

*PATAK Provident Fund  
Deed of Establishment*

## DEED OF ESTABLISHMENT

**THIS DEED OF ESTABLISHMENT** is made on the date specified in Appendix A as the Date of Deed.

**BY:**

The person named and described in Appendix A as the Trustee

**RECITALS:**

- A** The Trustee has decided to establish a superannuation fund to be maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law.
- B** The Trustee has determined to act as Trustee in accordance with the provisions of this Deed.

**IT IS DECLARED:**

**1. ESTABLISHMENT**

The Trustee establishes the Fund which commences on the Date of Deed specified in Appendix A.


**2. RULES**

The Fund shall be maintained, managed and administered pursuant to the rules set out in the attached *SMSF Governing Rules Version 18.01*, which forms part of this Deed.

**EXECUTED** as a Deed on the date set out in Appendix A.


**SIGNED SEALED AND DELIVERED** by )  
**PAUL ANTHONY DWYER** as Trustee in the )  
presence of: )

Witness 

  
\_\_\_\_\_  
Janeen Pamela Sharp  
Witness full name

**SIGNED SEALED AND DELIVERED** by )  
**AMANDA JANE DWYER** as Trustee in the )  
presence of: )

Witness 

  
\_\_\_\_\_  
Janeen Pamela Sharp  
Witness full name

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presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness full name

**SIGNED SEALED AND DELIVERED** by )  
**AMANDA JANE DWYER** as Trustee in the )  
presence of: )

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness full name

1

## APPENDIX A

|                                   |   |
|-----------------------------------|---|
| <b>DATE OF DEED:</b>              | 14 April 2019   |
| <b>TRUSTEE:</b>                   | Paul Anthony Dwyer<br>15 Riverbank Road Bairnsdale VIC 3875<br><br>Amanda Jane Dwyer<br>15 Riverbank Road Bairnsdale VIC 3875 |
| <b>MEMBERS:</b>                   | Paul Anthony Dwyer<br>15 Riverbank Road Bairnsdale VIC 3875<br><br>Amanda Jane Dwyer<br>15 Riverbank Road Bairnsdale VIC 3875 |
| <b>NAME OF FUND:</b>              | PATAK Provident Fund  |
| <b>PROPER LAW GOVERNING FUND:</b> | Victoria  |

# SELF MANAGED SUPERANNUATION FUND – PRODUCT DISCLOSURE STATEMENT

This Product Disclosure Statement (PDS) provides a summary of significant information about the Self Managed Superannuation Fund (SMSF) you have joined or are considering joining. It contains a number of references to important information which forms part of the PDS, and should be considered for general information purposes as a guide only.

You should consider that information before making a decision about the SMSF. The information in the PDS is general information only and does not take into account your personal financial situation or needs. You should obtain financial advice tailored to your personal circumstances.

This material relating to SMSFs may change between the time when you read this PDS and the day when you sign the application form.

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## 1. About SMSFs

An SMSF is a type of super fund which enables individuals to manage their own superannuation benefits.

The basic definition of an SMSF is:

- it has fewer than 5 members;
- each individual trustee of the fund or director of the corporate trustee is a member of the fund;
- each member of the fund is an individual trustee or director of the corporate trustee of the fund;
- no member of the fund is an employee of another fund member, unless related; and
- no trustee or director of the corporate trustee receives any remuneration for duties or services in relation to the fund.

Specific exceptions apply to some of the basic definitions.

According to the Australian Taxation Office (ATO) publication *Running a self-managed super fund*

*“Like other super funds, SMSFs are a way of saving for your retirement. Generally, the main difference between an SMSF and other types of funds is that members of an SMSF are the trustees. This means the members of the SMSF run it for their own benefit.*

*“SMSFs are not suitable for everyone and you should think carefully before deciding to set one up.*

*“If you decide that an SMSF is the appropriate vehicle for your super savings, you need to ensure the fund is set up and maintained correctly so that it is eligible for tax concessions, can pay benefits and is as easy as possible to administer.”*

You can obtain further information regarding the operation of SMSFs in general from sources such as:

- the ATO - a series of publications ranging from *Thinking about self-managed super*, through to *Winding up an SMSF* at <http://www.ato.gov.au/Super/Self-managed-super-funds/>; or
- the ATO - a series of short videos covering a range of SMSF related topics at <https://www.ato.gov.au/super/self-managed-super-funds/in-detail/smsf-resources/smsf-videos/>; or
- the Australian Prudential Regulatory Authority (APRA) at <http://www.apra.gov.au/>; or
- the Australian Securities and Investments Commission (ASIC) MoneySmart site at <https://www.moneysmart.gov.au/>.



