
Deed poll - amendment and restatement of the B.E.R.T. Fund Trust Deed

BERT Fund Limited ACN 607 106 650

2024 amendments

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Title Deed poll - amendment and restatement of the B.E.R.T. Fund Trust Deed

Date 1st JULY 2024

By BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000 (Trustee)

Recitals

- A Clause 42.1 of the B.E.R.T. Fund trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of a Special Resolution of the Active Sponsors.
- B By a Special Resolution of the Active Sponsors, the Active Sponsors have approved the variation to the B.E.R.T. Fund trust deed as set out in this document.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this document, terms defined in the B.E.R.T. Fund trust deed have the same meanings when used in this document, and:

B.E.R.T. Fund trust deed means the redundancy fund trust deed for the B.E.R.T. Fund dated 16 May 1996 made by the Trustee and amended from time to time including by a supplemental deed dated 20 February 1997, a supplemental deed dated 5 March 2004, a supplement deed dated 10 November 2004, a supplemental deed dated 9 August 2006 and the deed of amendment and restatement dated 16 July 2015.

Effective Date means 1st JULY 2024.

1.2 Interpretation

Clause 1.2 of the B.E.R.T. Fund trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to B.E.R.T. Fund trust deed

2.1 Amendment and restatement

With effect from the Effective Date, the B.E.R.T. Fund trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

2.2 Amendment not to affect validity rights or obligations

The amendment and restatement of the B.E.R.T. Fund trust deed does not affect the validity or enforceability of the B.E.R.T. Fund trust deed.

2.3 References

On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund trust deed is a reference to the B.E.R.T. Fund trust deed as amended and restated under this document under 2.1.

Execution

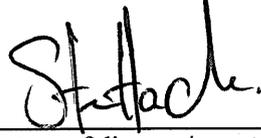
Executed as a deed.

**Signed sealed and delivered by
BERT Fund Limited (ACN 607 106
650) by:**



Signature of director

JOHN CRUTIAN
Name of director (please print)



Signature of director/secretary (please
strike out as applicable)

Steven Hack
Name of director/secretary (please print)

Annexure

Redundancy fund trust deed - B.E.R.T. Fund

**Redundancy fund trust deed
- B.E.R.T. Fund
(incorporating [20242015](#)
amendments)**

BERT Fund Limited ACN 607 106 650¹

¹ [BERT Fund Limited was appointed as trustee in place of BERT Pty Limited on 29 June 2015.](#)

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Title **Redundancy trust fund deed**

Date 16 May 1996

By [BERT Fund Limited \(ACN 607 106 650\)](#)~~[B.E.R.T. Pty Limited \(ACN 010 917 281\)](#)~~ of Level 15, 35 Astor Terrace, Spring Hill, Queensland 4004 (**Trustee**)²

Recitals

- A Various Awards and Industrial Agreements applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive:
- (a) a rollover or transfer of the whole of the assets and funds comprised in the Building Employee Redundancy Trust; and
 - (b) Contributions and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit.

Operative provisions

1. **Definitions and interpretation**

1.1 **Definitions**

Unless the context otherwise requires:

Accounting Period means any of:

- (a) the period from the date of this Deed to 30 June next;
- (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
- (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date,

but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

Active Employer Organisation³ means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;

² [BERT Fund Limited was appointed trustee in place of BERT Pty Limited on 29 June 2015 pursuant to a deed of retirement and appointment of trustee dated 16 July 2015 \(document reference 33796111v2\).](#)

³ [Definition inserted by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

- (b) any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor⁴ means the Active Employer Organisations and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union⁵ means each of:

- (a) the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Apprentice means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.

Approved Institution means a charitable or public educational institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and

⁴ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁵ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (b) approved by the Deputy Commissioner of Taxation as falling within section 23(e) or 23(j)(ii) or other provision providing an exemption from income tax of the *Income Tax Assessment Act 1936*.

Auditor means the auditor appointed by the Trustee.

Award means an award made by an Industrial Authority.

Beneficiary means a person entitled, or who may be entitled, to a Benefit but does not include a person who is a Member.

Benefit means any amount payable by the Trustee out of the Fund to or in respect of a Member.

BERT⁶ means B.E.R.T. Pty Limited ACN 010 917 281.

Building Employees Redundancy Trust⁷ means the fund established pursuant to a deed dated 12 December 1989 of which BERT was the original trustee.

Children includes an adopted child, step-child and ex-nuptial child.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or offsite.

Contribution means a payment to the Fund by a Participating Employer in accordance with the provisions of this Deed.

Death Benefit for a Member, means a Benefit payable following the death of the Member.

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed substantially in terms of the deed set out in Schedule 1.

Dependant means:

- (a) the Spouse of a Member, the widow or widower of a deceased Member;
- (b) the Children of a Member or deceased Member;
- (c) any other person who, in the opinion of the Trustee, is dependent or in the case of a deceased Member was wholly or partially dependent on the Member at the time of the Member's death;
- (d) the Nominated Dependant; and
- (e) any other person determined by the Trustee.

