

UPERANNUATION FUND

DEED

FOR THE

BJ AND MT GOUGH SUPERANNUATION FUND

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THIS TRUST DEED is made the day and year specified in the Schedule hereto

BETWEEN the person(s) named in the Schedule hereto as the Trustee AND the person named in the Schedule hereto as the Principal.

WHEREAS:

It has been determined to establish a superannuation fund (the "Fund") for the purpose of providing retirement and other benefits for certain persons who shall be eligible to become Members of the Fund and who shall elect to participate in the Fund.

- B. The Trustee has agreed to act as Trustee of the Fund in accordance with the provisions of this Trust Deed.
- C. The Fund is established and maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment or for the Dependants of Members in the event of the death of a Member or for other approved ancillary purposes.
- D. The Fund shall be conducted so as to attract the concessional rate of Taxation which is applicable to Complying Superannuation Funds.

NOW THIS DEED WITNESSES AS FOLLOWS:

- E. The Principal hereby establishes a superannuation fund which shall bear the name described in the Schedule hereto ("Fund").
- F. The Fund shall come into operation as from the Commencement Date of the Fund specified in the Schedule hereto (hereinafter called "the Commencement Date".)
- G. The Fund shall be held, applied, administered and governed by the Trustee in accordance with the provisions of this Deed and the Relevant Law.

1. INTERPRETATION - DEFINITIONS

In this Deed the following words and expressions shall unless the context requires otherwise or the contrary intention appears have the following meanings:

"Actuary" shall mean a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia or of any body formed in reconstruction of or in succession to that Institute;

"Annuity" includes an annuity arrangement and means annuity as defined for the purposes of the Relevant Law;

"Approved Deposit Fund" in relation to a year of income means a complying ADF in accordance with the Tax Act;

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit

Fund, an Annuity arrangement, an Eligible Rollover Fund or a Retirement Savings Account into which or from which assets of the Fund can be transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law;

"Auditor" shall mean an approved auditor as defined in Section 10 of the Superannuation Industry (Supervision) Act 1993;

"Beneficiary" shall mean a person presently and absolutely entitled to receive a benefit under this Deed;

"Benefit" means any amount which is payable by the Trustee from the Fund in accordance with this Deed to or in respect of a Member;

"Commissioner" shall mean the Insurance and Superannuation Commissioner appointed under the Superannuation Industry (Supervision) Act or the Commissioner of Taxation or such other authority having responsibility for the administration of superannuation funds;

"Complying Superannuation Fund" in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law;

"Contributions" shall have the same meaning as defined in the Regulations and include an amount transferred to this Fund by another Superannuation Fund or by an Approved Deposit Fund in respect of the member, being a benefit from the other fund that had prior to that transfer become vested in the member;

"Corporations Law" means the Corporations Act 1989 and Regulations (as amended);

"Dependant" shall mean the spouse, widow, widower, child, children, adopted child or children of a Member or any other person who in the opinion of the Trustee was substantially dependent on the Member at the date of his or her death;

"Eligible Rollover Fund" has the same meaning as in SIS;

"Eligible Termination Payment" has the same meaning as that contained in section 21A of the Tax Act;

"Employee" shall mean a permanent employee of the Employer normally employed in the Commonwealth of Australia and shall include a salaried Director;

"Employer" shall mean an "employer" under the Superannuation Guarantee Legislation that has been admitted to the Fund and is eligible to make contributions on behalf of eligible Employees and includes any Participating Employer;

"Fund" means the Fund established by this Deed whose name appears in the Schedule attached hereto;

"Gainful Employment" in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Law;

"Member" means a person who has been admitted to the Fund and where the context so requires or permits includes a former member, a pensioner and a spouse;

"Member's Accumulation Account" shall mean the account in the books of the Fund in the name of a Member established in accordance with this Deed;

"Principal " means the Employer described as such in the Schedule attached hereto or any Employer carrying on business in succession to or in amalgamation with the Principal Employer which elects to assume by deed the obligations of the Principal Employer under this Deed;

"Participating Employer" shall mean any person approved by the Trustee to participate in the Fund in accordance with this Deed who has not ceased to be an Employer;

"Regulations" shall mean the Regulations made under the Superannuation Industry (Supervision) Act 1993;

"Retiring Age" shall mean in relation to a Member, the age of 65 years or such other age as may be agreed upon between the Employer and the Member and is permissible under the Relevant Law;

"Reversionary Beneficiary" means a Dependant nominated by a pensioner and in default of a nomination by the pensioner, a Dependent nominated by the Trustee who is eligible to receive a Benefit upon the death of a pensioner;

"Rules" shall mean this Deed for the government and administration of the Fund and any amendments or additions thereto for the time being in force;

"Relevant Law" means any requirements under the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Superannuation Entities (Taxation) Act 1987, the Superannuation (Resolution of Complaints) Act 1993, the Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund -

(i) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or

(ii) to meet any other requirements of the Commissioner,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

"SIS" means the Superannuation Industry (Supervision) Act 1993;

"Spouse" means :

(i) in relation to "Dependant" and "Relative":