SMSFs can:

- accept contributions;
- provide for the investment and maintenance of super monies;
- provide insurance cover; and
- provide benefits in the form of lump sums and/or pensions.

SMSFs usually operate under a set of governing rules. Those rules, among others, generally provide details of possible investments permitted for the SMSF.

SMSF trustees will usually have access to a broad range of investment opportunities, including the ability to invest in specific assets, such as real property.

The regulation of SMSFs also differs from that of other superannuation arrangements as the ATO, and not APRA, regulates SMSFs.

#### **Your SMSF in particular**

You are a member or about to become a member of an SMSF which is governed by the *SMSF Governing Rules Version 18.01*, available for inspection at any time from the office of the trustee.

For the current year of income and subsequent years, the fund will be operated as a regulated superannuation fund in accordance with the requirements for SMSFs under the *Superannuation Industry (Supervision) Act 1993* (also referred to as the SIS Act) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regs).

You, your employers and certain others may be entitled to make contributions to the SMSF for your benefit. When contributions are made, they will be credited to your member accumulation account within the fund. The total amount of your accumulation account will, together with any pension accounts, ultimately form the basis of your benefit entitlement in the fund.

The governing rules may permit the spouse of a member and certain other persons with the consent of the trustee, to make contributions to the SMSF on behalf of the member.

Your benefit entitlement in the fund will accrue on an accumulation basis and be represented by the total amount held in your accumulation account and pension accounts, if any, and treated as vested in you.

Your accumulation account will be made up of all contributions and rollover payments credited to the account, together with income on those amounts less your share of all expenses and taxation referable to your entitlement in the SMSF. Any pension accounts you may have will be derived from funds in your accumulation account.

You do not have to withdraw your benefit entitlement from the SMSF at any particular age, regardless of whether or not you are still working.

The governing rules provide for a range of benefits payable as follows:

- Retirement at or after Normal Retirement Age (normally age 65);
- Total and Permanent Disablement;
- Temporary Total Disablement;
- Early Retirement from Employment;
- Attaining Preservation Age;
- Death;
- Terminal Medical Condition.

As a member of the fund, you will be entitled to receive the whole or part of your benefit by way of a lump sum and/or a superannuation income stream upon the attainment of one of the above conditions, provided either by payment of an account based pension or by the trustee's purchase of an annuity outside the fund.

The governing rules set out special requirements which apply to the trustee of the SMSF, including the requirement that each member plays an active role in the trusteeship of the fund.

The governing rules also set out the powers and duties of the trustee, which is required to act in the best interests of all members at all times, and machinery for the appointment and removal of the trustee.

Although the governing rules do not specifically provide for a cooling off period, you may cease your membership of the fund at any time.

Enquiries regarding your benefit entitlements in the SMSF and other questions regarding your membership of the SMSF should be directed to the trustee. Contact details for the trustee are included at the end of this document.

## 2. How super works

Superannuation is a part compulsory and part voluntary system to enable individuals to save for their retirement.

It provides a tax effective way of accumulating savings to be accessed once the person retires, or to provide for the dependants of the individual in the event of their death.

The compulsory portion is the contributions required to be made by an employer under the Superannuation Guarantee legislation, which represents 9.5% of the salary received by most employees for the 2017/18 financial year.

Most people have the right to choose the fund to which their employer should direct their superannuation guarantee contributions.

Individuals may voluntarily add to the contributions, either by requesting their employer to contribute an additional amount from their employment income, or by making contributions from personal funds.

Other sources of money to increase the superannuation balance of an individual include contributions made by Government and also money in other super funds which can be transferred (rolled over) to the SMSF. Additionally, tax savings are provided by the Government in the form of lower tax rates for superannuation funds which comply with the law.

Superannuation and taxation laws impose limits on the amount of contributions which may be made by you or on your behalf. Also, some contributions may not be permitted, depending on the balance you have in superannuation. It would be advisable to seek advice as to your contribution limits before making contributions to the fund.

Additionally, most contributions and income generated from investments are 'preserved', meaning that certain conditions need to be met before the super benefits may be released.

