

MUNICIPAL WORKCARE SCHEME

SCHEME RULES



**WESTERN
AUSTRALIAN
MUNICIPAL
ASSOCIATION**

MUNICIPAL WORKCARE SCHEME- SCHEME RULES

PART 1 – INTERPRETATION

1. Structure of Rules

These Rules are divided into parts as follows:

- Part 1 – Interpretation
- Part 2 - Objectives
- Part 3 - Executive Member
- Part 4 - Scheme Membership
- Part 5 - Commencement and Closure of Fund Years
- Part 6 - Contributions
- Part 7 - Liability Protection
- Part 8 - Claims Procedures
- Part 9 - Scheme Member Default and Cancellation of Membership
- Part 10 – Amendment of Rules

2. Definitions

In the Rules:

'Accumulated Funds' means for a Fund Year, the aggregate of the Fund in respect of that year, any surplus standing to the credit of the Scheme in respect of Funds for previous Fund Years and any other assets of the Scheme including assets from which claims and expenses payable by WAMA in relation to the Scheme may be paid;

'Board' means the Board of Management appointed by WAMA from time to time;

'Claim' means any claim for workers' compensation liability made upon a member during a Fund Year and, in a case where a single claim is made or representative action is brought on behalf of more than one person, means the individual claim by each such person;

'Executive Member' means WAMA;

'Funds' means each separate annual fund;

'Fund Year' means the initial 12 month period commencing from 4.00 pm on 30 June 1995 to midnight 30 June 1996 . Thereafter from midnight on 30 June in a calendar year to midnight on 30 June in the next calendar year in which the Scheme is operating, unless otherwise determined by the Board;

'Pooled Cover' means cover provided from the Fund to meet claims against Scheme Members in the amount and in respect of risks determined from time to time by the Board;

'Reinsurance Cover' means insurance cover purchased from underwriters by the Board on behalf of Scheme Members to meet claims against the members in the amount and in respect of risks determined from time to time by the Board;

'Scheme Manager' means the entity appointed from time to time by WAMA to manage the Scheme on its behalf;

'Scheme' means Western Australian Municipal Association Municipal WorkCare Scheme, or where the context so requires, WAMA;

'Scheme Member' means a body admitted as a member of the Scheme from time to time pursuant to these Rules;

'Special Resolution' means a resolution passed with the unanimous vote of all persons present and entitled to vote at the meeting in which the resolution is put;

'WAMA' means the Western Australian Municipal Association.

3. Purpose of Rules

These Rules form the principal constituent document of the Scheme. The purpose of these Rules is to set out the administrative mechanisms by which the Scheme is administered so as to put objectives of the Scheme into effect.

PART 2 - OBJECTIVES

4. The objectives of the Scheme are to provide to Scheme Members assistance in respect of their potential and actual liabilities for the rehabilitation and compensation of their employees for injuries and illness compensable under the *Workers' Compensation and Rehabilitation Act 1981* (WA) and at common law pertaining to that legislation including, without limiting the generality of the foregoing:

- (a) advice in respect of minimising the occurrence and severity of all compensable injuries and illness;
- (b) assistance in the administration, investigation and resolution of claims by employees in respect of compensable injuries and illness;
- (c) assistance in the rehabilitation of employees from compensable injuries or illness;
- (d) legal representation in respect of any claims by employees in respect of compensable injuries or illness;
- (e) financial assistance by way of grants in respect of the liabilities towards compensation and rehabilitation of all employees suffering from compensable injuries or illness; and
- (f) indemnity of Scheme Members in respect of the financial obligations imposed upon them by the *Workers' Compensation and Rehabilitation Act 1981* (WA).

PART 3 - EXECUTIVE MEMBER**5. WAMA**

5.1 WAMA is the executive member of the Scheme, and is charged with administering the affairs of the Scheme in the pursuit of its objectives for and on behalf of the Scheme Members in and for each Fund Year.

5.2 WAMA may appoint a Board to manage the Scheme on its behalf.

5.3 The Board, subject to the prior approval in writing of WAMA, may by ordinary resolution delegate any of its functions in relation to Scheme membership, claims and risk management to the Scheme Manager upon such terms as it determines.

6. Powers, Duties and Functions of the Executive Member

6.1 The executive management of the Scheme is vested in the Executive Member or its delegate for and on behalf of all the Scheme Members in and for each Fund Year.

6.2 The Executive Member may appoint a person (natural or otherwise) to act as manager of the Scheme in respect of each financial year in which the Scheme shall operate, for such term of years as the Executive Member shall determine, to:

- (a) carry out such duties with respect to the management and administration of the Scheme for and on behalf of the Executive Member, as the Executive Member may deem fit from time to time; and
- (b) keep records of all its activities for and on behalf of the Scheme.

6.3 The Scheme Manager is entitled to be paid a management fee for the performance of its duties.

6.4 The Executive Member is empowered for and on behalf of the Scheme Members to do all of the following things namely:

- (a) levy calls upon eligible Scheme Members for differential contributions to the Scheme Funds, including calls for Further Contributions under rule 18;
- (b) invest all contributions received from Scheme Members;
- (c) expend the capital and income comprising the Funds of the Scheme in respect of each Fund Year in and towards:
 - (i) the general administration of the Scheme including the objectives set out in rule 4;
 - (ii) the cost to the Executive Member of performing its responsibilities under the Scheme and of providing human resource services such as supervisory, administrative, industrial, publicity and other advisory services to the Scheme Manager and Scheme Members;
 - (iii) such other expenses determined by the Executive Member to be necessarily incidental to the proper functioning of the Scheme;

(d) arrange reinsurance in accordance with Rule 7;

(e) make sub-rules to be observed by Scheme Members as it may deem fit with respect to the terms and conditions upon which a Scheme Member shall be eligible for assistance from the Scheme, provided that no such sub-rule shall:

- (i) be made in terms inconsistent with these Rules; and
- (ii) operate and take effect in respect of any Scheme Member until a copy of the sub-rule has been served upon the Scheme Member;

(f) enter into all such agreements for and on behalf of the Scheme Members as are necessary for, or incidental to, the proper administration of the Scheme in the pursuit of its objectives; and

(g) such other things as the Executive Member deems necessary for the proper administration of the Scheme in the pursuit of its objectives, and to this end has the powers given to a company under section 124(1) of the *Corporations Law*.

6.5 The Executive Member is empowered to grant a mortgage and/or charge over the Accumulated Funds and all other assets held or utilised for the purposes of, or in connection with, the Scheme:

- (a) arising by virtue of the operation of the Scheme;
- (b) accumulated by way of surplus contributions to or profits of the Scheme; or
- (c) arising from the investments of assets of the Scheme,

to secure any financial accommodation granted to WAMA in its capacity as Executive Member for any purpose related to the proper administration of the Scheme in the pursuit of its objectives.

