

# Trust deed

The **National Electrical Contractors Association** of Level 12, 222 Kings Way, South Melbourne, Victoria and **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia** of Level 1, 200 Arden Street, North Melbourne, Victoria (collectively the **Sponsors** and individually a **Sponsor**)

**Protect Severance Scheme No. 2 Pty Ltd**

# Trust deed

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# Trust deed

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**Date** *Consolidated version of the Deed as at 3 April 2020*

**Parties**

The **National Electrical Contractors Association** of Level 12, 222 Kings Way, South Melbourne, Victoria and **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia** of Level 1, 200 Arden Street, North Melbourne, Victoria (collectively the **Sponsors** and individually a **Sponsor**)

**Protect Severance Scheme No.2 Pty Ltd** ACN 606 361 853 of Ground Floor, 200 Arden Street, North Melbourne, Victoria (**Trustee**)

**Recitals**

- A The Sponsors have agreed to establish a scheme to be known as Protect Severance Scheme No.2 (the **Scheme**) to provide benefits to Workers who leave or change their employment in circumstances set out in this Deed.
- B As a consequence of the agreement referred to in Recital A above, the Sponsors have also agreed to take all necessary action to:
- (i) subscribe for fifteen 'A' Class Units in the case of the ETU and 5 'A' Class Units in the case of NECA and transfer the 'A' Class Unit Price for those 'A' Class Units to the Trustee after the execution of this Deed; and
  - (ii) actively promote and seek membership of the Scheme from employers eligible to participate in the Scheme.
- C To achieve the purpose of the Scheme, Employers will become Members of the Scheme and will make Contributions in respect of Workers.
- D The Trustee has consented to become the initial trustee of the Scheme upon the terms of this Deed.

The parties agree

## 1 Definitions and interpretation

The following definitions apply unless the context requires otherwise.

**'A' Class Unit** means an undivided part or share in the Trust Fund having the characteristics identified in this Deed.

**'A' Class Unit Price** means \$0.01.

**Amend** includes amend, alter, modify, vary, add to, repeal and delete and **Amendment** includes any amendment, alteration, modification, variation, addition, repeal or deletion.

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**Agreement** means, in relation to a Division, an industrial instrument that the Trustee and the Division Sponsors or if there is no Division Sponsor, the applicable Employee Organisation and Employer Organisation (if any) agree is the industrial instrument that sets out a Member's underlying obligations to its employees to make contributions to an Approved Worker Entitlement Fund such as the Scheme.

**AMWU** means:

- (a) the trade union named the 'Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' and known as the Australian Manufacturing Workers' Union of 1st Floor, 251 Queensberry Street, Carlton South, Victoria, being a registered organisation under the Fair Work (Registered Organisations) Act 2009; or
- (b) any trade union or other entity which replaces or succeeds the entity named in paragraph (a) and which, having the power to do so, agrees with the Trustee to assume the obligations, powers, duties and role of that entity under this Deed.

**AMWU (National)** means:

- (a) the trade union named the 'Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (National)' and known as the Australian Manufacturing Workers' Union (National) of 1st Floor, 251 Queensberry Street, Carlton South, Victoria, being a registered organisation under the Fair Work (Registered Organisations) Act 2009; or
- (b) any trade union or other entity which replaces or succeeds the entity named in paragraph (a) and which, having the power to do so, agrees with the Trustee to assume the obligations, powers, duties and role of that entity under this Deed.'

**Application Form and Deed of Adherence** means an application form and deed of adherence in (or substantially in) the form of Schedule 1, or in such other form as may be prescribed by the Trustee from time to time.

**Apprentice** means a person:

- (a) employed by a Member under the terms of an indenture or a training contract pursuant to which the person will learn an occupation or trade within the Industry; or
- (b) who in the opinion of the Trustee is an apprentice within the meaning of the applicable industrial laws and industrial agreements,

for whom Contributions are required to be made and in the case of the Electrical Division includes an electrotrades trainee employed by a Member.

**Approved Worker Entitlement Fund** means an approved worker entitlement fund within the meaning of section 58PB of the Fringe Benefits Tax Assessment Act 1986.

**Associate** has the same meaning in relation to a person as that expression has in relation to a person in the Income Tax Assessment Act 1936.

**'B' Class Unit** means an undivided part or share in the Trust Fund having the characteristics identified in this Deed.

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**'B' Class Unit Price** means \$0.01.

**Commencement Date** means the date of commencement of the Scheme.

**Complying Approved Deposit Fund** means a complying approved deposit fund within the meaning of section 47 of the Superannuation Industry (Supervision) Act 1993.

**Complying Superannuation Fund** means a complying superannuation fund within the meaning of section 45 of the Superannuation Industry (Supervision) Act 1993.

**Contract of Employment** includes any agreement, arrangement or understanding (and whether documented or not) under which a Worker is employed by an employer and is or may become entitled to Severance Payments in accordance with its terms.

**Contributions** in respect of a Worker, means the contributions made to the Scheme by the Member in respect of the Worker in accordance with this Deed.

**Corporation** means any body corporate, whether formed or incorporated within or outside Victoria and includes any company.

**Deed** means this deed of trust including the Division Rules and references to this Deed mean this deed of trust as Amended and for the time being in force.

**Dependant** means a death benefits dependant within the meaning of the Income Tax Assessment Act 1997.

**Division** means a segment of the Scheme that the Trustee has determined in accordance with the terms of this Deed to establish as a division in the Scheme so that it can be distinguished from any other part of the Scheme and includes:

- (a) the Electrical Division;
- (b) the Manufacturing - National Division;
- (c) the Manufacturing Workers Division;
- (d) the Maritime Division; and
- (e) any other division established by the Trustee on or after that date in accordance with Clause 3.

**Division Rules** means the rules (if any) made from time to time in accordance with Clause 3 that govern each Division in addition to any clause in this Deed.

**Division Sponsor** means, in respect of a particular Division, any person who:

- (a) has agreed with the Trustee to be the sponsor of that Division; or
- (b) otherwise, is with that person's consent described in the relevant Division Rules as the sponsor of that Division.

**Division Sponsor's Account** means, in respect of a Division Sponsor, the account established and maintained by the Trustee in its books of account under Clause 14.5.

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**Electrical Division** means the Division in the Scheme known as the 'Electrical Division' or by such other name as the Trustee may determine from time to time that is governed under any Rules declared by the Trustee as being the Division Rules for the Electrical Division in addition to the Clauses in this Deed.

**Employed in the Industry** means in relation to a Worker, a person who is employed by an employer whose business or activities, in the opinion of the Trustee, relate to the Industry.

**Employee Organisation** means an employee organisation within the meaning of the Fair Work Act 2009 provided that:

- (a) in relation to the Electrical Division, it means the ETU;
- (b) in relation to the Manufacturing - National Division, it means the AMWU (National);
- (c) in relation to the Manufacturing Workers Division, it means the AMWU;
- (d) in relation to the Maritime Division, it means the MUA; and
- (e) in relation to any other Division, it means any such employee organisation that represents employees within the Industry to which that Division applies and with whom the Trustee has an agreement in relation to the conduct and management of that Division.

**Employer** means a person who is an employer and whose business activities:

- (a) are within a particular Industry; or
- (b) the Trustee agrees in writing to treat as being within a particular Industry.

**Employer Organisation** means an employer organisation within the meaning of the Fair Work Act 2009 provided that:

- (a) in relation to the Electrical Division, it means NECA; and
- (b) in relation to any other Division, it means any such employer organisation that represents employers within the Industry to which that Division applies and with whom the Trustee has an agreement in relation to the conduct and management of that Division.

**Employment Termination Payment** means an employment termination payment within the meaning of section 82-130 of the Income Tax Assessment Act 1997.

**ETU** means:

- (a) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia of Level 1, 200 Arden Street, North Melbourne, Victoria, a registered organisation under the Fair Work (Registered Organisations) Act 2009;
- (b) any industrial union or other entity which replaces or succeeds or amalgamates with the entity named in paragraph (a) and which subsequently agrees with the Trustee to assume the obligations, powers, duties and role of ETU (in its capacity as a Sponsor) under this Deed in circumstances where the successor entity has

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the necessary power and agrees to assume those obligations, powers, duties and role under this Deed.

**ETU Beneficiaries** means each of the following:

- (a) ETU;
- (b) each Worker;
- (c) the parents, grandparents, brothers, sisters, spouses, widows, widowers, children and grandchildren of each Worker and the spouses, widows, widowers, children and grandchildren of such parents, grandparents, brothers, sisters, spouses, children and grandchildren (the **Worker Beneficiaries**);
- (d) an administrator appointed under legislation of a State or Territory of Australia in respect of the estate of a Worker or a Worker Beneficiary who suffers intellectual impairment, mental illness, brain damage, physical disability or senility;
- (e) any corporation wherever incorporated or resident if any share in its capital is beneficially owned by ETU, any Worker or any Worker Beneficiary or by the trustee of any trust or settlement under which ETU, any Worker or any Worker Beneficiary is a beneficiary or has any interest;
- (f) the trustee of any trust or settlement under which ETU, any Worker or any Worker Beneficiary is a beneficiary or in or from which ETU, any Worker or any Worker Beneficiary has any interest, right to receive a distribution or expectancy whatsoever in its capacity as trustee of any trust or settlement. For the purposes of this paragraph, where any such trust is a unit trust ETU, the Worker or the Worker Beneficiary (as the case may be) will be deemed to have an interest in that unit trust if any of the units are held by the trustee of any trust or settlement under which ETU, a Worker or a Worker Beneficiary is a beneficiary or in or from which ETU, any Worker, any Worker Beneficiary or the trustee or any superannuation fund of which any Worker or any Worker Beneficiary is entitled to a benefit (whether vested or contingent) has any interest, right to receive a distribution or expectancy whatsoever;
- (g) the executors and/or trustees of the will of any Worker or any Worker Beneficiary in their capacity as executors and/or trustees of any such will;
- (h) the trustee of any superannuation fund (in its capacity as trustee) of which any Worker or any Worker Beneficiary is a member or beneficiary or from or under which any Worker or any Worker Beneficiary is entitled to any benefit (whether vested or contingent);
- (i) any persons having legal custody of any Worker or any Worker Beneficiary;
- (j) any person related by blood or marriage to any Worker or any Worker Beneficiary;
- (k) the trustee of any charitable trust and any person, officer or governing body of any association in their capacity as such, or any society, authority, institution, church, religious order or person or entity which at the time of a distribution of income or capital of the surplus income is to be made is exempt from income tax under the provisions of the Income Tax Assessment Act or if at such time a gift of money to that entity is deductible against assessable income of the donor by virtue of the Income Tax Assessment Act;



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- (l) any person, entity, fund, club or association with objects not inconsistent with the objects of ETU;
  - (m) any person, corporation or body conducting a school or like educational institution at which ETU, any Worker or any Worker Beneficiary may from time to time attend;
  - (n) any person, firm, corporation or organisation carrying on the professional business of a surgeon, physician, general practitioner or other medical practitioner, nurse, chiropractor, physiotherapist, masseur, pharmacist, hospital or nursing home or as a supplier or provider of medical, nursing or therapeutic care or services who may treat or attend to in the course of any such professional business or supply or provide any goods or services in the course of any such profession or business to any Worker or any Worker beneficiary; or
  - (o) any person or corporation wherever resident or incorporated which the Trustee may from time to time nominate.

