in such manner and proportions, and subject to such conditions, as the Trustee determines.

3DDA.10 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 to or for the benefit of such one or more of;

- (1) the dependants of the worker;
- (2) the legal personal representative of the worker;
- (3) if a surviving dependant of the worker subsequently dies, the dependants and the legal personal representatives of the deceased dependant; and
- (4) any other person the Trustee thinks fit,

to the exclusion of the other or others of them and in such manner and proportions, and subject to such conditions, as the Trustee determines.

3DDA.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.

3DDA.12 For the purposes of this Part 3DDA "gainfully employed" and "last retirement day" have the meanings given to them in section 995-1 of the Income Tax Assessment Act 1997.

3DDA.13 For the purposes of this Part 3DDA 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.

3DDA.14 If:

- (1) a worker's Worker's Account is converted into a Genuine Redundancy Account in accordance with clauses 3DDA.1 and 3DDA.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 Part 3DDA,

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 (including, without limitation, for the purposes of clauses 3DDA.1 and 3DDA.2).

3DDA.15 The provisions of this Deed 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 3DDA.14. Where relevant, subject to such a conversion having occurred in respect of a worker, and subject to clause 3DDA.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, the Trustee may determine the interpretation and such determination is binding on any workers or Members to which it relates.

### **Part 3DDD Funded Apprentices**

- 3DDD.1 A member may give notice to the Trustee that the member will be making contributions to the Fund in respect of one or some apprentices ("Funded Apprentice").
- 3DDD.2 The notice must include at least:
- (1) the name(s) of the Funded Apprentice(s);
  - (2) their addresses and contact details;
  - (3) amount of contribution per week;
  - (4) date from which contribution payable;
  - (5) the year of the Funded Apprentice's training agreement which the Funded Apprentice is currently in (and its commencement date);
- 3DDD.3 A member giving notice under Clause 3DDD.1 must provide to the Trustee all other information requested by the Trustee for the proper and efficient administration of the Fund, within the time (if any) specified by the Trustee making the request.
- 3DDD.4 A member must only give a notice under Clause 3DDD.1 if the amount of the contribution per week which the member will make is at least the amount of the relevant percentage set out in Clause 3E.5(2) of the amount of the contribution per worker per week which the member is obliged to make under Part 3A.
- 3DDD.5 A notice under Clause 3DDD.1 once given in respect of a Funded Apprentice is irrevocable so long as the Funded Apprentice remains an apprentice, unless the Trustee consents otherwise (which the Trustee may or may not do at its discretion).
- 3DDD.6 A member giving notice under Clause 3DDD.1 must make contributions to the Fund per Funded Apprentice per week of the amount stated in the notice, adjusted from time to time as may be



necessary to reflect the year of the Funded Apprentice's training agreement in which the Funded Apprentice is at those times.

- 3DDD.7 The provisions of Clauses 3A and 3C apply, with necessary changes, to the contributions to the Fund which a member is obliged to make under this clause.
- 3DDD.8 The Trustee must credit contributions made under this clause to each Funded Apprentice's respective Funded Apprentice Account.
- 3DDD.9 No benefits under Clause 3E accrue to an apprentice at any times during which that apprentice is a Funded Apprentice.
- 3DDD.10 Where the employment of a Funded Apprentice is terminated (which includes that Funded Apprentice's training agreement being terminated), the provisions of Clause 3DD and 6AA apply to that Funded Apprentice, but on the basis that:
- (1) references to "worker" were references to the Funded Apprentice; and
  - (2) references to Worker's Account were references to the Funded Apprentice's Funded Apprentice Account,
- and with other necessary changes.
- 3DDD.11 Any decision or determination of the Trustee as to the existence or extent of the entitlement of a Funded Apprentice under this clause is binding on the Funded Apprentice to whom it relates.
- 3DDD.12 If a Funded Apprentice becomes a worker, the Trustee must transfer the balance standing to the credit of that Funded Apprentice's Funded Apprentice Account to his or her Worker's Account.

### **Part 3E Payments to Apprentices**

- 3E.1 Subject to Clauses 3E.2 and 3E.3, no benefit shall be payable to an apprentice who does not complete his or her training agreement and a further 12 months (or some lesser period as determined by the Trustee in its absolute discretion) within the Industry in a career path recognized by the Trustee.
- 3E.2 Where a training agreement is cancelled because of "work shortage" which requires an Industrial Training Council of Victoria Supervisor to be involved, the apprentice shall be entitled to be paid a redundancy benefit accumulated and calculated in accordance with the scale set out in Clause 3E.5 and Clause 3E.6.
- 3E.2A Where:

- (1) the training agreement of an apprentice is cancelled or terminated; or
- (2) the employment of a worker being a former apprentice is terminated before that worker has completed a further 12 months within the industry,

and the Trustee is satisfied that the cancellation or termination arises out of the bona fide redundancy of that apprentice or worker in accordance with Clause 3E.14, he or she shall be entitled to be paid a redundancy benefit accumulated and calculated in accordance with the scale set out in Clauses 3E.5 and 3E.6.

3E.3 Where a training agreement is terminated for any other reason the Trustee has an absolute discretion as to what benefit, if any, will be paid to the apprentice or former apprentice, if a claim is made by the apprentice or former apprentice because of extenuating circumstances.

3E.4 No benefit is payable as a consequence of a transfer of the training agreement of an apprentice from one member to another.

3E.5 (1) Any amount payable to an apprentice shall be determined as a percentage of the contributions which a member was obliged to make in a relevant year (less the apprentice levy) as set out in Part 3A, and shall be calculated in accordance with Clause 3E.6.