A. a person legally married to a Member at any time; or

B. a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them;

"Superannuation Guarantee Legislation" means the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Act 1992;

"Tax Act" means the Income Tax Assessment Act 1936 (as amended) and any Regulations issued under that Act;

"Taxation" includes income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Members, former Member or Beneficiary pursuant to the Superannuation Contributions Tax Imposition Act 1997 and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on Eligible Termination Payments, payroll tax, land tax, stamp duty and other taxes or duties of whatever description paid or payable by the trustee on behalf of the Fund or, where applicable, by any Member, former Member or Beneficiary;

"Total and Permanent Disablement":

- (i) has the same meaning as contained in any policy effected by the Trustee with an insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or
- (ii) if there is no policy containing such a term effected in respect of a Member then Total and Permanent Disablement in relation to a Member means ill-health (whether physical or mental) where the Trustee is reasonably satisfied after considering medical and other evidence that the member is unlikely, because of ill-health, ever again to engage in the Member's current employment with that Member's Employer, or any other employment for which the Member is reasonably suited by reason of his education, training and experience, and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted which are appointed in accordance with the provisions of this Deed.

- (a) Plural and gender of words

In the foregoing and in this Deed, the words importing the masculine gender shall include the feminine gender and the singular shall include the plural and vice versa and references to any persons shall include corporations and other entities recognised by law.

- (b) Statutory Enactments

References to any statutory enactment shall be construed as references to the said enactment as the same shall stand amended re-enacted and modified from time to time.

(c) **Headings**

Headings in this Deed are for convenience only and shall not affect the construction hereof.

2. CONSTITUTION OF FUND

The Fund is hereby constituted to provide old age pensions and shall be known as the name appearing in the Schedule attached hereto.

The Fund shall be an indefinitely continuing fund and shall be only terminated in accordance with the provisions of this Deed.

3. OPERATION OF THE FUND

3.1 The Fund shall comprise:

3.1.1 contributions made by Members pursuant to this Deed; 3.1.2

contributions made by any Employer pursuant to this Deed;

3.1.3 any other moneys or assets paid or transferred to the Fund from any other Approved Benefit Arrangement;

3.1.4 the income, whether interest or dividends, arising from any investments of the Fund and the accumulation thereof;

3.1.5 any accretions to or profits on realisation of investments; and

3.1.6 any other moneys, assets, policies of insurance or assurance, or investment which become subject to the trusts of this Deed.

3.2 The Fund shall be vested in the Trustee to be held in trust as a common fund upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed and shall be managed and administered and applied by it in accordance with the provisions of this Deed to provide for the Members of the Fund on retirement or on the happening of the other approved events as are herein mentioned. The Trustee shall not pledge the assets of the Fund to secure an advance to the Employer, to any Employee, or to any third person for any purpose.

3.3 It is the intention of the Trustee that the Fund shall comply with and be administered as a regulated superannuation fund and not a public offer superannuation fund. Notwithstanding any provision in this Deed to the contrary the Trustee is empowered to do all things necessary to be done by it and to ensure the Fund does not become a public offer superannuation fund and satisfies the relevant provisions of the Relevant Law, and notwithstanding any provision to the contrary, the Trustee is restrained from

doing or omitting to do anything the doing or omission of which will cause the Fund to fail to satisfy such provisions or cause the Fund to become a public offer superannuation fund or a non complying superannuation fund.

3.4 The Trustee shall provide written notice in an approved form to the Commissioner within the period provided by the Relevant Law indicating that the Trustee has elected that the Fund is to become a regulated superannuation fund.

4. TRUSTEE

The Trustee accepts its appointment as trustee and shall manage the Fund in accordance with the provisions of this Deed and shall have all the powers and discretions and be entitled to such indemnities that this Deed or by law are conferred upon the Trustee.

4.1 A Trustee of this Fund shall be one or more or any combination of:

4.1.1 a natural person; or

4.1.2 a corporation which shall be a constitutional corporation as required by the Relevant Law.

4.2 Prior to being appointed as Trustee, the proposed Trustee must first have consented in writing to such appointment. Where the Trustee is a corporation, such consent must be executed under the common seal of the corporation.

5. APPOINTMENT OF NEW TRUSTEE

5.1 The Principal Employer may appoint as Trustee a person eligible to be appointed Trustee in accordance with the Relevant Law. Any vacancy occurring in the office of Trustee must be filled within 90 days of the day on which the vacancy occurs.

5.2 Where the person appointed as Trustee is not a constitutional corporation then the Fund must be administered for the provision of old age pensions.

6. REMOVAL OF TRUSTEE

A Trustee shall immediately cease to act as trustee of the Fund:

6.1 if being a corporation, it is placed in receivership or in liquidation;

6.2 if the Trustee is disqualified from holding office as Trustee by operation of the Relevant Law or is removed or suspended under the Relevant Law;

6.3 if the Trustee resigns as a Trustee of the Fund by notice in writing to the Principal Employer;

6.4 if being an individual, the Trustee dies or becomes mentally incapacitated; or

6.5 subject to the Relevant Law, after the person is removed from office by notice in writing given by the Principal Employer.

