



ANNO VICESIMO

## ELIZABETHAE II REGINAE

A.D. 1971

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### No. 28 of 1971

An Act to amend the Regulations governing Elder's Trustee Provident Fund originally established by Deed dated the fourteenth day of September 1921, to amend the Deed dated the thirtieth day of October 1947 setting out the provisions governing Elder's Trustee Women's Provident Fund both of which Deeds are more specifically referred to in the preamble hereto, to extend the powers of the Trustees of each of those Funds and for other purposes.

[Assented to 22nd April, 1971]

WHEREAS by a Deed dated the 14th day of September 1921 made Preamble. between Elder's Trustee and Executor Company Limited (hereinafter referred to as "the trustee company") of the first part Alexander James Murray George Henry Prosser and Oswald Tipping of the second part and certain other persons of the third part a Provident and Guarantee Fund was established in connection with the business of the trustee company for the purpose *inter alia* of providing pensions and other benefits for male employees of the trustee company who should become contributors to the said Fund upon their retirement from the service of the trustee company and for their dependants in the event of their death:

AND WHEREAS the said Deed has been varied and altered from time to time by several Deeds of Variation and the name of the said Provident and Guarantee Fund has been changed to "Elder's Trustee Provident Fund" (hereinafter referred to as "the trustee

company's Fund") and the regulations governing the trustee company's Fund have been varied and altered from time to time by the said Deeds of Variation and the trustee company's Fund is now held and administered by the present trustees thereof namely John Neil McEwin Henry Norman Giles Alfred Moxon Simpson and Ronald William Gayler upon and subject to the regulations governing the Fund:

AND WHEREAS by a Deed dated the 23rd day of December 1913 made between Elder Smith & Co. Limited of the first part James Harvey Alick James Murray and Alfred Horsley Chapman of the second part and certain other persons of the third part a Fund now known as "the Provident Fund" (hereinafter referred to as "the parent company's Fund") was established in connection with the business of Elder Smith & Co. Limited for the purpose *inter alia* of providing pensions and other benefits for male employees of the said Elder Smith & Co. Limited who should become contributors thereto upon their retirement from the service of that company and for their dependants in the event of their death:

AND WHEREAS the regulations governing the parent company's Fund have been varied and altered from time to time by several Deeds of Variation and have also been varied and altered by the Elder Smith & Co. Limited Provident Funds Act, 1963:

AND WHEREAS a substantial part of the business of the said Elder Smith & Co. Limited has been acquired by or merged with the business of Elder Smith Goldsbrough Mort Limited (hereinafter referred to as "the parent company") and pursuant to the regulations governing the parent company's Fund the parent company has succeeded the said Elder Smith & Co. Limited as "the company" for the purposes of the parent company's Fund and the regulations governing that Fund and the parent company's Fund is now established and conducted as a Fund for providing *inter alia* pensions and other benefits for male employees of the parent company and its associated companies (as defined in the regulations governing the parent company's Fund) who become contributors thereto upon their retirement from the service of their employer company and for their dependants in the event of their death:

AND WHEREAS the whole of the issued shares of the trustee company have been acquired by the parent company and the trustee company is an associated company within the meaning of the regulations governing the parent company's Fund:

AND WHEREAS the regulations governing the parent company's Fund make provision by Regulation 18A thereof whereby the Board of Directors of the parent company and the trustees of the parent company's Fund may make arrangements with the trustees of a Fund established by an associated company for providing pensions and other benefits for male persons on the staff of such

associated company on their retirement and for the dependants of such persons and with the associated company that all male persons admitted to the associated company's Fund and still on the staff of the associated company shall be admitted as members of the parent company's Fund and that all moneys and investments and other assets held by the trustees of the associated company's Fund be paid or transferred to the trustees of the parent company's Fund to be held by them as part of that Fund and that the trustees of the parent company's Fund shall assume responsibility for the payment out of the parent company's Fund of all pensions benefits and other moneys (if any) then due or payable pursuant to the regulations of the associated company's Fund to any member of that Fund who shall have retired or to the widow or dependants or personal representatives of any deceased member of the associated company's Fund:

AND WHEREAS the pensions and benefits payable to persons who are members of the parent company's Fund upon their retirement and *inter alios* to their dependants in the event of their death are greater than those payable in like circumstances under the Regulations governing the trustee company's Fund but the contributions made to the respective Funds by the members thereof in relation to their salaries are the same:

AND WHEREAS for some time past male persons employed by the trustee company who became eligible to become contributors to and members of the trustee company's Fund have instead been admitted as contributors to and members of the parent company's Fund:

AND WHEREAS certain of the male persons on the staff of the trustee company are and have been for many years contributors to and members of the trustee company's Fund:

AND WHEREAS the Board of Directors of the trustee company and the trustees of the trustee company's Fund desire that those persons on the staff of the trustee company who are members of the trustee company's Fund shall be admitted as members of the parent company's Fund so as to have the benefit of the greater pensions and other benefits provided by that Fund and so as to be placed on the same footing as regards pensions and benefits on death as those persons on the staff of the trustee company who have been admitted as members of the parent company's Fund and the Board of Directors of the parent company and the trustees of the parent company's Fund are willing in exercise of the powers given to them by the said Regulation 18A to admit them as members and to assume responsibility for payment of all pensions and benefits payable to or in respect of former members of the trustee company's Fund provided all moneys and investments and other assets held by the trustees of the trustee company's Fund are paid or transferred to the trustees of the parent company's Fund to be held by them as part of that Fund:

AND WHEREAS there is no provision in the regulations governing the trustee company's Fund enabling the trustees thereof to pay or transfer moneys or other assets held by them as part of the Fund to the trustees of another fund and the Board of Directors of the trustee company and the trustees of the trustee company's Fund desire that the said regulations be amended so as to allow the trustees to transfer the moneys investments and other assets held by them as part of the trustee company's Fund to the trustees of the parent company's Fund to be held by those trustees as part of the last-mentioned Fund upon all the present members of the trustee company's Fund being admitted as members of the parent company's Fund as from the respective dates of their admission as members of the trustee company's Fund and upon the trustees of the parent company's Fund assuming responsibility for the payment out of the parent company's Fund of all pensions benefits and other moneys (if any) due and payable pursuant to the regulations of the trustee company's Fund to any former member of that Fund who has retired or to the widow or dependants or personal representatives of a former member who has died:

AND WHEREAS if the moneys and other assets held as part of the trustee company's Fund are transferred to the trustees of the parent company's Fund to be held as part of that Fund those moneys and assets will become part of a Fund applicable for the payment of pensions and other benefits not only to persons who are in the employ of the trustee company but also to persons who are in the employ of the parent company or of other associated companies of the parent company:

AND WHEREAS Regulation 50 of the Regulations governing the trustee company's Fund empowers the making of certain alterations to the said Regulations as in the said Regulation 50 more particularly set forth but any alteration to the said Regulations which would authorize the application or use of any part of the Fund for the provision of benefits or pensions for any persons other than male persons on the staff of the trustee company who are contributors to the trustee company's Fund and the wives widows and dependants of such persons is prohibited:

AND WHEREAS by each of eleven several settlements all made by Robert Barr Smith (now deceased) seven of which are dated the 26th day of April 1957 and four of which are dated the 24th day of September 1960 the trust funds subject to the respective settlements were directed to be held by the trustee thereof subject to certain prior trusts therein respectively declared (including certain life interests) in trust for the trustees of the trustee company's Fund to be held by the last-mentioned trustees as part of and in augmentation of that Fund:

AND WHEREAS the prior trusts declared by the respective settlements have not yet determined and the interest of the trustees of the trustee company's Fund under the said respective settlements is an interest in remainder expectant on the determination of the said prior trusts:

AND WHEREAS if the moneys and other assets held by the trustees of the trustee company's Fund are transferred to the trustees of the parent company's Fund to be held as part of that Fund and the members of the trustee company's Fund are admitted as members of the parent company's Fund the trustee company's Fund will thereupon cease to exist and the trustee of the respective said settlements may thereupon hold the trust funds (subject to the said prior trusts) upon a resulting trust for the personal representatives of the settlor the said Robert Barr Smith on the ground that the trust in remainder has become impossible of fulfilment:

AND WHEREAS by a Deed dated the 30th day of October 1947 made between the trustee company of the one part and Ronald Fife Angas William Murray Fowler and Francis Cooper Wade of the other part a Fund known as Elder's Trustee Women's Provident Fund (hereinafter referred to as "the trustee company's Women's Fund") was established in connection with the business of the trustee company for the purpose of providing pensions for certain members of the female staff of that company:

AND WHEREAS pursuant to the power in that behalf contained in the said Deed the provisions of the said Deed have from time to time been altered and new provisions have from time to time been made and the trustee company's Women's Fund is now held and administered by the present trustees thereof namely John Neil McEwin Henry Norman Giles Alfred Moxon Simpson and Ronald William Gayler upon and subject to the provisions of the said Deed as altered and added to as aforesaid:

AND WHEREAS the trustee company's Women's Fund consists wholly of moneys contributed by the trustee company from time to time and of legacies and gifts to the Fund and the investments thereof and accumulations of income and no contributions to the trustee company's Women's Fund have been made by members of the female staff of the trustee company:

AND WHEREAS by a Deed dated the 17th day of December 1963 made between the parent company of the first part certain other persons of the second part and John Neil McEwin Henry Norman Giles and Geoffrey Wyatt Docker of the third part a fund known as "Elders-GM Women's Provident Fund" was established for the purpose of providing pensions and other benefits for female members of the staffs of the parent company and its associated companies:

AND WHEREAS the trustee company is an associated company within the meaning of the last-mentioned Deed:

AND WHEREAS the pensions and benefits provided under the Elders-GM Women's Provident Fund are greater than those provided under the trustee company's Women's Fund:

AND WHEREAS after the acquisition by the parent company of the whole of the issued shares of the trustee company the directors of the trustee company decided that it would be more beneficial to females on the staff of the trustee company to become members of the Elders-GM Women's Provident Fund than to rely on the trustee company's Women's Fund for provision for their retirement and by Deed dated the 20th day of November 1968 the provisions relating to the trustee company's Women's Fund were amended so as to limit the persons entitled to pensions under that Fund to those female employees of the trustee company who on the 1st day of October 1968 were on the staff of the trustee company had attained the age of twenty-five years were unmarried and had been in the trustee company's service for five years or longer:

AND WHEREAS since the 1st day of October 1968 females on the staff of the trustee company who are not eligible to receive pensions under the trustee company's Women's Fund but who are eligible for membership of the Elders-GM Women's Provident Fund are and have been admitted as members of the Elders-GM Women's Provident Fund:

AND WHEREAS in consequence of the said amendment made on the 20th day of November 1968 no further females on the staff of the trustee company will become entitled to pensions under the trustee company's Women's Fund and as a further consequence of such amendment it is anticipated that from time to time the moneys and investments of the trustee company's Women's Fund may become more than adequate to pay and discharge all pensions for the time being subsisting and to make proper provision for any pensions that may subsequently become payable pursuant to the provisions regulating that Fund to women still on the staff of the trustee company and that in due course the stage may be reached when there will be no former female employee of the trustee company entitled to a pension under the trustee company's Women's Fund and no female on the staff of the trustee company who may become entitled to a pension under that Fund:

AND WHEREAS it is considered desirable that any surplus moneys or investments or other assets of the trustee company's Women's Fund from time to time remaining after making provision for all pensions for the time being subsisting and for all pensions which may subsequently become payable pursuant to the provisions of the trustee company's Women's Fund should be transferred to the trustees of the Elders-GM Women's Provident Fund to the end that such surplus moneys or investments or other assets should be used for purposes as near as the circumstances will admit to those for which they were originally intended:

AND WHEREAS Clause 15 of the said Deed dated the 30th day of October 1947 empowers the making of certain alterations to the provisions of the said Deed as in the said Clause 15 more particularly set forth but any alteration to the said provisions which would authorize the application or use of any part of the trustee company's Women's Fund for the provision of pensions or benefits for any persons other than females on the staff of the trustee company is prohibited:

AND WHEREAS by a settlement dated the 26th day of April 1957 made by the said Robert Barr Smith the trust funds subject thereto were directed to be held by the trustee thereof subject to certain prior trusts therein declared (including certain life interests) in trust for the trustees of the trustee company's Women's Fund (therein referred to as "Elder's Trustee and Executor Company Limited Women's Provident Fund") to be held by the last-mentioned trustees as part of and in augmentation of that Fund:

AND WHEREAS the prior trusts declared by the said settlement have not yet determined and the interest of the trustees of the trustee company's Women's Fund under the said settlement is an interest in remainder expectant on the determination of the said prior trusts:

AND WHEREAS if before the determination of the said prior trusts the stage is reached when there is no former female employee of the trustee company entitled to a pension under the trustee company's Women's Fund and no female on the staff of the trustee company who may become entitled to a pension under that Fund the trustee of the said settlement may thereupon hold the trust funds (subject to the said prior trusts) upon a resulting trust for the personal representatives of the settlor the said Robert Barr Smith on the ground that the trust in remainder has failed or become impossible of fulfilment:

AND WHEREAS for the reasons aforesaid it is desirable to authorize such additions to the regulations of the trustee company's Fund and to the provisions regulating the trustee company's Women's Fund as are hereinafter set out and to authorize and empower the trustees of the trustee company's Fund to transfer to the trustees of the parent company's Fund the interests in remainder under the said settlements to which as such trustees they are entitled and to authorize and empower the trustees of the trustee company's Women's Fund to transfer to the trustees of the Elders-GM Women's Provident Fund the interest in remainder under the said settlement to which as such trustees they are entitled.

NOW THEREFORE BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Elder's Trustee and Executor Company Limited Provident Funds Act, 1971". Short title.

**Interpretation.****2. In this Act, unless the contrary intention appears—**

“the Elders-GM Women’s Provident Fund” means the Fund established by a Deed dated the 17th day of December, 1963, made between Elder Smith Goldsbrough Mort Limited of the first part, certain other persons of the second part and John Neil McEwin Henry Norman Giles and Geoffrey Wyatt Docker of the third part, more particularly described in the preamble to this Act:

“the parent company” means Elder Smith Goldsbrough Mort Limited:

“the principal Deed” means the said Deed dated the 30th day of October, 1947, setting out the provisions governing the trustee company’s Women’s Fund:

“The Provident Fund” means the Provident Fund established by a Deed dated the 23rd day of December, 1913, made between Elder Smith & Co. Limited of the first part James Harvey Alick James Murray and Alfred Horsley Chapman of the second part and certain other persons of the third part, more particularly described in the preamble to this Act:

“the regulations” means the regulations governing the trustee company’s Fund:

“the trustee company” means Elder’s Trustee and Executor Company Limited:

“the trustee company’s Fund” means the Fund established by a Deed dated the 14th day of September, 1921, made between Elder’s Trustee and Executor Company Limited of the first part, Alexander James Murray George Henry Prosser and Oswald Tipping of the second part and certain other persons of the third part, more particularly described in the preamble to this Act:

“the trustee company’s Women’s Fund” means the Fund established by a Deed dated the 30th day of October, 1947, made between Elder’s Trustee and Executor Company Limited of the one part, and Ronald Fife Angas William Murray Fowler and Francis Cooper Wade of the other part, more particularly described in the preamble to this Act.



3. The following regulation is enacted and inserted in the regulations after Regulation 54 under the heading "WINDING UP OF FUND":

Enactment of regulation 54A of the regulations—

54A. Notwithstanding anything elsewhere in these Regulations contained the Trustees may with the approval of the Board arrange with the Board of Directors of Elder Smith Goldsbrough Mort Limited (hereinafter referred to as "the parent company") and the trustees of The Provident Fund (hereinafter called "the parent company's Fund") established *inter alia* for providing pensions and other benefits for male persons on the staff of the parent company or of an associated company (as defined in the regulations governing the parent company's Fund) upon their retirement or for their dependants in the event of their death that all male persons who shall have been admitted as contributors to the Fund and who are still in the service of the company shall be admitted as members of or contributors to the parent company's Fund as from the respective dates of their admission as contributors to the Fund that the trustees of the parent company's Fund shall assume responsibility for the payment out of the parent company's Fund of all pensions, benefits and other moneys (if any) then due or payable pursuant to these regulations to any officer who shall have retired or to the widow or dependants or personal representatives of any deceased officer which pensions, benefits or moneys shall not have been fully paid or satisfied and that all moneys, investments and other assets held by the Trustees or to which they are entitled shall be paid or transferred to the trustees of the parent company's Fund to be held by them as part of that Fund. If such an arrangement shall be made then upon all male persons still in the service of the company who shall have been admitted as contributors to the Fund being admitted as contributors to the parent company's Fund as from their respective dates of admission as contributors to the Fund and upon the trustees of the parent company's Fund assuming responsibility to the satisfaction of the Trustees for payment out of that Fund of all pensions benefits and other moneys (if any) then due or payable as hereinbefore mentioned and upon all moneys, investments and other assets held by the Trustees or to which they are entitled being paid or transferred to the trustees of the parent company's Fund to be held by them as part of that Fund the Fund shall be wound up.

Provision for transfer of assets of the Fund to another fund.

4. The principal Deed is amended—

(a) by inserting therein after clause 18 thereof the following clause:—

Amendment of the principal Deed.

