

L&A O'Rourke Investments

Superannuation Trust Document Package

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Matter name **Self Managed Super Fund**
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What to do next

You need to arrange for the documents to be signed and the trust established

How to establish the trust is explained in the *Superannuation Fund Establishment Kit*, prepared by Maddocks. The Kit starts on the next page.

Questions or further information

If you have any questions, you can call Cleardocs on 1300 307 343.

Cleardocs will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

Maddocks will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

Superannuation Fund Establishment Kit

This Kit has been prepared by Maddocks. All the legal information contained in this Kit is provided by Maddocks.

As trustee, or director of the trustee company, you need to complete each of the following steps as part of establishing your fund.

Is the trustee a company? If the trustee of your fund is a company, then each of the obligations described in this Kit that apply to trustees apply to you as a director of that company.

STEP 1 Responsibilities of being a trustee

It is important that you understand your responsibilities as trustee of your superannuation fund. Serious penalties may apply if you do not comply with the various laws applying to superannuation.

As a starting point, please read the information on the next few pages under the heading 'YOUR RESPONSIBILITY AS TRUSTEE'.

STEP 2 Sign the self managed super fund trustee declaration form and consents

You need to read and sign the ATO 'Self managed super fund trustee declaration (NAT 71089)' form. This form is contained in your Cleardocs document package.

Each trustee/trustee director must then sign the Trustee Declaration of Non-disqualification and Consent to Act as Trustee. This can be found within the Member Records in your document package.

After you have consented to act as trustee/trustee director, you need to sign the ATO 'Self managed super fund trustee declaration (NAT 71089)' form.

You need to keep the signed form with the fund's records for at least 10 years. You will need to make this form available to the ATO if it ever asks you to.

STEP 3 Read the trust deed

The trust deed is written in 'plain English' to make it easier for trustees to understand. Its provisions enable you to take full advantage of your membership of your fund.

Please read the trust deed and become familiar with it.

All the completed forms required to establish the fund are provided separately – see Steps 4 and 5.

STEP 4 Provide the APPLICATION TO BECOME A MEMBER and PRODUCT DISCLOSURE STATEMENT to each proposed member

The Application to become a Member for each member of the fund can be found within the Member Records in your document package.

STEP 5 Obtain the signed Application to be a Member from the relevant persons

Each member of the fund must also be a trustee. They must advise their Tax File Number with the application form except where the member is to be a child.

STEP 6 Hold the first meeting of all trustees

You need to arrange, and hold, the first meeting of the trustees. At that meeting:

- table the signed Declaration of Non-disqualification and Consent to Act as Trustee; and
- the trustees must pass the resolutions set out in the attached 'Meeting Minutes: Initial Business' and the chair of the meeting must sign and date the minutes.

STEP 7 Sign the trust deed

The person or company who will establish the fund and the trustee or trustees will need to sign the deed.

If the trustees are individuals, then all trustees must sign the trust deed.

If an individual is establishing the fund, then he or she must sign the deed.

If the trustee is a company and/or a company will establish the fund, then the deed can be executed by:

- using the company's seal; or
- being signed by any of:
 - any 2 directors;
 - a director and the company secretary; or
 - if the company has only 1 director, that director.

The documents will include execution clauses which are determined according to your answers to certain questions on the Cleardocs site.

If you are uncertain about the requirements for executing legal documents, then please see our FAQ on this on www.cleardocs.com. Follow the links to 'Resources', then 'Frequently asked legal questions', then 'signing and witnessing documents'. If the FAQ does not resolve your queries, then call the Cleardocs helpline on 1300 307 343 and Cleardocs will put you in touch with a lawyer from Maddocks.

