

BRUWEN

SUPERANNUATION FUND

Queensland Duty Not Payable  
Signed: ..... *CD* ..... 23/11/07

## DEED OF VARIATION

THIS DEED is made the *1st* day of *July* 2007

**BETWEEN** Bruce David GOLDSHAFT (hereinafter called "the Principal") of the First Part  
**AND** Bruce David GOLDSHAFT and Wendy GOLDSHAFT (hereinafter called "the Trustees") of the Second Part.

### WHEREAS

The Trustees are the Trustees of the Superannuation Fund known as the Bruwen Superannuation Fund (hereinafter called "the Fund"), which was established by a deed dated the 19<sup>th</sup> day of June 1995, and the Trustees and the Principal desire to reconstitute the Fund to better comply with the various requirements in relation to superannuation and in particular to comply with the Superannuation Industry (Supervision) Act.

### NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. The Trustees agree to continue to act as Trustees.
2. The Trustees and the Principal agree to amend the terms of trust applicable to the Fund by revoking all clauses and rules of the current Deed and replacing them with the clauses and rules contained in the attached Deed, with effect on and from 1 July 2007.
3. The Trustees and the Principal agree to be bound by the terms and conditions of the attached Deed and Rules.
4. The Trustees hereby covenant and warrant as follows:
  - (a) That the Fund was properly constituted and that they were properly appointed as Trustees; and
  - (b) That they were empowered under the terms of trust of the Fund and that they have obtained all necessary consents and authorities to reconstitute the Fund.
5.
  - (a) The Fund is vested in and controlled and administered by the Trustees of the Fund.
  - (b) The Trustees hereby declare that they hold the Fund upon the covenants and conditions and subject to the trusts, powers, authorities and discretions set out in this Deed and in the Rules, as amended.

AND THE PARTIES HERETO DECLARE AS FOLLOWS:

**INDEX**

CLAUSE	PAGE NO.
<b>C1 DEFINITIONS AND GOVERNING PRINCIPLES</b>	
1.1 Definitions	1
1.2 Plural and Gender of Words	4
1.3 Headings to Clauses	4
1.4 Defined Words	5
1.5 Purpose of Fund	5
1.6 Employer's Powers Not Prejudiced	5
1.7 Exercise of Rights under the Deed	5
1.8 Deed Governed by State Laws	5
1.9 Arbitration	5
1.10 Fund Subject to Regulations	5
<b>C2 CONSTITUTION OF THE FUND</b>	
2.1 Moneys Payable to the Fund	5
2.2 Accounts of the Fund	5
<b>C3 TRUSTEE</b>	
3.1 Fund Vested in Trustee	6
3.2 Covenants	6
3.3 A) INDIVIDUAL TRUSTEES	7
1. Removal and Appointment of Individual Trustee	7
2. Vacancy in Office	7
3. Continuity of Office	7
B) CORPORATE TRUSTEE	7
1. Removal and Appointment of Corporate Trustee	7
2. Vacancy in Office	7
3. Continuity of Office	8
4. Composition of Board of Directors of Corporate Trustee	8
5. Vacancies on Board	8
C) CHANGE OF TRUSTEE TYPE AND COMPULSORY APPOINTMENTS	8
1. Change From Individual Trustee to Corporate Trustee	8
2. Change from Corporate Trustee to Individual Trustee	8
3. Trustees Deemed Appointed	8
3.4 Powers of Trustee	9
3.5 Remuneration of Trustee	9
3.6 Indemnity of Trustee	9
3.7 Small Fund becoming Representative Fund	9
3.8 Meetings of Members	9
3.9 Liability of Trustees, Directors and Members	10
(a) Liabilities of Trustees and Directors	10
(b) Members Liability	10
(c) Trustees and Directors Indemnity	10
<b>C4 APPOINTMENT TO OFFICES</b>	
4.1 Appointment of Actuary, Auditor and other Officers	10
4.2 Ability to Act	10

CLAUSE	PAGE NO.
<b>C5 RECORDS AND FINANCIAL STATEMENTS</b>	
5.1 Records and Accounts to be kept	11
5.2 Annual Accounts	11
5.3 Copy of Deed and Financial Statements available to Members	11
5.4 Reporting to the Commissioner	11
5.5 Auditor	11
5.6 Information to be Supplied	11
5.7 Compliance with the Law	11
<b>C6 INVESTMENTS</b>	
6.1 Investments Authorized	12
6.2 Terms and Conditions	12
6.3 Borrowing	12
6.4 Restrictions on Dealings with Members, Relatives and Associates	12
6.5 Particular Investments for Particular Members	13
6.6 Investment Strategy	13
6.7 Agreement with the Investment Manager	13
6.8 Charge over Assets	13
6.9 Power to Sell and Vary Investments	13
<b>C7 MEMBERSHIP</b>	
7.1 New Members	13
(a) Application to Join the Fund	13
(b) Admission of Applicants	13
7.2 Transfers from another Fund	14
<b>C8 GENERAL PROVISIONS RELATING TO BENEFITS, CONTRIBUTIONS AND EXPENSES</b>	
8.1 Trustee to be advised	14
8.2 Members Contributions Deducted from his Salary	14
8.3 No Inquiry	14
8.4 Benefits and Contributions when Special Leave is Taken	14
8.5 Expenses of Administration	14
8.6 Member Transfer to another Fund	14
8.7 Limitation on Benefits and Contributions	15
(a) Benefits	15
(b) Contributions	15
(c) Cash	15
(d) Beyond 65	15
(e) Obligation to Contribute	15
(f) Retired Member Receiving a Pension	15
(g) Contribution Splitting	15
8.8 Excessive Benefits	16
8.9 Benefits Forfeited on Cessation of Membership	16
8.10 Additional Benefits	16
8.11 Limitation by Insurance Company	16
8.12 Moneys owing to Fund or an Employer	16

CLAUSE	PAGE NO.
8.13 Unclaimed Moneys	16
8.14 Rollover of Certain Benefits	16
8.15 Forfeiture of Benefits	16
8.16 Conditions Applicable to Pension Payments	17
(a) Accrual and Payment of Pensions	17
(b) Termination of Pensions	17
(c) Term Certain and Instalments	17
(d) Complying Pension	17
(e) Account Based or Allocated Pension	18
(f) Pension determined by the Commissioner to be Excessive	18
8.17 Trustee may effect Annuity	18
8.18 Payment to Others on behalf of Beneficiaries	18
8.19 Benefits Not Grounds for Increasing any Claim for Damages	18
8.20 Deduction of Tax	18
8.21 Persons to Whom Benefits are Payable and Receipt	18
(a) Persons to Whom Benefits are Payable	18
(b) Receipt	19
8.22 Payment to Employer	19
8.23 Payment of Benefits in Specie	19
8.24 Payment of Benefits Deferred	19
8.25 Preservation of Benefits	19
8.26 Statements to Members	19
8.27 Trustees Reporting Obligations	19
8.28 Timing of Benefit Payments	20
8.29 Indefinite Accumulation	20
<b>C9 ADMISSION OF PARTICIPATING EMPLOYERS</b>	
9.1 Admission as Participating Employer	20
<b>C10 REPLACEMENT OF PRINCIPAL</b>	
10.1 Replacement of Principal	20
<b>C11 DISCONTINUANCE OF CONTRIBUTIONS AND WINDING-UP</b>	
11.1 Discontinuance of Contributions	20
11.2 Winding-Up	21
<b>C12 ALTERATIONS</b>	
12.1 Alterations	21
12.2 Alterations (Rules)	21
<b>RULES</b>	
<b>RULES GENERAL</b>	
CONTRIBUTIONS:	
R1.1 Contributions Payable by Members	22
Contributions Payable by Employer	
BENEFITS:	
R1.2 Benefit on Total & Permanent Disablement	22
R1.3 Benefit on Death	22
R1.3A Payment of Benefits on Death to Personal Representative or Dependants	22
R1.4 Payment of Unrestricted Unpreserved Benefit	23

CLAUSE	PAGE NO.
R1.5 Benefit in Other Circumstances	23
R1.6 Calculation of Benefit under Rules R1.2, R1.3 and R1.5	23
R1.7 Death and Disablement Benefits where covered by Insurance	23
R1.8 Individual Accounts	23
R1.9 Forfeited Benefits	24
R1.10 Payments to and from Individual Accounts	24
<b>RULES A</b>	
RA1 Benefit at or after Attainment of the Eligibility Age	25
RA2 Pension Benefit Converted to Lump Sum	25
RA3 Non-Commutable Benefit at or after Eligibility Age Prior to Retirement	25
<b>RULES B</b>	
RB1 Benefit at or after Attainment of the Normal Retirement Age	26
RB2 Lump Sum Benefit Converted to a Pension	26
RB3 Non-Commutable Benefit at or after Eligibility Age Prior to Retirement	26

---

## **C1 DEFINITIONS AND GOVERNING PRINCIPLES**

C1.1 Definitions. In this Deed unless the context otherwise requires:

“Actuary” means a Fellow or an Accredited Member of the Institute of Actuaries of Australia.

