



**ANNOTATED TRUST DEED**  
for  
**DBP ANNUITANTS SCHEME**  
(dated 21 September 2016, effective 20 October 2016)

**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 sub-clause) 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

## TABLE OF CONTENTS

PART I .....	2
GENERAL.....	2
1 TITLE AND COMMENCEMENT .....	2
1A FMC ACT .....	2
2 DEFINITION AND CONSTRUCTION .....	3
3 APPLICATIONS AND ELECTIONS TO BE IN WRITING.....	4
PART II .....	5
PAYMENT OF BENEFITS.....	5
4 PAYMENT OF BENEFITS FROM THIS SCHEME.....	5
5 METHOD OF PAYMENT OF PENSIONS, ALLOWANCES AND ANNUITIES .....	6
PART III .....	6
MEMBERSHIP OF THIS SCHEME .....	6
6 ANNUITANTS ON 1 APRIL 1991 .....	6
7 OTHER BENEFICIARIES.....	6
PART IV .....	7
TRANSFER OF PROPERTY FROM CONTRIBUTORS SCHEME TO THIS SCHEME.....	7
8 BASIS OF TRANSFER .....	7
PART V.....	7
BENEFIT ADJUSTMENT PROVISIONS .....	7
9 PROVISIONS FOR ADJUSTMENT.....	7
9A MINIMUM COST OF LIVING ADJUSTMENT .....	7
9B MINIMUM SPOUSAL ANNUITY .....	9
PART VI .....	9
TRUSTEE PROVISIONS.....	9
10 TRUSTEES - APPOINTMENT AND REMOVAL .....	9
11 POWERS OF BOARD.....	9
12 POWER OF AMENDMENT.....	10

13	AMENDMENTS IN RESPECT OF FUTURE TAX CHANGES .....	10
14	DECISIONS OF BOARD UNDER THE CONTRIBUTORS SCHEME TO BE IMPLEMENTED .....	11
15	LIMITATION OF LIABILITY .....	11
	PART VII .....	12
	INVESTMENT PROVISIONS .....	12
16	INVESTMENT .....	12
17	APPOINTMENT OF ADMINISTRATION AND/OR INVESTMENT MANAGERS .....	12
	PART VIII .....	13
	MISCELLANEOUS.....	13
18	DISCRETIONARY TRANSFERS.....	13
19	CHANGES IN BENEFITS .....	14
20	PROHIBITION OF ASSIGNMENT, BORROWING AND PAYMENT OF DEBTS.....	15
21	BANKRUPTCY .....	15
22	INABILITY TO MANAGE AFFAIRS .....	15
23	PAYMENTS IN RESPECT OF MINORS.....	15
24	UNCLAIMED MONEY PAYABLE OUT OF SCHEME .....	17
25	IMPLIED TERMS OR CONDITIONS .....	17
26	ACTUARY.....	17
27	INFORMATION TO MEMBERS.....	17
28	WINDING UP.....	17
29	DISTRIBUTION OF ASSETS ATTRIBUTABLE TO SECTIONS A, B, D AND E OF THE CONTRIBUTORS SCHEME IN EVENT OF WINDING UP.....	18
30	DISTRIBUTION OF ASSETS ATTRIBUTABLE TO SECTION C OF THE CONTRIBUTORS SCHEME IN EVENT OF WINDING UP .....	19
31	FURTHER PROVISIONS ON WINDING UP .....	20
32	REGISTER.....	20
33	ACCOUNTING RECORDS .....	21
34	FINANCIAL STATEMENTS .....	21
35	AUDIT .....	21
36	THE AUDITOR.....	21
37	INTENTION TO BE LEGALLY BINDING .....	22

**ANNOTATED TRUST DEED****TRUST DEED PREPARED PURSUANT TO SECTION 45 OF THE NATIONAL PROVIDENT FUND RESTRUCTURING ACT 1990 AND APPROVED BY THE MINISTER OF FINANCE PURSUANT TO SECTION 49 OF THAT ACT.****WHEREAS**

