



**NATIONAL
PROVIDENT**

**ANNOTATED TRUST DEED
for the
AIRCREW SUPERANNUATION SCHEME**

as at 30 January 2021

This is an Annotated Trust Deed for the Scheme and is not the official signed trust deed that governs the Scheme. The Scheme trust deed is subject to change. Therefore, if you wish or need to rely on the terms of the trust deed, please contact the Scheme Administrator for a copy of the signed trust deed.

Marginal dates indicate that text in the sub-clause (including any subsequent clauses included under that subclause) beside which they are placed was amended with effect from the dates stated. If you wish to consult the terms of the trust deed as it applied in the past, please contact the Scheme Administrator.

ANNOTATED TRUST DEED
FOR THE
AIRCREW SUPERANNUATION SCHEME

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TRUST DEED

HISTORY OF THE DEED

- A.** The Aircrew Superannuation Scheme was established under the National Provident Fund Act 1950 as one of four sections of the NPF Standard Scheme for Local Authorities Superannuation (including Harbourmasters and (Ships') Pilots);
- B.** The scheme document was adopted on 7 August 1988 and amended by scheme documents dated 23 March 1990 and 29 September 1990;
- C.** By section 43 of the National Provident Fund Restructuring Act 1990 (the "Act") the Scheme was deemed on 1 April 1991 to become a separate Superannuation Scheme and to be registered under the Superannuation Schemes Act 1989;
- D.** By section 45 of the Act, the Board was required to prepare a trust Deed for the Scheme. This trust deed was dated 28 March 1991 (effective 1 April 1991) ("the Deed");
- E.** Since 1 April 1991 the Deed has been amended as follows:
 - Deed of amendment dated 30 March 1993 (Past Practice Amendments);
 - Deed of amendment dated 7 September 1993 (amendment to allow transfers);
 - Deed of amendment dated 29 February 1996 (Human Rights Act amendments);
 - Deed of amendment dated 31 March 1998 (effective 1 April 1998) (removal of waiting period for elections to transfer out);
 - Deed of amendment dated 22 August 2006 (missing persons);
 - Deed of amendment dated 21 September 2016 (effective 20 October 2016) (Financial Markets Conduct Act 2013 compliance);
 - Deed of amendment dated 28 March 2019 (pension scheme transfer); and
 - Deed of amendment dated 6 May 2021 (with effect from 30 January 2021) (Trusts Act 2019 amendments).

THIS ANNOTATED TRUST DEED

The purpose of this annotated Trust Deed is to provide a record of all amendments that have been made to the Deed since 1 April 1991.

PART I

GENERAL

1 TITLE AND COMMENCEMENT

30/3/93 This Deed is the Trust Deed for the National Provident Aircrew Superannuation Scheme (the or this "Scheme") and shall come into force on 1 April 1991.

20/10/16 1A FMC ACT

1A.1 For the purposes of the FMC Act:

1A.1.1 this Scheme is treated as a trust established and governed by a trust deed interpreted and administered in accordance with New Zealand law;

1A.1.2 and for the purposes of any other enactment, this Scheme must be treated as if it were registered on the register of managed investment schemes under the FMC Act as a restricted scheme that is a Superannuation Scheme; and

1A.1.3 the Board is the 'manager' and the 'issuer' of the Scheme.

30/01/21 1B TRUSTS ACT

1B.1 The provisions of the Trusts Act are modified or excluded as follows:

1B.1.1 Section 33 of the Trusts Act (duty not to bind or commit trustees to future exercise of discretion) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.2 Section 34 of the Trusts Act (duty to avoid conflict of interest) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.3 Section 36 of the Trusts Act (duty not to profit) is excluded from the provisions of this Deed and the provisions of this Deed are modified accordingly.

1B.1.4 Any provision of the Trusts Act or rule of law restricting the remuneration of the Board including but not limited to section 37 of the Trusts Act is excluded and the provisions of this Deed are modified accordingly.

1B.2 Nothing in this Deed shall be construed as empowering the Board to act in a manner which would contravene any provision of the Trusts Act unless this Deed expressly modifies or excludes a provision in the Trusts Act as permitted by the Trusts Act.

2 DEFINITION AND CONSTRUCTION

2.1 In this Deed, unless inconsistent with the context, -

30/3/93 **"Act"** means the National Provident Fund Restructuring Act 1990.

- 30/3/93 **"Actual Contributory Service"** means:
- (a) service in the employment of a Contributing Employer during which contributions have been paid to this Scheme; and
 - (b) service counted as Actual Contributory Service pursuant to **clause 6** or **clause 7**.
- 30/3/93 **"Actuary"** means a person who is a Fellow of the New Zealand Society of Actuaries, who has been appointed by the Board under **clause 54** and whose appointment has not been terminated.
- 1/4/98 **"Administration Manager"** means a person appointed by the Board to manage the administration of the Scheme under **clause 46.1**.
- 20/10/16 **"Auditor"** means the person or firm appointed as auditor of the Scheme under **clause 61**.
- 30/3/93 **"Beneficiary"** means a natural person who is eligible to receive a Benefit from this Scheme.
- "Benefit"** has the same meaning as in the Act.
- "Board"** means the National Provident Fund Board established under section 9 of the National Provident Fund Act 1950, as continued in existence by section 12 of the Act and renamed from 1 April 1991 by that section as the Board of Trustees of the National Provident Fund.
- 30/3/93 **"Child"** in relation to any Contributor means a child of that Contributor's family and
29/2/96 *Children* shall be construed accordingly.
- "Constructive Contributory Service"** means service which is counted as Constructive Contributory Service under **clause 5** and in respect of which contributions have been paid or agreed to be paid to this Scheme in accordance with this Deed.
- 30/3/93 **"Contributing Employer"** means an Employer which is making or is liable to make contributions to this Scheme.
- 30/3/93 **"Contributor"** means a person who for the time being is or was actually contributing to this Scheme in accordance with this Deed or in respect of whom a Contributing Employer is or was liable to make payments under **clause 16.1** and includes a person deemed to be a Contributor under **clause 7**.
- 30/3/93 **"Contributory Service"** includes both Actual Contributory Service and Constructive Contributory Service but does not include any period in respect of which a lump sum payment is made in lieu of accrued annual leave or holiday or retiring leave or in respect of which a gratuity is paid.
- 29/2/96 **"Dependant"** in relation to a Contributor means a person of that Contributor's family (other than a Spouse or a Child of the Contributor) who is acknowledged by the Board as being financially dependent upon the Contributor.
- 30/3/93 **"Elect"** means to elect in writing in accordance with the provisions of **clause 3**; and *election* has a corresponding meaning.

- 30/3/93
20/10/16 **"Employee"** means any person who is engaged to work or works under a contract of service or apprenticeship with an Employer whether by way of manual labour, clerical or professional work or otherwise but does not include any person who would have been a 'shareholder-employee' (where a 'shareholder employee', in relation to any income year and to any company, means any person who, at any time in that income year, is an officer or employee of that company and who (i) at any time in that income year holds 50 percent or more of the paid-up capital, or of the nominal value of the allotted shares, or of the voting power in that company; or (ii) at any time in that income year has, by any means whatsoever, control of that company; or (iii) by reason of his shareholding at the end of that income year would be entitled to 50 percent or more of the profits of that company for that income year if those profits were distributed by way of dividend at the end of that year).
- 30/3/93 **"Employer"** means Air New Zealand Limited and includes any other employer accepted by the Board as a Contributing Employer.
- 7/9/93 **"Examination Date"** means the date as at which the most recent examination of the Scheme by the Actuary was made.
- 30/3/93 **"Final Average Salary"** means the average rate of annual Salary on the basis of which a Contributor contributed to this Scheme during the last five years immediately preceding the Contributor's Retirement, or, if the length of Contributory Service is less than five years, during Contributory Service.
- "Financial Year"** means the year from 1 April to 31 March or such other period as may be a financial year of the Board.
- 20/10/16 **"FMA"** means the Financial Markets Authority (or any successor organisation).
- 20/10/16 **"FMC Act"** means the Financial Markets Conduct Act 2013.
- 30/3/93 **"marriage"** means, in the case of a Contributor who is legally married, the legal marriage and, in the case of a Contributor who has a Spouse but is not legally married, the date which the Board determines as the date on which the Spouse became the Contributor's Spouse and **"remarriage"** shall be construed accordingly.
- 30/3/93 **"Member"** means a natural person who has been admitted to membership of this Scheme and who is, or may become, entitled to Benefits under this Scheme;
- 30/3/93 **"Pension"** means non-assignable annual amount payable for life to a Contributor on Retirement from the service of the Contributing Employer.
- 28/3/19 **"Pension Scheme"** means the National Provident Pension Scheme governed by a trust deed dated 21 September 2016 (effective 20 October 2016).
- 30/3/93 **"Permanent Incapacity"** means permanent physical or mental incapacity suffered by any person that is in the opinion of the Board of such extent that, having regard to the previous employment and other characteristics of that person, the person is unlikely to have a significant earning capacity in the future.
- 30/3/93 **"Property"** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and includes, without limiting the generality of the foregoing:

- (a) Units in the global asset trust (as defined in the Act) and any GAT subsidiary (as defined in the Act) which is a unit trust;
- (b) Choses in action and money;
- (c) Goodwill;
- (d) Rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective.

30/3/93

"Refundable Contributions" means in respect of a Contributor's Contributory Service:

- (a) those contributions paid to this Scheme by a Contributor under **clause 10**; plus
- (b) those contributions, if any, paid to the Scheme by a Contributor under **clause 6, clause 7, clause 11, clause 12, or clause 16**; plus
- (c) in respect of Actual Contributory Service for the period or any part of the period between 1 April 1975 and 15 December 1975 there shall be included an amount of 1 percent of the employee's gross taxable earnings in lieu of the employer's contributions for that period or part thereof;

PROVIDED THAT "Refundable Contributions" shall not include any interest paid or payable in respect of the aforesaid contributions.

"Retirement" means final termination of employment, however occasioned.

"Salary" has the meaning assigned to it under **clause 9**.

30/3/93
29/2/96

"Spouse", in relation to a Contributor who is alive, means a woman or man to whom the Contributor is married and may include, whether or not the Contributor is legally married to another person, a woman or man whom the Board in its discretion regards as being the wife or husband or partner of the Contributor, being a person who, although not legally married to the Contributor, has lived as that Contributor's wife or husband or partner on a permanent domestic basis for such a period as the Board determines.

30/3/93

"Subsidised Service" means:

- (a) Actual Contributory Service; and
- (b) Constructive Contributory Service with respect to which the contributions required to be paid by the Contributor and the Contributing Employer have been paid.

20/10/16

"Superannuation Scheme" has the meaning given to it in the Act.

29/2/96

"Surviving Spouse" in relation to a Contributor that has died means a woman or man to whom that Contributor was married immediately before the Contributor's death and may include, whether or not the Contributor was legally married to another person, a woman or man whom the Board in its discretion regards as having been the wife or husband or partner of the Contributor immediately before death, being a woman or man who, although not legally married to the Contributor, had lived as that Contributor's wife or husband or

partner on a permanent domestic basis for such period as the Board determines;

PROVIDED THAT where under the provisions of this Scheme more persons than one have claims as the Surviving Spouse of any Contributor the total amount of any payment payable to them in respect of any Benefit to which one Surviving Spouse would be entitled may be divided by the Board between them in such shares and proportions as the Board from time to time thinks fit and in any case where they disagree regarding the making of an election under this Scheme the Board may deem them to have made an election and the provisions of this Scheme shall apply accordingly.