“Account Based Pension” means a Pension paid in accordance with the definition of such a Pension within the Law.

“Allocated Pension” means a Pension in existence prior to 1<sup>st</sup> July 2007 paid in accordance with the definition of such a Pension within the Law.

“Annuity” means an eligible Annuity as defined in the Income Tax Assessment Act.

“Approved Deposit Fund” means a complying Approved Deposit Fund as defined by Law.

“Associate” means a person, or entity which has a relationship with a Member, including, but not restricted to, a Member’s business partner, or corporations of which the Member is an officer.

“Auditor” means a registered company Auditor, or any other person acceptable to the Commissioner, not being a person or firm acting as Trustee, nor a person in respect of whom a disqualification order is in force under the Law.

“Beneficiary” means a person who has a beneficial interest in the Fund at the relevant time including a Pensioner.

“Benefit” means any amount paid or payable by the Trustee out of the Fund pursuant to the Deed to or in respect of a Member.

“Clause” means a Clause or Sub-Clause of the Deed and Rules has a corresponding meaning.

“Commissioner” means the Insurance and Superannuation Commissioner or any person who is appointed by a Law of parliament to supervise the conduct of Superannuation Funds.

“Complying Pension” means a Pension based on a benefit determined in accordance with the Pension RBL and paid under the terms and conditions applicable to Complying Pensions under the Law and Regulations and the Income Tax Law and includes a Market Linked Pension as defined by the Law.

“Contributions” means payments to the Fund by or on behalf of Members and Employers pursuant to the Deed.

“Corporate Trustee” means a Trustee which is a corporation within the meaning of the Corporations Act.

“Deed” means these presents and any authorized additions, amendments, alterations, modifications, rescissions or variations thereto, and includes the Rules attached hereto.

"Dependant" in relation to a Member or former Member means:

- (i) the spouse of the Member or a deceased Member;
- (ii) a person in an "interdependent relationship", as defined under the Law, with that Member or former Member;
- (iii) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; and
- (iv) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time.

"Directors" means the Directors of a board of management for the time being of an Employer or of a Corporate Trustee and Director has the same meaning as the meaning of the word "Director" under the Corporations Act.

"Disablement" means in respect of a Member his physical or mental Disablement caused through bodily injury, illness, disease, infirmity or accident (none of which has been incurred or inflicted for the purpose of obtaining a Benefit) which the Trustee, after obtaining the advice of a registered medical practitioner, considers will render the Member unable to perform his duties to his Employer or of continuing to engage in any Gainful Employment for which he is reasonably qualified by education, training or experience.

"Eligible Rollover Fund" means a fund as described in Regulation 10.1 of the Law as amended from time to time.

"Eligibility Age" in relation to an Old-Age Pension means:

- (a) in the case of a man – 65 years or, if another age is prescribed by the Regulations in place of 65 years, the age so prescribed; or
- (b) in the case of a woman – 60 years or, if another age is prescribed by the Regulations in place of 60 years, the age so prescribed.

"Employee" means a person in the employment of an Employer (including a Director) and who is:

- (a) classified by his Employer as a permanent Employee; or
- (b) declared by his Employer to be an Employee for the purposes of the Deed.

"Employer" means any Employer of an Employee or Member.

"Employer Representative" has the meaning given by Section 10 of the Superannuation Industry (Supervision) Act 1993.

"Full-Time" in relation to Gainfully Employed means a Member who is employed on a full-time basis within the meaning of the (Superannuation Guarantee Charge Act 1992 (Cth)) as amended from time-to-time, or a Member deemed by the Trustee as a Full-Time Employee.

"Fund" means the fund named in the preamble to this Deed.

"Fund Year" means a period of twelve (12) months ending on the 30<sup>th</sup> day of June, or such other date as the Trustee from time-to-time may determine.



"Income Tax Act" means the Income Tax Assessment Act 1936 of the Commonwealth of Australia as amended from time-to-time.

"Individual Trustee" means an individual who is a Trustee of the Fund.

"Law" wherever the context requires means the Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1997 and/or the Income Tax Transitional Provisions Act 1997 and any regulations or subordinate legislation thereto.

"Member" means a person who has been accepted by the Trustee as a Member of the Fund, a person includes a person who, at the relevant time, is receiving or is entitled to Benefits from the Fund.

"Member Representative" has the meaning given by Section 10 of the Superannuation Industry (Supervision) Act 1993.

"Member's Accumulated Contributions" means the Member's own Contributions accumulated with interest at the Net Earning Rate of the Fund or such other amount as may be acceptable to the Commissioner.

"Member's Benefit" means the Individual Account held on behalf of the member, pursuant to this Deed, whether vested or not.

"Net Earning Rate of the Fund" means the rate of interest earned on the Fund assets (or on the assets held for a particular set of Rules, as the case requires) for a particular Fund Year after allowing for appropriate administration costs and/or the averaging of such returns on a basis acceptable to the Commissioner.

"Normal Retirement Age" means the age of 65 years or such other age as is acceptable to the Commissioner.

"Old-Age Pension" has the same meaning as in paragraph 51(xxiii) of the Constitution.

"Participating Employer" means any Employer admitted as a Participating Employer pursuant to Clause C9.1 hereof.

"Pension" means a Benefit payable at a yearly rate by instalments, and "Pensioner" means a person receiving a Pension.

"Pension RBL" means the Pension Reasonable Benefit Limit.

"Permanently Disabled and Permanent Disablement" means a Disablement in the circumstances provided for by the Law or Regulations; or where any part of the Benefit payable on Permanent Disablement is insured, the definition of Permanent Disablement or permanent and total Disablement or incapacity contained in the policy document evidencing the contract of insurance.

"Pooled Superannuation Trust" means a Pooled Superannuation Trust as defined in the Superannuation Industry (Supervision) Act 1993.

"Preservation Age" means the age of 55 or later as required by the Law or Regulations.

"Preserved Benefit" means the whole or part of any Benefit which is required by the Law to be preserved for the Member in the Fund or in another Fund until a Member has retired from the workforce and attained the age of 55 (or any other age as prescribed by the Law as being the Preservation Age for that Member) or if the Member dies or becomes Permanently Disabled, or payment of the Benefit in other circumstances as permitted by Law.

"Principal" means the person named in the preamble hereto or person who assumes the obligations of the Principal under the Deed.

"Reasonable Benefit Limit" (hereinafter called "RBL") means the amount calculated as the Member's RBL under the Income Tax Act.

"Regulated Superannuation Fund" is a Superannuation Fund in respect of which subsections 19(2) to 19(4) of the Law have been complied with.

"Regulation" means a Regulation issued pursuant to the Law.

"Relative" has the meaning defined in the Superannuation Industry (Supervision) Act 1993.

"Representative Fund" means a fund of which there are 5 or more Members.

"Retiring Age" is the age of 65 years or such other age as prescribed by Law.

"Rules" means the Rules attached to the Deed.

"Small Fund" means a Fund that is not a Representative Fund.

"Sole Purpose Test" has the meaning in subsection 62(1) of the Superannuation Industry (Supervision) Act 1993.

"Special Leave" means any period of temporary absence of a Member from his employment (other than as a normal condition of employment) with or without pay and given with approval of his Employer.

"Standard Employer-Sponsor" has the meaning given in the Superannuation Industry (Supervision) Act 1993.

"Trustee" may be either Individual Trustees or a Corporate Trustee as defined in the Deed.

"Unclaimed Moneys" has the meaning given in the Superannuation Industry (Supervision) Act 1993.

"Vested Benefit" means any part of the Member's Benefit which is required by the Law to be treated as a minimum Benefit vested in and payable to a member on termination of the Member's employment (subject to any preservation requirements).