**Exempt Benefit** means an exempt benefit within the meaning of section 58PA of the Fringe Benefits Tax Assessment Act 1986.

**External Administrator** means an external administrator within the meaning of the Payment Systems and Netting Act 1998.

**GRA Severance Event** means the termination of the Worker's employment by reason of a genuine redundancy, provided the Worker has not yet attained the age prescribed by paragraph 83-175(2)(a)(i) of the Income Tax Assessment Act 1997 at the time of the termination of their employment.

**GRA Worker:** a Worker will be a GRA Worker for the purposes of Clauses 9.2 and 9.3 upon the happening of a GRA Severance Event.

**Income** has the meaning determined by the Trustee for the purposes of this Deed.

**Income Tax Assessment Act** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 or both the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 as appropriate.

**Industry** means, in respect of a Division, the industry in respect of which the Division Sponsor participates as an Employee Organisation for Workers who are or will be beneficiaries in that Division or where there is no Division Sponsor, such industry as the Trustee determines.

**Insolvency Event** means any of the following:

- (a) the Member has a receiver, receiver and manager, mortgagee in possession or voluntary administrator appointed to the Member or the Member's assets;
- (b) the Member becomes subject to any form of external administration;
- (c) a resolution is passed for winding up of the Member or an order is made for the winding up of the Member;
- (d) an application for winding up of the Member is presented which relates to an amount of money owed by the Member which is not bona fide in dispute;

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- (e) if the Member is a partnership, the partnership is dissolved or the Member resolves to dissolve the partnership; or
  - (f) if the Member is an individual, the Member becomes, or is declared, bankrupt or dies.

An **Interdependency Relationship** exists between a Worker and another person (whether or not related by family) if:

- (a) they have a close personal relationship; and
- (b) they live together; and
- (c) one or each of them provides the other with financial support; and
- (d) one or each of them provides the other with domestic support and personal care.

However, an interdependency relationship may still exist between a Worker and another person (whether or not related by family) if:

- (e) they satisfy the requirement of paragraph (a); and
- (f) they do not satisfy the requirements of paragraphs (b) to (d) because either or both of the Worker and the other person suffer from a physical, intellectual or psychiatric disability.

**Legal Personal Representative** has the meaning given to that expression in the Income Tax Assessment Act 1997 (Cth).

**Manufacturing Workers Division** means the Division in the Scheme known as the 'Manufacturing Workers Division' or such other name as the Trustee may determine from time to time that is governed under any Rules declared by the Trustee as being the Division Rules for the Manufacturing Workers Division in addition to the Clauses in this Deed.

**Manufacturing - National Division** means the Division in the Scheme known as the 'Manufacturing - National Division' or such other name as the Trustee may determine from time to time that is governed under any Rules declared by the Trustee as being the Division Rules for the Manufacturing - National Division in addition to the Clauses in this Deed.

**Maritime Division** means the Division in the Scheme known as the 'Maritime Division' or such other name as the Trustee may determine from time to time that is governed under any Rules declared by the Trustee as being the Division Rules for the Maritime Division in addition to the Clauses in this Deed.

**Member** means any person who:

- (a) has been admitted, or deemed to have been admitted, to participate in the Scheme as a member under this Deed (including any person who replaces or succeeds or amalgamates with a member in circumstances where the replacement, successor or amalgamated entity has the necessary power and agrees (whether expressly or by implication or conduct) to assume the powers, duties and obligations of a member under this Deed); and

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(b) has not ceased to participate in the Scheme as provided in this Deed,

and, in relation to a Worker means, the person employing him or her and in relation to a former Worker means the person or persons by whom the former Worker was last employed.

**MUA** means:

- (a) the Maritime Union of Australia of Level 2, 365-375 Sussex Street, Sydney, New South Wales, being a registered organisation under the Fair Work (Registered Organisations) Act 2009; or
- (b) any trade union or other entity which replaces or succeeds the entity named in paragraph (a) and which, having the power to do so, agrees with the Trustee to assume the obligations, powers, duties and role of that entity under this Deed.

**NECA** means:

- (a) The National Electrical Contractors Association of Level 12, 222 Kings Way, South Melbourne, Victoria, a registered organisation under the Fair Work (Registered Organisations) Act 2009 (Cth); or
- (b) any person who:
  - (i) replaces or succeeds the National Electrical Contractors Association as the applicable employer organisation for that industry;
  - (ii) has the requisite legal capacity and ability to assume the obligations, powers, duties and role of the National Electrical Contractors Association as a Sponsor under this Deed; and
  - (iii) agrees with the Trustee to assume the obligations, powers, duties and role of the National Electrical Contractors Association (in its capacity as a Sponsor) under this Deed.

**NECA Beneficiaries** means each of the following:

- (a) NECA for the benefit of the NECA Victorian Chapter Fund;
- (b) any corporation wherever incorporated or resident if any share in its capital is beneficially owned by NECA, or by the trustee of any trust or settlement under which NECA is a beneficiary or member;
- (c) any entity which NECA controls for the purposes of section 50AA of the Corporations Act 2001;
- (d) the trustee of any trust or settlement under which NECA is a beneficiary or in or from which NECA has any interest, right to receive a distribution or expectancy whatsoever in its capacity as trustee of any trust or settlement. For the purposes of this paragraph, where any such trust is a unit trust, NECA will be deemed to have an interest in that unit trust if any of the units are held by the trustee of any trust or settlement under which NECA is a beneficiary is entitled to a benefit (whether vested or contingent) has any interest, right to receive a distribution or expectancy whatsoever;

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- (e) the trustee of any charitable trust and any person, officer or governing body of any association in their capacity as such, or any society, authority, institution, church, religious order or person or entity which at the time of a distribution of income or capital of the surplus income is to be made is exempt from income tax under the provisions of the Income Tax Assessment Act or if at such time a gift of money to that entity is deductible against assessable income of the donor by virtue of the Income Tax Assessment Act; or
  - (f) any person or corporation wherever resident or incorporated which the Trustee may from time to time nominate.

**NECA Victorian Chapter Council** means the committee of management elected by the members of the Victorian Chapter of NECA as the council of the Victorian Chapter of NECA.

**NECA Victorian Chapter Fund** means the fund to be managed and controlled by the Victorian Chapter Council according to the rules of the Victorian Chapter of NECA.

**Necessary Information** has the meaning given within Clause 6.7.

**Permanent Incapacity:** a Worker is considered to be suffering permanent incapacity if the Trustee is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**Preservation Age** means the age specified as a person's preservation age in the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Prescribed Amount** means:

- (a) where the payment is made in consequence of a TER Severance Event, the sum of \$4,000 or such other amount as may be determined by the Trustee from time to time for the purposes of this definition; or
- (b) where the payment is made in consequence of a GRA Severance Event, the tax free amount of a genuine redundancy payment calculated in accordance with subsection 83-175(3) of the Income Tax Assessment Act 1997 or such other amount as may be determined by the Trustee from time to time for the purposes of this definition; or
- (c) in relation to a particular Division, where the Division Rules provide otherwise, the amount described as the prescribed amount in the Division Rules.

**Reciprocating Scheme** means:

- (a) any Approved Worker Entitlement Fund; or
- (b) any fund that was an Approved Worker Entitlement Fund at the time contributions were made to it,

as may from time to time be approved by the Trustee.

**Retirement** is taken to occur when:

- (a) a Worker has attained their Preservation Age; and

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- (b) an arrangement under which the Worker was employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment has come to an end; and
  - (c) the Trustee is reasonably satisfied that the Worker does not intend to be so employed again for more than 10 hours per week.

**Retirement Savings Account** means a retirement savings account within the meaning of the Retirement Savings Account Act 1997.

**Severance Event** means any GRA Severance Event or TER Severance Event.

**Severance Payments** means payments to be made to or in respect of Workers under Clause 9.

**Scheme** means the trust created under this Deed and known by such name as is determined in accordance with Clause 12.

**Sponsors** mean NECA and ETU.

**Statutory Declaration** means a statutory declaration within the meaning of the laws of the jurisdiction within Australia under which the declaration is made.

**TER Severance Event** means the termination of the Worker's employment for any reason whatsoever, including the termination of the Worker's employment due to:

- (a) the Worker suffering Permanent Incapacity; or
- (b) the Worker's Retirement; or
- (c) the Worker's death,

but excludes a GRA Severance Event.

**TER Worker:** a Worker will be a TER Worker for the purposes of Clauses 9.2 and 9.3 upon the happening of a TER Severance Event.

**Trust Fund** means all moneys and other assets held by, or on account of, the Trustee under this Deed.

**Trustee** means the trustee or trustees for the time being of the Scheme whether initial, additional or substituted.

**Unallocatable Amount** has the meaning given within Clause 6.7.

**Unit** means an 'A' Class Units or a 'B' Class Unit, being an undivided part or share in the Trust Fund.

**Unitholder** means any person who holds Units for so long as that person is registered as the holder of a Unit and any other person for the time being registered under the provisions of this Deed as the holder of a Unit and includes persons jointly registered.

**Worker** means an employee whose employer, being a Member, has agreed that the employee be treated as a worker for the purposes of this Deed by notifying the Trustee in

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such manner and form as may be prescribed by the Trustee from time to time, but does not include an Apprentice.

**Worker's Account** means, in respect of a Worker, the account established and maintained by the Trustee in its books of account under Clause 14.2.

**Year of Income** means:

- (a) unless paragraph (b) applies, the period from the date of this Deed to the next 30 June and after that date, each 12 months ending 30 June; or
- (b) such other period as determined by the Trustee from time to time with the consent of the Sponsors.

## 2 Interpretation

2.1 Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body.
- (d) A reference to writing includes a reference to printing, typing and other methods of producing words in a visible form.
- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- (f) A reference to a party to this Deed or any other person includes the party's or the person's successors, permitted substitutes and permitted assigns (and, where applicable, the party's or person's legal personal representatives).
- (g) A reference to an agreement or document (including without limitation a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to a Clause is a reference to a provision in this Deed other than a Division Rule.

2.2 In this Deed, unless the context requires otherwise, a reference to a right, power, duty, role, obligation or liability of the Sponsors confers that right, power, duty or role, or imposes that obligation or liability (as the case may be), jointly.

2.3 Where anything in this Deed requires or provides for:

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- (a) the giving of notice; or
  - (b) the consent or agreement,

that notice, consent or agreement must be given in writing unless the Trustee has expressly agreed otherwise in writing.

### **3 Divisions**

3.1 The Trustee may from time to time:

- (a) with the written consent of the Sponsors:
  - (i) establish; and
  - (ii) subject to Clause 3.2(c), vary,

Divisions of the Scheme in such manner as the Trustee considers appropriate including without limitation for the purposes of segregating the interests in the Scheme of Workers within a particular Industry; and

- (b) the Trustee may acquire certain assets (or determine that certain assets are held) in respect of:
  - (i) a particular Division;
  - (ii) particular Division Sponsors; or
  - (iii) Workers of a particular Division.