Superannuation money can be invested on a long term basis, depending on the time horizon until the member or members are permitted to access their superannuation.

Usually, individuals may access their superannuation on a limited basis after turning a specific age ('Preservation Age') and on an unlimited basis after turning 65 years of age.

For those born on or after 1 July 1960, access can occur after reaching their Preservation Age, as detailed in the table below.

| Date of Birth       | Preservation Age |
|---------------------|------------------|
| After 30/06/64      | 60               |
| 01/07/63 - 30/06/64 | 59               |
| 01/07/62 - 30/06/63 | 58               |
| 01/07/61 - 30/06/62 | 57               |
| 01/07/60 - 30/06/61 | 56               |
| Before 01/07/60     | 55               |

Depending on their ages and circumstances, full access may be available to individuals between ages 55 and 65.

Instances of members being able to access their superannuation before reaching age 65, at least on a limited basis, include:

- a transition to retirement income stream;
- permanent retirement after age 55;
- changing an employment arrangement after age 60;
- temporary total disability;
- total and permanent disability; and
- contracting a terminal illness.

### 3. Benefits of investing with your SMSF

The key benefits of an SMSF include:

- control - many investors wish to have control, as trustee, over the investment decisions and other key management decisions concerning their superannuation;
- investment choice - individuals wishing to include a range of direct investments in their super, including property, can do so through an SMSF;
- costs - although a range of fixed costs can apply to SMSFs, the trustees and members have a degree of control over the operating costs of their SMSF;
- flexibility - an SMSF can be structured to pay lump sum or pension benefits, or a combination of the two;
- individual structures - SMSFs can be structured to separately cater for the individual needs of each member;
- insurance - insurance policies can be owned within the SMSF at different levels of cover, according to the personal requirements of each member;
- personally owned assets - certain assets owned by individual members may be purchased by the SMSF or contributed to the fund;
- asset purchases and sales - the timing of purchases and sales can be more easily controlled in an SMSF than in a larger fund;
- borrowing - subject to specific rules, SMSF trustees are able to borrow to purchase investments;
- estate planning - planning for the passing of a member and the provision for their dependents can be more easily facilitated with an SMSF, given the closer relationship between the members and trustees.

### 4. Risks of super

Superannuation is a vehicle through which investments are made. All investments carry a degree of risk.

Investments such as cash or bonds generally have a lower level of risk, whereas other investments, including property and shares, can have a higher level of risk.

As a generalisation, investments which indicate potentially higher returns over a longer term will provide a greater potential for:

- volatility over a short term; and
- a negative return on the investment.

In general terms:

- short term risk is a risk that your super savings will be reduced by volatility of the investment markets;
- medium-term risk balances two risks, firstly that your super savings will be reduced by volatility and, secondly, that your super savings will not keep up with inflation; and
- long-term risk is the risk that your super savings will not keep up with inflation.

The appropriate level of risk will vary from member to member, depending on the individual's age, investment time frame, level of assets held outside of superannuation and risk tolerance.

Within the SMSF, investment risk can be catered for by using separate investment strategies for each member or for each age group (i.e. parents and children).

Diversified investment strategies allow money to be allocated to a range of assets in order to mitigate the risk of volatility and the possible loss from investing superannuation money.

The significant risks to investment of super monies include:

- the value of investments can rise or fall, so your superannuation will reflect those values;
- investment market failures can occur;
- investing in assets which provide low returns but little risk of loss can result in a loss when compared to the rate of inflation;
- investing based on past returns is no indication of future returns;
- you may outlive your superannuation money; and
- the amount of your future superannuation savings (including contributions and investment returns) may not be enough to adequately provide for your retirement.

A further risk of superannuation, not directly related to investment issues, is that the Government may change superannuation, social security and/or tax laws over time, with such changes having an adverse impact on your superannuation benefits in general, your ability to access those benefits or the taxation cost of accessing the benefits.

## 5. How your money is invested

Each member of the SMSF, as a director of the trustee (or individual trustee) of the SMSF, has a responsibility for the investment of all of the member funds comprising the SMSF.

The trustee of the SMSF is guided by the governing rules of the fund in regards to the investments permitted to be made on behalf of members, which authorises a wide range of investments.

In the governing rules of the SMSF, the trustee is permitted to offer members the opportunity of having their superannuation benefits invested in a particular investment strategy specifically designed to cater for the individual member's investment risks and time horizon.