7. CONTINUITY OF OFFICE

Upon the vacation of office by any Trustee, such Trustee shall do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books held by such Trustee in relation to the Fund to the remaining or new Trustee.

8. INDEMNITY OF TRUSTEE

The Trustee and where applicable, its directors, shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise of the trusts, powers, authorities and discretions vested in it or them and shall have a lien on and may use moneys forming part of the Fund in pursuance of this indemnity. This indemnity shall not apply to the Trustee or its directors where the Trustee or its directors:

- (i) fails to act honestly;
- (ii) intentionally or recklessly fails to exercise, in relation to any matter affecting the Fund, the requisite degree of care that the Trustee or a director is required to exercise; or
- (iii) the liability relates to a civil penalty order under the Relevant Law. 9.

POWERS OF THE TRUSTEE

9.1 General Powers

The Trustee may act only in a manner which is not prohibited by the Relevant Law. 9.2

Discretions

Subject to clause 14, the Trustee shall have in the exercise of each and every power exercisable by the Trustee an absolute and uncontrolled discretion and is not bound to give to any person any reason for or explanation of the exercise of any such power. The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for the powers conferred on or exercisable by it at law.

9.3 Power to Accept Contributions

In addition to the powers which it may have by law and which are otherwise granted to it by this Deed, the Trustee shall have the following powers:

9.3.1 to accept contributions from, and on behalf of, a Member who has, or whose Dependants have, a right to receive benefits from the Fund and including contributions made on behalf of a Member by:

- an Employer of the Member;
- a company in which an Employer of the Member has a controlling interest or the Employer is a company;

- a person who is associated with that company;
- any other Fund on behalf of any Member;
- a Participating Employer.

The Trustee may reduce the contributions of Members and Employers by such amounts as it may deem necessary to avoid excess benefits arising in the Fund only in accordance with the Relevant Law. No contribution shall be made to the Fund by or in respect of a Member if to do so would affect the status of the Fund as a Complying Superannuation Fund.

9.4 **Delegation of Powers**

The Trustee may delegate all or any of the powers or authorities vested in it to any person. The Trustee may appoint not more than two (2) persons jointly or severally to give receipts and discharges on behalf of the Fund and may at any time by notice in writing remove and replace any such person.

9.5 **Appointment of Staff and/or Advisors**

The Trustee may retain, and at its discretion, remove or suspend the services of professional advisors or any person for permanent, temporary or special services as the Trustee considers necessary for the proper administration and management of the Fund, and to pay out of the Fund the salary or fees payable to such professional advisors or other persons.

9.6 **Expenses**

Subject to the provisions of this Deed, the Trustee may pay out of the Fund all expenses and duties of or incidental to the administration of the Fund.

9.7 **Assets**

Subject to the Relevant Law, the Trustee may purchase or otherwise acquire lease vary or transpose sell or otherwise dispose of any of the assets and investments of the Fund.

9.8 **Borrowing**

Subject to the Relevant Law, the Trustee may borrow money by way of a secured or unsecured loan or temporary finance by way of overdraft with a suitable bank- or financial institution;

9.9 **Investment Strategy**

The Trustee must devise, implement, review and amend as necessary an investment strategy for the Fund in accordance with the Relevant Law.

10. TRUSTEE'S INVESTMENT POWERS

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment strategies of the Fund in any of the following investments:

- 10.1 any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- 10.2 the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- 10.3 on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;
- 10.4 subject to the Relevant Law on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- 10.5 any policy or Annuity with an insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- 10.6 the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- 10.7 the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- 10.8 the acquisition of any futures, options or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund;
- 10.9 any other investments which the Trustee considers appropriate and which satisfy the Relevant Law;
- 10.10 and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee shall ensure that all investments shall be in accordance with the Relevant Law.

11. POWER TO SELL, VARY AND OTHERWISE DEAL WITH INVESTMENTS

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

12. INTEREST OF TRUSTEE IN INVESTMENT

12.1 Subject to paragraph 12.2 below, the Trustee and any Director shall have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

12.2 The Trustee and any director shall disclose details of any interest in an investment to which paragraph 12.1 applies in the manner prescribed under the Corporations Law and the Relevant Law.

13. PROVISION OF INVESTMENT CHOICE

13.1 The Trustee shall not be obliged to provide investment choice to Members or Beneficiaries of the Fund. The Trustee may however in its absolute discretion determine to provide investment choice either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.

13.2 Where the Trustee determines to provide investment choice, it shall establish an investment strategy for each of the investment choices available to Members and Beneficiaries under the Fund and where appropriate shall allocate or designate particular assets of the Fund to be held within that strategy and shall advise Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Relevant Law to enable Members and Beneficiaries to make an informed decision regarding the effect of, and risks associated with, each of those investment strategies. The advice provided shall include the various directions that a Member or a Beneficiary can give to the Trustee under paragraph 13.6 below and the circumstances in which any such directions can be given or altered.

13.3 The Trustee shall continually monitor each of the investment strategies established under paragraph 13.2 above and the assets held within each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.

13.4 The Trustee shall determine a fund earning rate and shall allocate the earnings of the Fund to each Member's Accumulation Account in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the fund year in respect of which the allocation is being made, an appropriate adjustment being made for amounts (if any) credited to, debited from the Member's or Beneficiary's account during that year.

