



## **RETIREMENT BENEFITS FUND**

### **TASMANIAN ACCUMULATION SCHEME**

#### **TRUST DEED (CONSOLIDATED VERSION)**

**This Consolidated Version of the Trust Deed incorporates the following:**

**the original Trust Deed effective from 25 April 2000;**

**the Amendment Deed 2001 effective from 2 April 2001;**

**the Amendment Deed 2002 effective from 28 December 2002;**

**the Amendment Deed 2005 effective from 1 July 2005;**

**the Amendment Deed (No. 2) 2005 effective from 1 July 2005;**

**the Amendment Deed (No. 1) 2006 effective from 1 May 2006;**

**the Amendment Deed (No. 2) 2006 effective from 30 June 2006; and**

**the Amendment Deed (No. 1) 2007 effective from 1 July 2007.**

## INITIAL TRUST DEED RECITALS

THIS TRUST DEED is made on the 17th day of April 2000, by the Retirement Benefits Fund Board, constituted as a corporate trustee under the *Retirement Benefits Act 1993* (hereinafter called "the Board")

### RECITALS

- A The *Public Sector Superannuation Reform Act 1999* (hereinafter called "the Act") reforms public sector superannuation arrangements in Tasmania and received Royal Assent on 14 May 1999.
- B The Act amended the *Retirement Benefits Act 1993* and the *Retirement Benefits Regulations 1994* such that:
- i) persons employed in the Tasmanian public sector after 15 May 1999 will, from 25 April 2000, become members of the Tasmanian Accumulation Scheme, unless they elect to become members of another complying superannuation scheme;
  - ii) members of the Retirement Benefits Fund non-contributory scheme established under Part 5 of the *Retirement Benefits Regulations 1994* will be members of the Tasmanian Accumulation Scheme on and from 25 April 2000 and their beneficial interests will not be significantly altered; and
  - iii) Parts 4 and 5 of the *Retirement Benefits Regulations 1994* are not to apply to any employee who becomes a member of the Tasmanian Accumulation Scheme, except where this Trust Deed provides otherwise.
- C The Board is, by virtue of section 10(2) of the *Retirement Benefits Act 1993*, the trustee of the Retirement Benefits Fund Scheme, and under section 12 of the Act, the Tasmanian Accumulation Scheme is part of the Retirement Benefits Fund Scheme and the funds that are held by the Board in respect of the Tasmanian Accumulation Scheme are to be administered as a sub-fund of the Retirement Benefits Fund.
- D Section 7 of the Act requires the Board to prepare a draft Trust Deed for the Tasmanian Accumulation Scheme and submit that draft Trust Deed to the Treasurer, the Hon Dr David Mackenzie Crean MLC, being the Minister responsible under the Act for the approval and execution of the Trust Deed.
- E In approving the Trust Deed, the Treasurer has consulted with the Tasmanian Trades and Labor Council and is satisfied that the Trust Deed complies with the Act and the law of the Commonwealth, as required by section 7 of the Act.

- F From 25 April 2000, as required by section 6(8) of the Act, the benefits and obligations of Tasmanian Accumulation Scheme members will be established in this Trust Deed and will no longer be governed by Parts 4 and 5 of the *Retirement Benefits Regulations 1994*.
- G On 25 April 2000, the initial account balances of Tasmanian Accumulation Scheme members are the balances of the Retirement Benefits Fund non-contributory scheme members immediately prior to that date, adjusted, as required by section 10(4) of the Act, for appropriate changes in taxation of contributions and benefits as a consequence of the funding of the Tasmanian Accumulation Scheme.
- H The *Retirement Benefits Act 1993* and the *Retirement Benefits Regulations 1994*, other than Parts 4 and 5, apply in respect of an employee who becomes a member of the Tasmanian Accumulation Scheme, except to the extent of any inconsistency with this Deed and the Act, where the Act prevails.

THIS DEED WITNESSES that on and from 25 April 2000, the governing rules of the Tasmanian Accumulation Scheme are established in this Trust Deed.

## AMENDMENT DEED 2001 RECITALS

THIS DEED (hereinafter called "the Deed") is made on the Twenty First day of March 2001, by the Retirement Benefits Fund Board, constituted as a corporate trustee under the *Retirement Benefits Act 1993* (hereinafter called "the Board")

### RECITALS

- A On 17 April 2000, a Trust Deed (hereinafter called "the Trust Deed") was entered into between the Board and the Treasurer, the Hon Dr David Mackenzie Crean MLC.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (hereinafter called "the Act").
- D Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment, are those prescribed within sections 7 and 11 of the Act.
- E In accordance with Section 7 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Treasurer, the Hon Dr David Mackenzie Crean MLC, being the Minister responsible under the Act, for the approval and execution of the Deed.
- F In approving the Deed, the Treasurer has consulted with the Tasmanian Trades and Labor Council and is satisfied that the Deed complies with the Act and the requirements of the law of the Commonwealth, as required by section 7 of the Act.
- G The benefits and obligations of Tasmanian Accumulation Scheme members which were established in the Trust Deed will be amended by the provisions of this Deed from the date specified in the notice of the Treasurer's approval of this Deed is published in the Tasmanian Government Gazette.

THIS DEED WITNESSES that on and from Second April 2001, the governing rules of the Tasmanian Accumulation Scheme are amended as prescribed within this Deed.

## AMENDMENT DEED 2002 RECITALS

THIS DEED ("the Deed") is made on the Twenty Eighth day of December 2002, by the Retirement Benefits Fund Board ("the Board"), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed ("the Trust Deed") was made by the Board and the Hon Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999* ("the Minister").
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* ("the Act")
- D By Amendment Deed made on the 21 March 2001 ("the Amendment Deed") the Trust Deed was amended and consolidated in accordance with provisions of the Amendment Deed.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Treasurer, being the Minister responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the Treasurer.
- H The Treasurer has consulted with the Tasmanian Trades and Labor Council.
- I The Treasurer is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Minister's approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and the Minister, the Trust Deed is amended as follows:

## AMENDMENT DEED 2005 RECITALS

THIS DEED (“the Deed”) is made on the 22<sup>nd</sup> day of June 2005, by the Retirement Benefits Fund Board (“the Board”), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed (“the Trust Deed”) was made by the Board and the Hon Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999*.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (“the Act”).
- D By Amendment Deed made on the 21 March 2001 and Amendment Deed made on 28 December 2002 the Trust Deed was amended and consolidated in accordance with the provisions of those Amendment Deeds.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Minister for Finance, being the Minister currently responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the Minister for Finance.
- H The Minister for Finance has consulted with the Tasmanian Trades and Labor Council.
- I The Minister for Finance is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Minister for Finance’s approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and the Minister for Finance, the Trust Deed is amended as follows:

## AMENDMENT DEED (NO. 2) 2005 RECITALS

THIS DEED (“the Deed”) is made on the 22<sup>nd</sup> day of June 2005, by the Retirement Benefits Fund Board (“the Board”), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed (“the Trust Deed”) was made by the Board and the Hon Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999*.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (“the Act”).
- D By Amendment Deed made on the 21 March 2001, Amendment Deed made on 28 December 2002 and Amendment Deed made on 22 June 2005 the Trust Deed was amended and consolidated in accordance with the provisions of those Amendment Deeds.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Minister for Finance, being the Minister currently responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the Minister for Finance.
- H The Minister for Finance has consulted with the Tasmanian Trades and Labor Council.
- I The Minister for Finance is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Minister for Finance’s approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and the Minister for Finance and the Trust Deed is amended as follows:

## AMENDMENT DEED (NO. 1) 2006 RECITALS

THIS DEED (“the Deed”) is made on the 26<sup>th</sup> day of April 2006, by the Retirement Benefits Fund Board (“the Board”), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed (“the Trust Deed”) was made by the Board and the Hon Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999*.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (“the Act”).
- D By Amendment Deed made on the 21 March 2001, Amendment Deed made on 28 December 2002, Amendment Deed made on 22 June 2005 and Amendment Deed (No. 2) made on 22 June 2005 the Trust Deed was amended and consolidated in accordance with the provisions of those Amendment Deeds.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Treasurer, being the Minister currently responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the former Minister for Finance.
- H The Treasurer has consulted with the Tasmanian Trades and Labor Council.
- I The Treasurer is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Treasurer’s approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and the Treasurer and the Trust Deed is amended as follows:

## AMENDMENT DEED (NO. 2) 2006 RECITALS

THIS DEED (“the Deed”) is made on the 28<sup>th</sup> day of June 2006, by the Retirement Benefits Fund Board (“the Board”), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed (“the Trust Deed”) was made by the Board and the Hon Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999*.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (“the Act”).
- D By Amendment Deed made on the 21 March 2001, Amendment Deed made on 28 December 2002, Amendment Deed made on 22 June 2005, Amendment Deed (No. 2) made on 22 June 2005 and Amendment Deed (No. 1) made on 1 May 2006, the Trust Deed was amended and consolidated in accordance with the provisions of those Amendment Deeds.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Treasurer, being the Minister currently responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the Treasurer.
- H The Treasurer has consulted with the Tasmanian Trades and Labor Council.
- I The Treasurer is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Treasurer’s approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and Treasurer and the Trust Deed is amended as follows:

## AMENDMENT DEED (NO. 1) 2007 RECITALS

THIS DEED (“the Deed”) is made on the 27<sup>th</sup> day of June 2007, by the Retirement Benefits Fund Board (“the Board”), constituted as a corporate trustee under the *Retirement Benefits Act 1993*.

### RECITALS

- A On 17 April 2000, a Trust Deed (“the Trust Deed”) was made by the Board and the Honourable Dr David Mackenzie Crean MLC, Treasurer, being and as the Minister administering the *Public Sector Superannuation Reform Act 1999*.
- B The Trust Deed took effect from 25 April 2000 and prescribes the governing rules of the Tasmanian Accumulation Scheme.
- C The Trust Deed was created in accordance with section 7 of the *Public Sector Superannuation Reform Act 1999* (“the Act”).
- D By Amendment Deed made on the 21 March 2001, Amendment Deed made on 28 December 2002, Amendment Deed made on 22 June 2005, Amendment Deed (No. 2) made on 22 June 2005, Amendment Deed (No. 1) made on 26 April 2006 and Amendment Deed (No. 2) made on 28 June 2006, the Trust Deed was amended and consolidated in accordance with the provisions of those Amendment Deeds.
- E Section 11 of the Act and Clause 11 of the Trust Deed provide that the Trust Deed may be amended and prescribe that the processes to be followed in respect of any such amendment are those in Section 11 of the Act and Clause 11 of the Trust Deed.
- F In accordance with Section 11 of the Act the Board is to prepare a draft amending Deed and submit that Deed to the Treasurer, being the Minister currently responsible under the Act, for the approval of the Deed.
- G The Board prepared a draft of this Deed and submitted it to the Treasurer.
- H The Treasurer has consulted with the Tasmanian Trades and Labor Council.
- I The Treasurer is satisfied that the Deed complies and is consistent with the Act and the law of the Commonwealth.

THIS DEED WITNESSES that on and from the day upon which notice is published in the Gazette of the Treasurer’s approval of the amendments to the Trust Deed contained in this Deed and of the execution of this Deed by the Board and Treasurer and the Trust Deed is amended as follows:

1	PRELIMINARY.....	1
	1.1 CONSTITUTION OF THE SCHEME _____	1
	1.2 APPLICATION OF COMMONWEALTH AND STATE LAW _____	2
	1.3 INTERPRETATION _____	3
2	ADMINISTRATION.....	14
	2.1 POWERS AND FUNCTIONS OF BOARD _____	14
	2.2 ADMINISTRATION OF THE SCHEME _____	16
	2.3 DELEGATION _____	17
3	ESTABLISHMENT OF FUND.....	18
	3.1 OPERATION OF FUND _____	18
	3.2 INVESTMENT OF FUND _____	19
	3.3 POWER TO BORROW FUNDS _____	20
	3.4 ACCOUNTS AND RECORDS _____	21
	3.5 TAXATION PROVISIONS _____	22
	3.6 DEATH AND INCAPACITY PROVISION ACCOUNT _____	23
	3.7 ADMINISTRATION PROVISION ACCOUNT _____	23
	3.8 INVESTMENT INCOME RESERVE ACCOUNT _____	24
4	MEMBERSHIP.....	25
	4.1 MEMBERSHIP OF SCHEME _____	25
	4.2 ESTABLISHMENT OF MEMBER ACCOUNTS _____	27
	4.3 INVESTMENT OPTIONS _____	29
	4.4 ELECTION FOR DEATH AND INCAPACITY COVER _____	30
	4.5 LEVELS OF DEATH AND INCAPACITY COVER AND PREMIUMS _____	31
5	CONTRIBUTIONS.....	33
	5.1 AGENCY SUPERANNUATION CONTRIBUTIONS _____	33
	5.2 OBLIGATION OF AGENCIES TO CONTRIBUTE _____	33
	5.3 ADDITIONAL EMPLOYER CONTRIBUTIONS _____	33
	5.4 OBLIGATION OF MEMBERS TO CONTRIBUTE _____	34
	5.5 TIME AND MANNER OF PAYING CONTRIBUTIONS _____	35
	5.6 INWARD PORTABILITY _____	36
	5.7 PRESERVATION OF CONTRIBUTIONS, ROLL-OVER SUPERANNUATION BENEFITS AND BENEFIT TRANSFERS, CONTRIBUTION AND BENEFIT ACCRUAL STANDARDS _____	36
	5.8 CONTRIBUTION LIMITS _____	37
	5.9 EXCESS CONTRIBUTIONS TAX ASSESSMENTS RELEASE AUTHORITIES _____	37
6	BENEFITS.....	38
	6.1 BENEFIT PAYMENT STANDARDS _____	38
	6.2 OUTWARD PORTABILITY _____	39
	6.3 RESIGNATION BENEFIT _____	39
	6.4 REDUNDANCY BENEFIT _____	39
	6.5 RETIREMENT BENEFIT _____	39
	6.6 ENTITLEMENT TO A DEATH OR PERMANENT INCAPACITY BENEFIT	40
	6.7 FUTURE SERVICE COMPONENT OF DEATH AND PERMANENT INCAPACITY BENEFIT _____	40
	6.8 TEMPORARY INCAPACITY PENSION _____	41
	6.9 BENEFIT ENTITLEMENT UPON TRANSFER TO CONTRIBUTORY SCHEME _____	42
	6.10 RELEASE OF PRESERVED BENEFITS _____	43
	6.11 SPLIT OF BENEFITS IN ACCORDANCE WITH FAMILY LAW ACT 1975 _____	47
	6.12 SPOUSE CONTRIBUTION SPLITTING _____	48
7	ACCOUNT-BASED PENSIONS.....	50