7/9/93 **"Transfer Value"** in respect of any Transferred Member and at any time, means:

- (a) the dollar amount calculated under **clause 46B.2**; plus (or less, as appropriate);
- (b) an amount equal to the sum of the earnings that have been credited (and/or debited, as the case may be) at or prior to that time under **clause 46B.5**; plus (or less, as appropriate);
- (c) an amount equal to the earnings that have been credited (or debited, as the case may be) at or prior to that time under **clause 46B.6**.

7/9/93 **"Transfer Value Earnings Rate"** has the meaning given to it in **clause 46B.8**.

7/9/93 **"Transferred Member"** means a Member who has made an election to transfer under **clause 46A** and whose election to transfer has been accepted by the Board.

30/1/21 **"Trusts Act"** means the Trusts Act 2019.

30/3/93 2.2 Unless inconsistent with the context, terms not defined in this Deed but defined in the Act shall have the same meaning as in the Act, whether specific reference is made to the Act or not.

30/3/93 2.3 In the construction of this Deed, unless inconsistent with the context:

- 2.3.1 References to **clauses** and Parts are to clauses and parts of this Deed;
- 2.3.2 References to any statute are references to the statute as from time to time amended and include substituted provisions that substantially correspond to these referred to and also include any regulations, Orders in Council and other instruments from time to time issued thereunder;
- 2.3.3 The singular includes the plural and vice versa, and words importing any gender include the other genders;
- 2.3.4 The headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed.

3 APPLICATIONS AND ELECTIONS TO BE IN WRITING

30/3/93 3.1 Every application, election, notice of withdrawal and other notification given or required to
7/9/93 be given by any person for the purposes of this Scheme shall be in writing signed by the
1/4/98 person and delivered to the Board and shall be deemed to be made or given when it is

received by the Board.

- 3.2 Every notification given or required to be given by the Contributing Employer to the Board for the purposes of this Scheme shall be in writing signed by a responsible officer on behalf of the Contributing Employer and delivered to the Board.

PART II

CONTRIBUTORS & CONTRIBUTORY SERVICE

4 CONTRIBUTORS

- 30/3/93 4.1 Subject to the terms of this Scheme, persons who satisfy the requirements of section 38 of the Act may be Contributors to this Scheme. For ease of reference, a copy of section 38 (in the form as at 8 May 1992) is annexed to this Deed.
- 30/3/93 4.2 This Scheme was closed to new Contributors on 1 October 1990 and to rejoining
29/2/96 Contributors on 1 January 1996.
20/10/16

5 APPLICATION TO CONTRIBUTE IN RESPECT OF PREVIOUS SERVICE

- 30/3/93 On the application of a Contributor, with the agreement of the Contributing Employer, and subject to the payment of the sums payable under **clause 12** and **clause 13**, the Board may in its discretion allow to be counted as Constructive Contributory Service the following service, study, or experience:
- 30/3/93 5.1 The whole or any part of service in the employment of any employer during which the applicant was engaged in the operation of aircraft;
- 30/3/93 5.2 The whole or any part (not exceeding in the aggregate five years) of:
- 5.2.1 a course of study leading to some recognised degree or diploma or certificate and including apprenticeships which in the opinion of both the Contributing Employer and the Board is or has been of substantial benefit to the performance of the applicant's duties while a Contributor; or
- 5.2.2 experience as a practitioner, tradesman, or employee in a type of work providing a specialised skill or knowledge which in the opinion of both the Contributing Employer and the Board is or has been of substantial benefit to the performance of the applicant's duties while a Contributor;

PROVIDED THAT no Contributor who has attained age 45 shall be entitled to contribute under **clause 5.1** in respect of previous service unless, in the opinion of the Board, there are exceptional circumstances.

- 30/3/93 **6 APPLICATION TO COUNT PREVIOUS SERVICE AS A CONTRIBUTOR TO THE NPF DEFINED BENEFIT PLAN, THE NPF STANDARD SCHEME OR THE GOVERNMENT SUPERANNUATION FUND**

- 6.1 A Contributor who:

- 30/3/93 6.1.1 was previously contributing to either of the existing schemes (as defined in the

20/10/16 Act) known as the Defined Benefit Plan and the Standard Scheme for Local Authorities Superannuation (including Harbourmasters and (Ships') Pilots), or to the Government Superannuation Fund or to any other Superannuation Scheme recognised by the Board as providing benefits substantially equivalent to those under this Scheme; and

6.1.2 has not taken a refund of contributions from that plan, scheme, or fund; and

6.1.3 is not receiving a retiring allowance or pension from that plan, scheme or fund,

may apply to the Board within six months of the commencement of service with the Contributing Employer to have such previous service in relation to which contributions have been made counted as Actual Contributory Service.

30/3/93 6.2 The Board may in its discretion and subject to the payment of such sums as it thinks fit
20/10/16 allow the whole or a portion of the previous service to which **clause 6.1** applies to be counted as Actual Contributory Service;

PROVIDED THAT where the Contributor was on the day of becoming a Contributor a contributor in terms of the said Defined Benefit Plan, or the said Standard Scheme for Local Authorities as authorised under Part III of the National Provident Fund Act 1950 or a contributor in terms of either Part II or Part IIA of the Government Superannuation Fund Act 1956, one-half only of the whole or any part of the contributory service entitlement in those schemes not counted as Constructive Contributory Service and Subsidised Service in terms of **clause 5** shall be brought into account in determining the amount of any Benefit which may become payable to the Contributor or the Contributor's Spouse, Children or Dependants.

7 PERMITTED PERIOD OF ABSENCE FROM SERVICE OF CONTRIBUTING EMPLOYER

30/3/93 7.1 Where a Contributor ceases to be in the service of a Contributing Employer before becoming
entitled to a Pension under this Scheme and does not accept a refund of Refundable Contributions under **clause 29** the Contributor may remain a Member of this Scheme for a period (in this **clause 7** referred to as "the permitted period of absence") commencing on the day following the date on which the Contributor terminates service with the Contributing Employer and terminating on the expiry of a period of 18 months from that day or when the Contributor recommences Contributory Service with the same Contributing Employer or commences Contributory Service with another Contributing Employer, whichever first happens;

PROVIDED THAT the Board may in its discretion extend the permitted period for such further period as it may allow or determine in any case.

30/3/93 7.2 If the Contributor during the permitted period of absence pays or causes to be paid to this
7/9/93 Scheme in respect of the permitted period of absence such sums as the Board in its discretion may determine and at the times and in the manner agreed to by the Board, the Contributor shall be entitled to count the permitted period of absence as Actual Contributory Service:

PROVIDED THAT if the Contributor so elects payment of the sums to be paid under this **clause 7** may be delayed until the Contributor returns to the service of a Contributing Employer and then be paid as approved by the Board, subject to the payment of interest at a rate to be fixed by the Board, but if payment is so delayed no person shall be entitled

during the permitted period of absence to any of the Benefits under **clause 17, clause 19, clause 20, clause 31, clause 33 or clause 34** in respect of the Contributor and the Contributor shall not be eligible to elect to transfer under Part VIIIA.

- 30/3/93 7.3 Where the Contributor after taking no longer than the permitted period of absence recommences Contributory Service with the same Contributing Employer or commences Contributory Service with another Contributing Employer, and elects not to pay the sums required under this **clause 7** in respect of the permitted period of absence, the following provisions shall apply:
- 7.3.1 the former period of Contributory Service is reactivated in full and is added to current Contributory Service; and
- 7.3.2 the permitted period of absence is treated as a period of non-contributory service and cannot be bought back at a later date.
- 30/3/93 7.4 Notwithstanding the provisions of **clause 7.3**, where the permitted period of absence is not more than three months, the Contributor shall be required to meet the personal contributions and the contributions due from the Contributing Employer required to bridge the break in Contributory Service.
- 30/3/93 7.5 The contribution rate applicable before the Contractor took no longer than the permitted period of absence shall, upon resumption of Contributory Service with a Contributing Employer, be retained.

8 RIGHT TO CEASE TO BE A CONTRIBUTOR

- 8.1 Subject to the conditions of a Contributor's employment any Contributor may at any time give notice in writing of intention to cease to be a Contributor from a future date nominated by the Contributor.
- 8.2 On the expiration of six months from the giving of any such notice, the Contributor shall cease to be a Contributor, and shall be entitled to receive a refund of Refundable Contributions;
- 20/10/16 **PROVIDED THAT** no person who became a Contributor on or after 1 April 1985 shall be entitled to receive any refund while remaining in service.
- 30/3/93 8.3 Contributions due from the Contributor and Contributing Employer are to be remitted by the Contributing Employer up to the nominated date of the Contributor ceasing to contribute to this Scheme.
- 8.4 Notice of intention to cease to be a Contributor may be revoked by a further notice in writing prior to the expiration of the period of six months prescribed in **clause 8.2**.
- 29/2/96 8.5 Any person who ceases to be a Contributor pursuant to this **clause 8** shall not at any future time be admitted as a Contributor to this Scheme.

PART III

CONTRIBUTIONS

9 DEFINITION OF SALARY

- 30/3/93 9.1 For the purposes of this Scheme "Salary" includes:
- 9.1.1 wages;
 - 9.1.2 any bonus paid as a permanent addition to salary and approved by the Board;
 - 9.1.3 any allowance or the value of any concession or benefit provided to the Contributor by the Contributing Employer and approved by the Board;
 - 9.1.4 payments during or in respect of annual leave, holiday or retiring leave taken as such by the Contributor during employment by the Contributing Employer.
- 30/3/93 9.2 For the purpose of this Scheme "Salary" shall not include:
- 9.2.1 payment for overtime work;
 - 9.2.2 any bonus other than a bonus approved under **clause 9.1.2**;
 - 9.2.3 any allowance or the value of any concession or benefit not approved by the Board under **clause 9.1.3**;
 - 9.2.4 any lump sum or other payment on Retirement in lieu of accrued annual leave, holiday or retiring leave not taken as such during employment;
 - 9.2.5 any gratuity paid on Retirement under section 6 of the Finance Act (No. 2) 1941 or any other enactment;
 - 9.2.6 any exceptionally large increment during the last five years immediately preceding Retirement if in the opinion of the Board it was not earned or justified by added duties, responsibilities or qualifications or by any other change in conditions of employment.
- 30/3/93 9.3 For the purposes of this **clause 9**, if any question arises as to what remuneration or payment in money or money's worth or otherwise is included or is not included in the Salary of any Contributor or as to the value of any Salary received or enjoyed otherwise than as money, such question may be decided by the Board, and its decision shall be final.
- 30/3/93 9.4 In particular there may be included as Salary if the Board in any particular case approves, the value of any concession or benefit whether free of charge or otherwise, in respect of a Contributor's employment by way of board or lodging or by the use of a house or by way of an allowance instead of so being provided with board or lodging or the use of a house, on or subject to such conditions as the Board may impose and at such rate as it may think fit.

10 CONTRIBUTIONS TO BE DEDUCTED FROM SALARY

- 30/3/93 10.1 The Contributing Employer shall deduct from every payment of Salary made to a Contributor during employment by the Contributing Employer or in respect of a period during that employment the appropriate percentage set out in the following table:

Table of Deductions

Age of Contributor at Commencement of Actual Contributory Service	Percentage of Salary
Under 45	8¾
45 and under 50	9
50 and over	10

- 30/3/93 10.2 A Contributor shall be deemed to attain the age of 45 on the forty-fifth anniversary of birth, and the other ages referred to in the table above shall be calculated respectively in the same manner.

