

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

**WA CONSTRUCTION INDUSTRY
REDUNDANCY FUND LIMITED**

DEED AND REGULATIONS

(Composite Deed & Regulations - incorporating amendments in Deeds 1, 2, 3,
4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22
and Director's Resolution 21/6/90 and 3/8/90)

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Regulation Number

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THIS DEED OF TRUST was initially made the 30th day of June 1989
BETWEEN:

**MASTER BUILDERS' ASSOCIATION OF WESTERN AUSTRALIA (Union of
Employers) Perth** of 35 Havelock Street West Perth (herein called "MBA");

and

AUSTRALIAN FEDERATION OF CONSTRUCTION CONTRACTORS (WESTERN
AUSTRALIAN BRANCH) (succeeded by **CONSTRUCTION CONTRACTORS
ASSOCIATION OF WESTERN AUSTRALIA**) of C% Multiplex, level 2 "The Old Swan
Brewery", 173 Mounts Bay Road, Perth;

and

**MASTER PLUMBERS AND MECHANICAL SERVICES ASSOCIATION OF WESTERN
AUSTRALIA (UNION OF EMPLOYERS)** (now called **The MASTER PLUMBERS AND
GASFITTERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF
EMPLOYERS)**) of 106 Caledonian Avenue, Maylands;

(herein collectively called the "**Employer Associations**") of the first part

AND

BUILDING TRADES ASSOCIATION OF UNIONS OF WESTERN AUSTRALIA of 82
Royal Street, East Perth (herein called "BTA");

and

The **AUSTRALIAN BUILDERS' LABOURERS' FEDERATED UNION OF WORKERS
(WESTERN AUSTRALIAN BRANCH)** first succeeded by the **WESTERN AUSTRALIAN
BUILDER'S LABOURERS, PAINTERS AND PLASTERERS UNION OF WORKERS** and
then succeeded by **THE CONSTRUCTION, FORESTRY, MINING AND ENERGY
WORKERS UNION OF WORKERS WESTERN AUSTRALIA** of 82 Royal Street, East
Perth;

and

The **OPERATIVE PLASTERERS AND PLASTER WORKERS FEDERATION OF
AUSTRALIA (INDUSTRIAL UNION OF WORKERS) WESTERN AUSTRALIAN
BRANCH** first succeeded by the **WESTERN AUSTRALIAN BUILDER'S LABOURERS,
PAINTERS AND PLASTERERS UNION OF WORKERS** and then succeeded by **THE
CONSTRUCTION, FORESTRY, MINING AND ENERGY WORKERS UNION OF
WORKERS, WESTERN AUSTRALIA** of 82 Royal Street, East Perth;

and

BUILDING WORKERS INDUSTRIAL UNION OF AUSTRALIA (WESTERN AUSTRALIAN BRANCH) succeeded by **THE CONSTRUCTION, FORESTRY, MINING AND ENERGY WORKERS UNION OF WORKERS, WESTERN AUSTRALIA** of 82 Royal Street, East Perth;

The CONSTRUCTION, MINING AND ENERGY WORKERS UNION OF AUSTRALIA first succeeded by CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS' UNION (WESTERN AUSTRALIAN BRANCH) UNION OF WORKERS and then succeeded by **THE CONSTRUCTION, FORESTRY, MINING AND ENERGY WORKERS UNION OF AUSTRALIA, CONSTRUCTION AND GENERAL DIVISION, WESTERN AUSTRALIAN BRANCH** of 82 Royal Street, East Perth;

The OPERATIVE PAINTERS & DECORATORS UNION OF AUSTRALIA (WESTERN AUSTRALIAN BRANCH) UNION OF WORKERS first succeeded by the WESTERN AUSTRALIAN BUILDER'S LABOURERS, PAINTERS AND PLASTERERS UNION OF WORKERS and then succeeded by **THE CONSTRUCTION, FORESTRY, MINING AND ENERGY WORKERS UNION OF WORKERS, WESTERN AUSTRALIA** of 82 Royal Street, East Perth;

and

[Deletion by Deed of Amendment No.21];

(herein collectively referred to as "**the Participating Unions**") of the second part,

AND

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND LTD the registered office of which was previously situate at 13th Floor, Mount Newman House, 200 St George's Terrace, Perth and is now situate at Unit 2, 1st Floor, 44 Parliament Place, West Perth (herein called "the Trustee") of the third part.

AND

THE PARTICIPATING EMPLOYERS (as hereinafter defined) of the fourth part.

AND

The PARTICIPATING EMPLOYEES (as hereinafter defined) of the fifth part.

AND

THOSE INDUSTRIAL ASSOCIATIONS OR ORGANISATIONS described in Schedule D of this Deed (as hereinafter defined as "Participating Organisations") that are parties to this Deed pursuant to sub-clause 2.2 of this Deed.

[This composite document incorporates subsequent amendments to the original Deed and Regulations]

WHEREAS:

- A. The Employer Associations and the Unions, on 30 June 1989, established a redundancy payment scheme, under which Participating Employers are to contribute a specific amount per worker per week to the scheme, to provide benefits upon termination of employment of workers, who are engaged in works in the commercial/industrial/civil/engineering sectors of the building industry, to be known as the WA Construction Industry Redundancy Fund.
[Deed No. 3,18 & 21]
- AB. The Trustee has amended this Deed and the Fund Regulations, from time to time, in accordance with the provisions of this Deed.
[Deed 13]
- ABB. The Trustee has determined that from 29 June 2002 the redundancy payment scheme shall be extended to permit greater discretion in Participating Employers contributing to the Fund for Participating Employees engaged in works in the commercial/industrial/civil/engineering sectors.
[Deed No. 14 (18/12/97) and 18]
- B. Participating Employers propose to make contributions to the Fund from time to time in accordance with the provisions of this Deed (and regulations made hereunder).
- C. The Trustee has agreed to accept contributions from Participating Employers and to hold the Fund upon the trusts and subject to the terms and conditions hereinafter contained.
- D. The parties have agreed to enter into this Deed on the understanding that the Fund will be a trust governed by Division 6 of Part III of the Income Tax Assessment Act 1936.
[Deed No 18]

INTERPRETATION

1. The headings to clauses in this instrument shall not affect its construction. Except to the extent that such interpretation shall be excluded by or be repugnant to the context, in this instrument:-
- 1.1A The expression "Amalgamated Fund" means that part of the Fund to which, subsequent to 29 June 2002:
[Deed No.17] (a) Redundancy Pay Contributions are to be credited in accordance with this Deed and to the Fund Regulations; and
(b) to which amounts previously contributed to the Fund (as contributions to the General Fund or Limited Fund) have been credited.

- 1.1 "Application for Employee Participation" means an agreement between the Trustee and a Participating Employee substantially in the form set out in Schedule E1 of the Fund Regulations.
[Deed No. 13,15, & 18]
- 1.2 [No current clause]
[Deed No 18]
- 1.3 "Building Project" means any commercial/industrial sector building project or civil/engineering sector project:
[Deed No. 14 & 18] (a) within the State on which a Participating Employee will provide his/her labour; or
(b) within any other part of the Commonwealth and on which a Particular Participating Employee provides or is reasonably anticipated to provide his/her labour for not more than 3 successive months;
and, without limiting the generality thereof and by way of clarification only, includes any project comprising a unit or cluster development project of more than 5 separate residential living units but does not include any project comprising a unit or cluster development project of 5 or less separate residential living units and does not include any mine site from the time the civil/engineering sector project thereon is commissioned for operation.
- 1.4 The expression "BTA" means the corporation herein so described and that corporation's successors.
- 1.5 [No current clause]
[Deed No 12]
- 1.6 The expression "the Commonwealth" means the Commonwealth of Australia.
- 1.7 "Contribution Agreement" means an agreement between the Trustee and a Participating Employer substantially in the form set out in Schedule E2 of the Fund Regulations and includes any variation to that agreement notified by the relevant Participating Employer in a Contribution Return or other written variation.
[Deed No. 13, 15 & 18]
- 1.8 The expression "Day of Distribution" means the date upon which the Fund is determined in accordance with subclause 13.2 of this Deed.

1.9 The expression "Distributable Amount" means the Income of the Fund together with any accretion to the Fund on income or capital account (save that arising by reason of any revaluation of an asset) but excluding all Redundancy Pay Contributions or other sum paid to the Trustee to supplement Redundancy Pay Contributions.

1.10 The expression "Financial Year" means any period of twelve (12) months which commences on the 1st day of July in any year and ends on the next succeeding 30th day of June and includes unless the context otherwise requires the period commencing upon the date of this Deed and ending on the 30th day of June 2004 and the period commencing on the 1st day of July immediately preceding the Day of Distribution and ending on that day or such other twelve (12) month accounting period as applies to the Fund for taxation purposes under an offer approved by the Commissioner of Taxation under the provisions of the Income Tax Assessment Act 1936.

1.11 The expression "the Fund" and "WA Construction Industry Redundancy Fund" mean, subsequent to 29 June 2002, the single fund thereafter known as the Amalgamated Fund (being an amalgamation of the sub-funds previously known as the General Fund and the Limited Fund), and shall comprise:

- (1) Redundancy Pay Contributions paid to and accepted by the Trustee or transferred from the General Fund or the Limited Fund;
- (2) any sums deposited with the Trustee by any person from time to time upon the trusts of this Deed to supplement Redundancy Pay Contributions;
- (3) all investments into which the sum and cash referred to in paragraph (1) and (2) may from time to time be invested.
- (4) the proceeds of the sale, redemption or repayment of any such investments;
- (5) all investments representing the re-investment in accordance with the provisions hereinafter contained in any property forming part of the Fund;
- (6) the proceeds of any borrowing in pursuance of Clause 6 hereof;
- (7) any net income which is not distributed;
- (8) all investments and property into which the above may be converted or which by the exercise of any of the powers herein contained may accrue to or otherwise become subject to the trusts hereof.

1.12 The expression "Fund Regulations" means, as the context requires, the regulations governing either the Amalgamated Fund set out in Schedule E hereof or other regulations adopted by the Trustee (by amendment of existing regulations or otherwise) from time to time in accordance with this Deed.

1.12A [No current clause]
[Deed
No.
13/18]

1.12B The expression "General Fund" and "Limited Fund" means the sub-funds of the Fund provided for in the Deed and the Fund Regulations prior to 29 June 2002.
[Deed
No.
13/18]

1.12C [No current clause]
[Deed
No.
13/18]

1.13 The expression "Income of the Fund" means that amount (excluding Redundancy Pay Contributions) determined to be income and so shown in the audited accounts of the Fund provided for in subclause 12.2 and 13.3 of this Deed.