7.1	ACCOUNT-BASED AND TERM ALLOCATED PENSIONS _____	50
7.2	PAYMENT STANDARDS – ACCOUNT-BASED PENSIONS _____	51
7.3	PAYMENT STANDARDS – TERM ALLOCATED PENSIONS _____	53
8	FINANCIAL PROVISIONS.....	57
8.1	FIXING OF INTEREST RATES _____	57
8.2	COST OF ADMINISTRATION _____	57
8.3	TIME AND MANNER OF BENEFIT PAYMENTS _____	57
8.4	TAXATION AND PAYMENT OF LUMP SUM AND ALLOCATED PENSION BENEFITS _____	58
8.5	ESTABLISHMENT OF SURCHARGEABLE CONTRIBUTIONS DEBT ACCOUNT _____	59
8.6	PROVISION OF CERTAIN INFORMATION BY THE BOARD _____	60
8.7	SCHEME SOLVENCY CERTIFICATE _____	60
9	GENERAL PROVISIONS .....	61
9.1	QUESTION OF INCAPACITY TO BE DETERMINED BY BOARD _____	61
9.2	PAYMENT ON PERMANENT INCAPACITY _____	61
9.2A	PAYMENT ON DEATH _____	62
9.3	POLICIES AND PROCEDURES TO BE ADOPTED BY THE BOARD _____	63
9.4	AGENCY TO PROVIDE INFORMATION _____	64
9.5	DUTIES OF RESPONSIBLE OFFICERS _____	64
9.6	CLAIMANT TO PROVIDE INFORMATION _____	66
9.7	MAKING OF ELECTIONS, DIRECTIONS, CLAIMS OR APPLICATIONS _____	67
9.8	ASSIGNMENT OF BENEFIT _____	67
9.9	RECOVERY OF MONEY OWING TO THE SCHEME _____	68
9.10	PAYMENT WITHOUT GRANT OF PROBATE. _____	69
9.11	RESTORATION OF LOST RIGHT UNDER DEED _____	69
9.12	PAYMENT WHERE MEMBER INCAPABLE _____	69
9.13	UNCLAIMED BENEFITS _____	70
9.14	PAYMENT WHERE BENEFICIARY BANKRUPT _____	71
9.15	SERVICE OF NOTICES BY THE BOARD _____	71
9.16	MARKETING AND PROMOTION _____	71
9.17	PROVISION OF INFORMATION TO THE MINISTER _____	72
10	REVIEW OF BOARD DECISIONS .....	73
10.1	BOARD NOT SUBJECT TO DIRECTION _____	73
10.2	HEARING BEFORE THE BOARD _____	73
10.3	POWER TO APPLY TO SUPREME COURT FOR DECLARATION AS TO VALIDITY _____	74
10.4	APPEAL AGAINST DECISION, DETERMINATION OR ORDER OF BOARD _____	75
10.5	DUTY TO ESTABLISH ARRANGEMENTS FOR DEALING WITH INQUIRIES OR COMPLAINTS _____	76
11	AMENDMENTS TO DEED .....	77
11.1	AMENDMENTS TO THE DEED _____	77

**SCHEDULE 1**

**FUNDING AND ESTABLISHMENT OF OPENING BALANCES FOR TRANSFERRING MEMBERS**

**SCHEDULE 2**

**PROVISION FOR MEMBERS TO ACCESS TO A PENSION UNDER CLAUSE 6.9.3 OF THE DEED**

# 1 PRELIMINARY

## 1.1 CONSTITUTION OF THE SCHEME

- 1.1.1 This **Deed** has effect from the **Transfer Day** and it is directed by the **Minister** and declared by the parties that the **Board** will continue to hold the **Fund** from the **Transfer Day** on the terms and conditions of this **Deed**.
- 1.1.2 The **Scheme** replaces the superannuation scheme referred to in Part 5 of the *Retirement Benefits Regulations 1994*.
- 1.1.3 Subject to the terms and conditions of this **Deed** and the **Act**, the **Board** must act as Trustee of the **Scheme** and the **Fund**.
- 1.1.4 The **Fund** in respect of the **Scheme**:
- is to form part of the Retirement Benefits Fund; and
  - is to be administered by the **Board** as a sub-fund of the Retirement Benefits Fund.
- 1.1.5 To form the **Fund** under this **Deed**, the **Board** must lodge in an account or accounts with a financial institution the first application of money received by the **Board** in respect of the **Scheme**. The money shall be held by the **Board** in accordance with the terms and conditions of this **Deed**.
- 1.1.6 The **Board** is constituted and continued in existence under section 7 of the *Retirement Benefits Act 1993* with the corporate name of "the Retirement Benefits Fund Board" and shall, notwithstanding any change in Membership of that **Board**, continue in existence as a body corporate with that corporate name.
- 1.1.7 The **Board** -
- a) has perpetual succession;
  - b) has a common seal;
  - c) may take proceedings, and be proceeded against, in its corporate name;
  - d) may acquire, hold and dispose of real and personal property;
  - e) has the functions imposed, and the powers conferred, on it by this **Deed**, the **Act** or any other Act; and
  - f) may do and be subject to all other things that bodies corporate may, by law, do or be subject to, being things necessary for, or conducive or incidental to, the discharge of its functions and the exercise of its other powers.

- 1.1.8 The common seal of the **Board** shall not be attached to a document except by resolution of the **Board** and every sealing shall be authenticated by the signature of 2 members of the **Board** and the **Chief Executive Officer**.
- 1.1.9 A **Member**, a **Member's** dependants and a **Member's** beneficiaries, as the case may be, shall have an interest in the **Fund** that is conferred on that person under the provisions contained in this **Deed** but shall not have any interest in any particular part of the **Fund** or in any particular investment of the **Fund**.

## 1.2 APPLICATION OF COMMONWEALTH AND STATE LAW

- 1.2.1 The Retirement Benefits Fund is an exempt public sector superannuation scheme for the purposes of the Commonwealth's *Superannuation Industry (Supervision) Act 1993*.
- 1.2.2 The **Scheme** is to be administered in accordance with the requirements of the standards prescribed for the purposes of the Commonwealth's *Superannuation Industry (Supervision) Act 1993*, or any other law of the Commonwealth or **State** as amended from time to time relating to superannuation which is applicable to matters arising under this **Deed** and shall have effect in relation to those matters as if they were included in this **Deed**.
- 1.2.3 Notwithstanding sub-clause 1.2.2, this **Deed** may provide for **Benefits** in excess of those requirements of the standards prescribed for the purposes of the *Superannuation Industry (Supervision) Act 1993*.
- 1.2.4 The *Retirement Benefits Act 1993* and the *Retirement Benefits Regulations 2005* (other than Part 5) apply in respect of an employee who becomes a **Member** of the **Scheme**, except to the extent of any inconsistency with this **Deed**, the **Act** and the **Regulations**.

## 1.3 INTERPRETATION

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

“**Account-Based Pension**” has the same meaning as in the **SIS Regulations**;

“**Account-Based Pension Account**” means an account established by the **Board** on the behalf of a **Member** for the purpose of paying an **Account-Based Pension** in accordance with clause 7.2;

“**Act**” means the *Public Sector Superannuation Reform Act 1999*;

“**Actuary**” means:-

- a) a person who is a Fellow of either the Institute of Actuaries (Australia), the Institute of Actuaries (London) or the Faculty of Actuaries (Edinburgh); or
- b) an organisation which employs such persons;

that is appointed by the **Minister** for the purposes of the *Retirement Benefits Act 1993*;

“**Agency**” means -

- a) a Government department or an organisation specified in column 1 of Schedule 1 to the *State Service Act 2000*;
- b) a **Prescribed Authority**;
- c) a **State-owned Company**;
- d) a body or person carrying on an industry or undertaking for or on behalf of the State, unless the body or person is exempt from the **Act** by the **Regulations**;
- e) a **Seconding Employer**;
- f) a **House of Parliament**;
- g) the Office of the Governor; or
- h) the Legislature-General;

“**Agency Manager**” means-

- a) a Head of Agency within the meaning of the *State Service Act 2000*;
- b) a chief executive officer within the meaning of the *Government Business Enterprises Act 1995*;
- c) a controlling authority of a **Prescribed Authority** that is not:-
  - i) a Government department or organisation specified in column 1 of Schedule 1 to the *State Service Act 2000*; or

- ii) a **Government Business Enterprise** within the meaning of the *Government Business Enterprises Act 1995*;
- d) a chief executive officer, howsoever titled, of a **State-owned Company**;
- e) a chief executive officer, howsoever titled, of a **Seconding Employer**;
- f) a controlling authority of a body or person carrying on an industry or undertaking for or on behalf of the State; or
- g) the Speaker of the House of Assembly in Tasmania and the President of the Legislative Council in Tasmania;

“**Ambulance Service Member**” means a person appointed or employed under the *State Service Act 2000*, to perform functions for the purposes of the *Ambulance Service Act 1982*;

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

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

“**Board**” means the Retirement Benefits Fund Board continued in existence under Section 7 of the *Retirement Benefits Act 1993*;

“**Board Member**” means a member of the Retirement Benefits Fund Board as constituted pursuant to Section 8 of the *Retirement Benefits Act 1993*;

“**Chief Executive Officer**” means the Chief Executive Officer of the Board appointed under Regulation 12 of the *Retirement Benefits Regulations 2005*;

“**Child**”, in respect of a **Member**, includes a step-child of the **Member**;

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

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

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

“**Contributory Scheme**” means the superannuation arrangements provided by Part 5 of the *Retirement Benefits Regulations 2005*;

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

“**Default Investment Option**” means the investment option to apply generally where no direction for an investment option is made by a **Member**;

“**Dependant**”, in respect of a **Member**, includes –

- a) the **Spouse** of the Member; and
- b) a **Child** of the **Member**; and
- c) any other person with whom the **Member** has an interdependency relationship within the meaning of section 10A of the **SIS Act**;

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

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

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

“**Eligible Employee**” means:

- a) a person who is employed in an **Agency** and includes a person who has been seconded to a **Seconding Employer** or a **Police Officer**; or
- b) a person who is a Member of a **House of Parliament** and is not subject to the provisions of the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*; or
- c) a person who is a Judge, the Master of the Supreme Court, the Solicitor-General, the Director of Public Prosecutions or the Governor, first appointed after 1 July 1999 or such persons who otherwise elects to transfer to the **Scheme**; or
- d) a **Fire Service Member**, first appointed or employed on or after 1 July 2005, or who is otherwise not a member of the State Fire Commission Superannuation Scheme; or
- e) an **Ambulance Service Member**, first appointed or employed on or after 30 June 2006, or who is otherwise not a member of the Tasmanian Ambulance Service Superannuation Scheme.

“**Employer Contributions**” means:

- a) **Agency** superannuation contributions paid or payable on behalf of a **Member** in accordance with clause 5.1 and clause 5.2 of this **Deed**; and
- b) Additional employer contributions including salary sacrifice contributions paid or payable on behalf of a **Member** in accordance with clause 5.3 of this **Deed**;

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

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

“**Fund**” means the assets and liabilities of the **Scheme** established under this **Deed** and is to be known as the Tasmanian Accumulation Fund;

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

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

“**Government Business Enterprise**” means a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*;

“**House of Parliament**” means either the House of Assembly or the Legislative Council;

“**Incapacity**” means **Permanent Incapacity** or **Temporary Incapacity**;

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

“**Medical Transport**” means transport by land, water or air for the purposes of medical attention.

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

“**Member Contributions**” means contributions paid in accordance with clause 5.4 of this **Deed**;

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

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

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

“**Non-Working Spouse**” means a **Spouse** who has never been **Gainfully Employed** for at least 10 hours per week or such other time prescribed by the Commonwealth’s *Superannuation Industry (Supervision) Act 1993*;

“**Parental Leave**” means any period not exceeding 12 months on any one occasion of maternity leave, paternity leave or adoption leave;

“**Parliament**” means the **Houses of Parliament** in the State of Tasmania;

“**Permanent Incapacity**” means ill-health, whether physical or mental, where the **Board** is reasonably satisfied that the **Member** is unlikely, because of the ill-health, ever again to engage in **Gainful Employment** for which the **Member** is reasonably qualified by education, training or experience;

“**Police Officer**” means a police officer within the meaning of the *Police Service Act 2003*;

“**Prescribed Arrangement**” means an enactment, arrangement or agreement under which services currently provided by an **Agency** or part of an **Agency** are terminated or transferred as a result of:

- a) a change in its constitution; or
- b) a sale or any other enactment, arrangement or agreement which may result in any change to the terms of employment of all or some of its employees,

to another person, organisation or **Prescribed Authority** if the enactment, arrangement or agreement is declared by the **Minister** by notice in the **Gazette** to be a **Prescribed Arrangement**;

“**Prescribed Authority**” means an authority to which section 3 of the **Act** applies;

“**Preservation Age**” means the relevant age referred to in the following table:

<i>Date of Birth</i>	<i>Relevant Age</i>
Before 1 July 1960	55 years
1 July 1960 – 30 June 1961	56 years
1 July 1961 – 30 June 1962	57 years
1 July 1962 – 30 June 1963	58 years
1 July 1963 – 30 June 1964	59 years
After 30 June 1964	60 years

and for a **Non-Working Spouse** the age of 65 years;  
or the relevant age as amended by any law of the Commonwealth;

“**RBF Account Holder**” means a person who is entitled to a benefit under the *Retirement Benefits Regulations 2005*;

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

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

“**Regulations**” means the regulations prescribed in accordance with the **Act**;

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

“**Responsible Officer**” in relation to an **Agency** means:

- a) the **Agency Manager**; or
- b) a person employed in that **Agency** to whom is assigned the duty of conducting the business of the **Agency** relating to the **Scheme**;

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

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

**"RSA"** means a Retirement Savings Account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth;

**"SAL(D&I)"** means in the case of a **Member**:

- a) whose length of service is 12 months or more, the **Salary** received by the **Member** in relation to the year immediately preceding death or cessation of employment on the grounds of **Permanent Incapacity** or commencement of a **Temporary Incapacity** pension and is determined by the summation of the **Agency** superannuation contributions paid or payable in respect of that **Member** divided by the rate or rates applicable to the relevant period as prescribed in clause 5.2;
- b) whose length of service is less than 12 months, the annual equivalent of the **Salary** earned, or deemed by the **Board** to have been earned, by the **Member** immediately preceding death or cessation of employment on the grounds of **Permanent Incapacity** or commencement of a **Temporary Incapacity** pension;
- c) who has been in receipt of a **Temporary Incapacity** pension for 12 months or more immediately preceding death or cessation of employment on the grounds of **Permanent Incapacity**, the **Salary** which the **Member** would have received, in the year preceding death or cessation of employment on the grounds of **Permanent Incapacity**, if he or she had continued to be employed in his or her usual capacity;
- d) who has been in receipt of a **Temporary Incapacity** pension for less than 12 months immediately preceding death or cessation of employment on the grounds of **Permanent Incapacity**, the annual equivalent of the **Salary** earned, or deemed by the **Board** to have been earned, by the **Member** in the year preceding death or cessation of employment on the grounds of **Permanent Incapacity**, if he or she had continued to be employed in his or her usual capacity; or
- e) whose payroll history immediately preceding death or cessation of employment on the grounds of **Permanent Incapacity** or commencement of a **Temporary Incapacity** pension contains periods during which **Agency** superannuation contributions have not been paid or the **Member's Salary** during the same period is in doubt, such amount as determined by the **Board** having regard to the circumstances of the **Member**;

but does not include:-

- f) amounts paid or payable to the **Member** by an **Agency**; or
- g) **Agency** superannuation contributions paid or payable to the **Scheme**, in respect of accrued recreational leave or accrued long service leave taken as a lump sum payment on termination of employment;

“**Salary**” means salary or other discretionary benefits paid or payable to a **Member** including overtime, allowances, bonuses paid in respect of work and payments made by an **Agency** in respect of accrued recreation leave or accrued long service leave taken as a lump sum payment on termination of employment. The **Agency** shall, having regard to the **Member’s** awards and conditions of employment, determine the salary to be used for the purpose of calculating **Agency** superannuation contributions. **Salary** does not include:

- a) any payment being a reimbursement of expenses in respect of travelling or other work related expenses;
- b) dividends;
- c) benefits or other payments subject to fringe benefits tax;
- d) any other payments made on the termination of employment; or
- e) any electorate or other allowance paid or payable to a person who is a member of a **House of Parliament**, in accordance with Schedule 2 of the *Parliamentary Salaries, Superannuation and Allowances Act 1973*;

“**Scheme**” means the Tasmanian Accumulation Scheme as constituted under the **Act** and this **Deed**;

“**Seconding Employer**” means an agency or authority of the Commonwealth or of another State or Territory or a private sector employer whether incorporated or not which employs a **Member** in accordance with a secondment agreement;

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

“**SIS Regulations**” means the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth;

“**Splittable Contribution**” means a contribution made on or after 1 January 2006 and includes **State Fire Transfer Amounts** and **Tasmanian Ambulance Transfer Amounts**, but does not include:

- a) an amount that was rolled over or transferred before 1 July 2006, other than **State Fire Transfer Amounts** or **Tasmanian Ambulance Transfer Amounts**;
- b) an amount allotted under clause 6.12; or
- c) an amount or payment mentioned in paragraph (a) or (jaa) of the definition of eligible termination payment in section 27A(1) of the *Income Tax Assessment Act 1936*.