Additionally, the trustee may accept directions from individual members in regards to the investment of each member's benefits within the SMSF.

Therefore, members may choose, if they wish, a range of investments which suit their individual needs and retirement horizons. It is important, when choosing investments, that individuals consider the likely investment return, the risks associated with the selected investments and the individual's investment time frame.

Alternatively, the trustee will invest member funds on a 'pooled basis', whereby each member will share in the gains or losses derived from all investments, on a proportionate basis.

The trustee will have an overall investment strategy for the SMSF, in accordance with the governing rules and the superannuation legislation, and may also have a number of investment strategies to suit the specific individual requirements of members. Those strategies can be amended at any time.

Investment strategies generally:

- include an indicative range of investments for the SMSF trustee to hold across the various asset categories;
- consider the overall risk and return as well as an investment aim for the SMSF over a medium to long-term horizon;
- contain benchmarks against which the performance of the investments can be measured;
- contemplate the ability of the trustee to meet its obligations, including the payment of member benefits, as and when they fall due; and
- determine whether the fund should hold insurance cover for the members.

When investing SMSF money, the trustee will generally select from investments which are performing well or indicate potential improved financial performance as well as having effective environmental, social and governance standards.

## 6. Fees and costs

### Consumer Advisory Warning

#### Did you know?

Small differences in both investment performance and fees and costs can have a substantial impact on your long-term returns.

For example, total annual fees and costs of 2% of your fund balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from \$100,000 to \$80,000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs. You may be able to negotiate to pay lower adviser fees. Ask your adviser.

#### To find out more

If you would like to find out more, or see the impact of the fees based on your own circumstances, the ASIC website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) has a superannuation fee calculator to help you check out different fee options.

*This Consumer Advisory Warning is a Government prescribed warning.*

The trustee of your SMSF is not permitted to charge a fee for its services, nor are the directors of the corporate trustee permitted to charge for services in regards to acting as directors or the company acting as trustee of the SMSF.

Fees and costs of an SMSF are generally able to be determined by the trustee and members, as most of the fees and costs relate to services obtained from professionals, such as:

- Lawyers;
- Accountants;

- Fund Administrators;
- Auditors;
- Financial Advisers;
- Actuaries;
- Share Brokers;
- Valuers; and
- Other professional advisers.

The level of the expense incurred in regards to each of the above will depend on the complexity of service (if any) required and, in some instances, the quality of information prepared by the trustee (such as providing complete information to accountants or administrators for preparation of the annual financial statements).

Other expenses likely to be incurred by the SMSF include taxation, the ATO regulatory levy, the ASIC annual company fee, insurance premiums and expenses in regards to the acquisition, maintenance and disposal of investments.

For example, the cost of operating a bank account is generally minimal. On the other hand, the cost to acquire and dispose of other investments, such as listed equities, will result in brokerage fees incurred on acquisition and also on disposal. The level of brokerage fees will vary from time to time, depending on volume of trades and rates negotiated with stockbrokers.

As some of the expenses incurred in the administration of the SMSF are effectively fixed in nature, the relevant proportion of those costs, as an overall percentage of fund assets, will vary depending on the actual value of the assets held within the SMSF.

## 7. How super is taxed

Superannuation is generally taxed on 3 main types of transactions:

- Contributions;
- Investment income; and
- Benefit payments.

### Contributions

Contributions made by employers or by self-employed persons to the SMSF (concessional contributions), will be taxable in the hands of the SMSF trustee at the rate of either 15% or 30%. The higher rate applies in respect of individual members with an income greater than \$250,000 in the relevant year.

Amounts received by the SMSF in excess of an annual limit, the 'concessional contributions cap', will be taxed in the individual member's hands at their marginal rate of tax. A proportion (up to 85%) of the amount in excess of the concessional contributions cap is permitted to be withdrawn from the SMSF and paid to the ATO, for inclusion in the individual's income tax assessment.

All other contributions, including contributions made by a member for which no tax deduction is claimed, i.e. 'non-concessional contributions', are generally received by the trustee free of tax.

The exception to that is in respect of non-concessional contributions which exceed the relevant 'non-concessional contributions cap' for a particular year or years. The excess amount may be withdrawn from the SMSF, together with an increased amount which represents deemed investment earnings on the excess non-concessional contributions, and paid to the ATO for inclusion in the individual's income tax assessment.

