

29 January 2021

Our Ref: SC22609

The Director  
J n M Cook Holdings Pty Ltd  
C/- Ms Heather Byrne  
Heather Byrne Accountant  
PO Box 921  
Buderim QLD 4556

By email: heatherbyrne@bigpond.com

Dear Directors

## **Cook Family Super Fund**

Thank you for your instructions to provide you with documents to enable you to establish this new self managed superannuation fund.

In providing these documents we have not been requested to, and we are not in a position to, consider whether a self managed superannuation fund is appropriate for the individuals who are to participate in the superannuation fund.

### **1. The enclosed documents**

1.1 We now enclose our new self managed superannuation fund package with documents included in the following order:

- (a) Superannuation Deed
- (b) Governing Rules
- (c) Guide - How to establish your self managed superannuation fund
- (d) Resolutions, as applicable to the trustee structure of the superannuation fund:
  - (i) Trustees resolution to establish the fund, or
  - (ii) Directors resolution as trustee of the fund
- (e) General Product Disclosure Statement
- (f) Death benefit nomination forms:
  - (i) Binding death benefit nomination form/s
  - (ii) Non-binding death benefit nomination form/s
- (g) Trustee Representation Letter (Fund compliance statement for employer contributions)
- (h) Administrative resolutions:
  - (i) Written resolution of the directors, or
  - (ii) Written resolution of the trustees
- (i) Guide – SUPERCentral's Private Superannuation Fund Guide

## **2. Duty**

- 2.1 The superannuation deed will not be liable for state duty unless the fund is located in Northern Territory.
- 2.2 If the superannuation fund is located in the Northern Territory the duty will be \$20.

## **3. Taxation**

- 3.1 The signing of the superannuation deed will not give rise to a CGT event in relation to the superannuation fund.

## **4. Benefit transfers and employer contributions**

- 4.1 The federal government has mandated arrangements as to the transfer of superannuation benefits to new self managed superannuation funds to prevent such funds from being used as vehicles for illegal access to super benefits and the theft of super benefits.
- 4.2 The effect of these arrangements is that registration of the superannuation fund will generally take up to 28 days and, once registered, the status of the superannuation fund on the Super Fund Look Up website will be recorded as “registered”. The website description of the status of the super fund will change to “complying” once the ATO has issued a notice of compliance in respect of the super fund which generally takes up to 7 days of the SMSF being displayed on the Super Fund Look Up as ‘registered’.
- 4.3 A super fund having the status of “registered” is not precluded from accepting contributions, transfers and rollovers. However some large superannuation funds may decline to rollover/transfer benefits or may require more information to be provided before the rollover/transfer of benefits is effected.
- 4.4 The practical effect of these arrangements may be to considerably reduce the timeliness of benefit rollovers or transfers from large super funds to newly established self managed superannuation funds. Additionally or alternatively, trustees of large funds may require newly established self managed superannuation funds to provide documentary evidence of the bona fides of the fund; such as certified copies of the trust deed of the fund or bank account details.
- 4.5 Employers will generally require trustees of new established superannuation funds to provide a statement that the fund is a regulated and resident superannuation fund as a precondition for the making of employer contributions. This is generally called the “fund compliance statement”. This statement must be provided by the trustee. A template copy of this statement is included with this letter and is entitled “Trustee Representation Letter”.

## **5. Borrowing provisions**

- 5.1 We have included general provisions authorising the trustee (if it so wishes) to engage in limited recourse borrowing arrangements (also known as super gearing or investing in instalment warrants).
- 5.2 The relevant provisions are set out in rule 5.3 and rules 3.15 and 3.16.
- 5.3 While these provisions are sufficient (and have been checked and approved by many lenders over the years) we cannot guarantee that particular lenders will not require additional or special provisions to be included for their particular purposes.

## **6. Updating the governing rules**

- 6.1 The primary source for all the rights, powers and other rules that govern a superannuation fund is its governing rules, set out in or attached to its trust deed. Rarely does the superannuation

legislation provide the trustees with the necessary powers to comply with the legislation.

- 6.2 Typically, superannuation laws do not empower the trustee to do anything – rather they say what a trustee cannot do. It is the fund's governing rules which must contain specific provisions empowering trustee actions.
- 6.3 Without a good quality trust deed the trustee may lack important powers for the fully effective operation of the fund. Equally essential is the need to keep that deed up-to-date. Changes to the law do not automatically give the trustees the necessary powers to benefit from those changes.
- 6.4 There are a number of dynamic areas of development which affect the operation of an SMSF trust deed, including changes to legislation (both federal and state), changes to regulations (both federal and state), case decisions by the High Court, the Federal Court or any of the eight Supreme Courts, regulatory pronouncements by the ATO or ASIC, practice requirements of the professional accounting or financial planning organisations, industry practice developments, the requirements of third parties dealing with the fund (eg, banks, investment managers etc), and of course developments in administration procedures and processes that could enable the fund to access more efficient administration. It is vital to ensure the trust deed accommodates all these developments.

In our view, an update to the fund's governing rules cannot be solved by simply including a clause that says that the trustee will not do anything to contravene the superannuation laws. Where the law permits the trustee to do something it normally does not authorise the trustee to do it. The law generally states that if the trustee takes this action it will not breach the law. The trustee's power to take the action must come from its governing rules.

## **7. SUPERCentral's solution to updating the governing rules**

- 7.1 The key advantage of using the SUPERCentral system is the automatic updating of the governing rules. Under the SUPERCentral system, the governing rules are automatically updated as and when required. The updating occurs by the exercise of an amendment power which is conferred by the superannuation deed. Every fund using the SUPERCentral system will have the governing rules updated by way of complete replacement.
- 7.2 The SUPERCentral system operates on the basis that the trustees will be given 14 days' notice of the proposed update. The notice provides information as to the nature of the update and its impact on the fund. The updated governing rules will automatically apply to the fund at the end of the notice period.
- 7.3 Notice of any proposed update is provided by email. The trustees may, if they prefer, arrange for the email to be issued to their agent for the purposes of notification. For example, this will occur if the email address of the trustees' SMSF adviser is provided.
- 7.4 The trustee may decline an update during the notice period. To be effective the trustees must notify SUPERCentral during the notice period. If the trustees decline an update, the updated governing rules will not apply to the fund – the then current governing rules will remain as the governing rules of the fund. However, the fund will cease to be on the SUPERCentral system and any future updates of the governing rules will not apply to the fund.

## **8. Legal documents prepared by Townsends**

Our lawyers, Townsends Business & Corporate Lawyers, prepare and approve all of the legal documents issued by SUPERCentral. In particular, they have prepared and approved the superannuation deed and the governing rules and will prepare and approve any update to the governing rules.

## **9. Invoice**

A tax invoice for the preparation and drafting of the superannuation deed and other related

documents is issued prior to the release of this package.

Should you wish to discuss any aspect of this advice or the documents attached please contact us.

Yours faithfully,

**SUPERCENTRAL PTY LTD**

A handwritten signature in black ink, appearing to read 'Peter Townsend', with a large, stylized initial 'P'.

**PETER TOWNSEND BA, LLB, FAICD, FCLA**  
Director