“**Spouse**”, except in clause 6.12, includes the person with whom a **Member** is in a significant relationship, within the meaning of the *Relationships Act 2003*;

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

“**State Fire Transfer Amounts**” means any amount that was a splittable contribution in the State Fire Commission Superannuation Scheme for the purposes of the **SIS Act**, that was rolled over or transferred by way of the *Retirement Benefits (State Fire Commission Superannuation Scheme) Act 2005*;

“**State-owned Company**” means a company incorporated under the Corporations Law which is controlled by the Crown in the right of the State of Tasmania, a **Government Business Enterprise** or a statutory authority or another company which is so controlled;

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

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

“**Surchargeable Contributions Debt Account**” means the account established under clause 8.5;

“**Surviving Partner**” means a person who is determined by the **Board** under clause 9.2A to be the **Surviving Partner** of a **Member**;

“**TAP Partner**” in relation to a **Member** means the person, who is the husband or wife of that **Member** and includes a person who, although not legally married to that **Member**, lives with that **Member** on a genuine domestic basis as the husband or wife of that **Member**.

“**Tasmanian Ambulance Transfer Amounts**” means any amount that was a splittable contribution in the Tasmanian Ambulance Service Superannuation Scheme for the purposes of the **SIS Act**, that was rolled over or transferred by way of the *Retirement Benefits (Tasmanian Ambulance Service Superannuation Scheme) Act 2006*;

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

“**Temporary Incapacity**” means ill-health, whether physical or mental that causes the **Member** to cease to be **Gainfully Employed** but does not constitute **Permanent Incapacity**;

“**Term Allocated Pension**” means a pension which meets the standards prescribed by the **SIS Act** for a market linked income stream;

“**Term Allocated Pension Account**” means an account established by the **Board** on the behalf of a **Member** for the purposes of paying a **Term Allocated Pension**;

“**Transfer Day**” means the day specified by the **Minister** under section 7(5) of the **Act**, in a notice approving the **Deed** as the day the **Deed** is to take effect;

“**Transferring Member**” means any person who immediately before the **Transfer Day** -

- a) was a member of the scheme established under Part 5 of the *Retirement Benefits Regulations 1994*;
- b) had an accrued benefit entitlement arising from an Investment Account established under Regulation 60 of the *Retirement Benefits Regulations 1994*, other than a person who was:
  - i) a contributor to the **Contributory Scheme**; or
  - ii) a former contributor to the **Contributory Scheme** who elected to preserve his or her benefit entitlement under Regulations 43(4)(a) and (b) or 43(5)(b) of the *Retirement Benefits Regulations 1994*; or
- c) was in receipt of an allocated pension pursuant to Regulation 65 of the *Retirement Benefits Regulations 1994*.

“**Transition To Retirement Account-Based Pension**” means an **Account-Based Pension** that complies with the **Transition To Retirement Income Stream** payment standards prescribed by the **SIS Regulations**;

“**Transition To Retirement Income Stream**” has the same meaning as in the **SIS Regulations**;

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

- a) if all or part of any provision in this **Deed** is void or invalid for any reason whatsoever or would otherwise result in all or part of the **Deed** being void or invalid, the provision or part thereof shall be severed from this **Deed** and shall not affect the validity or operation of all or part of any other provision of this **Deed**;
- b) if all or part of any provision in this **Deed** is void or invalid by operation of section 6.8 of the **Act**, the operation of the severed part of the **Deed** shall be governed by, in order of precedence, the **Act**, the **Regulations**, the *Retirement Benefits Act 1993* and the *Retirement Benefits Regulations 1994*, where those Acts or Regulations contain specific provisions or provisions relating to the void or severed provisions of the **Deed**;
- c) the provisions of the *Retirement Benefits Act 1993* and the *Retirement Benefits Regulations 2005* do not operate as to disturb the effect of any provisions of the **Act** and **Regulations**;
- d) a reference to any Act, Regulation, agreement or document is to that Act, Regulation, agreement or document and where applicable, any of its provisions as amended, novated, supplemented or replaced from time to time;
- e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- f) where an obligation in this **Deed** is binding on more than one party to the **Deed** the obligation is binding jointly and severally and nothing in the **Deed** and no action by the recipient of the obligation shall affect the right of the recipient to make any claim or commence any action or proceedings against any or all of the parties under the obligation;
- g) where an expression is defined in the singular, the plural form of that expression has a corresponding meaning;
- h) a reference to an Act, whether Commonwealth or State, in this **Deed** means that Act as amended from time to time;
- i) words and expressions used in this **Deed** which are defined in the *Acts Interpretation Act 1931* are to be construed as if this **Deed** were an Act;
- j) where a word is in bold type, that word has the meaning prescribed in sub-clause 1.3.1, otherwise the word has its ordinary meaning; and
- k) a reference in this **Deed** to a period expressed in years includes, where appropriate, a reference to a period expressed in years together with a fraction of a year, that is expressed in days.

## 2 ADMINISTRATION

### 2.1 POWERS AND FUNCTIONS OF BOARD

2.1.1 The functions of the **Board** are to -

- a) manage the **Scheme** and the **Fund** so as to maximise the return earned on the **Fund**, subject to the risk and time profiles of the investment options offered by the **Board**, having regard to the need to -
  - i) exercise reasonable care and prudence so as to maintain the integrity of the **Fund**; and
  - ii) provide for payments out of the **Fund**;
- b) establish policies and procedures to administer the collection and receipt of contributions, **Roll-over Superannuation Benefits**, benefit transfers and the payment of **Benefit** entitlements having due regard to the need for equity among **Members**, their dependants and beneficiaries;
- c) establish policies in respect of the administration of this **Deed** and the investment of money standing to the credit of the **Fund** and to adopt strategies designed to achieve those policies;
- d) provide directions to the **Chief Executive Officer** as the officer responsible for the implementation of **Board** policies and strategies;
- e) ensure its operations are conducted in an efficient, cost-effective and economic manner;
- f) establish policies, procedures and approve programmes to provide **Members** with a range of investment options, having regard to the **Board's** fiduciary obligation to:
  - i) exercise reasonable care and prudence so as to maintain the integrity of the **Fund**; and
  - ii) provide for equity among **Members**, their dependants and beneficiaries; and
- g) take, purchase, lease, hold, sell, exchange and dispose of real and personal property for the purposes of this **Deed**.

### 2.1.2 The **Board** covenants -

- a) to act honestly in all matters concerning this **Deed**;
- b) to exercise, in relation to all matters affecting the **Fund**, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom that person felt morally bound to provide;
- c) to ensure that the **Board's** functions and powers are performed and exercised in the best interest of all **Members**;
- d) to keep the money and other assets of the **Fund** separate from any money and assets that are held personally by **Board Members**;
- e) not to enter into any contract, or do anything else, that would prevent the **Board** from, or hinder the **Board** in, properly performing or exercising its functions and powers pursuant to this **Deed**;
- f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the **Fund** including, but not limited to, the following:
  - i) the risk involved in making, holding and realising, and the likely return from, the **Fund's** investments having regard to its objectives and its expected cash flow requirements;
  - ii) the composition of the **Fund's** investments, where appropriate, as a whole, including the extent to which the investments are diverse or involve the **Fund** in being exposed to risks from inadequate diversification;
  - iii) the liquidity of the **Fund's** investments, having regard to its expected cash flow requirements; and
  - iv) the ability of the **Board** to discharge the **Fund's** existing and prospective liabilities as and when they become due and payable;
- g) if there are any reserves of the **Fund**, to formulate and give effect to a strategy for the prudent management of those reserves; and
- h) to allow a **Member** access to any information or any documents prescribed under an Act of the Commonwealth or **State** that may be relevant to the **Member** but not including information referred to in sub-clause 2.1.4.

2.1.3 An investment strategy is taken to be in accordance with sub-clause 2.1.2f) even if it provides for a specified **Member** or specified class of **Members** to give directions to the **Board**, where the directions are given in circumstances covered by the Commonwealth's *Superannuation Industry (Supervision) Regulations 1994*.

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

2.1.5 The **Board** may:

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

2.1.6 The **Board** shall, as part of the Annual Report required under Regulation 19 of the *Retirement Benefits Regulations 2005*, include:

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

## 2.2 ADMINISTRATION OF THE SCHEME

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

2.2.2 The **Chief Executive Officer** shall exercise such powers and authorities and perform such duties and functions as are prescribed or as the **Board** may authorise or direct.

2.2.3 The **Chief Executive Officer** shall be responsible for providing the **Board** with an efficient, cost-effective and economic administration.

2.2.4 The **Chief Executive Officer** may utilise such officers of the **Board** as he or she considers necessary for the purpose of enabling the **Board** to properly perform its functions under this **Deed**.

## 2.3 DELEGATION

- 2.3.1 The **Board** may, by an instrument of delegation under its common seal, delegate to a **Board Member**, the **Chief Executive Officer** or an officer of the **Board** acting jointly or severally, any power or duty of the **Board** under this **Deed** other than the power of delegation.
- 2.3.2 A duty or power, the performance or exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be performed or exercised from time to time in accordance with the terms of the delegation.
- 2.3.3 A delegation under this clause may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstance, as are specified in the instrument.
- 2.3.4 Notwithstanding any delegation, the **Board** may continue to perform or exercise all or any of the functions or powers delegated.
- 2.3.5 Any act or thing done by or to a delegate while acting in the exercise of a delegation under this clause shall have the same force and effect as if the act or thing had been done by or to the **Board** and shall be deemed to have been done by or to the **Board**.
- 2.3.6 Any act or thing done by or to a delegate while acting in the exercise of a delegation under this clause shall be reported to the **Board** at its next ordinary meeting.
- 2.3.7 An instrument purporting to be signed by a delegate of the **Board** in his or her capacity as such a delegate shall be deemed to be an instrument signed by the **Board** under this clause.

### 3 ESTABLISHMENT OF FUND

#### 3.1 OPERATION OF FUND

- 3.1.1 On establishment of the **Scheme**, the **Board** shall establish a **Fund** comprising such accounts and reserves as, in the opinion of the **Board**, are necessary or convenient for the administration of the **Scheme**.
- 3.1.2 Schedule 1 to this **Deed** shall have effect with respect to the calculation and distribution of money transferred to the **Fund** by operation of section 10 of the **Act**.
- 3.1.3 As prescribed by section 12 of the **Act**:
- a) the **Scheme** is a superannuation scheme which is incorporated into the Retirement Benefits Fund as constituted under the *Retirement Benefits Act 1993*; and
  - b) the **Fund** is a sub-fund of the Retirement Benefits Fund.
- 3.1.4 The **Board** may, where appropriate, cause to be paid to the **Fund**:
- a) contributions made by an **Agency**;
  - b) contributions made by **Members**;
  - c) **Roll-over Superannuation Benefits** or transferred **Superannuation Benefits** received on behalf of **Members**;
  - d) **Directed Termination Payments** or other money authorised to be paid into the **Fund**;
  - e) income derived from investments of the **Fund**, including any profit made from the realisation of any investments of the **Fund**;
  - f) money borrowed for the purposes of clause 3.3;
  - g) any other income derived from the operation of any clause of this **Deed**; and
  - h) any other amount that the **Board** considers appropriate and is allowable under the law of the Commonwealth or the **State**.
- 3.1.5 Money that is to be paid into the **Fund** is to be paid to the **Board**.

- 3.1.6 The **Board** shall, where appropriate, cause to be met from the **Fund**:
- a) administration costs and any other management charges as determined by the **Board** arising from either administering this **Deed** or meeting any obligation arising as a consequence of this **Deed**;
  - b) the **Benefits** payable under this **Deed**;
  - c) expenses associated with the investment of money standing to the credit of the **Fund**;
  - d) the cost of borrowing funds for the purposes of clause 3.3;
  - e) the payment of any tax, duty, impost or surcharge liability imposed under the law of the Commonwealth or **State** on the **Fund** or in respect of any **Benefits** payable by the **Board** from the **Fund**; and
  - f) any audit, insurance or actuarial costs incurred in the administration and management of this **Deed**.