Although members are not required to provide their tax file number to the trustee of their SMSF, if they do not do so, higher taxes may be levied from concessional contributions and the trustee will not be permitted to receive other types of contributions.

### Investment Income

Income and realised capital gains ('fund earnings') generated from investments held by the fund are included in the annual taxation return of the SMSF.

Expenses incurred in generating the income are able to be offset against the fund earnings of the SMSF.

If the SMSF trustee is paying a pension to one or more members, at least a portion of the taxable income of the fund may be reduced by an amount titled 'exempt current pension income' amount. That effectively makes at least a portion of the income from assets supporting a pension, tax-free.

Dividend imputation credits received by the SMSF are able to be offset against any tax payable and, if they exceed the amount of tax payable, are paid as a refund to the SMSF.

Certain investments made on a basis that is deemed not to be at arm's length (i.e. not commercial) may be taxed at the top marginal tax rate, including Medicare levy (i.e. 47%) regardless of whether or not the SMSF trustee is paying a pension to one or more members.

### **Benefit payments**

Member balances within superannuation are required to be recorded in components being either taxable or tax free.

Proportions of payments derived from the tax free component will not be taxed in the hands of recipients, regardless of their age. Recipients of any taxable component of payments may be subject to tax on that portion.

Benefit payments to members over 60 years of age are paid free of tax, whether paid by way of a lump sum or as a pension.

For individuals under age 60, tax will be applied to the taxable component of any benefit paid. The amount of tax withheld will be retained by the trustee and remitted to the ATO. The remitted tax will be treated as tax paid by the member when that individual's income tax return is assessed.

For recipients of a lump sum payment, a certain amount of the taxable component of the benefit may be received free of tax, if the amount is within the individual's 'low rate cap', a lifetime allowance for withdrawal of lump sum benefits from superannuation, which is indexed annually.

The taxable component of payments to pension recipients will be included in their income tax return and they may be entitled to an offset of 15%, effectively providing a reduction in the rate of tax payable.

## **8. Insurance in your super**

The governing rules of your SMSF permit the trustee to hold insurance cover for members.

There is no automatic offering of insurance for members of the fund, although consideration may be given by the trustee to obtaining cover for each member, for death and Total and Permanent Disability cover.

It is a legislative requirement that the trustee regularly considers, as part of an investment strategy for the SMSF, whether it will hold insurance within the fund for one or more members.

As the directors of the trustee, or trustees, and the members are usually one and the same, the trustee is in a position to determine the individual insurance needs of the members, whether the individuals hold sufficient insurance cover outside of superannuation, and the type of insurance cover, if any, required within the SMSF. There are costs involved in maintaining insurance cover for members, which will generally be paid from accumulated member benefits.

Members or prospective members who have superannuation benefits in public offer funds should consider their insurance needs, if intending to transfer their benefits from that fund or those funds, as their insurance cover is likely to cease following the transfer of their benefits to the SMSF.

Apart from the usual insurance needs of the members, the trustee will also consider insurance in the event of a decision being made to borrow funds to purchase an asset which is of significant value in comparison to the overall value of the SMSF.

Payment of premiums in respect of insurance cover taken out for individual members will generally be drawn from the member balances of each of the respective individuals covered under their insurance policies.

## **9. How to open an account**

The trustee of the SMSF is permitted under the governing rules of the fund to accept any person, at its discretion, as a member of the fund.

That discretion is subject to some limitations, including:

- the SMSF must never have more than 4 members;
- the prospective member is not disqualified from acting as trustee of the SMSF or as director of the corporate trustee;
- if the prospective member is an employee or employer of another member, they are related;
- if accepted as a member, the individual will become a trustee or director of the trustee; and
- if accepted, the member agrees to abide by the governing rules of the fund.

A prospective member may be admitted to membership either by completing an Application for Membership form and/or, if the trustee decides to admit the person as a member of the SMSF.

Before making an application for membership, you should read this PDS and make enquiries of the trustee in respect of any matters which are not understood.

**Dispute resolution**

- Any complaint should initially be addressed to the trustee.
- If the complaint remains unresolved, you should seek independent legal advice.
- You are not able to take your dispute to the Superannuation Complaints Tribunal, as an SMSF is not subject to the Tribunal's jurisdiction.
- The Australian Financial Complaints Authority (AFCA) will replace the Superannuation Complaints Tribunal from 1 July 2018 and there will be limited scope for members to take their dispute to AFCA.