3.2 At any time there are Divisions, the Trustee:

- (a) must determine in its sole discretion the characteristics of each Division which may include without limitation:
  - (i) the respective rights and obligations of Members, Workers and the Trustee in respect of the Division;
  - (ii) the criteria that a Member or Worker must meet to be admitted as a Member or Worker respectively in respect of a particular Division;
  - (iii) the investment strategy of the Division; or
  - (iv) any other characteristic which distinguishes the Division from any other part of the Scheme,

PROVIDED THAT where there is a Division Sponsor for a Division, the Trustee must agree from time to time with the Division Sponsor on the characteristics of that Division and any specific services that the Trustee will provide in respect of that Division but only if:

- (v) those characteristics and services will not adversely affect the status of the Scheme as an Approved Worker Entitlement Fund;

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- (vi) those characteristics and services are legally permissible having regard to the laws governing the Scheme and the Trustee, the terms of this Deed and the Trustee's rights and obligations under any applicable service or other agreement with third parties; and
  - (vii) the Trustee is entitled and able to be paid and reimbursed (as the case may be) the fees (if any) from time to time and costs and expenses of providing those characteristics and services out of the assets of that Division or the Division Sponsor agrees in writing to pay such fees and costs and expenses to the Trustee at such times and in such manner as the Trustee reasonably requires;
- (b) may make rules governing each Division or in respect of part of a Division or particular Members or Workers of a Division PROVIDED THAT if there is a Division Sponsor for the Division, the Trustee may only do so with the consent of the Division Sponsor;
  - (c) may amend or vary the rules of a Division in the same manner as this Deed may be amended or varied provided that where there is a Division Sponsor for a Division, any amendment or variation will not be effective without the written consent of the Division Sponsor;
  - (d) may determine that the assets comprised in each Division shall either:
    - (i) only be applied for the purpose of that particular Division and shall not be available to meet any liabilities in respect of the other Divisions of the Scheme; or
    - (ii) be pooled with all the assets of the Scheme so that all assets of each Division are available in respect of all of the liabilities of the Scheme,

PROVIDED THAT:

- (iii) if there is a Division Sponsor for a Division, the Trustee may only make such a determination with the consent of the Division Sponsor but otherwise it may do so in its sole discretion; and
  - (iv) if the Trustee makes any determination to pool the assets of a Division with all the assets of the Scheme, it must apply those assets on a fair and equitable basis having regard to the interests within each Division and the interests within the Scheme as a whole;
- (e) may determine in its sole discretion that any surplus or deficiency in the assets of the Scheme will be calculated and applied separately in respect of each Division on such basis as is fair and equitable;
  - (f) may (but is not obliged to) reallocate Members or Workers of a Division to another Division in relation to which the relevant Member or Worker (as the case may be) meets the applicable criteria (if any) PROVIDED THAT the Trustee may only make such a reallocation if it is to the Division that best corresponds to the Member or Worker having regard to any one or more of:
    - (i) the Worker's membership of or eligibility to join an Employee Organisation that is a Division Sponsor;



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- (ii) the Member's membership of or eligibility to join an Employer Organisation that is a Division Sponsor;
  - (iii) the Industry in which the Member or Worker operates; and
  - (iv) the Agreement by which the Member or Worker is regulated,
- and if it does so, must keep records of the reallocations and reclassification made;
- (g) must give a name to any Division it has created and may subsequently change the name of a Division to another name;
  - (h) may decide to close any Division:
    - (i) where it appears to the Trustee that the Division is insolvent or for any other reason should be closed; or
    - (ii) where the Division Sponsors for the Division request that the Trustee close the Division and the Trustee would be reasonably able to close the Division having regard to such matters as the Trustee is required to consider including the interests of the Workers in that Division and the costs associated with closing the Division,

PROVIDED THAT where the Trustee decides to close a Division, the Trustee must notify the Division Sponsors (if any), affected Members and Workers and call in all arrears of contributions and for the purposes of closure of the Division, Clauses 28.4, 28.5 and 28.6 shall apply as if a reference to the Scheme in those provisions is a reference to the Division, a reference to termination or dissolution of the Scheme is a reference to closure of the Division and a reference to the Sponsors in Clause 28.5 is a reference to the Division Sponsors if any; and

- (i) must ensure that the records of the Scheme are kept in a way that allows:
  - (i) any surplus or deficiency; and
  - (ii) the entitlements of Workers or the obligations of Members,in relation to each Division to be calculated.

3.3 The Scheme comprises the following Divisions:

- (a) the Electrical Division;
- (b) the Manufacturing - National Division;
- (c) the Manufacturing Workers Division; and
- (d) the Maritime Division,

and for the avoidance of doubt, the respective Division Sponsors are:

- (e) the Sponsors in respect of the Electrical Division;
- (f) the AMWU (National) in respect of the Manufacturing - National Division;

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- (g) the AMWU in respect of the Manufacturing Workers Division; and
  - (h) the MUA in respect of the Maritime Division.
- 3.4 Despite anything to the contrary in this Deed, where there is a conflict between a Clause and the Division Rules, the Clause shall prevail except where the conflict is a manifest error.
- 3.5 For the purposes of Clause 3.2(h)(ii) and without limiting the matters that the Trustee may have regard to under that provision, it would be reasonable for the Trustee to close a Division upon the request of the Division Sponsors if in respect of any proposal for the closure of the Division made by the Division Sponsors:
- (a) the closure can be lawfully carried out by the Trustee including having regard to the rights, entitlements and interests of Workers in that Division; and
  - (b) the Trustee is entitled and able to be indemnified against any liability associated with the closure of the Division out of the assets of the Division; and
  - (c) the Trustee is entitled and able to be reimbursed the costs and expenses associated with closing the Division out of the assets of that Division or the Division Sponsors agree in writing to pay those costs and expenses to the Trustee; and
  - (d) the Division Sponsors agree in writing to indemnify and keep indemnified the Trustee against the reasonable costs and expenses associated with closing the Division.

## **4 Membership of the Scheme**

- 4.1 Subject to Clause 4.2, an Employer may participate in the Scheme and shall become a Member of the Scheme in respect of a Division that the Trustee has established for the particular Industry in which that Employer operates or is agreed by the Trustee to operate if the Employer enters into a Deed of Adherence with the Trustee. Without limiting the foregoing, an Employer may initiate entry into a Deed of Adherence by lodging an Application Form with the Trustee in which case the Employer shall become a Member as if it had entered into a Deed of Adherence immediately upon the Trustee's acceptance of the Employer's application and the Employer shall be obliged, upon request by the Trustee, to enter into a Deed of Adherence with the Trustee.
- 4.2 Despite anything else to the contrary in this Deed, an Employer who has not lodged a completed Application Form or entered into a Deed of Adherence with the Trustee shall be deemed to be a Member of the Scheme in respect of a Division that the Trustee has established for the particular Industry in which that Employer operates if:
- (a) the Employer makes a Contribution to the Scheme; and
  - (b) the Trustee accepts the Contribution and admits the Worker in respect of whom the Contribution was made as a beneficiary of the Scheme,

and the making of the Contribution by the Employer shall be taken to be the Employer's agreement to be bound by the terms of this Deed.

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- 4.3 Upon admission to the Scheme a Member shall be bound by the terms and conditions of this Deed.
- 4.4 A Member shall, unless prohibited by law, provide all information requested by the Trustee for the proper and efficient administration of the Scheme within the time (if any) specified by the Trustee including details concerning the Workers employed by the Member.
- 4.5 Nothing in this Deed will be deemed to affect, prejudice or alter in any way the powers of a Member with regard to the dismissal or remuneration of, or any other dealings with, any of its Workers.
- 4.6 Nothing in this Deed renders a Member, any Sponsor or any Division Sponsor liable or responsible, and neither the Sponsors, any Division Sponsor nor any Member are liable or responsible in any way, for any act or omission of:

- (a) the Trustee;
- (b) a director, other officer, or employee of the Trustee;
- (c) another Member;
- (d) a Worker; or
- (e) any other person

in connection with this Deed or the Scheme unless that act or omission was caused or contributed to by the negligence, or fraud of that Member, that Sponsor or that Division Sponsor (as the case may be).

- 4.7 If any question arises as to:
- (a) the date on which a person entered or left the employ of a Member;
  - (b) whether or not a Worker is employed by the Member; or
  - (c) the terms of a Worker's employment generally,

a certificate of the Member on the matter shall be prima facie evidence of the facts contained in the certificate for the purposes of this Deed.

- 4.8 If called upon by the Trustee, the Member will issue to the Trustee a certificate in respect of details supplied under Clause 4.7 and the Trustee shall accept that certificate as prima facie evidence of the facts set out in it for all purposes of this Deed including (without limitation) the calculation of benefits.

## **5 Contributions to the Scheme**

- 5.1 Each Member shall make Contributions to the Scheme in respect of each of the Member's Workers of such amount, or at such rate and on such basis:
- (a) applicable from time to time under, or for the purpose of, an Agreement; or

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- (b) as may be agreed from time to time between the Member, the Trustee and the Sponsors (whether in relation to the Member's Workers generally or in relation to any particular category or class of the Member's Workers).

5.2 All Contributions made by a Member to the Scheme become part of the Trust Fund.

## 6 Payments of Contributions

6.1 The Contributions payable by a Member to the Trustee under this Deed must be paid to the Trustee in the manner, at the times, and by such arrangements advised to the Member by the Trustee from time to time for the purposes of this Clause provided that such arrangements are consistent with Clause 5.1.

6.2 Each Contribution paid to the Trustee by a Member in respect of a Worker under this Deed shall be accompanied by a statement setting out details of the basis upon which the Contribution has been calculated.

6.3 In the case where a Member considers that no Contribution is payable under this Deed by the Member in respect of one or more Workers in respect of a period, the Member shall give the Trustee a statement explaining the reasons why the Member considers that no Contribution is payable. Such a statement shall be given at or before the time the Contribution would have been due and payable in the absence of the reasons given in the relevant statement.

6.4 A statement given to the Trustee by a Member under Clauses 6.2 or 6.3 shall be prima facie evidence of the facts contained in it for all purposes of this Deed including (without limitation) the calculation of benefits.

6.5 If a Member fails to pay any Contribution to the Trustee on the date due for payment, the Trustee may require the Member to pay interest to the Trustee at a rate determined by the Trustee from time to time.

6.6 If, in the opinion of the Trustee, some or all of any Contribution to the Trustee has been paid by mistake (whether of fact or law), the Trustee may, at its sole discretion, refund that amount to the Member or offset it against any other amounts owing by the Member to the Scheme and the Trustee shall not pay or be liable to pay any interest to the Member on the amount for earnings attributable to that amount or otherwise compensate the Member.