- 13.5 Upon admission of a person to membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with paragraph 13.1 above, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under paragraph 13.2 above and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment strategy or strategies selected by that person under this paragraph PROVIDED THAT any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law and without limiting any of the foregoing the Trustee shall ensure that the Member or Beneficiary is provided with such information as shall be required by the Relevant Law in order to enable the Member or Beneficiary to make an informed decision.
- 13.6 A Member or Beneficiary who wishes to select one or more investment strategies pursuant to paragraph 13.2 above shall complete a request or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary. The Trustee shall not be bound to act on the request or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.
- 13.7 Except to the extent permitted by the Relevant Law, a Member or Beneficiary or any other person shall not direct the Trustee to make a particular investment in respect of a Member or Beneficiary of the Fund. Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee shall be made for an additional investment strategy or strategies for those particular investments ("asset specific investment strategy") to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with paragraph 13.2 above. The Trustee may in its absolute discretion approve or reject any requests made under this paragraph.
- 13.8 The Trustee shall advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or beneficiaries or classes of Members or Beneficiaries who decline, or otherwise are unable to select an investment strategy.
- 13.9 Where an Employer contributes to the Fund in respect of a Member or Beneficiary or classes of Members or Beneficiaries, that Employer may, to the extent and in the circumstances permitted under the Relevant Law, give directions to the Trustee regarding the investment strategy or strategies that may be pursued in relation to the Member or Beneficiary or classes of Members or Beneficiaries in respect of whom that Employer contributes.

14e RESTRICTIONS ON INVESTMENTS

14.1 Prohibition on Financial Assistance

The Trustee must not lend any money or give any financial assistance to a Member or relative of a Member and the level of in-house assets shall not exceed that set by the Relevant Law.

14.2 Arm's - Length Requirements

The Trustee must not invest any money of the Fund unless the Trustee and the other party to the transaction are dealing with each other at arm's - length, or if the Trustee has an interest in the transaction, the terms are no less favourable to the Trustee than those which would be reasonable to expect if the parties had been dealing on an arm's length basis.

14.3 Acquisition of Assets from Members

The Trustee shall not acquire an asset (other than cash) from a Member or relative of the Member except where permitted by the Relevant Law.

15e TRUSTEE'S POWERS OF MANAGEMENT 15.1

Signing of Documents

The Trustee being a corporation may by resolution of its board authorise any one or more of its directors jointly or singly to execute or sign cheques, negotiable instruments, agreements, writings, contracts or documents of any kind whatsoever required in or about the business of the Fund. Where there shall be two or more individual Trustees, then any two of such Trustees shall be deemed to be so authorised.

15.2 Bank Accounts

The Trustee may open and maintain a banking account or accounts at such bank or banks as the Trustee may from time to time determine and to operate upon the account or accounts by cheque in the name of the Fund signed by any two Trustees or, where the Trustee is a corporation, by any director of, or other person, authorised to sign by the directors of that Trustee corporation. Cheques and other negotiable instruments for payment to the credit of the Fund bank account or accounts may be endorsed by any one Trustee or the secretary (if any) of the Fund.

15.3 Legal Proceedings

The Trustee may institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund, -and also to compound and to allow time for payment or satisfaction of any debts due and any claims or demands by or against the Fund.

15.4 Insurance

The Trustee may insure or re-insure any risks contingencies or liabilities of the Fund and to effect acquire and maintain policies of insurance upon the life, disability,

accident or sickness of any Member, and to pay any premium or such insurance or re-insurance and to purchase or pay any Annuity for or to any Member or any Spouse or Dependant of any Member. The Trustee may in the name of the Fund arrange, effect, alter, amend and cancel such policy or policies of life insurance on the life of a Member for such amount and for such period and subject to such terms and conditions as the Trustee may in its absolute discretion from time to time determine.

15.5 General Powers

The Trustee may generally do all acts and things as the Trustee may consider necessary or expedient for the due administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

16. INSURANCE BENEFITS

16.1 Level of Benefits

The amount and nature of death or total and permanent disability (hereinafter called the "Insured benefits") shall be determined by the Trustee.

16.2 Commencement of death and disability insurances

A Member will not be insured against death or total and permanent disability under any policy arranged by the Trustee until:

16.2.1 he or she is admitted as a Member;

16.2.2 The Employer has notified the Trustee that insurance is required in respect of that Member;

16.2.3 the Member and any relevant Employer have provided information required by the insurer.

16.3 Cessation of insurance cover

A Member's interest in the rights under any death or total and permanent disability insurance arranged by the Trustee cease:

16.3.1 if the Member ceases to be within the class of persons covered by the policy or otherwise ceases to be covered under the terms of the policy;

16.3.2 upon the insurer terminating the policy or the Member's cover;

16.3.3 on written request to the Trustee given by the Member;

16.3.4 on the Trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the Trustee;

16.3.5 if the amount standing to the credit of a Member's Accumulation account is insufficient to pay for the Member's cover;

16.3.6 on payment of the Member's Benefit or on transfer of the Benefit to another Complying Fund.