(2) The percentage rate applicable for determining the amount payable to the apprentice shall be the following percentages of the contributions which a member was obliged to make in a relevant year (less any apprentice levy):

First Year	50%
Second Year	50%
Third year	75%
Fourth Year	95%

3E.6 A benefit payable to an apprentice shall be calculated by reference to:

- (1) the relevant year or years of the training agreement;
- (2) the relevant contribution rate or rates (excluding any apprentice levy) applicable in any of those years; and
- (3) the percentage or percentages (applying to the relevant year or years of the training agreement) of the relevant contribution rate or rates (excluding any apprentice levy) referable to the number of days in the relevant year for which the apprentice was credited in the books of the Trustee, with any of working

on a commercial/industrial building site or paid leave or attending at trade school.

- 3E.7 Subject to Clauses 3E.1, 3E.2 and 3E.3, a benefit accumulated during a period of apprenticeship will only be available to a worker being a former apprentice, where the employment of that worker is terminated.
- 3E.8 The details of the circumstances giving rise to the cancellation of an apprentice's training agreement or the termination of employment of a worker who was a former apprentice (as the case may be) shall be promptly provided by the member being the immediate past employer of the apprentice or the worker when requested to do so by the trustee.
- 3E.9 The benefit (if any) to which an apprentice is entitled under Clauses 3E.2 and 3E.3 shall be paid by the Trustee at the time of termination of the training agreement and at the relevant percentage applicable to the year of termination of the training agreement, as set out in sub-Clause 3E.5(2) applied to the amount prescribed in sub-Clause 3D.1(1), or such lesser amount as is calculated in accordance with Clauses 3E.5 and 3E.6.
- 3E.10 If an apprentice is still out of work after four (4) consecutive weeks and the amount paid (if any) to the apprentice under either Clause 3E.9 or Clause 3E.14(5) was less than the amount calculated in accordance with Clauses 3E.5 and 3E.6 then the apprentice shall be entitled to be paid by the Trustee an amount equal to the difference between the two (2) amounts provided that the Trustee is provided with evidence that the apprentice is registered with the Commonwealth Employment Service before allowing a withdrawal.
- 3E.11 In all cases, credits for an apprentice accrue only for the time spent on commercial/industrial sites of members, attendance at school and on paid leave.
- 3E.12 The commencement date for accrual of benefits for an apprentice will be from the date the employer of the apprentice joined the Fund.
- 3E.13 This clause is subject to Clause 3DDD.
- 3E.14 (1) An application for a payment under Clause 3E.2A shall be in writing on a form prescribed by the Trustee.
- (2) For the purposes of Clause 3E.2A, the cancellation or termination of the training agreement of an apprentice or the termination of a worker will be taken not to arise from the bona fide redundancy of that person (**redundant person**) unless:
- (a) the cancellation or termination date is before;

- (i) the date the redundant person attained 65 years of age; and
    - (ii) an earlier date on which the redundant person's employment would necessarily have had to terminate under the terms of his or her training agreement or employment;
  - (b) there is, at the cancellation or termination date, no agreement, arrangement or understanding whether formal or informal, expressed or implied or whether or not enforceable or intended to be, between the redundant person and his or her employer, or between that employer and another person, to employ the redundant person after that date;
  - (c) the cancellation or termination is not on account of any personal act or default of the redundant person; and
  - (d) the cancellation or termination was initiated and implemented by the employer.
- (3) If the employer of the redundant person provides a certificate to the Trustee in terms or to the effect that the employer has or had a surplus of employees or apprentices to carry out specific types of work or to carry out work at a particular place and the termination arose from that excess capacity, the Trustee is entitled to determine that the cancellation or termination of the training agreement of, or the termination of the employment of, the redundant person has arisen from his or her bona fide redundancy.
  - (4) The Trustee may but is not obliged to make a positive determination about the bona fide redundancy of a redundant person in any particular case, or to justify a negative determination.
  - (5) The redundancy benefit to which a redundant person is entitled under Clause 3E.2A shall be paid by the Trustee at the time of cancellation or termination and at the relevant percentage applicable to the year of termination of the training agreement, as set out in Clause 3E.5(2) applied to the amount prescribed in Clause 3D.1(1), or such lesser amount as is calculated in accordance with Clauses 3E.5 and 3E.6.

#### **Part 4 Apprentice and Former Apprentice Payments Account**

- 4.1 The Trustee shall establish a separate account in its books of account to be called an "Apprentice and Former Apprentice Payments Account" and this account shall have recorded in it the payments received by the Trustee pursuant to sub-clause 3B.1(1) and from the MBAV and the

Unions pursuant to Clause 4.2 and the payments made to apprentices or a worker who was a former apprentice by the Trustee in accordance with Clauses 3E.2, 3E.3 or 3E.7.

4.2 Both MBAV and the participating Unions hereby agree that within five (5) days of a request having been made to each of them by the Trustee for funds necessary to enable the Trustee to pay an apprentice, or a former apprentice (as the case may be) a payment pursuant to Clauses 3E.2, 3E.3 or 3E.7 they shall pay the amount so requested to the Trustee.

4.3 (1) If:

(a) 2 years have elapsed from the date on which a member last lodged a return with the Trustee in respect of an apprentice which disclosed time spent on any of:

- (i) commercial/industrial sites of the member;
- (ii) attendance at school; or
- (iii) paid leave,

by the apprentice; and

(b) the Trustee having taken all steps which, in the opinion of the Trustee, are reasonable and necessary to locate that apprentice (including posting to the last known address of that apprentice a notice that the apprentice may be entitled to a payment or may have accrued a contingent entitlement to a payment from the Apprentice and Former Apprentice Payments Account and requesting the apprentice to contact the Trustee) is unable to do so,

then, upon the Trustee resolving that the apprentice cannot be located, the entitlement of the apprentice to any payment to which the apprentice may have otherwise been entitled or contingently entitled ends, and any payment to which the apprentice may have been entitled or contingently entitled remains part of, and to the extent necessary is forfeited to, the Apprentice and Former Apprentice Payments Account PROVIDED HOWEVER that the Trustee and MBAV and the Unions may agree to deal with the entitlement or the amount of any forfeited entitlement in any other manner.