C1.2 Plural and Gender of Words. In the Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender and words importing the singular number shall include the plural number and vice versa.

C1.3 Headings to Clauses. The headings in the Deed are for convenience and reference

- C1.4 Defined words. For convenience, the first letters of words and expressions defined in the Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.
- C1.5 Purpose of Fund. The Fund has been established and will be maintained for the purpose of providing retirement and other Benefits to Members and Beneficiaries, in satisfaction of the Sole Purpose Test. At all times, the Fund will operate as a Regulated Superannuation Fund. The Fund's Trustee will be one or more individuals or a corporation. Unless the Trustee is a corporation, the Fund will pay retirement Benefits in the form of an Old-Age Pension under Rules A.
- C1.6 Employer's Powers not Prejudiced. Nothing in the Deed shall affect the powers of an Employer with regard to the terms of employment or dismissal of an Employee.
- C1.7 Exercise of Rights under the Deed. All powers and rights conferred on an Employer or the Trustee under the Deed may be fully exercised for or on behalf of such Employer or Trustee by resolution of its Directors or by any person or persons having the written authorization of such Directors to so act on their behalf.
- C1.8 Deed Governed by State Laws. The Deed shall be governed in accordance with the laws of the State of the Commonwealth of Australia in which the Deed is executed.
- C1.9 Arbitration. If any questions or dispute shall arise with respect to the Fund or to the construction or meaning of the Deed, and if the Trustee so requires, the question or dispute shall be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement to an arbitrator appointed pursuant to the provisions of the Arbitration Act in the State in which the Deed was executed. If the Trustee requires any question or dispute to be referred pursuant to this Clause, no right of action shall accrue in respect of thereof until the question or dispute has been adjudicated upon by the arbitrator.
- C1.10 Fund Subject to Regulations. This Deed shall be read and construed on the basis that the Law as amended from time to time and any Regulations made pursuant thereto are incorporated in the Deed to the extent that they impose obligations on the Trustee in order for the Fund to obtain concessional taxation status and this Deed shall be further read and construed on the basis that where there is any inconsistency between a provision in this Deed and a provision in the Law as amended from time to time and any Regulations made pursuant thereto, the Law and Regulations referred to shall prevail provided that this Deed shall not be read or construed and no such provision or Regulation shall be so incorporated if to do so would constitute a breach of the power granted by Clause C12.1 hereof to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

## **C2 CONSTITUTION OF THE FUND**

- C2.1 Moneys Payable to the Fund. The Fund shall consist of all cash, investments and other property for the time being held by or on account of the Trustee pursuant to this Deed.
- C2.2 Accounts of the Fund. For the purpose of managing, administering and applying the Fund the Trustee may if it sees fit:

- (i) Establish and maintain separate parts of the Fund for the purpose of distinguishing between different classes or groups of Members and/or Beneficiaries;
- (ii) Establish and maintain separate accounts and or investments in respect of any part of the Fund;
- (iii) Establish and maintain separate accounts and/or investments in respect of each or any Member and/or Beneficiary;
- (iv) Transfer Members and assets between parts of the Fund.

### **C3 TRUSTEE**

C3.1 Fund Vested in Trustee. The Fund shall be vested in the Trustee upon the terms of the Deed.

C3.2 Covenants. The Trustee covenants as follows:

- (i) to act honestly in all matters concerning the Fund;
- (ii) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members and Beneficiaries;
- (iv) to keep money and other assets of the Fund separate from any money and assets, respectively:
  - (A) that are held by the Trustee personally; or
  - (B) that are money or assets, as the case may be, of a standard Employer-sponsor, or an associate of a standard Employer-sponsor, of the Fund;
- (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee, in properly performing or exercising the Trustee's functions and powers;
- (vi) to formulate and give effect to an investment strategy that has regard to the whole circumstances of the Fund including, but not limited to, the following:
  - (A) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (B) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (C) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (D) the ability of the Fund to discharge its existing and prospective liabilities;
- (vii) if there are any reserves of the Fund - to formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (viii) to allow a Member or Beneficiary access to any prescribed information or any prescribed documents.

C3.3

A) INDIVIDUAL TRUSTEES

1. Removal and Appointment of Individual Trustee. A simple majority of Members shall have the right to appoint or remove any Individual Trustee by notice given in writing, provided that any such appointed Trustee is acceptable for the purpose of the Law and Regulations or under any ruling given by the Commissioner.
2. Vacancy in Office. The office of a Trustee shall become vacant and a Trustee shall cease to be a Trustee if he:
  - (i) is removed from office by the Members;
  - (ii) resigns from his office by notice in writing to the Members;
  - (iii) is disqualified from office under Part 15 of the Superannuation Industry (Supervision) Act or by other operation of law; or
  - (iv) dies,and upon such vacancy the Members shall as soon as possible appoint another Trustee.
3. Continuity of Office. A Trustee, on ceasing to be a Trustee, shall do everything necessary to transfer the Fund to the new Trustee and shall deliver all Fund records and other books to the remaining or new Trustee.

B) CORPORATE TRUSTEE

1. Removal and Appointment of Corporate Trustee.
  - (i) Where the Fund is a Small Fund, a simple majority of Members shall have the right to appoint or remove any Corporate Trustee by notice given in writing, provided that any such appointed Trustee or Trustees is acceptable for the purpose of the Law and Regulations or under any ruling given by the Commissioner.
  - (ii) Where the Fund is a Representative Fund, the Principal shall have the right to appoint or remove any Corporate Trustee by notice given in writing, provided that any such appointed Trustee is acceptable for the purpose of the Law and Regulations or under any ruling given by the Commissioner.
2. Vacancy in Office. The office of a Trustee shall become vacant and a Trustee shall cease to be a Trustee if it:
  - (i) is removed from office by the Members or by the Principal, as the case requires;
  - (ii) resigns from office by notice in writing to the Members or to the Principal, as the case requires;
  - (iii) is disqualified from office under Part 15 of the Superannuation Industry (Supervision) Act or by other operation of law; or
  - (iv) is wound up,and upon such vacancy the Members (where the Fund is a Small Fund) or the Principal (where the Fund is a Representative Fund), shall as soon as possible appoint another Trustee.

3. Continuity of Office. A Trustee, on ceasing to be a Trustee, shall do everything necessary to transfer the Fund to the new Trustee and shall deliver all Fund records and other books to the new Trustee.
4. Composition of Board of Directors of Corporate Trustee. Where the Fund is a Representative Fund, the Board of Directors of the Trustee shall contain equal numbers of Employer Representatives and Member Representatives, except during a period when a vacancy on the Board has occurred.
5. Vacancies on Board. The office of a Director of the Trustee shall become vacant and a Director shall cease to be a Director of the Trustee if he:
  - (i) resigns from his office by notice in writing to the Board;
  - (ii) being an Employer representative, is removed from office by the Principal;
  - (iii) being a Member representative, is removed from office by a relevant majority of the Members at a meeting of Members called for that purpose;
  - (iv) dies;
  - (v) has become Bankrupt or has within the preceding three years made an assignment to or an arrangement or composition with his creditors under Part 10 of the Bankruptcy Act 1966 (Commonwealth) or any replacement legislation; or
  - (vi) is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health,

and upon such vacancy the Trustee shall, within 90 days of the vacancy occurring, appoint another Director, provided that, where the Fund is a Representative Fund, the replacement of the Director results in an equal number of Employer Representatives and Member Representatives on the Board.

#### C) CHANGE OF TRUSTEE TYPE AND COMPULSORY APPOINTMENTS

1. Change From Individual Trustee to Corporate Trustee. A simple majority of Members shall have the right to appoint a Corporate Trustee and remove all Individual Trustees by notice given in writing, provided that any such appointed Corporate Trustee is acceptable for the purpose of the Law and Regulations or under any ruling given by the Commissioner.
2. Change from Corporate Trustee to Individual Trustee. Where the fund is a Small Fund, a simple majority of Members shall have the right to remove the Corporate Trustee and appoint two or more individual Trustees by notice given in writing, provided that any such appointed Individual Trustees are acceptable for the purpose of the Law and Regulations or under any ruling given by the Commissioner.
3. Trustees Deemed Appointed.
  - (i) Where, in order to comply with the Act, a Trustee is required to be appointed, or a person is required to become an officer of a Trustee, then that person shall as soon as practicable advise the existing trustee in writing of this fact and promptly sign all documents and do all things necessary to facilitate such appointment as a Trustee or officer.