⁶ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁷ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

Discretionary Beneficiaries⁸ means:

- (a) the Active Sponsors;
- (b) the Members;
- (c) the legal personal representative of the Dependants of Members; and
- (d) any Approved institution.

Employee means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.

Employer means a person required to pay Contributions in respect of its Employees.

Enterprise Agreement means an agreement between an Employer and a union of employees which has been certified or approved by an Industrial Authority.

Fund means the redundancy fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 17.1.

Income Beneficiaries⁹ means:

- (a) the Active Sponsors;
- (b) the legal personal representative or the Dependants of any deceased Member; and
- (c) any Approved Institution.

Industrial Agreement means an agreement:

- (a) between an Employer or an employer association and a union of employees; or
- (b) between an Employer and its Employees,

whether or not it has been certified by, approved by or registered with an Industrial Authority.

Industrial Authority means a court or tribunal or other body or person, constituted under a law of the Commonwealth, a State or a Territory with power of conciliation or arbitration in relation to industrial disputes.

Member means:

- (a) a person who becomes a Member pursuant to the provisions of clause 3.2(c); and
- (b) an Employee who has been accepted by the Trustee as a Member,

and has not ceased to be a Member pursuant to clause 5.6.

Member Account means one of the accounts described in clause 11.1

Minimum Contribution¹⁰ means for each Week of Service:

- (a) in respect of a Member other than an Apprentice the greater of:

⁸ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁹ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹⁰ Definition amended by a supplemental deed dated 9 August 2006 and subsequently by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (i) the Contribution rate determined by a Special Resolution of the Active Sponsors and until otherwise determined is \$59.95; or
 - (ii) the Contribution rate specified in an Industrial Agreement or Enterprise Agreement which applies in respect of the Member;
- (b) in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member:
- (i) for a first year Apprentice – 40%;
 - (ii) for a second year Apprentice – 55%;
 - (iii) for a third year Apprentice – 75%;
 - (iv) for a fourth year Apprentice – 90%; and
- (c) in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member, which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.

Net Income means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) *Income Tax Assessment Act 1936* unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.

Nominated Dependant means the person nominated by a Member as the person that the Member would prefer to receive the amount standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit.

Participating Employer means:

- (a) a party who becomes a Participating Employer pursuant to clause 3.2(e); and
- (b) any Employer admitted under clause 4.1,

and who has not ceased to be a Participating Employer pursuant to clause 39.

Pension Age has the meaning given to that term in section 23 of the *Social Security Act 1991 (Cth)*.

Redundancy means that termination of employment of a Member in circumstances where the work the Member has been performing is no longer required to be done by anyone and **Redundant** has a corresponding meaning.

Reserve Account means the account maintained in accordance with clause 11.2.

Rollover Date means the date specified by the Trustee pursuant to clause 3.2(a).

Scope of the Deed¹¹ means:

- (a) all work in industrial, commercial or multi-residential building construction;
- (b) any other work within the Construction Industry as set out in an agreement between Active Sponsors;

¹¹ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (c) any other work within the Construction industry as agreed between an Employer and a Union;
- (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and
- (e) any work where the Employer makes a Contribution on behalf of an Employee.

Small Amount means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution ~~calculated in accordance with clause 1.1(31)(a)(i).~~

Special Resolution of the Active Sponsors¹² means a resolution:

- (a) signed by not less than 75% of the Active Sponsors;
- (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) signed by more than 50% of the Active Sponsors who are Active Unions.

Spouse means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Total and Permanent Disablement in relation to a Member means his or her incapacity to the extent:

- (a) of the loss of two limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
- (b) that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) is unable ever again to undertake any form of remunerative work in the construction industry for which he or she is reasonably equipped by educational training or experience;

provided that the illness or injury was not occasioned by intentional self injury and **Total and Permanently Disabled** has a corresponding meaning.

Trustee means the trustee for the time being of the Fund.

Vesting Date¹³ means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Week of Service means a week where on any day of the week:

- (a) the Member is employed by the Participating Employer; or
- (b) for which the Member is entitled to receive workers compensation in respect of an injury or other event occurring whilst in the employ of the Participating Employer up

¹² Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹³ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or

- (c) where the Member is on annual leave, long service or other paid leave, and a week falls in a month where Friday falls in that month.

1.2 Interpretation

- (a) Reference to:
- (i) one gender includes the other gender;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (A) that Statutory Provision as amended or re-enacted from time to time; and
 - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (b) If a party consists of more than one person, this Deed binds them jointly and each of them severally.
- (c) The schedules form part of this Deed.
- (d) Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.
- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (f) Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

1.3 Severance

If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

1.4 Perpetuity Period

All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2. Constitution of Fund

2.1 Establishment of Fund

The Trustee accepts its appointment as trustee of the Fund.

2.2 Name of Trust

The name of the Fund is the B.E.R.T. Fund.