7. Reinsurance

7.1 The Executive Member is empowered to make such arrangements for Reinsurance Cover as are necessary for the proper functioning of the Scheme.

7.2 The Executive Member may discharge this obligation by requiring the Scheme Manager to arrange such appropriate Reinsurance Cover.

8. Finance

8.1 The Executive Member shall cause proper books of account to be kept in respect of all aspects of the administration and operation of the Scheme in accordance with the standards prescribed by the Institute of Chartered Accountants in Australia.

8.2 The Executive Member shall appoint an auditor to audit the books of account kept in respect of the Scheme. The Executive Member shall cause all books of account kept in respect of the administration of the Scheme to be audited in respect of each financial year.

PART 4 - SCHEME MEMBERSHIP**9. Offer of Scheme Membership**

An offer of membership with the Scheme may be made to an eligible body, namely:-

- (a) a local government;
- (b) a regional local government; or
- (c) any other body with functions relating to local government approved in writing by the Minister for Local Government.

10. Details of Offer

An offer of membership must include advice as to the contribution payable for the first Fund Year of membership with the Scheme.

11. Acceptance of Offer

An eligible body becomes a Scheme Member by:

- (a) accepting the offer of membership with the Scheme in writing; and
- (b) paying the initial Fund Year membership contribution within 30 days of the date of such offer (or such longer period as is determined by the Board) failing which, unless otherwise determined by the Board, the offer of membership lapses.

12. Subsequent Fund Years

Not later than 30 days prior to the end of a Fund Year, or within such other time as the Board may determine from time to time, the Board must determine in respect of each Scheme Member, and advise each Scheme Member in writing:

- (a) whether the Scheme Member will be offered renewed membership of the Scheme for the next Fund Year; and
- (b) if so, the contribution payable by the Scheme Member in respect of that Fund Year.

13. Manner of Renewal

A Scheme Member who wishes to accept an offer of renewed membership of the Scheme for the next Fund Year must pay the contribution within 30 days, or such other time as the Board may from time to time determine, of the date of issue of an offer of renewed membership of the Scheme, failing which, unless otherwise determined by the Board, the offer of renewed membership lapses.

14. General Scheme Membership Obligations

14.1 A Scheme Member agrees, by its acceptance of an offer of membership (or renewed membership), that:

- (a) subject to the Rules as amended from time to time, the Rules constitute a contract between WAMA and the Scheme Member;
- (b) it will be bound by the Rules and perform the obligations of the Scheme Member under the Rules;

(c) it will make available to the Scheme and the Scheme Manager all information and data which either of them reasonably require in order to determine the claim and risk management experience of the Scheme Member for the purpose of assessing contributions;

(d) the Scheme may carry out a risk management audit or otherwise inspect the Scheme Member's property and operations at any time; and

(e) the Scheme may examine and audit the Scheme Member's books and records at any time (but only so far as they relate to membership of the Scheme or risks covered by the Scheme).

14.2 For the avoidance of doubt, the contract referred to in Rule 14.1(a) is a contract between the Scheme Member and WAMA only and the contract does not create as between any Scheme Members any joint rights or obligations or any mutual rights or duties.

14.3 To the extent, if any, to which a provision of these Rules:

- (a) is contrary to Rule 14.2; or
- (b) provides or implies that WAMA is constituted a joint or mutual agent for Scheme Members or any other of them,

that provision is inoperative and does not form part of the legal relationship between the Scheme Member and WAMA.

15. Scheme does not warrant risk levels.

Each Scheme Member acknowledges that neither the Scheme's rights to make inspections, the making of any inspection or the preparation or provision of a report on an inspection constitutes an agreement or the assumption of an obligation, on behalf of or for the benefit of the Scheme Member or others, to determine or warrant that such property or operations are safe.

PART 5 - CLOSURE OF FUND YEARS**16. Closure of Fund Year**

16.1 The Board shall determine when the accounts for a Fund Year will be closed and final results for the Fund Year determined and declared.

16.2 Except in the event of the Scheme being wound up, no Scheme Member has any entitlement to be paid any amount on account of profits or surplus for a Fund Year unless:

- (a) the accounts for the Fund Year have been closed and final results determined and declared; and
- (b) the Board has determined that a distribution return should be paid to Scheme Members in respect of that Fund Year under rule 21.

PART 6 – CONTRIBUTIONS**17. Relevant Factors in Determination**

The contributions determined for any Scheme Member in respect of any Fund Year will be determined in accordance with the provisions of the *Workers' Compensation and Rehabilitation Act 1981 (WA)* and having regard to advice from the Scheme Manager and such matters as the Board considers relevant to the Scheme Member's level of risk and may include, without limitation:

- (a) the Scheme Members' aggregate annual salaries and wages payments.
- (b) the Scheme Member's workers' compensation claims history (both during and prior to its membership of the Scheme);
- (c) any matters relating to the nature of the Scheme Member's area of jurisdiction or its operations which create increased or reduced risks of workers' compensation claims; and
- (d) matters relevant to the Scheme Member's risk management practices which are known to the Board.

18. Further Contributions

- 18.1 If the Accumulated Funds for a given Fund Year will be or are insufficient or if the Board considers the same are likely to be insufficient, to meet the liabilities, obligations, claims and expenses in connection with the Scheme, the Board may determine that an additional contribution is payable by each Scheme Member for that Fund Year, which additional contribution will for each Scheme member be in the same proportion as the initial contribution paid by that Scheme Member bears to the initial contribution of all other Scheme Members for that Fund Year.

This contribution will be known as the "Further Contribution".

- 18.2 As set out below in these Rules, any Scheme Member may terminate its membership in accordance with these Rules. However, once membership is terminated, the former Scheme Member continues to share in the joint and several liability for the Fund Years during which the former Scheme Member was a Scheme Member.

- 18.3 A former Scheme Member is liable for Further Contributions in respect of the Fund Years during which the former Scheme Member was a Scheme Member.

19. Time for Payment

All contributions (including a Further Contribution mentioned above) must be paid by the Scheme Member within 30 days or such other time as the Board may from time to time determine, of the date of the contribution notice given to the Scheme Member or the Scheme Manager (or such longer period as is determined by the Board).

20. Overdue Payments

Without affecting any other Rule, if the amount of any contribution (including a Further Contribution) is not paid by the due date:

- (a) interest on the contribution (including a Further Contribution) may, if the Board so determines, accrue at the Commonwealth Bank of Australia corporate loan reference rate plus 2% from day to day and compounding monthly until the amount is paid or at such other rate that the Board applies; and
- (b) the amount (and interest) may be recovered against the Scheme Member by WAMA or the Scheme Manager on behalf of the Scheme as a debt payable by the Scheme Member.