11 ELECTION TO CONTRIBUTE ON HIGHER SALARY IF SALARY REDUCED

- 30/3/93 11.1 Where for any reason other than misconduct or a permanent reduction in normal hours of duty, a Contributor's Salary is reduced (whether by reason of transfer or appointment to another position with the same Contributing Employer or another Contributing Employer or otherwise), the Contributor may, within three months of the date when the reduction first took effect, elect to have the aggregate amount of deductions from Salary and contributions from the Contributing Employer maintained as if the Salary had not been so reduced, and in that event the Contributor shall on Retirement be entitled to have the Pension (if any) computed as if the Salary had not been so reduced;

PROVIDED THAT the election shall be subject to the consent of the Contributing Employer, and if any break in employment between Contributing Employers exceeds three months, to the consent of the Board;

AND FURTHER PROVIDED THAT if the former higher Salary of a Contributor who has so elected would have been increased from time to time in accordance with general increases fixed under a salary or wage fixing procedure, had the Contributor remained on the former rate of Salary, the amount deducted from the Contributor's Salary shall be based on the Salary as if it had been increased by those notional increases unless and until the Salary actually paid exceeds the notional salary on which deductions were made.

- 30/3/93 11.2 Where payments are made under **clause 11.1** on a notional salary, the amount of the additional contributions which would be required from the Contributing Employer if the notional salary were actual Salary shall be paid by the Contributor or the Contributing Employer in such proportions as agreed by those parties.

12 PAYMENT FOR CONSTRUCTIVE CONTRIBUTORY SERVICE

12.1 There shall be payable to this Scheme in respect of each period of service, study or experience counted as Constructive Contributory Service under **clause 5** such sums as the Board may in each case determine, having regard to the additional prospective burden on this Scheme of Benefits due to the counting of such period.

30/3/93 12.2 The sums payable under **clause 12.1** or such portions as the Board may in any case direct, together with interest thereon at a rate to be fixed by the Board, shall be paid at the direction of the Board either by deductions from the Contributor's Salary or by the payment by the Contributor of one sum or instalments to the Contributing Employer for transmission to the Board.

13 CONTRIBUTING EMPLOYER MAY PAY PORTION OF SUM PAYABLE FOR CONSTRUCTIVE CONTRIBUTORY SERVICE

13.1 In respect of each Contributor who makes an application under **clause 5** which is allowed by the Board, the Contributing Employer may agree with the Board, if it has legal power so to do, to pay from its own funds a portion of the sums determined by the Board under **clause 12**;

PROVIDED THAT any amounts so paid by the Contributing Employer shall not form part of the Contributor's Refundable Contributions.

13.2 The money payable under this **clause 13** shall be paid to the Board in one sum within three months of receipt by the Contributing Employer of notification of the sum payable;

PROVIDED THAT if within that three month period the Contributing Employer notifies the Board in writing of its intention so to do, the Contributing Employer may pay the said sum by equal monthly or four weekly instalments extending over a period to be stated in the Contributing Employer's notification and not to exceed 10 years, with interest at a rate to be fixed by the Board, and the Board shall notify the Contributing Employer of the amount of the monthly or four weekly payment required so to discharge the said sum with interest. The first of such monthly or four weekly payments shall fall due and be payable on the last day of the monthly or four weekly accounting period in which the said Contributing Employer's notification is given, and **clause 15** shall apply to any such payment as if it were payable for the monthly or four weekly period on the last day of which it falls due

14 PAYMENT OF BALANCE DUE UPON RETIREMENT OR EARLIER DEATH OF CONTRIBUTOR

30/3/93 14.1 If upon the Retirement or earlier death of the Contributor the sums payable under **clause 6, clause 7, clause 12, clause 13** or **clause 15** have not all been paid, the balance shall thereupon become due and may be deducted from any Benefits payable under this Scheme to or in respect of the Contributor or collected as the Board may direct, or the Board may in its discretion disallow any Contributory Service in respect of which contributions or payments have not been made.

30/3/93 **15 CONTRIBUTIONS TO BE PAID BY CONTRIBUTING EMPLOYER**

15.1 There shall be paid into this Scheme by the Contributing Employer:

- 15.1.1 the amounts deducted from Salary in accordance with **clause 10**;
- 15.1.2 an amount payable out of the Contributing Employer's own funds equal to one hundred and seventy-five percent of the amounts specified in **clause 15.1.1** or such other amount as may from time to time be determined by the Board and advised in writing to the Contributing Employer;
- 15.1.3 the amounts deducted from Salary or paid by the Contributor for transmission to this Scheme under **clause 7** or **clause 12**;
- 15.1.4 any sums payable in respect of Constructive Contributory Service under **clause 13**;
- 15.1.5 any additional money payable by the Contributing Employer under **clause 16** or **clause 20.3**.

30/3/93 15.2 All money payable by a Contributing Employer under **clause 15.1** shall be a debt due to this Scheme from the Contributing Employer.

30/3/93 15.3 All money payable by the Contributing Employer under **clause 15.1** shall be due on the last day of each four-weekly or monthly accounting period.

15.4 Interest at a rate determined by the Board may be charged as from the due date on any amounts unpaid as at the 20th day of the month following the due date.

15.5 If any Contributing Employer fails to make any payment to this Scheme for which it is liable or fails to make any deduction from the Salary of a Contributor any contribution for which the Contributor is liable, the total amount of the contributions may, at the request of the Board, be deducted by the Minister of Finance from any subsidy payable to the Contributing Employer, and paid to this Scheme.

16 ABSENCE OF CONTRIBUTOR FROM EMPLOYMENT

30/3/93 16.1 Subject to **clauses 16.3** and **16.4**, the absence of a Contributor from employment pursuant to leave of absence granted by the Contributing Employer or otherwise, whether with or without pay, shall not affect the liability of the Contributing Employer to make the several payments which would otherwise be payable in accordance with the provisions of **clause 13** or **clause 15**, but this provision is without prejudice to the incidence of liability between the Contributing Employer and the Contributor in respect of any of these payments.

30/3/93 16.2 Notwithstanding the provisions of **clause 16.1** a Contributor who is granted leave of absence for in excess of three months may elect under **clause 30** to reactivate previous Contributory Service on return to service by recommencement of Contributory Service (in which case **clause 16.1** will not apply);

PROVIDED THAT a Contributor who wishes to so elect must give notice of intention to do so to the Board before the leave of absence commences unless the Board otherwise permits.

- 30/3/93 16.3 In respect of any Contributor who is granted leave of absence without pay for a period in excess of three months, the Contributing Employer shall not be required to make the payments referred to in clause 16.1 except in respect of the initial period of three months or such other initial period as may be agreed by the Contributing Employer and the Contributor (the "initial period"), and in the event that the Contributing Employer makes no other payments other than in relation to the initial period, the Contributor shall be deemed to have ceased to be in the service of the Contributing Employer at the end of the initial period and to have elected to leave contributions in this Scheme on a contingent basis under **clause 30**.
- 30/3/93 16.4 In respect of any Contributor who is granted leave of absence with pay for a period in excess of three months, the Contributing Employer shall continue to make the payments referred to in **clause 16.1** for so long as the period of leave with pay continues.

PART IV

CONTRIBUTOR'S BENEFITS ON RETIREMENT

17 ENTITLEMENT TO A PENSION

There shall be payable to a Contributor on Retirement on or after attaining the age of 50 years a Pension for the remainder of the Contributor's life.

18 CALCULATION OF PENSION

- 30/3/93 18.1 The Pension payable under **clause 17** shall be of an annual amount being the sum of two portions made up as follows:
- 18.1.1 the first portion shall be one one-hundred-and-twentieth part of the Contributor's Final Average Salary for each year of Contributory Service, with a proportionate addition for any additional part of a year of Contributory Service; and
 - 18.1.2 the second portion shall be one one-hundred-and-twentieth part of the Contributor's Final Average Salary for each year of Contributory Service, with a proportionate addition for any additional part of a year of Contributory Service;

PROVIDED THAT the second portion shall not exceed one third of the Contributor's Final Average Salary;

AND FURTHER PROVIDED THAT where the Contributor's Contributory Service is or includes a period or periods of employment otherwise than on a full time basis, the length of Contributory Service shall be reduced proportionately to the extent that the Board may determine in each case. For the purposes of determining whether reduced Contributory Service occurs before 1 April 1990 or after 31 March 1990 this Deed shall be read as if the provisions of this proviso reducing the length of Contributory Service were omitted.

18.2 Any instalment which is payable on or after 1 April 1990 in respect of any Pension payable under this Scheme shall (before any election is made by the Contributor under **clause 22.1**) be reduced by one seventh, and then further adjusted as follows:

18.2.1 that part of the Pension which relates to Contributory Service before 1 April 1990 shall be reduced by:

$$\frac{t}{50}$$

where "t" equals the number of complete years (and for any part year, the fraction of that year) which has elapsed from 1 April 1990 up until the day on which the first instalment of the Pension is payable (both days inclusive);

PROVIDED THAT

18.2.1.1 the value of "t" shall not exceed 13; and

18.2.1.2 (for the avoidance of doubt) where the first instalment of the Pension is payable before 1 April 1990 "t" shall be 0;

18.2.2 that part of the Pension which relates to Contributory Service on or after 1 April 1990 shall be reduced by 26%.

30/3/93 18.3 In determining whether Contributory Service occurs before 1 April 1990 or after 31 March
29/2/96 1990 for the purposes of **clause 18.2**, this Deed shall be read as if the provisions of **clause 30.4** which deem Contributory Service to have occurred at a time (as specified in that clause) have been omitted.

19 PENSION WHERE CONTRIBUTOR PERMANENTLY INCAPACITATED

19.1 There shall be payable to a Contributor on Retirement on the grounds of Permanent Incapacity a Pension the amount of which shall be computed in accordance with the provisions of **clause 18**.

30/3/93 19.2 To a Contributor, on Retirement from the service of a Contributing Employer by reason of the cancellation of the Contributor's medical certificate under the Civil Aviation Act 1990, who is not entitled to a Pension in terms of **clause 19.1**, there shall be payable a Pension for the remainder of the Contributor's life of an annual amount computed in accordance with **clause 18** but reduced in the proportion deduced from the following table for the Contributor's age nearest birthday at the time of the Contributor's Retirement:

Age Next Birthday	Proportion of Pension
25	56%
30	60%
35	65%
40	72%
45	80%
50	100%

Percentages for ages intermediate between those specified in the table shall be graduated progressively in accordance with the percentages set out in the table.

- 30/3/93 19.3 Where a Contributor has retired and is receiving a Pension under this **clause 19**, the Board may from time to time require such proof of continuation of Permanent Incapacity or of grounds for the cancellation of the Contributor's medical certificate under the Civil Aviation Act 1990 (as the case may be) as it deems necessary.
- 19.4 The Board may in its discretion reduce, suspend or cancel any Pension payable under this **clause 19** if:
- 19.4.1 the Contributor resumes employment whether with the Contributing Employer or elsewhere, or becomes gainfully self-employed; or
- 19.4.2 the Contributor fails without sufficient justification to submit to a request to undergo a medical examination when and as often as required by the Board.
- 19.5 The Board may in its discretion vary or revoke any decision made by it under this **clause 19**.
- 30/3/93 19.6 No Pension payable under this **clause 19** shall be reduced, suspended, or cancelled after the date on which the Contributor would have become entitled to receive a Pension on Retirement under **clause 17** had the Contributor not sooner retired on the grounds of Permanent Incapacity or by reason of the cancellation of the Contributor's medical certificate under the Civil Aviation Act 1990. Any decision by the Board to reduce or suspend any such Pension shall cease to apply after that date, and where a Pension has been reduced or suspended it shall be reinstated as from that date.