- (ii) Should any delay occur in either the notification to the existing Trustee of the requirement to appoint such a person, or the completion of documents and actions to secure the appointment, then
- (a) The person appointed shall be deemed (for all purposes except those in clause C3.6) to have been appointed within a reasonable time (the determination of which shall fall to the existing Trustee at the time of appointment), and;
  - (b) The person appointed shall be deemed to have ratified as a Trustee or officer as the case may be, any decision taken by the existing Trustee(s) or officer(s) between the date of the deemed appointment and the date of actual appointment, and;
  - (c) The person appointed shall indemnify the existing Trustee(s) or officers against any loss or damage suffered as a result of delay in the appointment of that person no matter how such loss or damage was caused, and;
  - (d) The person appointed shall sign all documents and do all things necessary to secure such ratification and indemnity to the satisfaction of the existing Trustee or officers.

C3.4 Powers of Trustee. The Trustee shall, in its sole and absolute discretion, do all acts and things as it considers necessary or expedient for the proper administration, maintenance and preservation of the Fund and in the performance of its obligations under the Deed. Appropriate minutes shall be maintained by the Trustee to record its decisions, and any costs associated with any decision made by the Trustee shall be a proper expense of the Fund.

C3.5 Remuneration of Trustee. The Trustee is not entitled to receive remuneration from the Fund in respect of its office unless otherwise decided by the Principal.

C3.6 Indemnity of Trustee. Subject to the restrictions imposed under the Law and Regulations, the Trustee shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund from such indemnity.

C3.7 Small Fund becoming Representative Fund. Within 90 days of the Fund becoming a Representative Fund, the Members and Employers shall take such action as is necessary to ensure that a Corporate Trustee consisting of equal numbers of Member Representatives and Employer Representatives is appointed.

C3.8 Meetings of Members.

- (a) At the written request of not less than 50% of the current Members of the Fund and only for the purpose of either removing a Member Representative from the Trustee board and replacing that person with another Member Representative or filling a vacancy on the Board in respect of a Member Representative, the Trustee shall call a meeting of Members within 14 days of receipt of such written request. The Trustee shall provide written notice of such meeting to all Members of the Fund, such notice to include the time, date and place of the meeting. Notice of the meeting shall be given to all Members by delivery of the notice of meeting to the Principal. The Principal shall distribute notices to all current Members of the Fund.

- (b) A quorum for the meeting shall be 10 Members or 25% of the Members of the Fund whichever is the lesser. If a quorum is not present, the Trustee shall adjourn the meeting to the same time and place one week later. Notice of the adjourned meeting shall be given to all Members by delivery of the notice of meeting to the Principal. The Principal shall distribute notices to all current Members of the Fund.
- (c) If a quorum is present, a two-thirds majority of those Members in attendance may remove a Member Representative. A replacement Member Representative, including one to fill a vacancy, shall be appointed by the vote of a simple majority of those Members present at the same meeting.

#### C3.9 Liability of Trustees, Directors and Members.

- (a) Liabilities of Trustees and Directors. The Trustee and each Director of a Corporate Trustee will not be liable for any acts or omissions other than those that are:-
  - (i) dishonest; or
  - (ii) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a Trustee.
- (b) Members Liability. No Member (other than in their capacity as Trustee or Director of a Corporate Trustee) will be liable for any action taken or omitted in administering the Fund.
- (c) Trustee and Directors Indemnity. The Trustee, and each of the Directors of a Corporate Trustee, will be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Clause C3.9 (a)(i) and will have a lien on the Fund for this indemnity. The Trustee and the Directors of a Corporate Trustee will not be indemnified out of the Fund for any penalty imposed on them under the Law.

#### C4 APPOINTMENT TO OFFICES

- C4.1 Appointment of Actuary, Auditor and other Officers. The Trustee may appoint, and remove from office, any person (or any firm whose principals or employees can provide any of the appropriate services) to the following positions on such conditions as it determines: an Actuary; an Auditor; a solicitor; a secretary; and such other people as it considers desirable for the proper administration of the Fund. A covenant referred to in Clause C3.2 (v) does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.
- C4.2 Ability to Act. The Trustee shall be entitled to take and act on advice it requests from any person or firm and meet the relevant costs from the Fund, unless an Employer has undertaken to meet any such costs.



## C5 RECORDS AND FINANCIAL STATEMENTS

C5.1 Records and Accounts to be kept. The Trustee shall:

- (a) keep account of all moneys received and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into a bank or building society account in the name of the Fund, all moneys paid to the Fund;
- (c) keep appropriate records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments;
- (d) prepare after the end of each Fund Year a statement of financial position of the Fund as at the end of the said Fund Year, together with an operating statement for the same Fund Year and such accounts and statements as specified in the Regulations, and
- (e) keep such written records for the period specified under the Law and Regulations.

C5.2 Annual Accounts. Each statement of financial position and operating statement, as aforesaid, shall be audited annually or at other periods as permitted by the Commissioner.

C5.3 Copy of Deed and Financial Statements available to Members. A copy of the Deed and the latest annual statement of financial position and operating statement shall be made available on request for inspection by any Member or Beneficiary. Additional information shall be supplied to the Member at the Member's request in accordance with the Law and Regulations.

C5.4 Reporting to the Commissioner. The Trustee shall provide such written reports to the Commissioner in accordance with the Law or Regulations or as the Commissioner may require from time to time.

C5.5 Auditor. The Trustee will appoint an Auditor or a registered company Auditor (as required by Law) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the relevant requirements of the Act.

C5.6 Information to be Supplied. Information requested by the Trustee from an Employer, Member or Beneficiary to assist in the proper administration of the Fund shall be so given. The Trustee need not verify any information given as aforesaid. The Trustee may suspend Benefits in respect of a Member or Beneficiary if information is not given.

C5.7 Compliance with the Law. The Trustee will comply with reporting standards and will maintain all records required under the Law, including a statement of the financial position of the Fund and an operating statement (when required) for each financial year of the Fund. These accounts and statements must be signed by at least two Trustees or a Director.

## C6 INVESTMENTS

- C6.1 Investments Authorized. The Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes on an arms length basis in any investment of any kind which the Trustee in exercising its absolute discretion thinks fit, and without limiting the generality of the foregoing either directly or indirectly in:
- (i) any investments for the time being authorized by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
  - (ii) any Pooled Superannuation Trust;
  - (iii) any mortgage of or charge on freehold property;
  - (iv) on deposit or loan with any Employer, person, building society, company or other organization whatsoever;
  - (v) the purchase or acquisition of shares, fixed interest investments and options of any company or organization;
  - (vi) any mortgage of or charge on any personal or other property including assets of a wasting or depreciable nature;
  - (vii) any policy of insurance or Annuity contract and any choses in action, interest for life or any lesser terms or in reversion;
  - (viii) the purchase or acquisition of any real or personal property and the improvement or extension thereof;
  - (ix) the purchase or acquisition of any interests either jointly or in partnership or in any unit of interest including units or sub-units of any unit trust or mutual fund wheresoever situated;
  - (x) the discounting of loans, mortgages, contracts, hire purchase agreements or leases; or by direct lending in any of the same investments; and
  - (xi) any other investments which the Trustee could make if it was acting as an individual person and not as Trustee.
- C6.2 Terms and Conditions. Any investment may be made on such terms and conditions as decided by the Trustee in its absolute discretion, including the rate of interest payable and may be made with or without security.
- C6.3 Borrowing. The Trustee may borrow money only in terms of any conditions permitted by the Commissioner under the Law and the charging of any Fund assets to secure such borrowings shall only be made in the circumstances where it is necessary to obtain temporary finance for the payment of Benefits or other expenses. Interest payable on any such borrowings shall be a proper expense of the Fund.
- C6.4 Restrictions on Dealing with Members, Relatives and Associates.
- (a) The Trustee will not acquire assets from Members, from Relatives of Members or from Associates of Members except in the circumstances permitted by the Law.
  - (b) The Trustee will not lend any part of the money or assets of the Fund to Members or to Relatives of Members or give any financial assistance to Members or Relatives of Members except in the circumstances permitted by the Law.
  - (c) Loans to, or investments in, any Associate of any Member will be restricted to the amount permitted by the Law.