21. Surplus Distribution

Subject to Rule 16.2, if the Board determines that the Fund is in excess of the amount required to meet present and future claims and expenses from the Fund for a given Fund Year, then the Board may determine to pay any excess to Scheme Members in the same proportion to the initial contribution made by the Scheme Members to the Fund for the Fund Year.

PART 7 - LIABILITY PROTECTION**22. Coverage**

In respect of each Fund Year, but subject always to these Rules, the Scheme will indemnify each Scheme Member against claims for damages or compensation:

- (a) in accordance with the *Workers' Compensation and Rehabilitation Act 1981 (WA)*; and
- (b) by employees in respect of common law claims for workplace injury.

23. Recourse to Scheme Assets only

- 23.1 For the payment of any claim against the Scheme or the performance of any obligation of the Scheme, resort may be had solely to the Fund and other assets and property of the Scheme and no claims may be made or enforced by the Scheme Member against:

- (a) WAMA in any capacity;
- (b) any member of the Board, employee or agent of the Scheme (except in cases of negligence or other breach of duty by that member of the Board, employee or agent of the Scheme); or
- (c) any other Scheme Member.

24. Payment of Claims

The amount of Court judgments or claim settlements approved by the Board in respect of claims made against the Scheme Member during a Fund Year will be met to the extent that the amount:

- (a) does not exceed the amount of the Pooled Cover, from the Fund;
- (b) exceeds the amount of the Pooled Cover:
 - (i) to the amount of the Pooled Cover, from the Fund; and

- (ii) thereafter from the Reinsurance Cover to the extent of that cover; and

- (c) exceeds the amount of the Pooled Cover and the Reinsurance Cover:
 - (i) to the amount of the Pooled Cover, from the Fund;
 - (ii) to the amount of the Reinsurance Cover, to the extent of that cover; and
 - (iii) the balance by the Scheme Member itself without recourse to the Scheme.

25. WAMA Indemnified

WAMA is entitled to be indemnified out of the assets of the Scheme in respect of:

- (a) all costs, charges and expenses of any kind whatsoever incurred or expended by it, by through or in connection with the Scheme, including legal, actuarial, consulting and other costs;
- (b) any claim, action, suit or demand of whatsoever nature made by any person against WAMA and arising by, through or in connection with its relationship with the Scheme.

PART 8 - CLAIMS PROCEDURES

26. Notice of Claim

26.1 Notice in writing must be given as soon as possible and in line with the legislative requirements, to the Scheme or the Scheme Manager:

- (a) of any occurrence, circumstance, claim, writ, summons or proceedings, or of any, or any impending, prosecution or inquest, or knowledge of any occurrence or circumstances which may subsequently give rise to a claim covered by the Scheme irrespective of the quantum of such claim; and
- (b) of any change materially varying any of the facts or circumstances existing at the commencement of cover by the Scheme that shall come to the knowledge of the Scheme Member. Such notice shall be given by the Scheme Member whose knowledge shall be deemed to include the knowledge of any person whose knowledge would in law be that of the Scheme Member.

26.2 If a claim arises directly by, or by the driving of, a motor vehicle in respect of which a compulsory policy of insurance is held pursuant to the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)*, the Scheme Member is to officially notify the Insurance Commission of Western Australia immediately and to confirm with the Scheme Manager that this has been done.

27. Information Provided

The Scheme Member shall provide to the Scheme, the Scheme Manager, and any loss adjuster, solicitor, or other agent appointed by the Scheme or the Scheme Manager with respect to a claim or potential claim, all information requested by that party in the manner and format requested by such party.

28. Grant or Refusal of Indemnity

The Board shall advise the Scheme Member as soon as practicable after receipt of a claim as to whether the Scheme grants or refuses indemnity.

29. Admission Must Not Be Made

The Scheme Member shall not make any admission, offer, promise or indemnity in respect of a claim or potential claim without the written consent of the Scheme.

30. Indemnity May be Refused

30.1 Without limiting the discretion of the Board, the Scheme will not indemnify the Scheme Member against any claim (and may withdraw indemnity previously granted) where the Scheme Member has breached or failed to comply with any condition or obligation in these Rules

30.2 If indemnity is denied, the Scheme Manager will notify WorkCover WA in accordance with the *Workers' Compensation & Rehabilitation Act 1981 (WA)*.

31. Subrogation

The Scheme Member agrees that in the event of payment of any claim by the Scheme, the Scheme will be subrogated to the extent of such payment to all the rights of the Scheme Member against any person or other entity legally responsible for the claim, and in such event, the Scheme Member must render to the Scheme, the Scheme Manager or any loss adjuster, solicitor or other agent appointed by the Scheme or the Scheme Manager, all assistance (other than pecuniary) as is reasonably necessary to effect recovery.

32. Settlement of Claims

32.1 If the Scheme so desires, it may take over the conduct in the name of the Scheme Member the defence or settlement of any Claim.

32.2 Where a claim occurs, the Scheme Member must promptly take, at its own expense, all reasonable steps to prevent other workers' compensation or common law claims from or arising out of the same or similar conditions, but such expense shall not be recoverable from the Scheme.

32.3 The Scheme Member must use its best endeavours to preserve any damaged or defective property which might prove necessary or useful by way of evidence in connection with any claim and, except where some other course is required by Rule 32.2 but only so far as may be reasonably practicable, the Scheme Member must not make any alteration or repair to any premises, machinery, fittings, appliances or plant without consent of the Scheme until the Scheme has had an opportunity of inspection.

32.4 The Scheme is entitled to prosecute in the name of the Scheme Member, at its own expense and for its own benefit, any claim for indemnity or damages or otherwise.

32.5 The Scheme has full discretion in the conduct of any proceedings in connection with any claim.

32.6 Despite Rules 32.1 to 32.5, a Scheme Member shall not be required to contest any legal proceedings unless a Queen's Counsel or a person of similar authority (to be mutually agreed upon by the Scheme Member and the Scheme) shall advise that such proceedings should be contested with a reasonable probability of success or partial success.

33. Scheme Member's Litigation Responsibilities

In connection with any litigation or claim settlement negotiations conducted by the Scheme in the name of the Scheme Member, or any action taken by the Scheme in exercise of its rights of subrogation:

- (a) if a personal appearance by an elected member, officer, or agent of the Scheme Member is necessary at any conference, in any Court or elsewhere, the expense of such appearance must be borne or paid by the Scheme Member;
- (b) the Scheme Member must fully co-operate by supplying any information and assistance requested by the Scheme Manager and any loss adjuster, solicitor or other agent appointed by the Scheme Manager with respect to the litigation or claim; and
- (c) the Scheme Member may, upon notice in writing, prevent a settlement proposed by the Scheme of litigation or a claim brought or made against the Scheme Member, but if it does so and the claim is ultimately settled (or judgement is ultimately given) for a higher amount, then despite Rule 24, the Scheme Member must pay all amounts (including interest and legal costs) which exceed the amounts which the Scheme would have had to pay if the claim had been settled as proposed by the Scheme.