2.3 Declaration of Trust

The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

3. Rollover of the Building Employees Redundancy Trust

3.1 The Trustee may accept the transfer or rollover of the whole of the assets and funds comprised in the Building Employees Redundancy Trust into the Fund.

3.2 If the Trustee receives a transfer or rollover of the whole of the assets and funds comprised in the Building Employees Redundancy Trust into the Fund it must:

- (a) nominate a date upon which the funds comprised in the Building Employees Redundancy Trust are to be transferred or rolled over into the Fund;
- (b) establish a Member Account for each person who was a Worker in the Building Employees Redundancy Trust immediately prior to the Rollover Date;
- (c) admit each person who was a Worker in the Building Employees Redundancy Trust immediately prior to the Rollover Date as a Member without the need for that person to complete an application form in accordance with clause 5.2 or at all;
- (d) immediately after the Rollover Date, credit each Member Account established pursuant to clause 3.2(b) with an amount equal to the ~~positive~~ balance in the Worker Account for that same person immediately prior to the Rollover Date; and
- (e) admit each person who was a Member of the Building Employees Redundancy Trust immediately prior to the Rollover Date as a Participating Employer without the need for that person to complete a Deed of Adherence.

3.3 Regardless of any other provision in this Deed, the Trustee must administer the Fund on the basis that a Benefit, equal to the positive balance of the Member Account immediately after the Rollover Date established for the Member pursuant to clause 3.2(b), must be paid to that Member (~~or the Member's~~ legal personal representative in the event of the Member's death) no later than a Benefit would have been paid under the terms of the Building Employees Redundancy Trust.

3.4 Except to the extent to which the context or subject matter otherwise requires, words and phrases defined in the deed for the establishment of the Building Employees Redundancy Trust have the same meaning when used in this clause 3.

4. Participation

4.1 Trustee May Admit Participating Employers

The Trustee may admit an Employer as a Participating Employer if:

- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence; or
- (b) the Employer lodges with the Trustee a completed Deed of Adherence.

4.2 Participating Employers Bound by Deed

Each Participating Employer is bound by the terms of this Deed.

4.3 Admission - Participating Employers

The Trustee must notify an Employer in writing of its admission as a Participating Employer.

4.4 Commencement of Participation

An Employer becomes a Participating Employer:

- (a) if admitted pursuant to clause 3.2(e), on the Rollover Date;
- (b) if admitted pursuant to clause 4.1(a), on the date of receipt of payment by the Trustee of amounts required under the Industrial Agreement or Enterprise Agreement; and
- (c) if admitted pursuant to clause 4.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence.

4.5 Member Identification

The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

5. Membership of Fund

5.1 Eligibility for Membership

Any Employee of a Participating Employer may become a Member.

5.2 Application for Membership

An eligible Employee who wishes to become a Member must apply to the Trustee in writing in the form specified in Schedule 2 or in such other form as the Trustee determines.

5.3 Trustee May Reject or Accept

On the receipt of an application for membership, the Trustee may admit or reject the applicant.

5.4 Commencement of Membership

The Member is deemed to have joined on:

- (a) in respect of Members admitted pursuant to clause 3.2(c), the Rollover Date; and
- (b) in any other case, the date determined by the Trustee.

5.5 Conditions of Membership

The Trustee may impose conditions on:

- (a) a Member's admission;
- (b) his or her rights and duties as a Member; and
- (c) Benefits for that Member.

The Trustee may remove or vary any of these conditions.

5.6 Membership Ceases

A person ceases to be a Member when:

- (a) the Trustee so resolves once all that Member's entitlements have been:
 - (i) paid or forfeited; or
 - (ii) transferred to another fund in accordance with this Deed; or
- (b) the Member dies.

6. Fund Information

6.1 Information to Prospective Participating Employer

The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:

- (a) the kinds of Benefits;
- (b) the conditions relating to Benefits; and
- (c) the method of determining entitlements.

6.2 Member Information

The Trustee must give to a Member:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
- (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
- (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

6.3 Participating Employer Information

The Trustee must give to a Participating Employer:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
- (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
- (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

6.4 Trust Deed

A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times.

7. Contributions

7.1 Redundancy Contributions

Unless:

- (a) the provisions of an Enterprise Agreement or Industrial Agreement which has application to the Member require that the Minimum Contribution be paid to the Building Unions Superannuation Scheme (Queensland) (**BUSS(Q)**); and
- (b) the Member has more than the minimum set by the Enterprise Agreement or Industrial Agreement in his or her Member's Account; and
- (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to **BUSS(Q)** on his or her behalf;

a Participating Employer must pay to the Trustee, or as directed by It, within 30 days¹⁴ after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses, 7.1(a), 7.1(b) and 7.1(c) are not collectively fulfilled and the moneys actually paid to **BUSS(Q)**, then the Minimum Contribution remains payable to the Trustee.¹⁵

7.2 Productivity and Other Payments

A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:

- (a) agreed with its Employees; or
- (b) as it determines.

7.3 Particulars

The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid.