20 PENSION ON EARLY RETIREMENT

- 20.1 On the Retirement of a Contributor after attaining the age of 45 but before attaining the age of 50 the Board may in its discretion grant a Pension for the rest of the Contributor's life.
- 30/3/93 20.2 The amount of any Pension granted under **clause 20.1** shall be computed in accordance with the provisions of **clause 18**, but the Board may in its discretion reduce any such Pension in proportion to the additional actuarial burden cast upon this Scheme by reason of its earlier commencement.
- 30/3/93 20.3 Where a Pension is granted under **clause 20.1**, the Contributing Employer may, if it has legal power to do so, make a further contribution in respect of the Contributor notwithstanding that the Contributor is no longer in its employment, in order to offset in whole or in part the actuarial reduction imposed on that Pension under **clause 20.2** and the provisions of **clause 15** shall apply to such contribution.
- 30/3/93 20.4 In any case to which **clause 19** and **clause 20.1** may both apply, it shall be in the discretion of the Board whether a Pension as provided by **clause 19** or a Pension as provided by **clause 20.1** is granted to the Contributor.

21 CASH PAYMENT IN LIEU OF PENSION

- 30/3/93 21.1 Any Contributor on becoming entitled to a Pension under **clause 17, clause 19** or **clause 20**, shall be entitled before receiving payment of the first instalment to elect to receive in lieu of such Pension a refund without interest of an amount equal to fifteen times the annual Pension computed in accordance with the provisions of **clause 18**; and the Contributor may by notice given before receiving payment of the refund withdraw the election so made;

PROVIDED THAT where the first instalment of a Pension becomes payable on or after 1 April 1990 this **clause 21** shall be read and applied as if the expression "fifteen" had been omitted, and the expression "17.5" substituted.

22 ELECTION TO SURRENDER PORTION OF PENSION AND RECEIVE CASH PAYMENT

- 30/3/93 22.1 Where any Contributor becomes entitled to a Pension under **clause 17, clause 19** or **clause 20**, or where the Contributor would have been entitled to a Pension if the Contributor had retired on the date of the election, the Contributor may elect to surrender the right to a specified portion not being more than one-quarter of the Pension and to receive instead thereof payment of a sum equal to nine times the amount by which the annual Pension is reduced pursuant to the surrender;

PROVIDED THAT where the first instalment of a Pension becomes payable on or after 1 April 1990 **clause 22.1** shall be read and applied as if the expression "nine" had been omitted and the expression "10.5" substituted.

- 22.2 No Contributor shall anticipate the right under this **clause 22** where the Pension payable is to commence from any date after the day following the termination of employment.
- 30/3/93 22.3 An election under this **clause 22** may be made by a Contributor at any time within three months immediately preceding the date of becoming entitled to a Pension. Where an election is made before that date it shall be deemed to have been made on the earliest day on which the Contributor would be entitled to a Pension under this Scheme if the Contributor was living and retired on that day.
- 30/3/93 22.4 Where a Contributor has made an election, under this **clause 22** or under a substantially equivalent provision in any scheme under which the Contributor was previously contributing, in respect of any previous period of Contributory Service, the amount previously surrendered shall be taken into account in calculating the proportion of the Pension which the Contributor may elect to surrender.
- 30/3/93 22.5 On the making of an election under this **clause 22** the Pension payable to the Contributor shall be reduced by the same proportion as that which the Contributor elects to surrender, and all rights in respect of the proportion so surrendered shall be deemed to be determined.
- 30/3/93 22.6 Any election under this **clause 22** shall be made before the Contributor has received any instalment of the Pension and shall not be revocable, and the Contributor shall not be entitled to amend or extend any such election or to make a further election.
- 30/3/93 22.7 Any sum which a Contributor is entitled to receive under this clause 22 shall become payable on the date on which the Contributor becomes entitled to the Pension;

PROVIDED THAT where a Contributor dies on or after the date on which the election becomes effective but before a Pension becomes payable the Contributor shall for the purposes of this **clause 22.7** be deemed to have become entitled to a Pension on the date of the death.

23 ELECTION TO SURRENDER PORTION OF PENSION TO PROVIDE ANNUITY FOR DEPENDANT AFTER DEATH OF CONTRIBUTOR

- 30/3/93 23.1 Any Contributor, on becoming entitled to a Pension under **clause 17**, **clause 19** or **clause 20** and on satisfying the Board as to the Contributor's state of health, shall be entitled, before receiving payment of the first instalment of the Pension, to elect to surrender any specified portion of the Pension (up to a maximum to be fixed by the Board being not greater than 50 percent of the amount otherwise payable) in order to provide for payment after death from this Scheme to a Dependant approved by the Board of such annuity as the Board may determine, and the Contributor may by notice given before receiving payment of such first instalment withdraw the election so made.
- 23.2 For the purpose of enabling any Contributor to consider making an election under **clause 23.1** the Board shall, on application and on being supplied with all such information as it may require as to the age, health, and medical history of the Contributor and the age of the proposed Dependant, inform the Contributor of the maximum portion of the Pension that it would permit to be surrendered and of the amount and term of the annuity that it would grant.

24 ELECTION TO RECEIVE VARIABLE PENSION

- 30/3/93 24.1 Any Contributor may within the time prescribed by **clause 24.5** and with the consent of the Board, elect to surrender from any date specified by the Board a specified portion up to a maximum fixed by the Board of the Pension which, but for such an election, the Contributor would be entitled to receive on Retirement under **clause 17** or **clause 20** in order to provide for payment from this Scheme of an increased Pension up to that specified date.
- 24.2 An election under this **clause 24** may be for one reduction of the Pension from one specified date or for successive reductions from two or more specified dates.
- 30/3/93 24.3 No Pension shall be granted under this **clause 24** of an amount that is calculated to impose any additional liability on this Scheme, and every such Pension shall be computed as the actuarial equivalent of the Pension to which the Contributor would have been entitled if an election had not been made under this **clause 24**.
- 24.4 An election under this **clause 24** may be made at any time within the three months immediately preceding the day on which the payment of a Pension is due and before the payment of the first instalment has been received.

25 ELECTION ON MARRIAGE AFTER RETIREMENT TO SURRENDER PORTION OF PENSION TO PROVIDE ANNUITY FOR SPOUSE

- 30/3/93 25.1 Any Contributor who has retired and is in receipt of a Pension under **clause 17** or **clause 20**, and who has married or remarried after Retirement, on satisfying the Board as to the state of the Contributor's health, shall be entitled to elect to surrender any specified portion of the Pension (up to a maximum to be fixed by the Board being not greater than 50 percent of the amount otherwise payable) in order to provide for payment after death

from this Scheme to the Spouse of such annuity as the Board may determine.

30/3/93 25.2 Any election made in terms of this **clause 25** must be made within three months after marriage or remarriage and may be withdrawn by notice given before receiving payment of the first instalment of the Pension as so reduced.

25.3 **Clause 23.2** shall apply in the case of an election under this **clause 25**.

26 ELECTION AT AGE 50 BEFORE RETIREMENT TO SURRENDER PORTION OF PENSION TO PROVIDE ANNUITY FOR DEPENDANT AFTER DEATH OF CONTRIBUTOR

30/3/93 26.1 Any Contributor having attained the age of 50 may before Retirement, but only with the express consent of the Board, elect to surrender any specified portion (up to a maximum to be fixed by the Board being not greater than 50 percent of the amount otherwise payable) of the prospective Pension in order to provide for payment from this Scheme after death (whether before or after Retirement) to a Dependant approved by the Board of such annuity as the Board may determine.

26.2 Any such Election shall be irrevocable and no Contributor who has made an election under this **clause 26** shall thereafter be entitled to make an Election under **clause 21** to receive a refund in lieu of a Pension.

26.3 **Clause 23.2** shall apply in the case of an election under this **clause 26**.

29/2/96 **27 [RESERVED]**

29/2/96 **28 REJOINING NOT PERMITTED ON RE-EMPLOYMENT AFTER RETIREMENT ON PENSION**

30/3/93 28.1 Where any Contributor who has retired and is in receipt of a Pension from any
29/2/96 Superannuation Scheme in respect of which the Board is the trustee is re-employed in the
20/10/16 service of any Contributing Employer, the Contributor may not again become a Contributor under this Scheme.

29 REFUND OF CONTRIBUTIONS ON CEASING SERVICE BEFORE ENTITLEMENT TO PENSION

29/2/96 29.1 If any Contributor ceases to be in the service of a Contributing Employer before becoming entitled to a Pension under this Scheme, the Contributor shall thereupon be entitled to receive from this Scheme a refund of Refundable Contributions less, where Actual Contributory Service has been transferred to this Scheme under **clause 6** any Benefits already received from any scheme that was a scheme to which Part III of the National Provident Fund Act 1950 applied.

29/2/96 29.2 Any person who ceases to be in the service of a Contributing Employer under this **clause 29** may not again become a Contributor under this Scheme.

30/3/96 **30 REACTIVATION OF PREVIOUS CONTRIBUTORY SERVICE**

30/3/93 30.1 Any Contributor under the age of 45 years who for any reason ceases to be in the service of a Contributing Employer before becoming entitled to a Pension in addition to the options available under **clause 7** and **clause 29** may elect to leave contributions in this Scheme on a contingent basis. The period during which contributions are so left in this Scheme is

referred to in this clause as the "non-contributory period".

- 30/3/93 30.2 Should the Contributor resume employment with a Contributing Employer and recommence contributions to this Scheme before attaining age 45 or before the non-contributory period exceeds 15 years, whichever is the earlier, the Contributor may elect to reactivate the earlier period of Contributory Service which is then aggregated with the subsequent period of Contributory Service for the purposes of calculating the Pension entitlement.
- 30/3/93 30.3 When the previous period of Contributory Service is reactivated in accordance with **clause 30.2** the non-contributory period will cause the Contributor's earlier period of Contributory Service to be discounted according to the following formula:
- 30.3.1 a discount of 1.25% for each year or part of a year of the non-contributory period which can be offset against a year of Contributory Service completed before the Contributor made an election under **clause 30.1**; and
- 30.3.2 a further discount of 2.25% for each year or part of a year of the non-contributory period which is in excess of the earlier period of Contributory Service.
- 30.4 Any period of discounted Contributory Service under **clause 30.3** shall be deemed to precede immediately the date on which the Contributor again resumed contributions to this Scheme and the Contributor's rate of contributions on such resumption shall be determined according to the age of the Contributor at the date when the period of such discounted Contributory Service is deemed to commence.
- 30/3/93 30.5 The Contributor is not eligible to contribute to this Scheme during the non-contributory period and no Pension or annuity is payable in respect of the earlier period of Contributory Service during such period.
- 30/3/93 30.6 The Contributor may at any time during the non-contributory period elect to take a refund of Refundable Contributions and so terminate membership in this Scheme and forfeit the right to reactivate the earlier period of Contributory Service.
- 30/3/93 30.7 While the Contributor remains in this Scheme during a non-contributory period, only the right to reactivate the earlier period of Contributory Service is protected and the Contributor shall not be eligible to elect to transfer under Part VIIIA. In the event that the Contributor dies during a non-contributory period, the estate of the Contributor will be credited with a refund of the Contributor's Refundable Contributions.
- 7/9/93
- 30.8 Where any Contributor who has made an election under **clause 30.1** does not resume contributing with a Contributing Employer within the time specified or the whereabouts of the Contributor cannot be ascertained the Refundable Contributions only so left in this Scheme shall be held to the Contributor's credit in this Scheme and may be paid to the Contributor or the Contributor's estate on request but the Contributor shall not in any other respect be treated as a Contributor and the period in which the contributions are held for the Contributor shall not constitute Contributory Service.
- 30/3/93 30.9 Where a Contributor has under **clause 7** taken a permitted period of absence which has not been counted as Actual Contributory Service such period shall not be deemed to fall under this **clause 30**;

PROVIDED THAT a Contributor may make an election under **clause 30.1** while the Contributor is taking such a permitted period of absence and before the expiration of that permitted period of absence and in that event a non- contributory period will be deemed to commence at the beginning of and instead of the permitted period of absence.