**Cooling Off period**

You will have the right to a cooling off period in relation to your membership in the SMSF. The cooling off period will commence after the 5<sup>th</sup> day following your acceptance as a member of the SMSF and will last a period of 14 days.

You will have no right to discontinue your membership under these cooling off provisions if you have commenced receiving a pension in that period.

**10. Enquiries and contact details**

If you would like any further information, enquiries may be directed to the trustee as detailed below:

**Trustee Name:** Paul Anthony Dwyer and Amanda Jane Dwyer

**Contact Phone Number:** .....

## SMSF Governing Rules Version 18.01



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## **1 PURPOSE**

### **1.1 Purpose of Fund**

The Trustee must maintain the Fund solely for the purpose of providing superannuation benefits for Members in the event of their retirement from employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law, provided that while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund will be the provision of old-age pensions within the meaning of the Relevant Law.

### **1.2 Maintenance of the Fund as a Self Managed Superannuation Fund**

The Trustee must manage the Fund and must exercise its powers and discretions so as to ensure that at all times, subject to rule 1.3, the Fund is a Self Managed Superannuation Fund.

### **1.3 Ceasing to be a Self Managed Superannuation Fund**

If:

- (a) the Trustee considers that it is not possible or not reasonably practicable for the Fund to continue to be a Self Managed Superannuation Fund; or
- (b) all of the Members so request in writing,

the Trustee and the Members must take all such actions as are required for the Fund to commence to meet the requirements under the Relevant Law to be another type of regulated superannuation fund, including amending these Governing Rules, notifying the Regulator and applying for such approvals as are required in the circumstances under the Relevant Law, and appointing a replacement trustee which meets the requirements under the Relevant Law applicable to the trustee of the relevant type of regulated superannuation fund.

### **1.4 Proper Law**

These Governing Rules are governed, must be construed and take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in the Deed. The Trustee, Members and Beneficiaries must accept the jurisdiction of the courts of that State or Territory.

The provisions of section 35B of the Trustee Act 1936 of South Australia do not apply to these Governing Rules.

The provisions of part 2 of the Trusts Act 1973 of Queensland do not apply to these Governing Rules to the extent permitted by the exceptions available, including the full discharge of any Trustee ceasing through retirement or otherwise, when the cessation will result in only a single Trustee remaining.

### **1.5 Fund Subject to Relevant Law**

- (a) The provisions in these Governing Rules are to be read subject to the Relevant Law.
- (b) These Governing Rules must be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Governing Rules to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to operate as a Self Managed Superannuation Fund (unless the Trustee and the Members have determined that the Fund should cease to be a Self Managed Superannuation Fund and to commence to be another type of Regulated Superannuation Fund as contemplated by rule 1.3), to qualify for concessional Taxation treatment and to satisfy any other requirements of the

Regulator and these Governing Rules must be further read and construed on the basis that:

- (i) where there is any inconsistency between a provision of these Governing Rules and the Relevant Law, the latter prevails to the extent of the inconsistency; and
  - (ii) in the event of any doubt arising as to the effect of the Relevant Law or if there is an inconsistency between the Relevant Law and a provision of these Governing Rules, the decision of the Trustee is final.
- (c) These Governing Rules must not be read or construed and no such provision of the Relevant Law may be so incorporated if to do so would constitute a breach of the power granted by rule 42 to add to, amend, alter, modify, rescind or vary the provisions of these Governing Rules.

#### **1.6 Superannuation Guarantee Legislation**

The Trustee must administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and must provide all certificates, reports and other information required under the Guarantee Act.

## **2 FUND TRUSTEES**

### **2.1 Nature of Trustee**

The Trustee must at all times be a person, persons or body which is or are eligible to be the Trustee under rule 2.2.

### **2.2 Eligibility for Appointment as Trustee**

The following persons or bodies are eligible to be the Trustee:

- (a) Individual Trustees who are not Disqualified from holding office as Trustees;
- (b) a Constitutional Corporation:
  - (i) which is not Disqualified from holding office as Trustee; and
  - (ii) no Director of which is Disqualified from holding office as a Trustee; and
- (c) such other persons or bodies as satisfy the Relevant Law or are appointed by the Regulator under the Relevant Law.