7.4 Interest

If a Participating Employer defaults in the payment of Contributions due in accordance with clause 7.1 it must pay interest from the date the Contributions became due until the date on

¹⁴ Clause 7.1 was amended by a supplemental deed (document reference 19152853).

¹⁵ Clause 7.1 was amended by a supplemental deed (document reference 15710327).

which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

7.5 Recovery of Expenses

A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) In obtaining payment by any Participating Employer of any outstanding Contribution.

8. Information from Members and Beneficiaries

8.1 A Member when requested by the Trustee must:

- (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and
- (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.

8.2 If a Member fails to comply with the provisions of clause 8.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.

8.3 Where a Member or Beneficiary furnishes information affecting the Benefit payable to the Member or Beneficiary and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

9. Transfer from another Redundancy Fund

9.1 The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund.

10. Transfer of Benefit to New Fund

10.1 Transfer Requested by Member

On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another similar fund which makes provision for payment of benefits on Redundancy.

10.2 Transfer of Benefit by Trustee

The Trustee may transfer to another similar fund which makes provision for payment of benefits on Redundancy an amount no less than the positive balance of his or her Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

10.3 Receipt of Trustee

The receipt of the trustee of the fund or scheme to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

11. Accounts

11.1 Member Accounts

A Member Account must be established for each Member showing:

- (a) any amount paid or transferred into the Fund in respect of a Member pursuant to clauses 3.2 or 9;
- (b) Contributions made in respect of that Member; and
- (c) sums added to or deducted from the account pursuant to the provisions of this Deed.

11.2 Reserve Account

A Reserve Account must be established showing:

- (a) any amounts of Net Income accumulated by the Trustee in accordance with clause 29.1; and
- (b) any forfeited Benefits pursuant to clause 36.4.
- (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) pursuant to the provisions of this Deed; and
- (d) any amounts paid, applied or set aside from the Reserve Account pursuant to clause 11.3.

11.3 Trustee's Distributions from Reserve Account

The Trustee may pay, apply or set aside all or any part of any positive balance in the Reserve Account to or for any one or more of the Discretionary Beneficiaries to the exclusion of the others of them and in the proportions the Trustee thinks fit provided that any distribution from the Reserve Account under this clause 11.3 to the Active Sponsors must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half to the Active Employer Organisations and, if more than one, usually between them.¹⁶

11.4 Other Accounts and Registers

The Trustee must keep:

- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

¹⁶ Clause 11.3 was amended by a supplemental deed (document reference 15710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#).

12. Accounting Report

12.1 Trustee to Prepare Annual Report

After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the Active Sponsors.¹⁷

13. Audit of Accounts

13.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.

13.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

14. Qualification of Trustee

14.1 Eligibility to be Trustee

The Trustee must be a limited liability company in which:

- (a) the Active Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
- (b) the Active Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.¹⁸

15. Powers of Trustee

15.1 General Power

The Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.

15.2 Particular Powers

Without limiting the general power contained in clause 15.1, the Trustee has the particular powers referred to in Schedule 3.

15.3 Discretion in Exercise of Powers

The Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

15.4 Statutory Powers

¹⁷ Clause 12.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹⁸ Clause 14.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (a) The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.
 - (b) Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.
-

16. Appointment of Managers

- 16.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
 - 16.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
 - 16.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.
 - 16.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 16.3.
 - 16.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
 - 16.6** The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.
-

17. Appointment of Fund Administrator

- 17.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
 - 17.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
 - (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust;
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts;
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.
-

18. Confidentiality of Trustee's Deliberations

- 18.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
 - (a) any document disclosing:

- (i) any deliberations of the Trustee as to the manner in which the Trustee should
 - (ii) exercise any power or discretion conferred upon the Trustee;
 - (iii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iv) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
 - (c) any reason for any exercise or non-exercise of any power or discretion.
-

19. Remuneration of Trustee

The Trustee may with the prior approval of a Special Resolution of the Active Sponsors charge and retain out of the Fund a trustee's commission.¹⁹

20. Liability of Trustee

- 20.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 20.2 All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 20.
- 20.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 20.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.
-

21. Indemnity for Trustee

- 21.1 The Trustee is entitled to be Indemnified out of the Fund against liabilities Incurred by the Trustee by virtue of being the trustee of the Fund.

¹⁹ [Clause 19 was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

- 21.2 The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 21.3 The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.
-

22. Appointment and Removal of Trustee

- 22.1 The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 14.1;
 - (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
 - (d) by Special Resolution of the Active Sponsor, the Active Sponsors resolve that the Trustee be removed.²⁰
- 22.2 The Trustee may resign its office by giving 1 month's notice in writing to the Active Sponsors of its desire so to do.²¹
-

23. Appointment of New Trustee

- 23.1 If the Trustee is removed from office or retires pursuant to clauses 22.1 and 22.2 the Active Sponsors may by Special Resolution of the Active Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 22.1 or 22.2 unless and until the Active Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.²²
- 23.2 The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.
-

24. Sole Trustee

- 24.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* any corresponding legislation in any state or territory of Australia or elsewhere.
- 24.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.
-

25. Exercise of Discretions and Powers

- 25.1 Every discretion vested in the Trustee is absolute and uncontrolled.