1.13AA The expression "industrial award/agreement" means any industrial award or agreement providing in specific or general terms for Redundancy Pay Contributions (or like contributions) to be paid into the Fund (or any other like fund) to provide for payment of benefits to a worker in circumstances contemplated by this Deed.
[Deed
No.14
& 18]

1.13A [No current clause]
[Deed
No.13
& 18]

1.13B [No current clause]
[Deed
No.13
& 18]

1.13C [No current clause]
[Deed
No.13
18]

1.13D The expression "Maintenance Site" means a site upon which maintenance or refurbishment is being undertaken subsequent to the practical completion of a Building Project.
[Deed
No.14
& 18]

1.14 The expression "MBA" means the corporation herein so described and that corporation's successors.

1.16 The expression "Notice of Agreement to be Bound" means an agreement between the
[Deed Trustee and a Participating Organisation substantially in the form set out in Schedule C
No. 11, of this Deed.
14, 15
& 18]

1.16A 1.16A The expression "Paid Leave" means any period or periods of leave during
[Deeds which the Participating Employee is entitled (or would be entitled but for sickness or
No.19 injury) to be paid his/her salary or wages, as a Participating Employee of the
and 22] Participating Employer Member who most recently nominated that Participating
Employee for Redundancy Pay Contributions (including any period a Participating
Employee would otherwise have been engaged in work or activity on a nominated
Building Project, Maintenance Site or other site or under a nominated industrial
award/agreement but for being on holiday leave, long service leave, sick leave,
bereavement leave, family and parental leave, leave on workers' compensation or
absence from work for which the Participating Employee is or is subsequently paid
under any policy of insurance or paid damages in replacement or compensation for lost
salary or wages).

1.17 The expression "Participating Employee" means, in relation to a Participating Employer,
any natural person who, pursuant to a contract, agreement or arrangement, provides
his/her labour for that Participating Employer:

- [Deed
No.6,
12,14
& 18]
- (a) in work or activity which is within the coverage of any Commonwealth or State
Building Trades Award:
- (i) on a Building Project;
 - (ii) on a Maintenance Site;
 - (iii) on any other site upon which work directly related to a Building Project or
a Maintenance Site is being undertaken; or
 - (iv) under an industrial award/agreement;

in whatever capacity (including as a sub-contractor, manager, administrator,
supervisor or trainee); or

- (b) in work or activity which is within the coverage of any industrial
award/agreement (that is specifically nominated, from time to time, by a
Participating Employer Member in a Contribution Agreement) and associated
with the commercial/industrial/civil/engineering sectors of the building industry,
in whatever capacity (including as a sub-contractor, manager, administrator,
supervisor, apprentice if provided for in the industrial award/agreement, or
trainee); or
- (c) as an employee of a Participating Organisation.

1.18 The expression "Participating Employer" means a person for whom a Participating Employee provides his/her labour.

[Deed
No.12
& 18]

1.19 The expression "Participating Organisation" means:

(a) the Unions and Employer Associations which are parties to this Deed (described in pages 1 and 2 of this Deed); and

(b) any other industrial association, organization or union, representing Participating Employees or Participating Employers, which seeks participation in the Redundancy Pay Scheme pursuant to sub-clause 2.2.

[Deed
No.14
& 18]

1.20 The words " party " and " parties " mean, respectively, a party or parties to or those who subsequently become bound as if signatories to this instrument in accordance with sub-clauses 2.1, 2.2 or 2.3.

[Deed
No. 11
& 18]

1.21 The word " person " includes a corporation.

[Deed
No.18]

1.22 "Redundancy Pay Contribution" means a contribution to be made to the Fund by a Participating Employer Member hereunder;

[Deed
No. 12
& 18]

1.23 "Redundancy Pay Scheme" means the amalgamated redundancy pay scheme provided for in this Deed and the Fund Regulations.

[Deed
No.13
& 18]

1.24 "Redundancy Payment" means the payment to be made to a Participating Employee Member by the Trustee, pursuant to the Fund Regulations.

[Deed
No 12]

1.25 The expression "the State" means the State of Western Australia.

- 1.26 The expression "the Trustee" means the corporation herein so described and that corporation's successors and assigns.
- 1.26A
[Deed
20] The expression "WA Construction Industry Redundancy Fund" has the meaning ascribed in clause 1.11.
- 1.26B
[Deed
20] "WA Construction Industry Redundancy (No.2) Fund" means the Redundancy Fund established by a Deed of Settlement made by WA Construction Industry Redundancy Fund Ltd (ACN 009 404 273) dated 9 March 2004.
- 1.27 A word importing the singular number or plural number includes the plural and singular respectively.
- 1.28 A word importing any gender includes every other gender.
- 1.29 A reference to this instrument includes a reference to any schedule hereto.
- 1.30 A reference to an Act or Code, Regulation or By-law or to any section, sub-section or paragraph thereof includes any amendment or re-enactment thereof for the time being in force.
- 1.30A
[Deed
No. 14] Where under this instrument the day or last day for doing an act or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is a Saturday, Sunday or gazetted public holiday, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served shall be deemed to be the next day which is not a Saturday, Sunday or gazetted public holiday.
- 1.31 Where under this instrument any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29th, 30th or 31st day of a month which does not contain such a date, then references thereto shall be construed as references to the last day of that month.

MEMBERSHIP OF THE FUND

2.1 A Participating Employer becomes a member of the Fund by:

[Deed

- No.12,1 (a) lodging a duly signed Contribution Agreement with the Trustee; and
4,15 & (b) providing to the Trustee all of the information referred to in the Contribution
18] Agreement or other information (of like nature) requested by the Trustee;

and shall, as a Participating Employer Member, be bound by and comply with the terms and conditions of this Deed and the Fund Regulations, that are referred to in the Contribution Agreement or Contribution Agreements so lodged by the Participating Employer, as if that Participating Employer was a signatory to this Deed.

(2.1A) [No current clause]

[Deed

No.2,

11,12,

13,15

&18]

(2.1B) [No current clause]

[Deed

No.13,1

5&18]

(2.1C) A Participating Employer Member may resign from membership of the Fund by serving upon the Trustee a notice of resignation and the Participating Employer Member shall, upon acceptance of that resignation by the Trustee, be deemed to have ceased to be a Participating Employer Member of the Fund at the later of:

[Deed
No.13,1
5&18]

(a) the expiration of the week (Saturday to Friday) of service of that notice upon the Trustee; or

(b) the expiration of any period for which Redundancy Pay Contributions are payable by reference to a period for contribution previously nominated by the Participating Employer;

and subsequent to that expiration date the Participating Employer will no longer be bound by or obliged to comply with the terms of the Fund Regulations and this Deed but shall nevertheless remain bound to comply therewith and to make Redundancy Pay Contributions up to that expiration date (including Redundancy Pay Contributions for the full week in which a relevant resignation expiration of a resignation notice occurs) together with interest thereon until the date of payment and legal costs of recovery provided for in the Fund Regulations (which shall continue to apply notwithstanding resignation from membership of the Fund).

2.2 An industrial association, organization or union representing Participating Employees or
[Deed Participating Employers, not being a party at the date of this Deed, shall become a party
No.11,1 to this Deed, with prior approval of a resolution of the Trustee, by:

- 4&18] (1) lodging a duly signed Notice of Agreement to be Bound (Schedule C) with the Trustee; and
(2) providing to the Trustee all of the information referred to in the Notice of Agreement to be Bound or other information (of like nature) requested by the Trustee;

and shall be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time) as if a signatory hereto and thereafter be relevantly included within the meaning of the expression Participating Organisation in addition to or as a successor (if so nominated) to a Participating Organisation which was party at the original date of this Deed.

2.2A On 29 June 2002 each then Participating Employer Member of the General Fund and the
[Deed Limited Fund and each then Participating Employee or Participating Employee Member
No.13, of the General Fund and the Limited Fund shall be respectively deemed to become and
18&19] continue (subject to sub-clause (2.1C) as parties to this Deed as a Participating Employer Member, Participating Employee or Participating Employee Member, respectively of the Amalgamated Fund, bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time), referred to in the Contribution Agreement or Application for Employee Participation respectively lodged by that person, as if that person was a signatory to this Deed.

2.3 A Participating Employee or former Participating Employee becomes a member of the
[Deed Fund by:

- No.12,1 (a) lodging a duly signed Application for Employee Participation with the Trustee;
5&18] and
(b) providing to the Trustee all of the information referred to in the Application for Employee Participation or other information (of like nature) requested by the Trustee;

and shall, as a Participating Employee Member, be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time), that are referred to in the Application for Employee Participation so lodged by that person, as if that person was a signatory to this Deed.

2.3A [No current clause]
[Deed
No.13]

2.4 A Participating Employer Member shall:
[Deed (1) make Redundancy Pay Contributions to the Trustee in compliance with the
No 12 nominations made by the Participating Employer under the Fund Regulations;
& 18] (2) comply with all of the terms and conditions of this Deed for the observance
and performance of a Participating Employer Member;
and the Participating Employer Member's obligations under this Deed and the Fund
Regulations shall apply in priority over and notwithstanding any contrary or inconsistent
agreement or arrangements made by a Participating Employer with or negotiated by any
Participating Employee or Participating Organisation.

2.4A [No current clause]
[Deed
No.12]

2.5 All Redundancy Pay Contributions made by a Participating Employer Member shall be
[Deed accretions to the capital of the Fund.
No.12
& 18]

2.5A If a Participating Employee has an entitlement to any payment for redundancy:
[Deed (a) direct from a present or past Participating Employer; or
No 18] (b) from any other fund to which a present or past Participating Employer
contributed;
the Trustee may accept into the Fund payment from that Participating Employer or the
trustee/administrator of that other fund an amount representing the entire sum of that
entitlement, in accordance with any arrangement which the Trustee may enter into with
that Participating Employer or trustee/administrator for the transfer into the Fund of the
entire sum of that entitlement. The amount so accepted by the Trustee into the Fund
shall be an accretion to the capital of the Fund to be held upon trust and to be
maintained, notwithstanding subclause 4.5, as if a Redundancy Pay Contribution
referrable to the Participating Employee subject to the provisions of this Deed.

DECLARATION OF TRUST

3. The parties to this Deed **HEREBY JOINTLY AND SEVERALLY DECLARE** that the
Trustee shall and the Trustee **HEREBY DECLARES** that it will henceforth stand
possessed of the Fund and the income thereof upon the trusts and subject to terms and
conditions of this Deed.

APPLICATION OF THE TRUST FUND

4.1 Subject to the provisions of this Deed the Fund is established and shall be maintained exclusively for the making of Redundancy Payments to Participating Employee Members in accordance with this Deed and the Fund Regulations.
[Deed No.2, 12& 18]

4.1A Notwithstanding any other provision of this Deed or the Fund Regulations, the Trustee may, at the request of a Participating Employee, transfer an amount out of the capital of the Fund, equal to the sum standing to the credit of an account of a Participating Employee with the Fund, to a trustee or other administrator of another fund, which provides for payments to the Participating Employee in similar circumstances as provided for payment of a Redundancy Payment pursuant to this Deed, and the payment of that amount to that trustee/administrator shall be a complete discharge to the Trustee in respect of any liability which the Trustee would otherwise have to that Participating Employee under the provisions of this Deed or the Fund Regulations.
[Deed No 18]

4.2 The Trustee shall establish separate accounts in its books of account in respect of each Participating Employee named in a Contribution Agreement or Contribution Return and each such account shall be credited with Redundancy Pay Contributions referable to the Participating Employee.
[Deed No 12]

4.3 Subject to the provisions of this Deed and the Fund Regulations upon a Participating Employee Member establishing to the satisfaction of the Trustee that the Participating Employee Member is entitled to a Redundancy Payment, pursuant to the provisions of the Fund Regulations, the Trustee shall apply the amount standing to the credit of that Participating Employee Member's account in payment to the Participating Employee Member of that Redundancy Payment.
[Deed No.2, 12& 18]

4.4
[Deed No.1 and 20]

4.5 The Redundancy Payment payable by the Trustee to a Participating Employee Member under this Deed shall be reduced by an amount equal to the entitlement of the Participating Employee Member to any payment for redundancy:
[Deed No.2, 7, 12 & 18] (a) direct from a present or past Participating Employer; or
(b) from any other fund to which a present or past Participating Employer contributed;

and, subject to sub-clause 2.5A, that amount shall be held in trust to be paid out of the Fund by the Trustee (or applied as directed in writing) respectively to those Participating Employer(s) in an amount(s) equal to the sum they have so paid or contributed to that other redundancy pay entitlement, absolutely.

