

GERARD DAVIES and JANICE GRAY DAVIES
("Members")

- and -

G J DAVIES PTY LIMITED
(ACN: 000 634 079)
("Trustee")

- establishing the -

THE DAVIES SUPERANNUATION FUND

Prepared by:
Anthony Foate
Catalyst Partners Commercial Lawyers (N'cle)
PO Box 438
KOTARA NSW 2289

THIS DEED IS MADE ON 01 MAY

2002

PARTIES

1. **GERARD DAVIES** of 3/48 Morgan Street, Merewether in the State of New South Wales and **JANICE GRAY DAVIES** of 23/55 Shortland Esplanade, Newcastle in the State of New South Wales (the "Initial Members"); and
2. **G J DAVIES PTY LIMITED (ACN: 000 634 079)** of C/- Level 1, 25 Watt Street, Newcastle in the State of New South Wales (the "Trustee");

RECTIALS

- A. The Trustees have agreed to act as trustee of **THE DAVIES SUPERANNUATION FUND** (the "Fund");
- B. The Initial Members are eligible to be members of Complying Superannuation Funds under the Superannuation Industry (Supervision) Act 1993;
- C. The Initial Members are the initial members of the Fund.

OPERATIVE PROVISIONS

1. The Trustee consents to act as trustee of the fund;
2. The commencement date for the Fund is the date of this deed;
3. The rules, attached as Annexure "A", have effect as if set out in the operative part of this deed;
4. If this deed is amended by substituting the attached rules then the substituted rules have effect as if set out in the operative part of this deed;
5. This deed is governed by the laws of New South Wales.

EXECUTED AS A DEED

SIGNED SEALED and DELIVERED
 by **GERARD DAVIES**
 in his capacity as Initial Member in the
 presence of:


)
)
)
)



M. Hogg. J.P.
 Witness

SIGNED SEALED and DELIVERED
 by **JANICE GRAY DAVIES**
 in her capacity as Initial Member in the
 presence of:

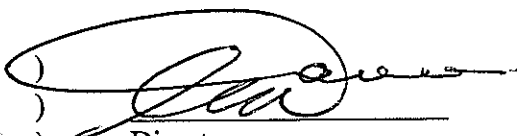
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M. Hogg. J.P.
 Witness

SIGNED SEALED and DELIVERED
 by **G J DAVIES PTY**
LIMITED in accordance with section 127
 of the Corporations Act in the presence of:

)
)
)



Director

Janice Davies
 Director/Secretary

M. Hogg. J.P.
 Witness



ANNEXURE "A"

RULES

1. THE FUND

1.1 Trustee to be a constitutional corporation or be a pension fund

- (a) The Trustee shall be a Constitutional Corporation within the meaning of the Act and Regulations; or
- (b) The primary purpose of the fund shall be for the provision of old-age pensions.

1.2 Objects of the Fund

The Trustee shall maintain the Fund solely for the provision of benefits to Members for any purpose permitted by the Act and Regulations as the Trustee may approve.

2. INTERPRETATION

2.1 Words not defined in this rule

Any word or expression in the Deed or these Rules which is not defined in Rule 3, but for which a definition appears in the Act and Regulations and/or the Tax Act, has, if the context requires, the meaning imposed by the Act and Regulations, and/or the Tax Act as the context requires.

2.2 Acts Interpretation Act

The Acts Interpretation Act 1987 (NSW) applies to the interpretation of the provisions of the Deed and these Rules.

2.3 One Member Funds

If there is only one Member these rules are deemed to be amended by:

- (a) deleting Rule 18;
- (b) replacing any reference to more than one Member with a reference to one Member;
- (c) replacing any reference to a Pension Account with a reference to a Contributions Account;
- (d) replacing any reference to a Sub Fund with a reference to the Fund;
- (e) requiring the addition of a natural person that is Linked to the Member to be an additional Trustee.