## 3.2 INVESTMENT OF FUND

- 3.2.1 The **Board** must ensure that the assets of the **Fund** are invested in a manner that is consistent with the standards prescribed for regulated superannuation funds in accordance with the **SIS Act**.
- 3.2.2 Money standing to the credit of the **Fund** may be invested by the **Board** in any manner in which the **Board** thinks fit.
- 3.2.3 For the purposes of clause 3.2.2, the **Board** may:
- a) investigate, negotiate for, promote, create, acquire, underwrite, sub-underwrite, dispose of, transfer, collect, realise, alter, convert, improve, exploit, insure, extend, reconstruct, develop, manage and otherwise deal with and turn to account any property and any right, contract, option or like in respect of property in any manner, with or without security or liability to any conditions acceptable to the **Board**;
  - b) exercise all powers appertaining or incidental to any manner or form of property and discharge from the **Fund** all costs of and incidental to the powers of the **Board** under this **Deed**, including without limitation, costs of the investigation of and negotiation for property which does not become part of the **Fund**;

- c) issue, acquire or participate in and perform any obligation under or in respect of any synthetic investment or transaction including without limitation a futures contract, hedge contract, swap contract or option contract whether or not related to any other property forming part of the **Fund**;
- d) borrow funds in accordance with clause 3.3;
- e) acquire any property either alone or in conjunction with any other person, including without limitation the **Board** acting as trustee or manager of another trust or scheme, and mix money or property forming part of the **Fund** with any other money or property, including without limitation money or property held or administered by the **Board** as trustee or manager of another trust or scheme, but so long as at all times separate and distinct records are maintained in order to enable ready identification of the moneys and property attributable to the **Fund**; and
- f) cause or allow any property to be acquired and held in the name of the **Board** or of another person acceptable to the **Board**, whether or not that other person acts for the **Board** alone or for the **Board** and another person.

3.2.4 The **Board** may authorise an investment manager or custodian to perform powers and duties of the **Board** with respect to all or part of the moneys of the **Fund** available for investment.

3.2.5 The **Board** must determine an investment strategy or strategies as soon as possible after the **Transfer Day** and shall review at least annually its investment strategy or strategies and the management and performance of its investments.

3.2.6 The **Board** must advise **Members** at least annually of its investment strategy or strategies and performance and of any changes to those investment strategy or strategies.

### 3.3 POWER TO BORROW FUNDS

3.3.1 The **Board** may borrow funds under this **Deed** provided that:

- a) the purpose is only for the payment of **Benefits**;
- b) approval is sought from the **Minister** on each occasion no less than 7 days prior to the intended borrowing of funds;
- c) the **Minister** is satisfied that there are no other liquid assets available that could be used to fund the payment of **Benefits** and approves of

the borrowing of funds on the terms and conditions he or she may impose;

- d) the borrowing of funds is undertaken through the Tasmanian Public Finance Corporation;
- e) the period of the borrowing of funds shall not exceed 90 days and all repayments against the borrowings are made within a financial year; and
- f) the total amount borrowed by the **Board** shall not exceed 10% of the value of the assets of the **Fund**.

### 3.4 ACCOUNTS AND RECORDS

3.4.1 The **Board** must ensure that there are proper accounts and records kept of the transactions and affairs of the **Board** and any other record as shall sufficiently explain the financial operations and position of the **Fund**.

3.4.2 The **Board** is to:-

- a) ensure that all money payable to the **Board** in relation to this **Deed** is properly collected;
- b) ensure that all money expended by the **Board** in relation to this **Deed** is properly authorised;
- c) ensure that adequate control is maintained over assets owned by or in the custody of the **Board**;
- d) ensure that all liabilities incurred by the **Board** are properly authorised;
- e) develop and maintain adequate budgeting and accounting systems;
- f) develop and maintain adequate internal audit and corporate governance systems;
- g) develop and maintain adequate performance management and continuous improvement systems; and
- h) ensure that the accounts of the **Fund** are properly audited by the Auditor appointed in accordance with this clause.

- 3.4.3 The **Board** must include a statement of the operation and the financial position of the **Fund** as at the end of each financial year in the annual report of the **Board** for the purposes of Regulation 19 of the *Retirement Benefits Regulations 2005*.
- 3.4.4 As soon as practicable after 30 June each year, the **Board** must prepare the statement of accounts of the **Fund** in accordance with the Australian Accounting Standards.
- 3.4.5 The Auditor of the **Fund** shall be the Auditor-General as appointed pursuant to the *Financial Management and Audit Act 1990*.
- 3.4.6 The cost of auditing the **Fund** is to be met from the **Fund**.

### 3.5 TAXATION PROVISIONS

- 3.5.1 The **Board** is to establish within the **Fund** a taxation provision account for **Fund** accounting purposes.
- 3.5.2 The **Board** is to credit to the taxation provision account any tax deducted from **Members'** accounts and any taxation provision applicable to the **Fund's** investment earnings.
- 3.5.3 The **Board** is to debit to the taxation provision account all or part of the tax paid to the **Commissioner of Taxation** pursuant to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*, applicable to the **Fund**.
- 3.5.4 If, at the end of the financial year, the taxation provision account is in surplus or deficit, the **Board** must determine whether or not to:
- a) distribute the surplus to, or recover the deficit from, **Members** by way of:
    - i) adjusting investment returns; or
    - ii) a transfer to or from the administration provision account established under clause 3.7; or
  - b) carry forward the provision to the next financial year.

### 3.6 DEATH AND INCAPACITY PROVISION ACCOUNT

- 3.6.1 The **Board** is to establish within the **Fund** a death and incapacity provision account.
- 3.6.2 The **Board** is to credit to the death and incapacity provision account the death and incapacity premiums deducted from relevant **Members'** accounts and any investment earnings obtained from the balance of the provision account.
- 3.6.3 The **Board** is to debit to the death and incapacity provision account the costs of any **Benefits** paid and any costs directly associated with the administration and payment of death and **Incapacity Benefits** to a **Member** who is so entitled.
- 3.6.4 The **Board** shall cause the **Actuary** to perform a review of the state and sufficiency of the death and incapacity provision account at the end of each financial year.
- 3.6.5 If at the end of the financial year the death and incapacity provision account is in surplus or deficit, the **Board** must determine, on the advice of the **Actuary**, whether to:
- a) distribute the surplus to, or recover the deficit from, **Members'** accounts by adjusting premium rates; or
  - b) carry forward the provision to the next financial year.

### 3.7 ADMINISTRATION PROVISION ACCOUNT

- 3.7.1 The **Board** is to establish within the **Fund** an administration provision account.
- 3.7.2 The **Board** is to credit to the administration provision account the administration and management charges of the **Scheme** determined in accordance with clause 8.2 that have been, or are to be, recouped from **Members'** accounts.
- 3.7.3 The **Board** is to debit to the administration provision account the administration and management charges of the **Scheme**.
- 3.7.4 If, at the end of the financial year, the administration provision account is in surplus or deficit, the **Board** must determine, on the advice of the **Actuary**, whether or not to:
- a) distribute the surplus to, or recover the deficit from, **Members'** accounts; or
  - b) carry forward the provision to the next financial year.

### 3.8 INVESTMENT INCOME RESERVE ACCOUNT

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

## 4 MEMBERSHIP

### 4.1 MEMBERSHIP OF SCHEME

4.1.1 Every person under the age of 75 years who:

- a) is a **Transferring Member**;
- b) becomes an **Eligible Employee** on or after the **Transfer Day** and does not make an election under Sections 6 (1) or 6 (2) of the **Act** to become a member of an **RSA** or another **Complying Superannuation Plan**; or
- c) on the day immediately preceding the day he or she attains the preservation age, has a preserved benefit entitlement under Regulation 67 of the *Retirement Benefits Regulations 2005*;

shall be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions contained in this **Deed**.

4.1.2 Every person not subject to sub-clause 4.1.1 and under the age of 75 years who:

- a) is an **Eligible Employee** and eligible under section 6 (3) of the **Act** to become a **Member** of the **Scheme**;
- b) is eligible to join the **Scheme** pursuant to any **Regulations** made under section 15 of the **Act**;
- c) was an **Eligible Employee** who, upon cessation of **Gainful Employment** with an **Agency**, received a lump sum superannuation benefit;
- d) has a preserved benefit entitlement under regulation 67 of the *Retirement Benefits Regulations 2005*;
- e) is in receipt of a pension pursuant to the *Retirement Benefits Regulations 2005*, the *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*, the *Judges' Contributory Pensions Act 1968*, the *Solicitor-General Act 1983*, the *Director of Public Prosecutions Act 1973* or the *Governor of Tasmania Act 1982*;
- f) is the **Spouse** of a person referred to in sub-clause 4.1.1 or sub-clause 4.1.3 or in paragraph a), b), c), d), e), g) or i) of this sub-clause, where that person has a financial interest in the **Fund**;
- g) is a member of **Parliament**, a Judge, the Master of the Supreme Court, the Solicitor-General, the Director of Public Prosecutions or the Governor;
- h) is an **Eligible Employee** who does not have **Agency** superannuation contributions paid into the **Fund**;
- i) is an **RBF Account-Holder**;

- j) is a **Fire Service Member** and who is a member of the State Fire Commission Superannuation Scheme;
- k) is an **Ambulance Service Member** and who is a member of the Tasmanian Ambulance Service Superannuation Scheme; or
- l) is a **Spouse** of a person referred to in h), j) or k);

may elect to be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions contained in this **Deed**.

4.1.3 Every person who:

- i) in accordance with clause 6.11;
- ii) under the *Retirement Benefits Regulations 2005*;
- iii) in accordance with clause 6.11 of the State Fire Commission Superannuation Scheme Trust Deed; or
- iv) in accordance with clause 6.11 of the Tasmanian Ambulance Service Superannuation Scheme Trust Deed;

is eligible or entitled to a share of a superannuation benefit in accordance with the *Family Law Act 1975* may be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions contained in this **Deed**.

4.1.4 A **Member**, the **Spouse** or **Surviving Partner** of a **Member**, or a **Legal Personal Representative** of the **Member** shall be entitled to receive **Benefits** in accordance with this **Deed**.

4.1.5 A **Surviving Partner** who is entitled to a **Term Allocated Pension** payable under this **Deed** shall be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions of this **Deed**.

4.1.6 A **Surviving Partner** who is entitled to a superannuation benefit payable under the *Retirement Benefits Regulations 2005* or this **Deed** may elect to be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions of this **Deed**.

4.1.7 A person who is a **Surviving Partner** for the purposes of the State Fire Commission Superannuation Scheme Trust Deed and who is entitled to a superannuation benefit in accordance with the State Fire Commission Superannuation Scheme Trust Deed may elect to be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions of this **Deed**.

4.1.8 A person who is a **Surviving Partner** for the purposes of the Tasmanian Ambulance Service Superannuation Scheme Trust Deed and who is entitled to

a superannuation benefit in accordance with the Tasmanian Ambulance Service Superannuation Scheme Trust Deed may elect to be a **Member** of the **Scheme** and remain so, provided he or she retains a financial interest in the **Fund**, which is conferred on him or her under the provisions of this **Deed**.

## 4.2 ESTABLISHMENT OF MEMBER ACCOUNTS

4.2.1 The **Board** shall establish such accounts and determine such administrative policy and terms and conditions that are necessary for the efficient and effective administration of **Members'** accounts.

4.2.2 Money standing to the credit of **Members'** accounts shall vest in the **Member**.

4.2.3 Following the establishment of **Members'** accounts, the **Board** must:

- a) credit to such accounts, where appropriate:
  - i) all **Agency** superannuation contributions paid on behalf of **Members** pursuant to clause 5.2 and 5.3;
  - ii) all contributions paid by **Members**;
  - iii) all **Roll-over Superannuation Benefits, Directed Termination Payments** or transferred benefits paid into the **Scheme** under this **Deed**;
  - iv) investment returns determined according to the interest rates calculated pursuant to clause 8.1; and
  - v) any other amount authorised by this **Deed** and considered appropriate by the **Board**;
- b) debit to such accounts, where appropriate:
  - i) surcharge liability payments, taxation provisions or any other amounts required by the law of the Commonwealth or **State**;
  - ii) the cost of providing cover for **Benefits** on the death or **Incapacity** of a **Member** as provided by this **Deed**;
  - iii) administration and management charges as provided by this **Deed**; and
  - iv) any other amount authorised by this **Deed** and considered appropriate by the **Board**.

4.2.4 Schedule 1 to this **Deed** shall have effect with respect to allocation of balances to accounts established on the **Transfer Day**.

4.2.5 The **Board** must provide to each new **Member** of the **Scheme**:

- a) information about the **Scheme**;
- b) information regarding:
  - i) the ability to transfer to an **RSA** or another **Complying Superannuation Plan** at any time;
  - ii) the investment options;
  - iii) the level of death and **Incapacity** cover;
  - iv) the rate of **Member** contributions; and
  - v) the payment of death **Benefit** entitlements; and
- c) such other information as required by the law of the Commonwealth.

4.2.6 Notwithstanding sub-clause 4.2.2 a **Member** may make an application to the **Board** pursuant to clause 6.12 to rollover, transfer or allot **Splittable Contributions** for the benefit of their spouse in accordance with the provisions of this **Deed** and in the manner consistent with the laws of the Commonwealth relating to the splitting of superannuation contributions held by **Complying Superannuation Plans**.

### 4.3 INVESTMENT OPTIONS

- 4.3.1 The **Board** shall provide **Members** with a range of investment options and must:
- a) establish such accounts;
  - b) advise **Members** of the investment options including the **Default Investment Option**; and
  - c) determine an administration policy and such terms and conditions
- as are necessary for the efficient and effective administration of those investment options.
- 4.3.2 A **Member** may direct the **Board** as to which of the investment options made available by the **Board** he or she wishes to exercise in respect of:
- a) the whole or part of the balance standing to the credit of his or her account or accounts established under this **Deed**; and
  - b) any future amounts credited to that account or those accounts.
- 4.3.3 A direction made under this clause is to be in a form or manner approved by the **Board** and the **Board** must give effect to that direction within 14 working days of receipt of that direction and notify the **Member** accordingly.
- 4.3.4 The **Board** may charge a management fee to cover any costs of giving effect to a direction made under this clause.
- 4.3.5 In the absence of a direction by a **Member** under this clause, the **Board** may invest any money standing to the credit of that **Member's** account or accounts in a **Default Investment Option** as determined by the **Board**.
- 4.3.6 The **Board** must formulate and give effect to a range of investment options, one of which must be a portfolio consisting of government fixed interest securities, unless otherwise approved by the **Minister**.

#### 4.4 ELECTION FOR DEATH AND INCAPACITY COVER

- 4.4.1 A **Member** who is an **Eligible Employee** and who is under 60 years of age shall be covered for death and **Incapacity Benefits** as provided by this **Deed** unless he or she elects not to be so covered by notice in writing, or in a manner approved by the **Board**, to the **Board**.
- 4.4.2 A **Member** may elect not to be covered for death and **Incapacity Benefits** and the **Board** may approve such an election if the **Member** is able to demonstrate to the satisfaction of the **Board** that he or she has adequate alternative death and **Incapacity** cover.
- 4.4.3 If a **Member** has previously:
- i) received a **Permanent Incapacity Benefit** under this **Deed**; or
  - ii) received a partial and permanent incapacity or total and permanent incapacity benefit under the rescinded *Retirement Benefits Regulations 1994*; or
  - iii) received an invalidity benefit under the *Retirement Benefits Regulations 2005*; or
  - iv) elected not to be covered for death and disability benefits under the rescinded *Retirement Benefits Regulations 1994* or death and **Incapacity Benefits** under this **Deed**,
- that **Member** is not eligible to be covered for death and **Incapacity Benefits** provided under this **Deed** without:
- a) a medical certificate from a suitably qualified medical practitioner appointed by the **Board** stating that the **Member** is fit for **Gainful Employment**; and
  - b) **Board** approval that it is reasonable for that cover to be granted.
- 4.4.4 The **Board** at its discretion may self insure the future service component of the death and **Incapacity Benefits** of a **Member** or contract out the same to an insurer under a policy of insurance.
- 4.4.5 Where the **Board** contracts out to an insurer under a policy of insurance, the cost of such insurance shall be met from the account established under clause 3.6.
- 4.4.6 Except as provided for in clause 4.4.2, a person who is a **Member** of the **Scheme** and who elects under section 6 of the **Act** to become a member of an **RSA** or another **Complying Superannuation Plan** is covered for death and **Incapacity Benefits** under the **Scheme** until that election takes effect.