²⁰ [Clause 22.1\(d\) was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

²¹ [Clause 22.2 was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

²² [Clause 23.1 was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

25.2 Every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.

25.3 The Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

26. Interest of Directors of Trustee Corporation

26.1 Any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

27. Interest of Trustee

27.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:

- (a) the Trustee or any person being a director or shareholder of the Trustee may:
 - (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit, either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee is the sole trustee.
-

28. Exercise of Discretion in Favour of Trustee

28.1 Where a power or discretion is exercisable by the Trustee in favour of a class that includes a trustee, an exercise of that power or discretion in favour of a trustee (whether or not to the exclusion in whole or in part of the other members of the class) is not invalidated and may not be objected to because it is in favour of a trustee.

28.2 The words 'a trustee' in clause 28.1 include a director or a shareholder of a company which is a trustee.

29. Distribution of Net Income

29.1 Trustee's Discretion

The Trustee may in respect of all or any part of the Net Income for an Accounting Period:

- (a) pay, apply or set it aside to or for any one or more of the Income Beneficiaries to the exclusion of the others and in the proportions as the Trustee thinks fit; or
 - (b) accumulate it by paying it into the Reserve Account;
- provided that any distribution of Net Income pursuant to this clause 29.1:
- (c) to the Active Sponsors, must be made:

- (i) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the fund; and
 - (ii) as to the other half for the Active Employer Organisations and, if more than one; and
- (d) to the legal personal representatives or Dependants of a deceased Member, must be limited to the payment of a funeral benefit where the Trustee is satisfied that there is financial hardship. No distribution is to be made if in the opinion of the Trustee, it would affect the taxation treatment of the Fund or its Participating Employers.²³

29.2 Late Exercise of Discretion

The Trustee may exercise the discretion contained in clause 29.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the Income Beneficiary in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

29.3 Takers in Default

If the Trustee does not exercise the discretion contained in clause 29.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the Net income for the Accounting Period:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the remaining one-half for the Active Employer Organisations and, if more than one, equally between them.²⁴

29.4 Recoupment of Losses

Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus, If losses are at any time to be recouped out of corpus they must first be recouped from the Reserve Account.

30. Amount of Benefit

- 30.1 Subject to clause 30.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 30.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member or Beneficiary.

²³ Clause 29.1 was amended by a supplemental deed (document 1S710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#).

²⁴ Clause 29.3 was amended by a supplemental deed (document reference 1S710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#).

31. Payment of Benefits

- 31.1 A Benefit is payable upon a claim being made by the Member or a Beneficiary if the Member:
- (a) retires from the work force on or after attaining the [Pension Ageage of 55 years](#);
 - (b) permanently leaves the Construction Industry;
 - (c) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;²⁵
 - (d) dies;
 - (e) becomes Totally and Permanently Disabled;
 - (f) is made Redundant;²⁶ or
 - (g) permanently leaves Australia.²⁷
- 31.2 A Member will be considered to have permanently left the Construction Industry for the purposes of clause 31.1(b) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.²⁸
-

32. Preconditions to Entitlement

- 32.1 A Member or Beneficiary has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 32.2 The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's or Beneficiary's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
-

33. Death Benefit

- 33.1 The Trustee must pay the Death Benefit to any one or more of the Dependants and legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 33.2 If no claim for a Death Benefit is made by the legal personal representatives or any Dependants of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 36.4.
-

34. Procedure for Payment of Benefits

- 34.1 The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.

²⁵ Clause 31.1(c) was amended by a supplemental deed (document reference 20778453).

²⁶ Clause 31.1(f) was amended by a supplemental deed (document reference 20778453).

²⁷ Clause 31.1(g) was Inserted by a supplemental deed dated 10 November 2004.

²⁸ Clauses 31.1(b) and 31.2 were deleted by a supplemental deed dated 5 March 2004. Clauses 31.1(b) and 31.2 were reinstated ~~in~~ an amended ~~form~~ by a supplemental deed dated 10 November 2004.

- 34.2 Every Member and Beneficiary must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member or Beneficiary changes address of:
- (a) the Member's or Beneficiary's place of residence and full postal address; and
 - (b) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.
- 34.3 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.
-

35. Payment of Taxation

- 35.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 35.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 35.3 The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.
-

36. Forfeiture of Benefits

36.1 Loss of Benefits

Any Member or Beneficiary:

- (a) who before a Benefit becomes payable, becomes bankrupt; or
- (b) whose Benefits whether by the persons own act, operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
- (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member or Beneficiary unable to manage his or her own affairs; or
- (d) who assigns or charges or attempts to assign or charge his or her Benefit;

forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

36.2 Dependants to be Considered

Benefits forfeited by reason of clause 36.1 must be held for the Member or Beneficiary (as the case requires) and his or her Dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to any one or more of them in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys. Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 36.4.