- C6.5 Particular Investments for Particular Members. The Trustee may hold particular investments solely for particular Members or categories of Members, and will identify those investments and the Member or category of Members for whom they are held, in the records of the Fund. The earnings on investments will be credited to the relevant accounts of the Members for whom particular investments are held, and income tax and expenses payable in respect of those investments will be debited to the relevant Members accounts.
- C6.6 Investment Strategy. From time to time, the Trustee will formulate and give effect to an investment strategy in accordance with the requirements of the Law.
- C6.7 Agreement with the Investment Manager. If the Trustee appoints or has appointed a company as an investment manager for the Fund or any part of it, the agreement with the investment manager will be in writing and contain provisions which will comply with the Law.
- C6.8 Charge over Assets. The Trustee will not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed by the Law.
- C6.9 Power to Sell and Vary Investments. The Trustee shall have power as it sees fit to sell any investments and to vary, transpose or encumber any investments into others authorized by the Deed.

## **C7 MEMBERSHIP**

### **C7.1 New Members**

(a) Application to Join the Fund. The Trustee shall notify in writing the existence of each Member's right to receive Benefits pursuant to the Rules and, unless otherwise determined by the applicant's Employer (if any), a person in applying to join the Fund shall:

- (i) make written application in the form from time to time required by the Trustee;
- (ii) provide a statement that he is in Gainful Employment or otherwise satisfies the Membership requirements of the Law or Regulations;
- (iii) not have attained the age of 65 years or such later age as permitted by the Commissioner;
- (iv) submit evidence of his age and any evidence of the state of his health required by the Trustee;
- (v) provide any other information reasonably required by the Trustee; and
- (vi) declare in writing that on acceptance of his application he shall be bound by the terms and conditions of the Deed.

(b) Admission of Applicants. The Trustee shall consider each application and in its absolute discretion may admit the applicant to the Fund. The Trustee may impose conditions on an applicant's admission and his rights and duties as a Member and may limit and impose conditions upon benefits as it sees fit. Where any person is admitted to the Fund and the benefits payable in any circumstances differ from those provided under the relevant provisions of the Deed, the Trustee shall advise him in writing to this effect.

C7.2 Transfers from another Fund. Where a person who has been admitted to the Fund was a Member of any other Superannuation arrangement or Approved Deposit Fund and there is paid to the Trustee for the credit of the Fund an amount from such previous Fund, the Trustee shall provide the Member with additional or accrued Benefits in such manner as it shall determine, provided that if the transfer occurs from a Fund which cannot pay Benefits prior to the Member's attainment of the Preservation Age that portion of the Benefit payable under this Deed arising from the aforesaid transfer, as determined by the Trustee shall not be payable to or in respect of a Member until his attainment of the Preservation Age (except in the event of death) unless written approval to the contrary is obtained from the Commissioner. Payment of any transferred Benefit shall be subject to the provisions of Clause C8.25.

## **C8 GENERAL PROVISIONS RELATING TO BENEFITS, CONTRIBUTIONS AND EXPENSES**

C8.1 Trustee to be advised. At the time of making Contributions, the Employer, or any other person contributing, will advise the Trustee of the Contribution in respect of each Member, and whether the Contributions are made:-

- (a) pursuant to an industrial award or agreement; and or
- (b) in lieu of the Employer paying the Superannuation guarantee charge pursuant to the Guarantee Act.

C8.2 Members Contributions Deducted from his Salary. Unless the Employer of the Member (if any) otherwise determines, any Contributions payable by a Member shall be deducted from his salary.

C8.3 No Inquiry. The Trustee may assume, without inquiry, that an Employer is authorised by the Member and by law to pay a Members Contribution by deducting the agreed amount from the Member's salary. Neither the Trustee nor the Fund will be liable in any case where that payment or deduction is not authorised by the Member or by law, even if the Trustee has notice of it.

C8.4 Benefits and Contributions when Special Leave is Taken. In the event of a Member taking special leave, the Trustee shall consult with his Employer regarding the payment of Contributions by and in respect of him during the said special leave and then shall advise the Member in writing of the conditions which will apply in respect of Benefits and Contributions both during and after the period of special leave.

C8.5 Expenses of Administration. All costs, charges and expenses incurred in the management and administration of the Fund, may be paid, by agreement between the Principal and the Trustee, by either the Employers, at the rates and in the proportions determined by the Trustee, or by the Fund.

C8.6 Member Transfer to another Fund. Where a Member joins or is eligible to join any other Superannuation arrangement approved for the purposes of the Law or an Approved Deposit Fund or a Fund providing an Annuity, the Trustee, with the approval of the Member and the Principal, may transfer to the Trustee of the other Fund or Approved Deposit Fund an amount determined by it and any Benefit entitlements under this Deed to the former Member or his Dependents shall cease, provided that such transfer meets the requirements of the Commissioner.

C8.7 Limitation on Benefits and Contributions.

(a) Benefits. Notwithstanding any other Clause or Rule of the Deed, the Trustee shall not pay out any Benefits to Members, the Dependants of Members or Beneficiaries where such payment would prevent the Fund from qualifying for concessional taxation status pursuant to provisions of the Law. Where a Benefit paid exceeds the maximum permitted under the Law and Regulations, any resultant additional tax ("the Non-Concessional tax liability") incurred by the Member in respect of the excessive Benefit shall be the responsibility of the Member and the Trustee shall have no liability to the Member in respect of the additional tax imposed. If there is an amount that is in excess of the non-concessional tax liability then the Trustee must obtain a release order from the commissioner.

(b) Contributions. The Trustee shall refuse to accept Contributions to the Fund by or in respect of any Member if the Member is, under 18 years or over 65 years and not Gainfully Employed, except as permitted by The Law or Regulations, or to the extent that Contributions are in respect of the minimum level required under the Superannuation Guarantee arrangements or except where the Contribution to the Fund is by or for the spouse of a Member.

(c) Cash. Any Contributions made by a Member or an Employer shall be made to the Trustee within the Fund Year in respect of which it is to be paid which Contributions shall be paid in cash or by transfer of an asset or assets provided that the assets transferred in respect of the Contribution must be authorised investments as specified herein and provided further that any such transfer of assets does not contravene the Law or Regulations.

(d) Beyond 65. Contributions may continue once the Member has attained the age of 65 provided that the Member is still Gainfully Employed and Contributions are made in accordance with the Law and Regulations and provided further that acceptance of the Contribution does not prevent the Fund from qualifying for concessional taxation status pursuant to the provisions of the Law. Contributions up to the minimum required under the Superannuation Guarantee arrangements may be made in respect of a Member who has attained the age of 70, where the Contribution relates to service prior to attaining age 70.

(e) Obligation to Contribute. In the absence of any agreement to the contrary neither a Member nor an Employer shall be under any obligation to contribute to the Fund in each Fund Year and the Member may remain a Member notwithstanding that a Contribution is not made in respect of that Member in any Fund Year.

(f) Retired Member Receiving a Pension. The Trustee shall refuse to accept Contributions from or in respect of a Member, if the Member is no longer Gainfully employed, except where the Member is being admitted to receive Benefits in the form of a Pension and the admission of the Member is in accordance with the Law and the Regulations as applicable to Pensions.

(g) Contribution Splitting. On receiving a complying authority and direction from a Member within the time limits required by law, the Trustee may allocate a contribution or contributions for an eligible period to a Spouse of the Member. The Spouse of the Member shall become a member of the fund if the allocation is to stay within the fund and the Spouse is not a Member already.