- A.** The Defined Benefit Schemes as defined in the National Provident Fund Restructuring Act 1990 ("the Act") were established or operated under the National Provident Fund Act 1950 and include the following:
- (1) the NPF Defined Benefit Plan, which was established on 1 April 1986 (the "Existing Defined Benefit Plan");
  - (2) the Fire Services Superannuation Scheme which is one of four sections of the Standard Scheme for Local Authorities Superannuation as adopted on 7 August 1988 (the "Existing Fire Services Superannuation Scheme");
  - (3) the NPF Superannuation Scheme for Permanent Representatives which was established as an employer subsidised superannuation scheme on 16 September 1965 (the "Existing Superannuation Scheme for Permanent Representatives");
  - (4) the Nursing Services Superannuation Scheme which is one of four sections of the Standard Scheme for Local Authorities Superannuation as adopted on 7 August 1988 (the "Existing Nurses Services Superannuation Scheme"); and
  - (5) the Standard Scheme for Local Authorities Superannuation (including Harbour Masters and (Ships') Pilots) Scheme which is one of four sections of the Standard Scheme for Local Authorities Superannuation as adopted on 7 August 1988 (the "Existing Local Authorities Scheme").
- B.** By section 41 of the Act the Defined Benefit Schemes shall on 1 April 1991 be deemed to have been amalgamated into one superannuation scheme and immediately after such amalgamation shall be deemed to have been divided into two separate superannuation schemes, one being the DBP Contributors Scheme and the other being the DBP Annuitants Scheme.
- C.** By section 45 of the Act, the Board is required to prepare a trust deed ("this Deed") for the DBP Annuitants Scheme.
- D.** Under Part IV and in particular section 42 of the Act certain provisions must or maybe contained in this Deed.

- 20/10/16 **E.** By section 41 of the Act the DBP Annuitants Scheme was deemed to be registered under the Superannuation Schemes Act 1989 on the 1st day of April 1991.
- 20/10/16 **F.** This Deed has been amended from time to time.
- 20/10/16 **G.** Under section 59A of the Act, certain provisions of the Financial Markets Conduct Act 2013 ("the FMC Act") apply to the Scheme on and after the effective date for the Scheme in accordance with clause 19 of Schedule 4 of the FMC Act. In particular, the Scheme must comply with certain governance requirements of the FMC Act. One of these governance requirements is that this Deed must comply with the requirements of the FMC Act.
- 20/10/16 **H.** The effective date for the Scheme is the earlier of the following dates: (a) the date that the issuer of the Scheme elects; or (b) 1 December 2016.
- 20/10/16 **I.** This Deed has been amended to comply with the requirements of the FMC Act.
- 20/10/16 **J.** This Deed records the terms under which the Scheme is constituted and governed.

**NOW THEREFORE THIS DEED WITNESSES AS FOLLOWS:**

**PART I**

**GENERAL**

**1 TITLE AND COMMENCEMENT**

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

20/10/16 **1A FMC ACT**

For the purposes of the FMC Act:

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

1A.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.3 the Board is the 'manager' and the 'issuer' of the Scheme.

## 2 DEFINITION AND CONSTRUCTION

2.1 In this Deed, unless inconsistent with the context:

"**Act**" means the National Provident Fund Restructuring Act 1990.

"**Actuary**" means a person who is a Fellow of the New Zealand Society of Actuaries, who has been appointed by the Board under **clause 26** and whose appointment has not been terminated.

30/3/93

20/10/16

"**Auditor**" means the person or firm appointed as auditor of the Scheme under **clause 36**.

"**Beneficiary**" means any natural person who is eligible to receive a Benefit from this Scheme or from any of Sections A to E of the Contributors Scheme.

"**Benefit**" means any lump sum, annuity, pension, allowance, refund, or other payment arising from membership of any of Sections A to E of the Contributors Scheme and payable under this Scheme or under the Contributors Scheme.

"**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.

"**Contributors Scheme**" means the DBP Contributors Scheme established under section 41 of the Act.

20/10/16

"**FMA**" means the Financial Markets Authority.

20/10/16

"**FMC Act**" means the Financial Markets Conduct Act 2013.

"**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.

20/10/16      **"Superannuation Scheme"** has the meaning given to it in the Act.

30/3/93      2.2      Unless inconsistent with the context, terms not defined in this Deed (and whether commencing with a capital or not) but defined in any of the relevant Sections A to E of the Contributors Scheme shall have the same meaning in relation to each of those sections as in the relevant section of the Contributors Scheme.

30/3/93      2.3      Unless inconsistent with the context terms not defined in this Deed or in any of the relevant Sections A to E of the Contributors Scheme 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      2.4      In the construction of this Deed, unless inconsistent with the context:

2.4.1      references to **clauses** and Parts are to clauses and parts of this Deed;

2.4.2      references to any statute are references to the statute as from time to time amended and include substituted provisions that substantially correspond to those referred to and also include any regulations, Orders in Council and other instruments from time to time issued thereunder;

2.4.3      the singular includes the plural and vice versa, and words importing any gender include the other genders;

2.4.4      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 be given by any person for the purposes of this Scheme shall be in writing

signed by the person and delivered to the Board and shall be deemed to be made or given when received by the Board.