3. DEFINITIONS

In these Rules, unless the context otherwise requires:

"Accumulated Contributions" means the balance in a Member's Contribution Account at any time after all income of the Fund has been distributed and the Fund re-valued;

"Act" means the Superannuation Industry (Supervision) Act 1993 as amended or replaced from time to time;

"APRA" means the Australian Prudential Regulation Authority and any other governmental authority responsible for supervising Superannuation Funds and determining the availability of income tax concessions to Superannuation Funds

"Complying Superannuation Fund" means a superannuation fund, which satisfies the requirements of the Act and Regulations for complying superannuation funds;

"Contributions Account" means the account set up for each Member under Rule 14;

"Deed" means the deed to which these Rules are attached;

"Dependant" means the spouse and the children (including posthumous children) of a Member and all persons who are, in the opinion of the Trustee at the relevant time dependant in whole or in part upon the Member for their maintenance and support;

"Eligible Person" means any person in respect of whom the Trustee may accept contributions or transfers or rollovers of money or other property under the Act and Regulations;

"Financial Year" means a period of twelve months ending on 30 June each year or such other period of twelve months as the Trustee will determine;

"Fund" means the Fund established by this Deed. Unless the context otherwise requires, "Fund" also includes "Sub-Fund";

"Institutional Fund" means a Public Offer Superannuation Fund within the meaning in the Act and Regulations;

"Linked" means, in relation to a Member, a person defined as being linked to a Member in the Act and Regulations;

"Member" means an Eligible Person who has been accepted as a Member of the Fund and is either an initial Member named in the Deed or has been admitted to Membership subsequently;

"Member Resolution" means a decision of the majority of Members, recorded in writing and signed by the majority of Members;

"Membership Application" means that application attached to these rules as Annexure A.

"Pension" means a pension payable under Rule 19 of these Rules;

"Pension Account" means the account established in accordance with Rule 18 of these Rules;

"Policy" means any policy of insurance or assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that benefits will be payable to the Trustee on the death or disablement of a Member;

"Regulations" means the regulations under the Superannuation Industry (Supervision) Act 1993 as amended or any statutory replacement and, unless the context otherwise requires, includes any requirements lawfully imposed by any competent authority which must be satisfied for the Fund to qualify for income tax concessions;

"Reserve Account" means an account set up under Rule 14;

"Rollover Fund" means a Complying Superannuation Fund, an Approved Deposit Fund and any other fund approved under the Act and Regulations for the purpose of holding money or property for Members, or former Members, of Complying Superannuation Funds on a tax concessional basis.

"Sub-Fund" means a Sub Fund created under Rules 10 and 18;

"Tax Act" means the Income Tax Assessment Act 1936 and any regulations thereto as amended or replaced from time to time;

"Taxation" includes, income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member, 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, goods and services tax and any 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;

"Trustee" means the Trustee named in the Deed and any subsequent trustee of the Fund

4. TRUSTEE'S DUTIES

- 4.1 The Trustee must comply with the duties and obligations imposed on the trustees of Complying Superannuation Funds by the Act and Regulations. In the event of an inconsistency between the duties and obligations imposed by the Deed and

these Rules, and the Act and Regulations, the Trustee must comply with the requirements of the Act and Regulations.

5. THE TRUSTEE

5.1 Members to be Trustees

Members must either be individual Trustees of the Fund or, if the Trustee of the Fund is a Constitutional Corporation, the Members must be Directors of that Constitutional Corporation.

5.2 Trustee ceases to be Member

All Members being individual Trustees or being a Director of a Constitutional Corporation acting as Trustee of the Fund will ipso facto upon ceasing to be a Member also cease to be a Trustee or a Director of the Constitutional Corporation as the context requires.

5.3 If Member ceases to be a Trustee

In the event that a Member does not consent to accepting the position of Trustee (in their personal capacity) or a Directorship (should the Trustee be a Constitutional Corporation), or resigns or ceases being a Trustee, then any amount standing to the credit of that Member's Contributions Account shall be transferred out of this Fund to an Institutional Fund in accordance with the mechanism outlined in Rule 22.3.

5.4 Additional Trustees

Subject to Rules 5.1 and 5.2, Members may at any time by a Members Resolution remove and appoint Trustees.

6. TRUSTEE POWERS

6.1 Trustee's Powers of Investment

The Trustee may invest, realise and reinvest the assets of the Fund as though the assets were beneficially owned by the Trustee, and where the Trustee is a Constitutional Corporation, as though the Trustee were a natural person and the assets were beneficially owned by it.