- C8.8 Excessive Benefits. If at any time, in the opinion of the Trustee, a Member's Benefit exceeds or would be likely to exceed any maximum reasonable benefit specified from time to time by Law, the Trustee, in its absolute discretion, may decline to accept any further Contributions for the Benefit of that Member. The Trustee shall be under no obligation to provide reasons relating to the exercise of this discretion.
- C8.9 Benefits Forfeited on Cessation of Membership. Where any Benefit paid to a Member on termination of membership is less than the full value of that Member's interest in the Fund, the amount of such excess shall be distributed between other Members within two (2) months after the end of the Fund Year on a basis determined by the Principal.
- C8.10 Additional Benefits. Where in respect of a Member, the Employer and/or the Member pays to the Fund an amount either as a capital sum or additional Contributions, the Trustee shall provide the Member with additional Benefits in such manner as it shall determine.
- C8.11 Limitation by Insurance Company. If in connection with any policy of insurance effected by the Trustee against death or Disablement, an insurance company refuses to insure or seeks to impose any limitations or special conditions in respect of a Member, then notwithstanding the Benefits payable pursuant to the Deed in respect of the aforesaid contingencies, the Trustee may impose limitations or special conditions on such Benefits.
- C8.12 Moneys owing to Fund or an Employer. Where a Member, at the time he ceases to be an Employee, owes any moneys to the Fund or to an Employer, the Trustee may deduct the said moneys from the Member's Benefit and pay them to the Fund or the Employer, as the case requires, except that no deduction may be made where the Benefit has vested in the Member or is required to be preserved in accordance with Clause C8.25.
- C8.13 Unclaimed Moneys. Where there are unclaimed moneys held on behalf of a Member after the Member has reached the Eligibility Age, the Trustee shall deal with those moneys in accordance with the Law and provide the necessary information to the Commissioner.
- C8.14 Rollover of Certain Benefits. If a Benefit is payable to a Member as described in Sub-Section 244(1) of the Superannuation Industry (Supervision) Act 1993, the Trustee may, in its sole and absolute discretion, after the applicable period of time, transfer the Benefit to an Eligible Rollover Fund.

If a Benefit is payable to a Member as described in Sub-Section 244(3) of the same Act, the Trustee shall transfer the Benefit to an Eligible Rollover Fund.

- C8.15 Forfeiture of Benefits. Any Member or Beneficiary:

- (i) who assigns or charges or attempts to assign or charge any Benefits;
- (ii) whose Benefits whether by his own act, operation of law or otherwise become payable to or vested in any other person or organization;
- (iii) who becomes bankrupt or insolvent;
- (iv) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs;

- (v) who, in the opinion of the Member's Employer (if any), commits any fraud or is guilty of dishonesty, defalcation or serious misconduct;
- (vi) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee during a period of five (5) years after a payment was last made to him by his Employer or by the Trustee;
- (vii) whose Membership has ceased and for whom any relevant Benefit has been paid, or
- (viii) who agrees in writing to forfeit all or part of his Benefit, provided that the amount forfeited does not include any of the minimum Benefit as defined in the Law or Regulations,

shall forfeit entitlement to all his remaining Benefits.

The Trustee may in its absolute discretion hold the forfeited Benefits upon trust and upon the termination of the Member's employment or gainful employment, pay them to the former Member or Beneficiary (as the case requires) and his Dependants or any one or more of them in such proportions between them and on such terms and at such times as the Trustee in its absolute discretion determines and, if in the sole opinion of the Trustee there is nobody rightfully entitled to receive the Benefit the money shall remain in the Fund for the Benefit of remaining Members. Alternatively, the Trustee may, in its absolute discretion, repay all or part of the forfeited Benefits to an Employer.

C8.16 Conditions Applicable to Pension Payments. If any Benefit under the Fund is payable in the form of a Pension the following Sub-Clauses shall apply:

(a) Accrual and Payment of Pensions. No Pension shall be payable for any day on which salary is payable to a Member, unless such Pension is a non-commutable allocated Pension, a non-commutable Account Based Pension, a non-commutable allocated annuity or a 'transition to retirement income stream', as defined by the Law. A Pension shall commence on the day following the event which gave rise to its payment. Pensions shall accrue from day-to-day.

(b) Termination of Pensions. A Pension terminating on the death of a Pensioner shall be payable up to and including the day of his death. A Pension terminating for any reason other than death shall not be payable on and from the day of the happening of the event which gave rise to its termination.

(c) Term Certain and Instalments. Pensions payable under the Deed can, with the approval of the Principal, include a payment for a term certain and shall be payable by instalments which may be equal or unequal, and on the dates the Trustee determines.

(d) Complying Pension. Where the Member elects to receive a Complying Pension, or after death the Trustee determines in its absolute discretion to pay a Pension, the terms and conditions applicable to that Pension, including the amount of the Pension, annual increases in the Pension, reversion to a spouse, term certain and residual amount shall be in accordance with the requirements of the Law and Regulations.

(e) Account Based or Allocated Pension. Where the Member has elected to receive an Allocated Pension or elects to receive an Account Based Pension, or after death the Trustee determines in its absolute discretion to pay a Pension, the terms and conditions applicable to that Pension, including the minimum and maximum amount of the Pension, reversion to a spouse, term certain and residual amount shall be in accordance with the requirements of the Law and the Regulations.

(f) Pension determined by the Commissioner to be Excessive. Where the Commissioner of Taxation has determined that a Pension being paid from the Fund is excessive, the Trustee shall comply with the request by the Commissioner of Taxation to alter the Pension and advise the Pensioner accordingly.

C8.17 Trustee may effect Annuity. Where a Benefit is paid or will at some time in the future become payable in the form of a Pension, the Trustee may effect an Annuity of such type as it decides with a life office or other body to replace part or all of the Pension entitlements payable under this Deed including any reversion to a surviving spouse. The terms and conditions of the Annuity and the residual Benefit, if any, under this Deed shall be decided by the Trustee in its sole and absolute discretion, subject to the provisions of the Law and Regulations.

C8.18 Payment to Others on behalf of Beneficiaries. When any Beneficiary is under the age of twenty-one (21) years or when in the Trustee's opinion it would be in the best interests of the Beneficiary, the Trustee may pay all or part of a Benefit to any other person for application on behalf of the Beneficiary and or to his Dependants and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit.

C8.19 Benefits Not Grounds for Increasing any Claim for Damages. The Benefits to which a Member might claim to be entitled under the Deed shall not be used as grounds for increasing or as a means of assessing damages in any claim made or action brought by a Member against an Employer.

C8.20 Deduction of Tax. The Trustee may deduct from any Contribution to the Fund, from any income earned by the Fund, from any capital gain realised in the Fund, from the capital applicable to the relevant Member or Members to whom the tax applies or from any payment out of the Fund any amount of income or other tax which it in its absolute discretion determines to be proper in relation to any law of the Commonwealth of Australia or of any State or Territory. In making this determination the Trustee may take into account any announcement made by a competent authority of intended laws or amendments to existing laws which on their enactment will impose a responsibility on the Trustee. Nothing in this Clause shall prejudice other rights which the Trustee may have in respect to income or other tax in relation to the Fund. The Trustee may in its sole and absolute discretion transfer any tax liability to a Pooled Superannuation Trust or to a Life Insurance company, subject to the requirements of the Law.

C8.21 Persons to whom Benefits are Payable and Receipt.

(a) Persons to whom Benefits are Payable. The Trustee shall pay Benefits as follows -

(i) Where the Benefit or Balance of the Benefit is Payable following the Member's Death:



[1] Where a valid notice under the Law, requiring the Trustee to provide any benefits in respect of the Member on or after the Member's death to a person or persons mentioned in the notice, has been provided by the Member, in accordance with that notice.

[2] Otherwise to the Member's Dependants in such proportion as decided by the Trustee in its absolute discretion or where there are no Dependants to the legal personal representatives of the Member.

(ii) In all other cases: to the Member.

(b) Receipt. Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in the form from time-to-time required by the Trustee.

C8.22 Payment to Employer. In the event that no Members remain in the Fund and that no former Members or Beneficiaries are entitled to any further payments from the Fund, but where the Fund still contains assets, the Trustee in its sole and absolute discretion shall pay the assets to such Employers as it decides.

C8.23 Payment of Benefits in Specie. The Trustee may, with the agreement of the Member or Beneficiary to whom a Benefit is payable, transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable under the provisions of this Deed.

C8.24 Payment of Benefits Deferred. Subject to the requirements of the Law, on the termination of the employment of a Member, the Trustee may, with the agreement of the Member, hold any Benefits upon trust in the Fund for such period as agreed between the Member and Trustee and during such period the Trustee shall increase the Benefits with interest at the Net Earning Rate of the Fund.

C8.25 Preservation of Benefits. Notwithstanding any other Clause of the Deed no Benefit shall be paid from the Fund prior to the Preservation Age except in any situation permitted by the Commissioner. Where the Member has reached the Preservation Age, no Benefit may be paid to the Member unless the Trustee is satisfied the Member has ceased to be Gainfully Employed, except in any situation permitted by the Commissioner.

C8.26 Statements to Members.

(a) As soon as practicable after the admission of a person as a Member of the Fund, the Trustee shall give to such Member a written statement containing such details as the Commissioner shall require.

(b) The Trustee shall provide to Members and former Members of the Fund in writing such information in relation to the conduct of the Fund, Contributions made to the Fund and Benefits payable from the Fund as shall be required by the Commissioner or the Law from time to time.