6.7 Without limitation to the Trustee's entitlements under Clause 6.6, if the Trustee receives an amount of money from a Member purporting to be by way of a Contribution payable by that Member under the provisions of this Deed, but in respect of which money the Trustee does not, in its sole discretion, have sufficient information (Necessary Information) in order to identify the Worker's Account or Workers' Accounts to which that money must be credited under the provisions of Clause 7 (**Unallocatable Amount**), the Trustee shall be entitled in its sole discretion to adopt in respect of the Unallocatable Amount, any, or any combination of, the following procedures:

- (a) to refund an Unallocatable Amount or any part or parts thereof to the Member; and/or
- (b) to seek the Necessary Information from the Member or howsoever otherwise, by any or any combination of the following means:

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- (i) by way of a request for provision of information from the Member pursuant to Clause 4.4;
  - (ii) by calling upon the Member to issue to the Trustee a certificate in accordance with Clause 4.8;
  - (iii) by way of a request to the Member for a statement (or further statement) under Clause 6.2; and/or
  - (iv) by any other means of obtaining the Necessary Information that the Trustee in its sole discretion may determine to adopt.
- 6.8 In addition to the entitlements of the Trustee in other provisions of this Deed relating to the information provided to the Trustee under the provisions of this Deed as referred to in Clause 6.7, the Trustee shall be entitled to accept any information it receives under the provisions of Clause 6.7 as accurate for the purposes of identifying the Worker's Account or Worker's Accounts to be credited with the Unallocatable Amount.
- 6.9 Pending the Trustee:
- (a) refunding the Unallocatable Amount to the Member; and/or
  - (b) (if the Trustee does obtain the Necessary Information) crediting the Unallocatable Amount to the Worker's Account or Workers' Accounts in such manner as the Trustee shall determine is appropriate having regard to the Necessary Information,
- the Trustee shall receipt the Unallocatable Amount and credit it to a suspense account.
- 6.10 Upon receipt by the Trustee, to its satisfaction, of Necessary Information the Trustee shall (to the extent that it has not refunded or determined to refund the Unallocatable Amount or any part or parts thereof to the Member) debit the suspense account and credit the Worker's Account or Workers' Accounts as the Trustee determines appropriate having regard to the Necessary Information.
- 6.11 To the extent that the Trustee shall credit any Worker's Account with any amount of the Unallocatable Amount that part of the Unallocated Amount shall thereupon be regarded under this Deed to be a Contribution by the relevant Member and subject to the provisions of this Deed as such, including, without limitation the provisions of Clause 5.2, Clause 7.1(a) and Clause 7.2.
- 6.12 Without prejudice to the provisions of Clause 32, in the exercise of its powers and discretions and anything else done by the Trustee in or about the provisions of Clauses 6.7, 6.8, 6.9, 6.10 and 6.11 the Trustee shall have no liability to:
- (a) the Member;
  - (b) any Worker;
  - (c) the Legal Personal Representatives or Dependants of any Worker; or
  - (d) any person claiming through or under the Member, the Worker, the Legal Personal Representatives or Dependants of any Worker.

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## **7 Application of Contributions, roll-overs and capitalised income**

- 7.1 The Trustee shall credit to the Worker's Account of each Worker:
- (a) each Contribution made in respect of him or her pursuant to this Deed; and
  - (b) any amount transferred to the Scheme from a Reciprocating Scheme under Clause 16.1.
- 7.2 The Trustee shall make the credits required to be made to Worker's Accounts under Clause 7.1 as at the date the relevant contribution or amount (as the case may be) is received by the Trustee.
- 7.3 The Worker shall be issued one 'B' Class Unit for every \$0.01 credited to the Worker's Account under Clause 7.1.
- 7.4 The Trustee shall credit to the Division Sponsor's Account of each Division Sponsor any Income applied as an accretion to the capital of the Trust Fund in respect of that Division.
- 7.5 The Trustee shall make the credits required to be made to Division Sponsors' Accounts under Clause 7.4 as at the date that any Income is applied as an accretion to the capital of the Trust Fund.

## **8 Taxes, costs and expenses**

- 8.1 The Trustee shall subject to restrictions as to use of income and contributions that apply to an Approved Worker Entitlement Fund (in the case of paragraphs (a), (b) and (e) of this Clause), or may with the consent of the Sponsors (in the case of paragraphs (c), (d) and (e) of this Clause), debit from the Worker's Account of each Worker (and redeem the corresponding 'B' Class Units at the 'B' Class Unit Price in accordance with Clause 13.5):
- (a) any Severance Payment or other benefit paid from the Worker's Account in accordance with this Deed;
  - (b) any benefit transferred from the Worker's Account in accordance with Clause 16.2;
  - (c) such amount (if any) as is determined by the Trustee from time to time having regard to any tax, levy, stamp duty, settlement duty, revenue duty or any other impost, duty or charge and any similar or related amounts which in the opinion of the Trustee have or may be assessed against the Worker, or the Scheme in respect of the Worker (including, without limitation, any such amount payable in respect of a Severance Payment or other benefit payable from the Scheme in respect of the Worker), and in respect of which no adjustment has been made under other provisions of this Deed;
  - (d) such amount (if any) as is determined by the Trustee from time to time having regard to the costs incurred in administering the Scheme, and in respect of which no adjustment has been made under other provisions of this Deed; and
  - (e) such other amounts (if any) which the Trustee determines is appropriate or equitable to debit to the Worker's Account of the Worker.

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8.2 The Trustee shall make the debits required to be made to Worker's Accounts under Clause 8.1 (and redeem the corresponding 'B' Class Units at the 'B' Class Unit Price in accordance with Clause 13.5) as at the date:

- (a) in the case of paragraph (a) – the relevant benefit is paid;
- (b) in the case of paragraph (b) – the relevant benefit is transferred in accordance with Clause 16.2; or
- (c) in the case of paragraphs (c), (d) and (e) – determined by the Trustee from time to time.

8.3 Where the balance of a Worker's Account is required to be determined on a date other than the last day of the Scheme's Year of Income any debits required to be made under Clause 8.1(c) or 8.1(d) will be made on a pro-rata basis in a manner determined by the Trustee.

## **9 Benefits payable to Workers**

9.1 Upon the occurrence of:

- (a) a GRA Severance Event, a GRA Worker will be entitled to a Severance Payment in accordance with Clause 9.2(a); and
- (b) a TER Severance Event, a TER Worker will be entitled to a Severance Payment in accordance with Clause 9.2(b).

9.2 Subject to Clause 9.1, the Trustee shall pay:

- (a) to a GRA Worker, or a person claiming through or under a GRA Worker, a Severance Payment calculated in accordance with Clause 9.3 on the happening of a GRA Severance Event; and
- (b) to a TER Worker, or a person claiming through or under a TER Worker, a Severance Payment calculated in accordance with Clause 9.3 on the happening of a TER Severance Event,

subject to the Trustee receiving a written request, in a form prescribed or approved by the Trustee together with such evidence as is satisfactory to the Trustee, from the Worker or a person claiming through or under the Worker.

9.3 Subject to Clause 9.9, the Severance Payment payable to a Worker, or a person claiming through or under a Worker, shall be:

- (a) where the amount standing to the credit of the relevant Worker's Account at the time of the Severance Event is less than or equal to the Prescribed Amount, an amount up to and including the amount standing to the credit of the relevant Worker's Account, calculated at the time of the Severance Event and payable as the Trustee determines from time to time; or
- (b) where the amount standing to the credit of the relevant Worker's Account at the time of the Severance Event is greater than the Prescribed Amount:

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- (i) an amount up to and including the Prescribed Amount, calculated at the time of the Severance Event and payable as the Trustee determines from time to time; plus
  - (ii) an amount up to and including the balance of the amount standing to the credit of the relevant Worker's Account, calculated at the time of the Severance Event and payable as follows or as the Trustee determines from time to time:
    - (A) where the Worker's Severance Payment is payable due to the Worker's Retirement, the Worker's death or the Worker's termination due to Permanent Incapacity, upon the occurrence of the Severance Event; or
    - (B) where the Worker's Severance Payment is payable for any other reason whatsoever, including a genuine redundancy:
      - (1) 5 weeks after the Severance Event where the Worker has remained unemployed for 5 consecutive weeks commencing on the day after the occurrence of the Severance Event; or
      - (2) 39 weeks after the Severance Event where the Worker has ceased to be employed either in the Industry or by a Member, or has been promoted to an above-award position and remained in that position, for 39 consecutive weeks commencing on the day after the occurrence of the Severance Event,

and a corresponding debit will be made to the Worker's Account.

- 9.4 The Worker shall satisfy the Trustee as to the applicable matters in Clauses 9.3 by a Statutory Declaration or other form acceptable to the Trustee.
- 9.5 The Trustee may, at its unfettered discretion and upon any conditions, waive all or part of the waiting periods prescribed in Clause 9.3(b)(ii) if, in the Trustee's opinion, the waiver would alleviate hardship of the Worker or be appropriate on compassionate grounds or such other basis as the Trustee determines from time to time.
- 9.6 An amount payable pursuant to Clause 9.2 due to the death of a Worker shall be payable to or for the benefit of:
  - (a) the Legal Personal Representative of the Worker; or
  - (b) one or more Dependants of the Worker,to the exclusion of the other or others of them and in such manner and proportions, and subject to such conditions, as the Trustee determines.
- 9.7 Where the Worker's Severance Event is due to his or her departure from Australia for a period of two (2) or more years, the Trustee may, at its unfettered discretion, pay the Worker the amount standing to the credit of the relevant Worker in his or her Worker's Account at the time of the Worker's departure from Australia.



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- 9.8 Notwithstanding any provision of this Deed, a Worker or other person will not be entitled to be paid a benefit until the Trustee has received a claim from the Worker or other person (as the case may be) together with such other information as the Trustee may require, and in the case where an insurance benefit is payable the insurer under the relevant insurance policy has determined to accept and pay the claim.
- 9.9 The Trustee shall pay each Severance Payment within a reasonable time after:
- (a) receipt of evidence satisfactory to it that a Severance Event has occurred; and
  - (b) the Severance Payment is deemed to be payable under Clause 9.3.
- 9.10 (a) Notwithstanding anything else in this clause 9 or this Deed, subject to receiving evidence to the satisfaction of the Trustee that the Worker has been stood down from his or her current employment without pay, the Trustee may make payments to the Worker in accordance with clause 9.10(b).
- (b) The Trustee may make the following payments to a Worker who is eligible for such payments under clause 9.10:
- (i) an initial payment of up to \$2,000 (**Initial Relief Payment**); and
  - (ii) subject to the Worker continuing to satisfy the conditions in clause 9.10(a) five weeks after receiving the Initial Relief Payment, a second payment of up to \$2,000.
- (c) The Trustee's power to make payments under this clause 9.10 is subject to the following conditions:
- (i) the Trustee must not rely on the power to make any payments after 31 December 2020; and
  - (ii) the Trustee must not make any payments to a Worker in excess of the amount standing to the credit of the Worker's Account.