4.6 Each Participating Employer Member, Participating Organisation and Participating Employee Member agrees that any payments made by the Trustee to a Participating Employee Member pursuant to this Deed shall be in satisfaction of or partial satisfaction of an equal amount required to be paid by a Participating Employer to the Participating Employee under the provisions of any industrial award or industrial agreement that requires a payment to be made to that Participating Employee for redundancy.
[Deed No.2, 7,12 & 18]

4.7 The Trustee's liability to make the payments referred to in 4.3 shall at all times be limited to the amount standing to the credit of the particular Participating Employee Member's account at the time the liability falls due for payment to the particular Participating Employee Member AND, if subsequent to payment of a Redundancy Payment the Trustee recovers arrears of Redundancy Pay Contributions from a relevant Participating Employer, the Trustee may, in its discretion, withhold payment of the balance of the Participating Employee Member's accrued Redundancy Payment entitlement until the Trustee has recovered all the arrears.
[Deed No. 2, 12& 18]

4.8 If the Trustee has taken all reasonable and necessary steps to locate a particular Participating Employee (including posting to the last known address of the worker a notice that the worker has entitlements to a Redundancy Payment from the Fund) but is still unable to locate the Participating Employee then if the Trustee so resolves, upon the expiration of four (4) years from the date upon which a Participating Employer Member last made a Redundancy Pay Contribution in respect of that Participating Employee, the amount standing in credit in the Participating Employee's account shall be treated by the Trustee as having been forfeited. All amounts so forfeited shall be credited by the Trustee, in the books of account of the Fund, equally to MBA and BTA and the amounts in those accounts shall be held by the Trustee upon trust for the MBA and BTA absolutely.
[Deed No. 2, 10,12 &18]

APPLICATION OF INCOME OF THE TRUST FUND

- 5.1 The Distributable Amount of the Fund for each Financial Year shall not be applied in payment of any Redundancy Payment but shall be held by the Trustee upon trust:-
(a) as to one-half for MBA; and
(b) as to one-half for BTA;
absolutely.
- 5.2 The Distributable Amount of the Fund held in Trust absolutely for MBA and BTA shall [Deed No 15] be paid or applied by the Trustee as directed by the party so entitled, in writing or in a minute of a binding resolution of any meeting at which an authorised representative of that party is present, but upon receipt of such a written direction not countersigned by the other party or receipt of a minute of a resolution on which the other party did not vote in favour, the Trustee shall notify the other party, in writing, of that direction at least 1 week before so paying or applying a Distributable Amount under that direction.
- 5.3 In the event that the Income of the Fund is insufficient to meet the outgoings, expenses, losses and damages incurred or suffered in the administration and conduct of the Fund or [Deed 20] in any way related thereto by the Trustee in any Financial Year (including any deficiency in the current value of the Fund as against the value of Redundancy Payments owing or contingently owing by the Trustee) then MBA and BTA shall equally contribute, from and only from sums held absolutely on their respective behalves in the Fund (being any amounts so held absolutely by the Trustee for the MBA and BTA by reference to absolute entitlements of the MBA and BTA under earlier provisions of this Deed which have not been paid to the MBA and BTA but are held in investments by the Trustee for the MBA and BTA), such sum as is necessary to make-up any deficiency and the Trustee may set-off against any sum due and held absolutely in trust for MBA or BTA (including in investments so held absolutely by the Trustee for the MBA and BTA) sums to be so contributed.

INVESTMENT POWERS OF TRUSTEE

- 6.1 The Trustee shall have the following absolute powers and discretions which it may exercise itself and jointly with any other person or persons:
- [Deed No.18] (aa) subject to clause 7A but otherwise without limitation, the Trustee may invest, vary or realise any part of the Fund in accordance with the provision of section 17 of the Trustees Act;
- (bb) the Trustee, without limitation and without limiting the generality of the investment powers referred to in sub-clause 6.1(aa), may do any of the things specified in Schedule F;
- [Deed No.13 & 18] (a) the Trustee may, from time to time, make rules (herein referred to as the "Fund Regulations") for the due administration and management of the Fund covering all matters included within the Fund Regulations set out in Schedule E hereof and like matters AND shall have power to determine any further matters to be dealt with in the Fund Regulations and the further power to amend the Fund Regulations, from time to time, as it deems fit (so long as the Fund Regulations are not inconsistent with the terms of this Deed);
- [Deed No 13] (b) the Trustee may delegate to any competent and reputable investment manager, on such terms and conditions as the Trustee thinks fit, the execution or exercise of any of the trusts powers authorities and discretions in relation to the investment of the Fund conferred upon the Trustee by this Deed;
- (c) the Trustee shall have power out of the income of the Fund to meet and pay all outgoings, expenses, losses and damages incurred or suffered in the administration and conduct of the Fund or in any way related thereto by the Trustee including costs in any way connected with the preparation and execution or stamp duty on or of this Deed or any money or investment paid or transferred to the Trustee; and
- [Deed No 19] (d) the Trustee may take and act upon the opinion of any solicitor or counsel admitted for not less than 10 years to practise in the Supreme Court of any State or Territory of Australia whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts hereof without being liable to any one in respect of any act done by them in accordance with such opinion PROVIDED that nothing herein shall oblige the Trustee to act in accordance with any such opinion AND PROVIDED FURTHER that nothing herein contained shall prohibit the Trustee from applying to any such Court if it shall think fit.

EXERCISE OF TRUSTEE'S POWERS

7. Subject to any express provision to the contrary herein contained, every power or discretion vested in the Trustee shall be absolute and uncontrolled and may be exercised without the Trustee assigning any reason therefor, and every power vested in it shall be exercisable in its absolute discretion and the Trustee shall have the like discretion in deciding whether or not to exercise any such power.

LIMITATION ON EXERCISE OF TRUSTEE'S POWERS OF INVESTMENT

[Deed
No.17
& 18]

- 7A.1 Notwithstanding clause 7 the Trustee's powers of investment referred to in sub-clause 6.1(b) and paragraphs 1, 11, 18 of Schedule F shall only be exercised in accordance with a resolution of the Trustee passed in conformity with the provisions of this clause 7A.
- 7A.2 If the Trustee comprises individuals, then any exercise of the powers of the Trustee referred to in sub-clause 7A.1 shall be submitted to a duly convened meeting of all the Trustees and must be passed by a resolution of not less than 75 per centum (75%) of all the Trustees.
- 7A.3 If the Trustee is a corporation, then any exercise of the powers of the Trustee referred to in sub-clause 7A.1 shall, notwithstanding any article of association of the corporation to the contrary in relation to quorum, be submitted to a meeting of all the Directors (or alternate Directors) of the Trustee and any resolution must be passed by a resolution of not less than 75 per centum (75%) of all the Directors (or alternate Directors) of the Trustee.
- 7A.4 A resolution in writing signed by all the Trustees, if the Trustee comprises individuals, or signed by all the Directors of the Trustee for the time being entitled to receive notice of a meeting of Directors (other than alternate Directors), if the Trustee is a corporation, shall be as valid and effectual, as a resolution for exercise of the powers of the Trustee referred to in sub-clause 7A.1 as if it had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or meeting of all the Directors, if the Trustee is a corporation, duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if the Trustee is a corporation. If the Trustee is a corporation the provisions of this clause shall apply notwithstanding any provision in the Articles of Association of the Trustee in relation to resolutions in writing signed by Directors.

8. [Deleted from original Deed]

PARTIES BOUND

9. All parties to this Deed (including Participating Employer Members, Participating Employee Members and Participating Organisations who become parties or members subsequent to the date of this Deed) shall be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time at the sole discretion of the Trustee in accordance with the provisions of this Deed) and referred to in the Contribution Agreement(s), Application(s) for Employee Participation or Notice of Agreement to be Bound lodged by the Participating Employer, Participating Employee or Participating Organisation), as if the relevant person was a signatory to this Deed and the respective Contribution Agreement (of Participating Employer Members), Application for Employee Participation (of Participating Employee Members) and Notice of Agreement to be Bound (of Participating Organisations) shall be read and construed as if forming part of this Deed.

RESPONSIBILITY OF TRUSTEE AND BENEFICIARIES

10. (a) While purporting to act in the execution of the trusts and powers hereof the Trustee shall not be liable for any loss or damage unless attributable to its own wilful dishonesty it being the intention that the Trustee shall have the widest possible powers and discretions in the investment and management of the Fund.
- (b) The Trustee acting in good faith shall be entitled to be indemnified out of the Fund in respect of all liabilities incurred by it relating to the execution of any powers duties authorities or discretions vested in it under the provisions of this Deed and in respect of all actions proceedings costs claims and demands in relation to any matter or thing done or omitted to be done concerning the Fund PROVIDED ALWAYS that the right of the Trustee to be indemnified in respect of any liability incurred by the Trustee or arising in or about the investment and administration of the Fund in the conduct and management of any business forming part of the Fund in the acquisition of any authorised investment under any contract entered into by the Trustee as trustee of the Fund or by reason of the execution of any power duty authority or discretion vested in the Trustee shall, subject to subclause 5.3, be limited always to the assets of the Fund and shall not extend to enable the Trustee to recover any loss or obtain reimbursement for such liability from any party to this Deed, Member or any person on behalf of whom the Trustee holds the Fund or any part thereof in trust absolutely or otherwise.

DEALINGS WITH TRUSTEE

11. Notwithstanding anything herein contained or implied to the contrary a person or company dealing with the Trustee without any actual knowledge of a breach of trust:-
- (a) shall not be under any obligation to enquire as to the regularity of the administration by the Trustee of any of the trusts hereby created;
 - (b) shall, if the Trustee is a corporation, be entitled to treat the Trustee as duly bound by the dealing if and to the extent to which the Trustee would as a corporation and not as a trustee be so bound, and
 - (c) shall by virtue of this instrument and in consideration of dealing with the Trustee without enquiry as described in paragraph (a) be indemnified and held harmless by the Trustee in his capacity as such and in his personal capacity against any irregularity in the Trustee's administration of the trusts hereby created, or in the due performance and observance by the Trustee of any duty in relation to the administration of trusts imposed on the Trustee by law or in equity.