30/3/93 30.10 Where a Contributor:

30.10.1 has had a permitted period of absence under **clause 7**;

30.10.2 has elected under the proviso to **clause 7.2** to delay the payment of such sums as the Board determines to entitle the Contributor to count the permitted period of absence under that clause as Actual Contributory Service until after the Contributor has returned to the service of a Contributing Employer; and

30.10.3 at the date of the Contributor's Retirement, has not made payment of all sums required to be paid under the proviso to **clause 7.2**;

then the Contributor shall have the option of either:

30.10.4 completing the payments required under the proviso to **clause 7.2** in the manner approved by the Board under that proviso; or

30.10.5 electing to discontinue such payments, in which case the amount of the permitted period of absence which the Contributor is permitted to treat as Actual Contributory Service under **clause 7.2** shall be the proportion of the permitted period of absence which is equal to the proportion of the sums required to be paid under **clause 7.2** which have been paid.

30/3/93 30.11 Where a Contributor has had a permitted period of absence under **clause 7** and makes an election under **clause 30.1** before the expiration of the permitted period of absence, the Contributor shall have the option of:

30.11.1 making all the payments required under **clause 7.2** at the times and in the manner approved by the Board under **clause 7.2** (in which case the Contributor shall be entitled to treat the permitted period of absence which falls before the date of the Contributor's election under **clause 30.1** as Actual Contributory Service); or

30.11.2 not making any payments under **clause 7.2** (or any further payments if such payments have already commenced) in which case the non-contributory period will be deemed to commence at the beginning of such permitted period of absence (or, if such payments have already commenced, at the end of that part of the payment period of absence which the Contributor is entitled to treat as Actual Contributory Service by virtue of having made some of the payments required to be made under **clause 7.2**).

PART V

DEATH BENEFITS

31 DEATH OF CONTRIBUTOR LEAVING SPOUSE WHO BECAME THE SPOUSE BEFORE RETIREMENT

31.1 Where a Contributor dies before or after becoming entitled to a Pension, and while still entitled thereto leaves a Surviving Spouse who became the Spouse before Retirement, there shall be payable out of this Scheme to the Surviving Spouse an allowance at the rate provided in **clause 31.2**.

31.2 The allowance so payable shall not be in any case (except as otherwise provided in this Deed) at a rate of less than \$390 a year and, subject to this **clause 31**, shall:

31.2.1 In the case of a Contributor dying before Retirement, be an allowance calculated as:

a
2

Where "a" is the Pension to which the deceased Contributor would have been entitled if the Contributor had retired on the date of death on the grounds of Permanent Incapacity, such Pension to be:

31.2.1.1 calculated as if the words "the day on which the first instalment of the Pension is payable" in **clause 18.2.1**, were omitted and the words "the day after the date of death" were substituted therefor;

31.2.1.2 calculated on the basis that the Contributor died without exercising any of the rights of election contained in **clause 26**.

31.2.2 In the case of a Contributor dying after Retirement, be one-half of the annual Pension paid or payable before the taking effect of any Election made under **clause 23** or **clause 26**.

30/3/93 31.3 If the allowance ceases by reason of the death of the Surviving Spouse before an amount equal to fifteen times the Contributor's Pension computed in accordance with the provisions of **clause 18** has been exhausted in payment of the allowance and any other Benefits, the balance of that amount after deducting Benefits prospectively payable under **clause 23**, **clause 25**, **clause 26**, **clause 34** (other than under **clause 34.4**) or **clause 35** (other than under **clause 35.2**) shall forthwith be paid to the Surviving Spouse's legal personal representatives.

30/3/93 31.4 In the absence of any election under **clause 23**, **clause 25** or **clause 26** a Surviving Spouse becoming entitled to an allowance under this clause 31 may:

31.4.1 by notice given before receiving the first instalment of the allowance, elect to receive in lieu of the allowance a refund of an amount equal to fifteen times the Contributor's Pension computed in accordance with the provisions of **clause 18** less any Benefits already paid;

31.4.2 by notice given before receiving such a refund, withdraw such notice of election.

31.5 No person shall be entitled to receive more than one allowance under the provisions of this **clause 31** and **clause 32** and if such an entitlement were possible but for this **clause 31.5**, the person may, subject to the approval of the Board, choose whichever one of the allowances is desired.

30/3/93 **32 DEATH OF CONTRIBUTOR LEAVING SURVIVING SPOUSE WHO BECAME THE SPOUSE AFTER RETIREMENT**

30/3/93 32.1 Where a Contributor dies after becoming entitled to a Pension, and while still entitled thereto leaves a Surviving Spouse who became the Spouse after Retirement, there shall be payable out of this Scheme to the Surviving Spouse an allowance at the rate provided in **clause 32.2**;

PROVIDED THAT an entitlement under this **clause 32** shall have no effect for payment purposes for any period prior to 1 April 1986.

30/3/93 32.2 The allowance so payable shall not be in any case (except as otherwise provided in this Deed) at a rate of less than \$390 a year and, subject to this **clause 32**, shall be:

32.2.1 10% of the Contributor's Pension when the Contributor dies less than 2 years after the marriage;

32.2.2 20% of the Contributor's Pension when the Contributor dies 2 or more years but less than 3 years after the marriage;

32.2.3 30% of the Contributor's Pension when the Contributor dies 3 or more years but less than 4 years after the marriage;

32.2.4 40% of the Contributor's Pension when the Contributor dies 4 or more years but less than 5 years after the marriage;

32.2.5 50% of the Contributor's Pension when the Contributor dies 5 or more years after the marriage;

PROVIDED THAT the minimum rate of allowance shall be reduced in such proportion of that rate as is appropriate in terms of the ratios given in the preceding paragraphs of this **clause 32.2**.

30/3/93 32.3 If the allowance ceases by reason of the death of the Surviving Spouse before an amount equal to fifteen times the Contributor's Pension computed accordance with the provisions of **clause 18** has been exhausted in payment of the allowance and any other Benefits, the balance of that amount after deducting Benefits prospectively payable under **clause 23**, **clause 25**, **clause 26**, **clause 34** (other than under **clause 34.4**) or **clause 35** (other than **clause 35.2**) shall forthwith be paid to the Surviving Spouse's legal personal representatives.

30/3/93 32.4 In the absence of any election under **clause 23**, **clause 25 or clause 26**, a Surviving Spouse becoming entitled to an allowance under this **clause 32** may:

32.4.1 by notice given before receiving the first instalment of the allowance, elect to receive in lieu of the allowance a refund of an amount equal to fifteen times the

Contributor's Pension computed in accordance with the provisions of **clause 18** less any Benefits already paid;

32.4.2 by notice given before receiving such a refund, withdraw such notice of election.

32.5 No person shall be entitled to receive more than one allowance under the provision of this **clause 32** and **clause 31** and if such an entitlement were possible but for this **clause 32.5**, the person may, subject to the approval of the Board, choose whichever one of the allowances is desired.

32.6 **Clause 32.3** and **clause 32.4.1** shall be read and applied as if the expression "fifteen" had been omitted and the expression "17.5" substituted in any case where the Contributor dies on or after 1 April 1990.

30/3/93 **33 DEATH OF CONTRIBUTOR LEAVING NO SURVIVING SPOUSE**

On the death of a Contributor, whether before or after Retirement, leaving no Surviving Spouse, there shall forthwith be paid to the Contributor's legal personal representatives any balance of an amount equal to fifteen times the Contributor's Pension computed in accordance with the provisions of **clause 18** after deducting therefrom any Benefits prospectively payable under **clause 23, clause 25, clause 26, clause 34** (other than **clause 34.4**) or **clause 35** (other than **clause 35.2**);

PROVIDED THAT where the death occurs on or after 1 April 1990 this **clause 33** shall be read and applied as if the expression "fifteen" had been omitted and the expression "17.5" substituted.

34 CHILDREN'S ALLOWANCES

30/3/93 34.1 On the death of a Contributor, whether before or after Retirement leaving a Child under the
20/10/16 age of 16, there shall be paid in respect of such Child until the Child attains the age of 16 an allowance at the rate of \$78.00 a year;

PROVIDED THAT no allowance shall be payable in respect of any Child in respect of whom an allowance is payable as the Child of another deceased Contributor or member of any Superannuation Schemes (as defined in the Act) in respect of which the Board is trustee and to which Part III of the National Provident Fund Act 1950 applied.

34.2 If any Child in respect of whom the allowance is payable remains at school after attaining the age of 16, the allowance may be continued so long as the Child remains at school until the end of the year in which the Child attains the age of 18.

34.3 If any Child in respect of whom the allowance is by reason of physical or mental incapacity unable to maintain her/himself and is not being maintained free of charge in a state institution the allowance may thereafter be continued at the discretion of the Board.

30/3/93 34.4 If all allowances payable under this **clause 34** cease after all other Benefits have ceased to be payable and before an amount equal to fifteen times the Contributor's Pension computed in accordance with the provisions of **clause 18** has been exhausted in payment of the allowances and other Benefits, the balance thereof shall be paid in equal shares in respect of the Children of the Contributor then surviving;

PROVIDED THAT where the death of the Contributor occurs on or after 1 April 1990 this **clause 34.4** shall be read and applied as if the expression "fifteen" had been omitted and

the expression "17.5" substituted.

- 34.5 Monies payable under this clause 34 in respect of any Child may be expended by the Board for the benefit of the Child in such manner as the Board thinks fit and may be paid to any person to be expended on behalf of the Child.

35 PROVISIONS APPLYING TO ANNUITY TO SPOUSE OR APPROVED DEPENDANT ON DEATH OF CONTRIBUTOR

- 30/3/93 On the death of a Contributor who has made an election for the payment of an annuity under **clause 23, clause 25, or clause 26** the following provisions shall apply:

- 35.1 Any annuity so payable shall be in addition to any allowance payable under **clause 31 or clause 32**;

- 30/3/93 35.2 If on the death of the last of the Spouse or any Dependiant who has survived the Retirement and death of the Contributor there remains in this Scheme any balance of an amount equal to fifteen times the Contributor's Pension computed in accordance with the provision of **clause 18**, all claims to that date having previously been satisfied, such balance after deducting therefrom any Benefits prospectively payable under **clause 31, clause 32 or clause 34**, shall thereupon be paid out of this Scheme to the legal personal representatives of such Spouse or Dependiant;

PROVIDED THAT clause 35.2 above shall be read and applied as if the expression "fifteen" had been omitted and the expression "17.5" substituted in any case where the death of the Spouse or Dependiant occurs on or after 1 April 1990.