## 10 [Deleted]

[Deleted]

## 11 Declaration of trust

The Trustee declares that it will hold the Trust Fund, subject to the provisions of this Deed, on trust for the Division Sponsors and the Workers in proportion to the number of Units held by them and on the terms and conditions (if any) applicable to such Units.

## 12 Name of Trust

The trust created by this Deed is 'Protect Severance Scheme No.2' or by such other name as the Trustee may determine from time to time with the written approval of the Sponsors.

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## 13 Units and Administration

- 13.1 The beneficial interest in the Trust Fund as constituted and as existing from time to time will be vested in the Unitholders for the time being.
- 13.2 The Trustee may from time to time issue Units.
- 13.3 Each Unit entitles the registered holder, together with the registered holders of all other Units, to a beneficial interest in the Trust Fund as an entirety but does not entitle a Unitholder to any particular security or investment comprised in the Trust Fund or any part and no Unitholder is entitled to the transfer to that Unitholder of any property comprised in the Trust Fund.
- 13.4 The Trustee will issue:
- (a) 'A' Class Units at the 'A' Class Unit Price; and
  - (b) 'B' Class Units at the 'B' Class Unit Price.
- 13.5 The Trustee may redeem all or any Units held by a Unitholder in accordance with the provisions of this Deed.
- 13.6 The Trustee may:
- (a) raise out of the Trust Fund; or
  - (b) borrow in exercise of its powers under this Deed; or
  - (c) realise or sell any investment comprised in the Trust Fund,
- to provide an amount necessary to meet payments on redemption.
- 13.7 The Trustee may keep a register of the Unitholders which may include the following details as the Trustee sees fit:
- (a) the names, addresses and descriptions of the Unitholders;
  - (b) the number of Units registered in each Unitholder's name and the distinctive numbers or letters of the Certificates held by them respectively;
  - (c) the issue price for the Units registered in each Unitholder's name;
  - (d) the date on which the name of each Unitholder was entered in the register in respect of any Units standing in their name; and
  - (e) any other matters that the Trustee deems necessary.
- 13.8 A Unitholder may request the Trustee to register a transfer of any or all of the Units held by the Unitholder.
- 13.9 Upon receipt of a request for a transfer of Units by a Unitholder in accordance with Clause 13.8, the Trustee may:
- (a) register the transfer; or

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(b) agree to register the transfer subject to satisfaction of such conditions as it may determine; or

(c) refuse to register the transfer,

at its absolute discretion and without being bound to assign any reason for exercise of such power.

## **14 Application of the Trust Fund**

14.1 Subject to the provisions of this Deed, the Trust Fund shall be maintained exclusively for making Severance Payments to Workers in accordance with this Deed.

14.2 The Trustee shall establish a Worker's Account in respect of each Worker in its books of account for the Division that applies to the Industry in which the Worker is employed. The Trustee shall credit and debit amounts to each Worker's Account in accordance with Clauses 7, 8 and 9.

14.3 Where a Worker becomes entitled to a Severance Payment then the Trustee shall deal with such an entitlement in accordance with Clause 9.

14.4 Notwithstanding anything expressed or implied to the contrary in this Deed, the Trustee's liability to make any Severance Payment to a Worker shall be limited to the amount standing to the credit of the relevant Worker's Account at the date on which the liability arises.

14.5 The Trustee shall establish a Division Sponsor's Account in respect of each Division Sponsor in its books of account. The Trustee shall credit and debit amounts to each Division Sponsor's Account in accordance with Clauses 7.4 and 17.3.

## **15 Forfeited benefits**

15.1 If:

(a) no Contribution, or transfer under Clause 16.1, has been received by the Trustee in respect of a Worker within the last 2 years of the Worker's membership of the Scheme; and

(b) the Trustee, having taken reasonable steps, is unable to locate:

(i) a Worker; or

(ii) where the Worker has died, the Worker's Legal Personal Representative or Dependants,

then the balance credited to the person's Worker's Account shall be forfeited to the Scheme and applied towards the reasonable administration expenses of the Scheme upon the Trustee resolving that the Worker or the Worker's legal personal representative or dependants are unable to be located.

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- 15.2 For the purposes of Clause 15.1(b), in determining whether a Worker is unable to be located:
- (a) reasonable steps may consist of, or include, the Trustee sending by ordinary post to the Worker or the Worker's Legal Personal Representative or Dependants at their last known place of address as set out in the records of the Trustee:
    - (i) a written communication; or
    - (ii) a letter requesting him or her to supply current contact details; and
  - (b) the Trustee may rely on the fact that:
    - (i) the written communication or letter referred to in Clause 15.2 is returned to the Trustee; or
    - (ii) the Worker or the Worker's legal personal representative or dependants fail to respond to the letter referred to in Clause 15.2(a)(ii).

## 16 Transfers of amounts from and to Reciprocating Schemes

- 16.1 The Trustee on receiving a written request from the trustee of a Reciprocating Scheme may make or carry into effect an arrangement with the Trustee of the Reciprocating Scheme whereby the entire sum standing to the credit of that particular Worker in the Reciprocating Scheme shall be transferred from the Reciprocating Scheme to the Scheme. The Trustee shall credit any amount transferred to the Scheme under this Clause to the Worker's Account of the relevant Worker as provided in Clause 7.
- 16.2 The Trustee may on receiving a written request from a Worker in the form set out below, or in such other form as may be prescribed by the Trustee from time to time, transfer the entire amount then standing to the credit of the Worker's Account to the Trustee of a Reciprocating Scheme provided that the Trustee of the Reciprocating Scheme consents to the transfer of the amount.

'To: The Trustee

Protect Severance Scheme No.2 (the **Scheme**)

### REQUEST TO TRANSFER WORKER'S ACCOUNT BALANCE TO A RECIPROCATING SCHEME

I \_\_\_\_\_ of \_\_\_\_\_ being a Worker as defined in the Trust Deed establishing the Scheme request that the entire balance standing to the credit of my Worker's Account in the Scheme be transferred immediately to [*name of Reciprocating Scheme*] provided that the Trustee is satisfied that it is a Reciprocating Scheme as defined in the Trust Deed governing the Scheme.

I acknowledge and agree that upon the transfer being effected my interest in the Scheme will cease, and that the Trustee will thereby be released and discharged in respect of the amount transferred, and my membership of the Scheme, and that no person claiming through or under me will have any claim in respect of the transfer of the balance standing to the credit of my Worker's Account in the Scheme.

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SIGNED:

SIGNATURE:

DATED:'

- 16.3 The receipt by the trustee of the Reciprocating Scheme of the amount transferred to the Reciprocating Scheme under Clause 16.2 shall be a complete discharge to the Trustee in respect of any liability the Worker, or persons claiming through the Worker, may have in relation to the amount transferred.
- 16.4 The Trustee may transfer to another Approved Worker Entitlement Fund an amount no less than the positive balance of a Member Account of a Member provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Scheme will not be adversely affected in a material way by the transfer.

## **17 Application of income of the Trust Fund**

- 17.1 The Trustee may make payments from the income of the Trust Fund only for the following purposes:
- (a) to make investments to generate income from the assets of the Trust Fund;
  - (b) to reimburse Members who have paid entitlements directly to Workers;
  - (c) to return contributions to Members;
  - (d) to pay, for the benefit of a Worker, an Employment Termination Payment into a Complying Superannuation Fund, a Complying Approved Deposit Fund or a Retirement Savings Account;
  - (e) to transfer contributions to another Approved Worker Entitlement Fund;
  - (f) to pay the reasonable administrative expenses of the Trust Fund;
  - (g) to pay amounts to a Member's External Administrator that would otherwise be payable as a reimbursement to Members who have paid entitlements directly to Workers or to return contributions to Members;
  - (h) to pay interest on, or to repay, money lent to the Scheme;
  - (i) to make payments to Members; and
  - (j) to make payments to other persons where the payment is specified in Clause 17.2.

For the avoidance of doubt, unless expressly provided otherwise in this Deed, the assets, liabilities and income of the Trust Fund that are attributable to a particular Division must be maintained and applied for the purposes of that Division and nothing in this Clause 17 shall be construed as permitting the Trustee to attribute such assets, liabilities and income to any purpose or use outside that Division.

- 17.2 A payment made by the Trustee to a person in the following circumstances is specified for the purposes of subclause 17.1(j):

- (a) a contribution has been made to the Trust Fund in respect of the person; and
- (b) the contribution would be an Exempt Benefit if the Trust Fund were an Approved Worker Entitlement Fund; and
- (c) either:
  - (i) the payment is of a Worker entitlement under the Scheme the contribution for which would be an Exempt Benefit if the Scheme were an Approved Worker Entitlement Fund; or
  - (ii) the payment is of some kind other than a Worker entitlement under the Scheme.

17.3 Any amount not applied in accordance with Clauses 17.1 and 17.2 shall be retained in the Trust Fund in respect of the Division to which that amount related and at the end of the relevant Year of Income applied as an accretion to the capital of the Trust Fund in respect of that Division. Division Sponsors shall be issued one 'A' Class Unit, in proportion to the number of Units in that Division that they hold, for every \$0.01 that is applied as an accretion to the capital of the Trust Fund in respect of their Division. Any 'A' Class Units issued under this Clause may be redeemed at the 'A' Class Unit Price and the proceeds of redemption distributed (with the Division Sponsor's Account debited accordingly) and if the proceeds are distributed, shall be distributed in such manner as:

- (a) is permitted by law;
- (b) would not cause the Scheme to cease to be an Approved Worker Entitlement Fund; and
- (c) the Trustee otherwise determines,

PROVIDED THAT subject to Clauses 17.3(a) and 17.3(b):

- (d) in the case of the Electrical Division, any such amount must be distributed to the NECA Beneficiaries and the ETU Beneficiaries in the proportions set out below:
  - (i) NECA Beneficiaries in accordance with clause 17.3A 25%
  - (ii) ETU Beneficiaries in accordance with clause 17.3A 75%
- (e) in the case of the Manufacturing Workers Division, any such amount must be distributed to the AMWU or as otherwise agreed between the Trustee, the AMWU and the applicable Division Sponsors (if any);
- (f) in the case of the Manufacturing - National Division, any such amount must be distributed to the AMWU (National) or as otherwise agreed between the Trustee, AMWU (National) and the applicable Division Sponsors (if any);
- (g) in the case of the Maritime Division, any such amount must be distributed to the MUA or as otherwise agreed between the Trustee, the MUA and the applicable Division Sponsors (if any); and
- (h) in the case of any other Division, in such manner as the Trustee determines from time to time or otherwise agrees with any applicable Employee Organisation,

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Employer Organisation (if any) or the Division Sponsors (if any) in respect of that Division.