FUND ACCOUNTS

- 12.1 The Trustee shall open and maintain an account or accounts at such bank or banks as the Trustee may from time to time determine and the Trustee shall pay into such account or accounts all moneys which come into its hands. The Trustee shall determine who shall be entitled to operate on such account or accounts.
- 12.2 As soon as practicable after the end of each Financial Year during the continuance of the Fund, a general account shall be taken of income, assets, credits, property, effects, debts and liabilities of the Fund and of all transactions matters and things usually comprehended in a general account of a like nature. Every such general-purpose account shall be balanced agreed to and signed by the Trustee (or those persons authorised to do so by a resolution of the Trustee). When such general-purpose accounts are finalised in writing by the Trustee an audited copy of such general-purpose accounts shall be provided to each of the parties (other than to a Participating Employer Member or Participating Employee Member unless specifically requested from the Trustee in writing) and they shall be binding on the parties and members except that if any manifest error therein be detected and pointed out by a party or member to the Trustee within twelve (12) months of the signing thereof then such error shall be rectified forthwith. The Trustee may from time to time publish to Participating Employer Members and Participating Employee Members information from such general-purpose account and as to the general administration and investments of the Fund as the Trustee in its absolute discretion determines.

12.3 The general-purpose accounts shall be audited by such registered company auditor (as [Deed defined in section 9 of the Corporations Act 2001) as may be appointed by the Trustee No. 11] from time to time who shall provide their audit report to the Trustee within three (3) months of the close of the Financial Year.

DETERMINATION OF THE FUND

13.1 Subject to the provisions of this Deed the Fund shall continue indefinitely.

- 13.2
- (a) Notwithstanding Clause 13.1 the MBA or BTA (in this clause referred to as "the proposer") may at any time by notice in writing to the other and the Trustee request the determination of the Fund;
 - (b) The other party shall have six (6) months from the date of service of the notice in which to consider the request and notify the proposer and the Trustee of its decision;
 - (c) If a party fails to notify the proposer and the Trustee of its decision then it shall be deemed to have agreed to the proposed determination of the Fund;
 - (e) If the other party by notice to the proposer and Trustee agrees or is deemed to agree then the Trustee shall consider the application of the surplus of the Fund (and need for amendment of the Deed) and thereafter shall resolve to determine the Fund which shall be determined upon the expiration of a further six (6) months.

13.3 (a) Immediately prior to Day of Distribution a full and general account and valuation shall be taken of all income, assets, credits, property, effects, debts and liabilities and of all transactions, matters and things usually comprehended in a general account of like nature. Such account and valuation shall be balanced agreed to and signed by the Trustee. Immediately thereafter all the debts, assets and effects then belonging to or due to the Fund shall be satisfied realised or sold to best advantage and the moneys arising from such sale and all other moneys of the Fund shall be applied in the following manner:-

- (i) Firstly - in payment of the costs and expenses of the winding up of the Fund and realising its assets;
- (ii) Secondly - in the payment of the debts and liabilities of the Trustee including any debts owing by the Trustee to any of the parties or members (including any Redundancy Payment);
- (iii) Thirdly - in payment of any net Income of the Fund equally to MBA and BTA;
- (iv) Fourthly - the surplus shall be transferred to one or more other redundancy pay schemes operating, at the time of the determination of the Fund, for the benefit of workers in the building construction industry and the Trustee shall, upon the request of a member or former member, take all reasonable steps on behalf of each member or former member to transfer that member's or former member's membership of the Fund and any part of the surplus represented to such one or more other redundancy pay schemes.

[Deed
No.18]

[Deed
No 2, 7
& 14]

(b) If at the time of determination of the Fund there is no other redundancy pay scheme in existence then the surplus of the said moneys shall be transferred to an independent trustee to hold the same upon trust absolutely for payment of Redundancy Payments to former Participating Employees or for forfeiture to the MBA and BTA equally, upon an entitlement to such a Redundancy Payment or forfeiture arising in accordance with the provision of the Fund Regulations (as if those Fund Regulations and the Deed had continued in force with the independent trustee acting in place of the Trustee).

[Deed
No.18]

13.4 The general account and valuation referred to in sub-clause 13.3 shall be audited by such registered company auditor (as defined in section 9 of the Corporations Act 2001) as may be appointed by the Trustee from time to time who shall provide their audit report to the Trustee within three (3) months of the close of the Financial Year.

[Deed
No.11
&18]

13.5 Upon the determination of the Fund each party and each member shall execute such release or releases to the parties or other parties from all claims on account of the Fund as is usual in such cases.

ARBITRATION

- 14.1 If any dispute or difference arises between the parties a party and/or any member as to the construction of this instrument or otherwise concerning anything contained in or arising out of this instrument or as to the rights, obligations, duties or liabilities of a party or member which cannot be resolved by agreement, a party or member may serve notice (in this Clause called an "Arbitration Notice") on the party, other party or member requiring such dispute or difference to be referred to arbitration in accordance with the provisions of this Clause, specifying with detailed particulars the matter at issue. Upon service of the Arbitration Notice, the dispute or difference shall be determined by arbitration. Unless the parties and member to the dispute agree upon an arbitrator, the party or member may request the Chairman of the State Chapter of the Institute of Arbitrators Australia to nominate a single arbitrator. Subject to the provisions of this Clause, an arbitration shall be conducted generally in accordance with the provisions of the Commercial Arbitration Act 1985 of the State.

14.2 In any arbitration proceedings hereunder which are conducted in accordance with the Commercial Arbitration Act 1985:

- (a) The proceedings shall be conducted on the basis of an exchange of formal pleadings, mutual discovery of documents and formal hearing by the arbitrator at which hearing a party or member shall be entitled to call witnesses and produce documents in accordance, mutatis mutandis, with the rules of evidence and the practice and procedure applicable to actions commenced in the Supreme Court of the State.
- (b) In conducting proceedings, the arbitrator shall be bound by the rules of evidence.
- (c) A party or member shall be entitled to be represented by a duly qualified legal practitioner or other representative.
- (d) The arbitrator shall have no power to order any of the parties or a member to take any steps to achieve a settlement of the dispute or difference the subject of an Arbitration Notice.
- (e) Each party and member irrevocably consents to another party or member bringing an appeal to the Supreme Court of the State on any question of law arising out of an award made in the arbitration.
- (f) Each party and member irrevocably consents to any application by another party or member to the Supreme Court of the State to determine any question of law arising in the course of the arbitration.
- (g) The arbitration proceedings shall be conducted in Perth.
- (h) The arbitrator may award whatever interest the arbitrator considers reasonable.
- (i) If one party or member has overpaid another, whether under a mistake of law or fact, the arbitrator may order repayment together with interest.
- (j) The arbitrator may, if he considers it appropriate, rectify any of the terms of this instrument (but not this Clause) so as to conform to the true intention of the parties, in accordance with the principles of the general law applicable to the rectification of contracts

14.3 An arbitrator shall not be a present or former shareholder, member, officer, employee or [Deed agent of a Participating Organisation, the Trustee or a Member. No.18]

AMENDMENTS TO THIS DEED AND ADMISSION OF PARTICIPATING ORGANISATIONS

15.1 The Trustee may at any time and from time to time by deed add to, vary or revoke all or any of the terms of this Deed or the terms of this Deed as previously added to, varied or revoked from time to time and without limiting the generality of this power may by the same or any deed or deeds declare any new or other powers or discretions for the administration and operation of the Fund PROVIDED HOWEVER that any addition, variation or revocation shall not affect any vested entitlement of MBA, BTA or members.

- (15.1A) If the Trustee comprises individuals, then any addition, variation or revocation of this
[Deed Deed or Fund Regulations or application for admission of a Participating Organisation as
No. 3 a party to this Deed (under clause 2.2) shall be submitted to a duly convened meeting of
& 18] all the Trustees and must be passed by a resolution of not less than 75 per centum (75%)
of all the Trustees.
- (15.1B) If the Trustee is a corporation, then any addition, variation or revocation of this Deed or
[Deed Fund Regulations or application for admission of a Participating Organisation as a party
No. 3 to this Deed (under clause 2.2) shall, notwithstanding any article of association of the
& 18] corporation to the contrary in relation to quorum, be submitted to a meeting of all the
Directors (or alternate Directors) of the Trustee and any resolution must be passed by a
resolution of not less than 75 per centum (75%) of all the Directors (or alternate
Directors) of the Trustee.
- (15.1C) A resolution in writing signed by all the Trustees, if the Trustee comprises individuals,
or signed by all the Directors of the Trustee for the time being entitled to receive notice
of a meeting of Directors (other than alternate Directors), if the Trustee is a corporation,
[Deed shall be as valid and effectual, as a resolution for addition, variation or revocation as if it
Nos had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or
3 & 11] meeting of all the Directors, if the Trustee is a corporation, duly convened and held.
Any such resolution may consist of several documents in like form each signed by one or
more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if
the Trustee is a corporation. If the Trustee is a corporation the provisions of this clause
shall apply notwithstanding any provision in the Articles of Association of the Trustee in
relation to resolutions in writing signed by Directors.
- 15.2 Where this Deed is so altered the Trustee shall give to each Participating Employer
[Deed Member and Participating Organisation as soon as practicable thereafter a statement in
No. 12 writing explaining the nature and purpose of the alteration.
& 15]
- 15.3 A member shall be entitled to inspect the Trust Deed and Fund Regulations (as amended
from time to time) at the registered office of the Trustee.
- 15.4 Unless otherwise provided in a deed effecting an amendment to this Deed or the Fund
[Deed Regulations, any addition, variation or revocation to this Deed or the Fund Regulations
No. 14] shall be effective and apply as if that addition, variation or revocation had been
originally included in the provisions of this Deed or the Fund Regulations and shall
apply accordingly to all parties and all Members whether admitted as a party or Member
before, on or after the date on which the relevant amending deed is executed by the
Trustee (and if so otherwise provided then that addition, variation or revocation shall
apply accordingly to all parties and all Members from the date so provided in the
relevant amending deed).

REMOVAL OR RETIREMENT OF TRUSTEE

16. (a) The Trustee may retire upon giving notice to MBA and BTA of its desire so to do and MBA and BTA may by deed jointly appoint a new Trustee in its stead.
- (b) If the Trustee goes into liquidation or receiver or official manager of its undertaking is appointed or the MBA and BTA by joint notice remove the Trustee then the Trustee shall immediately cease to be Trustee under this Deed and MBA and BTA may by deed jointly appoint a new Trustee in its stead.

CONFIDENTIAL INFORMATION

16A. The terms of this Deed and the Fund Regulations are confidential to the parties and no party may disclose anything about this Deed or Fund Regulations or any of its concepts except:

- [Deed No 11]
- (1) where expressly directed or permitted to do so by this Deed or the Fund Regulations;
 - (2) with prior approval of a resolution of the Trustee;
 - (3) if so required by any law; or
 - (4) to comply with any accounting, taxation, legal or other regulatory requirement.