36 ELECTION BY SURVIVING SPOUSE TO SURRENDER PORTION OF ALLOWANCE AND RECEIVE CASH PAYMENT

- 30/3/93 36.1 This **clause 36** shall apply to any Surviving Spouse who becomes entitled to an allowance under this Scheme and who is less than 61 years of age at the time the entitlement to the allowance arises.

- 30/3/93 36.2 Where any such Surviving Spouse of any Contributor who has died before or after Retirement becomes entitled to an allowance under this Scheme, such Surviving Spouse may elect to surrender up to one-quarter of the allowance payable and to receive instead payment of a sum equal to nine times the amount by which the allowance is reduced pursuant to the surrender;

PROVIDED THAT where the first instalment of any allowance becomes payable on or after 1 April 1990 **clause 36.2** shall be read and applied as if the expression "nine" had been omitted and the expression "10.5" substituted.

- 30/3/93 36.3 Any election under this **clause 36** shall be made in writing delivered to the Board before the Surviving Spouse has accepted any instalment of the allowance.

- 30/3/93 36.4 No Surviving Spouse shall have the right to revoke, amend or extend any election made under this **clause 36**.

- 30/3/93 36.5 On the making of any such election the allowance payable to the Surviving Spouse shall be reduced by the same proportion as that which the Surviving Spouse has elected to surrender as aforesaid, and all rights in respect of the proportion so surrendered shall be

deemed to be determined.

PART VI

FINANCIAL

37 METHOD OF PAYMENT OF PENSIONS, ALLOWANCES AND ANNUITIES

37.1 All Pensions, other allowances and annuities payable under this Scheme shall be paid by instalments at four-weekly intervals in advance and each shall be paid to the end of the period in which it ceases to be payable.

30/3/93 37.2 Each such four-weekly instalment shall be calculated as 28/365ths of the annual amount payable to the nearest cent above;

PROVIDED THAT the minimum four-weekly instalment of an allowance payable at the rate of \$390 per annum under **clause 31** or **clause 32** shall be \$30 and the four-weekly instalment of the Child's allowance payable under **clause 34** shall be \$6.

30/3/93 37.3 Every such instalment shall be paid to the person entitled thereto personally unless the Board in its discretion directs that it shall be paid to some other person on behalf of the annuitant or other person entitled;

PROVIDED THAT in any case where by reason of age or infirmity of the person entitled or for any other sufficient cause it is not convenient that payment be made to the person entitled personally, payment may be made to any person or bank account duly authorised by the person entitled to receive payment on that person's behalf.

30/3/93 37.4 All Pensions and other Benefits payable under this Scheme shall be payable in New Zealand dollars and to a bank account in New Zealand, or, if the Board agrees, by posting of a cheque in New Zealand dollars to an address nominated by the person entitled to receive the Pension or other Benefit.

38 REFUND OF BALANCE OF CONTRIBUTIONS AFTER DEDUCTING BENEFITS PAYABLE

Wherever provision is hereby made in this Scheme for payment out of this Scheme of the balance of the Contributor's Refundable Contributions after deducting Benefits prospectively payable, the amount to be deducted shall be determined by the Board with such actuarial advice as it may elect to seek.

39 MINIMUM BENEFIT

30/3/93 The value of any Benefit payable under this Scheme shall not be less than the Contributor's own contributions to this Scheme together with any credits which the Contributor has transferred from any previous scheme to this Scheme.

PART VII

TRUSTEE – APPOINTMENT AND REMOVAL

40 TRUSTEES - APPOINTMENT AND REMOVAL

- 30/3/93 40.1 The Board is the trustee of this Scheme pursuant to section 20(1)(a) of the Act and the
20/10/16 'manager' of the Scheme for the purposes of the FMC Act.
- 40.2 The members of the Board hold office in accordance with Part II of the Act.
- 40.3 The Board is a body corporate, and as such cannot retire from the office of trustee, nor can another trustee be appointed other than by Act of Parliament.

41 POWERS OF BOARD

- 20/10/16 41.1 The Board may give guarantees undertakings and (subject to section 135(1)(f) of the FMC
30/1/21 Act and the Trusts Act) indemnities and incur all such obligations relating to this Scheme as the Board in its discretion thinks fit.
- 41.2 The Board may borrow money for the purposes of:
- 41.2.1 making any investment; or
 - 41.2.2 paying any Benefit; or
 - 41.2.3 meeting any liability; or
 - 41.2.4 the management of this Scheme.
- 41.3 The Board may enter into any insurance or reinsurance contract relating to the payment under this Scheme of any Benefit contingent on the death or survival of human life.
- 20/10/16 41.4 **The Board in its capacity as manager shall have the functions and duties and have the responsibilities accorded to it as a manager under the FMC Act. In particular the Board is responsible for the following functions:**
- 41.4.1 offering the interests in the Scheme;
 - 41.4.2 issuing the interests in the Scheme;
 - 41.4.3 managing the Scheme's Property and investments; and
 - 41.4.4 administering the Scheme.

42 POWER OF AMENDMENT

- 30/3/93 42.1 The Board may amend this Trust Deed from time to time
20/10/16
- PROVIDED THAT** no amendment shall have any effect unless the provisions of section 139 of the FMC Act are complied with.

42.2 [RESERVED]

43 AMENDMENTS IN RESPECT OF FUTURE TAX CHANGES

- 30/3/93 43.1 Notwithstanding the other provisions of this Scheme the Board may at any future time vary
20/10/16 any benefit under this Scheme to take account of changes in taxation that may arise (other than as a result of the passing of the Income Tax Amendment Act 1989)

PROVIDED THAT no reductions in benefits under this **clause 43** shall be made until:

- 43.1.1 the FMA has been provided with a copy of an opinion of an actuary who is a Fellow of the New Zealand Society of Actuaries confirming that the reductions are no more than are necessary to make the benefits of this Scheme secure and the FMA has confirmed in writing to the Board that it agrees with that opinion; and
- 43.1.2 the FMA has confirmed in writing to the Board that it is satisfied that the reductions in benefits are equitable as between all Members and other Beneficiaries.

44 LIMITATION OF LIABILITY

- 44.1 No member of the Board shall be liable to the Board or any other person, nor shall the Board be liable, for any losses:
- 44.1.1 arising from any act or omission done bona fide in conformity with the decisions of the Board pursuant to the provisions of this Deed or the Act; or
- 44.1.2 not attributable to the wilful act or omission of the Board or member of the Board, as the case may be, known by the Board or member of the Board to be a breach of trust; or
- 44.1.3 arising from the neglect or default of any manager appointed under this Scheme or of any solicitor, banker, accountant, broker, actuary, or other adviser or agent employed or consulted by the Board.
- 30/3/93 44.2 Without limiting **clause 44.1**, neither the Board nor any member of the Board shall be liable for any losses attributable to the Board's or any member of the Board's negligence in the execution of the Board's or any member of the Board's duties under this Deed or the actions of any employee of the Board.
- 30/3/93 44.3 The liability of the Board and of every member of the Board for all losses, damages, costs and expenses of the Board for all claims against the Board and for every action of the Board referred to in this **clause 44** shall be limited to the assets of this Scheme.
- 44.4 No member of the Board shall be liable to contribute personally to any losses, damages, costs or expenses claimed against or payable by the Board unless the loss, damage, cost, or expense has been held by the High Court or any superior court to be attributable to that member of the Board's dishonesty or that member of the Board's omission or wilful act known by that member of the Board to be a breach of trust.
- 20/10/16 44.5 Subject to the Trusts Act, the Board and the members of the Board may be indemnified for
30/1/21 the liabilities or expenses incurred in relation to the performance of the Board's obligations as manager of the Scheme **PROVIDED THAT** such rights must only be available in relation

to the proper performance of duties under sections 143(1) and 144 of the FMC Act.

PART VIII

INVESTMENT PROVISIONS

45 INVESTMENT

- 30/3/93 45.1 The Property of this Scheme may only be invested in the global asset trust (as defined in
20/10/16 the Act), whether by way of debt securities (as defined in the Act) or managed investment products (as defined in the Act), or otherwise.
- 30/3/93 45.2 Nothing in **clause 45.1** shall prevent the Board as trustee of this Scheme depositing money of this Scheme into a bank account (which may be a bank account for one or more existing schemes (as defined in the Act)) to the extent necessary or desirable for the operation of this Scheme.
- 30/3/93 45.3 None of the provisions of the Trusts Act relating to the investment of trust funds shall apply
20/10/16 in respect of this Deed or the investment of the Property of this Scheme.
30/1/21

46 APPOINTMENT OF ADMINISTRATION AND/OR INVESTMENT MANAGERS

- 20/10/16 46.1 The Board may, subject to the provisions of the FMC Act, on such terms and conditions as it thinks fit, appoint any person (including the Crown) to manage all or any part of
- 46.1.1 the administration of this Scheme; or
- 46.1.2 the investment of the trust fund (as defined in the Act) of this Scheme; or
- 46.1.3 both.
- 30/3/93 46.2 All fees and expenses payable to any such manager or managers shall be paid out of the trust fund of this Scheme.
- 1/4/98 46.3 Where the Board has appointed an Administration Manager to, or agreed that the Administration Manager may, perform or exercise any duty or power given to the Board by this Deed, references in this Deed to the performance or exercise of that duty or power by the Board shall be deemed to be references to the performance or exercise of that duty or power by the Administration Manager.
- 20/10/16 46.4 In appointing any person under **clause 46.1**, the Board shall take all reasonable steps to:
- 46.4.1 ensure these functions are performed in the same manner and are subject to the same duties and restrictions, as if the Board were performing them directly; and
- 46.4.2 monitor the performance of those functions.
- 20/10/16 46.5 Any right of indemnification given to an investment manager appointed under **clause 46.1**
30/1/21 shall be subject to the Trusts Act and shall be only in relation to the proper performance of the appointee's duties in accordance with section 136(2) of the FMC Act.

7/9/93

PART VIIIA

DISCRETIONARY TRANSFERS

46A ELECTIONS TO TRANSFER

46A.1 Any Member of this Scheme, other than a Beneficiary in receipt of a Benefit from this Scheme, may:

- 20/10/16 46A.1.1 elect to transfer to another Superannuation Scheme; and
- 46A.1.2 having made an election to transfer and subject to this Part VIIIA, transfer to another Superannuation Scheme.

46A.2 Any Member who elects to transfer under this **clause 46A** shall complete an "election to transfer notice" in the form prescribed by the Board.

- 1/4/98 46A.2A The Board (or, if the Board shall so agree in writing and on such terms and conditions as the Board shall determine, the Administration Manager) shall consider, and decide whether to accept, the Member's election to transfer.

- 20/10/16 46A.3 The Board is not obliged to accept a Member's election to transfer under this **clause 46A** unless it is satisfied that the Superannuation Scheme to which the Member has elected to transfer (referred to below as the "other scheme") is:

- 46A.3.1 able and has agreed to accept:
- 46A.3.1.1 the Member as a transferring member; and
- 46A.3.1.2 the terms on which the Member's Transfer Value or any Withdrawal Payment (as defined in **clause 46C.3**) will be payable; and
- 46A.3.2 governed by a trust deed under which the Transfer Value is fully vested to the transferring member immediately on payment of that amount to the other scheme,

and for this purpose the Board may require the trustees of the other scheme to certify to that effect.