- 17.3A The Trustee will pay, apply or set aside the amount to which the NECA Beneficiaries or the ETU Beneficiaries are entitled under Clause 17.3 to, or in favour of, one or more of the NECA Beneficiaries or ETU Beneficiaries in such proportions and in such manner as it thinks fit provided that:
- (a) if an amount is paid, applied or set aside for an ETU Beneficiary other than the ETU, the Trustee must obtain the prior written consent of the ETU; and
  - (b) if an amount is paid, applied or set aside for a NECA Beneficiary other than NECA, the Trustee must obtain the prior written consent of the NECA Victorian Chapter Council.
- 17.4 The Trustee may establish in the accounting records of each Division of the Scheme separate accounts and ledgers:
- (a) for each separate category or class of income showing the nature, source and accounting for that income and the attributable expenses relating to that income made in the accounting period of that income;
  - (b) if the Trustee exercises its power under paragraph (a), to determine and allocate such deductions, credits or rebates as are allowable or available in accordance with relevant taxation legislation at the time of any determination or allocation including (without limitation) credits and rebates in respect of franked dividends, the flow-on franking amount, prescribed payments, and income derived where there are foreign beneficiaries and foreign income; and
  - (c) for capital receipts showing the nature, source and accounting for the capital and the attributable expenses relating to that capital.
- 17.5 Upon receipt of income or capital into the Trust Fund, the Trustee may determine and allocate the whole or part of any amount that is the most appropriate to capital or income in respect of the Division to which it applies.

## **18 Investment and other powers of the Trustee**

- 18.1 The general control, management and administration of the Scheme will be vested in the Trustee which will administer the Scheme in accordance with this Deed.
- 18.2 The Trustee must ensure that the management of the Trust Fund (including the management of the investments of the Trust Fund) is carried out at arm's length from the Members and their Associates.
- 18.3 Subject to this Deed, the Trustee has power to do all acts and things which it considers necessary, desirable or expedient for the administration, maintenance and preservation of the Scheme or any part of it.
- 18.4 Subject to the limitations imposed by Clauses 18.2 and 19 of this Deed, the Trustee shall have all of the powers and discretions conferred upon a trustee by law.

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- 18.5 Without limiting the generality of Clause 18.4, the Trustee may invest all moneys and other property becoming part of the Trust Fund in the investments and manner authorised by the Trustee Act 1958 of the State of Victoria, or (where applicable) any similar or equivalent legislation applying in any other State, Territory or jurisdiction which may from time to time be applicable to the investment of all or any assets of the Trust Fund, except that sections 6(1) and 6(3) of the Trustee Act 1958 of the State of Victoria, or their equivalent provisions (as determined by the Trustee) in other jurisdictions (as the case may be), are specifically excluded from their application to the Trustee in respect of the Scheme.
- 18.6 In addition to the investment powers conferred on the Trustee under Clause 18.4 and the powers conferred on trustees by law, the Trustee has the powers relating to:
- (a) investments; and
  - (b) insurance,
- as set out in Schedule 2.
- 18.7 The Trustee may pay out of any income, the reasonable administrative expenses incidental to the establishment and management of the Scheme or to the exercise of any power authority or discretion contained in this Deed or carrying out or performing the trusts of this Deed which the Trustee may at any time incur including costs in any way connected with the preparation and execution of this Deed, all taxes, levies, stamp duty, settlement duty, revenue duty or any other impost, duty or charge or money of whatever nature which in the opinion of the Trustee is or may be payable in respect of this Deed or the Scheme or in respect of any money or investment paid or transferred to the Trustee upon the trusts of this Deed and whether under the laws of the Commonwealth of Australia or any of the States or Territories.
- 18.8 The Trustee:
- (a) where applicable, shall have power to remit any amount deducted from the Scheme under Clause 18.7 on account of any tax, levy, stamp duty, settlement duty, revenue duty or any other impost, duty or charge, or such other amount as the Trustee thinks fit, to the Commissioner of Taxation or other relevant authority (as the case may be) in accordance with the requirements of the applicable legislation; and
  - (b) shall have the power to debit any account in the books of the Scheme with such amount as the Trustee thinks fit in respect of any payment or deduction made under this Clause.
- 18.9 The Trustee may become a director of, or appoint a person to act as a director on its behalf of, a corporation in which money forming part of the Trust Fund is from time to time invested and may receive the remuneration attached to that office or permit its representative to receive the remuneration without being liable to account to the Scheme for that remuneration and that representative may become qualified to act as a director (if the constitution so allows) by the holding in the representative's name of shares forming part of the Trust Fund provided that the representative executes a declaration of trust in favour of the Trustee generally and lodges it and the certificates for the shares with the Trustee and accounts to the Scheme for all dividends and bonuses payable in respect of those shares.
- 18.10 The Trustee may exercise or concur in exercising all powers and discretions given by this Deed or by law notwithstanding that it, or a person being a trustee or a director or member



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of the Trustee being a corporation, has or may have a direct or personal interest in the mode or result of exercising that power or discretion or may benefit either directly or indirectly as a result of the exercise of that power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

- 18.11 Where a Member who is required to make Contributions to the Scheme under Clause 5 is in arrears for more than one month, the Trustee may charge the Member a reasonable administration fee to cover the Trustee's costs incurred in pursuing those arrears.

## **19 Limitation on Trustee powers**

Notwithstanding anything else in this Deed:

- (a) the Trustee may not invest more than 5% of total assets of the Trust Fund in an entity controlled by a Member or an Associate of a Member;
- (b) the Trustee may not use the assets of the Trust Fund to provide or facilitate any form of financial assistance, including a loan, to a Member, a Worker or an Associate of a Member or a Worker; and
- (c) any administrative expenses to be paid by the Trustee may only be paid out of contributions to the Fund or fund income if the administrative expenses are reasonably incurred.

## **20 Trustee may appoint delegates and agents**

- 20.1 The Trustee may delegate any trust or power exercisable by the Trustee (including one which the Trustee may have a duty to exercise or perform and the power of delegation) to any person in such manner and upon such terms and conditions as the Trustee thinks fit. The Trustee may vary or revoke any such delegation as the Trustee thinks fit. The Trustee may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.
- 20.2 The Trustee shall not be bound in any case to act personally but shall be at full liberty to engage a contractor, manager, solicitor, accountant, clerk, workman, employee, servant or agent to transact all or any business of whatever nature required to be done in respect of the affairs of the Scheme including the receipt and payment of money and the Trustee shall in its discretion determine the remuneration to be allowed and paid and the charges and expenses to be reimbursed to a person so engaged.
- 20.3 Subject to this Deed, the Trustee may:
- (a) appoint from time to time such one or more persons, firms or companies as the Trustee thinks fit to act either as custodian or investment manager or both subject to such conditions as the Trustee may from time to time determine;
  - (b) delegate to, and confer upon, each custodian or investment manager those authorities, powers and discretions as the Trustee thinks fit; and
  - (c) remove from time to time any custodian or investment manager appointed under Clause 20.3(a).

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- 20.4 The Trustee will not be:
- (a) liable or responsible for any act, omission, error of judgement, negligence or breach of trust of any custodian or investment manager appointed under Clause 20.3(a); and
  - (b) bound to take proceedings against any custodian or investment manager in respect of the matters referred to in Clause 20.4(a).
- 20.5 The Trustee may pay out of the Scheme to any custodian or investment manager appointed under Clause 20.3(a) such remuneration for his, her, its or their services as the Trustee considers proper.
- 20.6 No custodian or investment manager appointed under Clause 20.3(a) will be entitled to take part in the proceedings or deliberations of the Trustee.

## **21 Trustee's discretion absolute**

Subject to any express provision to the contrary, every discretion vested in the Trustee shall be absolute and uncontrolled and may be exercised without the Trustee assigning any reason for its exercise 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.

## **22 Receipts by Trustee**

The receipt in writing of the Trustee for all money or other real or personal property paid or transferred to the Trustee or the Trust Fund shall effectively discharge the person or authority paying or transferring the money or property from being concerned to see to its application.

## **23 Trustee not personally liable and indemnification**

- 23.1 The Trustee, and each director and other officer of the Trustee, shall not be personally liable for the consequences of any error or forgetfulness whether of law or of fact on its, his or her part (as the case may be) or on the part of its legal or other advisers or for any breach of duty or trust whatsoever unless it is proved to have been committed, made or omitted, in personal conscious fraudulent bad faith by the Trustee, or director or officer of the Trustee (as the case may be), charged to be so liable and, accordingly, all persons claiming any interest shall be deemed to claim with notice of and subject to the protection conferred on the Trustee.
- 23.2 Subject to Clause 23.1, the Trustee, and each director and other officer of the Trustee, will be indemnified to the extent of the Trust Fund against all liabilities incurred by it, him or her (as the case may be) in the execution or attempted execution or arising from the non-execution of the trusts, authorities and powers conferred upon the Trustee by this Deed.
- 23.3 The Trustee, and each director and other officer of the Trustee, will have a lien on and may use any moneys for the time being in the Trustee's hand for:

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- (a) the indemnity conferred under Clause 23.2; and
- (b) generally for the payment of all charges, costs, expenses and other amounts referred to in Clause 18.7.
- 23.4 Without affecting the generality of Clause 23.2, the indemnity provided by 23.2 will apply to any payment made to any person whom the Trustee, or director or other officer of the Trustee (as the case may be), bona fide believed to be entitled to the payment although the person was not entitled to some or all of the payment.
- 23.5 Under no circumstances whatever will any of the persons named below be in any way liable or responsible in the event of the Trust Fund proving insufficient for any reason to provide benefits specified in this Deed or any part of those benefits:
- (a) a Member;
- (b) any director or other officer of any Member;
- (c) the Trustee;
- (d) any director or other officer of the Trustee; or
- (e) either or both of the Sponsors.
- 23.6 Where the Trustee is entitled, either under the provisions of this Deed or under the general law, to be indemnified from the Trust Fund in respect of any cost, claim, liability or expense suffered or incurred by it, the Trustee:
- (a) may enforce such indemnity against the Trust Fund only PROVIDED THAT where the cost, claim, liability or expense relates to a particular Division, the Trustee may only enforce the indemnity against the assets in the Trust Fund that are attributable to that Division and where the cost, claim, liability or expense relates to more than one Division, the Trustee's right to be indemnified shall be apportioned between those Divisions on a fair and equitable basis; and
- (b) shall not, unless a separate agreement has been entered into between it and any Worker, Member, Division Sponsor or the Sponsors (as the case may be), be entitled to be personally indemnified by any of such persons.
- 23.7 Subject to the existence of any separate agreement as contemplated by Clause 23.6, no Worker, Member or Sponsor shall, by reason alone of being a Worker, Member or Sponsor (as the case may be) in the Scheme or by reason of any relationship created between the Worker, Member or the Sponsors (on the one hand) and the Trustee (on the other hand) be under any obligation whatsoever to personally indemnify or shall be personally liable to the Trustee, any creditor of the Scheme or any other person (collectively and separately called the claimant) in the event of there being insufficient assets of the Trust Fund available to meet any cost, claim, liability or expense of any such claimant, and whether or not the Trustee bears or incurs any personal liability in relation to such expenses, the rights of any claimant (whether arising under a right of indemnify or otherwise) shall be restricted to the Trust Fund itself.
- 23.8 The Trustee shall have power to effect or take out at the expense of the Scheme from time to time one or more policies or contracts with one or more insurance companies or reinsurance companies to protect:

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- (a) the Scheme; and
  - (b) each of the directors and other officers of the Trustee in respect of liabilities incurred by them or any of them in the execution or attempted execution or arising from the non-execution of the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed,

and to continue or renew or arrange for the continuance or renewal of all or any of such policies or contracts for such period or periods as the Trustee may think fit. The Trustee may also agree from time to time with the insurance company or reinsurance company concerned for any policy or contract to be varied or modified.

- 23.9 Each indemnity conferred under this Deed is a continuing obligation and will survive the termination of this Deed.
- 23.10 It is not necessary for any person entitled to the benefit of an indemnity under this Deed to incur expense, or make payment, before enforcing a right of indemnity conferred by this Deed.

## **24 Professional remuneration**

A Trustee or a director of a Trustee which is a corporation who is a solicitor or accountant or a firm of which the Trustee or director of a Trustee corporation is a Member shall be entitled to make all usual and proper charges which that person would have been entitled to make if not a Trustee or director for both that person's professional and other services in the administration of the trusts of this Deed and for that person's time and trouble.

## **25 Remuneration of Trustee**

The Trustee shall be entitled to be paid and retain out of the Scheme such remuneration as it determines to be reasonable for the administration and operation of the Scheme. Any amount paid and retained under this Clause shall form part of the reasonable administration expenses of the Scheme.

## **26 Advances by the Sponsors to the Scheme**

- 26.1 The Sponsors jointly may advance any sum or sums of money to the Trustee upon terms and conditions agreed by the Trustee and the Sponsors from time to time, and the same shall be a debt due from the Trustee to the Sponsors jointly and interest shall be payable on the amount so advanced at such rate (if any) agreed upon between the Trustee and the Sponsors from time to time.
- 26.2 Unless otherwise agreed between the Sponsors and the Trustee (either generally or in relation to any particular category or case), the interest (if any) payable on any amount advanced under Clause 26.1 shall be payable quarterly and computed on a daily basis from the date the advance is made during the continuance of the loan.

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## 27 Accounts

- 27.1 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 such account or accounts.
- 27.2 As soon as practicable after the end of each Year of Income during the continuance of the Scheme, a general account and valuation shall be taken and made up to the end of the Year of Income of the assets, debts and other liabilities of the Scheme and of all the transactions matters and things usually comprehended in a general account of a like nature.
- 27.3 Every account and valuation shall be signed by the Trustee. When an account and valuation is signed by the Trustee a copy of the account and valuation shall be provided to each of the Sponsors and they shall be binding on the Sponsors and the Members except that if any manifest error is detected and pointed out by the Sponsors or a Member to the Trustee within 12 months of the signing of the accounts then such error shall be rectified immediately.
- 27.4 The general account and valuation up to the end of each Year of Income shall be audited by a firm of Chartered Accountants as may be appointed by the Trustee from time to time.

## 28 Determination and winding up of the Scheme

- 28.1 The Scheme shall commence on the date of this Deed and, subject to the provisions of this Deed, shall determine on the date being 80 years from the date of this Deed less one day.
- 28.2 Notwithstanding Clause 28.1, the Scheme may be continued in operation or existence for such period as may be agreed between the Trustee and the Sponsors if the Trustee and the Sponsors agree that continuation of the Scheme appears to be in the interests of Workers provided that any such continuation would not in the Trustee's opinion give rise to any breach of the legal rule against perpetuities or remoteness of vesting of property in so far as such rule applies to the Scheme.
- 28.3 Notwithstanding Clauses 28.1 and 28.2:
- (a) the Scheme shall be determined if in the opinion of the Trustee the Scheme should be determined because it is insolvent, or it is inexpedient or impractical for the Scheme to continue, and such determination shall take effect as at the date nominated by the Trustee; or
  - (b) any of the Trustee or the Sponsors (being the **proposer**) may at any time by notice in writing to:
    - (i) the other of the Trustee and the Sponsors who are not the proposer; and
    - (ii) any Division Sponsor

**(the non-proposers),**

request that the non-proposers consent to the dissolution or determination of the Scheme. The non-proposers shall have 6 months from the date of service of the

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notice in which to consider the request and notify the proposer of their respective decisions. If any of the non-proposers fail to notify the proposer of their decision then that party shall be deemed to have agreed to the proposed dissolution or determination of the Scheme. If all parties agree (or are deemed to agree), the Scheme will be determined or dissolved upon the expiration of 6 months after the agreement to dissolve or determine the Scheme has been reached, or such other period as may be agreed between the Trustee and the Sponsors.

28.4 Upon the determination of dissolution of the Scheme a full account in writing shall be taken by the Trustee of all assets, debts and other liabilities and of all transactions, matters and things usually comprehended in a general account of like nature then belonging to or due to or owing by the Scheme and a proper valuation shall be made of all the particulars included in such account which require and are capable of valuation and immediately after such last mentioned account shall have been taken and settled all the assets then belonging to or due to the Scheme shall be realised and sold to what the Trustee considers to be the best advantage in the circumstances unless in the case of any asset or assets the Trustee determines not to realise or sell such asset or assets, and the moneys arising from such sale and all other moneys and assets of the Scheme shall be applied in the following manner:

- (a) first – in payment of the costs and expenses of the winding up of the Scheme and realising its assets and any other charges, costs, expenses and amounts referred to in Clause 18.7;
- (b) secondly – in the payment of the debts and liabilities of the Trustee including any debts owing by the Trustee to the Sponsors, Members or Apprentices; and
- (c) thirdly – the remaining moneys and assets (other than any insurance policies effected by the Trustee under Clause 18.6(b) in respect of health benefits provided to Workers or Apprentices or the proceeds of such policies (**the Health Insurance Policies**)) shall be applied as follows:
  - (i) if the moneys and value of the assets equal or exceed the sum of the aggregate amount credited to Workers' Accounts;
    - (A) by transferring to a Reciprocating Scheme for each Worker a benefit in accordance with Clause 28.5 equal to the amount credited to his or her Worker Account;
    - (B) paying the balance (if any) into the Workers' Accounts in proportion to the amount credited to their respective Worker Accounts; and
  - (ii) if paragraph (i) does not apply – by providing each Worker with a benefit in accordance with Clause 28.5 equal to the proportion which the remaining moneys and value of the assets bear to the balance of their respective Worker's Account.

The Trustee shall make such arrangements in respect of the Health Insurance Policies (which may, without limitation, include payments to the Workers or Apprentices (as the case may be) covered by such Health Insurance Policies) as it thinks equitable having regard to the circumstances.

28.5 The benefits provided by the Trustee to Workers and Apprentices (if applicable) under Clause 28.4(c) will be:

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- (a) provided in such form and by way of such arrangements and subject to such conditions as the Trustee and the Sponsors shall agree; and
  - (b) in lieu of, and in full satisfaction of, the benefits which would or might have been or become payable from the Scheme but for the operation of this Clause.
- 28.6 On termination or dissolution of the Scheme the Trustee, the Sponsors, the Division Sponsors (if any) and each Member shall execute such release or releases (if any) in favour of the others of them in respect of claims on account of the Scheme as is (in the opinion of the Trustee) usual in such cases.

## **29 Member's retirement from, or termination of, participation in the Scheme**

- 29.1 The participation of a Member in the Scheme may be terminated upon the Member giving one month's notice in writing to the Trustee of its intention to cease participation in the Scheme provided the Member makes up any arrears in respect of its Contributions.
- 29.2 The participation in the Scheme by such a Member shall cease as from the expiration of the one month notice period or any shorter period as may be agreed by the Trustee (whether generally or in relation to any particular category or case).
- 29.3 The participation in the Scheme by a Member may be terminated by the Trustee by giving seven (7) days written notice to the Member if:
- (a) in the opinion of the Trustee, for any reason or combination of reasons, the Member's business activities cease to relate to the Industry;
  - (b) an Insolvency Event occurs in relation to the Member; or
  - (c) the Member fails to the satisfaction of the Trustee, in the Trustee's sole discretion:
    - (i) to provide any information requested by the Trustee under the provisions of Clause 4.4 within the time (if any) specified by the Trustee in making the request;
    - (ii) to issue a certificate to the Trustee under the provisions of Clause 4.8;
    - (iii) to pay any Contributions to the Trustee payable under and in accordance with Clause 6.1;
    - (iv) to give a statement to the Trustee under and in accordance with Clauses 6.2 or 6.3; or
    - (v) to observe and perform any other of the Member's obligations and requirements under or in connection with this Deed.
- 29.4 The participation in the Scheme by a Member may also be terminated for any other reason whatsoever (with effect from the expiration of the period of notice) if the Trustee gives at least one (1) month's notice in writing to that Member of the Trustee's intention to terminate the Member's participation in the Scheme.
- 29.5 In the event of the termination of the participation of a Member in the Scheme:

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- (a) no further Workers of that retiring Member shall be admitted to the Scheme; and
  - (b) no further Contributions shall be made by the Member except Contributions which were due on or before the date of cessation as a Member.
- 29.6 Notwithstanding that an employer shall have previously ceased to be a Member, that employer shall, if it wishes to be a Member, apply to be readmitted as a Member and shall comply with all of the requirements of Clause 2.1.

### **30 Retirement removal and appointment of Trustee**

- 30.1 Subject to the provisions of this Clause, the power of appointment and removal of the Trustee is vested in the Sponsors.
- 30.2 A Trustee for the time being will hold office until the earlier of the Trustee's:
- (a) removal from office by the Sponsors;
  - (b) retirement from office by giving 60 days' written notice to the Sponsors (or such lesser period as the Sponsors may agree); or
  - (c) becoming disqualified from office by operation of law.
- 30.3 If the office of Trustee becomes vacant the Sponsors will appoint one corporate entity, or an appropriate number of natural persons having regard to paragraphs (a) and (b), as trustee or trustees (as the case may be) to replace Protect Severance Scheme No.2 Pty Ltd provided that:
- (a) if a corporate entity is appointed the board, or other governing body (as the case may be), must comprise the same proportion of persons appointed by ETU and NECA respectively as the board of directors of Protect Severance Scheme No.2 Pty Ltd at the time of replacement in accordance with its constitution; and
  - (b) if natural persons are appointed those natural persons must comprise the same proportion of persons appointed by ETU and NECA respectively as the board of directors of Protect Severance Scheme No.2 Pty Ltd at the time of replacement in accordance with its constitution.
- 30.4 The appointment or removal of a Trustee must be in writing. Nothing in this Deed is to be taken as limiting the right to appoint a corporation or a resident of a place outside Victoria as a Trustee.
- 30.5 Upon termination of office under Clause 30.2:
- (a) the Trustee will, subject to Clause 30.6, be deemed to be discharged from the trusts of this Deed and the duties and obligations of the Trustee under this Deed at the time and on the date of termination of office; and
  - (b) the Trustee will deliver, sign and execute all such things, papers, records, writings, documents, deeds and other property as may be necessary or desirable to give proper effect to such retirement from office and the transfer or assignment to, or otherwise the vesting of the assets of the Scheme in, the new Trustee.



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- 30.6 Nothing contained in this Deed will relieve a person which ceases to be a Trustee from liability for any antecedent breach of trust for which it otherwise would be liable.