16B. Save as specifically provided in this Deed or the Fund Regulations the Trustee shall not disclose membership of the Fund by a Participating Employer or Participating Employee nor any information from a Contribution Statement or Contribution Return nor disclose Redundancy Pay Contributions or Redundancy Payments except:

- [Deed No. 11 & 18]
- (1) to the Participating Employer and/or Participating Employee to whom they relate, the Trustee (if an individual or individuals), the Directors of the Trustee (if a corporation) and those employees of the Trustee or a Participating Organisation requiring the information to fulfil their duties in their employment with the Trustee or a Participating Organisation;
 - (2) where expressly directed or permitted to do so by this Deed or the Fund Regulations;
 - (3) with the prior approval of a resolution of the Trustee;
 - (4) if so required by any law; or
 - (5) to comply with any accounting, taxation, legal or other regulatory requirement.

16C. Upon application by a party (in a form, from time to time determined by the Trustee, in which the applicant expressly acknowledges the duty of confidentiality provided for herein) and upon payment of a fee per page (from time to time determined by the Trustee) the applicant shall be provided by the Trustee with a reproduction of the then current provisions of the Trust Deed, Fund Regulations and/or any deed or resolution amending the same.

NOTICES

17.1 A notice or other communication required or permitted to be given by a party to another [Deed shall be in writing duly signed and:
No 13] (1) delivered personally; or
(2) sent by post, postage prepaid; or
(3) sent by facsimile transmission,
to that party's address set out in this Deed or as notified to each party from time to time.

17.2 A notice or other communication is deemed given if:-
(1) personally delivered, upon delivery;
(2) mailed, on the expiration of two business days after posting;
(3) sent by facsimile transmission, upon receipt by the dispatching party of a confirmed transmission report.

GOVERNING LAW AND JURISDICTION

18. This instrument shall be governed by, take effect and be construed in accordance with the laws in force in the State and all the parties hereby submit to the jurisdiction of the Courts of the State.

COMPLIANCE WITH LAWS

19. The parties shall, in the performance of their obligations under this instrument, comply with all applicable laws, rules, regulations and by-laws of the Commonwealth and the State and with all lawful orders and directions of any competent governmental body or authority of the Commonwealth or the State or of any local authority in the State which relate directly or indirectly to the performance of such obligations.

COSTS

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

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

THE SEAL of the **MASTER BUILDERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS) PERTH** was hereunto affixed in accordance with its Constituent Documents in the presence of:

.....President

.....Executive Director

SIGNED on behalf of AUSTRALIAN FEDERATION OF CONSTRUCTION CONTRACTORS (WESTERN AUSTRALIAN BRANCH) (succeeded by CONSTRUCTION CONTRACTORS ASSOCIATION OF WESTERN AUSTRALIA)

..... President (WA)

Branch

..... Director

THE SEAL of MASTER PLUMBERS AND MECHANICAL SERVICES ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS) (succeeded by the MASTER PLUMBERS AND GASFITTERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF EMPLOYERS)) was hereunto affixed in accordance with its Constituent Documents in the presence of:

.....President

.....Secretary

THE SEAL of THE BUILDING)
TRADES ASSOCIATION OF UNIONS)
OF WESTERN AUSTRALIA)
was hereunto affixed in accordance)
with its Constituent Documents)

in the presence of:)

.....

.....

THE COMMON SEAL of AUSTRALIAN)
BUILDERS' LABOURERS' FEDERATED)
UNION OF WORKERS)
(WESTERN AUSTRALIAN BRANCH))
(succeeded by the CONSTRUCTION,)
FORESTRY, MINING AND ENERGY)
WORKERS UNION OF WORKERS)
WESTERN AUSTRALIA))
is hereto affixed pursuant to)
the Rules of the said Union))
in the presence of:)

.....

Acting Secretary

THE SEAL of OPERATIVE PLASTERERS)
AND PLASTER WORKERS FEDERATION OF)
AUSTRALIA (INDUSTRIAL UNION OF)
WORKERS) WESTERN AUSTRALIAN)
BRANCH (succeeded by the CONSTRUCTION,)
FORESTRY, MINING AND ENERGY)
WORKERS UNION OF WORKERS)
WESTERN AUSTRALIA))
was hereunto affixed in accordance)
with its Constituent Documents)
in the presence of:)

.....

THE SEAL of BUILDING WORKERS)
INDUSTRIAL UNION OF AUSTRALIA)
(WESTERN AUSTRALIAN BRANCH))
(succeeded by the CONSTRUCTION,)
FORESTRY, MINING AND ENERGY)
WORKERS UNION OF WORKERS)

WESTERN AUSTRALIA)was hereunto)
affixed in accordance)
with its Constituent Documents)
in the presence of:)

.....

.....

THE SEAL of THE CONSTRUCTION)
MINING AND ENERGY WORKERS UNION)
OF AUSTRALIA (WESTERN)
AUSTRALIAN BRANCH))
(succeeded by the **CONSTRUCTION, FORESTRY,**)
MINING AND ENERGY WORKERS UNION)
OF AUSTRALIA, CONSTRUCTION AND)
GENERAL DIVISION,)
WESTERN AUSTRALIAN BRANCH))
was hereunto affixed in accordance)
with its Constituent Documents)
in the presence of:)

.....

.....

THE SEAL of THE OPERATIVE)
PAINTERS AND DECORATORS UNION OF)
AUSTRALIA (WESTERN AUSTRALIAN)
BRANCH) UNION OF WORKERS)
(succeeded by the **CONSTRUCTION, FORESTRY,**)
MINING AND ENERGY WORKERS UNION)
OF WORKERS WESTERN AUSTRALIA)
was hereunto affixed in accordance)
with its Constituent Documents)
in the presence of:)

.....

Secretary

[THE SEAL of [*Deletion by Deed of Amendment No.21*])

was hereunto affixed in accordance with its Constituent)

Documents in the presence of:)

.....

Acting Secretary

THE COMMON SEAL of)

WA CONSTRUCTION INDUSTRY)

REDUNDANCY FUND LTD)

was hereunto affixed in accordance)

with the Memorandum and Articles)

of Association in the presence of:)

.....Director

.....Secretary

SCHEDULE A OF DEED

(Deleted by Amending Deed No. 13)

SCHEDULE B OF DEED

[Deed No.18]

No current provisions]

SCHEDULE BB OF DEED

[Deed No.18]

[No current provisions]

SCHEDULE C OF DEED

(Clauses 1.16 and 2.2)

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

WA Construction Industry Redundancy Fund Limited
as trustee for WA Construction Industry Redundancy Fund
A.C.N. 009 404 273

1st Floor, 44 Parliament Place, West Perth, 6005
P.O. Box 432, WEST PERTH, WA, 6872

Telephone: 9481 0259 Facsimile 9321 1441

NOTICE OF AGREEMENT TO BE BOUND

We
of

hereby request that our members participate in the Redundancy Pay Scheme established by the
WA CONSTRUCTION INDUSTRY REDUNDANCY FUND TRUST DEED dated 30th June
1989.

[Deed We hereby apply to become a party to the Deed and agree to be bound by the trusts,

No. 11 &

18] terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are
amended from time to time at the sole discretion of the Trustee in accordance with the Trust
Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the
Fund have been made available for inspection at the registered office of the Fund or that we have
at our request, in return for a copy fee, been provided with a reproduction of the present provisions
of the Trust Deed and Fund Regulations.

Date:

Signed on behalf of _____)

_____)
(name of organisation) _____)

by its authorised officer _____)

_____)
(full name and position of authorised officer) _____)

in the presence of: _____)

_____)
(signature of witness)

SCHEDULE D OF DEED

(Sub-clause 2.2)

ADDITIONAL PARTICIPATING ORGANISATIONS

[Deed No. 14] List of additional industrial associations or organisations that are parties to this Deed pursuant to sub-clause 2.2:

Employer Associations:

1. **Construction Contractors Association of Western Australia** of C% Multiplex, level 2 "The Old Swan Brewery", 173 Mounts Bay Road, Perth (which succeeded the Australian Federation of Construction Contractors Western Australian Branch).
2. **Master Plumbers and Gasfitters Association of Western Australia (Union of Employers)** of 106 Caledonian Avenue, Maylands (which succeeded the Master Plumbers and Mechanical Services Association of Western Australia (Union of Employers)).

Participating Unions:

1. **The Construction, Forestry, Mining and Energy Workers Union of Workers Western Australia** of 82 Royal Street, East Perth,
which succeeded the Western Australian Builders', Labourers, Painters and Plasterers Union of Workers
and which in turn succeeded each of:
 - (a) the Australian Builders' Labourers' Federated Union of Workers (Western Australian Branch) which in turn succeeded the ;
 - (b) the Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch;
 - (c) Building Workers Industrial Union of Australia (Western Australian Branch); and
 - (d) the Operative Painters and Decorators Union of Australia (Western Australian Branch) Union of Workers.
2. **The Construction, Forestry, Mining and Energy Workers Union of Australia, Construction and General Division, Western Australian Branch** of 82 Royal Street, East Perth (which succeeded the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union (Western Australian Branch) Union of Workers) and which in turn succeeded the Construction, Mining and Energy Workers Union of Australia

3. *[Deletion by Deed of Amendment No.21]*

NOTE: This list is current to the date of the last Deed of Amendment to the Trust Deed (Deed of Amendment No.21 of 21 December 2006).

SCHEDULE E OF DEED

FUND REGULATIONS

[Deed No. 18]

Admission of Members

- 1.1 (a) A Participating Employee or former Participating Employee:
- (i) is eligible to apply to become a Member of the Fund; and
 - (ii) may become a Participating Employee Member of the Fund by lodging with the Trustee a signed Application for Employee Participation substantially in the form set out in Schedule E1 of these regulations.
- (b) Upon the Trustee receiving from a Participating Employer Member any written notification that Redundancy Pay Contributions will be made for a Participating Employee the Trustee shall:
- (i) register the Participating Employee as a person eligible to apply for membership of the Fund;
 - (ii) allocate to that Participating Employee a distinctive membership number in the Fund;
 - (iii) issue to that Participating Employee a personalised card identifying that worker as a Participating Employee registered with the Fund; and
 - (iv) open an account in the Fund in the name and with the membership number of the Participating Employee;
 - (v) notify the Participating Employee of their right to apply for membership of the Fund and rights of a Member to Redundancy payments from the Fund;

but until the Participating Employee has applied for and become a member of the Fund that Participating Employee cannot apply for a Redundancy Payment under regulation 4.1.

- (c) Upon receipt by the Trustee of an Application for Employee Participation from a Participating Employee the Trustee shall register the applicant as a Participating Employee Member of the Fund and there shall be constituted an agreement between the Trustee and the Participating Employee for the applicant to be a Participating Employee Member of the Fund.
- (d) The Trustee shall, by writing, notify a person on their becoming a Participating Employee Member of the Fund.