STEP 8 Submit your deed for stamping, if necessary

Depending on the state or territory in which the deed was executed, you may need to submit the deed for stamping with the relevant revenue office. You should contact the relevant revenue office in your state or territory to check the current requirements:

State/Territory	Revenue office contact details
Victoria	State Revenue Office GPO Box 4389 Melbourne VIC 3001 Ph: 13 21 61 www.sro.vic.gov.au
Queensland	Office of State Revenue GPO Box 2593 Brisbane QLD 4001 Ph: 1300 300 734 www.osr.qld.gov.au
New South Wales	Office of State Revenue GPO Box 4042 Sydney NSW 2001 Ph: (02) 9689 6200 www.osr.nsw.gov.au
Tasmania	State Revenue Office GPO Box 1374 HOBART TAS 7001 Ph: 03 6166 4400
South Australia	Revenue SA GPO Box 1353 Adelaide SA 5001 Ph: (08) 8226 3750 www.revenuesa.sa.gov.au
Western Australia	Office of State Revenue GPO Box T1600 Perth WA 6845 Ph: (08) 9262 1100 www.finance.wa.gov.au
ACT	ACT Revenue Office GPO Box 293 Civic Square ACT 2608 Ph: (02) 6207 0028 www.revenue.act.gov.au
Northern Territory	Territory Revenue Management GPO Box 154 Darwin NT 0801 Ph: 1300 305 353 www.revenue.nt.gov.au

STEP 9 Advise the ATO

You need to complete and sign the 'Application for ABN registration for superannuation entities (NAT 2944)' form. You can download a .pdf of that form from <http://www.ato.gov.au/>. Then you need to arrange for the completed and signed Form to be sent to the Australian Taxation Office within 60 days of establishing your fund.

STEP 10 Formulate an Investment Strategy

The law requires your fund to have an investment strategy. To develop the strategy for your fund, you can meet with your advisor. The strategy helps you to set your fund's objectives and to plan its future directions. The strategy is an important document that must be audited by your fund's auditor each year. If the Tax Office decides to review your fund, it will pay careful attention to your investment strategy.

STEP 11 Adopt the Investment Strategy

Arrange a meeting of all the trustees to adopt the fund's Investment Strategy and sign the minutes accordingly.

YOUR RESPONSIBILITY AS TRUSTEE

General overview

The Trustees are responsible for all decisions made in relation to the fund, including its investments and its dealings with other people and service providers. You cannot hand your responsibilities over to anyone else. However, you can authorise others to make decisions on your behalf.

Remember that, like all trustees, you have a responsibility to exercise due care, skill, and diligence in all your duties. This includes transactions in respect of the fund's investments, cash, financial, and members' records.

One of your duties is to ensure that the total value of the fund's assets is not less than the total value of its accrued benefits.

Significant penalties may be imposed on trustees who do not comply with superannuation legislation.

You must also make sure that the assets of your fund, and all of its records, are kept separate from those of the members, or any other person or entity.

Superannuation legislation

The relevant superannuation legislation includes:

- The *Superannuation Industry (Supervision) Act 1993* and its Regulations (SIS); and
- The *Income Tax Assessment Act 1997*, *Income Tax Assessment Act 1936* and revisions (ITAA).

Delegating decision-making powers

Trustees may appoint advisors (for example, accountants and financial advisors) to help them make certain decisions about their fund. If you decide to do that, you should enter into formal written agreements with the advisors. Those agreements are to detail the extent of the delegated authority and the reporting and monitoring arrangements in place to enable the trustees to be kept fully informed about the decision-making processes they have delegated.

Keeping detailed minutes and records

You need to keep detailed records about decisions relating to the fund – whether those decisions are made by the trustees, or by someone to whom they have delegated the task. In particular, the records need to precisely record the fund's assets and cash transactions.

These records are important to demonstrate that the trustees are complying with their legal obligation to be diligent and to take their duties seriously. You should keep the records for at least 10 years.

If the tax office decides to review your fund, it will pay careful attention to your minutes and records.

Sole purpose

Your superannuation fund has been established solely to provide retirement benefits to all of its members. Other ancillary benefits may include providing insurance cover in the event of members' death or total and permanent disability.

The trust deed

The trust deed contains the governing rules of the superannuation fund.

Become familiar with the trust deed, which has been written in plain English.

You are responsible for making sure that the fund is maintained in accordance with the trust deed at all times.

Receiving contributions

The fund may receive contributions in accordance with the provisions of the trust deed and superannuation legislation.