## **31 Powers of the Sponsors**

Except to the extent (if any) expressly provided in this Deed, in the exercise, non-exercise or partial exercise of any power exercisable by the Sponsors under this Deed, the Sponsors:

- (a) have an absolute and uncontrolled discretion and are not required to give to any person any reason for or explanation of their exercise, or partial exercise, of that power; and
- (b) are not under any fiduciary or other duty and may act entirely in the interests of the Sponsors.

## **32 Rights of Workers and limitation of liability**

- 32.1 The terms and conditions of this Deed shall be binding on the Trustee, the Division Sponsors, NECA, the ETU, each Member and each Worker and all persons claiming through them respectively as if such Members, Workers, Division Sponsors, NECA, ETU and other persons had been a party to this Deed.
- 32.2 A Worker shall be entitled to Severance Payments as provided in this Deed but shall not, except as otherwise provided in this Deed, be entitled to:
- (a) in any way interfere with the exercise by the Trustee in the exercise of its powers in relation to the Scheme or otherwise under this Deed;
  - (b) exercise any rights, powers or privileges in respect of any investment; or
  - (c) lodge a caveat claiming an estate or interest in any land or real estate acquired or to be acquired as an investment of the Scheme or otherwise.
- 32.3 No Worker, or person claiming through or under a Worker or on his or her behalf, is entitled to require payment of any amount from the Scheme except as may be expressly provided for and specified in this Deed and no Worker or other person whose claims under this Deed have been satisfied will retain or have any further or other interest in the Scheme.
- 32.4 The Trustee may, but is not obliged to, pay any amount due to a Worker under this Deed in accordance with the written instructions of that person (or of his or her attorney appointed under power of attorney).
- 32.5 The Trustee shall, on a basis no less frequently than annually give each Worker a statement setting out details of the balance (if any) standing to the credit of the Worker's Account and such other matters relating to the Scheme as the Trustee thinks fit from time to time.

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## 33 Miscellaneous provisions

- 33.1 Subject to this Deed:
- (a) benefits payable from the Scheme will be payable at the place and in the manner as determined or approved by the Trustee from time to time; and
  - (b) it will be sufficient for the purposes of this Deed for the Trustee to make payment by cheque (or cause an Insurer to make any payment by cheque on behalf of the Trustee) and mail (or cause the Insurer to mail) the cheque to the payee at the last known address known to the Trustee of that payee.
- 33.2 Whenever it is necessary for the Trustee to decide questions of fact the Trustee may act upon such proofs or presumptions as the Trustee may consider appropriate whether or not they are strictly legal proofs or legal presumptions.
- 33.3 The powers conferred upon any corporation (including, without limitation, the Trustee and a corporate Member) may be fully and effectively exercised by a resolution of the directors (or the equivalent) of that corporation for and on behalf of the corporation or in such other manner as may be authorised by such resolution.
- 33.4 Any consent, approval, appointment, request, determination or decision (however described) which is or may be required to be given or made for the purposes of the Scheme or this Deed by the Sponsors or a Member shall in order to be effective for the purposes of this Deed:
- (a) be in writing; and
  - (b) be executed (as the case may be):
    - (i) by each Sponsor or on behalf of each Sponsor by not less than one of the relevant Sponsor's duly authorised officers; or
    - (ii) by the relevant Member or on behalf of the relevant Member by a duly authorised officer nominated in writing to the Trustee by that Member.

## 34 Amendments to this Deed

- 34.1 Subject to Clause 34.2, any provision of this Deed (including this Clause) may be Amended at any time and from time to time by agreement between the Trustee and the Sponsors by deed or instrument in writing. Any Amendment shall come into force when the deed or instrument in writing is executed and shall take effect from that date or as from such earlier or later date as may be specified for that purpose.
- 34.2 No Amendments will be made so as to prejudicially affect the beneficial entitlements of the Sponsor, any Member or any Worker as at the date of the Amendment unless the Sponsors, the relevant Member or Members or the relevant Worker or Workers (as the case may be) consent in writing.
- 34.3 Where in the opinion of the Trustee a material Amendment is made to this Deed the Trustee shall give to each Member, as soon as practicable after the Amendment, a statement in writing explaining the nature and purposes of the Amendment.

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## 35 Notices

35.1 A notice or other communication required or permitted to be given by a person to another under, or for the purpose of, this Deed shall be in writing and:

- (a) delivered personally;
- (b) sent by post, postage prepaid; or
- (c) sent by fax,

to that party's address set out in this Deed or the address or fax number last notified by each party from time to time.

35.2 A notice or other communication is deemed given if:

- (a) personally delivered, on delivery;
- (b) mailed, on the expiration of two business days after posting; or
- (c) faxed, on receipt by the sender of a transmission control report from the despatching fax machine showing the relevant number of pages and the correct destination fax machine number and indicating that the transmission has been made without error.

## 36 Severance of void provisions

36.1 Any provision of this Deed which is void, prohibited or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent only that the provision is void, prohibited or unenforceable in that jurisdiction.

36.2 Any provision which is ineffective under Clause 36.1 will not invalidate the remaining provisions of this Deed.

36.3 Where a provision is ineffective under Clause 36.1, the Trustee will determine the effect and interpretation of the remaining provisions of this Deed and the Trustee's determination will be final, conclusive and binding on all interested persons.

## 37 Further assurances

The Sponsors jointly, each Sponsor severally and the Trustee agree to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed and the transactions contemplated by it.

## 38 Counterparts

This Deed may be executed in counterparts. All counterparts together will be taken to constitute one instrument.

---

## **39 Attorneys**

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

## **40 Governing Law**

The Deed will be governed and construed, and will take effect, in accordance with the law of the State of Victoria.

# Trust deed

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## Schedule 1- Form of Application for Membership and Deed of Adherence

Clause 2.1(a) – Form of Application for Membership and Deed of Adherence

### Application Form

**Name of Member (Employer):** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: Contact Person: \_\_\_\_\_

Type of work conducted by  
Member (Employer) \_\_\_\_\_

The Member applies for membership of the Protect Severance Scheme No. 2 established by a Deed of Trust dated \_\_\_\_\_ between the National Electrical and Communications Association and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (the **Sponsors**) and Protect Severance Scheme No.2 Pty Ltd (ACN 606 361 853) (the **Trustee**) as provided in this Application Form and Deed of Adherence.

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**Date**

**Parties**

**Protect Severance Scheme No.2 Pty Ltd** of 200 Arden Street,  
North Melbourne, Victoria (**Trustee**)

[#] [(ACN ([#] incorporated in [#]of [#] (**the Employer**)).

**Recitals**

- A Under a trust deed dated [ ] (**the Trust Deed**) a redundancy scheme known as Protect Severance Scheme No.2 (**the Scheme**) is established.
- B The Trustee is presently the sole trustee for the time being of the Scheme.
- C Clause 2.1 of the Trust Deed provides:  
*'An employer shall become a Member of the Scheme if the Trustee is satisfied that the employer's business relates to the Industry and the employer:*
- (a) *completes the Application Form and Deed of Adherence;*
  - (b) *lodges the completed Application Form and Deed of Adherence with the Trustee;*
  - (c) *pays the Trustee the first Contribution payable under this Deed by the employer as a Member; and*
  - (d) *provides all additional information (if any) which may be requested by the Trustee.'*
- D The Trustee desires to admit the Employer as a Member and the Employer desires to be admitted as such.
- E The Trustee is satisfied that this Deed is a Deed of Adherence for the purposes of the Trust Deed.

It is agreed as follows.

## 1 Admission of Member

The Trustee admits the Employer to participate in the Fund as a Member on and from

[ ].

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## **2 Member bound by Trust Deed**

The Employer agrees that on and from [ ] it will, whilst it is a Member, duly observe and perform such of the provisions of the Trust Deed as are to be observed and performed by a Member under the Trust Deed and agrees to be bound by any determination made by the Trustee pursuant to its powers under the Trust Deed.

## **3 Definitions**

Unless the subject matter or context otherwise requires, words, terms and expressions defined in the Trust Deed will, when used in this Deed of Adherence, have the respective meanings given to them in the Trust Deed.

## **4 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## **5 Attorneys**

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

## **6 Governing Law**

This Deed is governed by the laws of Victoria.

# Trust deed

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## Schedule 2 - Additional powers of the Trustee

### **1 Investment Powers**

For the purpose of Clause 18.6(a), the Trustee has power to enter into (whether or not for purposes including the hedging of the investments of the Scheme) and carry out and perform obligations under agreements or arrangements relating to, or otherwise acquire rights in respect of, financial instruments, contracts and other derivative transactions of whatever nature and wheresoever situated (whether in Australia or elsewhere) including (without limitation) currency hedging arrangements, options, interest rate swaps, futures, any index traded on an options, futures or forward market and any other similar transactions of whatever nature.

### **2 Insurance Powers**

For the purposes of Clause 18.6(b), the Trustee has power to effect policies of insurance in the name of the Trustee, or pursuant to arrangements established or agreed with the Sponsors for this purpose, to cover liability for health insurance benefits provided to Workers or Apprentices including personal accident insurance, emergency transport cover and dental cover and any other type of insurance benefit determined from time to time by the Trustee.

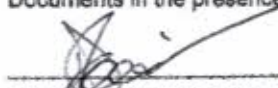


# Trust deed

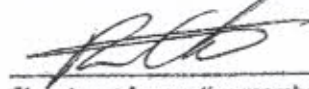
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## Signing page

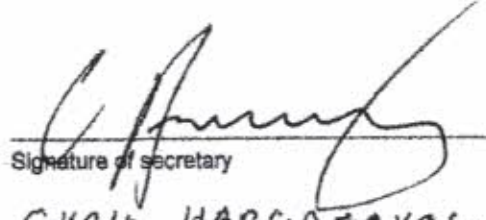
Executed by **The National Electrical Contractors Association** in accordance with its Constituent Documents in the presence of:

  
\_\_\_\_\_  
Signature of executive member

DEAN SPITZER  
Name of executive member (please print)


  
\_\_\_\_\_  
Signature of executive member

RUSSELL CHATFIELD.  
Name of executive member (please print)


  
\_\_\_\_\_  
Signature of secretary

CHRIS HARGREAVES.  
Name of secretary (please print)

EXECUTED by **Protect Severance Scheme No.2 Pty Ltd** ACN 608 361 853 in accordance with the *Corporations Act 2001* by being signed by the following officers:

  
\_\_\_\_\_  
Signature of director


MICHAEL SPIVACK  
Name of director (please print)

  
\_\_\_\_\_  
Signature of ~~director~~ / company secretary

Kathleen S Sharp  
Name of ~~director~~ / company secretary (please print)

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Executed by **Communications, Electrical,  
Electronic, Energy, Information, Postal,  
Plumbing and Allied Services Union of  
Australia** in accordance with its Constituent  
Documents in the presence of:



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Signature of President

**Daniel Filazzola**  
Name of President *(please print)*



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Signature of Secretary

**Troy Gray**  
Name of Secretary *(please print)*