16.4 Scope of Insurance Cover

Any Insured Benefit shall be subject to the terms of the insurance policy or policies taken out by the Trustee to provide the relevant Insured Benefit and no payment shall be required to be made in respect of a Member in satisfaction of any Insured Benefit that is greater than the amount received by the Trustee under the insurance policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to those amounts.

17 RECORDS, ACCOUNTS, AUDIT AND INSPECTION

17.1 The Trustee shall keep or cause to be kept on behalf of the Fund proper books of both record and account showing all appropriate membership details and all receipts, disbursements, assets and liabilities of and in connection with the Fund and shall at least once in every calendar year prepare a statement of receipts and disbursements together with a balance sheet showing the financial position of the Fund.

17.2 The books statements accounts and balance sheets of the Fund shall be audited by an approved Auditor in accordance with the provisions of the Relevant Law and the Auditor so appointed shall after each such examination submit a certificate in the prescribed form to the Trustee no later than the date the return is required to be lodged with the Commissioner.

17.3 Copies of all documents relating to the Fund including this Deed and the Auditor's reports, annual balance sheets, Members' Accounts and Membership records shall be held by the Trustee and shall on the submission of a written request be made available by the Trustee at least once in each year for inspection by a Member or Employer who may request the inspection.

17.4 The Trustee shall obtain such actuarial reports on the Fund or benefits payable as are required by the Relevant Law.

17.5 The Trustee must comply with all reasonable requests concerning production of and inspection of any books or records of the Fund by the Commissioner.

18. VALUATION OF FUND

The assets and investments of the Fund shall be valued as at the end of each financial year and may be revalued from time to time by the Trustee and it may employ such persons as it sees fit for that purpose. The Trustee may use the information produced for the purposes of the prudent management of the Fund and subject to the Relevant Law may debit or credit any account in the Fund to take account of any profit or loss which results from such valuations and may credit the reserve account or pay any taxation liability which may arise therefrom.

19. PAYMENT OF TAXES

The Trustee shall be empowered to deduct such amounts of tax as may be required by the Relevant Law to be deducted from any lump sum payment or other benefit to be paid out and from the Fund and to pay any income tax, surcharge or capital gains tax liability which may arise from time to time and to debit any Member's Member Accumulation Account, the payment of the tax or proportionate amount of the tax to be paid and notwithstanding that any Member's credit in an account may have become vested.

20. ALTERATION OF THE DEED

- 20.1 The provisions of this Deed may be amended, added to or varied from time to time by the Trustee, with the written consent of the Principal Employer.
- 20.2 Any such amendment, addition or variation must be effected by a Deed executed by the Trustee provided the proposed amendment, addition or variation is in accordance with the provisions of the Relevant Law.
- 20.3 If the Relevant Law prohibits it, this Deed shall not be amended in such a way that:
- 20.3.1 an individual would be eligible to be appointed as Trustee unless this Deed (or any Deed amending this Deed) provides and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose's, the provision of old-age pensions; or
- 20.3.2 the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the provisions of this Deed (or any Deed amending this Deed) provides, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.
- 20.4 No amendment may alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits unless:
- 20.4.1 where required, the consent of the Member and /or the Commissioner is obtained in accordance with the Relevant Law; or
- 20.4.2 the alteration is necessary to comply with or is expressly permitted by the Relevant Law.
- 20.5 The Trustee shall give to each Member such information or notice in respect of the amendment(s) as may be required by the Relevant Law.

21. EMPLOYERS

22. MEMBERSHIP OF THE FUND

- 22.3 The Trustee may accept or refuse any application for membership in its absolute discretion and shall not be required to give any reason for any such refusal.
- 22.4 A person shall become a Member when the Trustee approves such application. Before any contributions in respect of the newly approved Member are made, the Trustee shall provide a written statement advising of its acceptance of the Member's application. The Trustee is not required to so advise the first Members.
- 22.5 Each Member by his application shall be deemed to have assented to and to have consented to be bound by the provisions of this Deed.
- 22.6 Where a completed application for membership is not tendered by an Employee, the Trustee may accept the payment of a contribution by an Employer in respect of that Employee. Receipt of the payment of the contribution shall be deemed to constitute acceptance of the Employee's membership of the Fund.
- 22.7 A Member shall cease to be a Member in the event of the first of the following:
- 22.7.1 the death of the Member;
 - 22.7.2 when the total of all amounts payable wider this Deed in respect of the Member have been paid or transferred to another Complying Superannuation Fund; or
 - 22.7.3 when under this Deed any Benefit payable to on behalf of, or in respect to the Member ceases to be payable; or

22.7.4 when unclaimed benefits are paid to the relevant authority. 23<

CONTRIBUTIONS

23.1 From Employers

Each Employer may from time to time contribute to the Fund in relation to such of the Members of the Fund who are employed by each Employer, in such proportion as it in its discretion shall determine.

23.2 Specify Members

Each Employer when making contributions to the Fund shall specify the Members in respect of whom each such contributions are made and such contributions shall be credited only to the account of the named Members.

