

# PENSION VARIATION – NON-REVERSIONARY TO REVERSIONARY

(Changing a pension from being non-reversionary to  
being reversionary)

Sasha Huxley

Document provided by

**TOWNSENDS BUSINESS & CORPORATE LAWYERS**

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### **Important note as to use**

1. This document permits the variation of a non-reversionary pension to be a reversionary pension.
2. Only individuals who are dependants (within the meaning of the SIS Act) of the member receiving the pension can be nominated as the reversionary beneficiary.
3. This document only applies to an account pension: ie account-based pension or a transition to retirement pension.
4. The document is only relevant to an account based pension or a transition to retirement pension issued by a Superannuation Fund which has adopted either the SUPERCentral Governing Rules or the Townsends Business & Corporate Lawyer's Governing Rules as the governing rules of the fund.
5. The document can be used by both corporate and by individual trustees.
6. Before varying the pension determine (and if necessary obtain expert advice) whether the variation will have any adverse Centrelink implications – such as changing the Income Test status of the pension.

For example, will varying the pension be treated for Centrelink purposes as changing the pension from a "pre-1 January 2015" pension (ie a pension which is subject to the "deductible amount" income test) to a "post 31 December 2015" pension (ie a pension which is subject to the "deeming" income test).

7. This document has been drafted to take account of the recent variation of s307-80(3) by the inclusion of further sub-paragraph (aa).

## Steps to vary a pension to a spouse reversionary pension

1. Confirm that the pension is an account-based or transition to retirement pension which is not currently a reversionary pension.
2. Confirm that the individual who is to be the reversionary beneficiary is a dependant of the Member (such as the spouse of the member, a child of the member or an individual in relation to whom the Member is in an interdependency relationship).
3. Confirm that the terms of the pension permit the pension to be varied to nominate a reversionary beneficiary.

*The terms of the pension may restrict or limit the ability of the pension to be varied.*

4. Complete Part A – insert details of the superannuation fund, the trustee and the pension which is to be varied.
5. Complete Part B – Pension Details & Pension Commutation Option.

*The pension commutation option (if selected) provides that if the only reason a pension cannot transfer to the Reversionary Beneficiary is due to SIS Reg 6.21(2A) – then pension will be commuted and the lump sum arising from the commutation paid to the Reversionary Beneficiary as a superannuation death benefit.*

6. Complete Part C – Member request and Reversionary Beneficiary consent details.
7. Complete Part D – Trustee Resolutions – these resolutions may have to be modified.
8. Sign Part E – Trustees/Directors to sign and date.

**PART A – PARTIES**

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Item 1 The Superannuation Fund	The Graham Huxley Family Fund ABN 63 679 596 766
Item 2 The Trustee	Moreberth Pty. Limited ACN 050 957 803
Item 3 The Member	Sasha Huxley Unit 28, 70 Alfred Street, Milsons Point NSW 2061
Item 4 The Proposed Reversionary Beneficiary	Graham Charles Huxley Unit 28, 70 Alfred Street, Milsons Point NSW 2061

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**PART B – PENSION & TRANSFER DETAILS**

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Item 5 The Pension	An Account-Based pension for Sasha Huxley which commenced on  ...../...../..... payable from the Superannuation Fund
Item 6 The Pension Variation Date	...../...../.....
Item 7 – Pension Commutation Option	If the pension is not permitted to transfer to the Reversionary Beneficiary solely because the Reversionary Beneficiary is, at the date of death of the Member, an independent adult child of the Member, is the pension to be automatically commuted and the commutation amount paid as a superannuation lump sum to the Reversionary Beneficiary?  Not Applicable.  <i>If no election is made, then the Pension Commutation Option will not apply</i>

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**PART C – REVERSIONARY BENEFICIARY NOMINATION FORM**

By signing this Part the Member (Identified in Item 3) requests the Trustee (Identified in Item 2) to vary the terms of the Pension (Identified in Item 5) which is payable from the Superannuation Fund (Identified in Item 1) with effect on and from the Pension Variation Date (Identified in Item 6) so that on the death of the Member, the Pension will automatically transfer to the Proposed Reversionary Beneficiary (Identified in Item 4) and be payable to the Proposed Reversionary Beneficiary.

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Member sign here

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Member's full name

Sasha Huxley

Unit 28, 70 Alfred Street, Milsons Point NSW 2061

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Date of signing

...../...../ 20.....

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By signing below the Proposed Reversionary Beneficiary:

- (a) confirms that they consent to being nominated as the Reversionary Beneficiary in respect of the Pension;
- (b) understands and expressly acknowledges that their nomination as the Reversionary Beneficiary is revocable and may be altered at any time by the Member without notice being provided to the Reversionary Beneficiary;
- (c) understands and expressly acknowledges that their nomination as Reversionary Beneficiary may be altered at any time by the Member replacing them with another Reversionary Beneficiary or by removing them as the Reversionary Beneficiary without appointing a replacement Reversionary Beneficiary;
- (d) understands and expressly acknowledges that while the Member is alive, no pension payment can or will be made to them;
- (e) understands and expressly acknowledges that the Member may change the amount of pension being paid to the Member and may commute in part or in whole the pension to a superannuation lump sum payable to the Member thereby (in the case of a partial commutation) reducing the value of any pension which may be payable to them or terminating the pension entirely (in the case of a full commutation);
- (f) understands and expressly acknowledges that the pension account balance at the time of transfer to them will not be a specific amount and no guarantee or warranty is provided to them that the pension account balance at the time of transfer will be a specific or minimum amount;