C8.27 Trustees Reporting Obligations. Where required under the Law or Regulations or the Income Tax Act, the Trustee shall supply full details of the Fund and its transactions as required, to the Australian Taxation Office, in such form and content and within such time as required by the Commissioner of Taxation.

C8.28 Timing of Benefit Payments. Benefits shall be paid to Members or on their behalf as soon as practicable after the event which gave rise to the Benefit payment. A Member who is still in gainful employment at Normal Retirement Age, if the Law permits, may request payment of his Benefit at or after his 65th birthday. The Trustee shall pay the required Benefit as soon as practicable.

C8.29 Indefinite Accumulation. A member may maintain their Superannuation and remain in accumulation for an indefinite period of time.

## **C9 ADMISSION OF PARTICIPATING EMPLOYERS**

C9.1 Admission as Participating Employer. The Trustee, as directed by the Principal, shall admit an Employer as a Participating Employer provided that such Employer first covenants with the Principal and Trustee to be bound by the provisions of this Deed and the Rules attached hereto in the same manner as if it had been a party hereto.

## **C10 REPLACEMENT OF PRINCIPAL**

C10.1 Replacement Of Principal.

- (a) Where the Principal is an individual and that individual has ceased to be a Member, a simple majority of Members shall have the right to appoint another individual, who must also be a Member, as the Principal.
- (b) Where the Principal is an Employer, a simple majority of Members shall have the right to remove that Employer as the Principal and appoint either another Employer, who must not have permanently ceased to make Contributions to the Fund, or an individual, who must also be a Member, as the Principal.
- (c) Where the Principal is an Employer and that Employer has permanently ceased to make Contributions to the Fund, a simple majority of Members shall have the right to appoint an individual, who must also be a Member, as the Principal.

## **C11 DISCONTINUANCE OF CONTRIBUTIONS AND WINDING-UP**

C11.1 Discontinuance of Contributions. An Employer or a Member may discontinue payment of Contributions subject to its having given the Trustee one (1) month's notice in writing of its intention so to do. Any Member, for whom no Contributions have been paid by an Employer for the preceding twelve (12) months, may discontinue payment of Member Contributions, subject to his having given the Trustee one (1) month's notice in writing of his intention so to do.

Thereupon the Benefit in respect of each Member and Beneficiary shall be determined by the Trustee in its sole and absolute discretion and shall, in respect of Members be held under the trusts of the Deed until the Member leaves the service of the Employer or ceases all gainful employment, whereupon the Benefit as aforesaid shall be paid to or in respect of the Member pursuant to the terms of the Deed.

C11.2 Winding Up. The Trustee may elect to wind up the Fund if there are no Members remaining in the Fund, or if the Trustee determines for any reason that the Fund should be wound up, or if the Commissioner requires the Fund to be wound up. Where the Trustee determines that the Fund is to be wound up, the Fund shall be wound up and the Benefit payable in respect of each Member or Beneficiary shall be determined by the Trustee in its sole and absolute discretion and thereupon be paid or applied in such manner as the Trustee may determine in respect of each person in complete discharge of the obligations of the Trustee and any Employer hereunder.

## C12 ALTERATIONS

C12.1 Alterations. The Trustee shall have the power from time-to-time by resolution in writing or Deed, to add to, amend, alter, modify, rescind or vary (hereinafter called "Variation") any of the provisions of this Deed provided however that any such Variation shall not, without the respective Member's consent affect the accrued Benefit entitlements of any Member, as at the date of such Variation. Any Variation so made shall be deemed to have the same affect as if it had been contained in this Deed. Written notice of such a Variation shall be given to Members as required under the Law and Regulations.

C12.2 Alterations (Rules). The Trustee shall have the power from time-to-time by notice in writing to Members, to add to, amend, alter, modify, rescind or vary (hereinafter called "Variation"), any Rules pursuant to this Deed, which Rules are not inconsistent with the provisions of this Deed provided however that any such Variation shall not, without the respective Member's consent affect the accrued Benefit entitlements of any Member, as at the date of such Variation. Any Variation so made shall be deemed to have the same affect as if it had been contained in this Deed.

- RULES GENERAL -

CONTRIBUTIONS

R1.1 (a) Contributions Payable by Members. Contributions payable by a Member, if any, shall be determined by the Member in consultation with the Trustee from time-to-time.

(b) Contributions Payable by Employer. The Employer shall contribute to the Fund in respect of each Employee who is a Member, such Contribution (which may vary both between Members and from year to year) being determined by the Employer either as a percentage of Salary or as a specific dollar amount, and may if required be in accordance with the amount applicable for funding the cost of maximum lump sum or Pension Benefits under the Income Tax Law or under any ruling issued by the Commissioner of Taxation.

BENEFITS

R1.2 Benefit on Total & Permanent Disablement. In the event of a Member being totally & Permanently Disabled, as defined under the Law, and not being entitled to a Benefit pursuant to Rule RA1 or Rule RB1, the Trustee shall determine a Benefit, to or in respect of a Member, in accordance with Rule R1.6 and shall preserve such Benefit in accordance with the terms of Clause C8.24 and Clause C8.25 except to the extent that the Regulations allow payment of the Benefits to the Member, provided that the Trustee may transfer such Benefit to another approved Superannuation Fund or an Approved Deposit Fund or an approved Trustee of an Annuity for the Benefit of the Member. The Benefit shall be a lump sum.

R1.3 Benefit on Death. In the event of the death of a Member, and there being no entitlement to a Benefit pursuant to Rule RA1 or Rule RB1, the Trustee shall determine a Benefit in respect of the Member, determined in accordance with Rule R1.6 and shall pay such Benefit in accordance with the terms of Clause C8.21 (a). The Benefit shall be paid in accordance with Clause C8 and its Sub-Clauses.

R1.3A Payment of Benefits on Death to Personal Representative or Dependants. Where a Member has made a valid and current nomination that complies with the Law, the Trustee shall comply with the distribution specified by the nomination.

If a Member has made a nomination that does not comply with the Law, then the Trustee may pay the Benefit payable from the Fund upon the death of the Member as directed in the nomination. If the nomination provides more than one nominated Dependant but does not specify a proportion of distribution, then the Trustee may distribute the Benefit to the nominated Dependants, in the proportion that the Trustee, in its absolute discretion, thinks fit.

If a Member has not made a nomination, then the Trustee may distribute the Benefit to the Members Dependants or to the Members legal personal representative, in the proportion that the Trustee, in its absolute discretion, thinks fit.

R1.4 Payment of Unrestricted Unpreserved Benefit. Notwithstanding any other Clause or Rules within this Deed, where a Member is entitled to an Unrestricted Unpreserved Benefit (as defined in the Regulations to the Superannuation Industry (Supervision) Act 1993), the Member may, with the Trustee's consent, withdraw all or part of that Unrestricted Unpreserved Benefit at any time. The Benefit will be paid as requested by the Member.

R1.5 Benefit in Other Circumstances. In the event of a Member ceasing to be an Employee and/or a Member (as the case requires), and not being entitled to a Benefit pursuant to Rule R1.2, Rule 1.3, Rule 1.4, Rule RA1 or Rule RB1, the Trustee shall determine a Benefit, to or in respect of a Member, calculated as a lump sum in accordance with Rule R1.6 and shall preserve such Benefit in accordance with the terms of Clause C8.24 and Clause C8.25 except to the extent that the Regulations allow payment of the Benefit to the Member, provided that the Trustee may transfer such Benefit to another approved Superannuation Fund or an Approved Deposit Fund or an approved Trustee of an Annuity for the Benefit of the Member.

R1.6 Calculation of Benefit under Rules R1.2, R1.3 and R1.5. For the purpose of Rules R1.2, R1.3 and R1.5, the value of the Benefit shall be determined as the sum of (i) and (ii) hereof where:

- (i) is the Member's Accumulated Contribution; and
- (ii) is the Employer's Sub-Account maintained pursuant to Rule R1.8.

all relevant calculations being determined as at the date on which the Benefit is to be paid.