(2) Clause 4.3(1) applies despite any other provision of this Trust Deed, and whether or not the apprentice thereafter becomes entitled (absolutely or contingently) to any payment from the Fund as an apprentice or as a worker.

**Part 5 Declaration of Trust**

- 5.1 MBAV and the Unions HEREBY JOINTLY AND SEVERALLY DECLARE that the Trustee shall and the Trustee HEREBY DECLARES that it will henceforth stand possessed of the Trust Fund and the income thereof and the Apprentice Payments Account upon the trusts and with the subject to the powers and provisions hereafter expressed concerning the same.

**Part 6 Application of the Trust Fund prior to the Payment Procedures Variation Commencement Date**

- 6.1 Subject to the provisions of this Deed of Trust, the Trust Fund shall be established and maintained exclusively for:-
- (a) making redundancy payments to workers and apprentices pursuant to Parts 3D, 3DD and 3E; and
  - (b) making reimbursements to members entitled to reimbursements under Parts 3D & 3E prior to the Payment Procedures Variation Commencement Date.
- 6.2 Prior to the Payment Procedures Variation Commencement Date the Trustee shall establish a separate ESA and EBA in its books of account in respect of each worker to be credited in accordance with sub-clause 3B.1(2).
- 6.3 Where a member notifies the Trustee that a worker has become entitled to a redundancy payment prior to the Payment Procedures Variation Commencement Date and the member has established to the satisfaction of the Trustee that it (i.e. the member) has paid an amount to the worker in full satisfaction of the worker's entitlement under Clause 3D.1 the Trustee shall apply the amount standing to the credit of the particular worker's EBA and ESA:-
- (a) firstly reimbursing the member for the amount paid by the member to the worker pursuant to Clause 3D.1; and
  - (b) secondly paying the balance, if any remaining, to the worker in such amounts and upon such terms and conditions as may be laid down from time to time by the Trustee;

PROVIDED HOWEVER that the Trustee's liability to make one or more of the payments referred to in (a) and (b) shall at all times be limited to the amount standing to the credit of that particular worker's EBA and ESA at the time a payment falls due to the particular worker.

- 6.4 Notwithstanding the provisions of Clause 6.3, where a member notifies the Trustee that a worker has become entitled to a redundancy payment

prior to the Payment Procedures Variation Commencement Date and the member has established to the satisfaction of the Trustee that it is unable to pay the whole or part of any amount due to the worker pursuant to Clause 3D.1 the Trustee shall apply the amount standing to the credit of that particular worker's EBA and ESA in:-

- (a) firstly reimbursing the member for the amount, if any, paid by the member to the worker pursuant to Clause 3D.1;
- (b) secondly paying directly to the particular worker an amount equal to the difference between the amount, if any, paid by the member to the particular worker under Clause 3D.1 and the amount due to the worker under Clause 3D.1; and
- (c) thirdly paying the balance, if any remaining, to the worker in such amounts and upon such terms and conditions as may be laid down from time to time by the Trustee

PROVIDED HOWEVER that the Trustee's liability to make one or more of the payments referred to in (a), (b) and (c) shall at all times be limited to the amount standing to the credit of that particular worker's EBA and ESA at the time a payment falls due to the particular worker.

#### **Part 6AAA Application of the Trust Fund on and after the Payment Procedures Variation Commencement Date**

- 6AAA.1 On and after the Payment Procedures Variation Commencement Date the Trust Fund shall be maintained exclusively for making redundancy payments to workers pursuant to Parts 3DD and 3DDA, and to apprentices pursuant to Parts 3DD and 3E respectively and to Funded Apprentices under Part 3DDD.
- 6AAA.2 On and after the Payment Procedures Variation Commencement Date the Trustee shall establish a Worker's Account in its books of account in respect of each worker to be credited in accordance with sub-Clause 3B.1(3) and Clause 3B.2, subject to any conversion of such a Worker's Account into a Genuine Redundancy Account in accordance with Part 3DDA (but subject to clause 3DDA.14).
- 6AAA.3 Where a worker becomes entitled to a redundancy payment on or after the Payment Procedures Variation Commencement Date then the Trustee shall deal with such an entitlement in accordance with the provisions of Part 3DD, or with Part 3DDA if that worker's Worker's Account has been converted into a Genuine Redundancy Account pursuant to Part 3DDA (but subject to clause 3DDA.14).
- 6AAA.4 The Trustee must establish a Funded Apprentice Account in its books of account in respect of each Funded Apprentice to be credited in accordance with Clause 3DDD.8

6AAA.5 Where a Funded Apprentice becomes entitled to a redundancy payment, the Trustee must deal with such an entitlement in accordance with the provisions of Part 3DDD.

#### **Part 6AA Forfeited Benefits**

6AA.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 reasonable and 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:

- (a) the balance standing to the credit of that worker's Worker's Account is forfeited to the Fund and within 6 months after that one half of the forfeited balance shall be transferred by the Trustee from the Trust Fund to MBAV absolutely and the other half shall be transferred by the Trustee from the Trust Fund to the Unions absolutely PROVIDED HOWEVER that the Trustee and MBAV and the Unions may at any time agree to deal with any forfeited balance in any other manner; and
- (b) any entitlement or contingent entitlement of the worker to any payment, accumulated during the worker's apprenticeship, ends and any payment to which the worker may have been entitled or contingently entitled because of his or her apprenticeship remains part of, and to the extent necessary is forfeited to, the Apprentice and Former Apprentice Payments Account PROVIDED HOWEVER that the Trustee and MBAV and the Unions may at any time agree to deal with the entitlement or the amount of any forfeited entitlement in any other manner.