34. Relinquish Control

The Scheme may at any time pay to a Scheme Member the limit of Pooled Cover and Reinsurance Cover applying to any one claim or series of claims (after deduction of sums already paid) or any lesser amount for which such claims can be settled and shall then be under no further liability in connection with such claims.

35. Reasonable Care

A Scheme Member shall as far as reasonably practicable:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition; and
- (b) take all reasonable precautions to:
 - (i) prevent personal injury and damage to property; and
 - (ii) comply and ensure that its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

PART 9 - SCHEME MEMBER DEFAULT AND CANCELLATION OF SCHEME MEMBERSHIP

36. Withdrawal

Subject to the *Workers' Compensation and Rehabilitation Act 1981(WA)*, a Scheme Member may withdraw from membership of the Scheme only at the expiry of a Fund Year and provided that it:

- (a) gives to the Board written notice of its intention to withdraw at least 60 days prior to the expiry of that Fund Year;
- (b) ensures that upon the giving of written notice to the Board of its intention to withdraw, it immediately applies to the Minister for revocation of its exempt employer status pursuant to section 168 of the *Workers' Compensation and Rehabilitation Act 1981 (WA)*; and
- (c) indemnifies the Scheme, until such time as the Scheme Member's exempt employer status is revoked, in respect of its proportion of any levy payable by the Scheme to WorkCover (WA) in accordance with section 164 of the *Workers' Compensation and Rehabilitation Act 1981 (WA)* which is due by virtue of the gazettal of the Scheme Member as an exempt employer.

37. Effect of Withdrawal

Unless otherwise determined by the Board, withdrawal by a Scheme Member does not:

- (a) entitle the Scheme Member to a refund of contribution in full or in part in respect of the unexpired part of the Fund Year;
- (b) vary or waive the obligations of the continuing Scheme Members to comply with the provisions of the Rules; or
- (c) affect the withdrawing Scheme Member's current or subsequent obligation to make Further Contributions for any Fund Year whilst the withdrawing Scheme Member was a Scheme Member, including the unexpired part of the Fund Year of withdrawal.

38. Notice to Show Cause Why Scheme Membership Should not be Cancelled.

In the event that any Scheme Member (in this Part referred to as the 'Defaulting Scheme Member'):

- (a) fails to comply with reasonable directions of the Board as to the conduct of its operations so as to minimise risks;
- (b) fails to:
 - (i) make available to the Scheme and the Scheme Manager all information and data which either of them reasonably require in order to determine the claims and risk management experience of the Scheme Member for the purpose of assessing contributions;
 - (ii) permit the Scheme or the Scheme Manager to carry out a risk management audit or otherwise inspect the Scheme Member's property and operations; or

- (iii) permit the Scheme or the Scheme Manager to examine and audit the Scheme Member's books and records (but only so far as they relate to membership of the Scheme or risks covered by the Scheme);

- (c) fails to pay contributions (including Further Contributions) due to the Scheme within thirty (30) days of the due date for payment of those contributions (or such longer period as is determined by the Board); or
- (d) commits any other breach of the Rules which is not remedied within the time specified in a notice to the Scheme Member in that regard,

the Board may by notice in writing to the defaulting Scheme Member require that Scheme Member to show cause in writing within fourteen (14) days why its membership of the Scheme should not be cancelled.

39. Cancellation of Scheme Membership

The Board may by special resolution, with the consent of WAMA, cancel the membership of a Scheme Member by giving the Scheme Member written notice to that effect, where the Scheme Member:

- (a) fails to comply with the duty of utmost good faith;
- (b) fails to comply with its duty of disclosure;
- (c) has made a misrepresentation to the Scheme during negotiations for and before the commencement date of its Scheme Membership (or any subsequent renewal);
- (d) has made a fraudulent claim to the Scheme or under any concurrent policy of insurance; or
- (e) in the opinion of the Board fails to show sufficient cause to the contrary in response to a notice under Rule 38.

40. Effective Date of Cancellation

A notice of cancellation takes effect at:

- (a) the time when a policy of insurance between the Scheme Member and an insurer, being a policy of insurance that is intended by the Scheme Member to replace its cover under the Scheme, is entered into; or
- (b) midnight on the 30th business day after the day on which notice was given to the Scheme Member (or such later time as is specified in the notice) in accordance with Rule 39,

whichever first occurs.

41. Effect of Cancellation

- 41.1 Upon notice of cancellation taking effect from that date the defaulting Member shall have no right to claim against the Pooled Cover or the Reinsurance Cover in respect of:

- (a) any Claim in respect of an event occurring after that date; or

- (b) in a case where indemnity, where granted, is customarily on a claims made basis, any claim made upon it after that date.

- 41.2 Such cancellation nevertheless does not otherwise affect entitlement to cover for any claim already indemnified by the Board nor vary or waive the obligations of the defaulting Scheme Member to comply with the provisions of the Rules in respect of any Fund Year during which the defaulting Scheme Member was a member of the Scheme.

- 42. **Additional Contribution to Cover Cost of Default**
In the event that a Scheme Member is in default in payment of a contribution or in any other way whereby the Fund suffers any financial loss or incurs additional expense, the Board may as an alternative to cancellation require the defaulting Scheme Member to pay to the Fund an additional contribution in an amount to be determined by the Board to reimburse the Fund for the loss or additional expense.

- 43. **Additional Contribution for Additional Risks**
If a Scheme Member fails to comply with a direction of the Board and in doing so (in the opinion of the Board) exposes the Scheme to an increased, additional or readily avoidable risk, the Board may as an alternative to cancellation:

- (a) require the Scheme Member to pay an additional contribution to cover that risk;
- (b) exclude that risk from the Pooled Cover and the Reinsurance Cover applicable to that Scheme Member; or
- (c) otherwise limit the exposure of the Scheme and the indemnity insurer to such risk.

- 44. **Set Off Against Moneys Due to Scheme Member**
In the event that a Scheme Member is otherwise entitled to a distribution or return of any surplus in the Fund, any amount due to a defaulting Scheme Member will be set off against:

- (a) any contribution or other money due but unpaid by the defaulting Scheme Member to the Scheme; and
- (b) any loss or expense incurred by the Scheme by, through or in connection with the default by that defaulting Scheme Member.

PART 10 - AMENDMENT OF RULES

- 47. These Rules may be amended by resolution of the Executive Member provided that not less than 50% of the Scheme Members have indicated their support of a proposed amendment through either:

- (a) a postal ballot; or
- (b) a meeting to determine the opinion of the Scheme Members,

in which all Scheme Members were invited to participate.