- 1/4/98 46A.4 [**RESERVED**]

46B CONSEQUENCES OF TRANSFER

46B.1 Once an Election to transfer under **clause 23A** has been accepted by the Board, the Transfer Value for the Transferred Member shall be calculated by the Board.

- 1/4/98 46B.2 The Transfer Value for a Transferred Member shall be calculated as at a date determined by the Board (such date being referred to in this Part VIIIA as the "Transfer Date") being a date not earlier than, and not more than 14 days after, the date the completed election to transfer notice was received by the Board. Subject to section 50(2)(c) of the Act, the Transfer Value for any Transferred Member as at the Transfer Date shall be an amount

determined by the Board as being equal to:

46B.2.1 the amount determined as at the Examination Date to be 17.5 times the Pension to which the Transferred Member would have been entitled under clause 18 if the Transferred Member had retired as at the Examination Date and had been deemed at that date to be aged 50 at the Examination Date, adjusted by multiplying the amount so determined by the ratio TA/TB;

where:

46B.2.2 TA is the market value of the assets of the Scheme available to meet the liabilities of the Scheme in respect of Members eligible to elect to transfer under this Part VIIIA on the Examination Date; and

46B.2.3 TB is the total of the accrued benefits as at the Examination Date for all Members so eligible to transfer from the Scheme on the Examination Date (calculated on the same basis as the determination made under **clause 46B.2.1** for a Transferred Member is made but without the adjustment referred to in that clause); plus

46B.2.4 all amounts paid into the Scheme by the Contributing Employer under **clause 15** after the Examination Date (referred to in this **clause 46B** as the "Contribution Amounts"); plus (or minus, in the case of a negative rate)

46B.2.5 earnings (less withholdings, if any, required to be made by law) at the rate specified in **clause 46B.3** which shall be credited (or debited, in the case of a negative rate) to the amount determined under **clause 46B.2.1** to **clause 46B.2.3** for the period from the Examination Date until the Transfer Date; plus (or minus, in the case of a negative rate)

46B.2.6 earnings (less withholdings, if any, required to be made by law) at the rate specified in **clause 46B.3** which shall be credited (or debited, in the case of a negative rate) to the Contribution Amounts for the period for which the Contribution Amounts were in the Scheme on such basis as the Board may determine;

PROVIDED THAT, where there are circumstances which make the determination of the Transfer Value for any Transferred Member in accordance with this **clause 46B.2** inequitable to the Transferred Member or the Scheme because the Contribution Amounts are greater than or less than those which would have been payable in normal circumstances, the Transfer Value shall be determined as if the Contribution Amounts had been such greater or lesser amount as the Board may determine to be equitable in the circumstances.

46B.3 The rate or rates of earnings for the purposes of **clause 46B.2.5** (which may be negative or zero rates) will be determined as follows:

46B.3.1 where the Examination Date is more than 12 months before the Transfer Date, the earnings rate which applies in the 12 month period after the Examination Date will be a rate equal to the Transfer Value Earnings Rate in respect of that period declared by the Board under **clause 46B.8**; and the earnings rate in the period between the end of the 12 month period referred to above and the Transfer Date will be equal to the rate specified in **clause**

46B.3.2; or

46B.3.2 where the Examination Date is not more than 12 months before the Transfer Date, the earnings rate which applies in the period between the Examination Date and the Transfer Date will be a rate equal to the latest Transfer Value Earnings Rate declared in respect of the Financial Year in which such period falls under **clause 46B.8.1** or, if no such rate has been declared in respect of that Financial Year, such rate as the Board shall determine, which rate shall be applied on such proportionate basis as the Board shall determine;

PROVIDED THAT, where there are circumstances which make the application of **clause 46B.3.1** or **clause 46B.3.2** inequitable to the Transferred Member or the Scheme, the earnings rate which applies in all or any part of the period between the Examination Date and the Transfer Date shall be such rate as the Board may determine to be equitable in the circumstances.

46B.4 For the purposes of section 50(2) of the Act, **clause 46B.2** has been approved in writing by the Minister of Finance.

46B.5 Transfer Values shall remain in this Scheme until payable under **clause 46C**, and as soon as practicable after the end of each Financial Year Transfer Values shall be credited (or debited, in the case of a negative rate) on such basis as the Board determines with earnings (less withholdings, if any, required to be made by law) at the Transfer Value Earnings Rate declared in respect of that Financial Year under **clause 46B.8.2** (and where a Transfer Value has been held in this Scheme for less than 12 months, that rate shall be applied on such proportionate basis as the Board shall determine).

46B.6 Where during a Financial Year a Transfer Value is payable in accordance with **clause 46C**, the Transfer Value shall be credited (or debited, in the case of a negative rate) with earnings (less withholdings, if any, required to be made by law) for the period from the later of the Transfer Date and the last day as at which earnings were credited under **clause 46B.5** to the date of payment at:

46B.6.1 the latest Transfer Value Earnings Rate declared in respect of that Financial Year under **clause 46B.8.1**; or

46B.6.2 if no such rate has been declared in respect of that Financial Year, such rate as the Board shall determine, which rate shall be applied on such proportionate basis as the Board shall determine.

46B.7 No contributions to this Scheme shall be payable by or on behalf of a Transferred Member and a Transferred Member shall not be a Contributor for the purposes of this Scheme. A Transferred Member shall however remain a Member until the Transfer Value or a Withdrawal Payment has been paid under **clause 46C**. Nothing in this **clause 46B.7** shall prejudice **clause 46C.2** or **clause 46C.3** and **clause 48** shall continue to apply to the Transferred Member as if the Transferred Member were a Contributor.

46B.8 For the purposes of this Part VIIIA, "Transfer Value Earnings Rate" means an annual earnings rate (which may be a negative or zero rate) which:

46B.8.1 may be declared by the Board from time to time in respect of a Financial Year; and

46B.8.2 shall be declared by the Board in respect of each Financial Year as soon as practicable after the end of that Financial Year,

for the purposes of this **clause 46B**, after receiving the advice of the Actuary and having regard to the net investment earnings rate of this Scheme.

46B.9 For the purposes of **clause 46A** (but for no other purpose), a Contributor who is taking a permitted period of absence under **clause 7** which commenced prior to 1 April 1992 and has not made payment of the sums to be paid under **clause 7** shall be deemed to have elected to delay payment of the sums to be paid under **clause 7** as permitted under the proviso to **clause 7.2** and shall, notwithstanding the proviso to **clause 7.2**, be deemed to be eligible to elect to transfer under this Part VIIIA.

46B.10 For the purposes of calculating the Pension entitlement of any Transferred Member to whom **clause 46B.9** applies in order to determine the Transfer Value for that Transferred Member under **clause 46B.2**, such Transferred Member shall be deemed to be a Contributor who has commenced Contributory Service with a Contributing Employer on the day before the Examination Date and elected not to pay the sums required under **clause 7** in respect of the permitted period of absence as provided for in **clause 7.3**. The Board may, if it considers it equitable to do so, credit to the Transfer Value of any Transferred Member to whom **clause 46B.9** applies earnings (less withholdings, if any, required to be made by law) at such rate as the Board determines for the period from the date on which the Transferred Member terminated service with the Contributing Employer to the Transfer Date.

46C WHEN TRANSFER VALUES PAYABLE

20/10/16 46C.1 Subject to **clause 46C.2**, **clause 46C.3** and **clause 46C.4**, the Transfer Value for a Transferred Member shall become payable in one lump sum to the Superannuation Scheme to which the Transferred Member has transferred ("the elected scheme") (or to another Superannuation Scheme nominated by the Transferred Member and approved by the Board in the event that the elected scheme for any reason is unable to receive such payment), on the earlier of:

46C.1.1 **[RESERVED]**

46C.1.2 **[RESERVED]**

46C.1.3 **[RESERVED]**

46C.1.4 such date as may be agreed between the Board and the trustees of the Registered Superannuation Scheme to which the Transfer Value is payable; or

46C.1.5 the date of the winding up of this Scheme,

and the Transfer Period will be the period between the Transfer Date and the earlier of such dates.

46C.2 If a Transferred Member (or his or her Surviving Spouse or estate in the event of death) would have become entitled to a Benefit during the Transfer Period under **clause 17**, **clause 19**, **clause 31** or **clause 33** of this Deed if the Transferred Member had remained a Contributor (and treating the Transferred Member's employer as a "Contributing Employer" for the purposes of **clause 19.2**) then, subject to **clause 46C.3** and **clause**

46C.4, the Transfer Value shall, on the application in writing of the Transferred Member, Surviving Spouse or representative of the estate (as appropriate) to the Board, become payable in one lump sum to the Transferred Member, Surviving Spouse or estate (as appropriate).

46C.3 If during the Transfer Period a Transferred Member:

46C.3.1 ceases to be engaged by his or her employer; and

46C.3.2 having ceased to be so engaged, makes an application in writing to the Board for payment under this **clause 46C.3**,

the Transfer Value shall not be payable to or in relation to the Transferred Member and instead an amount (referred to in this Part VIIIA as the *Withdrawal Payment*) calculated in accordance with **clause 29** (and less any amount paid under **clause 46C.2**) shall become payable to the Transferred Member in one lump sum and shall be calculated as if the Transferred Member had:

46C.3.3 remained a Contributor; and

46C.3.4 had no further contributions made to this Scheme by or on behalf of that person after the Transfer Date; and

46C.3.5 elected to receive a refund of Refundable Contributions (less Benefits already paid) under **clause 29** at the same time as making the application referred to in **clause 46C.3.2**.

20/10/16 46C.4 The Board shall not be required to pay out any Transfer Value under **clause 46C.1** or **clause 46C.2**, or any Withdrawal Payment under **clause 46C.3**, until such time as it has been able to convert the Property of this Scheme which represents that Transfer Value or Withdrawal Payment to cash (or, where the Transfer Value is payable to the trustees of a Superannuation Scheme, and the Board agrees to make the payment in Property other than cash, other Property acceptable to the Board and those trustees) and for the purposes of this **clause 46C.4** the Board shall not be required to convert any Property of this Scheme to cash or other Property if to do so would or might, in the opinion of the Board, unduly prejudice the value of the Property of this Scheme representing other Members' and Beneficiaries' interests in this Scheme.

46C.5 [**RESERVED**]

46D OTHER PROVISIONS RELATING TO TRANSFERS OUT

20/10/16 46D.1 Subject to **clause 46B.7**, nothing in this Part VIIIA shall limit any right contained in any other Part of this Deed for any Contributor to transfer to any other Superannuation Scheme.

20/10/16 46D.2 Nothing in this Part VIIIA shall confer upon any person any right to require the Board to provide for transfers from this Scheme to any other Superannuation Scheme.

20/10/16 46D.3 The Board shall be under no obligation or liability to see to the application of any amount paid (or Property transferred) to the trustees of any Superannuation Scheme or any other person under this Part VIIIA.