36.3 Lost Members and Small Amounts

The amounts standing to a Member's Account may be forfeited where:

- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
- (b) in relation to that Member:
 - (i) a statement sent by the Trustee under clause 6.2(b) to the last known address of the Member (or to the last known address of a Worker prior to the Rollover Date under the equivalent provision in the Building Employees Redundancy Trust) has been returned unclaimed;
 - (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
 - (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

For the purposes of this clause 36.3:

- (i) **Redundancy Fund** means both the Fund and Building Employees Redundancy Trust;
- (ii) **Member** means both a Member, and in respect of the period prior to the Rollover Date, the Worker who became a Member by virtue of clause 3.2(c);
- (iii) **Member's Account** means both the Member Account for the Member and the Worker's Account for that person under the Building Employees Redundancy Trust for the period prior to the Rollover Date.

Nothing in this clause 36.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.²⁹

36.4 Allocation for Forfeited Benefits

Every Benefit forfeited or to which a Member or Beneficiary has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

37. Relationship between Employer and Employee

37.1 Dealings between the Employer and Employee are not affected by this Deed.

37.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:

- (a) common law;
- (b) any workers' compensation legislation; or
- (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,

²⁹ Clause 36.3 was amended by a supplemental deed dated 20 February 1997.

are not affected by this Deed.

38. Liability and interest in Fund

38.1 Interest

- (a) A Member's interest in the Fund is personal to the Member.
- (b) Except as provided in this Deed, a Participating Employer, a Member or a Beneficiary has no right to or interest in any money or other assets of the Fund.

38.2 Liability of Participating Employers and Members

The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

39. Change in Employer

39.1 New Employer

If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund;

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer.

39.2 Withdrawal of Employer

The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 39.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 39.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or

- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant period, as the case may be.

39.3 Effect of Termination of Participation

On the termination of a Participating Employer's participation in the Fund in accordance with clause 39.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

39.4 Procedure on Termination

On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 10.1 or 10.2.

39.5 Discharge of Trustee

The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund.

39.6 Notice to Members

The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

40. Dissolution of the Fund

40.1 Date of Dissolution

Provided the Active Sponsors have given their prior approval to the winding up of the Fund by a Special Resolution of the Active Sponsors, the Fund must be wound up if:³⁰

- (a) there are no Members or Beneficiaries and the Trustee resolves to terminate;
- (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
- (c) for any other reason the Trustee resolves to terminate the Fund.³¹

40.2 Notice to Members

If an event referred to in clause 40.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

40.3 Position Following Giving of Notice

Following the giving of the notices referred to in clause 40.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 40.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

40.4 Provision for Liabilities and Benefits

As soon as practicable after the date specified in the notices referred to in clause 40.2 the Trustee must make provision after meeting expenses and liabilities for the following:

- (a) payment of Benefits which on or before giving the notices referred to in clause 40.2 had become payable to a Member or Beneficiary; and
- (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 39.4(c).

40.5 Surplus

If after providing for expenses, liabilities and benefits in accordance with clause 40.4, a surplus remains, the Trustee may pay, apply or set aside that surplus to or for anyone or more of the Discretionary Beneficiaries to the exclusion of the others of them and in the proportions as the Trustee thinks fit provided that any distribution pursuant to this clause 40.5 to the Active Sponsors, must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half for the Active Employer Organisation and, if more than one, equally between them.³¹

40.6 Takers In default

³⁰ Clause 40.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

³¹ Clause 40.5 was amended by a supplemental deed (document reference 15710327) and subsequently by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

If the Trustee does not exercise the discretion contained in clause 40.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half for the Active Employer Organisation and, if more than one, equally between them.³²

40.7 After payment of benefits the Fund is dissolved

When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 40.4 the Fund is deemed to be dissolved.

40.8 Final accounts

Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

41. Payment to Others on Behalf of Beneficiaries

41.1 If:

- (a) a Beneficiary is under the age of 18; or
- (b) in the opinion of the Trustee it would be in the best interests of the Beneficiary;

the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary.

41.2 If the Trustee believes that a person who is entitled to a Benefit is unable to manage his or her financial affairs, the Trustee may pay the Benefit to another person to be used for the advantage of the person entitled to it.

41.3 The receipt of the person to whom the Benefit is paid pursuant to clauses 41.1 or 41.2 is a complete discharge to the Trustee for the payment.

41.4 The Trustee is not responsible for the application of the Benefit by the person to whom it is paid.

42. Variation of Trust

42.1 The Trustee may by written resolution of Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of Special Resolution of the Active Sponsors.³³

42.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations,

³² Clause 40.6 was amended by a supplemental deed (document reference 157103Z7) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#).

³³ [Clause 42.1 was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#)

alterations or additions take effect from the date the resolution or the supplemental deed is made.