## 4.5 LEVELS OF DEATH AND INCAPACITY COVER AND PREMIUMS

- 4.5.1 A **Member** who is covered for death and **Incapacity Benefits** under this **Deed** is automatically covered at the 100% level of cover unless an election is made pursuant to this clause.
- 4.5.2 A **Member** may elect to increase or decrease his or her level of death and **Permanent Incapacity** cover by way of an election in writing, or in a manner approved by the **Board**, to the **Board**.
- 4.5.3 Before accepting any election to increase the level of death and **Permanent Incapacity** cover, the **Board** shall require a **Member** to undergo a medical examination and the **Board** must be satisfied as to the health and well being of the **Member**.
- 4.5.4 Written confirmation is to be provided to the **Member** within 10 working days of the **Board** determining whether the **Member** is entitled to increase his or her level of death and **Permanent Incapacity** cover.
- 4.5.5 A **Member** is not entitled to additional death and **Permanent Incapacity** cover until such time as the **Board** confirms in writing to the **Member** that it has accepted the election.
- 4.5.6 The rates of premium and levels of cover to be applied are specified in the following table:

Level of Cover expressed as a percentage of Agency Superannuation Contributions	Premium rates expressed as a percentage of the rate of Agency Superannuation Contributions determined under clause 5.2		
	7%	8%	9%
0%	0	0	0
50%	3.93	3.75	3.62
100%	6.43	6.25	6.12
150%	8.93	8.75	8.62
200%	11.43	11.25	11.12
250%	13.93	13.75	13.62
300%	16.43	16.25	16.12

and are to be reviewed by the **Board**, on the advice of the **Actuary**, at least annually.

- 4.5.7 When there is a change to a level of cover or rate or rates of premium, that change must be advised to **Members** at such time and in such manner as the **Board** determines appropriate.

- 4.5.8 If a **Member** is covered for death and **Incapacity Benefits**, the **Board** is to debit the **Member's** account with an amount equal to the death and incapacity premium as determined by reference to the **Member's** level of cover, the rate of **Agency** superannuation contribution and the premium rate expressed as a percentage of the **Agency** superannuation contributions paid to the **Member's** account as set out in sub-clause 4.5.6.
- 4.5.9 Except when in receipt of a **Temporary Incapacity** pension or regular benefits paid in accordance with the *Workers Rehabilitation and Compensation Act 1988*, a **Member** ceases to be covered for death and **Incapacity Benefits**:
- a) 12 months after the receipt of the last **Agency** superannuation contribution when on sick leave without pay or **Parental Leave**;
  - b) 4 months after the receipt of the last **Agency** superannuation contribution;
  - c) from the date of termination of employment with an **Agency**; or
  - d) from the date of an election taking effect under section 6 of the **Act** to become a member of an **RSA** or another **Complying Superannuation Plan**,

whichever is the earlier.

## 5 CONTRIBUTIONS

### 5.1 AGENCY SUPERANNUATION CONTRIBUTIONS

5.1.1 **Agency** superannuation contributions are contributions made in respect of a **Member** that are required to be paid in accordance with the **Act**.

### 5.2 OBLIGATION OF AGENCIES TO CONTRIBUTE

5.2.1 An **Agency** shall pay **Agency** superannuation contributions to the **Scheme** on behalf of all **Eligible Employees** who are **Members** of the **Scheme** pursuant to section 6 of the **Act** and this **Deed**.

5.2.2 The rate of **Agency** superannuation contributions for a **Member** is 9% of **Salary**.

5.2.3 **Agency** superannuation contributions are to be paid to the **Board** in accordance with the terms of this **Deed**.

### 5.3 ADDITIONAL EMPLOYER CONTRIBUTIONS

5.3.1 In addition to the contributions payable pursuant to clause 5.2, a **Member** who has made arrangements pursuant to his or her contract, award or conditions of employment with his or her **Agency** may, subject to clause 5.8, elect to have:

- a) superannuation contributions made by a **Seconding Employer** that are greater than the required contribution rate prescribed by the **Act**;
- b) additional employer contributions paid by way of salary sacrifice;
- c) additional employer contributions paid from the whole or part of his or her non salary benefits; or
- d) additional employer contributions paid pursuant to an award

paid by the **Agency** on the **Member's** behalf into the **Fund**.

5.3.2 On making the election referred to in this clause, the **Member** must specify to the **Board** in writing, or in a manner approved by the **Board**, the nature and frequency of the additional employer contributions.

- 5.3.3 A **Member** who has made such an election may, in accordance with his or her contract of employment, award or conditions of employment also elect to revoke or vary that election by notice in writing, or in a manner approved by the **Board**, to the **Board** and the **Agency**.
- 5.3.4 The additional employer contributions referred to in sub-clause 5.3.1 are not to be taken into account by the **Board** when determining death and **Incapacity** premiums or death and **Incapacity** **Benefits**.
- 5.3.5 The **Board** may determine that this clause shall apply to a **Member** without the need for an election to be made under this clause.

## 5.4 OBLIGATION OF MEMBERS TO CONTRIBUTE

- 5.4.1 A **Member** who is an **Eligible Employee**, other than a **Transferring Member**, must contribute at the rate of 5% of **Salary** unless he or she elects in writing to the **Board**, or in any other manner approved by the **Board**, to contribute at another rate or to make no contributions.
- 5.4.2 Any deductions from a **Member's Salary** by an **Agency** and paid to the **Board** which do not comply with sub-clause 5.4.1 or with the **Member's** instructions are deemed not to be contributions pursuant to this **Deed** and are to be repaid to the **Member**.
- 5.4.3 A **Member** who makes an election to commence or vary his or her contribution rate must specify in that election the rate of contribution to be paid, being a rate in accordance with this clause.
- 5.4.4 A **Transferring Member** is taken to be making the same rate of contribution, including no contribution, as he or she was making immediately before the **Transfer Day**.
- 5.4.5 A **Member** may at any time elect to contribute to the **Scheme** on such terms and conditions determined by the **Board** having regard to the requirements relating to the conditions for the acceptance of **Member** superannuation contributions as specified for regulated superannuation funds by the **SIS Act**.
- 5.4.6 **Member** contributions may be any combination of the following:
- a) regular contributions expressed as either a percentage, in multiples of 1%, of **Salary** or a fixed dollar amount;
  - b) one off or irregular lump sum contributions; or
  - c) contributions to a **Spouse** account.

- 5.4.7 A **Member** shall have his or her regular contributions automatically deducted from his or her **Salary** by his or her **Agency**.
- 5.4.8 Single or irregular lump sum contributions and contributions to a **Spouse** account are to be paid to the **Board** in any manner agreed to by the **Board** and the **Member**.
- 5.4.9 A **Member** is not required to contribute to the **Scheme** when there are no **Agency** superannuation contributions payable in respect to that **Member**.
- 5.4.10 Notwithstanding sub-clause 5.4.9, the **Board** may accept contributions from or on behalf of a **Member** only where regulated superannuation funds are permitted by the **SIS Act** to accept such contributions in similar circumstances.

## 5.5 TIME AND MANNER OF PAYING CONTRIBUTIONS

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

## 5.6 INWARD PORTABILITY

5.6.1 A **Member** may pay or cause to be paid into the **Fund**-

- a) all or part of a benefit that the **Member** has accrued and is entitled to receive under the:
  - (i) *Retirement Benefits Regulations 2005*;
  - (ii) Tasmanian Ambulance Service Superannuation Scheme Trust Deed;
  - (iii) State Fire Commission Superannuation Scheme Trust Deed;
  - (iv) *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*;
- b) all or part of **Superannuation Benefit** the **Member** is entitled to receive as a member of another **Complying Superannuation Plan**;
- c) all or part of a **Roll-over Superannuation Benefit**; or
- d) a **Directed Termination Payment**.

5.6.2 Any amount paid into the **Fund** under this clause is to be credited to the **Member's** account and vested in the name of the **Member** after deductions have been made for any taxation liability or administration and management charges that may be appropriate.

## 5.7 PRESERVATION OF CONTRIBUTIONS, ROLL-OVER SUPERANNUATION BENEFITS AND BENEFIT TRANSFERS, CONTRIBUTION AND BENEFIT ACCRUAL STANDARDS

5.7.1 All contributions paid to the **Fund** are to be preserved by the **Board** in a manner which is consistent with the preservation standards prescribed for regulated superannuation funds by the **SIS Act**.

5.7.2 All **Roll-over Superannuation Benefits** or benefit transfers paid to the **Fund** are to be preserved by the **Board** in a manner which is consistent with the preservation standards prescribed for regulated superannuation funds by the **SIS Act**.

5.7.3 All contributions, **Roll-over Superannuation Benefits** or benefit transfers referred to in this clause are subject to the benefit accrual standards prescribed for regulated superannuation funds by the **SIS Act**.

## 5.8 CONTRIBUTION LIMITS

- 5.8.1 A **Member** shall not enter into an arrangement under this **Deed** to pay or cause to be paid **Superannuation Contributions** that will cause the **Member** to exceed his or her **Non-Concessional Contributions Cap**.
- 5.8.2 If a **Member's** accumulated **Superannuation Contributions** to the **Scheme** approach or reach his or her **Non-Concessional Contributions Cap**, the **Board** is to provide the **Member** with the following information:
- a) the amount of **Concessional Contributions** received;
  - b) the amount of **Non-Concessional Contributions** received;
  - c) the **Non-Concessional Contributions cap** applicable to the **Member** based on the contributions the **Member** has paid to the **Scheme**;
  - d) the amount, if any, of **Non-Concessional Contributions** the **Member** may elect to pay to maximise his or her **Non-Concessional Contributions**; and
  - e) any other information the **Board** considers appropriate in the circumstances.
- 5.8.3 If the **Board** becomes aware that a **Member's Member Contributions** to the **Scheme** exceed his or her **Non-Concessional Contributions Cap**, the **Board** must return the excess **Member Contributions** to the **Member** within 30 days of becoming aware of the excess **Member Contributions**.

## 5.9 EXCESS CONTRIBUTIONS TAX ASSESSMENTS RELEASE AUTHORITIES

- 5.9.1 For the purposes of this clause, a release authority has the same meaning as section 292-405 of the *Income Tax Assessment Act 1997* of the Commonwealth.
- 5.9.2 Where the **Board** has been given a release authority by a **Member** or the **Commissioner of Taxation**, the **Board** must treat the release authority in accordance with Subdivision 292-G of the *Income Tax Assessment Act 1997* of the Commonwealth.

## 6 BENEFITS

### 6.1 BENEFIT PAYMENT STANDARDS

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

## 6.2 OUTWARD PORTABILITY

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

- a) to cash the whole or part of the balance of his or her account; or
- b) to have the whole or part of the balance of his or her account rolled-over to an **RSA** or **Complying Superannuation Plan**.

6.2.2 On receipt of an election under sub-clause 6.2.1 the **Board** must, subject to sub-clause 6.2.3, give effect to that election and reduce the balance of that **Member's** account accordingly.

6.2.3 Any amount standing to the credit of a **Member's** account may be paid by the **Board** only where regulated superannuation funds are permitted under the **SIS Act** to make such a payment in similar circumstances.

6.2.4 The **Board** shall not charge any exit fees for any amounts that are rolled over to an **RSA**, a **Complying Superannuation Scheme** or **Eligible Rollover Fund**.

## 6.3 RESIGNATION BENEFIT

6.3.1 Subject to clause 6.1, upon **Resignation**, a **Member** is entitled to be paid an amount equal to the balance of his or her account or accounts.

## 6.4 REDUNDANCY BENEFIT

6.4.1 Subject to clause 6.1, upon **Redundancy**, a **Member** is entitled to be paid an amount equal to the balance of his or her account or accounts.

## 6.5 RETIREMENT BENEFIT

6.5.1 Subject to clause 6.1, upon **Retirement**, a **Member** is entitled to be paid an amount equal to the balance of his or her account or accounts.

## 6.6 ENTITLEMENT TO A DEATH OR PERMANENT INCAPACITY BENEFIT

- 6.6.1 Where the **Member** dies or where the **Board** has determined under clause 9.1 that the **Member** should be retired on the grounds of **Permanent Incapacity** and the **Member** so retires, the **Member**, the **Surviving Partner** of the **Member** or the **Member's Legal Personal Representative**, as the case may be, is to be paid:
- a) an amount equal to the balance of the **Member's** account or accounts; and
  - b) where the **Member** is covered for death and **Incapacity Benefits**, as provided by this **Deed**, an amount determined in accordance with clause 6.7.
- 6.6.2 A **Member** is not entitled to a **Permanent Incapacity Benefit** under this clause unless the **Board** has first determined pursuant to clause 9.1 that the **Member** is eligible to receive the **Benefit**.

## 6.7 FUTURE SERVICE COMPONENT OF DEATH AND PERMANENT INCAPACITY BENEFIT

- 6.7.1 For the purpose of clause 6.6, the future service component of the **Benefit** payable shall be calculated according to the following formula:-

$$B = \text{SAL(D\&I)} \times \text{CL} \times (\text{PS}/365) \times \text{PRC}$$

Where:

“**B**” is the future service component;

“**SAL(D&I)**” means the amount as defined in this **Deed**;

“**CL**” is the level of cover determined according to clause 4.5 for which the **Member** was covered at the date of death or retirement on the grounds of **Permanent Incapacity**;

“**PS**” is prospective service in days from the day following the date of the **Member's** death or retirement on the grounds of **Permanent Incapacity** to the day he or she would have attained 60 years of age;

“**PRC**” is the rate of **Agency** superannuation contributions applicable as at the date of the **Member's** death or retirement on the grounds of **Permanent Incapacity**.

- 6.7.2 For the purpose of sub-clause 6.7.1, **SAL(D&I)** includes the salary determined by the **Board** that the **Member** would otherwise have received for:
- a) any period of approved leave without pay;
  - b) any period during which benefits are paid in accordance with the *Workers Rehabilitation and Compensation Act 1988*; or
  - c) a reduction in the percentage of full-time equivalent hours, which has been approved by the **Agency Manager** due to the ill-health of the **Member**.