#### **Part 6A Transfers of Funds from and to Reciprocating or Compatible Funds**

6A.1 Subject to clause 6A4, the Trustee on receiving a written request from an employee covered by a Reciprocating Fund or a Compatible Fund (the "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 whereby the entire sum standing to the credit of that particular employee in the other Fund shall be transferred from the other Fund and paid into or transferred to the Fund.



- 6A2. Subject to clause 6A4, 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 Central Fund (the "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 Trust Deed hereby 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 \_\_\_\_\_ 199 .

SIGNATURE

transfer the entire amount standing to the credit of that worker's Worker Account to the Trustee of a Reciprocating Fund or to the Administrator of a Compatible Fund provided however that the Trustee of the Reciprocating Fund or the Administrator of the Compatible Fund consents to the transfer of the amount.

- 6A3. The receipt by the Trustee of the Reciprocating Fund or the Administrator of the Compatible Fund of the amount transferred to the Reciprocating or Compatible Fund pursuant to sub clause 6A2 shall be a complete discharge to the Trustee in respect of any liability the worker or persons claiming through a worker may have in relation to the amount transferred.

- 6A4. 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 Part 3DDA (but subject to clause 3DDA.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 6A4, "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 Part 3DDA. 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.

## **Part 7 Application of Income of the Trust Fund**

- 7.1 Subject to the provisions of this Deed of Trust the income of the Trust Fund for the year of income shall be applied firstly in meeting all outgoings, expenses, losses and damages incurred or suffered in the administration and conduct of the Fund, the conduct or carrying out of any of the activities authorised by this Deed or by the Directors of the Trustee to be carried out or carried on by the Trustee from time to time, or in any way related thereto, and the net income of the Fund then remaining shall be applied as follows:
- (a) one half to MBAV; and
  - (b) one half to the participating unions.
- 7.2 The net income of the Fund shall be apportioned in accordance with Clause 7.1 and credited to or paid to the parties as soon as practicable after the end of each year of income but in any case no later than three (3) months after the end of each year of income.

## **Part 8 Investment and Other Powers of the Trustee**

- 8.1 The Trustee shall have such powers and discretions as are conferred upon a trustee by law or otherwise exercisable by a trustee and the Trustee shall invest all monies and other property becoming part of the Trust Fund in such manner as may be from time to time required by the Trustee Act 1958 of the State of Victoria, or similar or equivalent legislation applying in any state or territory of Australia wherein monies of the Fund may from time to time be invested, as such legislation may be amended or re-enacted from time to time, and without limiting the effect of the foregoing, the powers of the Trustee include a power to make donations to give other forms of support to charities and other institutions and organisations as the Trustee may determine from time to time.
- 8.1A The Trustee shall have power to determine in its absolute discretion which projects and activities are considered by the Trustee to be beneficial to the interests of the employers and employees in the building industry in Victoria at any time and to undertake such activities and to apply such funds as it may from time to time have available for such purposes generally, in or towards undertaking activities considered by it in its absolute discretion to be in the best interests of the building industry in Victoria as set out in Schedule E.
- 8.1B In addition to the investment powers conferred on the Trustee under Clause 8.1 and the powers conferred on Trustees by law, the Trustee has the powers relating to investments as set out in Schedule E.

- 8.2 The Trustee may pay out of the income of the Trust Fund all charges costs and expenses incidental to the establishment and management of the Fund or to the exercise of any power authority or discretion herein contained or carrying out or performing the trusts hereof which the Trustee may at any time incur including costs in any way connected with the preparation and execution of this Deed, all stamp duty settlement duty revenue duty or any other impost or money of whatever nature payable in respect of this Deed or in respect of any money or investment paid or transferred to the Trustee upon the trusts hereof and whether under the laws of the Commonwealth of Australia or any of the States or Territories.
- 8.3 The Trustee may determine whether any real or personal property or any increase or decrease in amount number or value of any property or holding of property or any receipt or payment gain or loss from for or in connection with any real or personal property shall be treated as and credited or debited to the Trust Fund or to income of the Trust Fund and generally to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trust and powers of this Deed.
- 8.4 The Trustee may receive property by gift inter vivos or by will and under the provisions of any other trusts or otherwise and from any person as an addition to the Trust Fund and shall hold the same upon the trusts herein set forth and shall administer such additions under the provisions hereof.
- 8.5 The Trustee may permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee or of the Trustee and other persons and may deposit securities deeds and other documents belonging to the Fund with any Bank.
- 8.6 A Trustee may become a director of or appoint a person to act as a director on its behalf of a corporation in which money forming part of the Trust fund is from time to time invested and may receive the remuneration attached to that office or permit its representative to receive the remuneration without being liable to account to the trust therefore and that representative may become qualified to act as a director (if the Articles so allow) by the holding in the representative's name of shares forming part of the Trust Fund provided that the representative executes a declaration of trust thereof in favour of the Trustee generally and lodges it and the certificates for the shares with the Trustee and accounts to the trust for all dividends and bonuses payable in respect thereof.
- 8.7 The Trustee may exercise or concur in exercising all powers and discretions hereby or by law given notwithstanding that it or a person being a Trustee or a director or member of a Trustee hereof being a corporation has or may have a direct or personal interest in the mode or result of exercising that power or discretion or may benefit either directly

or indirectly as a result of the exercise of that power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

#### **Part 9 Trustee May Engage Agents etc.**

- 9.1 The Trustee shall not be bound in any case to act personally but shall be 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 Fund including the receipt and payment of money and the Trustee shall in its discretion determine the remuneration to be allowed and paid and the charges and expenses to be reimbursed to a person so engaged.