- 1.2 (a) A Participating Employer:
- (i) is eligible to apply to become a Member of the Fund; and
 - (ii) may become a Participating Employer Member of the Fund by lodging with the Trustee a signed Contribution Agreement substantially in the form set out in Schedule E2 of these regulations.
- (b) Upon receipt from a Participating Employer of a Contribution Agreement the Trustee shall register the applicant as a Participating Employer Member of the Fund and there shall be constituted between the Trustee and the Participating Employer an agreement for the applicant to be a Participating Employer Member of the Fund.
- (c) The Trustee shall, by writing, notify a person on their becoming a Participating Employer Member of the Fund.
- 1.3 Each person on becoming a Member of the Fund shall subject to sub-clause (2.1C) of the Deed be bound by the terms and conditions of the WA Construction Industry Redundancy Fund Trust Deed and the Fund Regulations (as they are amended from time to time).
- 1.4 [Deed No. 19] A Participating Employer shall, when applying for membership of the Fund and thereafter from time to time, notify the Trustee (generally or specifically), in writing, of:
- (a) the particulars of each Participating Employee of that Participating Employer for whom that Participating Employer Member agrees to contribute Redundancy Pay Contributions to the Fund;
 - (b) of nominated Building Projects or Maintenance Sites or industrial awards/agreements in respect of which that Participating Employer Member will contribute Redundancy Pay Contributions for the respective nominated Participating Employees;
 - (c) the period or periods during which that Participating Employer Member agrees to contribute Redundancy Pay Contributions for the respective nominated Participating Employees PROVIDED ALWAYS that the nominated period or periods will always be deemed to include any period when the Participating Employee will be on Paid Leave (whether or not contiguous with an expressly nominated period); and
 - (d) the rate (if any), being either \$25 or that rate plus increments of \$5 or the rate specified in a nominated industrial award/agreement, at which the Participating Employer Member will contribute Redundancy Pay Contributions for the respective nominated Participating Employees.
- 1.5 [No current regulation]
- 1.6 [No current regulation]

1.7 [Deeds No. 19 and 22] Upon a Participating Employer Member:

- (a) resigning from the Fund (pursuant to clause 2.1C of the Deed); or
- (b) notifying the Trustee that a Participating Employee is no longer a Participating Employee of that Participating Employer Member or that Redundancy Pay Contributions will be made for a Participating Employee for a lesser period than previously notified (which lesser period cannot exclude any period or periods of Paid Leave);

the Trustee shall amend its records and shall in the next Contribution Statement notify the relevant Participating Employer accordingly and thereafter notify each relevant Participating Employee in his next half-yearly statement in writing:-

- (i) that he/she ceased or will cease to be a Participating Employee for whom Redundancy Pay Contributions will be made to the Fund and whether he/she has, by nomination of a Participating Employer Member, been reinstated as a Participating Employee for whom Redundancy Pay Contributions will be made to the Fund;
- (ii) that his/her account with the Fund has been frozen pending his/her becoming eligible for a Redundancy Payment or a Participating Employee in respect of whom a Participating Employer Member is required to make Redundancy Pay Contributions; and
- (iii) the aggregate balance standing to the credit of that former Participating Employee's account in the Fund.

Contributions by Participating Employer Members

2.1 (a) [Deed No. 19] Subject to the following provisions of these regulations, every Participating Employer Member in the Fund shall be liable to contribute to the Fund a nominated amount per week/part week for each nominated Participating Employee during each nominated period (or deemed nominated period for Paid Leave referred to in sub-regulation 1.4(c)).

(ab) Each nomination shall be made in writing by the Participating Employer Member in that Participating Employer's Contribution Agreement, Contribution Return or other written notification. Each amending nomination received from a Participating Employer Member shall be binding upon the Participating Employer Member for the nominated period unless, within fourteen (14) days of the Contribution Statement effecting the nominated amendment, the Participating Employer Member advises the Trustee in writing and thereafter satisfies the Trustee that the amendment to the nomination was an error.

(ac) [Deed No.19] The Contribution Agreement and each amending nomination or Contribution Return shall nominate as the rate of Redundancy Pay Contribution for each nominated Participating Employee a dollar amount per week/part week calculated by reference to:

- (i) a minimum base contribution rate of \$25.00 per week (or part week) or that amount plus increments of not less than \$5.00; or
- (ii) a redundancy payment rate provided for in a nominated building construction industry industrial award/ or industrial agreement covering the Participating Employee;

PROVIDED HOWEVER that no variation may be made which decreases a previously nominated rate for a continuing Participating Employee unless referable to the Participating Employee ceasing to continue to provide his/her labour, on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement (other than when on Paid Leave), in which case the variation may be to the greater of the \$25.00 base rate or other contribution rate provided for in the then relevant industrial award/agreement.

- (ad) *[Deed No. 19]* The nominations made by a Participating Employer Member in the Contribution Agreement shall apply until amended with any nominated amendment applying only prospectively from the date of receipt by the Trustee of the appropriate amending nomination or Contribution Return. A Participating Employer Member shall notwithstanding a nominated amendment remain bound to make:
 - (i) all Redundancy Pay Contributions that have accrued, in accordance with a prior nomination, up to the date of receipt by the Trustee of the amending nomination or Contribution Return; and
 - (ii) all Redundancy Pay Contributions that have accrued (or subsequently accrue) for any deemed nominated period for Paid Leave (referred to in sub-regulation 1.4(c)).
- (b) The Trustee shall, by the last Friday of each calendar month, advise each Participating Employer Member of the Participating Employees registered with the Fund who have been nominated by that Participating Employer Member as a Participating Employee for whom Redundancy Pay Contributions will be made and the aggregate contributions required from that Participating Employer Member (herein referred to as the "Contribution Statement") for the month covered by that Contribution Statement.
- (c) (i) *[Deed No. 19]* A Participating Employer Member shall, within 14 days of the close of the calendar month in which registered as a Participating Employer Member and thereafter within fourteen (14) days of the close of each calendar month, lodge a return (herein referred to as the "Contribution Return") with the Trustee nominating the Participating Employees for whom that Participating Employer Member is or is deemed, by reference to sub-regulation 1.4(c), required to make Redundancy Pay Contributions and also nominating any prospective amendment and shall with that return pay Redundancy Pay Contributions in accordance with that Contribution Return and the Fund Regulations.

- (ii) If the amount to be paid by a Participating Employer Member is less than the amount claimed in the Contribution Statement the Participating Employer Member shall in the next Contribution Return or in writing, immediately notify the Trustee of the particulars of those Participating Employees for whom it is maintained there is no or a lesser Redundancy Pay Contribution payable in accordance with these regulations.
- (iii) The Participating Employer Member's Contribution Return may be a copy of the Contribution Statement, with appropriate amendments to show Participating Employees who have become or ceased to be Participating Employees for whom that participating Employer Member is required to make Redundancy Pay Contributions in accordance with these regulations.
- (iv) *[Deed No. 19]* The Redundancy Pay Contribution payable by a Participating Employer Member, shall subject to this regulation, be paid for each week/part week (comprising one or more days Saturday to Friday) falling within the nominated period during which the Participating Employee is shown in the Participating Employer Member's Contribution Return or is shown in the Trustee's records (as to a deemed nominated period for Paid Leave referred to in sub-regulation 1.4(c)) as:
 - A. engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement; or
 - B. that Participating Employee is on paid leave (including periods of leave on holiday, leave on long service or leave on worker's compensation) but would otherwise have been engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement; or
 - C. on Paid Leave.

2.2 *[Deed No.20]*

If a Participating Employer Member of WA Construction Industry Redundancy Fund makes contributions to the trustee of the WA Construction Industry Redundancy (No.2) Fund, as an employer member of WA Construction Industry Redundancy (No.2) Fund, then those contributions will reduce or satisfy (as the case may be) that Participating Employer Member's obligation to make Redundancy Pay Contributions to WA Construction Industry Redundancy Fund under the Trust Deed and Fund Regulations of WA Construction Industry Redundancy Fund to the same extent and for the same period as if those contributions had been made to the trustee of WA Construction Industry Redundancy Fund as Redundancy Pay Contributions under the Trust Deed and Fund Regulations of WA Construction Industry Redundancy Fund.

2.3 [No current regulation]

2.3A In the event that a Participating Employer Member fails to satisfy a liability to pay to the Trustee a Redundancy Pay Contribution or other moneys then the Participating Employer Member shall pay to the Trustee interest on the outstanding amount at a rate equal to the overdraft interest rate, from time to time charged by the Trustee's banker to customers on overdrafts of not more than \$100,000.00, which interest shall be paid to the Trustee by the Participating Employer Member on demand and shall accrue from the day the principal amount was payable until that principal amount is paid in full to the Trustee.

2.3B Notwithstanding any principle or presumption of law to the contrary or any direction given by any person at any time to the Trustee, the Trustee shall have an absolute discretion to apply any payment or credit of a Participating Employer Member towards or in satisfaction of that Member's liability to the Trustee for any Redundancy Pay Contribution or other moneys AND pending such election, as aforesaid, but without prejudice to the Trustee's entitlement to later make such election all payments and credits received by the Trustee as aforesaid shall be appropriated firstly, in or towards payment of any interest due or payable under these Fund Regulations; secondly, in or towards payment of any other moneys for which the Participating Employer Member is responsible or liable to the Trustee (including appropriation by the Trustee, to satisfy any arrears of Redundancy Pay Contributions for any Participating Employee, which permits the Trustee to satisfy an outstanding Redundancy Payment to that Participating Employee referable to those arrears); thirdly, in or towards payment of Redundancy Pay Contributions shown on a Contribution Return accompanying the payment in such order as the Secretary of the Trustee shall determine.

2.3C A Participating Employer Member shall pay to the Trustee, upon demand, an amount equal to all legal costs and disbursements reasonably incurred by the Trustee in recovering or seeking to recover from the Participating Employer Member any Redundancy Pay Contribution, interest or other monies payable by the Participating Employer Member hereunder (calculated by reference to the actual legal costs incurred by the Trustee on a Solicitor/Client basis).

2.3D [*Deed No. 19*] Notwithstanding any provision of these Fund Regulations to the contrary the obligation of a Participating Employer Member to make contributions is limited to the period during which a Participating Employee is:

- (a) engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement; or
- (b) on Paid Leave.

2.4 (No current regulation)

2.5 Subject to the powers of the Trustee to appropriate in accordance with the provisions of sub-regulation 2.3B Redundancy Pay Contributions shall be credited to the respective accounts of relevant Participating Employees in

accordance with the Contribution Return of a Participating Employer Member and shall be held in trust to be applied by the Trustee in satisfaction of the Trustee's obligation to the relevant Participating Employee for Redundancy Payment PROVIDED HOWEVER that upon a Participating Employer Member:

- (a) applying, within a period of twelve (12) months from the crediting of a contribution, for a refund of the contribution; and
- (b) proving to the satisfaction of the Trustee (by Statutory Declaration or otherwise) that the contribution was made in respect of a period when a person was not a Participating Employee of that Participating Employer Member;

then (but not otherwise and subject always to the Trustee's right to appropriate any amount refundable to the Participating Employer Member in exercise of its powers under sub-regulation 2.3B) the Trustee shall, so long as there is a credit balance in that Participating Employee's account at the time when the Trustee receives the Participating Employer's application, refund the relevant contribution (so long as it has not previously been applied in meeting a Redundancy Payment) by repayment out of that credit balance.