6.2 Trustee's General Powers

The Trustee may exercise all the powers, authorities and discretions conferred by law including, but not limited to, those set out hereunder, that is, to:

- (a) conduct and defend any legal proceedings by or against the Fund or otherwise concerning the affairs of the Fund.
- (b) compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund.
- (c) refer any claims or demands by or against the Fund to arbitration and observe and perform the awards.
- (d) make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund.
- (e) open bank accounts and to retain on current or deposit account at any banks such moneys as it considers proper. In the event that there are two or more trustees who are natural persons, then the trustees may operate any such bank accounts jointly or severally.
- (f) insure Members against death and/or disability and to insure the assets of the Fund.
- (g) insure the Trustee against liability of any type in the administration of the Fund but only in accordance with the Act and Regulations.
- (h) insure the Trustee, and to insure the Fund against claims by the Trustee, under the indemnities provided in Rule 7.
- (i) borrow money.
- (j) engage or appoint auditors and such independent advisers as may be necessary being actuaries, accountants, solicitors, fund managers, licensed investment advisers or otherwise as the Trustee thinks fit.
- (k) pay out of the Fund any income tax, goods and services tax, capital gains tax, stamp duty or other tax payable by the Trustee under any law, including any taxes or duties on payment of benefits (whether as money or by transfer of property) to Members or former Members or their dependants or legal personal representatives.
- (l) enter into commercial lease agreements and commercial hire purchase agreements for the lease and hire and purchase of any form of property.

6.3

Trustee Benefits

The Trustee must receive no remuneration from the Fund for acting as Trustee of the Fund.

7. TRUSTEES INDEMNITY

The Trustee, and each of the Directors of a Constitutional Corporation acting in the capacity as Trustee of the Fund, is entitled to be indemnified out of the Fund in respect of any liability incurred while acting as Trustee of the Fund.

8. ADMISSION OF MEMBERS

8.1 Admission of Members

Any person may apply in writing to the Trustee for Membership of the Fund by completing the Membership Application form attached to these rules as Annexure "A".

8.2 Trustee to approve applications from Eligible Persons

The Trustee shall only accept applications for consideration if a person can demonstrate to the Trustee that they satisfy the requirements of being an Eligible Person.

8.3 Trustee may accept or refuse application

The Trustee may accept or refuse any Membership Application without giving any reasons for any such refusal. If the Fund has four Members, the Trustee must refuse any further Membership Applications.

8.4 Date of Membership

A person becomes a Member of the Fund from the date the Membership Application is approved by the Trustee.

8.5 Members bound to terms of Deed

By virtue of their submission of a Membership Application, each member is deemed to consent to be bound to the provisions of the Deed and these Rules

9. WITHDRAWAL OF MEMBERS

9.1 A person ceases to be a Member on the first to happen of:

- (a) the Member's Death; or
- (b) the Member has been paid all to which he is entitled to under this Deed and these Rules: or
- (c) the Member has no Accumulated Contributions.

10. FUND STRUCTURE

10.1 Creation of Sub-Funds

The Trustee may, create a Sub-Fund for each Member comprising property equal in value to the Member's Contributions Account.

10.2 Maintenance of Sub-Funds

The Trustee must maintain the property in each Sub-Fund as a separate investment portfolio and account for each Sub-Fund separately in the books of the Fund.

10.3 Interest in Sub-Fund

Only the Member or Members in respect of whom a Sub-Fund is created have any interest in any of the assets that comprise the balance of that Sub-Fund.

10.4 Creation of one Sub-Fund

The Trustee may, instead of creating a separate Sub-Fund for each Member, create one Sub-Fund for the benefit of two or more Members or one Fund for the benefit of all Members.

11. CONTRIBUTIONS BY MEMBERS

11.1 Amount of Contributions

A Member may contribute to the Fund at such rate as they determines but must not make any contribution that would result in the Fund ceasing to be a Complying Superannuation Fund.

11.2 Contributions by Eligible Persons

Any Member who ceases to be an Eligible Person must not make any further contributions to the Fund until the Member again becomes an Eligible Person.

11.3 Eligible Member requirement

The Trustee must not accept contributions in respect of a Member who ceases to be an Eligible Person until the Member again becomes an Eligible Person.

12. OTHER CONTRIBUTIONS

12.1 Application to make Contributions on behalf of Member

The Trustee may, upon application in a form to the effect of the form attached as Annexure "B", accept contributions of money or other property in respect of a Member from any source from which Trustees of Complying Superannuation Funds may accept contributions.

13. THE FUND

The assets of the Fund will consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of the Deed and these rules.

14. MEMBER'S ACCOUNTS

(a) Credits to Accounts

All money and property received by the Trustee which must, under the Act and Regulations, be paid to a Member on retirement, or to his Dependants in the event of death, must be credited to a Contributions Account in the name of that Member.

(b) Credits of Property

Any other money and property received by the Trustee may be credited either to the Contributions Account of the Member to whom it relates, or, with that Member's written or oral consent, to one or more Reserve Accounts.

(c) Use of Reserve Account

The Trustee may use a Reserve Account for the benefit of Members and must act fairly with respect to the use of such Reserve Accounts as between each Member. The Trustee may, subject to the Act and Regulations, act on any written or oral direction by Members in relation to such an accounts.