- (g) understands and expressly acknowledges that if they survive the Member and have remained nominated as the Reversionary Beneficiary in respect of the Pension, then they will become a member of the Superannuation Fund in which case they agree to be bound by the terms of the Governing Rules of the Superannuation Fund as they are amended from time to time;
- (h) understands and expressly acknowledges that should the Pension transfer to them they must, if not already a Trustee or Director of the Corporate Trustee, be appointed as a Trustee or as a Director of the Corporate Trustee within 6 months of the transfer of the Pension;
- (i) understands and expressly acknowledges that the terms of the Pension (as proposed to be modified) will apply to the Pension when the Pension transfers to them;
- (j) understands and expressly acknowledges that the total pension payments in any financial year must not be less than the minimum statutory amount calculated in accordance with Schedule 7 of the SIS Regulations;
- (k) understands, accepts and agrees that the Trustee may increase the pension payments in any financial year to ensure that the minimum statutory amount has been paid in respect of that year;
- (l) understands, accepts and agrees that the Pension will not transfer to the Reversionary Beneficiary if, at the time of the death of the Member, they are not a dependant of the Member as that term is defined in s10(1) of the *Superannuation Industry (Supervision) Act, 1993*;
- (m) if they are a child of the Member, they understand, accept and agree that the Pension must be commuted to a superannuation lump sum if, at the date of death of the Member, they have attained age 25, or they have attained age 18 and are not financially dependent on the Member and, in either case, are not disabled;
- (n) if they are a child of the Member, they understand, accept and agree that the Pension will be automatically commuted on their attaining age 25 (unless they are then disabled) and the commutation value will be paid to them as a superannuation lump sum; and
- (o) expressly authorises the Trustee to use their Tax File Number for superannuation purposes.

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Proposed Reversionary Beneficiary sign  
here

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Proposed Reversionary Beneficiary's full name   Graham Charles Huxley

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Date of Signing

...../...../ 20.....

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Proposed Reversionary Beneficiary's  
current residential address

Unit 28, 70 Alfred Street, Milsons Point NSW 2061

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Proposed Reversionary Beneficiary's  
date of birth

...../...../.....

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## PART D – TRUSTEE RESOLUTIONS

### Background

1. **Noted** that the Pension is currently being paid from the Superannuation Fund in respect of the Member.
2. **Noted** that the Member has requested the Trustee to vary the terms of the Pension so that the Pension will automatically transfer to the Reversionary Beneficiary on the death of the Member.
3. **Noted** that the current terms of the Pension permit the requested variation.
4. **Noted** that Rule 15.7 of the Governing Rules of the Superannuation Fund permits the requested variation.

### Substantive Resolution

5. **Resolved** that the terms of the Pension (identified in Item 5) are, on and from the Pension Variation Date (Identified in Item 6), varied so as to include the following term:

#### **“Transfer of Pension to Reversionary Beneficiary**

- (a) On the death of the Member the Pension will automatically transfer to and be payable to the Reversionary Beneficiary if the following conditions are all satisfied as at the date of death of the Member:
  - (i) the Reversionary Beneficiary has survived the Member;
  - (ii) the Reversionary Beneficiary has not prior to the death of the Member been removed or replaced as the Reversionary Beneficiary;
  - (iii) the Reversionary Beneficiary is a dependant of the Member as that term is defined in s10(1) of the *Superannuation Industry (Supervision) Act, 1993.*”
  - (iv) if the Reversionary Beneficiary is a child of the Member – the Reversionary Beneficiary is either:
    - (A) aged less than age 18; or
    - (B) aged 18 or more but less age 25 and was financially dependent on the Member immediately before the death of the Member;
    - (C) aged is aged 18 or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986*;
- (b) Where on the death of the Member paragraphs (a)(i), a(ii) and (a)(iii) above are satisfied in respect of the Reversionary Beneficiary but not paragraph (a)(iv) above then:



- (i) if the Pension Commutation Option applies - the pension is automatically commuted and the resulting commutation amount is to be paid as a lump sum to the Reversionary Beneficiary as a superannuation death benefit; and
- (ii) If the Pension Commutation Option does not apply – the pension will terminate and be treated as a death benefit of the Member to be allocated in accordance with the terms of any applicable binding death benefit nomination or the terms of the Governing Rules of the Superannuation Fund (as the case may be).

For the avoidance of doubt, the Reversionary Beneficiary is not precluded from receiving all or a portion of the death benefit pursuant to the terms of any applicable binding death benefit nomination or in accordance with the terms of the Governing Rules of the Superannuation Fund.”

6. **Resolved** that, in all other respects, the terms of the Pension are unchanged.

*Consequential Matters*

7. **Noted** that a Pension PDS is only required to be issued to the Reversionary Beneficiary if and when the Pension transfers to the Reversionary Beneficiary.
8. **Noted** that the variation of the pension from non-reversionary to being reversionary is not an event which has any transfer balance account impact.

**PART E – SIGNING & DATING**

**Signed** as written resolutions of Moreberth Pty. Limited ACN 050 957 803 the Trustee of The Graham Huxley Family Fund ABN 63 679 596 766

.....  
Sasha Huxley – Trustee / Director

.....  
Graham Charles Huxley – Trustee / Director

.....  
Philippa Alexandra Huxley – Trustee / Director

Dated: ...../...../ 20.....

*Note: In the case of companies the written resolutions will be effective only if the constitution of the company permits written resolutions to be made or if s248A or s248B of the Corporations Act 2001 applies.*