#### **Part 10 Trustee's Discretion Absolute**

- 10.1 Subject to any express provision to the contrary herein contained, every discretion vested in the Trustee shall be absolute and uncontrolled any may be exercised without the Trustee assigning any reason therefore and every power vested in it shall be exercisable in its absolute discretion and the Trustee shall have the like discretion in deciding whether or not to exercise any such power.
- 10.2 No Trustee shall be responsible for any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Trustee or by failure to exercise any such discretion or power or for any loss or damage occurring as a result of concurring or refusing or failing to concur in any exercise of any power or discretion.

#### **Part 11 Receipts by Trustee**

- 11.1 The receipt in writing of the Trustee for all money or other real or personal property paid or transferred to the Trustee or the Trust Fund shall effectively discharge the person or authority paying or transferring the same from being concerned to see to the application thereof.

#### **Part 12 Trustee Not Personally Liable**

- 12.1 The Trustee shall not be personally liable for the consequences of any error or forgetfulness whether of law or of fact on the part of the Trustee or its legal or other adviser or for any breach of duty or trust whatsoever unless it is proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable and accordingly all persons claiming any interest shall be deemed to claim with notice of and subject to the protection hereby conferred on the Trustee.

#### **Part 12A Trustee Indemnity**

- 21A.1 The Trustee is entitled to be fully indemnified out the Trust Fund against liabilities incurred by the Trustee by virtue of being the Trustee of this Deed of Trust or the Fund.
- 12A.2 The Trustee is not entitled to be indemnified by any beneficiary personally in respect of any liabilities incurred by the Trustee in the administration of the Fund.
- 12A.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 Fund.
- 12A.4 The Trustee may apply the Trust Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.

#### **Part 13 Trustee's Power of Delegation**

- 13.1 Where there are more trustees than one they shall act jointly and may in any case in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee to one or more of their number and execute any power of attorney or other instrument necessary to effectuate that delegation.

#### **Part 14 Sole Trustee**

- 14.1 Notwithstanding the provisions of the Trustee Act 1958 a trustee may be discharged from its trust although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the Trustee Companies Act 1958. A sole Trustee hereof is hereby authorised notwithstanding that it is the sole Trustee to receive capital and other monies and to give valid and effectual receipts therefore for all purposes and for the purposes of any statutory enactments including the receipt of money which may or may be deemed to be capital money for the purpose of any statute.

#### **Part 15 Professional Remuneration**

- 15.1 A Trustee or a director of a Trustee which is a corporation who is a solicitor or accountant or a firm of which the Trustee or director of a Trustee corporation is a member shall be entitled to make all usual and proper charges which that person would have been entitled to make if not a Trustee or director for both that person's professional and other services in the administration of the trusts hereof and for that person's time and trouble.

## **Part 16 Advances by MBAV or the Unions to the Fund**

- 16.1 MBAV or the Unions or both shall, with the consent of the other party, advance any sum or sums of money to the Trustee under conditions agreed to by both parties and the same shall be a debt due from the Trustee to the party advancing the same and interest shall be payable on the amount so advanced at such rate (if any) agreed upon between the parties.
- 16.2 The interest (if any) payable on any amount so advanced under the terms of Clause 16.1 shall be payable quarterly and computed on a daily basis from the date the advance is made during the continuance of the loan.

## **Part 17 Fund Accounts**

- 17.1 The Trustee shall open and maintain an account or accounts at such bank or banks as the Trustee may from time to time determine and the Trustee shall pay into such account or accounts all monies which come into its hands. The Trustee shall determine who shall be entitled to operate on such account or accounts.
- 17.2 As soon as practicable after the end of each year of income during the continuance of the Fund and upon the date of determination of the Fund, a general account and valuation shall be taken and made up to the end of the year of income of the assets, credits, property, effects, debts and liabilities of the Fund and of all transactions matters and things usually comprehended in a general account of a like nature. Every such account and valuation shall be balanced agreed to and signed by the Trustee. When such account and valuation are signed by the Trustee a copy of such account and valuation shall be provided to each of the parties and to the members and they shall be binding on the parties and members except that if any manifest error therein be detected and pointed out by a party or member to the Trustee within twelve (12) months of the signing thereof then such error shall be rectified forthwith.
- 17.3 The general account and valuation up to the end of each year of income shall be audited by the firm of A.H.G. Clarke and Co., of 14th Floor, 114 William Street, Melbourne or such other firm of Chartered Accountants as may be appointed by the Trustee from time to time.

## **Part 18 Determination and Winding up of the Fund**

- 18.1 Subject to the provisions of this Deed of Trust the fund shall continue indefinitely.

- 18.2 Notwithstanding Clause 18.1 a party ("the proposer") may at any time by notice in writing to each of the other parties request that each of the other parties consent to the dissolution or determination of the Fund. Each of the other parties shall have six (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 shall be deemed to have agreed to the proposed dissolution or determination of the Fund. If the parties unanimously 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.
- 18.3 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 surplus of the said monies shall be transferred to one or more other redundancy pay schemes operating at the time of the determination or dissolution of the Fund and the Trustee shall, upon the request of a member, take all necessary steps on behalf of that member to transfer that member's membership of the Fund to such one or more other redundancy pay schemes nominated by the member on the same or similar terms or conditions as set out in this Deed.
- 18.4 If at the time of determination or dissolution of the fund there is no other redundancy pay scheme in existence then the surplus of the said monies shall be transferred and distributed as follows:
- (a) one-half to MBAV; and
  - (b) one-half to the Unions

- 18.5 Upon termination or dissolution of the fund each part and each member shall execute such release or releases to the other parties from all claims on account of the Fund as is usual in such cases.