Municipal WorkCare Scheme

SCHEME RULES

ELIGIBLE MEMBERS

The bodies eligible to apply for membership of the Scheme are:

- (a) all Councils and other bodies constituted under the Local Government Act 1960; and
- (b) any other body established for Local Government purposes as approved by the Minister.

OBJECTIVES

To provide members of the Scheme assistance in respect of their potential and actual liabilities for the rehabilitation and compensation of their employees for injuries and illness compensable under the Workers' Compensation and Rehabilitation Act 1981 including but without limiting the generality of the foregoing:

- (a) Advices in respect of minimising the occurrence and severity of all compensable injuries and illness;
- (b) Assistance in the administration, investigation and resolution of claims by employees in respect of compensable injuries and illness;
- (c) Assistance in the rehabilitation of employees from compensable injuries or illness;
- (d) Legal representation in respect of any claims by employees in respect of compensable injuries or illness; and
- (e) Financial assistance by way of grants in respect of the liabilities towards compensation and rehabilitation of all employees suffering from compensable injuries or illness.

MEMBERSHIP

In respect of each fund year during the operation of the Scheme, the members of the Scheme shall be those bodies which are eligible to be members and which have paid all monies levied in respect of their membership of the Scheme for that fund year.

EXECUTIVE MEMBER

The Western Australian Municipal Association shall be the Executive Member of the Scheme and shall be charged with administering the affairs of the Scheme in the pursuit of its objectives for and on behalf of the members in and for each financial year. The Executive Member shall at its discretion be the person responsible to report to the members of the Scheme on the performance of the Scheme.

MANAGEMENT OF THE SCHEME

The executive management of the Scheme shall be vested in the Executive Member for and on behalf of all of the members in and for each fund year.

The Executive Member shall from time to time as it sees fit appoint a Board of

Management to oversee the administration of any part or parts of the operating of the Scheme.

The Executive Member may appoint a person (natural or otherwise) to act as Manager of the Scheme in respect of each fund year in which the Scheme shall operate for such term of years as the Executive Member shall determine, to:

- (a) Carry out such duties with respect to the management and administration of the Scheme for and on behalf of the Executive Member as the Executive Member may deem fit from time to time;
- (b) Be paid a management fee for the performance of his duties; and
- (c) Keep records of all of his activities for and on behalf of the Scheme.

POWERS DUTIES AND FUNCTIONS OF THE EXECUTIVE MEMBER

The Executive Member shall be empowered for and on behalf of the members of the Scheme to do all of the following things namely:

- Levy calls upon eligible members for differential contributions to the funds of the Scheme.
- Invest all contributions received from members of the Scheme.
- Expand the capital and income comprising the funds of the Scheme in respect of each fund year in and towards:
 - (a) The general administration of the Scheme;
 - (b) Assistance to members by way of advices in respect of their potential and actual liabilities in respect of compensable injuries and illness;
 - (c) Assistance to members in respect of the rehabilitation of employees suffering from compensable injuries or illness;
 - (d) Assistance to members in the administration, investigation and resolution of claims by employees in respect of compensable injuries or illness;
 - (e) Legal representation for members in respect of any claims by employees in respect of compensable injuries or illness;
 - (f) Financial assistance by way of grants to members in respect of their liabilities to compensate and rehabilitate employees suffering from compensable injuries or illness;
 - (g) The cost to the Executive Member of performing its responsibilities under the Scheme; and
 - (h) Such other expenses determined by the Executive Member to be necessarily incidental to the proper functioning of the Scheme.

- Make such sub-rules to be observed by the members as it may deem fit with respect to the terms and conditions upon which a member shall be eligible for assistance from the Scheme provided that no such sub-rule shall be made in terms inconsistent with these Rules and further provided that no such sub-rule shall operate and take effect in respect of any member until a copy thereof shall have been served upon such member.

- Enter into all such agreements for and on behalf of members of the Scheme as are necessary for or incidental to, the proper administration of the Scheme in the pursuit of its objectives; and

- Carry out all such investigation of such things and make all submissions to such bodies as the Executive Member may deem to be necessary for or incidental to, the proper administration of the Scheme in the pursuit of its objectives.

FINANCE

The Executive Member shall keep proper books of accounts in respect of all aspects of the administration and operation of the Scheme in accordance with standards prescribed by The Institute of Chartered Accountants in Australia.

The Executive Member shall appoint an Auditor to audit the books of account kept in respect of the Scheme.

The Executive Member shall cause all books of account kept in respect of the administration of the Scheme to be audited in respect of each fund year.

CONTRIBUTIONS

Contributions once paid by a member to the funds of the Scheme shall not be recoverable in whole or in part by the member for any reason.

TERMINATION OF MEMBERSHIP

A member may terminate membership of the Scheme at any time by notice in writing to that effect or by failing to pay contributions levied by the Executive Member within the time prescribed by the Executive Member, and in such case the member shall not thereafter be entitled to any benefits which may otherwise have been forthcoming from the Scheme.

AMENDMENT TO RULES

These rules may be amended by resolution of the Executive Member provided that not less than 50% of the members of the Scheme have indicated their support of a proposed amendment through either:

- (a) a postal ballot; or
- (b) a meeting to determine the opinion of members; in which all members of the Scheme were invited to participate.

Municipal Liability Scheme

SCHEME RULES

Part 1 – Interpretation

1. Structure of Rules

These Rules are divided into parts as follows:

- Part 1 – Interpretation
- Part 2 – Scheme Membership
- Part 3 – Commencement and Closure of Fund Years
- Part 4 – Contributions
- Part 5 – Liability Protection
- Part 6 – Claims Procedures
- Part 7 – Scheme Member Default and Cancellation of Scheme Membership

2. Structure of Rules

In these Rules:

“Board” means the Board of Management formed pursuant to Clause 6 of the Trust Deed;

“Claim” means any claim for civil liability made upon a Member during the term of the Schedule and, in a case where a single claim is made or representative action is brought on behalf of more than one person, means the individual claim by each such person;

“Funds” means each separate annual Fund established pursuant to Clause 4 and 19 of the Trust Deed;

“Indemnity cover” means insurance cover purchased from underwriters

by the Board on behalf of Scheme Members to meet claims against Scheme Members in the amount and in respect of risks determined from time to time by the Board;

“Pooled cover” means cover provided from the fund to meet claims against Scheme Members in the amount and in respect of risks determined from time to time by the Board;

“Scheme Manager” means the Scheme Manager appointed from time to time pursuant to Clause 15 of the Trust Deed;

“Scheme” means the trust established under the Trust Deed more formally known as the WESTERN AUSTRALIAN MUNICIPAL ASSOCIATION MUNICIPAL LIABILITY SCHEME or, where the context so requires, means WAMA;

“Scheme Member” means a body admitted as a member of the Scheme from time to time pursuant to Clause 30 of the Trust Deed;

“Special resolution” means a resolution passed with the unanimous vote of all persons present and entitled to vote at the meeting at which the resolution is put;

“Trust Deed” means the deed dated 1995 establishing the Scheme and by which WAMA declares itself as trustee thereof (as amended from time to time);

“WAMA” means THE WESTERN AUSTRALIAN MUNICIPAL

ASSOCIATION in its capacity as trustee under the Trust Deed;

“Wording” means, in relation to any particular member, the Liability Wording issued to that Scheme Member by the Scheme setting out the risks covered by the Scheme and the terms, conditions and limits of pooled cover and indemnity cover in respect of those risks.