- 42.3 No revocation, addition or variation may adversely effect the beneficial entitlement to any amount set aside for any Member or Beneficiary prior to the date of the variation, alteration or addition.

43. Notices³⁴

- 43.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.
- 43.2 The notice or document is deemed to be served:
- (a) if delivered, at the time of delivery;
 - (b) if posted, at the time it would be received in the normal course of post;
 - (c) if sent by telex or facsimile, on the next business day in the place to which its addressed or
 - (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day, if delivered by 5.00 pm on a business day, or the next business day, in any other case.

44. Law of Trust

- 44.1 This Deed is governed by the law of Queensland.

45. Partial Payment of Benefit

45.1 Request for Deferral

If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

45.2 Drawdown Requests

Where the Trustee has agreed to defer payment of a Benefit, the Member may at any time make a Drawdown Request to the Trustee.

45.3 Pay Drawdowns

The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

45.4 Income on Undrawn Balances

³⁴ Clause amended by a supplemental deed (document reference 19152883).

A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 45.1 to have the payment deferred.

45.5 Definitions

In this clause 45:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount;
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.³⁵

³⁵ Clause 45 was Inserted by a supplemental deed (document reference 15710327).

Schedule 1

Deed of Adherence

Deed made

Parties ~~[B.E.R.T. Pty Limited ACN 010 917 281](#)~~ [BERT Fund Limited ACN 607 106 650³⁶](#)

of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 (**Trustee**)

And The party described in the Schedule

of **(Participating Employer)**

Introduction

A Pursuant to a deed dated 16 May 1996 (**Trust Deed**) the Trustee established the BERT Fund.

B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

It is agreed

1. Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

2.1 The Participating Employer:

- (a) is bound by the terms and conditions of the Trust Deed; and
- (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3. Governing Law and Jurisdiction

3.1 The law of Queensland governs this Deed.

3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices³⁷

4.1 A notice or other communication (Notice) connected with this Deed has no legal effect unless it is in writing and:

³⁶ [BERT Fund Limited was appointed trustee in place of BERT Pty Limited on 29 June 2015 pursuant to a deed of retirement and appointment of trustee dated 16 July 2015 \(document reference 33796111v2\).](#)

³⁷ Clause and schedule amended by a supplemental deed (document reference 19152853)

- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
- (b) sent by post, postage prepaid, to that address;
- (c) sent by facsimile to the facsimile number of the addressee; or
- (d) sent by email to the email address of the addressee.

4.2 A Notice is deemed given and received:

- (a) if delivered, upon delivery;
- (b) if sent by post on the 2nd Business Day (at the address to which it is posted) after posting; or
- (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer :

ACN (if a company) :

Business Name (if any) :

Address :

Telephone number :

Facsimile number :

Email address :

Contact name :

EXECUTED as a deed

THE COMMON SEAL of)
 was affixed in accordance with its articles)
 of association in the presence of:)

Director/Secretary

Director

Name of Director/Secretary (BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

Signed sealed and delivered by)
in the presence of:) _____

Signature of Witness (a J.P. or Solicitor)

Name of Witness (BLOCK LETTERS)

Address of Witness

Schedule 2

Application for Membership (clause 5.2)

CONFIDENTIAL

To: The Trustee
BERT Fund

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated: [●] 20[●]

.....
Signature

Name :

Address :

Occupation :

Date of Birth :

Nominated Dependant(s)

I nominate the following as my Nominated Dependants

Surname(s)	Given Name(s)	Relationship	% of Total Benefit
.....
.....
.....
.....

Schedule 3

Trustee's particular powers (clause 15.2)

1. Invest

To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:

- (a) not income producing;
- (b) of a wasting or speculative nature; or
- (c) not by law authorised for the investment of trust money.

2. Purchase and Pay for Investments

To make any investments for cash or in consideration of any annuity or otherwise and:

- (a) to make any investment for a sum greater than the amount of the Fund for the time being; and
- (b) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.

3. Vary Investments

To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.

4. Lend

To advance and lend money to any person with or without security.

5. Borrow and Obtain Credit

- (a) To raise or borrow money, either alone or jointly with others, from any person.
- (b) To enter into any agreement or arrangement for obtaining credit
- (c) To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.
- (d) No lender is concerned to enquire:
 - (i) as to whether the necessity for a borrowing has arisen;
 - (ii) as to the purpose for which it is required;
 - (iii) as to the application of the money borrowed; or
 - (iv) that no more than is wanted is raised.
- (e) The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.

6. Limit Liability

To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

7. Give Guarantees

- (a) To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person.
- (b) To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- (c) No lender is concerned to enquire as to:
 - (i) the necessity for or propriety of any guarantee or indemnity;
 - (ii) the purpose for which it is given; or
 - (iii) the application of any money borrowed,

8. Joint or Third Party Borrowing

To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to:

- (a) the Trustee jointly with any other person; or
- (b) any other person.

9. Deal with Property

To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

10. Acquire Policies of Insurance

- (a) To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.
- (b) To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.