### **2.3 Corporate Trustee**

Subject to rule 2.8, where the Trustee is a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) a Constitutional Corporation, the Director of which is the Member; or
  - (ii) a Constitutional Corporation, the Directors of which are the Member and another person who is a Relative of the Member; or
  - (iii) a Constitutional Corporation, the Directors of which are the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person; and
- (b) while the Fund has more than one Member, a Constitutional Corporation of which all of the Directors are the Members.

#### **2.4 Individual Trustees**

Subject to rule 2.8, where the Trustee is not a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) the Member and another person who is a Relative of the Member acting as Individual Trustees; or
  - (ii) the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person, acting as Individual Trustees; and
- (b) while the Fund has more than one Member, all of the Members acting as Individual Trustees.

#### **2.5 Later Trustees or Directors**

Subject to rule 2.8, the Members must put in place arrangements to ensure that:

- (a) where the Trustee is comprised of Individual Trustees, before a person commences to act as an Individual Trustee; or
- (b) where the Trustee is a Constitutional Corporation, before a person is appointed as a Director of the Trustee,

the Members are satisfied that the person will become a Member under rule 11.1 following their commencement or appointment or that the Fund will otherwise comply with the trustee and membership requirements of the Relevant Law.

#### **2.6 Trustee/Member Rules**

Subject to the Relevant Law, if at any time the trusteeship of the Fund does not meet the requirements of either rules 2.3, 2.4 or 2.8, the Trustee and the Members must:

- (a) restructure the Membership of the Fund; or
- (b) complete such arrangements as are necessary under rule 2.9; and
- (c) ensure that the trusteeship of the Fund meets those requirements no later than 6 months after the trusteeship ceased to meet those requirements.

#### **2.7 Continuity of Office**

Any person who acts as an Individual Trustee must, on any person becoming or ceasing to be a Trustee, under this rule 2, do everything necessary to vest the Fund in any new and any remaining Trustees and must deliver all records and other books to such new and remaining Trustees.

#### **2.8 Other Persons as Trustees or Directors**

Subject to rule 2.9, the Members may, and must if such action is required in order to prevent the Trustee from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Funds, unless the Fund is to cease to be a Self Managed Superannuation Fund under rule 1.3, take such steps as are necessary to appoint or remove as an Individual Trustee or facilitate the appointment or removal as a Director of a Constitutional Corporation which is the Trustee, the following persons:

- (a) the Legal Personal Representative of a deceased Member in place of the deceased Member, during the period:
  - (i) beginning when the deceased Member died; and

- (ii) ending when death Benefits commence to be payable in respect of the deceased Member; or
- (b) the Legal Personal Representative of a Member in place of the Member, during any period when:
  - (i) the Member is under a legal disability; or
  - (ii) the Legal Personal Representative has an enduring power of attorney in respect of the Member; or
- (c) the Legal Personal Representative or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Where a Legal Personal Representative appointed as provided under this rule 2.8 consists of more than one person, whether acting jointly or jointly and severally, that Legal Personal Representative shall have one vote only. If, in accordance with rule 10.2, each Individual Trustee appointed in place of a Member shall have such number of votes as is equal to the value in dollars of the total balances of that Member, where more than one Individual Trustee has been appointed as Legal Personal Representative of a Member, those Individual Trustees shall be entitled to vote, between them, only on the number of votes equivalent to the total balances of that Member.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits that the person may be a Trustee or Director of a Constitutional Corporation which is the Trustee and the Fund would remain a Self Managed Superannuation Fund.

## **2.9 Appointment and Removal of Trustee**

- (a) On the establishment of the Fund, the Trustee is the person, persons or body named and described in the Establishing Deed.
- (b) At all other times, and subject to rules 2.8, 2.9(d), 2.9(e), 2.9(f), 2.9(k) and 37.11, the Members must determine who will act as Trustee in accordance with this rule 2 and the Relevant Law for the Fund to be maintained as a Self Managed Superannuation Fund and must take such steps as are necessary to appoint or remove the persons or body to or from the office of Trustee to ensure such compliance is maintained, provided that any obligation imposed on a deceased Member or a Member who is under a legal disability by this paragraph shall be performed by the Legal Personal Representative of the relevant Member or, if there is no Legal Personal Representative or the Legal Personal Representative is unable or unwilling to act, then by the remaining Members.
- (c) An Individual Trustee will cease to hold the office of Trustee if the person dies or becomes Disqualified or ceases to have legal capacity, and a person will be taken for these purposes to have ceased to have legal capacity if they have become incapacitated such that:
  - (i) the person is found by two medical practitioners (expressed in writing) to be under a disability such that in the opinion of each medical practitioner the person is incapable of managing the person's financial affairs; or