18A. If at any time the Board of Directors shall be of opinion that the moneys in the Fund are more than sufficient to provide for payment of the pensions

then payable to women who were formerly on the staff of the company and to provide for the pensions that may become payable hereunder in the future to women then on the staff of the company the Board of Directors may give notice in writing of such its opinion to the trustees and thereupon the following provisions shall have effect:—

- (a) the trustees shall set aside a portion of the moneys in the Fund or of the investments thereof sufficient to answer the pensions then payable hereunder and the pensions which may thereafter become payable hereunder to women then on the staff of the company and the moneys or investments so set aside shall be retained by the trustees and applied by them from time to time in payment of such pensions:
- (b) the balance of the Fund or of the investments thereof shall be paid or transferred by the trustees to the trustees of the Fund established by a Deed dated the 17th day of December 1963 made between Elder Smith Goldsbrough Mort Limited of the first part certain other persons of the second part and John Neil McEwin Henry Norman Giles and Geoffrey Wyatt Docker of the third part for the purpose of providing pensions and other benefits for certain of the female employees of the said Elder Smith Goldsbrough Mort Limited and of companies which are associated companies as in the said Deed defined:
- (c) as and when any pensions referred to in paragraph (a) hereof shall cease to be payable so much of the moneys and investments retained pursuant to paragraph (a) hereof as shall not be required to answer any subsisting pensions and any pensions which may thereafter become payable as aforesaid shall be disposed of by the trustees in the manner set forth in paragraph (b) hereof:
- (d) the amount to be retained by the trustees pursuant to paragraph (a) hereof and the amount from time to time to be disposed of pursuant to paragraph (c) hereof shall be determined by an actuary appointed

by the board of directors and the trustees shall not retain a smaller amount or (as the case may be) dispose of a larger amount than shall be so determined:

(e) if at any time or times after notice shall have been given to the trustees as aforesaid the moneys retained by them shall prove insufficient for payment in full of the pensions for the time being payable hereunder the deficiency shall be made good by the company:

(f) if and when all pensions payable hereunder shall have ceased and there shall be no women on the staff of the company who may become entitled to a pension hereunder any moneys or investments remaining in the hands of the trustees shall be disposed of by the trustees in the manner provided in paragraph (b) hereof and the Fund shall be wound up.;

(b) by striking out the word "If" at the commencement of clause 19 thereof and inserting in lieu thereof the words "Subject to the provisions of clause 18A if".

5. If pursuant to Regulation 54A of the regulations governing the trustee company's Fund the trustees of that Fund shall arrange for the payment or transfer to the trustees of the parent company's Fund of all moneys investments and other assets held by them or to which they are entitled the trustees of the trustee company's Fund may assign or transfer to the trustees of the parent company's Fund as part of such assets all those the interests to which they are entitled pursuant to the trusts of eleven several settlements all made by Robert Barr Smith seven of which are dated the 26th day of April, 1957, and four of which are dated the 24th day of September, 1960, and notwithstanding any rule of law or equity to the contrary such assignment or transfer shall be effective and have full force and effect and the trustees of the parent company's Fund shall thereupon be entitled to such interests and no resulting trust for the said Robert Barr Smith or his personal representatives or any other person shall arise by reason of such assignment or transfer or by reason of a subsequent winding up of the trustee company's Fund.

Power of trustees of trustee company's Fund to transfer certain interests to trustees of parent company's Fund.

6. The trustees of the trustee company's Women's Fund may as part of the assets to be transferred or assigned to the trustees of the Elders-GM Women's Provident Fund pursuant to clause 18A of the principal Deed transfer or assign to the last-mentioned trustees all that the interest to which they are entitled pursuant to the trusts of a certain settlement dated the 26th day of April, 1957, made by

Power of trustees of trustee company's Women's Fund to transfer certain interests to trustees of Elders-GM Women's Provident Fund.

Robert Barr Smith and notwithstanding any rule of law or equity to the contrary such transfer or assignment shall be effective and have full force and effect and the trustees of the Elders-GM Women's Provident Fund shall thereupon be entitled to such interest and no resulting trust in favour of the said Robert Barr Smith or his personal representatives or any other person shall arise by reason of such transfer or assignment or by reason of a subsequent winding up of the trustee company's Women's Fund.

In the name and on behalf of Her Majesty, I hereby assent  
to this Bill.

J. W. HARRISON, Governor.