## 6.8 TEMPORARY INCAPACITY PENSION

- 6.8.1 Where the **Board** has determined pursuant to clause 9.1 that the **Member** is entitled to a **Temporary Incapacity** pension and that **Member** has been absent from duty on sick leave without **Salary** for a continuous period of 30 calendar days -
- a) the **Member** is entitled to be paid a pension equal to 75% of the **SAL(D&I)**; and
  - b) that pension is payable from the later of the following days:
    - i) the day on which the **Board** receives the **Member's** application referred to in sub-clause 9.1.1;
    - ii) the day after the last day of the period of 30 calendar days sick leave without **Salary**; and
  - c) that pension is payable for a period determined by the **Board** not exceeding 2 years.
- 6.8.2 For the purpose of sub-clause 6.8.1, **SAL(D&I)** includes the salary, determined by the **Board**, that the **Member** would otherwise have received for:
- a) any period of approved leave without pay;
  - b) any period during which benefits are paid in accordance with the *Workers Rehabilitation and Compensation Act 1988*; or
  - c) a reduction in the percentage of full-time equivalent hours, which has been approved by the **Agency Manager** due to the ill-health of the **Member**.
- 6.8.3 A **Member** is not entitled to a **Temporary Incapacity** pension under this clause unless the **Board** has determined pursuant to clause 9.1 that the **Member** is eligible to receive the **Benefit** entitlement.

- 6.8.4 The **Board** may suspend or reduce the **Temporary Incapacity** pension of the **Member** if the **Member**:
- a) engages in any business or occupation on his or her own account;
  - b) is in the opinion of the **Board**, **Gainfully Employed**;
  - c) has in the opinion of the **Board**, recovered from his or her **Temporary Incapacity** as to be able to undertake **Gainful Employment** in an occupation for which he or she is reasonably qualified by education, training or experience; or
  - d) is in receipt of workers compensation payments under the *Workers Rehabilitation and Compensation Act 1988* and the combined payments of the **Temporary Incapacity** pension and workers compensation payments exceed 100% of the **Member's SAL(D&I)** for the purposes of sub-clause 6.8.1.
- 6.8.5 A **Member** who was in receipt of a **Temporary Incapacity** pension which has expired is not entitled to a further **Temporary Incapacity Benefit** until such time, and in such circumstances, as the **Board** may determine.

## 6.9 BENEFIT ENTITLEMENT UPON TRANSFER TO CONTRIBUTORY SCHEME

- 6.9.1 Where a **Member** becomes a contributor to the **Contributory Scheme**, the **Member's** accrued **Benefit** is to be preserved in an account established by the **Board** for that purpose, having regard to any instructions given by the **Member**.
- 6.9.2 Where a **Member** becomes a contributor to the **Contributory Scheme**, the **Member's** entitlement to death and **Incapacity** cover under this **Deed** ceases on the day immediately prior to the day the **Member** joins the **Contributory Scheme**.
- 6.9.3 A **Member** who, as at 14 May 1999, was:
- a) a **RBF Account-Holder**; or
  - b) a member of the scheme established under Part 5 of the *Retirement Benefits Regulations 1994*;

and has subsequently ceased employment and attained the **Preservation Age** may elect in writing to the **Board** to convert the whole or part of his or her **Benefit** to a pension in accordance with Schedule 2 of this **Deed**.

## 6.10 RELEASE OF PRESERVED BENEFITS

6.10.1 A **Benefit** preserved under this **Deed** may only be released by the **Board** where regulated superannuation funds are permitted under the **SIS Act** to release such a benefit in similar circumstances.

6.10.2 Where the **Board** has determined under clause 9.1 that a **Member** with an entitlement to a preserved **Benefit** is suffering from **Permanent Incapacity**, the **Board** is to pay that **Benefit** to the person entitled to that **Benefit**.

6.10.3 Where a **Member** with an entitlement to a preserved **Benefit** dies, the **Board** is to pay that **Benefit** to the person entitled to that **Benefit** in accordance with sub-clause 9.2.2.

6.10.4 A **Member** may apply to the **Board** in a form approved by the **Board** for a determination in accordance with this clause for the early release of the whole or a part of his or her **Benefit**.

6.10.5 Notwithstanding any other provision of this **Deed**, the **Board** may make a determination for the early release of the whole or a part of a **Member's Benefit** as mentioned in sub-clause 6.10.4 if the **Board** is satisfied that –

- a) the amount to be released is required –
  - (i) to pay for medical treatment or **Medical Transport** for the **Member** or a **Dependant**; or
  - (ii) to enable the **Member** to make a payment on a loan, to prevent–
    - (A) foreclosure of a mortgage on the **Member's** principal place of residence; or
    - (B) exercise by the mortgagee of an express or statutory power of sale over the **Member's** principal place of residence; or
  - (iii) to modify the **Member's** principal place of residence, or vehicle, to accommodate the special needs of the **Member**, or a **Dependant**, arising from severe disability; or
  - (iv) to pay for expenses associated with the **Member's** palliative care, in the case of impending death; or
  - (v) to pay for expenses associated with a **Dependant's** death, funeral, burial or, in the case of impending death, palliative care; or
  - (vi) to meet expenses for any other purpose which the **Board** determines to be consistent with a ground mentioned in the preceding subparagraphs of this paragraph;

and in any such case that **Member** does not have the financial capacity to meet that expense or those expenses; or

- b) the **Member** to whom this clause applies is in severe financial hardship as mentioned in sub- clause 6.10.10(a); or
- c) the **Member** to whom this clause applies is in severe financial hardship as mentioned in sub-clause 6.10.10(b).

6.10.6 The **Board** must not make a determination under this clause that money is required for medical treatment unless 2 legally qualified medical practitioners (at least one of whom must be a specialist) certify that –

- a) the medical treatment is necessary to –
  - (i) treat a life-threatening illness or injury; or
  - (ii) alleviate acute or chronic pain; or
  - (iii) alleviate an acute or chronic mental disturbance; and
- b) the treatment is not readily available to the **Member**, or the **Dependant**, through the public health system.

6.10.7 The **Board** must not make a determination under this clause that money is required for **Medical Transport** unless the medical treatment for which the **Medical Transport** is required has been certified, under sub- clause 6.10.6, as necessary for a reason mentioned in sub-clause 6.10.6(a).

6.10.8 The **Board** must not make a determination under this clause that money is required on the ground mentioned in sub-clause 6.10.5(a)(ii) unless the **Member** provides the **Board** with a written statement from the mortgagee that–

- a) payment of an amount is overdue; and
- b) if the **Member** fails to pay the amount, the mortgagee will –
  - (i) foreclose the mortgage on his or her principal place of residence; or
  - (ii) exercise its express or statutory power of sale over the **Member's** principal place of residence.

6.10.9 A statement under sub-clause 6.10.8 is to specify –

- a) an amount that is equal to 3 months' repayments under the mortgage; and
- b) an amount that is equal to 12 months' interest on the outstanding balance of the loan at the time the statement is made.

6.10.10 For the purposes of sub-clause 6.10.5, a **Member** is taken to be in severe financial hardship if –

- a) the **Board** is satisfied that –
  - (i) based on written evidence provided by at least one department or agency of the Commonwealth responsible for administering a class of Commonwealth income support payments –
    - (A) the **Member** has received Commonwealth income support payments for a continuous period of 26 weeks; and
    - (B) the **Member** was in receipt of payments of that kind on the date of the written evidence; and
  - (ii) the **Member** is unable to meet reasonable and immediate family living expenses; or
- b) the **Member** has reached the age that is his or her preservation age plus 39 weeks and the **Board** is satisfied that –
  - (i) based on written evidence provided by at least one department or agency of the Commonwealth responsible for administering a class of Commonwealth income support payments, the **Member** received Commonwealth income support payments for a cumulative period of 39 weeks after he or she reached his or her preservation age; and
  - (ii) the **Member** was not gainfully employed on a full-time or part-time basis on the date of his or her application under this clause.

6.10.11 The written evidence referred to in sub-clause 6.10.10 (a) is of no effect if it is dated more than 21 days before the date of the relevant application to the **Board**.

6.10.12 In each 12-month period, beginning on the date of the first payment, the **Board** may, under this clause, pay by way of early release of a **Member's Benefit** a single lump sum payment that is to be –

- a) in respect of an amount released under sub-clause 6.10.5(a)(ii), not more than the total of the amounts referred to in sub-clause 6.10.9; or
- b) in respect of a **Member** who is in severe financial hardship as mentioned in sub-clause 6.10.10(a), an amount not less than \$1,000 and not more than \$10,000 or, if the amount of the **Member's Benefit** is less than \$1,000, the amount of that **Benefit**; or
- c) in respect of a **Member** who is in severe financial hardship as mentioned in sub-clause 6.10.10(b), an amount not more than the amount of his or her **Benefit**; or
- d) in respect of any other amount released under sub-clause 6.10.5, such amount as the **Board** considers appropriate after consideration of the relevant application and accompanying evidence.

6.10.13 An amount released under this clause may be paid to any person that the **Board** determines.

6.10.14 Where the **Board** has paid an amount by way of early release under this clause, the **Board** must reduce the balance of the relevant **Member's** account or accounts accordingly.

6.10.15 If the **Board** is not satisfied that an applicant has established grounds for the early release of the whole or a part of his or her **Benefit**, the **Board** may decline to proceed with consideration of the application until the applicant has produced such relevant information as the **Board** may require.

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

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

- i) Part VIIIIB of the *Family Law Act 1975*;
- ii) the *Family Law (Superannuation) Regulations 2001*; and
- iii) Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*.

6.11.2 If a **Member's** account or accounts are subject to a payment flag as defined in section 90MD of the *Family Law Act 1975*, that payment flag is to be applied in accordance with the provisions of:

- i) Part VIIIIB of the *Family Law Act 1975*; and
- ii) the *Family Law (Superannuation) Regulations 2001*.

6.11.3 The **Board** may impose fees in relation to any:

- a) application for information relating to a superannuation interest;
- b) payment split or payment flag; or
- c) other matter;

relating to Part VIIIIB of the *Family Law Act 1975* in such manner as is permitted by that Act.

## 6.12 SPOUSE CONTRIBUTION SPLITTING

6.12.1 A **Member** may apply to the **Board** to roll over, transfer or allot that part of his or her account, for the benefit of the **Member's** spouse, that is no more than the amount of the **Splittable Contributions** made by, for, or on behalf of the **Member** in:

- a) the last financial year that ended immediately before the application; or
- b) the financial year in which the application is made, where the **Member's** total account balance is to be rolled over or transferred in that year.

6.12.2 Upon receipt of a valid application under sub-clause 6.12.1, the **Board** must, subject to sub-clause 6.12.3, give effect to that application and reduce the balance of the **Member's** account accordingly.

6.12.3 The **Board** may only give effect to an application made under sub-clause 6.12.1 where regulated superannuation funds would be permitted under the **SIS Act** to give effect to such an application in similar circumstances.

6.12.4 An application made by a **Member** under sub-clause 6.12.1 is to be administered by the **Board** in accordance with the provisions of:

- a) Division 6.7 of *Superannuation Industry (Supervision) Regulations 1994*; and
- b) The *Income Tax Assessment Act 1936*.

6.12.5 For the purposes of this clause, contributions paid for or on behalf of a **Member** pursuant to clauses 5.2 and 5.3 are to be treated as:

- a) taxed contributions for the purposes of section 274 of the *Income Tax Assessment Act 1936*; and
- b) taxed splittable contributions for the purposes of the *Superannuation Industry (Supervision) Regulations 1994* and the *Income Tax Assessment Act 1936*.

6.12.6 For the purposes of this clause, contributions paid by, for, or on behalf of a **Member** pursuant to clause 5.4 for which a tax deduction is not claimed pursuant to section 82AAT of the *Income Tax Assessment Act 1936* are to be treated as:

- a) undeducted contributions for the purposes of section 27A of the *Income Tax Assessment Act 1936*; and
- b) untaxed splittable contributions for the purposes of the *Superannuation Industry (Supervision) Regulations 1994* and the *Income Tax Assessment Act 1936*.

6.12.7 A payment, transfer or allotment made under this clause is to be treated as a contributions splitting - ETP for the purposes of the *Income Tax Assessment Act 1936*.

6.12.8 For the purposes of this clause, a spouse means:

- a) a person of the opposite gender who is legally married to a **Member**;  
or
- b) a person of the opposite gender who although not legally married to the **Member**, lives with the **Member** on a bona fide domestic basis as the husband or wife of that **Member**.

## 7 ACCOUNT-BASED PENSIONS

### 7.1 ACCOUNT-BASED AND TERM ALLOCATED PENSIONS

7.1.1 The **Board** may establish such accounts and procedures for the purposes of paying **Account-Based Pensions** and **Term Allocated Pensions**.

7.1.2 The **Board** must administer **Account-Based Pensions** having regard to:

- a) the **Account-Based Pension** payment standards prescribed by the **SIS Regulations**;
- b) the **Transition To Retirement Income Stream** payment standards prescribed by the **SIS Regulations** in respect of **Transition To Retirement Account-Based Pensions**;
- c) the *Income Tax Assessment Act 1997* of the Commonwealth; and
- d) any other law of the Commonwealth relating to the payment of **Account-Based Pensions**.

7.1.3 The **Board** must administer **Term Allocated Pensions** having regard to:

- a) the payment standards prescribed by the **SIS Regulations** for market linked pensions;
- b) the *Income Tax Assessment Act 1997* of the Commonwealth; and
- c) any other law of the Commonwealth relating to the payment of market linked pensions.

7.1.4 The **Board** may determine administrative policies and such terms and conditions as are necessary for the efficient and effective administration of **Account-Based Pensions** and **Term Allocated Pensions**.

7.1.5 Without limiting the meaning of sub-clause 7.1.4, the **Board** may:

- a) charge administration and investment management fees with respect to the administration and investment of **Account-Based Pensions and Term Allocated Pensions**;
- b) provide a **Member** with access to a range of investment choice options as provided by clause 4.3.

## 7.2 PAYMENT STANDARDS – ACCOUNT-BASED PENSIONS

- 7.2.1 Subject to sub-clause 7.1.2, a **Member** upon attaining his or her **Preservation Age** may elect to transfer the whole or part of his or her **Benefit** under this **Deed** to an **Account-Based Pension Account**.
- 7.2.2 Subject to sub-clause 7.1.2, a **Member** who has retired on the grounds of **Permanent Incapacity** may elect to transfer the whole or part of his or her **Benefit** under this **Deed** to an **Account-Based Pension Account**.
- 7.2.3 Upon making an election pursuant to sub-clause 7.2.1 or sub-clause 7.2.2, a **Member** may by notice in writing to the **Board** nominate that in the event of his or her death the **Account-Based Pension** is to revert to his or her **Surviving Partner**.
- 7.2.4 The **Surviving Partner** of a **Member** may elect to transfer the whole or part of the deceased **Member's Benefit** under this **Deed**, to an **Account-Based Pension Account**.
- 7.2.5 A person who is the surviving partner of a member for the purposes of the:
- a) *Retirement Benefits Regulations 2005*;
  - b) *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*;
  - c) the Tasmanian Ambulance Service Superannuation Scheme Trust Deed; and
  - d) the State Fire Commission Superannuation Scheme Trust Deed;

may elect to transfer the whole or part of the deceased member's benefit to an **Account-Based Pension Account**.