#### **Part 18A Retirement of Member**

- 18A.1 The participation of a member in the Fund may be terminated upon the member giving twelve (12) month's notice in writing to the Trustee of its intention to cease participation in the Fund provided the member is not in arrears in respect of its contributions.
- 18A.2 The Trustee shall only accept such termination if it is satisfied that the member is not terminating its membership for the purpose of joining a similar fund to the Fund.
- 18A.3 The participation in the Fund by such a member shall cease as from the expiration of the twelve (12) month notice period.
- 18A.4 In the event of the termination of the participation of a member in the Fund:
- (a) no further workers of that retiring member shall be admitted to the Fund; and
  - (b) no further contributions shall be made by the member except contributions which were due on or before the date of cessation as a member.
- 18A.5 Notwithstanding that an employer shall have previously ceased to be a member that employer shall apply to be readmitted as a member and shall comply with all of the requirements of Clause 3.1.

#### **Part 19 Arbitration**

- 19.1 If there is a dispute between MBAV, the Unions, the Trustee or any members of the Fund concerning the interpretation and operation of Clauses 18.3, 18.4 or 18.5 the disputing parties may give written notice of the dispute to each other ("the notice") which shall state that it is a notice under this Part and shall specify the dispute concerned ("the dispute").
- 19.2 If the dispute is not settled by agreement within twenty-one (21) days of service of the notice, the dispute shall thereby be referred to arbitration in Melbourne by a single Arbitrator appointed by agreement by the parties to the dispute, and if they fail to agree by the Chairman of the Victorian Chapter of the Institute of Arbitrators Australia or the person acting in that capacity acting on the request of one or more of the parties to the dispute.



- 19.3 An arbitrator shall not be a present or former shareholder, member, officer employee or agent of either MBAV, the Unions, the Trustee or a member.
- 19.4 The arbitration shall be conducted in accordance with the Victorian Commercial Arbitration Act 1984 ("the Arbitration Act") except that:
- (1) the Arbitrator shall observe the rules of natural justice and the rules of evidence;
  - (2) the parties to the dispute may be represented by qualified legal practitioners or other representatives;
  - (3) the Arbitrator shall include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
  - (4) the parties to the dispute consent to an appeal to the Supreme Court of Victoria on any question of law arising in the course of the arbitration or out of the arbitration award.

#### **Part 20 Amendments to this Deed**

- 20.1 The parties to the Deed (with the consent of all of the participating Unions) may at any time and from time to time by deed add to, vary or revoke all or any of the terms of this Deed of Trust or the terms of this Deed of Trust as previously added to, varied or revoked from time to time and without limiting the generality of this power may by the same or any deed or deeds declare any new or other powers or discretions for the administration and operation of the Fund PROVIDED HOWEVER that any addition, variation or revocation shall not affect the beneficial entitlements of MBAV, the Unions and participating Unions and the members.
- 20.2 Where this Deed of Trust is so altered the Trustee shall give to each member as soon as practicable thereafter a statement in writing explaining the nature and purpose of the alteration.

#### **Part 21 Notices**

- 21.1 A notice or other communication required or permitted to be given by a party to another, or by any other person in connection with this Deed including, without limitation, by a worker, an apprentice or a member (Other Person) to the Trustee, or by the Trustee to an Other Person, shall be in writing and:
- (1) delivered personally; or

(2) sent by post, postage prepaid; or

(3) sent by electronic mail,

to that party's address set out in this Deed or as notified to each party from time to time (or the Other Person's address as notified by the Other Person to the Trustee, or the Trustee's address as notified to the Other Person, from time to time).

21.2 A notice or other communication is deemed given if:

(1) personally delivered, upon delivery;

(2) mailed, on the expiration of two business days after posting; or

(3) if sent by electronic mail, when the sender's information system from which the electronic mail was sent generates a confirmation of delivery report which indicates that the electronic mail has entered the information system of the recipient (but if that confirmation of delivery report indicates that the electronic mail entered the information system of the recipient on a day which is not a business day, or after 5.00 pm on a business day, the electronic mail will be deemed to be received at 9.00 am on the next business day).

21.3 For the purposes of this Part 21, "business day" means a day which is not a Saturday, Sunday, bank holiday or public holiday in the city or other place where the notice or other communication is received.

## Part 22 Governing Law

22.1 The law of this Agreement is the law of Victoria and the Commonwealth of Australia.

22.2 The parties submit themselves to the jurisdiction of the Courts of Victoria and the Commonwealth of Australia for all proceedings arising from this Agreement.

## Part 23 Costs

23.1 The costs and disbursements of and incidental to the negotiation, preparation, execution, stamping and registration of this Deed, and all other documents and matters referred to in this Deed, are payable by the Trustee.

## Part 24 Interpretation

- 24.1 The singular includes the plural and the plural includes the singular.
- 24.2 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 24.3 A reference to writing includes a reference to printing, typing and other methods of producing words in a visible form.
- 24.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- 24.5 Headings are for ease of reference and do not affect the construction of this Deed.
- 24.6 In the case of the Unions this Deed binds them jointly and each of them severally.
- 24.7 This Deed binds in addition to the parties, their respective legal personal representatives and successors.

IN WITNESS WHEREOF the parties have executed this Deed the day and year first hereinbefore written.

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

## SCHEDULE A

### Settled Sum

The Settled Sum is the amount of \$11,634,962 consisting of the following amounts:

1. Transferred from the MRP Plan (after deducting all establishment costs, \$10,965,442 administration and management costs incurred by the MBAV)
2. Transferred from the Union Plan (after deducting all establishment costs \$669,520 administration and management costs incurred by the Victorian State Building Trades Union) \$11,634,962.