Field Officers

- 3.1 The expression "Field Officer" shall, if the Trustee is a corporation include each of the secretary of the Trustee and any employee appointed as a Field Officer by the Trustee and if the Trustee comprises individuals shall be each of any two employees appointed as a Field Officer by the Trustee.
- 3.2 Upon a party notifying the Trustee that it is not satisfied that a Participating Employer Member is paying contributions for all Participating Employees, duly nominated as persons for whom Redundancy Contributions will be made, the Field Officer shall conduct an investigation of the position and for that purpose the Participating Employer Member shall make all its relevant documents and records available for his inspection.
- 3.3 Upon a party notifying the Trustee that it queries whether all Participating Employees of a Participating Employer Member, have registered as Member Participating Employees of the Fund, the Field Officer shall investigate the position and for that purpose, the Participating Employer Member shall make all its relevant documents and records available for his inspection.
- 3.4 The Field Officer, upon completion of an investigation, shall, unless the matter under investigation is resolved to the satisfaction of the Participating Employee, lodge a written report with the Trustee and a copy thereof shall be provided by the Trustee to the party requesting the investigation.
- 3.5 Following an investigation the Trustee shall, if any sum is, by the report, shown to be due by the Participating Employer Member to the Fund, include that sum in the next Contribution Statement for that Participating Employer Member.
- 3.6 If a party or Member does not agree with any part of a Field Officer's report, then that party or Member and the Trustee shall be taken to be in dispute and any such

party, Member or the Trustee may seek arbitration of the dispute in accordance with the provisions of the Trust Deed.

Redundancy Payments

4.1 [*Deed No. 19*] Upon a Participating Employee Member having satisfied the Trustee he/she is redundant (in the sense that he/she has ceased to provide his/her labour, as a Participating Employee (as defined in sub-clause 1.17), without being offered re-employment or offered other rights to provide his/her labour, as a Participating Employee:

- (a) by another Participating Employer; or
- (b) by his/her last Participating Employer (on terms and conditions materially no less favourable than those previously applying between the Participating Employee and his/her last Participating Employer);

and that he/she is not on Paid Leave, the Trustee shall pay to the Participating Employee Member the balance in the Participating Employee Member's account with the Fund.

4.2 The Trustee may at its discretion require evidence (including a Statutory Declaration) in relation to the matters referred to in sub regulation 4.1 from the Participating Employer Member and his/her current Participating Employer Member which must be provided by the Participating Employee Member and his/her Participating Employer Member prior to payment of a Redundancy Payment from the Fund.

4.3 Upon a Participating Employee Member having satisfied the Trustee that:

- (a) Redundancy Pay Contributions have been properly credited to his/her account with the Fund during a period when that Participating Employee Member was a director of a company, a partner in a partnership or a sole contractor; and
- (b) he/she has ceased to be a Participating Employee by reason of his/her Participating Employer being no longer engaged in works on any Building Project, Maintenance Site or other site or under a nominated industrial award/agreement, for more than three (3) months (or such lesser period as the Trustee in its discretion shall in any particular case determine);

the Trustee shall, notwithstanding any provision to the contrary, refund to the Participating Employer the previously undrawn balance of the Redundancy Pay Contributions contributed by that Participating Employer Member, during that period, to the former Participating Employee's account with the Fund.

4.4 [*Deed No.20*] Upon a Participating Employee Member having satisfied the Trustee that he/she has for a period of twelve (12) months (or such lesser period as the Trustee in its discretion shall in any particular case determine) provided his/her labour in work or activity on any Building Project solely in work or activity that is clerical, managerial, administrative or supervisory (except substantially in performance of the ordinary duties of a foreman) and that the balance in the

Participating Employee's account with the Fund comprises Redundancy Pay Contributions made to the Fund for a period during which he/she provided his/her labour in work or activity on any Building Project in work or activity that was not clerical, managerial, administrative or supervisory, the Trustee shall pay to the Participating Employee Member the balance in the former Participating Employee Member's account with the Fund by reference to the cessation of that Participating Employee Member's non-clerical/ non-managerial/ non-supervisory employment under a building industry industrial award/agreement.

- 4.5 The Trustee may, at its discretion, require evidence (including a Statutory Declaration) in relation to the matters referred to in sub-regulations 4.3 from the Participating Employee Member and his/her Participating Employer Member which shall be provided by the Participating Employee Member and his Participating Employer Member prior to payment of any amount to the Participating Employer Member from the Fund.
- 4.5A The Trustee shall only transfer an amount standing to the credit of an account of a Participating Employee with the Fund to the trustee/administrator of another fund, pursuant to sub-clause 4.1A of the Deed, upon first receiving a signed written request, substantially in the form set out in Schedule E3 of the Fund Regulations, from the Participating Employee in respect of whom the credit in that account is otherwise maintained for the making of Redundancy Payments.
- 4.5B If following the payment of a Redundancy Payment to a Participating Employee Member the Trustee determines that the Participating Employee Member may have had no entitlement to apply for the payment, the Trustee may institute an enquiry and upon request the Participating Employee Member and his/her then current Participating Employer Member shall fully cooperate in that enquiry and provide to the Trustee all documents and information or further evidence as may be requested to enable the Trustee to determine whether the Redundancy Payment was correctly applied for and paid out of the Fund and in the event that the Trustee determines that the Participating Employer Member has not proven, to the full satisfaction of the Trustee, that the Participating Employer Member had an entitlement to that Redundancy Payment then the Participating Employee shall immediately repay to the Trustee an amount equal to the Redundancy Payment, for crediting to the Participating Employee Member's account with the Fund.

In undertaking the enquiry the Trustee may construe a failure by the Participating Employee Member or his/her Participating Employer Member to provide further evidence as to the Participating Employee's entitlement to the Redundancy Payment, requested by the Trustee, as giving rise to an inference that the Redundancy Payment was incorrectly applied for and paid out of the Fund so long as the Trustee has first warned both the Participating Employee Member and his/her Participating Employer Member that a failure to provide the further evidence requested by the Trustee will give rise to such an inference.

4.5C [*Deed No.22*] In the event that a Participating Employee Member or that other person fails to repay to the Trustee an amount equal to a Redundancy Payment, in breach of an obligation under the preceding clause 4.5B:

- (a) that a Participating Employee Member or that other person shall pay to the Trustee interest on the outstanding amount, from the date the Trustee demanded such repayment, at a rate equal to the overdraft interest rate, from time to time charged by the Trustee's banker to customers on overdrafts of not more than \$100,000.00, which interest shall accrue from the day the principal amount was payable until that principal amount is paid in full to the Trustee; and
- (b) that a Participating Employee Member or that other person shall pay to the Trustee, upon demand, an amount equal to all legal costs and disbursements reasonably incurred by the Trustee in recovering or seeking to recover that amount or interest from the Participating Employee Member or that other person Redundancy Pay Contribution (calculated by reference to the actual legal costs incurred by the Trustee on a Solicitor/Client basis).

Account Statements and Annual Report

- 5.1 The Trustee shall send to each Participating Employer Member a statement showing all Redundancy Pay Contributions made by that Participating Employer Member during the period 1st July to 30th June immediately preceding.
- 5.2 The Trustee shall at the expiration of each quarter period of each Financial Year send to each Participating Employee or former Participating Employee a statement showing all Redundancy Pay Contributions credited to that Participating Employee's account or former Participating Employee's account since the date of the last statement provided to that Participating Employee or former Participating Employee together with the aggregate balance standing to the credit of that Participating Employee's account or former Participating Employee's account at the date of each statement.
- 5.3 The Trustee shall send to each Participating Employer Member, each Participating Employee with any credit balance in his/her account with the Fund and each Participating Organisation an annual report as to the Fund and its activities for each Financial Year.

Amendment of Regulations

- 6.1 The rules contained in the Fund Regulations may be supplemented by additional rules or varied from time to time at the discretion of the Trustee.
- 6.2 If the Trustee comprises individuals, then any addition, variation or revocation shall be submitted to a duly convened meeting of all the Trustees and must be passed by a resolution of not less than 75 per centum (75% each time) of all the Trustees.
- 6.3 If the Trustee is a corporation, then any addition, variation or revocation shall, notwithstanding any article of association of the corporation to the contrary in relation to quorum, be submitted to a meeting of all the Directors (or alternate

Directors) of the Trustee and any resolution must be passed by a resolution of not less than 75 per centum of all the Directors (or alternate Directors) of the Trustee.

6.4 A resolution in writing signed by all the Trustees, if the Trustee comprises individuals or signed by all the Directors of the Trustee for the time being entitled to receive notice of a meeting of Directors (other than alternate Directors) if the Trustee is a corporation, shall be as valid and effectual, as a resolution for addition, variation or revocation as if it had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or a meeting of all the Directors if the Trustee is a corporation, duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if the Trustee is a corporation. If the Trustee is a corporation the provisions of this sub-regulation shall apply notwithstanding any provision in the Articles of Association of the Trustee in relation to resolutions in writing signed by Directors.

6.5 Unless otherwise provided in these Fund Regulations or the deed or resolution effecting an amendment to the Fund Regulations, any deed or addition, variation or revocation to these Fund Regulations shall be effective and apply as if that addition, variation or revocation had been originally included in the provisions of these Fund Regulations and shall apply accordingly to all parties and all Members of the Fund whether admitted as a party or Member before, on or after the date on which the relevant amending deed was executed or resolution was passed by the Trustee (and if so otherwise provided then that addition, variation or revocation shall apply accordingly to all parties and all Members from the date so provided in the relevant amending deed or resolution).

7. [No Current Regulation]

SCHEDULE E1 OF THE FUND REGULATIONS

(Sub-regulation 1.1)

[Deed No.18]

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

WA Construction Industry Redundancy Fund Limited

as trustee for **WA Construction Industry Redundancy Fund**

ABN 12 230 821 810

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: 9481 0259 Facsimile 9321 1441

EMPLOYEE APPLICATION

I
(Surname) (Christian Names)

.....
(Address)

hereby request that I become registered with the WA Construction Industry Redundancy Fund, established by a Deed dated 30th June 1989.

I hereby apply to the Fund to become a Participating Employee Member and agree to be bound by the trusts, terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are amended from time to time at the sole discretion of the Trustee in accordance with the Trust Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the Fund have been made available for inspection at the registered office of the Fund or that I have, at my request in return for a copy fee, been provided with a reproduction of the present provisions of the Trust Deed and Fund Regulations.

I expressly authorize the Trustee to disclose to any officer or employee of the Trustee or of a Participating Organisation any information provided by me to the Trustee or that is recorded in the accounts or records of the Fund in relation to me for the purpose of that officer or employee, in the reasonable course of the duties of their office or employment, ensuring that the Trustee, Participating Employers and Participating Employees fulfill their obligations under any relevant industrial award/agreement and/or the Trust Deed and Fund Regulations.

Particulars to be completed:

(a) Name of Participating Employer:

(b) Address of Participating Employer:

(c) Participating Employer's telephone number:

(d) Participating Employer's facsimile number:.....

.....

(e) Date you became a Participating Employee with your present Participating Employer:

.....