- 7.2.6 If an election is made under sub-clauses 7.2.1, 7.2.2, 7.2.4 or 7.2.5 to transfer a benefit, the **Board** is to:
- a) credit to the **Account-Based Pension Account** if the **Member** or a surviving partner so requests:
    - i) any amount payable under Part 6 of this **Deed**;
    - ii) any amount paid pursuant to clause 5.6;
    - iii) any amount payable under the *Retirement Benefits Regulations 2005*, *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*, the Tasmanian Ambulance Service Superannuation Scheme Trust Deed or the State Fire Commission Superannuation Scheme Trust Deed; and
    - iv) any other amount allowable under the law of the Commonwealth;

- b) credit to the **Account-Based Pension Account** any investment earnings determined by the **Board**; and
- c) debit to the **Account-Based Pension Account**:
  - i) any **Account-Based Pension** payment made under this clause;
  - ii) any capital withdrawal made from the **Account-Based Pension Account**;
  - iii) any tax liability or other amounts required by the law of the Commonwealth or **State**; and
  - iv) any administration fees and investment management charges, as determined by the **Board**, to be sufficient to cover the cost of administering the **Account-Based Pensions**.

7.2.7 Upon the establishment of an **Account-Based Pension Account** for a **Member** and at any other time determined by the **Board** in accordance with sub-clause 7.1.4, a **Member** must notify the **Board** in writing of:

- a) the amount of **Account-Based Pension** to be paid to him or her during the financial year provided that:
  - i) the annual amount of the **Account-Based Pension** is not less than the minimum **Account-Based Pension** calculated in accordance with schedule 7 of the **SIS Regulations**; and
  - ii) the annual amount of the **Account-Based Pension** does not exceed the maximum permitted by schedule 7 of the **SIS Regulations**;
- b) the frequency of **Account-Based Pension** instalments, whether fortnightly, monthly or quarterly, half yearly or annually.

7.2.8 If a **Member** fails to make an election in accordance with sub-clause 7.2.7, the **Board** must:

- a) calculate the minimum **Account-Based Pension** payable for the financial year in accordance with schedule 7 of the **SIS Regulations**; and
- b) pay to the **Member** the minimum **Account-Based Pension** for the financial year at least annually or in such other instalments as determined by the **Board**.

7.2.9 An **Account-Based Pension** ceases to be payable on the earlier of the following dates:

- a) the date of death of the **Member** entitled to that pension; or
- b) the date on which the balance standing to the credit of the **Account-Based Pension Account** is zero.

7.2.10 If a person entitled to an **Account-Based Pension** dies, the **Board** must pay the balance standing to the credit of the **Account-Based Pension Account** in accordance with clause 9.2A.

### 7.3 PAYMENT STANDARDS – TERM ALLOCATED PENSIONS

7.3.1 Subject to sub-clause 7.1.3, a **Member** upon attaining his or her **Preservation Age** may elect to transfer the whole or part of his or her **Benefit** under this **Deed** to a **Term Allocated Pension Account**.

7.3.2 Subject to sub-clause 7.1.3, a **Member** who has retired on the grounds of **Permanent Incapacity** may elect to transfer the whole or part of his or her **Benefit** under this **Deed** to a **Term Allocated Pension Account**.

7.3.3 Upon making an election pursuant to sub-clause 7.3.1 or sub-clause 7.3.2, a **Member** may by notice in writing to the **Board** nominate that in the event of his or her death the **Term Allocated Pension** is to revert to his or her **Surviving Partner**.

7.3.4 The **Surviving Partner** of a **Member** may elect to transfer the whole or part of the deceased **Member's Benefit** under this **Deed**, to a **Term Allocated Pension Account**.

7.3.5 A person who is the surviving partner of a member for the purposes of the:

- a) *Retirement Benefits Regulations 2005*;
- b) *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*;
- c) the Tasmanian Ambulance Service Superannuation Scheme Trust Deed; and
- d) the State Fire Commission Superannuation Scheme Trust Deed;

may elect to transfer the whole or part of the deceased member's benefit to an **Term Allocated Pension Account**.

7.3.6 If an election is made under sub-clauses 7.3.1, 7.3.2, 7.3.4 or 7.3.5 to transfer a benefit, the **Board** is to:

- a) credit to the **Term Allocated Pension Account** if the **Member** or a surviving partner so requests:
  - i) any amount payable under Part 6 of this **Deed**;
  - ii) any amount paid pursuant to clause 5.6;
  - iii) any amount payable under the *Retirement Benefits Regulations 2005*, the *Retirement Benefits (Parliamentary Superannuation)*

*Regulations 2002*, the Tasmanian Ambulance Service Superannuation Scheme Trust Deed or the State Fire Commission Superannuation Scheme Trust Deed; and

- iv) any other amount allowable under the law of the Commonwealth;
- b) credit to the **Term Allocated Pension Account** any investment earnings determined by the **Board**; and
- c) debit to the **Term Allocated Pension Account**:
  - i) any **Term Allocated Pension** payment made under this Part;
  - ii) any capital withdrawal made from the **Term Allocated Pension Account**;
  - iii) any tax liability or other amounts required by the law of the Commonwealth or **State**; and
  - iv) any administration fees and investment management charges, as determined by the **Board**, to be sufficient to cover the cost of administering the **Term Allocated Pensions**.

7.3.7 Upon the establishment of a **Term Allocated Pension Account**, the **Member** must notify the **Board** in writing of:

- a) the period during which the **Term Allocated Pension** is to be paid to him or her based on the **Term Allocated Pension** payment factors prescribed by the **SIS Regulations**;
- b) the frequency of **Term Allocated Pension** instalments, whether fortnightly, monthly, half yearly or annually; and
- c) the annual payment percentage within the range of payment percentages prescribed for regulated superannuation funds by the **SIS Regulations**.

7.3.8 Any period of payment and instalment notified by a **Member** for the purposes of sub-clause 7.3.7 must be a period and frequency that is allowable under the **SIS Regulations**.

7.3.9 A **Term Allocated Pension** is to be calculated in accordance with the following formula or such other formula as may be prescribed by the law of the Commonwealth for the calculation of **Term Allocated Pension** instalments:

$$\text{TAP} = (\text{TAPB} \div \text{PVF}) \times \text{APP} \times (1 \div \text{N})$$

where –

“TAP” is the value of each **Term Allocated Pension** instalment to be paid to a **Member** in respect of a financial year;

“TAPB” is the balance standing to the credit of the **Term Allocated Pension Account**:

- i) at the date the account was established; and
- ii) on 1 July in each subsequent financial year in which the **Term Allocated Pension** payments are to be made;

“PVF” is the payment factor corresponding to the term remaining of the **Term Allocated Pension**;

“APP” is the annual payment percentage notified by a **Member** to the **Board** under sub-clause 7.3.7 c);

“N” is the number of instalments of **Term Allocated Pension** per annum, payable to that **Member** in accordance with his or her notification under sub-clause 7.3.7 b);

7.3.10 Where:

- a) the period of payment of a **Member’s Term Allocated Pension** has been calculated with reference to the life expectancy of the **TAP Partner** of that **Member** or calculated with reference to the number of years until the **TAP Partner** of that **Member** would attain the age of a 100 years; and
- b) that **Member** predeceases that **TAP Partner**,

that **Term Allocated Pension** must, subject to sub-clause 7.3.13, continue to be paid to that **TAP Partner**, on the death of that **Member**.

7.3.11 Where the period of payment of a **Member’s Term Allocated Pension** has been calculated with reference to the life expectancy of that **Member** or calculated with reference to the number of years until that **Member** would attain the age of a 100 years, that **Member** must elect, prior to the commencement of the first payment of the **Term Allocated Pension** as to whether that **Term Allocated Pension** is to be a reversionary or non-reversionary **Term Allocated Pension**.

7.3.12 Where a **Member** has elected to receive a non-reversionary **Term Allocated Pension**, that **Term Allocated Pension** must cease to be paid on the earlier of:

- a) the death of that **Member**; or
- b) the expiration of the period for which the **Term Allocated Pension** was purchased.

7.3.13 Where a **Member** has elected to receive a reversionary **Term Allocated Pension**, that **Term Allocated Pension** must cease to be paid on the earlier of:

- a) the expiration of the period for which the **Term Allocated Pension** was purchased;

- b) the death of the **Member**, where the **TAP Partner** of the **Member** at the date of death of that **Member** was not the **TAP Partner** nominated under sub-clause 7.3.3; or
- c) the death of the **TAP Partner** of that **Member**, where:
  - i) that **Member** has predeceased that **TAP Partner**; and
  - ii) the **TAP Partner** of that **Member** at the date of death of that **Member** was the **TAP Partner** nominated under sub-clause 7.3.3.

## 8 FINANCIAL PROVISIONS

### 8.1 FIXING OF INTEREST RATES

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

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

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

### 8.2 COST OF ADMINISTRATION

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

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

### 8.3 TIME AND MANNER OF BENEFIT PAYMENTS

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

## 8.4 TAXATION AND PAYMENT OF LUMP SUM AND ALLOCATED PENSION BENEFITS

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

- a) all **Employer Contributions** as **Concessional Contributions**; and
- b) all **Member Contributions** which have been included in the **Assessable Income** of the **Fund** as **Concessional Contributions**; and
- c) all **Member Contributions** which have not been included in the **Assessable Income** of the **Fund** as **Non-Concessional Contributions**; and
- d) the **Element Untaxed In The Fund** of a **Roll-over Superannuation Benefit** as **Assessable Income** of the **Fund**; and
- e) the **Element Untaxed In The Fund** of benefits transferred to the **Scheme** by the:
  - i) *Retirement Benefits Regulations 2005*;
  - ii) *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*;
  - iii) the Tasmanian Ambulance Service Superannuation Scheme Trust Deed; and
  - iv) the State Fire Commission Superannuation Scheme Trust Deed,as **Assessable Income** of the **Fund**.

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

- a) establish and maintain policies and administrative procedures with respect to the taxation of **Superannuation Contributions** and **Superannuation Benefits**; and
- b) determine, from time to time –
  - i) the proportion of a **Superannuation Benefit** that is to be treated by the **Board** as an **Element Untaxed In The Fund** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - ii) the proportion of a **Superannuation Benefit** that is to be treated by the **Board** as an **Element Taxed In The Fund** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - iii) the proportion of a **Superannuation Benefit** that is to be treated by the **Board** as the **Tax Free Component** for the purposes of the *Income Tax Assessment Act 1997* of the Commonwealth.

8.4.3 The **Board**, in accordance with the law of the Commonwealth, must deduct from **Superannuation Contributions, Superannuation Benefits** and amounts covered by sub-clause 8.4.1 d) and e) all amounts required to be paid as taxation under the law of the Commonwealth and remit those amounts to the **Commissioner of Taxation**.

## 8.5 ESTABLISHMENT OF SURCHARGEABLE CONTRIBUTIONS DEBT ACCOUNT

8.5.1 On receipt of an assessment notice from the **Commissioner of Taxation** in respect of a **Member**, the **Board** must establish a **Surchargeable Contributions Debt Account** in the name of the **Member**.

8.5.2 The **Board** must debit the **Surchargeable Contributions Debt Account** by the amount of any surcharge contributions tax liability specified in the notice of assessment relating to the **Member**.

8.5.3 If the **Surchargeable Contributions Debt Account** is in debit at the end of a financial year, the **Board** must:

- a) debit the **Member's** account or accounts established under clause 4.2 as the case requires, the amount or amounts standing to the debit of the **Member's Surchargeable Contributions Debt Account**;
- b) credit the **Member's Surchargeable Contributions Debt Account** with the amount debited in a); and
- c) forward that amount to the **Commissioner of Taxation** within the period specified under the law of the Commonwealth.

8.5.4 Where a **Benefit** entitlement becomes payable by the **Board** to a **Member** whose account established under this clause is in debit, the **Board** must reduce the **Benefit** payable by the extent of the balance of the **Member's Surchargeable Contributions Debt Account** and pay to the **Commissioner of Taxation**, within one month after the day on which the lump sum becomes payable, the amount equal to the amount of the **Benefit** reduction for surchargeable contributions debt.

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

- 8.6.1 The **Board** must provide the **Actuary** with such information in respect of **Members** as may be necessary for the purposes of this **Deed**.
- 8.6.2 The **Board** must provide the **Commissioner of Taxation** with such information in respect of **Members** as may be required under the law of the Commonwealth.
- 8.6.3 The **Board** must, at least annually, distribute to each **Member**:
- a) a report of its operations during the previous financial year; and
  - b) a statement of the balance of his or her account or accounts, detailing the total interest credited or debited, administration and management charges, death and incapacity premiums deducted and any surcharge or taxation liabilities deducted from the account or accounts; and
  - c) a statement of the **Board's** current investment strategies and performance.

## **8.7 SCHEME SOLVENCY CERTIFICATE**

- 8.7.1 The **Board** must comply with the financial management standards prescribed for regulated superannuation funds by the **SIS Act**.
- 8.7.2 The **Board** must obtain from the **Actuary** such solvency certificates consistent with the standards prescribed for regulated superannuation funds by the **SIS Act**.

## 9 GENERAL PROVISIONS

### 9.1 QUESTION OF INCAPACITY TO BE DETERMINED BY BOARD

9.1.1 If a question arises under this **Deed** following application by a **Member** who is an **Eligible Employee**, as to whether that **Member** is suffering from such ill health as to:

- a) be entitled to the payment of a **Permanent Incapacity Benefit** on his or her retirement; or
- b) receive a **Temporary Incapacity** pension;

the question is to be determined by the **Board**.

9.1.2 When determining a question under sub-clause 9.1.1 the Board is to have regard to:

- a) at least one report in relation to that **Member's** medical condition by a legally qualified medical practitioner appointed by the **Member** or the **Member's Legal Personal Representative**; and
- b) at least one report in relation to that **Member's** medical condition by a legally qualified medical practitioner appointed or employed by the **Board**, written during the six month period immediately prior to the date on which the question is determined.

9.1.3 When considering an application referred to in sub clause 9.1.1 the **Board** may seek additional advice from the **Member's Agency Manager** and the **Member's** legal advisor or **Legal Personal Representative**.

9.1.4 If the **Board** has received an application for the early release of a preserved **Benefit** on the ground of **Permanent Incapacity** from a **Member** who has a preserved **Benefit** under this **Deed**, the **Board** is to determine whether that **Member** is suffering from **Permanent Incapacity**.

### 9.2 PAYMENT ON PERMANENT INCAPACITY

9.2.1 If a **Member** becomes entitled to a **Permanent Incapacity Benefit**, the **Board** shall pay the **Benefit** to that **Member**, unless in the opinion of the **Board**, the **Member** is incapable of administering his or her own affairs, in which case the **Board** shall pay the **Benefit** to the **Member's Spouse** or **Legal Personal Representative**.