## SCHEDULE B

### Agreement and Application

BUILDING INDUSTRY REDUNDANCY PAY SCHEME  
REDUNDANCY PAYMENT CENTRAL FUND  
("THE FUND")  
AGREEMENT TO CONTRIBUTE TO THE SCHEME AND  
APPLICATION FOR MEMBERSHIP OF THE FUND

I/We of

hereby agree(s) to be bound by the terms of the 1987 Building Industry  
Redundancy Pay Agreement (a copy of which has been provided to me/us as an  
Employer) with effect from

19 .

I/We hereby apply for membership of the Fund established by Deed of Trust  
made

19

between Master Builders' Association of Victoria and Unions involved in the  
building industry and agree to be bound by the terms and conditions of the Deed  
of Trust governing the Fund (a copy of which has been provided to me/us with  
this application form) as from the date set out below.

SIGNATURE OF EMPLOYER

\_\_\_\_\_  
(In the case of a Company to be signed by a duly authorised officer of the  
Company)

SIGNATURE OF WITNESS

\_\_\_\_\_  
NAME OF WITNESS

\_\_\_\_\_  
DATE

## **SCHEDULE C**

### **Unions and Associations Eligible to be Participating Unions**

1. THE FEDERATED ENGINE DRIVERS AND FIREMEN'S ASSOCIATION  
OF AUSTRALIA
2. THE OPERATIVE PAINTERS AND DECORATORS UNION OF  
AUSTRALIA (VICTORIAN BRANCH)
3. PLUMBERS AND GASFITTERS EMPLOYEES' UNION OF AUSTRALIA  
(VICTORIAN BRANCH)
4. THE SLATERS, TILERS AND ROOFING INDUSTRY UNION OF  
VICTORIA
5. ANY OTHER UNIONS OR ASSOCIATIONS NOMINATED BY THE  
TRUSTEE

## SCHEDULE D

### Notice of Agreement to be Bound

The \_\_\_\_\_ ("the Union") of

hereby agrees to be bound by the terms of a Deed of Trust made April 1989 between Master Builders Association of Victoria, Amalgamated Society of Carpenters and Joiners of Australia (Victorian Branch), Building Workers Industrial Union of Australia (Victorian Branch), Victorian State Building Trades Union and Redundancy Payment Central Fund Limited Under which a Trust Fund called the Redundancy Payment Central Fund was established.

Dated 19 .

\_\_\_\_\_  
Authorised Officer(s) of the Union

## SCHEDULE E

### Additional Powers

#### Investment Powers

- (1) To deposit moneys or other property with:-
  - (a) a bank;
  - (b) an authorised dealer;
  - (c) a money market corporation, in Australia, which deposit is secured by a mortgage of securities of a market value at the time of the deposit of not less than the amount of the deposit; and
  - (d) the common fund of a trustee company which is invested solely in trustee securities pursuant to the Trustee Act 1958 of Victoria or equivalent legislation.
- (2) To purchase or subscribe for:-
  - (a) any securities of, or guaranteed by:-
    - (i) the Commonwealth;
    - (ii) a State or Territory of the Commonwealth; and
    - (iii) a government of an overseas country.
  - (b) any securities of:-
    - (i) a public body constituted by or under a law of the Commonwealth, or of a State or Territory of the Commonwealth; and
    - (ii) a public body established by or under the laws of a recognised country provided that money of the Fund may not be used pursuant to this investment Power 2(b)(ii) to purchase or subscribe for the securities of a public body established by or under the laws of a recognised country unless:
      - (A) the securities are guaranteed by the recognised country by or under whose laws it is established; or



- (B) the public body issuing the securities has at the time of purchase or subscription of the securities a long term US rating not less than AA if taken from Moody's Investor Service or AA if taken from Standard & Poor's Corporation.
  - (c) any securities of, or any shares or any right or option in respect of shares in:
    - (i) a corporation whose shares are listed, or due to be listed, on the Australian Stock Exchange Limited;
    - (ii) a corporation whose shares are listed on an overseas stock exchange;
  - (d) any certificate of deposit issued by a bank whether negotiable, convertible or otherwise;
  - (e) any bill of exchange that has been accepted or endorsed by a bank;
  - (f) any right or interest of a beneficiary or unitholder under a trust arrangement provided that the prior approval of the Board must be sought where the trust arrangement to be acquired pursuant to this Investment Power 2(f) does not comprise investments in which the authority is authorised to invest.
- (3) To provide financial accommodation secured by:-
- (a) a guarantee issued by the Commonwealth, or a State or Territory of the Commonwealth;
  - (b) a guarantee issued by a bank;
  - (c) an irrevocable documentary letter of credit established or confirmed by a bank in terms of the International Chamber of Commerce's Articles of Uniform Customs and Practice for Documentary Credits, which provides the authority with full recourse to the establishing or confirming bank;
  - (d) a first ranking mortgage of an estate in fee simple, or of a leasehold interest in land in Australia.
- (4) To purchase land in Australia or an estate or interest in any land in Australia.
- (5) To enter into a financial lease transaction provided that the lessee under a financial lease transaction entered into pursuant to this Investment Power (5) must be:-