(f) Relevant building construction industry Award or industrial agreement (registered under a law of the Commonwealth or the State) specifically providing for Redundancy Pay Contributions to be paid to the Fund:

.....

(g) Your WACIRF membership Number (if previously issued):.....

.....

(h) Your nominated dependant:

.....

(i) Your Date of Birth:

(j) Your telephone number if available:

* Signature of employee:

Signature of Witness:

Name of Witness: (Please Print)

Date/...../.....

*** PLEASE ENSURE THAT YOU SIGN THIS DOCUMENT AND ENSURE IT IS WITNESSED AND ALL INFORMATION IS COMPLETED BEFORE RETURNING"**

SCHEDULE E2 OF THE FUND REGULATIONS

(Sub-regulation 1.2)

[Deed No.18]

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

WA Construction Industry Redundancy Fund Limited

as trustee for **WA Construction Industry Redundancy Fund**

ABN 12 230 821 810

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: 9481 0259 Facsimile 9321 1441

CONTRIBUTION AGREEMENT

I/We

(Full name of Participating Employer)

of

hereby request that we become a party to the WA Construction Industry Redundancy Fund established by Deed dated the 30th June 1989. I/We hereby apply to be a member Participating Employer Member of the Fund and agree to be bound by the trust, terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are amended from time to time at the sole discretion of the Trustee in accordance with the Trust Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the Fund have been made available for inspection at the registered office of the Fund or that I/we have, in return for a copy fee at my/our request, been provided with a reproduction of the present provisions of the Trust Deed and Fund Regulations.

I/we expressly authorize the Trustee to disclose to any officer or employee of the Trustee or of a Participating Organisation any information provided by me/us to the Trustee or that is recorded in the accounts or records of the Fund in relation to me/us for the purpose of that officer or employee, in the reasonable course of the duties of their office or employment, ensuring that the Trustee, Participating Employers and Participating Employees fulfill their obligations under any relevant industrial award/agreement and/or the Trust Deed and Fund Regulations.

- (a) List of Participating Employees (To be Registered as Members of the Fund and for whom Redundancy Pay Contributions to be made)

Name of Participating Employee	Residential Address	Date of Birth	Building Project/ Maintenance Site/ other site/ industrial award/ agreement	Period of Contributions		Rate of Contribution per week/part week (Sat. to Friday)
				From:	To:	
						\$
						\$

Note:

- (i) if for the time being you propose that Participating Employees are to be nominated for all your present and future sites then insert "all" under the heading Building Project/Maintenance Site opposite the name of each nominated Participating Employee and provide a separate attached list of your proposed sites;
- (ii) if for the time being all Participating Employees are to be nominated for only nominated sites insert "all" under the heading Name of Participating Employee opposite the name of each site nominated and provide a separate attached list of details of all Participating Employees on those nominated sites;
- (iii) if the contribution rate to apply is base rate common for particular Participating Employees or sites then insert "base rate" opposite the details of the relevant Participating Employees; or
- (iv) if the contribution rate to apply is not common for all Participating Employees at the nominated sites then the contribution rate that is not common must be inserted opposite the details of the relevant Participating Employee.

(b) Base rate of Redundancy Pay Contributions \$25 per week;

OR

Other nominated rate being \$25 plus increments of \$5, per week or \$ amount per week under a nominated industrial award/agreement.

(c) List of Nominated Building Project Sites/Maintenance Sites/other sites:

Name of Project:

Address of Project:

(d) Nominated industrial awards/agreements:

I/We have voluntarily agreed with the Trustee to make Redundancy Pay Contributions at the contribution rate(s) set out above.

Signed on behalf of _____)

(name of organisation) _____)

by its authorised officer _____)

(full name and position of authorised officer) _____)

in the presence of: _____)

(signature of witness) _____)

SCHEDULE E3 OF THE FUND REGULATIONS

(Sub-regulation 4.5A)

[Deed No.18]

WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

WA Construction Industry Redundancy Fund Limited

as trustee for **WA Construction Industry Redundancy Fund**

A.C.N. 009 404 273

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: 9481 0259 Facsimile 9321 1441

**REQUEST FOR TRANSFER OF PARTICIPATING EMPLOYEE'S ACCOUNT
BALANCE TO ANOTHER FUND**

I
(Surname) (Christian Names)

of
(Address)

a Participating Employee in respect of whom an account is maintained with the WA Construction Industry Redundancy Fund HEREBY REQUEST the Trustee transfer and pay out of the capital of the Fund, to the trustee/administrator of the

.....
(full name of other Fund)

.....
(full address),

an amount equal to the entire balance standing to the credit of that account and HEREBY AGREE that upon transfer of that sum, representing that credit balance to that trustee/administrator the Trustee of the WA Construction Industry Redundancy Fund shall be completely discharged in respect of any liability to me for any entitlements that I may otherwise have had, in respect to the amount transferred, under the provisions of the Trust Deed and Fund Regulations of the WA Construction Industry Redundancy Fund.

*Signature of Participating Employee:

Signature of Witness:

Full name of Witness (please print):

Date: ____ / ____ / ____

*** PLEASE ENSURE THAT YOU SIGN THIS DOCUMENT AND ENSURE IT IS WITNESSED AND ALL INFORMATION IS COMPLETED BEFORE DELIVERY TO THE TRUSTEE.**

SCHEDULE F OF DEED

[Deed No. 18]

1. To let any property forming part of the Fund in such parts at such rentals upon such terms and conditions (including without limiting the generality thereof the grant or reservation of any necessary easements or rights) and to such tenants as the Trustee shall consider to be in the best interests of the Fund and to collect rents, occupation fees, licence fees and all other income relating to any property or business and to issue receipts therefore.
2. To execute and prosecute legal proceedings of any kind and in any Court to enforce any contract entered into or to recover damages for breach of any such contract.
3. To cancel, terminate or accept surrenders of leases; to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of any property; and to sue for and recover rent and damages for breach of any lease; to sue or prosecute trespassers or any other persons for damage to any part of any property; and to abandon, settle, compromise and release any such action or suit when expedient.
4. To pay out of the Fund all payments of all kinds necessary or desirable for carrying on management or development or purchase of any property or business.
5. To repair, renovate, decorate and maintain any chattels personal or any land including all fittings, fixtures, furnishings, furniture and equipment therein and the grounds and outhouses thereof.
6. To advertise any property or any part thereof and to display signs and notices thereon.
7. To impose rules and regulations governing the conduct of the occupants of any building or any other property.
8. To employ and superannuate such managers, staff and servants and engage such contracts as may be necessary or desirable and to engage the services of lawyers, engineers, architects, accountants, auditors, agents and any other professional or technical advisers and to pay any person or corporation whose services are engaged out of the Fund to make all such bonus payments to employees and other persons and to establish maintain and contribute to (whether or not the employee shall be obliged to) such one or more superannuation funds established for the benefit of any employee of the Trustee employed for the purposes of this Deed or the Trust as the Trustee shall think fit and to furnish all returns required in connection with the Trust or the income thereof by the law.

9. To do any other act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property or business forming part of the Fund.
10. To pay out of the Fund all expenses incurred in or about the exercise of any of the foregoing powers.
11. To invest the Fund in any investment authorized by section 17 of the Trustees Act from time to time selected by the Trustee (and if necessary in one particular authorised investment to the exclusion of all others) and to deal with manage transpose or realise such investments entirely as it thinks fit as if it were the absolute owner thereof and the Trustee shall not be accountable for any loss (except in the case of its wilful neglect dishonesty or fraud) arising out of the making of any investment or out of the failure to realise the investment or out of its management.
12. To undertake any liability in connection with the Fund or any part thereof in the acquisition sale or management of any authorised investment whether upon personal credit or with or without security and upon such terms and conditions as the Trustee shall in its absolute discretion think fit including granting as consideration for any authorised investment so acquired any annuity or other interest and upon such terms and conditions as the Trustee shall in its absolute discretion think fit, purchase any such authorised investment for a sum greater than the value of the Fund at the date of acquisition or that the authorised investment is to be paid for wholly or in part from any future moneys which may come into the Trustee's hands, including dividends, profits, interest or other income to be received from such investment.
13. To become or nominate officers of the Trustee directors of any company in which the Trustee may hold shares as part of the Fund AND it is directed that any Trustee or nominated officer of the Trustee may become qualified as a director by the holding in the Trustee's name of shares constituting part of the Fund.
14. To exercise all rights and privileges and perform all duties appertaining to any shares or stock for the time being subject to the trusts thereof with liberty to assent to any arrangements modifying such rights privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any company and for any such purpose to deposit surrender or exchange any of the said shares or stock or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares or stock or any such scheme or arrangement as aforesaid.
15. To raise or concur in raising with or without security any money which the Trustee in its absolute discretion thinks expedient or desirable for any purpose by mortgaging charging or otherwise hypothecating all or any part of the Fund.
16. To apply the whole or any part of the capital or Income of the Fund in or towards

payment of any liability undertaken by the Trustee in relation to the acquisition of property intended to form part of the Fund.

17. To grant or acquire easements or other rights in respect of any real property and generally to deal with such property or interest or to join in dealing with the same as if beneficially entitled thereto without being responsible for loss.
18. To acquire, carry on or join in carrying on any business in partnership with any other person or persons at the discretion of the Trustee during such period as it shall think proper with power for that purpose to employ therein such part or parts of the capital of the Fund as it thinks fit and employ at such salary as it thinks fit as manager of the said business any person or persons (whether Trustees or a Trustee of or otherwise interested in the Fund or not) or to leave the entire management of such business to any partner therein and to renew partnerships and generally to act in all matters relating to such business or businesses as if it were beneficially entitled thereto and without responsibility for loss.
19. To engage and appoint agents and to employ any manager solicitor accountant agent or other person to transact all or any business of whatever nature required to be done pursuant to this Deed including the receipt or payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.
20. To draw make accept endorse discount execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments and to join with any person or corporation in drawing making accepting endorsing discounting executing and issuing promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
21. To borrow with or without security for any of the purposes of this Deed and to give security for any such borrowing over any of the investments of the Fund or if appropriate give such security which involves a charge over the investments of the Fund and the assets of the Trustee jointly. Any such borrowing may be by way of overdraft accommodation from a Bank or by way of secured or unsecured loan or from any corporation or person or by way of deposit or otherwise.

22. *[Deed 20]*

To administer the trusts of and exercise all the Trustee's powers in relation to the Fund of the WA Construction Industry Redundancy Fund in conjunction and jointly with the administration of the trusts of and exercise of powers in relation to an associated trust, WA Construction Industry Redundancy (No.2) Fund, of which the Trustee is the trustee but at all times maintaining separate accounts and records of each fund and so that there is no mixing of the trust fund of each of the trusts.

23. *[Deed 20]*

To make loans to the trustee an associated trust, WA Construction Industry Redundancy (No.2) Fund, of which the Trustee is the trustee, for the purpose of the trustee of that trust meeting administrative expenses of the conduct of that trust and/or providing any benefit or payment which the trustee of that trust is authorised to provide or pay under the terms of the trust deed governing that trust.