## 9.2A PAYMENT ON DEATH

9.2A.1 Except as provided in sub-clause 9.2A.2, where a lump sum **Benefit** is payable under this **Deed** on the death of a **Member**, that **Benefit** is to be paid to:

- a) the **Surviving Partner** of that **Member**; or
- b) if there is no **Surviving Partner**, the person with whom the **Member** was in a caring relationship which was the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*, which deed was revoked by the death of that **Member**; or
- c) if there is no person referred to in paragraphs a) or b) -
  - i) the estate of that **Member**, subject to the production of grant of probate or letters of administration; or
  - ii) in accordance with clause 9.10.

9.2A.2 Notwithstanding sub-clause 9.2A.1, a **Member** may, by notice in writing to the **Board** –

- a) elect that in the event of his or her death all or part of the lump sum **Benefit** payable on his or her death is to be paid to his or her estate; or
- b) revoke any such election -

and, where the election is in force, sub-clause 9.2A.1 does not apply to any part of the lump sum **Benefit** that is subject to the election.

9.2A.3 If, upon the death of a **Member**, a question arises as to who is the **Surviving Partner** of that **Member** at the time of his or her death, for the purposes of this **Deed** the question is to be determined by the **Board** having regard to such matters as it considers relevant.

9.2A.4 For the purposes of sub-clause 9.2A.3, **Surviving Partner** means a person who the **Board** is satisfied that, at the time of a **Member's** death –

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

9.2A.5 When determining a question under sub-clause 9.2A.3, the **Board** must not determine more than one person to be the **Surviving Partner** of a **Member**.

9.2A.6 If the **Board** is unable to determine who is the **Surviving Partner** of the **Member** at the time of his or her death, after any enquiry it considers appropriate under this clause, any **Benefit** that would otherwise be payable to the **Surviving Partner** of the **Member** shall be paid to the **Member's Legal Personal Representative**.

### 9.3 POLICIES AND PROCEDURES TO BE ADOPTED BY THE BOARD

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

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

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

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

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

## 9.4 AGENCY TO PROVIDE INFORMATION

- 9.4.1 The **Agency Manager** shall submit to the **Board**, in such manner and form as the **Board** may determine, such information or evidence, as the **Board** requires, relating to **Members** who are or were **Eligible Employees** of that **Agency**.
- 9.4.2 Where the **Agency Manager** fails to provide the necessary information or evidence in relation to a **Member**, the **Board** may defer payment of a **Benefit** to, or in relation to, that **Member** where the information sought is relevant to the payment of the **Benefit**.

## 9.5 DUTIES OF RESPONSIBLE OFFICERS

- 9.5.1 A **Responsible Officer** must, on the appointment or employment of an **Eligible Employee**, immediately where an **Eligible Employee** becomes a **Member** pursuant to Part 4 of this **Deed**, notify the **Board** in writing, or in a manner approved by the **Board**, of the **Eligible Employee's**:
- a) surname and given names;
  - b) date of birth;
  - c) sex and marital status;
  - d) postal address;
  - e) private address;
  - f) tax file number;
  - g) employment status and percentage of full-time equivalent hours;
  - h) commencement date of service; and
  - i) rate of salary.
- 9.5.1A Upon a request from the **Board**, a **Responsible Officer** must provide the **Board** with the tax file number of a **Member** to enable the **Board** to administer the **Fund** in accordance with the *Income Tax Assessment Act 1997* of the Commonwealth.
- 9.5.2 A **Responsible Officer** must:
- a) on being notified by the **Member** of any changes in the information referred to in sub-clause 9.5.1 a), b), c), d), e) or f), immediately notify the **Board** in writing or in any other manner approved by the **Board** of those changes;

- b) immediately notify the **Board** in writing or in any other manner approved by the **Board** of any changes in the information referred to in sub-clause 9.5.1 g), h) or i) and provide a copy of this notification to the **Member**;
- c) on **Resignation, Redundancy, Retirement** or death of a **Member**, furnish the **Board** with any documents completed by the **Member**, that **Member's Surviving Partner** or **Legal Personal Representative** and the **Responsible Officer** that may be necessary to support the payment of **Benefits** accruing under this **Deed**; and
- d) on an election by a **Member** under section 6 of the **Act** to become a member of an **RSA** or another **Complying Superannuation Plan**, immediately notify the **Board** in writing or in any other manner approved by the **Board** of that **Member's** election.

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

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

## 9.6 CLAIMANT TO PROVIDE INFORMATION

- 9.6.1 Any person who submits a claim in relation to this **Deed** does so on the basis that the **Member** to whom the claim relates is deemed to have approved of, and be bound by, the **Deed** in all respects as if the **Member** were an original party to this **Deed**.
- 9.6.2 The **Board** may require a **Member** or a claimant for payment of a **Benefit** under this **Deed** -
- a) to provide the **Board** with specified information or evidence referred to in clause 9.5 in a manner approved by the **Board**;
  - b) to provide the **Board** with authority to request from a third person any such information or evidence; or
  - c) in the case of a claimant for an **Incapacity Benefit**, to undergo at least two (2) medical examinations by legally qualified and registered medical practitioners, at least one of who shall be appointed or employed by the **Board**.
- 9.6.3 A requirement under sub-clause 9.6.2 may be made only in relation to information, evidence or medical examinations that is relevant to the assessment of an application made by the claimant for payment of the **Benefit**.
- 9.6.4 Where -
- a) the **Member** or claimant, to whom a requirement under this clause relates, fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or
  - b) a person referred to in this clause fails to provide information or evidence that the **Board** has been authorised to request from the person or, in purported compliance with the request by the **Board** for the information or evidence, makes or provides an untrue statement,
- the **Board** may take such action in relation to the **Benefit** concerned as, in the opinion of the **Board**, would place the claimant as nearly as possible in the same position as the claimant would be if the true information or evidence had been provided.
- 9.6.5 For the purposes of this clause, "untrue", in relation to a statement, includes:
- a) false or misleading in the form and context in which the statement appears; and
  - b) false or misleading by reason of the omission from the statement of matter that is material.

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

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

- a) must be in writing signed by the person entitled to make the election, direction, claim or application and in such form as the **Board** determines;
- b) subject to sub-clause 9.7.2, is not valid unless it is received in the office of the **Board**;
- c) takes effect when it is received in the office of the **Board**, except that the **Board** may, if it thinks fit, accept that an election, direction, claim or application lodged with an **Agency** takes effect from the date it is so lodged or, in respect of investment elections, the date referred to in sub-clause 4.3.3.

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

9.7.3 For the purposes of this **Deed** the office of the **Board** is located at 39 Sandy Bay Road, Hobart, Tasmania.

## 9.8 ASSIGNMENT OF BENEFIT

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

- a) is not available as security for a loan and is not otherwise subject to any assignment, mortgage, charge, encumbrance or lien; and
- b) on the death of the **Member** so entitled is not, in the absence of a **Surviving Partner**, available as an asset in his or her estate for the payment of his or her debts or liabilities; and
- c) is not capable of being assigned, charged, taken in execution or passed under any law to any person other than the **Member** to whom it is payable.

9.8.2 Nothing in this clause prevents the **Board** from making, at the request of a person to whom an amount by way of a **Benefit** is payable, a payment of the

whole or a part of the amount on behalf of the person as a payment due to the **Board** pursuant to the *Retirement Benefits Regulations 2005* and this **Deed**.

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

## 9.9 RECOVERY OF MONEY OWING TO THE SCHEME

- 9.9.1 The **Board** may recover from a **Member**, beneficiary, or other person, any money which was paid in excess of the **Member's Benefit**, together with interest calculated in accordance with this clause, unless the **Board**, having regard to the circumstances of the **Member**, determines otherwise.
- 9.9.2 The **Board** shall recover from an **Agency** any payments to the **Fund** of **Agency** superannuation contributions, additional employer contributions and **Member** contributions that have not been forwarded to the **Board** within seven days of the relevant pay day and those payments shall attract interest calculated in accordance with this clause.
- 9.9.3 Payments from an **Agency** to the **Fund** of **Agency** superannuation contributions, additional employer contributions and **Member** contributions are to be credited to the **Members'** accounts as if they were received on the relevant pay day.
- 9.9.4 The interest determined under sub-clause 9.9.2 is the liability of the **Agency** and not the **Member**.
- 9.9.5 Interest is calculated on a daily basis using the Bloomberg's 90 day Bank Bill Swap Reference Rate, as published in the *Australian Financial Review* on the day the amount became due for payment, plus 4% and is payable on any amount owing to the **Fund** calculated from the date on which the amount becomes due for payment until the date on which the amount, together with interest if applicable, is fully recovered by, or otherwise paid to, the **Board**.
- 9.9.6 Any interest paid under this clause is to be credited to the Investment Income Reserve Account established under clause 3.8.

## 9.10 PAYMENT WITHOUT GRANT OF PROBATE.

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

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

the **Board** may, at its discretion, make a payment of the **Benefit** to the **Legal Personal Representative**.

## 9.11 RESTORATION OF LOST RIGHT UNDER DEED

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

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

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

## 9.12 PAYMENT WHERE MEMBER INCAPABLE

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

## 9.13 UNCLAIMED BENEFITS

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

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

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

## 9.14 PAYMENT WHERE BENEFICIARY BANKRUPT

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

## 9.15 SERVICE OF NOTICES BY THE BOARD

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

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

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

## 9.16 MARKETING AND PROMOTION

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

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

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

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

- a) the activity is in the interests of present and future **Members**;

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

## 9.17 PROVISION OF INFORMATION TO THE MINISTER

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

## 10 REVIEW OF BOARD DECISIONS

### 10.1 BOARD NOT SUBJECT TO DIRECTION

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

10.1.2 Sub-clause 10.1.1 does not apply to –

- a) a direction given by a court; or
- b) a direction given by a person that relates to the method of payment of the **Benefit** payable to that person; or
- c) a direction given by a **Member** that relates to an investment option available under this **Deed** to that **Member's Benefit**.

### 10.2 HEARING BEFORE THE BOARD

10.2.1 In respect of any application or question arising under sub-clause 4.5 or Parts 6, 7 and 9 but not including sub-clause 9.2A of this **Deed**, the **Board** must:

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

10.2.2 An applicant may, within 21 days after the date of written notification under sub-clause 10.2.1, elect by notice in writing to the **Board**:

- a) to appear and be heard before the **Board**; and
- b) to submit any relevant medical report or other evidence.

10.2.3 Before making a final decision on the application or question, the **Board** may:

- a) require the applicant to undergo a further medical examination by a medical practitioner or practitioners the **Board** considers appropriate at the **Board's** cost;
- b) seek further information from the applicant's **Agency Manager** or former **Agency Manager** as the **Board** considers appropriate;

- c) seek further information concerning the applicant's capacity and prospects for employment;
- d) require the applicant to submit any further evidence the **Board** considers appropriate; and
- e) take any other action the **Board** considers appropriate.

10.2.4 The **Board**, in the exercise of its powers under this clause, may impose any terms or conditions that it considers fair and equitable.

10.2.5 The **Board** may reduce or extend the 21 day election period referred to in sub-clause 10.2.2 on the written application of the applicant, provided that the written application is received by the **Board** within the period of 21 days after the date of written notification by the **Board** under sub-clause 10.2.1.

10.2.6 If an election under this clause is not made within the required time, the preliminary decision becomes the final decision of the **Board**.

### **10.3 POWER TO APPLY TO SUPREME COURT FOR DECLARATION AS TO VALIDITY**

10.3.1 If the **Board** has made a final decision under clause 10.2 adversely to an applicant, he or she may, within 6 months after notification of the final decision, require the **Board** to apply to the Supreme Court for a declaration in respect of that final decision.

10.3.2 Subject to sub-clause 10.3.3, the Supreme Court, on an application under sub-clause 10.3.1, may make a declaration, having regard to facts existing and events that have occurred at the time the declaration is made, as to the validity or otherwise of the determination in respect of which the application is made.

10.3.3 The Supreme Court must not make a declaration under sub-clause 10.3.2 in respect of a determination the validity of which cannot be decided at the time when the Court is asked to make the declaration.

10.3.4 For the purpose of reviewing a determination by the **Board**, the Supreme Court has all the powers and discretions that are conferred on the **Board** by law or under the **Act**, the *Retirement Benefits Act 1993* or the *Retirement Benefits Regulations 2005*.

10.3.5 The Supreme Court may make a declaration –  
a) affirming the **Board's** decision; or

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

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

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

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

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

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

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

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

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

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

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

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

10.5.3 The **Board** may charge a fee when dealing with an inquiry or complaint and may waive or reduce the fee if it is satisfied that the applicant's intended use of the information is of general public interest or benefit.

10.5.4 The fee that may be charged by the **Board** in dealing with an inquiry or complaint is not to exceed 400 fee units within the meaning of the *Fee Units Act 1997*.

10.5.5 If the **Board** believes the fee may exceed 25 fee units within the meaning of the *Fee Units Act 1997*, the **Board** must notify the applicant and inquire whether the applicant wishes to proceed with the inquiry or complaint.

## 11 AMENDMENTS TO DEED

### 11.1 AMENDMENTS TO THE DEED

- 11.1.1 This **Deed** may be amended, revoked or substituted as provided by sections 7 and 11 of the **Act** and this clause.
- 11.1.2 This **Deed** must not be altered so as to authorise the making of any payment from the **Fund** to an **Agency** other than an expense in the normal course of administration or refund of overpaid contributions.
- 11.1.3 If directed by the **Minister**, the **Board** must prepare and submit to the **Minister** for approval, a draft of such amendments, revocations or substitutions that are required to be made to the **Deed**, within a period determined by the **Minister**.
- 11.1.4 The **Minister** must not approve any amendment, revocation or substitution of or to this **Deed** unless he or she: -
- a) has consulted with the Tasmanian Trades and Labor Council; and
  - b) is satisfied that it is in accordance with the **Act** and the requirements of the law of the Commonwealth.
- 11.1.5 After the **Minister** has approved any amendment, revocation or substitution of or to this **Deed**: -
- a) the **Minister** and **Board** must execute the amendment, revocation or substitution of or to the **Deed**; and
  - b) the **Minister** must cause to be published in the **Gazette** notice of: -
    - i) the **Minister's** approval; and
    - ii) the execution of the amendment, revocation or substitution of or to this **Deed**.
- 11.1.6 An amendment to, or a revocation and substitution of, this **Deed** takes effect on the day on which the notice under this clause is published in the **Gazette**.
- 11.1.7 If there is an amendment to, or a revocation and substitution of this **Deed**, the **Board** shall notify all **Members** in accordance with the requirements prescribed for regulated superannuation funds by the **SIS Act**.

IN WITNESS whereof the parties have hereunto set their hands and seals to this Deed on the date hereinbefore first mentioned.

SIGNED, SEALED AND DELIVERED )  
by the HONOURABLE DR. DAVID )  
MACKENZIE CREAN being and as )  
the Minister administering the Act )  
in the presence of:- ) .....

Signature of Witness: .....

Name of Witness: .....

Address: .....

Occupation: .....

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

President of the Board .....

Name .....

Member of the Board .....

Name .....

Chief Executive Officer of the Board .....

Name .....