- (a) a body incorporated in Australia which either has at the time of entering into the financial lease transaction a medium term rating not less than AA provided by Australian Ratings Pty. Ltd., or is a body approved by the Board for the purposes of this Investment Power (5) or
  - (b) a public body constituted by or under the law of the Commonwealth or a State or Territory of the Commonwealth, and the obligations of that public body to which the Board has recourse must be guaranteed by the Commonwealth or a State or Territory of the Commonwealth..
- (6) To purchase or enter into the following types of futures contracts:
- (a) contracts for the purchase or sale of Treasury bonds or bank accepted bills of exchange which are traded on the Sydney Futures Exchange and options on such contracts.
  - (b) contracts for the payment or receipt of money calculated by reference to movement in the all ordinaries share price index, which are traded on the Sydney Futures Exchange and options on such contracts.
  - (c) contracts for the payment or receipt of money calculated by reference to the movement in the share price index of a major overseas economy and options on such contracts.
  - (d) options over the Morgan Stanley Capital International World Equities Index.
- (7) To enter into any of the following types of contracts or other arrangements for the purpose of managing, lessening, hedging or protecting against movements in currency exchange rates, interest rates, discount rates, values or prices in relation to any investment:-
- (a) contracts for the purchase or sale of bank accepted bills of exchange which are traded on the Sydney Futures Exchange, and options on such contracts;
  - (b) contracts for the purchase or sale of Treasury bonds which are traded on the Sydney Futures Exchange and options on such contracts;
  - (c) contracts for the payment or receipt of money calculated by reference to movement in the all ordinaries share price index, which are traded on the Sydney Futures Exchange, and options on such contracts;
  - (d) forward exchange transactions in foreign currencies;

- (e) forward rate agreements; and
- (f) currency swap contracts in foreign currencies.

**Undertaking activities in the best interests of the building industry in Victoria**

- (1) To undertake and conduct such projects and activities considered by the Trustee to be in the best interests of the building industry in Victoria and to make any payments (including donations) or incur expenses or liabilities which the Trustee considers necessary to conduct those projects and activities.

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## REDUNDANCY PAYMENT CENTRAL FUND

### RESOLUTION PURSUANT TO CLAUSE 3DD.8 OF THE TRUST DEED

The Trustee has, under Clause 3DD.8 of the Trust Deed, the capacity to lay down and determine terms and conditions as to the entitlement of particular workers or particular categories of workers to benefits under the Fund.

As a consequence of the Taxation Laws Amendment Act (No. 4) 2003 the Trustee and 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 Fringe Benefits Tax Assessment Act.

The Trustee has resolved to exercise its power under Clause 3DD.8 of the Trust Deed and hereby lays down and determines the following terms and conditions as to the entitlement of a particular category of workers (being apprentices entitled to a redundancy benefit from an Approved Worker Entitlement Fund) to benefits:

1. no benefit accrues under clause 3E of the Trust Deed to an apprentice at any time during which that apprentice is an approved Worker under the Redundancy Payment Approved Worker Entitlement Fund 2.

The Trustee further resolved to notify the members of the above determination as soon as possible.

Signed as a true record of the resolution of the directors of the Trustee at a meeting of the directors held on ..... 11<sup>th</sup> August 2004 .....  
at ..... *Causton* .....

.....  
*Amptden*

## Redundancy Payment Central Fund

### Resolution Pursuant to Clause 3.4(1) of the Trust Deed

As a consequence of an amendment to the Trust Deed governing the Fund which was executed on 16th October 1991, the Trustee has, under Clause 3.4 of the Trust Deed, the capacity to lay down and determine terms and conditions governing the making of redundancy pay contributions to the Fund having regard not only to the provisions of the Redundancy Pay Agreement but also, where the Redundancy Pay Agreement does not in the opinion of the Trustee adequately deal with the particular matter, then such matters which are, in the opinion of the Trustee, in the best interests of the members and workers.

As a consequence of the Taxation Laws Amendment Act (No. 4) 2003 the Trustee and the Industry Parties have established the Redundancy Payment Approved Worker Entitlement Fund 1 (**Complying Fund**) which is an Approved Worker Entitlement Fund under the Fringe Benefits Tax Assessment Act.

The Trustee has resolved to exercise its power under Clause 3.4 of the Trust Deed in certain respects and HEREBY DETERMINES and LAYS DOWN the following terms and conditions which affect the making of contributions to the Fund by employers:

1. That on and from 1 April 2005, any contributions to the Fund made by a member of the Fund will be applied:
  - (1) as to 65¢, to the Fund (to be applied in accordance with Clause 3B.1(1) of the Trust Deed); and
  - (2) as to the balance, to the Complying Fund.

It was noted that pursuant to a determination of the Trustee made in December 2003, the application of the balance of the member contribution to the Complying Fund under paragraph 1(2) above will to that extent satisfy the member's obligations to make redundancy pay contributions to the Fund.

The Trustee further resolved to notify the members of the above determination as soon as possible.

Signed as a true record of the resolution of the directors of the Trustee at a meeting of the directors held on 15th December 2004  
at CALTON.

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Funds 1.

# The Redundancy Payment Central Fund

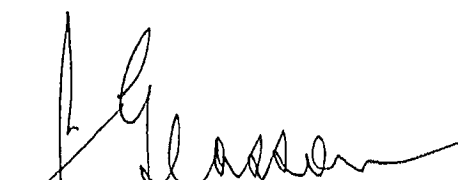
Determination by Trustee pursuant to Clause 3.4(2) of the Deed of Trust dated 10 April 1989

1. The Trustee has, under clause 3.4(2) of the Deed of Trust, power to lay down and determine terms and conditions governing the making of redundancy pay contributions, where 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 the Deed of Trust by notifying the Trustee in such manner and form as prescribed by the Trustee. It includes a trainee, but does not include an apprentice. "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 3.4(2) 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

# The Redundancy Payment Central Fund

## Determination by Trustee pursuant to Clause 3.4(2) of the Deed of Trust as amended and dated 29 November 2012

1. The Trustee has, under clause 3.4(2) 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. Part 3DDA 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 3.4(2) 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