23.3 Cessation of Contributions

An Employer may cease to contribute to the Fund on giving written notice to the Trustee. Any Member in respect of whom contributions by an Employer has ceased may also cease to contribute from the same date and any accrued benefits will be held within the Fund until they may be paid under the terms of this Deed.

23.4 Suspension of Contributions

The Trustee and an Employer may agree that contributions in respect of a Member may either be continued or suspended during periods of temporary absence from the Member's employment with the Employer.

23.5 From Members

Members may pay or cause to be paid into the Fund from time to time on a basis agreed with the Trustee, contributions or other moneys as may be required in accordance with this Deed and subject to compliance with the Relevant Law.

23.6 Deduction from salary

The contributions of a Member where applicable may, with the Member's consent, be deducted from a Member's salary by the Employer when each payment of salary is made and for-warded to the Trustee.

23.7 Limitations on Acceptance of Contributions

The Trustee shall only accept contributions in respect of a Member made in accordance with the Relevant Law.

24. ACCOUNTS

An account shall be established and maintained for each Member of the Fund (herein called the Member Accumulation Account) into which the following amounts shall be debited and credited: -

24.1 Employer Contributions showing

24.1.1 contributions by the Employer;

24.1.2 amounts credited or debited to such account pursuant to these provisions. 24.2

Member Contributions showing

24.2.1 contributions by the Member or the Member's Spouse;

24.2.2 amounts credited or debited to such account pursuant to these provisions. 24.3

Preservation and Cashing Restrictions

The Trustee shall record for each Member's Member Accumulation Account in respect of their benefit:

24.3.1 the amount that is required to be preserved;

24.3.2 the amount that is a restricted non-preserved benefit; and

24.3.3 the amounts that are subject to a "Nil" cashing requirement under the Relevant Law.

25. STATEMENTS TO MEMBERS

25.1 The Trustee shall give to each Member of the Fund a written statement each year setting out:

25.1.1 the amount of any Benefit accrued in the Member Accumulation Account at the commencement of the first day of the year of income to which the statement relates;

25.1.2 the amount of any Benefit accrued in the Member Accumulation Account at the expiration of the last day of that year of income:

25.1.3 the method of determining the amount of the Benefit referred to in subparagraph 25.1.2 hereof;

25.1.4 the amount of contributions made by the Member and/or the Employer during that year of income.

25.2 Where a person ceases to be a Member on a day other than the last day of a year of income of the Fund, the Trustee shall give, or arrange to be given, to the Member as soon as practicable thereafter a written statement setting out:-

25.2.1 the amount of any Benefit entitlement of the Member, identifying any amounts that are required by the Relevant Law or by this Deed to be preserved in relation to the Member;

25.2.2 the method of determining that entitlement; and

25.2.3 if the person ceases to be a Member otherwise than as a result of his death or retirement from the work-force, the amounts and other particulars referred to in paragraph 25.2.1 above as though a reference in that paragraph to the year of income to which the statement relates were a reference to the period commencing on the first day of the year of income during which the person ceased to be such a Member and ending at the expiration of the day on which the person ceased to be such a Member.

26. **BENEFITS**

Save as otherwise provided in this Deed upon the termination whether by death or otherwise, of his employment with the Employer the Member or his Dependants shall receive such amount as may be determined in accordance with the provisions herein appearing. No benefit shall be paid from the Fund where such payment would cause the Fund to lose its status as a Complying Superannuation Fund.

27< **BENEFITS PRIOR TO RETIREMENT OR TERMINATION OF SERVICE 27.1**

Early Retirement

In the event of a Member ceasing to be in the service of an Employer prior to attaining the age for retirement as specified in the Relevant Law or for any reason other than death or Total or Permanent Disability, a benefit (herein after called a "Withdrawal Benefit") shall be payable by the Trustee out of the Fund to that Member.

27.2 **Quantum of Benefit**

The withdrawal benefit to be taken by a Member withdrawing pursuant to this Clause shall comprise the amount standing to the credit of the Member's Member Accumulation Account and any earnings accrued therefrom that is not required to be preserved.

28. **RETIREMENT BENEFITS**

28.1 **Lump Sum Benefits**

The Member's Benefit shall be applied in the form of a lump sum to or on behalf of the Member. The Member may however elect in writing to receive an allocated pension from the Fund.

28.2 Retirement

The Member on attaining the Retiring Age is eligible to receive a Benefit (herein after called a "Retirement Benefit").

28.3 Quantum of Retirement Benefit

The Retirement Benefit taken by a Member under this Clause shall comprise the amount standing to the credit of the Member's Member Accumulation Account.

28.4 Compulsory Cashing

The Trustee must commence to pay a Benefit to a Member:

28.4.1 on or after the date on which the Member attains age 65, if he is not in Gainful Employment on either a full-time or part-time basis;

28.4.2 on or after the date on which the Member attains age 70, if he is not in Gainful Employment on a full-time basis; or

28.4.3 otherwise pursuant to the requirements of the Relevant Law. 29.