3. Purpose of Rules

3.1 These rules form one of the three principal constituent documents of the Scheme. The other two are:

3.1.1 the Trust Deed which constitutes the Scheme and sets out its purpose and intent as well as its underlying legal structure and controls; and

3.1.2 the Wording issued to each Scheme Member (either the standard Broad Form Liability Wording or a modified tailored to a particular member's requirements) which sets out the type and limits of protection provided to each member.

3.2 The purpose of these rules is to set out the administrative mechanisms which by Wordings are issued and by which the Scheme is administered so as to put the purpose and intent of the Trust Deed into effect.

Part 2 – Scheme Membership

4. Offer of Scheme Membership

An offer of membership of the Scheme may be made to:

4.1 all Councils and other bodies constituted under the Local Government Act 1960; and

4.2 any other body having a direct involvement with Local Government and having generally similar risks of civil liability to Local Government, but only in accordance with Clause 30.4 of the Trust Deed.

5. Details of Offer

An offer of membership must include:

5.1 a copy of the Wording for the liability protection offered by the Scheme to the prospective member;

5.2 a copy of the Trust Deed and these Rules; and

5.3 advice as to the contribution payable for the first Fund year of Scheme Membership.

6. Acceptance of Offer

A body becomes a Scheme Member by:

6.1 accepting the offer in writing;

6.2 paying the initial Fund Year membership contribution, within thirty (30) days of the date of the offer (or such longer period as is determined by the Board) failing which, unless otherwise determined by the Board, the offer of membership lapses.

7. Subsequent Fund Years

Not later than thirty (30) days prior to the end of a Fund Year, the

Board must determine in respect of each Scheme Member, and advise each Scheme Member in writing:

7.1 whether the Scheme Member will be offered renewed membership of the Scheme for the next Fund Year;

7.2 if so, the contribution payable by the Scheme Member in respect of that Fund Year.

8. Manner of Renewal

A Scheme Member who wishes to accept an offer of renewed membership of the Scheme for the next Fund year must pay the contribution within thirty (30) days of the date of issue of an offer renewed membership of the Scheme, failing which, unless otherwise determined by the Board, the offer of renewed membership lapses.

9. General Scheme Membership Obligations

9.1 By its acceptance of an offer of membership (or renewed membership) a Scheme Member agrees that, at all times while it remains a member of the Scheme:

9.1.1 subject to rule 9.3, the Trust Deed and Rules, as amended from time to time constitute a contract between WAMA and the Scheme Member;

9.1.2 it will be bound by the Trust Deed and Rules and perform the obligations of the Scheme Member under the same accordingly;

9.1.3 it will make available to the Scheme and the Scheme Manager all information and data which either of them reasonably require in order to determine the claim and risk management experience of the Council for the purpose of assessing contributions;

otherwise determined by the Board.

13. Closure of Fund Year

13.1 The Board must determine when the accounts for a Fund Year will be closed and final results for the Fund Year determined and declared.

13.2 Except in the event of the Scheme being wound up no Scheme

9.1.4 the Scheme shall be permitted (but not obligated) to carry out a risk management audit or otherwise inspect the Scheme property and operations at any time; and

9.1.5 the Scheme may examine and audit the Scheme Member's books and records at any time (but only so far as they relate to membership of the Scheme or risks covered by the Scheme).

9.2 For avoidance of doubt, the contract mentioned in clause 9.1.1 is a contract between a Scheme Member and WAMA only and the contract does not create, as between any Scheme Members, and joint rights or obligations or any mutual rights or duties.

9.3 To the extent, if any, to which a provision of these Rules or the Trust Deed provides or implies:

9.3.1 in any way contrary to rule 9.2; or

9.3.2 that WAMA is constituted a joint or mutual agent for Scheme Members or any of them, that provision is, to that extent, inoperative and does not form part of the legal relationship between a Scheme Member and WAMA.

10. Scheme Does Not Warrant Risk Levels

Each Scheme Member acknowledges that neither the Scheme's rights to make inspections nor the making thereof nor any report thereon constitutes an agreement or the assumption of an obligation, on behalf of or for the benefit of the Scheme Member or others, to determine or warrant that such property or operations are safe.

Part 3 – Commencement and Closure of Fund Years

11. First Fund Year

The first Fund Year is from 4.00pm on June 30, 1995 to 4.00pm on June 30, 1996.

12. Subsequent Fund Years

Subsequent Fund Years are from 4.00pm on June 30 in a calendar year to 4.00pm on June 30 in the next calendar year, unless

Part 4 – Contributions

14. Relevant Factors in Determination

The contributions determined for any Scheme Member in respect of any Fund Year will be determined having regard to advice from the Scheme Manager and such matters as the Board considers relevant to the Scheme Member's level of risk and may include, without limitation:

14.1 the Scheme Member's revenue base;

14.2 the location of the Scheme Member's area of jurisdiction;

14.3 the population of the Scheme Member's area of jurisdiction;

14.4 the Scheme Member's public liability and professional indemnity claims history (both during and prior to its membership of the Scheme);

14.5 any matters relating to the nature of the Scheme Member's area of jurisdiction or its operations which create increased or reduced risks of public liability or professional indemnity claims;

and

14.6 matters relevant to the Scheme Member's risk management practices which are known to the Board.

15. Additional Contributions

If during a Fund year it becomes apparent to the Board that, as a result of unexpected or exceptional circumstances, the Fund for that year will be insufficient to meet claims payable from the Fund, the Board may determine an additional contribution payable by each Scheme Member for that Fund Year (which will be in the same proportion to the contribution of all other Scheme Members as the initial contribution paid by the Scheme Member for that Fund Year).

16. Time for Payment

All contributions (including an additional contribution mentioned in Part 7) must be paid within thirty (30) days of the date of the

contribution notice given to the Scheme Member by the Scheme or the Scheme Manager (or such longer period as is determined by the Board).