15. LIFE INSURANCE

15.1 Trustee may insure Member

The Trustee may take out a Policy in respect of a Member on such terms and on such conditions as the Trustee sees fit.

16. ENTITLEMENT TO BENEFITS

16.1 Trustee to pay benefit

The Trustee shall pay each Member a benefit equal to his Accumulated Contributions upon a request being made by the Member. A Member may request payment of the balance of all his Accumulated Contributions or any part thereof.

16.2 Time for Payment

The Trustee must pay the Member a benefit equal to the balance of the Member's Accumulated Contributions or part thereof upon such a request being made by a Member.

16.3 Member's election

The Member may elect to receive any benefit payable under this Rule in any form.

16.4 Transfer to Reserve Account

The Trustee may, with the Member's written or oral consent, transfer from a Member's Contribution Account to a Reserve Account any amount, which, under the Act and Regulations, need not be paid to a Member on retirement, or to his Dependants in the event of death.

16.5 Transfer of Assets

The Trustee may with the consent of the Member, transfer any assets out of the Fund to the Member instead of paying money. The Trustee must take all reasonable steps to properly value the assets appropriated under this Rule but need not obtain the consent of any Member except the recipient. Any charge for Taxation payable by the Trustee in relation to the transfer may be charged against the Member's Accumulated Contributions.

16.6 Death of Member

Should a Member die before payment of the balance of his Accumulated Contributions, the Trustee must deal with the balance of his Accumulated Contributions under Rule 17.

17. MEMBER'S DEATH BEFORE PAYMENT

17.1 Trustee to transfer

On the death of a Member the Trustee must pay or transfer that Member's Accumulated Contributions to the person entitled under this Rule.

17.2 Member may nominate in Will

Each Member may in his or her Will nominate those of his Dependants entitled to the balance of his Accumulated Contributions.

17.3 Trustee to pay

If a Member does not exercise the power in paragraph 17.2 then the Trustee must pay that Member's Accumulated Contributions to the legal personal representative of that Member.

17.4 Types of Pensions

Benefits payable under this Rule may be paid as any form of Pension under Rule 19 unless the person entitled elects to be paid a lump sum. The Trustee must create a Sub-Fund and Pension Account for each person entitled to a Pension under this Rule and act in relation to that person and that person's entitlement as if, in relation to the payment of a Pension, the person is a Member.

17.5 Other Matters

Notwithstanding this Rule, the Trustee may, with the consent of the people entitled under this Rule, transfer from a Member's Accumulated Contributions to a Reserve Account any amounts that, under the Act and Regulations, do not have to be paid to a Member's dependants on his death.

18. PROCEDURE BEFORE PAYMENT OF A BENEFIT

18.1 Relevant date for Benefit Payment

In this Rule "Relevant Date" means the date of demand for payment of a benefit or the date on which a Benefit becomes payable under Rule 16 or 17.

18.2 Trustee to take steps

Upon each Relevant Date the Trustee must take all steps in this Rule.

18.3 Calculation of amounts

The Trustee must calculate and distribute any undistributed income to the Contributions Account of the Members in proportion to the credit balances in those accounts, or by such other method, as the Trustee reasonably considers fair.

18.4 Trustee to value assets

The Trustee must, by such method as it may choose, value all the assets in the Fund. The Trustee must credit any increase in value, or debit any decrease, to each Member's Contributions Account in proportion to the credit balances in those accounts or by such other method as the Trustee reasonably considers fair or, if allowed under Rule 14, by credit or debit to a Reserve Account.

18.5 Accumulation account of Pensioner

The balance in the Contributions Account of a Member electing to receive a Pension under Rule 19 must, after the Trustee has complied with the preceding paragraphs of this Rule, be transferred to a Pension Account in that

Member's name. If the Member has demanded payment of part of his entitlement under paragraph 16 then the Trustee must transfer only the part demanded in the form of a Pension to the Member's Pension Account.

18.6 Trustee to create Sub-Fund

The Trustee must, if not already created, create a separate Sub-Fund for the benefit of each Member entitled to a Pension, or the benefit of two or more Members entitled to a Pension comprising property equal in value to the balance in that Member's, or those Members', Pension Account.

19. PAYMENT OF PENSION

19.1 Form of Payment

A Pension may be paid in any form and by any method.