11. Pay Outgoings

To pay out the Fund all costs, charges and expenses incidental to:

- (a) the management of the Fund;
- (b) the exercise of any power, authority or discretion contained in this Deed; or
- (c) carrying out or performing the Trusts created by this Deed;

which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.

12. Take Up Shares, Units or Securities

To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:

- (a) any corporation incorporated in any of the states or territories of Australia or elsewhere;
- (b) any government semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
- (c) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
- (d) any limited partnership established in any of the states or territories of Australia or elsewhere.

13. Corporate Securities

With respect to any corporation or unit trust in which the Trustee holds shares, stocks, debentures, options, convertible notes, units, subunits (Securities) or is otherwise interested or concerned:

- (a) to pay calls on Securities or permit Securities to be forfeited and sold;
- (b) to purchase Securities and take up Securities of a new issue;
- (c) to lend money to the corporation or unit trust whether secured by debentures or in any other way or not secured;
- (d) to attend at meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
- (e) to sell Securities;
- (f) to assent to or join in any arrangements relating to the sale, transfer or exchange of any Securities or modifying any right, privileges or interests in relation to the Securities;
- (g) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities, whether in the same

corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;

- (h) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (i) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (j) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust with power to pay any money by way of equality of division or partition.

14. Futures Contracts and Options

- (a) To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
 - (i) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (ii) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (iii) place bids or make offers; or
 - (iv) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- (b) To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

15. Support Employee Associations etc.

To establish and support association institutions, funds (including staff superannuation funds), trusts and conveniences calculated to benefit employees, past-employees, dependants of employees or past-employees of any business carried on by the Trustee under this Deed.

16. Establish and Maintain Superannuation

- (a) To establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension provident or superannuation funds for the welfare and/or benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, a person (including a director) who is or was at any time in the employment by the Trustee.
- (b) To establish and aid any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interest and well-being of any of the Members and Beneficiaries.
- (c) To effect or acquire life and endowment policies of assurance and to pay or contribute to the payment of premiums on those policies for the benefit of employees and their

spouses and/or the spouse widows, widowers, families and dependents of employees and their spouses.

17. Partition

To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.

18. Determine Capital or Income

To determine:

- (a) whether:
 - (i) any property;
 - (ii) any increase or decrease in the amount, number or value of any property or holdings of property; or
 - (iii) any receipt or payment from, for or in connection with any property;is treated as and credited or debited to capital or to income and out of what part of the Fund; and
- (b) whether any expense or outgoing is borne by capital or income.

19. Open Bank Accounts

To open in the name of:

- (a) the Trustee;
- (b) a person as nominee of the Trustee; or
- (c) the Trustee and another jointly,

any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.

20. Grant Options

To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.

21. Become or Appoint Directors

- (a) To become a director of any corporation in which money forming a part of the Fund is invested.
- (b) To appoint any other person to act as director of the corporation.
- (c) To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.
- (d) Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of

trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

22. Do All Things Incidental

To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

23. Act Upon Advice

- (a) To obtain and act upon the opinion or advice of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.
- (b) Nothing in paragraph 23(a) prohibits or impedes the Trustee from applying to a court or prohibits any of the Discretionary Beneficiaries from doing so.

24. Take Opinion of Counsel

- (a) Without derogating from the generality of paragraph 23, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Discretionary Beneficiaries in respect of any act done by the Trustee in accordance with the opinion.
- (b) Nothing in paragraph 24(a) prohibits or impedes the Trustee from applying to a court

25. Permit Nominee to Hold Assets

- (a) To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- (b) To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

26. Take on Lease

To take on lease or hire purchase any property including plant machinery, goods, equipment articles and chattels of every kind or description.

27. Draw Bills of Exchange

- (a) To draw, make, accept, endorse, discount; sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills exchange and other negotiable transferable instruments and in particular commercial bills.
- (b) To secure any liability of the Trustee in respect of any matter referred to paragraph 27(a) by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

28. Deal with Distributions from Other Trusts

To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

29. Blend Funds

- (a) To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- (b) To join with any other person in making common investments.

30. Employ Agents

- (a) To employ any managers, agents, advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money.
- (b) To determine the remuneration to be paid to them.

31. Attorney

To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

32. Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

33. Manage

To manage any property that forms part of the Fund.

34. Compromise

To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

35. Pay for Assistance

To employ and pay for such professional or other assistance as the Trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

36. Institute and Defend Proceedings

- (a) To institute, join in and defend any legal arbitration or mediation proceeding.
- (b) To proceed to the final determination of the proceedings.
- (c) To discontinue the proceeding and any other claim or demand.

37. Apply for Grant

To apply for, acquire and exercise any chart, licence, legislative enactment, power, authority franchise, concession, right or privilege from any government or authority or any corporation or other public body.

38. Construct

- (a) To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- (b) To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- (c) To contribute to or assist in the construction improvement, maintenance, development working, management or carrying out control of the works or conveniences.

39. Procure Recognition

To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.