

## SELF MANAGED SUPER FUND - TRUSTEE DECLARATION

### JOHNSON SUPERANNUATION FUND

#### I CARMEL JOHNSON:

I am responsible for ensuring that the fund complies with the Superannuation Industry (Supervision) Act 1993 (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- (a) impose administrative penalties on me;
- (b) enter into agreements with me to rectify any contraventions of the legislation;
- (c) disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future;
- (d) remove the fund's complying status resulting in a significant tax penalty on the fund, and
- (e) prosecute me under the law, resulting in fines or imprisonment.

#### SOLE PURPOSE

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to its members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

#### TRUSTEE DUTIES

I understand that by law I must:

- (a) act honestly in all matters concerning the fund;
- (b) exercise skill, care and diligence in managing the fund;
- (c) act in the best interests of all the members of the fund;
- (d) ensure that retirement benefits are only accessed by members upon a legitimate condition of release being met;
- (e) refrain from entering into transactions that circumvent restrictions on the payment of benefits;
- (f) ensure that my money and other assets are kept separate from the money and other assets of the fund;
- (g) take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets);
- (h) refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund;
- (i) allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements
- (j) I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:
  - (i) the risks associated with the fund's investments;
  - (ii) the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
  - (iii) investment diversity and the fund's exposure to risk due to inadequate diversification, and
  - (iv) the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities, (including benefit payments); and
  - (v) whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### **Investment restrictions**

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from the following:

- (a) lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly including the provision of credit);
- (b) acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund;
- (c) borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached);
- (d) having more than 5% of the market value of the funds total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund including trusts or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party); and
- (e) entering into investments on behalf of the fund that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the funds assets reflects their market value).

### **Accepting contributions and paying a benefit**

I understand that I can only accept contributions and pay benefits (pensions or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

### **Administration**

I understand that the trustees of the fund must:

- (a) keep and retain for at least 10 years:
  - (i) minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees);
  - (ii) records of all changes of trustees, including directors of the corporate trustee;
  - (iii) each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee; and
  - (iv) all trustee declarations;
  - (v) copies of all reports given to members.
- (b) ensure that the following are prepared and retained for at least 5 years:
  - (i) an annual statement of the financial position of the fund;
  - (ii) an annual operating statement;
  - (iii) copies of all annual returns lodged;
  - (iv) accounts and statements that correctly record and explain the transactions and financial position of the fund
- (c) ensure that an approved auditor is appointed within the prescribed period (currently this is no later than 31 days before the due date for lodgment of the funds annual return but this may change to 45 days) to audit the fund for each income year, and provide that auditor with documents as requested;
- (d) lodge the fund's annual return, completed in its entirety, by the due date.
- (e) notify the ATO within 28 days of any changes in:
  - (i) membership of the fund, or trustees or directors of the corporate trustee;
  - (ii) name of the fund;
  - (iii) contact person and their contact details; and
  - (iv) postal address, registered address or address for service of notices for the fund;
- (f) notify the ATO in writing within 28 days of the fund being wound up or after becoming aware that the fund has ceased to be an SMSF.

## DECLARATION

By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- (a) I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and if I fail to do this, penalties may apply;
- (b) I may have to make this document available for inspection by a member of staff of the ATO and if I fail to do this, penalties may apply;
- (c) I do not have access to the government's financial assistance program that is available to trustees of Australian Prudential Regulation Authority (APRA) regulated funds in the case of financial loss due to fraudulent conduct or theft.

**Signature:**

  
CARMEL JOHNSON

**Witness Signature:**

  
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**Print Witness Name:**

(witness must be over the age of 18 years)

CHRIS JOHNSON  
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**Date:**

8 / 1 / 2014