- (ii) a Court or Tribunal of competent jurisdiction decides that the individual is suffering from incapacity to the extent the person is incapable of managing the person's financial affairs; or
  - (iii) a Court or Tribunal of competent jurisdiction has appointed an administrator or guardian to manage the person's financial affairs.
- (d) If an Individual Trustee who ceases to hold the office of Trustee by virtue of having ceased to have legal capacity is a Member of the Self Managed Superannuation Fund, then from the time the person is taken to have ceased to have legal capacity (in this rule referred to as the **Incapacity Date**):
- (i) the Legal Personal Representative of that Member must be appointed as Trustee in accordance with rule 2.8 or, if no Legal Personal Representative exists or a Legal Personal Representative exists but does not give their consent to appointment or is for any reason unable to act as Trustee; then
  - (ii) the Trustee may appoint an additional individual as Trustee for the purpose of:
    - (A) paying the Benefits to or for the benefit of the incapacitated Member, if permitted under the Relevant Law; or
    - (B) transferring the Benefits of the incapacitated Member to an Eligible Rollover Fund, if permitted under the Relevant Law; or
    - (C) appointing a replacement trustee in accordance with the powers contained in rule 1.3.
- (e) If the person or persons appointed as Trustee in place of an incapacitated Member in accordance with rule 2.9(d)(ii) are not or do not become the Legal Personal Representative of the Member within such time after the Incapacity Date to ensure that the Fund will otherwise comply with the trustee and membership requirements of the Relevant Law, their appointment under this deed shall cease on the date on which their continued appointment would otherwise cause the Fund to cease to comply with such requirements unless their continued appointment is determined in writing by the Regulator not to cause the Fund to breach the trustee and membership requirements of the Relevant Law.
- (f) If a Member has ceased to hold the office of Trustee as a result of incapacity in accordance with rule 2.9(c)(i), 2.9(c)(ii) or 2.9(c)(iii) regains capacity such that:
- (i) the Member is found by two medical practitioners (expressed in writing) to have become capable of managing the person's financial affairs; or
  - (ii) a Court or Tribunal of competent jurisdiction decides that the Member is capable of managing the person's financial affairs ; or
  - (iii) the relevant Court or Tribunal removes or terminates the appointment of an administrator or guardian appointed to manage the person's financial affairs, and no administrator or guardian is appointed in their place,

then the Member must be reappointed as an Individual Trustee unless the Member does not give their consent or directs in writing that their Legal

Personal Representative is to remain, or be appointed, as the case may be, as an Individual Trustee instead of the Member.

- (g) The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.
- (h) For the purposes of rule 2.9(b) the Members may accept the resignation in writing of any Trustee.
- (i) Where a new Trustee or an additional Trustee is appointed pursuant to the power of appointment contained in this rule 2, the Fund at that time vests in the person or body, or jointly in the person or body with the other Trustee or Trustees without the necessity for any declaration, transfer, conveyance, registration or other assurance for such appointment to be effective.
- (j) Where a Trustee is removed or resigns the other Trustees must take such steps to remove that person or body from any registration which may have been made in the course of acting as Trustee.
- (k) In the event that there are no Members remaining in the Fund, the Legal Personal Representative of the last surviving Member may determine who will act as Trustee for the Fund.

#### **2.10 Trustee Declarations and Diligence**

Each person who is an Individual Trustee or who is a Director of a Constitutional Corporation which is the Trustee must take all such actions, make all such declarations and execute all such documents as are required under the Relevant Law to be done, made or executed by a person who holds or who commences to hold such office.

Each person who is a Director of a Constitutional Corporation which is the Trustee must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Constitutional Corporation complies with the covenants and operating standards imposed by the Relevant Law.

### **3 COVENANTS AND OPERATING STANDARDS**

The Trustee for itself, its successors and assigns covenants with the Members to perform and observe the covenants, trusts and conditions of these Governing Rules and the covenants, operating standards and obligations imposed by the Relevant Law so far as they are or ought to be observed by the Trustee, including the following covenants and operating standards:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members and Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of an Employer, or an associate of an Employer;