17. Overdue Payments

Without affecting any other rule, if the amount of any contribution (including an additional contribution mentioned in Part 7) is not paid by the due date:

17.1 interest thereon may, if the Board so determines, accrue at the Commonwealth Bank of Australia Corporate Loan Reference rate plus 2% from day to day and compounding monthly until the amount is paid; and

17.2 the amount (and interest) may be recovered against the Scheme Member by WAMA on behalf of the Scheme as a debt payable by the defaulting Scheme Member.

18. Coverage

In respect of each Fund year, but subject always to the Trust Deed and these Rules, the Scheme will indemnify each Scheme Member against claims for damages or compensation in accordance with a Wording issued to that Scheme Member.

19. Change to Scope of Protection

19.1 The Board may from Fund Year to Fund Year alter, add to, reduce or otherwise vary the scope of protection as set out in any Wording.

19.2 If the Board makes a change mentioned in rule 20.1 it must include a copy of the new Wording or details of the change with every offer of renewed membership for the Fund Year in which the change takes effect.

20. Recourse to Scheme Assets Only

For the payment of any claim against the Scheme or the performance of any obligation of the Scheme hereunder, resort may be had solely to the Fund and other assets and property of the

Scheme and no claim may be made or enforced by a Scheme Member against:

20.1 WAMA in any capacity other than as trustee of the Scheme;

20.2 except in case of negligence or other breach of duty, any Board member, employee or agent of the Scheme; or

20.3 any other Scheme Member.

21. Payment of Claims

The amounts of court judgments or claim settlements approved by the Board during a Fund year in respect of claims made against the Scheme Member during that Fund year will be met, subject to the deductible (if any and unless the Board determines not to apply the deductible) specified in the relevant Wording:

21.1 to the extent that the amount does not exceed the amount of the pooled cover, from the Fund;

21.2 to the extent that the amount exceeds the amount of the pooled cover:

21.2.1 to the amount of the pooled cover, from the Fund;

21.2.2 thereafter from indemnity cover to the extent of that cover;

21.3 to the extent that the amount exceeds the amount of the pooled cover and the indemnity cover:

21.3.1 to the amount of the pooled cover from the Fund;

21.3.2 to the amount of the indemnity cover, to the extent of that cover; and

21.3.3 the balance by the Scheme Member itself without recourse to the Scheme.

22. Reimbursable Deductible:

22.1 If the Scheme pays any deductible amount referred to in a Wording for the Scheme Member, the Scheme Member must reimburse the Scheme within 14 days of written notice from the Scheme.

22.2 Without affecting anything in the rules, if the amount of the deductible is not paid within that time interest accrues thereon and the amount is recoverable in accordance with rule 18 as though the deductible were an overdue contribution.

Part 6 – Claims Procedures

23. Notice of Claims

Notice in writing must be given as soon as possible to the Scheme or the Scheme Manager:

23.1 of any occurrence, circumstance, claim, writ, summons or proceedings or of any impending prosecution or inquest, or knowledge of any occurrence or circumstances which may subsequently give rise to a claim covered by the Scheme, irrespective of the quantum of such claim; and

23.2 of any change materially varying any of the facts or circumstances existing at the commencement of cover by the Scheme that shall come to the knowledge of the Scheme Member. Such notice shall be given by the Scheme Member whose knowledge shall be deemed to include the knowledge of any person whose knowledge would in law be that of the Scheme Member.

24. Information to be Provided

The Scheme Member must provide to the Scheme, the Scheme Manager and any Loss Adjuster, Solicitor or other agent appointed by the Scheme, or the Scheme Manager with respect to a claim or potential claim all information requested by such party in the manner and format requested by such party.

25. Grant or Refusal of Indemnity

The Board must advise the Scheme Member as soon as practicable after receipt of a claim as to whether the Scheme grants or refuses indemnity.

Western Australian Municipal Association Municipal Liability Scheme

26. Admissions Must Not be Made

The Scheme Member must not make any admission, offer, promise or indemnity in respect of a claim or potential claim without the written consent of the Scheme.

27. Indemnity May Be Refused

Without limiting the discretions of the Board under the Trust Deed, the Scheme will not indemnify the Scheme Member against any claim (and may withdraw indemnity previously granted) where:

27.1 the Scheme Member has:—

27.1.1 breached or failed to comply with any condition or obligation in a Wording or under the Trust Deed or these Rules; or

27.1.2 committed any other act or made any other omission which entitled the Board to cancel the membership of the Scheme Member under rule 38;

and

27.2 the Scheme is prejudiced by that failure, act or omission.

28. Subrogation

The Scheme Member agrees that in the event of payment of any claim by the Scheme, the Scheme will be subrogated to the extent of such payment to all the rights of the Scheme Member against any person or other entity legally responsible for the claim, and in such event, the Scheme Member must render to the Scheme or the Scheme Manager any Loss Adjuster, Solicitor or other agent appointed by the Scheme or the Scheme Manager all assistance, other than pecuniary, as is reasonably necessary to effect recovery.

29. Settlement of Claims

29.1 If the Scheme so desires, it may take over the conduct in the name of the Scheme Member the defence or settlement of any Claim.

29.2 The Scheme Member must promptly take at its own expense all reasonable steps to prevent other Personal Injury or Damage to Property from arising out of the same or similar conditions, but such expense shall not be recoverable from the Scheme.

29.3 The Scheme Member must use its best endeavours to preserve any damaged or defective property which might prove necessary or useful by way of evidence in connection with any claim and, except where some other course is required by rule 30.2 but only so far as may be reasonably practicable, the Scheme Member must not make any alteration or repair to any premises, machinery, fittings, appliances or plant without the consent of the Scheme until the Scheme has had an opportunity of inspection.

29.4 The Scheme is entitled to prosecute in the name of the Scheme Member, at its own expense and for its own benefit, any claim for indemnity or damages or otherwise.

29.5 The Scheme has full discretion in the conduct of any proceedings in connection with any claim.

29.6 Despite, rules 30.1 to 30.5, a Scheme Member shall not be required to contest any legal proceedings unless a Queen's Counsel or a person of similar authority (to be mutually agreed upon by the Scheme Member and the Scheme) shall advise that such proceedings should be contested, with the reasonable probability of success or partial success.

30. Scheme Member's Litigation Responsibilities

In connection with any litigation or claim settlement negotiations conducted by the Scheme in the name of the Scheme Member, or any action taken by the Scheme in exercise of its rights of subrogation:

30.1 if a personal appearance by an elected member, officer or agent of the Scheme Member is necessary at any conference, in any Court or elsewhere, the expense of such appearance must be borne or paid by the Scheme Member;

30.2 the Scheme Member must fully co-operate by supplying any information and assistance requested by the Scheme Manager and

any Loss Adjuster, Solicitor or other agent appointed by the Scheme Manager or the Scheme with respect to the litigation or claim;

30.3 the Scheme Member may upon notice in writing, prevent a settlement proposed by the Scheme of litigation or a claim brought or made against the Scheme Member, but if it does so and the claim is ultimately settled (or judgment is ultimately given) for a higher amount, then despite rule 22, the Scheme Member must pay all amounts (including interest and legal costs) which exceed the amounts which the Scheme would have had to pay if the claim had been settled as proposed by the Scheme.

31. Relinquish Control

The Scheme may at any time pay to a Scheme Member the limit of pooled cover and indemnity cover applying to any one claim or series of claims (after deduction of sums already paid) or any lesser amount for which such claims can be settled and shall then be under no further liability in connection with such claims.

32. Reasonable Care

A Scheme member must as far as reasonably practicable:

32.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition.

32.2 take all reasonable precautions to:

32.2.1 prevent personal injury and damage to property;

32.2.2 prevent the manufacture, sale or supply of defective products;

32.2.3 comply and ensure that its employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property; and

32.3 at its own expense take reasonable action to trace, recall or modify any products manufactured, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied or distributed by the Scheme member (including any container thereof other than a vehicle) containing any defect or deficiency of which the Scheme Member has knowledge or has reason to suspect.

33. Automatic Reinstatement

Upon notification to the Scheme of a Claim made against a Scheme Member during the Fund Year, cover under the Wording shall be reinstated for such amount as may be ultimately paid by the Scheme in respect of such Claim, so as to remain in force during the Fund Year for the full cover specified in Wording.

34. Contribution

When a loss paid under a Wording is also recoverable under another Wording or under an insurance policy and the Scheme has paid more than its rateable share, the Scheme reserves its rights to seek contribution from the other party or insurer.

Part 7 – Scheme Member Default and Cancellation of Scheme Membership

35. Withdrawal

A Scheme Member may withdraw from membership of the Scheme only at the expiry of a Fund year upon giving to the Board written notice of its intention prior to the expiry of that Fund year.

36. Effect of Withdrawal

Unless otherwise determined by the Board, withdrawal does not:

36.1 entitle the Scheme Member to a refund of contributions (in full or in part) (in respect of the unexpired part of the Fund Year);

36.2 vary or waive the obligations of the continuing Scheme Members to comply with the provisions of the Rules; or

36.3 affect the withdrawing Scheme Member's current or subsequent obligation to make further contributions pursuant of this Deed, the Rules or the Wording for any Fund Year whilst the Scheme Member was a Scheme Member of the Scheme (including the unexpired part of the Fund Year of withdrawal).

37. Notice to Show Cause Why Scheme Membership Should Not be Cancelled

In the event that any Scheme Member (in this Part referred to as "the defaulting Scheme Member"):

37.1 fails to comply with the reasonable directions of the Board as to the conduct of its operations so as to minimise risks;

37.2 fails to:

37.2.1 make available to the Scheme and the Scheme Manager all information and data which either of them reasonably require in order to determine the claims and risk management experience of the Scheme Member for the purpose of assessing contributions;

37.2.2 permit the Scheme or the Scheme Manager to carry out a risk management audit or otherwise inspect the Scheme Member's property and operations;

37.2.3 permit the Scheme or the Scheme Manager to examine and audit the Scheme Member's books and records (but only so far as they relate to membership of the Scheme or risks covered by the Scheme);

37.3 fails to pay contributions due to the Scheme within thirty (30) days of the due date for payment of those contributions (or such longer period as is determined by the Board);

37.4 commits any other breach of the Rules which is not remedied within the time specified in a notice to the Scheme Member in that regard, The Board may by notice in writing to the defaulting Scheme Member require that Scheme Member to show cause within fourteen (14) days why its membership of the Scheme should not be cancelled.

38. Cancellation of Scheme Membership

The Board may, by special resolution, with the consent of WAMA, cancel the membership of a Scheme Member by giving the Scheme Member written notice to that effect, where the Scheme Member:

38.1 fails to comply with the duty of utmost good faith, or

38.2 fails to comply with the duty of disclosure, or

38.3 has made a misrepresentation to the Scheme during negotiations for and before the commencement date of its Scheme Membership (or any subsequent renewal), or

38.4 has made a fraudulent claim to the Scheme or under any concurrent policy of insurance; or

38.5 fails to show sufficient cause to the contrary in response to a notice under rule 38.

39. Effective Date of Cancellation

A notice of cancellation takes effect at:

39.1 the time when a Policy of Insurance between the Scheme Member and an insurer, being a Policy of Insurance that is intended by the Scheme Member to replace its cover under the Scheme, is entered into; or

39.2 4.00pm on the 30th business day after the day on which notice was given to the Scheme Member (or such later time as is specified in the notice), whichever first occurs.

40. Effect of Cancellation

Upon a notice of cancellation taking effect:

40.1 from that date the defaulting Member shall have no right to claim against the pooled cover or the indemnity cover in respect of:

40.1.1 any claim in respect of an event occurring after that date; or

40.1.2 in a case where indemnity, where granted, is customarily on a claims made basis, any claim made upon it after that date; and

40.2 from that date the defaulting Scheme Member shall have no

right to claim against the pooled cover or the indemnity cover in respect of any claim made upon it after that date and the Wording issued to the Scheme Member is cancelled accordingly; and

40.3 such cancellation nevertheless does not otherwise affect entitlement to cover for any claim already indemnified by the Board nor vary or waive the obligations of the defaulting Scheme Member to comply with the provisions of the Rules in respect of any Fund Year during which the defaulting Scheme Member was a member of the Scheme.

41. Additional Contribution to Cover Cost of Default

In the event that a Scheme Member is in default in payment of a contribution or in any other way whereby the Fund suffers any financial loss or incurs additional expense the Board may as an alternative to cancellation require the defaulting Scheme Member to pay to the Fund an additional contribution in an amount to be determined by the Board to reimburse the fund for the loss or additional expense.

42. Additional Contribution for Additional Risks

In the event that a Scheme Member fails to comply with a direction of the Board and, in doing so, in the opinion of the Board exposes the Scheme to an increased, additional or readily avoidable risk, the Board may as an alternative to cancellation:

42.1 require the Scheme Member to pay an additional contribution to cover that risk; or

42.2 exclude that risk from the pooled cover and the indemnity cover applicable to that Scheme Member; or

42.3 otherwise limit the exposure of the Scheme and the indemnity insurer to such risk.

43. Set Off Against Moneys Due to Scheme Member

In the event that a Scheme Member is otherwise entitled to a distribution or return of any surplus in the Fund, any amount due to a defaulting Scheme Member will be set off against:

43.1 any contribution or other monies due but unpaid by the defaulting Scheme Member to the Scheme; and

43.2 any loss or expense incurred by the Scheme by through or in connection with the default by that defaulting Scheme Member.