Trustees must ensure that contributions received are correctly recorded and correctly allocated to members' accounts. Contributions cannot be received for anyone who is not a member of the fund.

Contribution receipts should be banked promptly and invested in accordance with the fund's Investment Strategy.

Contributions should only be made and accepted if they are within the annual contribution cap limits set by superannuation law.

Benefits

Benefits must be maintained and can only be paid in accordance with the provisions of the trust deed and superannuation legislation.

Trustees must ensure that accrued benefits are correctly recorded and allocated to members' accounts and that the benefits are preserved in accordance with the trust deed and the superannuation legislation.

A benefit can only be paid to the living member for whom the benefit has been accrued. A death benefit can only be paid to the deceased member's spouse or to those people entitled to receive it. The trustees must comply with a member's death benefit directive if the directive is given in accordance with the superannuation legislation and the trust deed and is binding on the remaining trustees.

Fund assets

The trustees are responsible for the fund's investments. This is a key trustee responsibility.

Trustees must pay particular care to the following:

- that the fund's assets actually exist;
- that the fund's assets are owned by the fund. The assets should be in the name of the fund, or the trustees, on behalf of the fund, which

must have clear title. No other person or entity may have title to the fund's assets;

- That the fund's assets are valued at least once each year and when a member's benefit is paid.

Investment Strategy

The trustees must determine the fund's investment objective and then develop an Investment Strategy that will be used to achieve those objectives.

The trustees must:

- implement the Investment Strategy;
- regularly monitor the fund's investments and their performance in light of the Investment Strategy;
- keep themselves well informed about the management of the fund's investments and receive regular reports from other service providers who have been appointed to assist the Trustees in investing on the fund's behalf;
- review the Investment Strategy regularly; and
- ensure that the purchase and the sale of the fund's investments are in accordance with the Investment Strategy.

All of the fund's current or proposed investments must be in accordance with the trust deed and in compliance with the provisions of superannuation legislation.

The fund's Investment Strategy must consider 5 main elements:

- the risk associated with making an investment;
- the diversity of all of the fund's investments;
- the liquidity requirements to meet future expenses such as taxation payments;
- the ability of the fund to meet its future liabilities including the payment of benefits to members; and
- whether the fund should hold any contracts of insurance for each of the members.

Trustees must document their decision to invest, on behalf of the fund, after having considered the Investment Strategy and these 5 main elements.

Remember that the Investment Strategy is the fund's 'profit plan'. It is the plan chosen to achieve the fund's objectives. The Investment Strategy must be fluid and should change as the investment marketplace changes, and when important factors change such as when a member joins or departs the fund.

Reporting

Trustees are required to provide annual reports to:

1 The Regulator (Australian Taxation Office for self-managed superannuation funds)

The trustees must lodge an Income Tax Return and an Annual Return in accordance with taxation and superannuation law, by the due date for lodgement, with the ATO.

Before lodging these returns, the trustees must arrange for the fund's financial statements to be audited by an auditor who meets the qualifications required by the superannuation legislation.

2 The members

Superannuation law and the *Corporations Act* 2001 requires trustees to provide each member of the fund with information that will enable the member to understand his or her benefit entitlement in the fund.

First, trustees must provide each member and employer admitted to the fund with a Product Disclosure Statement (PDS).

Then, in the course of operating the fund, trustees must meet the continuous disclosure obligations set out in the *Corporations Act*. This requires trustees to make disclosures about matters including:

- i) any material changes to any of the matters previously included in a PDS;
- ii) any significant event that affects the matters previously described in the PDS;
- iii) give periodic statements in each reporting period to the members. In relation to this:
 - the reporting period is the 12 month period from a member's date of admission, and each subsequent reporting period begins on the anniversary of that date (where a member ceases to become a member, the reporting period ends on the cessation date);
 - the periodic statements must contain information about:
 - opening and closing balances for the reporting period;
 - termination value of the investment at the end of the reporting period;
 - a summary of transactions in relation to the member's interest in the fund, identifying the nature and purposes of those transactions;
 - any increases in the amounts contributed in respect of the member;
 - the return on the member's investments and the fund's investments;
 - details in changes in circumstances affecting the member's investments and the fund's investments since the last

- periodic statement; and
 - the ultimate source from which any Superannuation Contribution Surcharge payments or advance instalments of surcharges will be drawn.
- iv) The members or employers involved in the fund may make requests for information at any time. These requests may concern the types of benefits payable to a member, or the particular investment plan relating to a member. The provisions of the *Corporations Act* require that you deal with any such inquiries within one month of receiving the request.