BENEFIT ON DEATH

29.1 Eligible Persons

In the event of the death of a Member, the Trustee shall pay out of the Fund a Benefit (herein after called a "Death Benefit") to either:

29.1.1 the Dependants of the Member or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine; or

29.1.2 in the event there are no Dependants of the Member then to the legal personal representative of the Member; or

29.1.3 to any individual or individuals as permitted by the Relevant Law. 29.2

Quantum of Benefit

The Death Benefit in respect of a Member shall be:

29.2.1 a lump sum benefit calculated from the aggregate of the Member's Member Accumulation Account; and

29.2.2 the proceeds, if any, of any policy or policies of insurance effected on the life of the Member by the Trustee on behalf of the Fund and paid to the Fund.

30. TOTAL AND PERMANENT DISABILITY

30.1 Establishing Total & Permanent Disability

A Member shall not be treated as Totally and Permanently Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled.

30.2 Quantum of Benefit

The benefit in respect of a Member who is entitled to a total and permanent disability benefit shall be:

30.2.1 a lump sum benefit calculated from the aggregate of the Member's Member Accumulation Account;

30.2.2 the proceeds, if any, of any policy or policies of insurance affected on the life of the Member by the Trustee on behalf of the Fund and paid to the Fund.

31. TRANSFER OF ASSETS

The Trustee may with the agreement of the Member or Beneficiary to whom a benefit is payable transfer any assets in specie, of equivalent value to the amount standing to the credit of the Member's Member Accumulation Account to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable hereof PROVIDED such transfer will not cause the Fund to fail to continue to be a Complying Superannuation Fund.

32. VESTING OF BENEFITS

The total amount of employer-financed benefits, which term shall include any productivity payment received in respect of any Member accruing to a Member of the Fund, on or after the 1 st July, 1986, shall vest in that Member on the day on which the benefits accrue any amount arising directly or indirectly from contributions made by an Employer in relation to a Member in accordance with a prescribed award or agreement shall likewise vest in the member on that date being a date on or after the date of effect of the award or agreement.

33. PRESERVATION AND PORTABILITY OF BENEFITS

33.1 The amount of any benefit vested in any Member in accordance with clause 26 shall be preserved in accordance with the Relevant Law.

33.2 Any amount transferred to the Fund in relation to any Member pursuant to this Deed which is required by the Relevant Law to be preserved shall be preserved.

33.3 Where a person who was a Member withdraws from the Fund in circumstances other than those specified in sub-clause 33.1 or 33.2, all Benefits to which the person is entitled on such withdrawal and that are required to be preserved in relation to the person shall be:

33.3.1 retained in the Fund; or

33.3.2 transferred directly to, for preservation in relation to the person to:

33.3.2.1 another superannuation fund nominated by the person, being an Approved Benefit Arrangement of which the person is or intends to become a Member and that is required to preserve any benefits so transferred in accordance with the Relevant Law; or

33.3.2.2 a deferred annuity nominated by the person, being a deferred annuity that cannot be surrendered or assigned before the person attains the age of fifty five (55) years and that does not pay benefits except in the circumstances specified above,

provided that no Benefit shall be paid if to do so would infringe the Relevant Law or prejudice the concessional taxation status of the Fund or prevent the Fund from qualifying as a Complying Superannuation Fund.

34< ALLOCATED PENSION FUND

34.1 Application to Convert to Pension

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary under the terms of this Deed in accordance with the Relevant Law the Trustee may at the request of the Member or Beneficiary but otherwise in its absolute discretion determine to pay a Pension or Pensions from the Fund to the Member or Beneficiary (as the case might be) on the conditions set out in Clause 35:

34.1.1 in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or

34.1.2 in respect of any amounts credited to the Pension Account of a Member or Beneficiary under sub-clause 34.3.1.1.

34.2 Establishment of Pension Account

Where a Member or a Beneficiary has made an application under sub-clause 34.1 above and the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension, the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which Accounts the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the benefits as a Pension.

34.3 Operation of Pension Account

34.3.1 The following amounts shall be credited to the Pension Account of a pensioner:

34.3.1.1 any amount transferred wider sub-clause 34.2 above;

- 34.3.1.2 any amount paid into the Fund in respect of a Pensioner as a transfer or a roll over payment which the Trustee considers it appropriate to credit;
- 34.3.1.3 the proceeds of any policy effected by the Trustee in respect of the pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
- 34.3.1.4 such earnings of the Fund as the Trustee shall determine to be equitable;
- 34.3.1.5 any shortfall component paid in respect of the pensioner;
- 34.3.1.6 any amount of financial assistance determined by the Trustee to be appropriate to credit.

34.3.2 The following amounts are to be debited to the Pension Account of a pensioner:

- 34.3.2.1 any amount transferred out of the Fund in respect of a pensioner as a transfer of a roll over payment which the Trustee considers it appropriate to debit;
- 34.3.2.2 any payments made to or in respect of the pensioner or a reversionary Beneficiary pursuant to the provisions of this Deed;
- 34.3.2.3 the costs of any policy effected by the Trustee in respect of the pensioner which are not debited to a Member's Member Accumulation Account;
- 34.3.2.4 such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a pensioner or arising as a result of a roll over payment as the Trustee shall determine;
- 34.3.2.5 such of the costs, charges and expenses as the Trustee shall determine to be equitable;
- 34.3.2.6 such of the amount paid in respect of the Trustee indemnity as the Trustee shall determine to be equitable;
- 34.3.2.7 a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine to be equitable;
- 34.3.2.8 such negative earnings of the Fund as the Trustee shall determine to be equitable;
- 34.3.2.9 any amount transferred to the Member's Member Accumulation Account of a Beneficiary;

34.3.2.10 any amount of levy determined by the Trustee to be appropriate to debit;

34.3.2.11 such other amounts as the Trustee shall from time to time determine.