- 30/3/93 3.2 Every notification given or required to be given by a contributing employer to the Board for the purposes of this Scheme shall be in writing signed on behalf of the contributing employer and delivered to the Board.

## PART II

### PAYMENT OF BENEFITS

#### 4 PAYMENT OF BENEFITS FROM THIS SCHEME

The following Benefits specified in the Contributors Scheme as payable from this Scheme shall be payable from this Scheme:

- 4.1 Any pension or other Benefit payable to a contributor and calculated under any of **clauses A18, A19, A20, A21, A22, A23, B20, B21, B22, B23, B24, B25, B27, C9, C10, C11, C12, C13, C14, C16, D20, D21, D22, D23, D24, D25, D27, D35, E20, E21, E22, E23, E24 or E26** of the Contributors Scheme.
- 30/3/93 4.2 Any annuity or other Benefit payable to the spouse or surviving spouse or widow of a contributor and calculated under any of **clauses A18, A24, A26, A27, A30, B28, B34, B35, B38, B39, C12, C15, C16, C17, D28, D37, E27, E33, E34, E37, or E38** of the Contributors Scheme.
- 4.3 Any annuity or other Benefit payable to a dependant of a contributor and calculated under any of **clauses A24, A30, B26, B29, B38, D26, D29, D37, E25, E28 or E37** of the Contributors Scheme.
- 4.4 Any child's allowance or other Benefit payable to the child of a contributor and calculated under any of **clauses A29, B37, C18, D36 or E36** of the Contributors Scheme.
- 30/3/93 4.5 Any sum payable to the contributor or to the estate of the contributor and calculated under any of **clauses A18, A28, B25, B36, C15, C16, C17, D25, D35, E24 or E35** of the Contributors Scheme.
- 4.6 Any other Benefit expressed to be payable out of this Scheme and payable to any person on account of the membership of that person or of any other person in any of Sections A to E of the Contributors Scheme.



## 5 METHOD OF PAYMENT OF PENSIONS, ALLOWANCES AND ANNUITIES

29/3/06 Subject to **clause 9A**, **clause 9AA** and **clause 9B**, all pensions, allowances and annuities calculated under the provisions of any of Sections A to E of the Contributors Scheme and payable from this Scheme shall be paid by the Board in accordance with the provisions in the relevant section of Sections A to E of the Contributors Scheme.

24/3/09

## PART III

### MEMBERSHIP OF THIS SCHEME

## 6 ANNUITANTS ON 1 APRIL 1991

In accordance with section 41(2) of the Act every person who is an annuitant immediately before 1 April 1991 (either by virtue of the definition in section 41(3)(a) of the Act or by virtue of a determination by the Minister of Finance under section 41(3)(b) of the Act) shall be deemed to be a member (as defined by the Act) of this Scheme with effect immediately after the amalgamation referred to in section 41(1) of the Act.

## 7 OTHER BENEFICIARIES

### 7.1 Contributor before payment of Benefit from this Scheme

Where any Benefit is specified under **clause 4** or under the Contributors Scheme as payable to a contributor from this Scheme, the membership of that contributor in the Contributors Scheme shall, forthwith before payment of that Benefit, be transferred to this Scheme.

### 30/3/93 7.2 Spouse, Surviving Spouse, Widow or Dependant on death of contributor

Where any Benefit payable to a spouse or a surviving spouse or a widow or a dependant on the death of a contributor is specified under **clause 4** or under the Contributors Scheme as payable from this Scheme that spouse, surviving spouse, widow or dependant shall forthwith before payment of that Benefit become a member of this Scheme in respect of that Benefit.

### 7.3 Child of deceased contributor

Where any allowance payable to a child of a deceased contributor is specified under **clause 4** or under the Contributors Scheme as payable from this Scheme that child

shall forthwith before payment of that Benefit become a member of this Scheme in respect of that allowance.

#### PART IV

##### TRANSFER OF PROPERTY FROM CONTRIBUTORS SCHEME TO THIS SCHEME

#### 8 BASIS OF TRANSFER

- 29/3/06 8.1 Where under **clause 7** any contributor or other Beneficiary becomes a member of this Scheme the Board as trustee of the Contributors Scheme shall transfer from the
- 24/3/09 Contributors Scheme to this Scheme Property having a market value (as defined in the Act) equal to the liability of this Scheme to pay the Benefit attributable to that person's membership or payable on account of any person's membership to any other Beneficiary (other than any liability arising, or which may arise, under **clause 9A**, **clause 9AA** or **clause 9B**).
- 30/3/93 8.2 Every transfer of Property under **clause 8.1** shall take into account (other than with
- 29/3/06 respect to any liability arising, or which may arise, under **clause 9A**, **clause 9AA** or
- 24/3/09 **clause 9B**) estimates of future investment earnings, taxation, inflation, and mortality rates, that are based on reasonable expectations over the appropriate term of the liability in respect of the Benefit referred to in **clause 8.1** assuming that this Scheme is fully funded with an asset mix based on the investments that a trustee would make in respect of this Scheme if fully funded taking into account the term and nature of its liabilities.

#### PART V

##### BENEFIT ADJUSTMENT PROVISIONS

#### 9 PROVISIONS FOR ADJUSTMENT

- 29/3/06 Subject to **clause 9A**, **clause 9AA** and **clause 9B**, every pension, allowance and
- 24/3/09 annuity calculated under the provisions of any of Sections A to E of the Contributors Scheme and payable from this Scheme shall be adjusted by the Board from time to time as provided for in the relevant section of Sections A to E of the Contributors Scheme and as provided for in **clause F6** of Section F of the Contributors Scheme.

#### 29/3/06 9A MINIMUM COST OF LIVING ADJUSTMENT

- 9A.1 For the purposes of this **clause 9A**, the term "Minimum CPI Adjustment" means 90 percent of the percentage (if any) calculated by the Government Statistician by

which the annual all groups index number of the New Zealand Consumers Price Index for the December quarter of the calendar year immediately preceding that which includes the date for a cost of living adjustment to a pension, allowance or annuity pursuant to **clause 9** exceeds the index number determined by reference to the date of qualification applying to the relevant Beneficiary pursuant to the cost of living adjustment provisions in whichever of Sections A to E of the Contributors Scheme applies.

9A.2 If a cost of living adjustment made by the Board to any pension, allowance or annuity pursuant to **clause 9** results in a lower percentage of increase being applied to that pension, allowance or annuity than the Minimum CPI Adjustment then the Board shall further adjust that pension, allowance or annuity so that the aggregate adjustment made is equivalent to the Minimum CPI Adjustment.

9A.3 No Beneficiary will be entitled, pursuant to **clause 9A.2**, to any increased payment for any pension, allowance or annuity amount that was paid or is payable for any period before 1 July 2006.

#### 9AA **MINIMUM POST 2008 COST OF LIVING ADJUSTMENT**

24/3/09 9AA.1 For the purposes of this **clause 9AA**, where a pension, allowance or annuity is subject to an annual adjustment, the term "Minimum Post 2008 CPI Adjustment" means 100% of the percentage (if any) calculated by the Government Statistician by which the annual all groups index number of the New Zealand Consumers Price Index for the December quarter of the calendar year immediately preceding that which includes the date for a cost of living adjustment to a pension, allowance or annuity pursuant to clause 9 exceeds the index number of the New Zealand Consumers Price Index for the December quarter of 2007, or the index number relevant to the Beneficiary's date of qualification, if later.

9AA.2 The Minimum Post 2008 CPI Adjustment will apply to a pension, allowance or annuity relevant to any Beneficiary as at 1 April 2009, or the Beneficiary's date of qualification, if later.

9AA.3 If a cost of living adjustment made by the Board to any pension, allowance or annuity pursuant to **clause 9**, and after application of **clause 9A**, results in a lower pension, allowance or annuity than under **clause 9AA.2**, the Board shall further adjust that pension, allowance or annuity so that the resulting pension, allowance or annuity is equivalent to that under **clause 9AA.2**.

9AA.4 No Beneficiary will be entitled, pursuant to this **clause 9AA**, to any increased payment for any pension, allowance or annuity amount that was paid or is payable for any period before 2 April 2009.

29/3/06 **9B MINIMUM SPOUSAL ANNUITY**

9B.1 For the purposes of this **clause 9B**, the term "Tax-Adjusted Spousal Annuity" means any annuity which is paid or becomes payable from this Scheme pursuant to **clause 4.2** to the surviving spouse or widow of a deceased contributor who was, as at 31 March 1990, a Beneficiary in receipt of an annuity from this Scheme.

9B.2 Notwithstanding the provisions of the Contributors Scheme governing the annuity and other Benefit entitlements of a deceased contributor's surviving spouse or widow, the Board shall adjust the amount of each Tax-Adjusted Spousal Annuity if and to the extent necessary to ensure that the amount of the Tax-Adjusted Spousal Annuity is not less than that of the annuity to which the surviving spouse or widow would have been entitled if the relevant contributor had died on 31 March 1990.

9B.3 No Beneficiary will be entitled, pursuant to **clause 9B.2**, to any increased payment for any pension, allowance or annuity amount that was paid or is payable for any period before 1 July 2006.

## PART VI

### TRUSTEE PROVISIONS

#### 10 TRUSTEES - APPOINTMENT AND REMOVAL

30/3/93 10.1 The Board is the trustee of this Scheme pursuant to section 20(1)(a) of the Act and  
20/10/16 the 'manager' of the Scheme for the purposes of the FMC Act.

10.2 The members of the Board hold office in accordance with Part II of the Act.

10.3 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.

30/3/93 **11 POWERS OF BOARD**

20/10/16 11.1 The Board may give guarantees undertakings and (subject to section 135(1)(f) of the FMC Act) indemnities and incur all such obligations relating to this Scheme as the Board in its discretion thinks fit.

11.2 The Board may borrow money for the purposes of -

11.2.1 making any investment; or

11.2.2 paying any Benefit; or

11.2.3 meeting any liability (as defined in the Act); or

11.2.4 the management (as defined in the Act) of this Scheme.

11.3 The Board may enter into any insurance or reinsurance contract relating to the payment pursuant to this Scheme of any Benefit contingent on the death or survival of human life.

20/10/16 11.4 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 and the Act. In particular the Board is responsible for the following functions:

11.4.1 offering the interests in the Scheme;

11.4.2 issuing the interests in the Scheme;

11.4.3 managing the Scheme's Property and investments; and

11.4.4 administering the Scheme.

## 12 POWER OF AMENDMENT

20/10/16 12.1 The Board may amend this Trust Deed from time to time

**PROVIDED THAT** no amendment shall have any effect unless the provisions of section 139 of the FMC Act are complied with.

12.2 **[RESERVED]**

## 13 AMENDMENTS IN RESPECT OF FUTURE TAX CHANGES

30/3/93 13.1 Notwithstanding the other provisions of this Scheme the Board may at any future time  
20/10/16 vary 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 13** shall be made until:

13.1.1 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 and of the Contributors Scheme secure and the FMA has confirmed in writing to the Board that it agrees with that opinion; and

13.1.2 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 of this Scheme and of the Contributors Scheme.

#### **14 DECISIONS OF BOARD UNDER THE CONTRIBUTORS SCHEME TO BE IMPLEMENTED**

The Board shall, as trustee of this Scheme, give effect to any decision of the Board as trustee of the Contributors Scheme and to any provision of the Contributors Scheme that requires action to be taken or not to be taken under this Scheme.

#### **15 LIMITATION OF LIABILITY**

15.1 No member of the Board shall be liable to the Board or any other person, nor shall the Board be liable, for any losses:

15.1.1 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

15.1.2 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

15.1.3 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 15.2 Without limiting **clause 15.1** of this Deed, 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.

15.3 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 15 shall be limited to the assets of this Scheme.

- 30/3/93 15.4 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 15.5 The Board and the members of the Board may be indemnified for 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 VII

### INVESTMENT PROVISIONS

#### 16 INVESTMENT

- 20/10/16 16.1 The Property of this Scheme may be invested only in the global asset trust (as defined in the Act), whether by way of debt securities (as defined in the Act) or managed investment products (as defined in the Act), or otherwise.
- 16.2 Nothing in **clause 16.1** 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.
- 20/10/16 16.3 None of the provisions of the Trustee Act 1956 relating to the investment of trust funds shall apply in respect of this Deed or the investment of the Property of this Scheme.

#### 17 APPOINTMENT OF ADMINISTRATION AND/OR INVESTMENT MANAGERS

- 20/10/16 17.1 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:
- 17.1.1 the administration of this Scheme; or
- 30/3/93 17.1.2 the investment of the trust fund (as defined in the Act) of this Scheme; or
- 17.1.3 both.

- 20/10/16 17.2 All fees and expenses payable to any such manager or managers shall be paid out of the trust fund of this Scheme.
- 30/3/93 17.3 In appointing any person under clause 17.1, the Board shall take all reasonable steps to:  
20/10/16
- 17.3.1 ensure those functions are performed in the same manner and are subject to the same duties and restrictions, as if the Board were performing them; and
- 17.3.2 monitor the performance of those functions.
- 30/3/93 17.4 Any right of indemnification given to an investment manager appointed under clause 17.1 shall only be related to the proper performance of the appointee's duties in accordance with section 136(2) of the FMC Act.

## PART VIII

### MISCELLANEOUS

30/3/93 **18 DISCRETIONARY TRANSFERS**

- 30/3/93 18.1 The Board may:  
20/10/16
- 18.1.1 Permit any member or other Beneficiary to elect to transfer from this Scheme to any other Superannuation Scheme upon such terms and conditions as the Board determines; and
- 18.1.2 Provide for the transfer of Property from this Scheme to the Superannuation Scheme to which the member or other Beneficiary transfers.
- 20/10/16 18.2 Where any transfer is permitted under **clause 18.1** Property shall be transferred from this Scheme to the other Superannuation Scheme in accordance with the following:
- 18.2.1 the Property to be transferred shall represent the share of the Property of this Scheme that is attributable to the transferring member or other Beneficiary plus a corresponding share of any dedicated reserves (as defined in the Act) of this Scheme; and
- 18.2.2 for the purpose of calculating the Property of this Scheme, no account shall be taken of any Property that represents unclaimed money (as defined in the Act); and



18.2.3 the transfer of Property shall be fair and equitable to all members and other beneficiaries of the existing schemes (as defined in the Act) affected, after taking into account the interests of any corporate contributor (as defined in the Act) to those schemes and the Crown as guarantor of any liabilities of those schemes and having regard to the matters referred to in clause 2(5) of the Fifth Schedule to the Act as if there had been a change in respect of transfer values.

18.3 Nothing in this **clause 18** shall confer upon any person any right to require the Board to provide for transfers from this Scheme to any other Superannuation Scheme under **clause 18.1**.

30/3/93  
20/10/16 18.4 Without limiting any existing rights of any members or other Beneficiaries or the considerations other than the financial position that may be taken into account, any person (including the Board and the Crown) considering, determining, or directing any matter in respect of the payment of any amount on transfer of a member or other Beneficiary to another Superannuation Scheme ("transfer values") shall take into account the combined financial position of this Scheme and the Contributors Scheme as if **clause 19.2.1.1** to **clause 19.2.1.5** (inclusive) applied.

30/3/93 18.5 Following the payment of any transfer values determined in accordance with **clause 18.4**, there shall be a transfer between the Contributors Scheme and this Scheme of such Property as is necessary to ensure that the resulting financial position of each scheme is fair and equitable to the members and other Beneficiaries of this Scheme, the corporate contributors, and the Crown as guarantor.

30/3/93 18.6 Any person (including the Board and the Crown) considering, determining, or directing any matter in respect of transfer values in terms of **clause 18.4** shall have as an objective the need to ensure that members and other Beneficiaries of this Scheme and the Contributors Scheme are not in any way -

18.6.1 Affected by the division resulting in those schemes; or

18.6.2 Disadvantaged by the implementation of any settlement of claims in relation to any NPF group company.

## 19 CHANGES IN BENEFITS

19.1 For the purpose of this **clause 19** "benefit" shall have the same meaning as in the Act and shall not include any reduction or potential reduction in a contribution rate or any reversion of Property on a winding up of the Contributors Scheme or this Scheme.

20/10/16

- 19.2 In making any improvements or other changes in benefits (including increases to benefits in this Scheme or the Contributors Scheme or both but not including transfers from this Scheme to other Superannuation Schemes) without limiting considerations other than the financial position that may be taken into account, any person (including the Board and the Crown) shall either:
- 19.2.1 take into account the combined financial position of the Contributors Scheme and this Scheme as if -
- 19.2.1.1 those schemes had not been divided; and
- 19.2.1.2 no settlement of claims in relation to any NPF group company (as defined in the Act) had been entered into by the Board; and
- 19.2.1.3 all Property and liabilities of the Board that existed immediately before 1 April 1991 in relation to an NPF group company had been allocated among the existing schemes by the proposal (as defined in the Act) in a fair and equitable manner; and
- 19.2.1.4 the investment of the Property of those schemes had been appropriate to their liabilities; and
- 19.2.1.5 all powers, directions, actions, and obligations had been exercised, made, taken, or complied with as if **clause 19.2.1.1 to clause 19.2.1.4** (inclusive) had applied; or
- 19.2.2 take into account only the financial position of the Contributors Scheme.
- 19.3 In the event that a change in benefits is implemented under **clause 19.2.1** there shall be a transfer between the Contributors Scheme and this Scheme of such Property as is necessary to ensure that the resulting financial position of each scheme is fair and equitable to the members and other Beneficiaries of the schemes, the Contributing Employers, and the Crown as guarantor.
- 19.4 In the event that a change in benefits under this Scheme is implemented under **clause 19.2.2** there shall be a transfer from the Contributors Scheme to this Scheme of Property having a market value equal to the consequential increase in the actuarial liability of this Scheme.
- 19.5 In considering, determining, or directing a change in benefits in terms of **clause 19.2** any person (including the Board and the Crown) -

19.5.1 shall, in deciding which of **clause 19.2.1** or **clause 19.2.2** to apply, take into account the position which is most favourable to members and other Beneficiaries of the Contributors Scheme and this Scheme; and

19.5.2 shall regard as the paramount objective the need to ensure that members and other Beneficiaries of this Scheme are not in any way disadvantaged by the implementation of any settlement of claims in relation to any NPF group company; and

20/10/16 19.5.3 shall have regard to the practice of not improving benefits from a Superannuation Scheme unless there is an actuarial surplus in that scheme.

## **20 PROHIBITION OF ASSIGNMENT, BORROWING AND PAYMENT OF DEBTS**

30/3/93 20.1 No money payable from this Scheme to any person shall be in any way assigned, charged, or passed by operation of law to any other person.

20.2 No contributor shall borrow against the security of any Benefits payable from this Scheme.

20.3 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 21 BANKRUPTCY**

No money payable out of this Scheme to any person shall pass to any other person by operation of law. The Board may forfeit to this Scheme the Benefits of a contributor or other Beneficiary, in the event of the bankruptcy of the contributor or the other Beneficiary and the Board may in its discretion allocate the forfeited Benefits towards the support of the contributor or Beneficiary or the contributor's dependants.

## **22 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.

## **23 PAYMENTS IN RESPECT OF MINORS**

23.1 Where any Benefit is payable 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 applied on behalf of the minor.

- 23.2 Any receipt given by a minor or other person for money paid under **clause 23.1** shall be a good discharge to the Board.

## **24 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.

## **25 IMPLIED TERMS OR CONDITIONS**

Every term or condition of a defined benefit scheme (as defined in the Act) that was provided in the National Provident Fund Act 1950 and is not expressly provided in the relevant section of Sections A to E of the Contributors Scheme or in this Scheme shall be incorporated in that section of the Contributors Scheme or in this Scheme as a term or condition of the relevant section of the Contributors Scheme or of this Scheme.

## **26 ACTUARY**

30/3/93  
20/10/16 The Board shall appoint an Actuary for this Scheme and shall ensure that the financial 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.

## **27 INFORMATION TO MEMBERS**

30/3/93  
20/10/16

- 27.1 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.

- 27.2 The Board shall comply with the reporting requirements of the FMC Act.

## **28 WINDING UP**

- 28.1 Subject to **clause 28.2** 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.

- 28.2 This Scheme shall not be wound up unless the Contributors Scheme is being wound up at the same time.

30/3/93

28.3 Upon a winding up of this Scheme, the Crown shall pay into this Scheme the amount necessary to increase the market value of the Property of this Scheme to the value it would have had if:

28.3.1 property had been allocated to this Scheme by the proposal in accordance with clause 4(10) of the Second Schedule to the Act but without the deduction of the amount of \$230 million (or such other amount as may have been agreed between the Crown and the Board for the purposes of that subclause); and

28.3.2 the investment of the Property of the Scheme had been appropriate to its liabilities; and

28.3.3 **clause 19.2.1.2** and **clause 19.2.1.3** applied, -

such assessment to be made by an actuary (as defined in the Act) appointed by the Board and approved by the Crown.

20/10/16 28.4 **[RESERVED]**

28.5 The Board shall advise the FMA of its intention to wind up the Scheme by providing it with a copy of its resolution to do so within 10 working days in accordance with section 212 of the FMC Act.

## **29 DISTRIBUTION OF ASSETS ATTRIBUTABLE TO SECTIONS A, B, D AND E OF THE CONTRIBUTORS SCHEME IN EVENT OF WINDING UP**

30/3/93 29.1 In the event of this Scheme being wound up the assets of this Scheme attributable to Sections A, B, D and E of the Contributors Scheme shall be realised and the proceeds thereof (less the reasonable costs of the winding up) allocated pro rata between the members and Beneficiaries of each of those sections on a basis that takes account of their interests and period of membership in the relevant section of the Contributors Scheme and in this Scheme.