Each person must be involved

As each person who is a trustee is involved in the administration of the fund, it is important to ensure that each of them:

- is fully aware of the fund's operations; and
- has full and open ability to contribute to the fund's management and trusteeship.

SUPERANNUATION

Important do's and don'ts for trustees of self-managed superannuation funds

The superannuation and taxation legislation imposes many complicated restrictions on superannuation fund trustees. The following do's and don'ts are very general and do not delve into the complexities of the legislation.

If you are in any doubt, you should seek specific advice.

These are the main DO's

DO treat the fund as being a separate entity.

DO ensure that all the fund's transactions are on an 'arm's length' or commercial basis – regardless of with whom the fund has dealings.

DO ensure that the fund's money is kept in a separate bank account used only for the fund with its name mentioned on the account.

DO ensure that all of the fund's expenses are paid from the fund's banking account by cheque or bank transfer.

DO ensure that you have documents, such as receipts and invoices etc., to record all of the fund's transactions.

DO ensure that all money, received from contributions, interest and dividends from investments etc. are promptly banked directly into the fund's banking account.

DO ensure that all investment transactions are in accordance with the fund's Investment Strategy.

DO review the fund's Investment Strategy regularly.

DO ensure that any life insurance policy is owned and paid for by the fund.

DO ensure that any assets or investments that the fund purchases are paid for by the fund, not by any other person – unless the asset is the type that can be treated as a contribution and is contributed.

DO ensure that the fund's investments are in the name of the trustees on behalf of the fund, and kept separate from the trustees' and members' personal assets.

DO ensure that the fund's assets are valued at 'market value' when preparing accounts and statements for the fund.

DO ensure that you comply with the trust deed in all respects.

DO ensure that you have a policy for the allocation of investment earnings to members' accounts.

DO reconcile the fund's assets to the members' account balances at least annually.

DO ensure that all members receive an annual statement of their benefits.

DO ensure that any directions given by members, including death benefit nominations (binding or non-binding) and death benefit agreements, are maintained up to date.

DO ensure that a record is kept of all trustee decisions.

Things that you cannot do

The main DON'TS are:

DO NOT allow the fund to borrow money from any person, unless strictly in accordance with the limited recourse borrowing laws.

DO NOT allow the fund's bank account to go into overdraft.

DO NOT borrow money from the fund or use the fund's money to pay for anyone else's expenses.

DO NOT lend, invest or enter into a lease arrangement in respect of more than 5% of the fund's assets with a related party.

DO NOT acquire more than 5% of the fund's assets from a related party unless the asset acquired is business real property, or property that is used wholly and exclusively in the conduct of a business or businesses.

DO NOT accept contributions which exceed the caps for concessional and non-concessional contributions.

DO NOT accept contributions in respect of members who are over 65 years of age except mandated employer contributions or if the member is between 65 and 74 years of age and meets the work test or a work test exemption.

DO NOT accept contributions in respect of members who are over 70 years of age except mandated employer contributions or if the member is between 70 and 74 years of age (inclusive) and meets the work test.

DO NOT accept contributions in respect of members who are over 75 years of age except mandated employer contributions.

Any questions?

If you have any questions about your documents, about establishing your trust, or about superannuation in any detail, please contact your accountant or Andrew Arnold Coleman on (08) 93933095.

Associated documents for L&A O'Rourke Investments Establishment Package

Declarations of Trustee
Consents of Trustee
Application for Membership
Tax File Number Information
Tax File Number Form
Meeting Minutes: Initial Business
Meeting Minutes: Fund Strategy
Advice to the Trustees
Trust Deed