19.2 Transfer of assets

The Trustee, may with the consent of the Member, transfer any assets out of a Sub-Fund to the Member instead of paying money. The Trustee from amounts otherwise payable to the Member may deduct any impost in the form of Taxation payable by the Trustee in relation to the transfer.

19.3 Death of a Member

On the death of a Member receiving a Pension the Trustee must pay (but subject to paragraph 19.6) the balance in that Member's Pension Account to the persons entitled under this Rule.

19.4 Nomination of Dependants

Each Member may, by his or her Will, nominate the Dependant or Dependants entitled to the balance in that Member's Pension Account to the persons entitled under this Rule.

19.5 No dependant nominated

If a Member does not exercise the power in paragraph 19.4 on the death of a Member, then, subject to Rule 19.6, the Trustee must pay the balance in that Member's Pension Account to the Member's legal personal representative.

19.6 Pension to Dependant

A person entitled to receive money or property on the death of a Member may elect to be paid in the form of a Pension under this Rule. The Trustee must create a Pension Account for each person so electing and act in relation to that person and that person's entitlement as if the person were a Member.

19.7 Transfer to Reserve Account

The Trustee may, with the consent any person entitled to money or property on the death of a Member, transfer from the Member's Pension Account to a Reserve Account any amounts, which need not be paid to the Member's Dependant in the event of his or her death.

20. RESTRICTIONS ABOUT PENSIONS

20.1 Non Assignability

A Pension is not assignable at law or in equity.

20.1 Not to be used as Security

Neither the capital value of a Pension nor the income from it may be used by a Member as security for any borrowings. The Trustee must disregard any notice from a Member, or any other person, of the purported creation of a security for a borrowing in contravention of this Rule.

21. COMMUTATION OF PENSIONS

21.1 Ability to Commute Pensions

At any time on or after the first day on which a Member becomes entitled to a Pension, and before the death of that Member, the Member may notify the Trustee of his election to commute so much of his Pension as he desires.

21.2 Conversion of Sub-Fund

Upon commutation, the Trustee must convert all, or the relevant part of, the assets in that Member's Sub-Fund to money then pay the resulting balance, or part thereof, in the corresponding Pension Account to the Member entitled.

21.3 Transfer of assets

The Trustee may, with the consent of the Member, instead of paying money, transfer any of the assets in the Sub-Fund of the same value to the Member. The Trustee from amounts otherwise payable to the Member may deduct any impost in the form of Taxation payable by the Trustee in relation to the transfer.

22. PORTABILITY – TRANSFERS TO AND FROM OTHER FUNDS

22.1 Transfers to Fund

The Trustee may accept into the Fund on behalf of a Member a transfer or roll-over of money or other property from any other Roll-over Fund. The value of money or other property accepted must be credited to that Members Accumulation Account, or, if allowed, to a Reserve Account.

22.2 Roll over from Fund

At either the request of a Member or to ensure that the Fund remains a Complying Superannuation Fund, the Trustee must transfer or roll-over a Member's Contributions Account, or the balance in a Member's Pension Account, to such other Complying Superannuation as a Member may direct.

22.3 Member Refuses to Transfer

In the event that a Member refuses to nominate or direct the Trustee where to pay or transfer the balance of his Accumulated Contributions or Pension Account, and there is a possibility that the Fund may not continue to be a Complying Superannuation Fund as a result of the refusal to nominate or direct the Trustee where to pay or transfer, the Trustee must roll-over the benefit to an Institutional Fund.

22.4 Sale of assets by Trustee

The Trustee may sell such assets in the Fund as it may decide to finance a transfer or roll-over under paragraph 22.2 and 22.3. Alternatively, the Trustee may, with the Member's consent, transfer such assets out of the Fund as it may determine instead of paying money. The Trustee from amounts otherwise payable to the Member may deduct any impost in the form of Taxation payable by the Trustee in relation to the transfer.

23. REPORTING

The Trustee must report to, and otherwise provide information and documents to, Members, prospective members, former members, employer sponsors and APRA or any other person in the manner required by the Act and Regulations.

24. AMENDMENT

The Trustee may, with the consent of all Members, amend all or any of the provisions of this Deed and Rules unless such amendment is in contravention or causes the Fund to be in contravention of the Act and Regulations or such amendment causes the Fund not to be a Complying Superannuation Fund.

25. DEEMING PROVISION

The provisions of the Act and Regulations are deemed to be included in the Deed and these Rules as far as they are applicable. In the event of any inconsistency between the terms of the Deed and these Rules (as varied from time to time) and the Act and/or Regulations, the Deed and these Rules must be read as subject to the Act and/or Regulations.