29.2 In this **clause 29** the term "member" for the purpose of the allocation of assets attributable to Section D of the Contributors Scheme shall have the same meaning as in Section D of the Contributors Scheme.

20/10/16 29.3 Any Benefit payable to members and Beneficiaries under **clause 29.1** on winding up of this Scheme shall be paid to those persons as a cash lump sum;

**PROVIDED THAT** in respect of any member who has attained age 50 years when this Scheme is wound up, that part of the Benefit arising from the Contributing Employer's contributions shall be paid in the form of a pension purchased from a life insurance company or another Superannuation Scheme of which the Board is trustee that is able to provide such pensions, and where such pension does not exceed \$520 per year, it may be taken as a lump sum; and

**PROVIDED FURTHER THAT** in relation to Sections B, D and E of the Contributors Scheme, any pension, allowance or annuity being paid or becoming payable shall be purchased from a life insurance company or another Superannuation Scheme of which the Board is trustee that is able to provide such benefits.

### **30 DISTRIBUTION OF ASSETS ATTRIBUTABLE TO SECTION C OF THE CONTRIBUTORS SCHEME IN EVENT OF WINDING UP**

30.1 Subject to **clause 30.3** and **clause 30.4** in the event of this Scheme being wound up, the assets of this Scheme attributable to Section C of the Contributors Scheme shall be realised and the proceeds thereof (less the reasonable costs of the winding up) allocated pro rata between the remaining contributors and Beneficiaries of Section C on a basis determined by the Board that takes account of the contributors' and Beneficiaries' respective interests which shall be calculated having regard to the following:

30.1.1 in the case of contributors (who are not Beneficiaries), the present value of the contributor's deferred pension as at the termination date;

30.1.2 in the case of Beneficiaries, the present value of the Beneficiary's Benefit as at the termination date.

30.2 Subject to **clause 30.3** on winding up of this Scheme, the Board may pay such additional Benefits to contributors and Beneficiaries of Section C as it thinks fit.

20/10/16 30.3 Benefits payable on winding up shall at the election of the contributor (or Beneficiary, as the case may be):

30.3.1 be paid in the form of a lump sum;

30.3.2 **[RESERVED]**

**PROVIDED THAT** any contributor or Beneficiary who has attained age 50 years when this Scheme is wound up shall take that part of his or her Benefit arising from the employer's contributions as either:

30.3.3 a pension for the rest of that person's life calculated on the basis of annuity tables supplied by the Actuary from time to time;

30.3.4 a cash lump sum, if the annuity does not exceed \$520 per annum.

30.4 Notwithstanding any other provisions of Section C of the Contributors Scheme or of this Deed, where the winding up of this Scheme could reduce or adversely affect any contributor's or Beneficiary's interests in Section C of the Contributors Scheme, the contributor or Beneficiary so affected may elect to remain in Section C of the Contributors Scheme and Section C of the Contributors Scheme shall continue for any such contributor or Beneficiary as if Section C of the Contributors Scheme had not been wound up.

### **31 FURTHER PROVISIONS ON WINDING UP**

20/10/16 31.1 On the winding up of this Scheme no part of the assets of this Scheme shall revert to:

31.1.1 any person other than as provided for in **clause 29** and **clause 30** without the written consent of the FMA; or

31.1.2 any of the contributing employers.

20/10/16 31.2 The Board shall advise the FMA, of its intention to wind up the 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 32 REGISTER**

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

32.2 Such register may be in electronic form and compiled by a delegate of the Board in a manner approved by the Board.

32.3 The following details shall be entered on the register:

32.3.1 the names and addresses of each contributor or Beneficiary;

32.3.2 the date on which the contributor or Beneficiary became a contributor or Beneficiary of the Scheme; and

32.3.3 such other information as the Board requires or as is required by the Act or the FMC Act.

32.4 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.

32.5 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 **33 ACCOUNTING RECORDS**

33.1 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.

33.2 In keeping or causing to be kept the accounting records under clause 33.1 the provisions of Part 7 of the FMC Act must be complied with.

20/10/16 **34 FINANCIAL STATEMENTS**

34.1 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 **35 AUDIT**

35.1 The Board shall ensure that:

35.1.1 the Scheme's financial statements are audited and reported on by the Auditor in accordance with the requirements of the FMC Act; and

35.1.2 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 **36 THE AUDITOR**

36.1 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 **37 INTENTION TO BE LEGALLY BINDING**

It is intended that this deed be legally enforceable as between the Board, the members and the other Beneficiaries in receipt of a benefit, under this Scheme or the Contributors Scheme.