28/03/19 **46E TRANSFER OF PENSIONERS TO PENSION SCHEME**

- 46E.1 Subject to **clause 46E.6**, on any person becoming entitled, on or after such date as the Board may determine, to a pension or allowance under this Scheme, whether as the result of making an Election or otherwise the Board shall transfer that person and the liability to pay the pension or allowance to that person, to the Pension Scheme **PROVIDED THAT** if that person Elects in accordance with this Deed to defer receipt of their pension the Board shall defer transfer of the pension to the Pension Scheme until such time as the person Elects or is deemed to have Elected to commence receipt of their pension.
- 46E.2 Subject to **clause 46E.6**, the Board may, on such date as it may determine, transfer all persons already receiving a pension or allowance under this Scheme and the liability to pay their pensions or allowances, to the Pension Scheme.
- 46E.3 Any pension to be transferred (the "transferred pension") under **clause 46E.1** or **clause 46E.2** shall include:
- 46E.3.1 any pension, allowance or other Benefit payable or contingently payable under any of **Parts IV** or **V** of this Deed or otherwise to any other person as a result of the death of the person receiving the transferred pension or otherwise consequential on entitlement to the transferred pension; and
 - 46E.3.2 any minimum payment that would have applied in relation to the transferred pension under the terms of this Scheme or of which the Board has advised the Contributor.
- 46E.4 On transfer of the liability to pay any pension or allowance under **clause 46E.1** or **clause 46E.2** the Board shall transfer from this Scheme to the Pension Scheme, assets with a value as determined by the Board (having considered the advice of the Actuary) to meet the liability so transferred.
- 46E.5 On transfer of the liability to pay any pension or allowance under **clause 46E.1** or **clause 46E.2** and assets under **clause 46E.4** the pension or allowance so transferred shall be payable from the Pension Scheme and neither the person so transferred nor any other person shall be entitled to receive any further payment from this Scheme in respect of that pension or allowance.
- 46E.6 The Board must not transfer the liability to pay the pension or allowance of a person from this Scheme to the Pension Scheme unless it is satisfied, after considering the advice of the Actuary, that:
- 46E.6.1 the terms of that person's pension or allowance under the Pension Scheme are not materially and adversely different from the terms on which that person's pension or allowance would have been paid under this Scheme; and
 - 46E.6.2 the transfer of assets from this Scheme to the Pension Scheme under **clause 46E.4** is fair and equitable to that person and to all members and beneficiaries of this Scheme materially affected by the transfer.

PART IX

MISCELLANEOUS

30/3/93 **47** [RESERVED]
7/9/93

48 PROHIBITION OF ASSIGNMENT, BORROWING AND PAYMENT OF DEBTS

30/3/93 48.1 No money payable from this Scheme to any person shall be in any way assigned, charged, alienated or passed by operation of law to any other person.

30/3/93 48.2 No Member shall borrow against the security of any Benefits payable from this Scheme.

48.3 Any money payable from this Scheme on the death of a Contributor shall not be assets for the payment of that Contributor's debts or liabilities.

30/3/93 **49 BANKRUPTCY**

All the interests in this Scheme of any person then or contingently entitled to any Benefit under this Scheme shall be forfeited to this Scheme in the event that the Board considers that the person has committed or is likely to commit any act of bankruptcy; and shall be applied by the Board to the benefit of that person or that person's dependants in such manner as the Board considers appropriate having regard to the objects of this Scheme.

50 INABILITY TO MANAGE AFFAIRS

The Board may, in the event of the inability of a Contributor or other Beneficiary to manage that person's own affairs, administer any Benefits on that person's behalf.

51 PAYMENTS IN RESPECT OF MINORS

51.1 Where any Benefit is payable under this Scheme to any minor the Board may pay the Benefit to the minor or, subject to such terms and conditions as the Board may determine, to any other person to be expended on behalf of the minor.

51.2 Any receipt given by a minor or other person for money paid under **clause 51.1** shall be a good discharge to the Board.

52 UNCLAIMED MONEY PAYABLE OUT OF SCHEME

All money payable out of this Scheme to any person for which no claim or demand has been made by or on behalf of that person shall remain part of this Scheme but may at any time be paid out of this Scheme to any person establishing a lawful claim to the money.

22/8/06 **52A MISSING PERSONS**

52A.1 In this **clause 52A** –

"Existing Scheme" has the same meaning as in the Act.

"Missing Person" means any Member or Beneficiary from, or in respect of, whom no

contributions are being received and for whom the Board has no current address.

52A.2 The Board may deduct from any Benefit, entitlement or earnings credited to a Missing Person to which the Missing Person is entitled, a reasonable amount to cover the costs incurred by the Board in endeavouring to locate, and in confirming and satisfying the Scheme's liability to, the Missing Person **PROVIDED THAT** this **clause 52A.2** does not limit any other power the Board may have to charge costs or expenses against this Scheme or any other Existing Scheme, or against a Member or Beneficiary.

52A.3 The Board may allocate to any Missing Persons:

52A.3.1 property of this Scheme equivalent to the Missing Persons' share in this Scheme; and

52A.3.2 future investment returns from that property received after the date of that allocation.

52A.4 The Board may transfer Missing Persons, the liabilities of the Scheme to those Missing Persons and any property allocated to them under **clause 52A.3**, to any other Existing Scheme without the consent of Members or Beneficiaries or any other person.

52A.5 For the purposes of **clause 52A.3.1** and except as otherwise approved in writing by the Minister of Finance, any Missing Persons' share in this Scheme is to be calculated as the value of the liabilities (as determined by the Actuary) of this Scheme to those Missing Persons-

52A.5.1 **plus**, if this Scheme has an actuarial surplus, an equitable share of the surplus, as determined by the Board after receiving advice from the Actuary; or

52A.5.2 **less**, if this Scheme has an actuarial deficit, an equitable share of the deficit, as determined by the Board after receiving advice from the Actuary.

52A.6 The Board may at any time extinguish the liabilities of this Scheme to a person who has been a Missing Person for a period of at least five years before the extinguishment (whether under this Scheme or under the provisions of any Existing Scheme which are equivalent to the provisions of this **clause 52A**);

PROVIDED THAT:

52A.6.1 no liability may be extinguished under this **clause 52A.6** unless the Board has used reasonable endeavours to find the current address of that Missing Person; and

52A.6.2 if any person establishes to the satisfaction of the Board that a liability of this Scheme to him or her has been extinguished under this clause during the previous 15 years, the Board must reinstate the liability of this Scheme to that person as if it had never been extinguished.

53 IMPLIED TERMS OR CONDITIONS

30/3/93

Every term or condition of this Scheme that was provided in the National Provident Fund Act 1950 and is not expressly provided in this Scheme shall be incorporated in this Scheme as a

term or condition of this Scheme.

30/3/93 **54 ACTUARIAL REPORTS**

30/3/93 The Board shall appoint an Actuary for this Scheme and shall ensure that the financial
20/10/16 position of this Scheme is examined by the Actuary so appointed as required by the FMC Act and the Act and that the requirements of those Acts in relation to actuarial examinations are complied with.

55 REPORTS

20/10/16 55.1 Every Member of this Scheme shall have the right to receive annual reports of the Board in respect of this Scheme, to receive estimates of Benefits, and to look at and receive copies of the scheme documents and reports as provided for in the FMC Act.

20/10/16 55.2 The Board shall comply with the reporting requirements of the FMC Act.

56 WINDING UP

56.1 This Scheme may be wound up only at the direction of the Minister of Finance after consultation with the Board and shall be wound up in accordance with any such direction.

30/9/93 56.2 In the event of this Scheme being wound up in whole or part, the assets of this Scheme (or
7/9/93 the appropriate proportion of the assets in the event of the partial termination of this Scheme) shall be realised and the proceeds thereof (less the reasonable costs of winding up) allocated pro rata between the remaining Contributors, Members and Beneficiaries in receipt of a Pension or annuity, affected by the termination on a basis that takes account of their interests and period of membership in this Scheme.

56.3 The Benefit payable on the total or partial winding up of this Scheme shall be paid as a cash lump sum.

20/10/16 56.4 In the event of a winding up of this Scheme (either in whole or in part) no part of the assets of this Scheme shall revert to:

56.4.1 any person other than as provided for in **clause 56.2** without the written consent of the FMA; or

56.4.2 any of the Contributing Employers.

30/3/93 56.5 The Board shall as soon as practicable advise the FMA of its intention to wind up the
20/10/16 Scheme by providing a copy of its resolution to do so within 10 working days in accordance with section 212 of the FMC Act.

20/10/16 56.6 **[RESERVED]**

20/10/16 **57 REGISTER**

57.1 A register of Members and Beneficiaries must be kept by the Board in a form and manner required by the FMC Act.

57.2 Such register may be in electronic form and compiled by a delegate of the Board in a

manner approved by the Board.

57.3 The following details shall be entered on the register:

- 57.3.1 The names and addresses of each Member or Beneficiary;
- 57.3.2 The date on which the Member or Beneficiary became a Member or Beneficiary of the Scheme;
- 57.3.3 Such other information as the Board requires or as is required by the Act or the FMC Act.

57.4 The Board must ensure that the register is audited at intervals of not more than 12 months or as required by and in accordance with the provisions of the FMC Act.

57.5 The Board must advise the Registrar of the place where its registers are kept and of any change in that place. Changes must be advised to the Registrar within 10 working days of the change in place.

20/10/16 **58 ACCOUNTING RECORDS**

58.1 The Board shall ensure that there are kept at all times accounting records that comply with the requirements of section 455 of the FMC Act.

58.2 In keeping or causing to be kept the accounting records under **clause 58.1** the provisions of Part 7 of the FMC Act must be complied with.

20/10/16 **59 FINANCIAL STATEMENTS**

59.1 Subject to any law relevant to the Board or the Scheme (including the FMC Act), the Board must ensure that financial statements are prepared that comply and are in accordance with the requirements of Part 7 of the FMC Act.

20/10/16 **60 AUDIT**

60.1 The Board shall ensure that:

- 60.1.1 the Scheme's financial statements are audited and reported on by the Auditor in accordance with the requirements of the FMC Act; and
- 60.1.2 those financial statements, together with the Auditor's report on those financial statements, are delivered and lodged in accordance with any requirements of the FMC Act.

20/10/16 **61 THE AUDITOR**

61.1 A person or firm selected by the Board must be appointed Auditor of the Scheme. Such person or firm must be a Qualified Auditor (as defined in the FMC Act) and meet the requirements of any law relevant to the Board or the Scheme.

20/10/16 **62 INTENTION TO BE LEGALLY BINDING**

- 62.1 It is intended that this deed be legally enforceable as between the Board, the Members and the Beneficiaries.

30/3/93

ANNEX

SECTION 38 NATIONAL PROVIDENT FUND RESTRUCTURING ACT 1990

38. (1) No person is entitled to be a contributor to any existing scheme unless that person -
- (a) was a contributor to that scheme immediately before the transfer day; or
 - (b) was a contributor to another existing scheme immediately before the transfer day and is a person, or a person of a kind, whom the Board, in its discretion and after consultation with the Minister, has agreed may contribute to that scheme.
- (2) Any person -
- (a) who has, before the transfer day, contributed to an existing scheme; and
 - (b) whose contributions, or part of whose contributions, remain in the scheme on the transfer day -
- shall for the purposes of this section, be deemed to have been a contributor to that existing scheme immediately before the transfer day.
- (3) Any employer -
- (a) who was not a contributor to an existing scheme immediately before the transfer day; and
 - (b) who, after the transfer day, is or becomes the employer of an employee who was a contributor to an existing scheme immediately before the transfer day -
- may, notwithstanding subsection (1) of this section but subject to the terms of the existing scheme, contribute to any existing scheme to which that employee contributes, as a corporate contributor, for the purpose of subsidising that employee's contributions or obtaining a benefit for that employee.
- (4) Nothing in this section limits -
- (a) the terms of any existing scheme; or
 - (b) any other provision of this Act.