R1.7 Death and Disablement Benefits where covered by Insurance. At the direction of an Employer in respect of an Employee of the Employer who is a Member or at the direction of the Member in other cases, the Trustee may insure one or more Members for Benefits to be payable on the death or Disablement of the relevant Member or Members. Where the Trustee has effected such death and/or Disablement insurance, the amount payable in the event of a Member's death or Disablement shall be a lump sum, paid as a Pension under Clause C8.16, or income payment equal to the claim paid under such policy plus the balance of the Member's Individual Account maintained pursuant to Rule R1.8. If these monies are paid as a Pension, they may be combined with other Pension monies.

R1.8 Individual Accounts. The Trustee shall establish an Individual Account in respect of each Member which shall be equal to the sum of the Member's Sub-Account and the Employer's Sub-Account where:-

- (a) the Member's Sub-Account is the same as the Member's Accumulated Contributions as defined; and
- (b) the Employer's Sub-Account is equal to:
  - (i) All payments made by or attributable to the Employer in respect of the Member; plus
  - (ii) Interest earned on the Member's Individual Account at a rate determined by the Trustee as being applicable to that Account (after taking into account interest credited to the Member's Sub-Account).

R1.9 Forfeited Benefits. Where a Member's employment and membership of the Fund is terminated for any reason and the full balance of his Individual Account is not paid or payable to him as a Benefit on leaving service nor payable to any other Beneficiary, the balance of the Account, subject to Rule R1.10 (d), shall be referred to as a Forfeited Benefit. All such Forfeited Benefits arising during the course of a Fund Year shall be distributed in accordance with Clause C8.9.

R1.10 Payments to and from Individual Accounts.

- (a) The amount of interest credited to a Member's Individual Account pursuant to Rule R1.8 (b) shall be determined by the Trustee at the end of each Fund Year and shall be allocated to the Individual Account on a basis determined by the Trustee.

In the event of the Fund depreciating in value the Trustee shall be entitled to debit the depreciation to the Individual Account of Members in such manner as it shall determine.

- (b) A Member's Individual Account shall be debited with any Benefit payments made to or in respect of the Member or former Member and, if the Principal directs, be debited with the cost of any insurance cover provided through the Fund and/or any expenses incurred in the administration of the Fund.

Debits against the Member's Individual Account shall be made as follows:

Benefit payments: from the Member's Sub-Account,  
Any insurance and expense payments: from the Employer's Sub-Account;

provided that when the respective Sub-Accounts are insufficient to meet the debit, the balance of the debit shall be made against the other Sub-account.

- (c) The Trustee, unless otherwise directed by the Principal, shall not pay any Benefit or instalment thereof if the payment would exceed the balance of the Member's Individual Account. In the event of this proviso having effect, a final payment will be made pursuant to the following sub-Rule.
- (d) Where any residual amount remains in a Member's Individual Account after all Benefit payments have been made to or in respect of a former Member and the Trustee determines that such residual amount will not form part of the Forfeited Benefits under Rule R1.9, the balance of such Account may be paid to the former Member, his spouse, other Dependants or legal personal representatives as the Trustee shall determine and the former Member and his Dependants shall cease to have any financial interest in the Fund whatsoever.

\*\*\*\*\*

- RULES A -

These Rules are applicable where the Trustee of the Fund is one or more individuals.

RA1 Benefit at or after Attainment of the Eligibility Age. The Trustee shall pay a Benefit to a Member on his ceasing to be an Employee and a Member at or after the Eligibility Age.

The Benefit, subject to the provisions of the Deed and to Rule R1.7, shall be an Old-Age Pension based on the balance of the Member's Individual Account maintained pursuant to Rule R1.8 provided that the Member has reached the Eligibility Age. The Member shall have the choice of receiving the Benefit as a Complying Pension, a complying Annuity or an Account Based Pension. The Pensions may be paid from the Fund and the Annuity may be purchased from a Life Office or other registered organization at the Member's choice but in respect of Pensions paid from the Fund, only with the agreement of the Trustee.

The amount of the Pension and the conditions on which it will be payable shall be determined by the Trustee in consultation with the Member and based on the restrictions imposed by the Law and Regulations. Where the Trustee determines it is necessary, the advice of an Actuary will be sought in relation to the amount of the Pension and the conditions under which it will be payable.

RA2 Pension Benefit Converted to Lump Sum. A Pension Benefit payable under this part of the Rules may be commuted to a Lump Sum, any such commutation being at the absolute and sole discretion of the Member who is entitled to the Pension Benefit.

RA3 Non-Commutable Benefit at or after Eligibility Age Prior To Retirement. The Trustee shall pay a non-commutable benefit to a member upon his attainment of eligibility age prior to retirement in accordance with the Law. The Member may cease the non-commutable benefit prior to retirement and roll the benefit back into the fund. In the event that the member retires while receiving the said non-commutable benefit, the benefit may be dealt with in accordance with RA1 and RA2 herein.

\*\*\*\*\*

**- RULES B -**

These Rules are applicable where the Fund has a Corporate Trustee.

- RB1 Benefit at or after attainment of the Normal Retirement Age. The Trustee shall pay a benefit to a Member on his ceasing to be an Employee and a Member at or after the Normal Retirement Age.

The Benefit, subject to the provisions of the Deed and to Rule R1.7, shall be a lump sum based on the balance of the Member's Individual Account maintained pursuant to Rule R1.8, provided that the Member has reached the Normal Retirement Age.

- RB2 Lump Sum Benefit Converted to a Pension. A Lump Sum Benefit payable under this part of the Rules may be converted to a Pension, any such conversion being at the absolute and sole discretion of the Member who is entitled to the Lump Sum Benefit. The Member shall have the choice of receiving the Benefit as a Complying Pension, a complying Annuity or an Account Based Pension. The Pensions may be paid from the Fund and the Annuity may be purchased from a Life Office or other registered organization at the Member's choice but in respect of Pensions paid from the Fund, only with the agreement of the Trustee.

The amount of the Pension and the conditions on which it will be payable shall be determined by the Trustee in consultation with the Member and based on the restrictions imposed by the Law and Regulations. Where the Trustee determines it is necessary, the advice of an Actuary will be sought in relation to the amount of the Pension and the conditions under which it will be payable.

- RB3 Non-Commutable Benefit at or after Eligibility Age Prior To Retirement. The Trustee shall pay a non-commutable benefit to a member upon his attainment of eligibility age prior to retirement in accordance with the Law. The Member may cease the non-commutable benefit prior to retirement and roll the benefit back into the fund. In the event that the member retires while receiving the said non-commutable benefit, the benefit may be dealt with in accordance with RB1 and RB2 herein.

\*\*\*\*\*

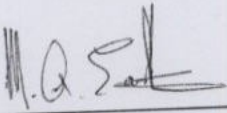


IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and date first hereinbefore appearing.

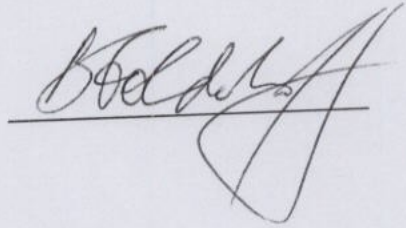
SIGNED SEALED AND DELIVERED

by the said  
BRUCE DAVID GOLDSHAFT

in the presence of



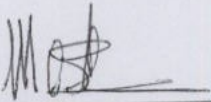
Witness

)  
)  
)  
)  
)  
)  
)  


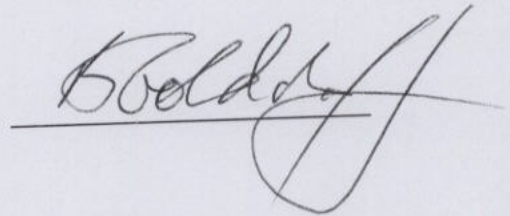
SIGNED SEALED AND DELIVERED

by the said  
BRUCE DAVID GOLDSHAFT

in the presence of



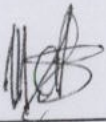
Witness

)  
)  
)  
)  
)  
)  
)  


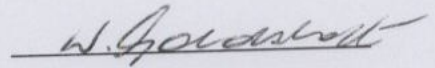
SIGNED SEALED AND DELIVERED

by the said  
WENDY GOLDSHAFT

in the presence of



Witness

)  
)  
)  
)  
)  
)  
)  


This deed of variation for

Bruwen Superannuation Fund

was prepared on the  
instructions of  
Proven Superannuation Fund  
Management Pty. Ltd.

for

Bruce David GOLDSHAFT  
and Wendy GOLDSHAFT

by

Bennett Carroll Solicitors  
33 Sanders Street  
UPPER MT. GRAVATT