34.4 Segregation of Pension Assets

In relation to each Pension payable to a Member or a Beneficiary, the Trustee may:

34.3.1 segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and

34.3.2 constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

35e PENSION PAYMENT CONDITIONS 35.1

Method of Payment and Security

Where a Pension is payable from the Fund, the following conditions shall apply to the payment of the Pension:

35.1.1 the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;

35.1.2 the Pension shall be paid at least annually;

35.1.3 the amount of the Pension in any year shall be such amount as is nominated by the pensioner and notified to the Trustee in writing from time to time PROVIDED THAT the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Relevant Law for the payment of a Pension;

35.1.4 the Pension shall not be transferred to any person other than a reversionary Beneficiary on the death of the pensioner or on the death of a reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Law;

35.1.5 the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing.

35.2 Pension Account Limitation

Where a Pension is payable to or in respect of a Member or a Beneficiary or where the Trustee purchases an Annuity on behalf of a Member or a Beneficiary, the total instalments of such Pension or the total purchase price of such Annuity shall not exceed the amount standing to the credit of a Member or pensioner in the relevant Member Accumulation Account or Pension Account of the Member or pensioner at the relevant time.

35.3 Pension Increase

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Law and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases PROVIDED HOWEVER that any increase shall be at least the minimum required by the Relevant Law in respect of the type of Pension being paid.

35.4 Reversionary Beneficiary

After the death of a Pensioner who was at the time of death still in receipt of a Pension under this Deed, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit which amount shall not exceed an amount calculated in accordance with the Relevant Law.

36. COMMUTATION OF PENSION

36.1 Conditions of Commutation

On the written application of a pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to such pensioner or Reversionary Beneficiary as applicable PROVIDED THAT:

36.1.1 the commutation of the Pension is permitted by the Relevant Law;

36.1.2 the amount of the commuted Benefit including the value of any remaining Pension payable shall be subject to the provisions of clause 26;

36.1.3 the commutation would not be to the disadvantage of the Fund, the Employers, the remaining Members, pensioners or reversionary beneficiaries.

36.2 Payment of Lump Sum Benefit

The Trustee shall pay the amount of the lump sum Benefit in respect of the Pension being commuted to the pensioner or the Reversionary Beneficiary who applied for the commutation but subject to any other applicable provisions of this Deed.

36.3 Adjustment of Pension following the Commutation

42. COVENANTS BY THE TRUSTEE

The covenants contained in Superannuation Industry (Supervision) Act 1993 shall be deemed to be contained in this Deed.

43. GOVERNING LAW

This Deed shall be governed and construed in accordance with the law of the State or Territory specified in the Schedule.

SCHEDULE

NAME OF FUND: **BJ and MT Gough Superannuation Fund**

COMMENCEMENT DATE: **7th July, 1999**

TRUSTEE: **The following persons to be joint trustees:**

**Bernard James Gough of 40 Spring Street, Beecroft
in the State of New South Wales**

**Marie Therese Gough of 40 Spring Street, Beecroft in
the State of New South Wales**

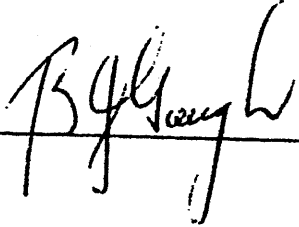
PRINCIPAL: **Bernard James Gough of 40 Spring Street, Beecroft
in the State of New South Wales**

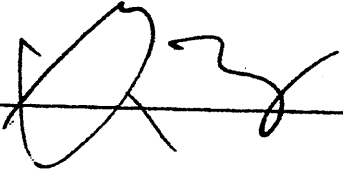
PROPER LAW GOVERNING FUND: **New South Wales**

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

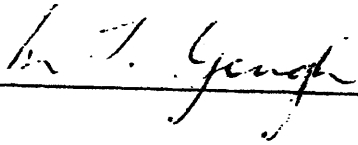
THE TRUSTEE

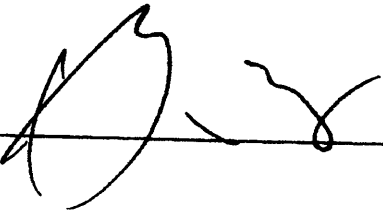
SIGNED, SEALED and DELIVERED
by the said BERNARD JAMES
GOUGH in the presence of:





SIGNED, SEALED and DELIVERED
by the said MARIE THERESE
GOUGH in the presence of:





PRINCIPAL

SIGNED, SEALED and DELIVERED
by the said BERNARD JAMES
GOUGH in the presence of:

