



SELF MANAGED SUPERANNUATION
TRUST DEED
THE J L NELSON SUPERANNUATION
FUND

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PARTICULARS

THE J L NELSON SUPERANNUATION FUND

FUND NAME: THE J L NELSON SUPERANNUATION FUND

TRUSTEE: JOHN LEONARD NELSON of 28 AMITY BOULEVARD, COOGEE, WA 6166
HEATH WAYNE NELSON of 128 PRESTON POINT ROAD, EAST FREMANTLE, WA 6158

MEMBERS: JOHN LEONARD NELSON of 28 AMITY BOULEVARD, COOGEE, WA 6166

BACKGROUND:

- (A) The Trustees wish to establish a self managed superannuation fund, as defined in SIS Legislation, to provide superannuation benefits to Members; while the Trustee(s) of the Fund are natural persons, to provide these superannuation benefits primarily by way of old-age pensions; and to act for any other purposes as permitted from time to time by SIS.
- (B) The Trustees desire to maintain the Fund as a complying superannuation fund under SIS.
- (C) The Trustees desire that the Fund have the capacity to become another type of superannuation fund under SIS.

AGREEMENT OF THE PARTIES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

Account means one or more of:

- (a) Accumulation Account;
- (b) Bank Account;
- (c) Pension Account;
- (d) Reserve Account;
- (e) any other account established by the Trustees pursuant to this Deed;

Account Based Pension means a pension established for the benefit of a Member in accordance with regulation 1.06(9A) of the SIS Regulations or an annuity established for the benefit of a Member in accordance with regulation 1.05(11A) of the SIS Regulations;

Accumulation Account means an account established on behalf of each Member pursuant to clause 7.1(a) into which are deposited Contributions;

Bank Account means an account opened in the name of the Trustees as trustee for the Fund at a financial institution. The Trustees may have any one or more of a money management account, a cheque account, a loan account or such other account or accounts as may be required from time to time;

Beneficiary means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;

Benefit means any amount paid or payable by the Fund to or in respect of a Member or Beneficiary whether as a Lump Sum or Pension or otherwise in accordance with this Deed;

Bill of Exchange means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed and determinable future time, a sum certain in money to the order of a specified person, or to bearer;

Bill of lading means a receipt issued by a shipping company for goods transported. The bill serves as a record of the contract, setting out terms and conditions;

Binding Death Benefits Nomination means a direction given to the Trustees by a Member in accordance with this Deed in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the Requirements as to payment of the Member's Death Benefit in the event of the Member's death;

- (a) a surviving Spouse or de facto spouse;
- (b) a child of the deceased Member who is under 18 years of age;
- (c) a child of the deceased Member aged between 18 years and 25 years of age, who was financially dependent on the deceased;
- (d) a child of the deceased Member aged 18 years of age or over, who has a permanent disability (as contemplated by the *Disability Services Act 1986 (Cth)*);
- (e) any person who relied on the deceased Member for financial maintenance at the time of their death;
- (f) any person who, in the opinion of the Trustee, the Member has an interdependency relationship with, as referred to in sections 10(1) and 10A of SIS; or
- (g) any other person that may be a Dependant pursuant to SIS.

Employee means a person in the employment of, or a Director of, an Employer or an associate of the Employer;

Employer means an employer of a Member who contributes to the Fund on behalf of the Member. Where used in reference to a particular Member, it means the Employer by whom the Member is employed at the relevant time;

Excess Concessional Contributions has the meaning given by section 291-20 of the Income Tax Assessment Act 1997;

Excess Contributions Tax means any tax imposed by reason of the Superannuation (Excess Concessional Contributions Tax) Act 2007 or the Superannuation (Excess Non- Concessional Contributions Tax) Act 2006;

Financial Instrument includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

First Home Super Saver (or FHSS) Scheme means the scheme set out in:

- (a) Division 313 of the ITAA 1997; and
- (b) Division 138 in Schedule 1 to the Taxation Administration Act 1953;

and such other provisions as they relate to those Divisions;

ITAA means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* as applicable and the regulations thereunder;

LPR means a Members legal personal representative being the executor of the will or administrator of the estate of a deceased Member, the trustee of the estate of a Member under a legal disability or a person who holds an enduring power of attorney granted by a Member;

Lump Sum means the amount of Benefit, other than a Pension, payable to or in respect of a Member;

Market Value in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale.

or such other meaning as may be set out in s10(1) of SIS;

Member means a person who has been accepted by the Trustees as a Member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a pensioner. The Members are set out in the Particulars;

Nominated Dependant means the person or people nominated by a Member as such in either a Binding Death Benefits Nomination or a non binding death benefits nomination;

Nominated Reversionary Beneficiary (or Nominated Reversionary Beneficiaries as the case may be) means the person or people nominated by a Member in their relevant Pension documentation to receive the Member's Pension upon the happening of a Reversionary Event;

Non-Concessional Contributions has the meaning given in section 292.90 of the ITAA 1997;

Non-Concessional Contributions Cap has the meaning given by section 292-85 of the ITAA 1997. If a Member's total superannuation balance is greater than or equal to the general transfer balance cap (from 1st July 2021 \$1.7m) at the end of the previous financial year, the Member NOT able to make non-concessional contributions in the subsequent year. If a Member is under 67 years old, the Member may be able to make non-concessional contributions of up to three times the annual non-concessional contributions cap in a single year. As from 1st July 2021 the Concessional Contributions cap is \$110,000 or \$330,000 over 3 years. If relevant Members can re-contribute (between 1 July 2021 and 30 June 2030) amounts they withdrew under the COVID-19 early release of super program without those amounts counting towards their non-concessional contributions cap;

Restricted Benefit means a benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;

Reversionary Event means an event including but not limited to death, divorce, incapacity or such other reversionary event as the Requirements may permit;

SGC means the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992* and the Superannuation Guarantee (Administration) Regulations as the context requires;

SIS means the *Superannuation Industry (Supervision) Act 1993* (and includes the SIS Regulations where the context requires);

SIS Regulations means the Superannuation Industry (Supervision) Regulations;

Spouse means:

- (a) a person legally married at any time to a Member; or
- (b) a person (whether of the same sex or a different sex) not legally married to the Member who, in the opinion of the Trustees, lives or lived with the Member as the de facto spouse or partner of the Member;

Transfer Balance Account means the transfer balance account established pursuant to Subdivision 294B of ITAA 1997 which is credited if the Member has a superannuation income stream in the retirement phase;

Transfer Balance Cap means the amount specified in s294.35 ITAA 1997 being the total amount a Member can transfer into the retirement phase of superannuation (where earnings are exempt from taxation);

Trustee means the Trustees for the time being of the Fund (and where the context permits includes the directors of a corporate Trustee), the current Trustees are JOHN LEONARD NELSON , HEATH WAYNE NELSON.

Trustee Declaration means a declaration in the approved form (being a Trustee Declaration (NAT 71089)) that is to be signed by either each individual trustee or each director of a corporate trustee, no later than 21 days after that person becomes a trustee or director.

- 1.2 It is expressly stipulated that those restraints (if any) placed upon the ability for a sole Trustee to act as the Trustee of a trust by the Trustee Act 1962 (Western Australia), shall not apply to the Trust including but not limited to Section 7(2)(c), Section 30 (1) (k), Section 58 of the Trustees Act 1962 (Western Australia) and all other corresponding provisions of comparable legislation, and it shall be permissible for one trustee only to act as Trustee of the Fund irrespective of the number of Trustees appointed whether or not originally appointed at the time of creation of the Fund constituted by this Deed. For the absence of doubt, subject always to the Requirements it shall at all times be permissible for a single person or corporation to occupy the office of Trustee of the Fund.
- 1.3 Throughout this Deed there are notes and comments in square brackets that appear like this - [Ref: detail]. These comments essentially draw the readers attention to changes that will take place as from 1st July 2017 as well as sections in SIS, regulations within the SIS Regulations, ATO Taxpayer Alerts, ATO Interpretative Decisions, ATO Rulings and Determinations and other comments that you may wish to read to obtain a greater understanding of the subject matter dealt with by that section of this Deed. Many of these may be accessed via the ATO website www.ato.gov.au. These references have been included for information purposes only, are neither legal or financial advice and do not affect the interpretation of this document.
- 1.4 The singular shall mean and include the plural and vice versa, any gender shall mean and include all other genders and Person means and includes a natural person, firm or corporation.
- 1.5 The provisions of a Schedule constitute part of this Deed.
- 1.6 References to any statutory enactment shall mean and be construed as reference to that enactment as amended modified substituted and re-enacted from time to time.
- 1.7 The index does not form part of and shall not affect the interpretation of this Deed.
- 1.8 Clause headings and highlighting of text shall not affect the interpretation of this Deed. A reference to a clause number shall be a reference to a clause in this Deed.
- 1.9 The perpetuity period in relation to all dispositions made by this Deed shall be:
 - (a) for all jurisdictions except South Australia eighty years commencing on the date of this Deed, or such shorter period as may be prescribed by law from time to time; or
 - (b) for this Fund if expressed to be subject to the laws in force from time to time in South Australia, initially eighty years commencing on the date of this Deed and any further period or periods in excess of eighty years as the Trustee(s) may determine from time to time by deed;
- 1.10 Unless a contrary intention applies, any word or expression defined in SIS, the ITAA or the Requirements which is used but not defined in this Deed, has the same meaning.
- 1.11 This Deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

- (c) the Trustee:
 - (i) dies;
 - (ii) becomes, in the opinion of the other Trustees, mentally or physically incapable of fulfilling the office of Trustee of the Fund;
 - (iii) is removed by the Regulator, or
 - (iv) is precluded from being a Trustee in other circumstances prescribed by SIS.

2.5 Appointment

The power of appointing a new Trustee is held by:

- (a) the then Trustee or Trustees or if none, the Members; and
- (b) if for any reason the Members are unable to appoint a new Trustee then a new Trustee may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority, with such appointment to be evidenced by deed that specifies the date upon which the former trustee will cease to act in that capacity and the new trustee will commence, a requirement for the parties to notify any third parties as may be necessary in order to have assets transferred into the name of the new trustee and such other matters as the Trustees consider necessary.

2.6 Appointment of directors

The power of appointing a new director of a corporate Trustee is held by:

- (a) the then directors or if none, the shareholders of the corporate Trustee; and
- (b) if no person under paragraph (a) is available then a new director may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority.

2.7 Vesting of Assets

Any Trustee on ceasing to be a Trustee must do everything necessary to vest the Fund in the remaining Trustees or the new Trustee and must deliver all records and other books to the remaining Trustees or the new Trustee.

2.8 Trustees Covenants

[Considerations: Treasury Laws Amendment (2018 Superannuation 6 Measures No. 1) Act 2018 seeks to change the non-arm's length income (NALI) provisions from 1st July 2018. The NALI provisions are an anti-avoidance provision that is contained in s295-550 of ITAA 1997. They are designed to prevent SMSFs from entering into non-arm's length transactions which result in the SMSF artificially inflating its for the purposes of this income being taxed at the concessional rates that apply to SMSFs.

The Explanatory Memorandum states (para 3.7) the concept of non-arms length takes its ordinary meaning. In broad terms, the concept is interpreted as relating to transactions in which individuals or entities are not dealing with each other on a commercial, unrelated party basis.

On page 36 a clear example is provided:

The SMSF financed the purchase of the property under limited recourse borrowing arrangements from a related party on terms consistent with section 67A of the SIS Act. The limited recourse borrowing arrangements were entered into on terms that include no interest, no repayments until the end of the 25 year term and borrowing of the full purchase price of the commercial real property (i.e. 100 per cent gearing)....

The SMSF has not incurred expenses that it might have been expected to incur in an arms length dealing in deriving the rental income. As such, the income that it derived from the non-arms length scheme is non-arms length income. The rental income of \$78,000 (less deductions attributable to the income) therefore forms part of the SMSFs non-arms length component and is taxed at the highest marginal rate. However, there will be no deduction for interest, which under the scheme was nil.

Non-arms length interest on borrowings to acquire an asset will result in any eventual capital gain on disposal of the rental property being treated as non-arms length income.

If the trustee is not acting as a trustee but is instead providing services that are procured as a third-party, the non-arms length income rules are intended to apply. Provided that the amount charged for any such services is not less than that which would be expected to be charged between parties dealing at arms length, the dealings will not be subject to the non-arms length income rules. In such cases, the trustee of an SMSF may also be prevented from charging any more than the arms length price because of the regulatory requirements in the SIS Act (see section 17B of the SIS Act, which permits a trustee to charge up to an arms length amount for duties or services performed other than in the capacity as trustee). (para 3.37)

The Trustees for themselves and their successors agree :

- (a) to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustees;
- (b) to comply with such of the Requirements which apply to the Fund;
- (c) to hold the Fund and the income of the Trust Fund upon trust for the Members in accordance with the terms and conditions contained in this Deed;

- (c) hold meetings by telephone, webcam or other similar means;
- (d) appoint one of them to act as chairman and replace the chairman whenever seen fit.

3.3 Written Resolutions

A resolution in writing signed by the Trustees has the same effect and validity as a resolution of the Trustees passed at a meeting of the Trustees.

3.4 Minutes

- (a) The Trustees must keep minutes of their resolutions and proceedings kept for that purpose and otherwise keep such records of their proceedings in such manner as provided for in the Requirements.
- (b) Minutes are evidence of the matters recorded in them if they are signed by all of the Trustees or alternatively confirmed at the next Trustee meeting and signed by the chairman.

3.5 Trustees may Act on Authorisations

The Trustees may treat an authorisation or information purported to be given by a Member or Beneficiary as given by the Member or Beneficiary and may rely on it.

3.6 Trustees Fees

For any period in which the Fund is a self managed fund, the Trustees must not be paid any fees but may recover costs and disbursements incurred.

3.7 Trustees Indemnity

The:

- (a) Trustees are (and in the case of a corporate Trustee, each director is) indemnified out of the Fund to the maximum extent permitted by the Requirements against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law, except in the case of:
 - (i) fraud;
 - (ii) wilful or reckless failure to exercise proper care and diligence; or
 - (iii) a civil penalty order pursuant to SIS;
- (b) indemnity under sub-clause (a) is a continuing indemnity and applies to former Trustees (and directors of a corporate Trustee) for any period in which they acted in that capacity.

3.8 Insurance against Fund losses

- (a) The Trustees may in their discretion take out insurance against:
 - (i) any liability which arises against:
 - (A) a Trustee or director of a Trustee company; or
 - (B) the Fund; and
 - (ii) any losses or damages which the Fund, a Trustee or director of a Trustees company may suffer or incur, as a result of or arising from any act or omission of the Trustees or any person to whom the Trustees may have delegated their powers duties and discretions or any servant, agent or employer of the Trustees or any contractor (including persons acting in any professional role), administrator, custodian or other person or body engaged by the Trustees for the purposes of the Fund.

3.9 Trustee's Discretion

Unless otherwise specifically indicated, the Trustees in the exercise of the powers and discretions conferred by this Deed have an absolute and uncontrolled discretion. The Trustees may, subject to the Requirements, re-exercise a discretion.

3.10 Comply with the Regulator

The Trustees must abide by all lawful directions, orders and authorities of the Regulator in force from time to time.

4. TRUSTEE'S POWERS OF INVESTMENT AND SALE

4.1 Investment strategy

[Considerations: as from 1st July 2017 Trustees may need to consider the type of investments to be acquired and held, the age of the Member(s), their account balances and intended action at retirement as well as whether the Fund. Consider any property assets, whether they are encumbered (using s67A SIS (limited recourse borrowing arrangements), their current and potential future value, and income. Which method does the Fund use in determining its exempt current pension income (ECPI) - segregated or proportionate (unsegregated).

- part of the Fund that is held for that person in accordance with those strategies. Any direction must be in accordance with the Requirements;
- (g) may sell, transfer or vary any investment made in accordance with an investment strategy, in the absolute discretion of the Trustees in accordance with this Deed. The Trustees must do so in the interests of the relevant Members or Beneficiaries. The Trustees must continually monitor the investments to ensure that they remain appropriate;
 - (h) will, if a Member adopts an investment strategy, do as follows:
 - (i) establish a sub-account of the Member's Accumulation Account in respect of that strategy;
 - (ii) credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the Member's Accumulation Account itself;
 - (iii) allocate earnings attributable to that strategy to the Member's or Beneficiary's Accumulation Account in a way that the trustee thinks equitable;
 - (iv) determine a Fund Earning Rate for that sub-account (see clause 4.2).
 - (i) will in accordance with SIS Regulation 4.07D(2) (namely the insured event must be consistent with a condition of release specified in item 102, 102A, 103 or 109 of Schedule 1) and Regulation 4.09(2)(e), consider and if warranted take out a contract of insurance that provides insurance cover for one or more Members of the Fund on such terms and conditions as the Trustees may from time to time determine.
 - (j) will regularly review the Fund's Investment Strategy and:
 - (i) although the Regulations do not prescribe what 'regular' means, the Trustee's agree to undertake an annual review of the Fund's Investment Strategy (which is in accordance with the ATO's view) at which time they will consider whether each Member has appropriate risk insurance coverage, including life, total and permanent disability (TPD) and income protection insurance;
 - (ii) document (by minute) that the annual review has taken place and record any decisions made including whether to update an investment strategy and in what respect.

4.2 Earning Rate

[Regulation 4.09(2)(a) and 5.03 SIS Regulations]

At the end of each year the Trustees must determine the Fund earning rate (which may be positive or negative) for the Fund (Fund Earning Rate) in a way that is fair and reasonable as between:

- (a) all the Members; and
- (b) the various kinds of Benefits of each Member,

taking into account:

- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (b) the realised and unrealised losses and expenses of the Fund, including any tax that is or may be incurred by the Trustees which are not debited to an account;
- (c) any provisions established by the Trustees for taxes and expenses;
- (d) the appropriateness of averaging profits, earnings, losses and expenses over two or more years;
- (e) the Fund's Reserve Accounts (and the purposes of those reserves); and
- (f) such other matters the Trustees consider appropriate.

The Trustees may determine the Fund Earning Rate at such other times as they may decide.

4.3 Interim Earning Rate

If the Trustees are required to pay a Benefit during the course of a financial year, the Trustees must determine a Fund Earning Rate to the date of payment and adjust the appropriate Member's Accumulation Account or Pension Account, accordingly.

4.4 Averaging Income

If the Trustees in determining a Fund Earning Rate decides to average the losses, profits, expenses and earnings of the Fund over two or more years, the Trustees may establish a Reserve Account in accordance with clause 7.6.

4.5 Allocation of Earning Rate

The Trustees may adjust each Accumulation Account or Pension Account by allocating the earnings due in accordance with the Fund Earning Rate (in proportion to the amount standing to the credit of each such account at the beginning of the year with an appropriate adjustment being made for amounts (if any) credited or debited to each Accumulation or Pension Account since that date).

4.6 Unallocated earnings

In 2014 the ATO issued 2 taxation determinations (TD 2014/25 and TD 2014/26) clarifying that bitcoin and cryptocurrencies like bitcoin are not money but are CGT assets. The ATO flags various issues with a cryptocurrency investment on its web page entitled [SMSF investing in cryptocurrencies](#).

- (xvii) Digital technologies and related digital investments that are associated with decentralized finance (DeFi), decentralized apps (dApps), smart contracts or blockchains;
- (xviii) any other investment permitted by the Requirements and which the Trustees deem appropriate including but not limited to investment in collectables and personal use assets. Regulation 13.18AA (1) specifies the assets that are taken to be collectables and personal use assets.
- (b) For the purposes of clause 4.8 (a), the words/phrases referred to below, will have the following meanings:
- **contracts for difference (CFDs)** is a contract that enables two parties to enter into an agreement to trade on financial instruments based on the price difference between the entry prices and closing prices. There is no delivery of physical goods or securities with CFDs;
 - **decentralized finance (DeFi)** is an emerging financial technology based on secure distributed ledgers similar to those used by cryptocurrencies. The system removes the control banks and institutions have on money, financial products, and financial services;
 - **decentralized apps (dApps)** are digital applications or programs that exist and run on a blockchain or peer-to-peer (P2P) network of computers instead of a single computer. DApps are outside the control of a single authority. DApps which are often built on the Ethereum platform can be developed for a variety of purposes including gaming, finance, and social media;
 - **derivatives** means a contract that operates and is valued by reference to the value or performance of an asset, entity, rate, index, or other instrument that is referenced in the contract and is said to be "underlying" the transaction. Underlying assets include commodities, currencies, debt obligations, and indices to individual equity shares and baskets of equities. Derivatives do not require a direct investment in the underlying asset;
 - **Ethereum** is a decentralized, open-source blockchain with smart contract functionality. Ether (ETH) is the native cryptocurrency of the platform;
 - **Exchange traded commodities (ETCs)** is a managed fund that can be bought and sold on an exchange (eg the Australian Securities Exchange (ASX)). ETCs seek to track the price movement of a commodity or group of commodities such as precious metals, industrial metals, oil, natural gas, soft commodities and livestock. The performance of an ETC is based either on the spot price (price for the immediate supply) or the future price (price for the supply in the future) of a single commodity or a basket of commodities;
 - **Exchange traded funds (ETFs)** is a managed fund that can be bought and sold on an exchange (eg the Australian Securities Exchange (ASX)). EFTs are a way to earn a return similar to an index (eg the ASX200 or S&P500) or a commodity (eg gold). The value of the ETF increases or decreases with the index or asset being tracked by the fund manager;
 - **Exchange Traded Options (ETOs)** are a derivative security, their value is derived from another asset, typically a share or (stock market) index. An ETO gives you the right but not the obligation to buy or sell a given security at a certain price within a given time;
 - **Managed Investments** is where the investor's money is pooled with the money of other investors in a fund. Money (or property) is paid or transferred to a body corporate or into a trust fund managed on the investor's behalf by a Fund Manager;
 - **separately managed accounts** is a registered managed investment scheme that provides investors beneficial interest in a professionally constructed and managed portfolio of investments that may consist of Australian shares, listed securities (such as shares, ETFs, ETCs, listed investment companies (LICs) and listed investment trusts (LITs) etc.), managed funds and cash;
 - **smart contracts** are self-executing contracts with the terms of the agreement between buyer and seller being directly written into lines of code. The code and the agreement evidenced by the code exist across a distributed, decentralized blockchain network. The code controls the execution, and transactions are trackable and irreversible.
 - **synthetic investments** is an investment that replicates, or attempts to replicate, the cash flows incident to ownership of an asset (usually a security, basket of securities, index, or other financial instrument). An investment is said to be synthetic where there is no ownership of the underlying asset;

- (b) must provide their tax file number to the Trustees;
- (c) may sign an Application Form in the form set out in Schedule 1 and a Trustee Declaration;
- (d) may sign either a Binding Death Benefits Nomination (whether lapsing or non-lapsing) or a non-binding death benefits nomination;

5.2 Additional Members

For the financial year 2019-2020 the maximum number of Members allowed in a SMSF is 4, but as from 01/07/2021 the maximum number has been increased to 6.

The Trustees may appoint further Members to the Fund and:

- (a) Membership is by written application to, and acceptance by, the Trustees. The Trustees may reject any application for membership in their absolute discretion.
- (b) Before accepting a person as an additional Member (Applicant), the Trustees may require the person to provide such information or documents considered relevant or execute such documents as the Trustees determines, including but not limited to:
 - (i) an Application Form signed by the applicant;
 - (ii) the applicant's tax file number;
 - (iii) the applicant signing a Trustee Declaration;
 - (iv) where the applicant (or subsequently the Member) wishes to sign a Binding Death Benefits Nomination or non-binding death benefits nomination, that form; and
 - (v) a statement made by the applicant that they do not suffer from any disqualification to act as a Trustee.
- (c) For the avoidance of doubt, the applicant will not become an additional Member, and the Trustees must not accept the applicant as an additional Member:
 - (i) if the total number of Members will be more than permitted by the Requirements;
 - (ii) if the applicant is disqualified from being either a director of the corporate trustee or an individual trustee;
 - (iii) if the applicant is in an employment relationship with another Member (except another Member who is a relative);
 - (iv) before the applicant has been given a Product Disclosure Statement.
- (d) If the Trustees decide to admit the applicant as a Member, the applicant:
 - (i) becomes a Member on the date determined by the Trustees;
 - (ii) if the Trustees make no such determination, the date that the applicant completed the Application Form.

5.3 Minors as Members

For the purposes of this clause, a minor is a person who is under 18 years of age.

A minor may be a Member, provided the Requirements have been complied with. In relation to a Member who is a minor:

- (a) the minor's parent or guardian must sign the Application Form;
- (b) decisions in relation to the minor's membership must be made by the minor's parent or guardian until the minor turns 18 or such other age as the Requirements permit a minor to make decisions concerning the Fund.

5.4 Member's Attorney

Subject always to the Requirements, the Trustees will permit a person being the donee of a valid enduring power of attorney granted by a Member (the Attorney) to perform and exercise all of the rights, powers, duties and obligations of the Member in respect to the Fund. Everything done by the Attorney will be as valid as if done by the Member appointing the Attorney.

5.5 Conditions of Membership

The Trustees may impose conditions on membership and may impose limits or conditions upon Benefits and may remove or vary such conditions at any time.

5.6 Cessation of Membership

A person ceases to be a Member as soon as the first of the following happens:

- (a) the Member dies;
- (b) the Member ceases to be a director of the corporate trustee;

- (C) copies of all income tax returns for the Fund.
- (ii) for a minimum of 10 years:
 - (A) minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed);
 - (B) records of all changes of Trustees;
 - (C) Trustee declarations (whether as a individual trustee, or director of a corporate trustee);
 - (D) Members' written consent to be appointed as Trustees, and
 - (E) copies of all reports given to Members;
 - (F) Member contributions statements;
 - (G) copies of all annual returns lodged (for corporate trustees).
 - (H) audit reports.
- (c) if a Member is in receipt of a Pension, then the Trustees must monitor the value of capital transferred in and out of the retirement phase to determine whether a Member has breached their Transfer Balance Cap. The mechanism for doing this is the Transfer Balance Account. Characteristics of the Transfer Balance Account include:
 - (i) a credit to the TBA arises when value is transferred into retirement phase (eg on starting a retirement phase pension such as an account based pension);
 - (ii) a credit increases the balance of the Member's TBA and therefor uses up their Transfer Balance Cap;
 - (iii) a debit to the TBA arises when value is transferred out of retirement phase (eg by commuting a retirement phase pension);
 - (iv) a debit decreases the balance of the Member's TBA and therefor gives the Member the ability to transfer additional value into retirement phase up to the Transfer Balance Cap;
 - (v) debits arise in a TBA from:
 - (A) a commutation of a superannuation income stream in the retirement phase;
 - (B) structured settlement contributions;
 - (C) an event that results in your superannuation interest being reduced (fraud or dishonesty; bankruptcy);
 - (D) a payment split (divorce or relationship breakdown);
 - (E) a superannuation income stream failing to comply with the pension or annuity standards under which it is provided;
 - (F) a superannuation income stream provider failing to comply with a commutation authority in respect of a particular superannuation income stream;
 - (G) a notice being issued under section 136-70 in Schedule 1 to the Tax Administration Act 1953 (TAA) in relation to a non-commutable excess transfer balance;
 - (H) other circumstances as provided for by the Regulations.;
 (see s294-80 ITAA 1997)
 - (vi) special rules apply concerning repayments made under a limited recourse borrowing arrangement (LRBA).

[Note: see also section 294.55 of the ITAA 1997. Law Companion Ruling LCR 2016/9 Superannuation reform: transfer balance cap provides further information on LRBA's, apportioning the LRBA credit for multiple Members, TBA and the TBC].

A credit will arise in a Member's TBA in relation to a payment made by the Trustees under a limited recourse borrowing arrangement (LRBA) that was entered into on or after 1 July 2017 where the payment results in an increase in the value of the Member's superannuation interest that supports their superannuation income stream. An increase in the value of the Member's superannuation interest supporting the superannuation income stream (in the retirement phase) will occur where a payment in respect of the LRBA is made fully, or partially, from assets that are supporting superannuation interests that are not in the retirement phase.
 - (vii) the Fund Trustees are required to report certain 'events' affecting a Member's TBA. The relevant ATO form is **Super transfer balance account report (NAT 74923)** (generally referred to as **TBAR**).

6.2 Auditor

- (c) Deposit all money of the Fund as soon as practicable into the Bank Account. After receiving a contribution the Trustees must allocate the contribution to a Member's Accumulation Account or Pension Account within 28 days after the end of the month the contribution was received or if it is not reasonably practicable to allocate the contribution to the Member within the 28 day period, within such longer period as is reasonable in the circumstances.

7.2 Credits to Accumulation Account

The Trustees must credit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (a) Contributions;
- (b) re-contributions pursuant to the First Home Super Saver Scheme;
- (c) re-contributions of COVID-19 early release amounts;
- (d) contributions pursuant to the Downsizer Contribution (see clause 9.1);
- (e) any amount paid to the Trustees as a result of a successful application made pursuant to Part 23 of SIS and which the Trustees thinks fit to credit to the Member's account;
- (f) any amount rolled over from another superannuation account in respect of the Member;
- (g) the proceeds of any policy of insurance effected by the Trustees (and owned by the Fund) in respect of the Member;
- (h) any allocation by the Trustees from the Reserve Account;
- (i) any allocation of earnings by the Trustees;
- (j) any other amount that the Requirements do not expressly exclude.

Note: for a Member to be eligible to make a re-contribution of COVID-19 early release amounts:

- the Member must have accessed superannuation amounts through COVID-19 early release of super program;
- the total amount, including any previous COVID-19 recontributions, the Member is re-contributing is equal to or less than the total amount the Member accessed through COVID-19 early release;
- the Member can provide the approved form notifying the Fund of the re-contribution on or before the time when the contribution is made;
- the Member re-contributes the amounts to the Fund between 1 July 2021 and 30 June 2030;
- the Member is not claiming a deduction in their income tax return for the amounts re-contributed.

7.3 Debits to Accumulation Account

The Trustee must debit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (a) any amount paid out of the Member's Accumulation Account including but not limited to tax payable in respect to that Member, a contribution split to another Member, an amount rolled over to another superannuation fund as a result of a request by a Member, the payment of a benefit (but not including a payment from a Pension Account);
- (b) the costs of any policy of insurance effected and owned by the Trustees in respect of the Member;
- (c) such proportion of any negative earnings as may be allocated by the Trustees;
- (d) any amount forfeited by the Member;
- (e) such proportion of the costs of the Fund as are allocated by the Trustees;
- (f) any costs, losses, expenses that relate to that particular Member (either directly, or indirectly by virtue of their choice of investments) as may be determined by the Trustee; or
- (g) any other amount the Trustees think appropriate to debit.

7.4 Contribution splitting

[Note: To be entitled to the spouse contributions tax offset:

- a Member must make a non-concessional contribution to their spouses super. This is a voluntary contribution made using after-tax dollars, which the contributing Member does not claim a tax deduction for;
- the Members must be married or in a de facto relationship.
- the Members must both be Australian residents.
- the receiving spouses income must be \$37,000 or less for you to qualify for the full tax offset and less than \$40,000 for you to receive a partial tax offset.

- (2) payment or transfer of the non-member Spouse's entitlement (including on his or her death in which case the Trustees have the same discretions and powers to pay his or her entitlement as if the non-member Spouse were a Member);

and except as specified in this clause, a non-member Spouse has no rights or entitlements under the Fund.

- (i) **Separate interest**

The Trustees may (but are not obliged to) create a separate interest or Account for a non-member Spouse.

7.5 Pension Account

After the Trustees have received a Pension Payment Application from a Member, the Trustees must:

- (a) confirm that the Member has met a Condition of Release;
- (b) advise the Member in writing that the requested Pension will be paid and at what times;
- (c) provide the Member with a Product Disclosure Statement;
- (d) document what assets/investments will fund that Pension and those assets/investments will become the Pension Account. If required pursuant to the Requirements, the Trustees must obtain an actuarial certificate to confirm what assets/investments will fund that Pension.

7.6 Reserve Account

- (a) The Trustees may establish one or more Reserve Accounts that the Trustees believe necessary or desirable, or that is required or permitted by the Regulations.
- (b) Any amount held in a Reserve Account does not form part of any Accumulation or Pension Account.
- (c) A Reserve Account may be used at the Trustee's absolute discretion to:
 - (i) increase Member's Benefits;
 - (ii) stabilise the investment earnings of the Fund;
 - (iii) pay complying or other Pensions; or
 - (iv) for such other purpose as the Trustees see fit.
- (d) The Trustees have the discretion to deal with the assets of a Reserve Account in any manner consistent with the Requirements.
- (e) The following amounts may be credited to a Reserve Account:
 - (i) unallocated earnings;
 - (ii) income generated from assets held specifically for the Reserve Account;
 - (iii) contributions the contributor has advised the Trustees are to be credited to the Reserve Account.

The Trustees covenant that they will formulate and to give effect to a strategy for the prudential management of the Reserve Account, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

8. CONTRIBUTIONS

8.1 Trustee Obligations

The Trustees:

- (a) may accept:
 - (i) Contributions in accordance with the Requirements;
 - (ii) Contributions made in accordance with what is known as the Downsizer Contribution (see note below);
 - (iii) re-contributions (between 1 July 2021 and 30 June 2030) of amounts a Member withdrew under the COVID-19 early release of super program (those amounts do not count towards their non-concessional contributions cap);
 - (iv) First Home Super Saver Scheme contributions and if the Member does not purchase or construct a residential premises within the requisite 12 month period, the Member's re-contributed FHSS released amount;
 - (v) mandated employer contributions provided an Employer has consented to become a participating employer and agreed to make contributions in respect of a Member subject to the

- (iii) any Contribution that the Regulator directs the Trustees not to accept;
 - (iv) a Contribution that would otherwise have been made by an employer which is the subject of an **employer shortfall exemption certificate** issued by the ATO to a Member (and the relevant employer(s)) and which the Member has given written notice to the Trustees;
- (c) The Trustees are required to comply with the Requirements concerning:
- (i) any contribution or shortfall component the Trustees have accepted in breach of clause 8.1(b) and must refund the amount within any time specified by, and only as permitted by, superannuation law. The Trustees may deduct from the amount to be refunded:
 - (A) any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
 - (B) reasonable administration charges; and
 - (C) any other amount the Trustees consider appropriate, acting reasonably.
 - (ii) any Excess Contributions Tax imposed on a Member and provided it is permitted by the Act, the withdrawal by a Member of Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings.

[Note: From 1 July 2022, access to the non-concessional contribution bring forward rule will extend to individuals who are aged 74 or less on 1 July of a financial year. Pre 01/07/2022 the bring forward arrangements were only available to individuals age 67 or less.

All the other eligibility requirements for accessing the bring forward arrangements remain unchanged. Individuals must have a total superannuation balance at the previous 30 June of under \$1.48 million to be eligible for a three-year bring forward period and contribute up to \$330,000 of non-concessional contributions. Individuals must have a total superannuation balance at the previous 30 June between \$1.48 million and \$1.59 million to be eligible for a two-year bring forward period and contribute up to \$220,000 of non-concessional contributions. They must also not currently be in a bring forward period.

Individuals with a total superannuation balance at the previous 30 June between \$1.59 million and \$1.7 million cannot use the bring forward rule but can contribute up to \$110,000.

If relevant Members can re-contribute (between 1 July 2021 and 30 June 2030) amounts they withdrew under the COVID-19 early release of super program without those amounts counting towards their non-concessional contributions cap.

8.2 Unallocated Contributions

The Trustees may accept unallocated Contributions or Contributions subject to conditions or directions.

8.3 Contributors notify

The contributor must:

- (a) identify the Member for whom the Contribution is made (unless unallocated);
- (b) the Benefits or Fund expenses which they are to fund or apply; and
- (c) whether there are any conditions attached.

8.4 Contribution in Cash or Assets

Contributions may be paid in cash or by transfer of assets provided that where a Contribution is made by the transfer of an asset the Trustees must determine:

- (a) if the asset transferred is appropriate;
- (b) if the party that is transferring the asset is a related party to the Member;
- (c) whether the Contribution has been made on behalf of a non-resident Member and the consequence that the Contribution may have on the status of whether the Fund is an Australian superannuation fund;
- (d) the Market Value of the asset for the purposes of the Contribution; and
- (e) there will be no breach of the Requirements.

8.5 Reallocation of Contributions

Where an asset is transferred to the Fund by a Member or Members in accordance with clause 8.4 notwithstanding any other provision in this Deed:

- (a) that asset must be held in the relevant Member's Accumulation Account and the Trustees shall identify the asset, the Member or Members for whom the asset is held and where more than one Member contributed the asset, the proportions in which the asset was contributed by and is held for the Members, in the records of the Fund;

Where the Rollover contains Restricted Benefits the Trustees may assume that the Entity's governing rules will ensure that such amounts are preserved or dealt with in accordance with the Requirements.;

9.4 Discharge

Payment of the Rollover is a discharge to the Trustees of all liability in respect of it and the Trustees are not responsible to see to its application.

9.5 Consent

Unless permitted by the Requirements the Trustees must not effect a Rollover without the consent of the Member.

10. TRANSFERS FROM OTHER FUNDS

10.1 Transfers in

The Trustees may accept money or assets transferred from the Trustees of an Entity by way of Rollover.

10.2 Acceptance of Restricted Benefits

Where the Trustees are advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustees must deal with such amount in accordance with the Requirements.

10.3 Amount, Composition of Entitlement

On any transfer in accordance with this clause, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustees and the composition thereof is as determined by the Trustees having regard to the information provided by the Trustee of the Entity.

10.4 Crediting account

If, or to the extent that, the transfer is in respect of a Member, the Member's Accumulation Account shall be credited accordingly. Any remaining amount must be credited to a reserve or other account as the Trustees determine .

11. PAYMENT OF BENEFITS - GENERAL

11.1 Payment of preserved benefits

The Trustees must only pay to a Member their preserved benefits in accordance with the Requirements. As at the date of this Deed, the Trustees may pay a preserved benefit to a Member upon the satisfaction of a Condition of Release.

11.2 Payment of non-preserved benefits

Subject to the Requirements and to providing the Trustees with a written direction in a form acceptable to the Trustees, a Member may withdraw any part of the non-preserved amount of the Member's Accumulation Account.

11.3 Compulsory cashing of benefits

A Member's benefit entitlement will vest according to the Requirements. The Trustees must cash a Member's benefit entitlement as soon as practicable after a Member dies.

11.4 Methods of Paying Benefits

The Trustees may, subject to the Requirements, provide Benefits as:

- (a) a Lump Sum;
- (b) an Account Based Pension;
- (c) a transition to retirement pension;
- (d) a defined benefits pension subject always to that Pension and the Trustees adhering to Division 9.2B of the SIS Regulations and in particular, regulation 9.04I;
- (e) any other pension as permitted by the Requirements; or
- (f) a combination of the above.

11.5 Procedure before Benefits payable

Benefits are not payable until:

- (a) the Member has satisfied a Condition of Release; and
- (b) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustees:
 - (i) a Pension Payment Application being a written request that the Trustees pay the Benefit to or in respect of the Member identifying the intended recipient;
 - (ii) any evidence and documents the Trustees require as to entitlement to the Benefit; and

- (i) for or towards the maintenance, education, advancement or otherwise for the benefit of the person in such form and manner and subject to such terms and conditions as the Trustees think fit; and
 - (ii) without limiting the generality of paragraph (a) by payment to a person who is, or appears to be a trustee, a parent, or guardian of the Member, or to have for the time being the care or custody of the person or to meet the financial expenses of the care or custody of the person.
- (b) The receipt of the person to whom the Benefit is paid is a good discharge to the Trustees and is deemed to be payment to the Member or the Beneficiary. The Trustees are not bound or concerned to see to the application of the Benefit so paid.

13. PENSION BENEFITS

13.1 Limit on Benefits

The Trustees must limit a Member's Benefits only where required in accordance with the Requirements.

*[Considerations: from 1 July 2017, a Member has a Transfer Balance Cap of \$1.6 million (or after 1/07/2021 \$1.7m), being the value of assets that a Member may take into pension phase. Transfer Balance Accounts in excess of the \$1.6m (but as 01/07/2021 \$1.7m) will attract **excess transfer balance tax**. Possible ways to deal with this situation must be discussed with your accountant or financial planner, but may include:*

- *transfer the excess above \$1.6 million into an accumulation account within your existing super fund, or another super fund, OR;*
- *withdraw the excess above \$1.6 million out of the super system.*

The Transfer Balance Cap applies equally to Account Based Pensions and also defined pensions, but it is determined in a different way. Pension payments over \$100,000 per annum paid to members of unfunded [untaxed] defined benefit schemes and constitutionally protected funds providing defined pensions, will continue to be taxed at full marginal rates, however the 10 per cent tax offset will be capped at \$10,000 from 1 July 2017.

For members of funded [taxed] defined benefit schemes, 50% of pension amounts over \$100,000 per annum will be taxed at the individual's marginal tax rate.]

13.2 Payment of Benefits

The Trustees must not pay a Benefit to a Member unless permitted by the Requirements.

13.3 Forms of Pension

Without limiting anything in this Deed, the Trustee and a Member or the Beneficiary may agree that the whole or any part of any amount payable to a Member under this Deed will be paid in one or more of the following forms of pension if that is permitted by the Requirements:

- (a) an Account Based Pension;
- (b) a Transition to Retirement Pension;
- (c) a defined benefits pension subject always to Division 9.2B of the SIS Regulations and in particular, regulation 9.04I; and
- (d) any other form of pension that the Trustee chooses to make available at any time and which is permitted by the Requirements.

For the avoidance of doubt, if this Deed is silent on the terms and conditions upon which the Trustees may pay that Pension, then the procedure to be followed will be that outlined in SIS and the SIS Regulations.

13.4 Provisions of the Requirements

The clauses in this Deed concerning Pensions are designed to reflect certain provisions of the Requirements relating to Pensions. To the extent that those provisions of the Requirements may be varied or supplemented, the Trustees may offer Pensions on terms that are consistent with the varied or supplemented provisions. Subject to the Requirements, where a change of the type referred to previously occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current Pension is paid, without being required to amend the terms of this Deed.

13.5 Account based pensions

The following terms, in addition to any other terms that may be set out in the Requirements, apply to an Account Based Pension:

- (a) Capital supporting the pension (which is limited to a Members Transfer Balance Cap of \$1.6m (but as 01/07/2021 that amount is \$1.7m) cannot be added to by way of contribution or rollover after the pension has commenced;
- (b) The Pension must be paid annually, but pension payments may be made more frequently as the Trustee determines;

- (c) The total Pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the SIS Regulations;
- (d) The total Pension payments in a year may not be greater than the maximum limits calculated in accordance with the SIS Regulations;
- (e) The Pension will cease when the Account Balance is nil;
- (f) The Pension on the death of the Member or the then current Nominated Reversionary Beneficiary may be:
 - (i) transferred to a Dependant of the Deceased Member or Nominated Reversionary Beneficiary;
 - (ii) paid as a Lump Sum to the Deceased Member's or Nominated Reversionary Beneficiary's estate;
 - (iii) paid as a Lump Sum to a person that is not a Dependant;

How the Trustees are to deal with the transition to retirement pension following the death of a Member may be addressed by the Member in the relevant Pension Payment Application or their Binding Death Benefits Nomination.

- (g) Where a reversionary pension is payable, subject to compliance with these pension standards and subject always to the Requirements, the amount, terms and conditions of the reversionary pension may be agreed between the Nominated Reversionary Beneficiary and the Trustee;
- (h) The capital value of the Pension and the income from it cannot be used as a security for a borrowing.
- (i) The Pension may be commuted, in whole or in part, in accordance with the Requirements. If the Pension is commuted, the resulting Lump Sum amount cannot be cashed unless:
 - (i) the purpose of the commutation is:
 - (A) to cash unrestricted non-preserved benefits;
 - (B) to pay a superannuation contributions surcharge; or
 - (C) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (ii) before commutation, the primary beneficiary or reversionary beneficiary, as the case may be, has satisfied a Condition of Release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'nil'.

13.7 Particular Pension arrangements

Subject to the Requirements the Trustees may require the Member or the Nominated Reversionary Beneficiary or other Beneficiary to provide the Trustee with information and other particulars relating to the Pension by way of a Pension Payment Application, before it is payable including:

- (a) the commencement day of the Pension;
- (b) the frequency of instalments;
- (c) the amount (whether variable or constant);
- (d) whether on the death of the Member the Pension has a reversionary component and, if so, to whom it is to be paid; and
- (e) whether the Pension can be commuted.

13.8 Pension variations

The Trustees may, with the agreement of the Member vary the frequency or basis upon which a Pension is payable.

14. COMMUTATION OF PENSION

14.1 The Trustees may:

- (a) on the request of a Member commute (roll back) all or part of a Pension to the Member's Accumulation Account provided that the commutation is not in breach of the terms on which the Pension is payable or the Requirements;
- (b) on the request of a Beneficiary commute all or part of a Pension in any manner permitted by the terms on which the Pension is payable or the Requirements.

[Note: the introduction of the Transfer Balance Cap as from 1st July 2017 will require certain self managed superannuation funds to commute a portion of the assets supporting their pension. Practical Compliance Guideline PCG 2017/5 applies to a member of a SMSF who requests an amount or amounts to be commuted from their superannuation income stream(s) to avoid exceeding the \$1.6 million (or after 1/07/2021 \$1.7m) transfer balance cap. The Guideline does not apply in respect of commutation requests made on or after 1 July 2017.]

- (d) the Trustees may pay to or in respect of the Member, his Benefit by way of Pension or Lump Sum as requested by the Member (or the Member's LPR whichever may be relevant) pursuant to clauses 13.2 and 17.1.

19. DEATH BENEFITS

19.1 Form of Benefit

[Note: a Binding Death Benefits Nomination made by a Member does not have to be renewed every 3 years contrary to comments made by many professionals. For confirmation of this see SMSFD 2008/3, s59 SIS and Regulation 6.17A do not apply to self managed superannuation funds]

Upon the death of a Member or Pensioner before the whole of their Benefit has been paid to them, the Trustees must pay the Benefit by way of Lump Sum or Pension as determined by the Trustees subject to the following:

- (a) where the Deceased Member has nominated in their Pension documentation one or more Nominated Reversionary Beneficiaries then:
- (i) upon the happening of a Reversionary Event, any amount standing to the credit of the Deceased Member's Pension account is to be considered a Benefit of the Nominated Reversionary Beneficiary or Beneficiaries and not of the Deceased Member;
 - (ii) subject to the terms and conditions contained in the Pension documentation, the Pension may be transferred to another Nominated Reversionary Beneficiary upon the death or the happening of a Reversionary Event to the then current Nominated Reversionary Beneficiary;
 - (iii) where the Requirements do not allow a Nominated Reversionary Beneficiary to continue on the Pension, the Nominated Reversionary Beneficiary's share of the Pension is to be commuted to a lump sum in accordance with the Requirements;

[Note: consideration must be given to the Nominated Reversionary Beneficiary/Beneficiaries Transfer Balance Account and Transfer Balance Cap as soon as a Member dies. Remember only automatically reversionary pensions obtain a 12 month grace period before a credit arises to the Nominated Reversionary Beneficiaries Transfer Balance Account.

Law Companion Guideline LCG 2017/3 Superannuation reform: Superannuation death benefits and the transfer balance cap was issued on 8th May 2017. This LCG confirms that if you have a superannuation interest when you die, your death creates a compulsory cashing requirement for the superannuation provider. This requires the superannuation provider to cash your superannuation interests to your beneficiaries or to your legal personal representative as soon as practicable (Reg 6.21 SISR). Note that as from 01/07/2017 for dependant beneficiaries, superannuation death benefits can be cashed:

- as a superannuation lump sum that is paid out of the superannuation system;
- as death benefit income streams that are retained in the superannuation system (from 1 July 2017 such superannuation income streams must also be in the retirement phase), or
- a combination of the two.]

- (b) a Member may sign a Binding Death Benefits Nomination in a form acceptable to the Trustees and which contains the information required by SIS Regulation 6.17A. The relevant Member may sign a Binding Death Benefits Nomination that has no time limit (referred to as non-lapsing) or be limited to a specific period of time after which it will lapse.
- (c) subject to clause 19.1(d) where a Member dies (**Deceased Member**) and leaves a valid Binding Death Benefits Nomination, the Trustees must pay all or part of the Benefit as specified in that nomination. If the Deceased Member has nominated a Nominated Reversionary Beneficiary, any amount standing to the credit of the Deceased Member's Pension account (**Pension Balance**) is to be considered a Benefit of the Nominated Reversionary Beneficiary or Beneficiaries and not of the Deceased Member. Accordingly the Binding Death Benefits Nomination will have no relevance to the Pension Balance;
- (d) if proceedings, for dissolution of a Member's marriage to a spouse (or partner), under the Family Law Act 1975 or some similar foreign legislation have commenced, then any Binding Death Benefits Nomination which states that the Benefit is to be paid to that spouse (or partner) will be deemed to be revoked;
- (e) where a Deceased Member does not leave a valid Binding Death Benefits Nomination, the Trustees must pay the Benefit:
- (i) amongst one or more of:
 - (A) the Dependants of the Deceased Member;
 - (B) the Estate of the Deceased Member;

When all Benefits have been paid, and assets transferred or applied in accordance with the provisions of the Deed the Fund is dissolved.

21. ARBITRATION

21.1 Dispute

Unless the Fund is no longer a self managed fund (thus giving the right to appeal to the Superannuation Complaints Tribunal) any question or dispute with respect to the Fund the payment of Benefits or to the construction or meaning of this Deed shall be determined by the Trustees but (if the Trustees so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed by the Trustees pursuant to the provisions of the Commercial Arbitration Act 1985.

21.2 Right of Action

If the Trustees have referred the dispute to an arbitrator, no right of action accrues in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

22. SIS

22.1 Deemed inclusion

Despite any other provision in the Deed:

- (a) the Deed is deemed to include those covenants and requirements of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustees to elect for the Fund to become a regulated fund (and to the extent of any inconsistency those provisions of SIS prevail);
- (b) if SIS no longer requires any such covenant or Requirement to be so included then that covenant or requirement ceases to be included;
- (c) if any such covenant or requirement or its operation is modified then the Trustees are only required to comply with the covenant or requirement as modified;
- (d) the Trustees are not taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such a covenant or requirement if the contravention is waived or accepted by the Regulator as not being sufficient to result in the loss of the Fund's complying status;
- (e) the Trustees have power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements;
- (f) the Trustees have power to elect under SIS for the Fund to become a regulated fund;
- (g) the SIS provisions which do not apply to certain small funds (whether defined in SIS as self managed funds or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition;
- (h) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Regulator;
- (i) the Trustees may disclose to the Regulator any event, omission or thing that SIS requires to be disclosed to the Regulator and seek the advice, ruling or direction of the Regulator as considered necessary.

22.2 Non-mandatory Requirements

The Trustees may determine not to comply with any non-mandatory Requirements.

22.3 Trustees must not be in breach of Trust

The Trustees are not contravening the Deed or in breach of trust if in giving effect the Deed it:

- (a) construes or interprets this Deed; or
- (b) does such acts or things; or
- (c) omits to do such acts or things;

which might otherwise contravene this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of SIS.

22.4 Rectification of contraventions

The Trustees are not taken to contravene this Deed or be in breach of trust if it does anything or omits to do anything in contravention of SIS if:

- (a) the Trustees rectify the contravention within such period as may be allowed by SIS or within such further period as the Regulator allows; or

SCHEDULE 1 - EXAMPLE APPLICATION FOR MEMBERSHIP

THE J L NELSON SUPERANNUATION FUND

CONFIDENTIAL

I _____ (name) apply for admission to membership of the Fund. I state that I am eligible to be admitted as a Member of the Fund and to be appointed as a Trustee or a director of the corporate Trustee if the Fund is a self managed superannuation fund. I agree:

- (1) To be bound by the Trust Deed governing the Fund as it is or may be varied from time to time (and state I understand the terms and conditions of the Trust Deed, including the benefits payable, my rights and the rights of my Dependants);
- (2) To the Trustee acting as Trustee of the Fund;
- (3) If the Fund is a self managed fund to be appointed a Trustee or a director of the corporate Trustee;
- (4) To give the Trustee my details (including any Tax File Number), or for the Trustee to obtain them from my Employer;
- (5) To advise the Trustee of any preserved benefits or other relevant information regarding my superannuation contributions and benefits;
- (6) To give any other information the Trustee may require for the purposes of the Fund.

Dated: _____/____/2023

Signature: _____

Occupation: _____

Date of birth: ____/____/____

Tax File Number: _____

NON-BINDING NOMINATION OF DEPENDANT(S)

I nominate the following persons as my Nominated Dependants to receive any Benefits payable on my death, and I acknowledge this is not a binding nomination (eg My Estate or name):

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature: _____
[Name]

Date: ___/___/2023

WITNESS ONE DECLARATION

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 1 Full Name: _____

Witness 1 Signature: _____

Date: ___/___/2023

WITNESS TWO DECLARATION

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 2 Full Name: _____

Witness 2 Signature: _____

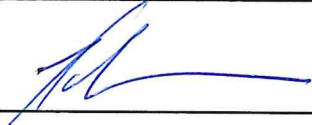
Date: ___/___/2023

Signed by **JOHN LEONARD NELSON**
in the presence of

Witness Name:

Witness Signature:

Signed by **HEATH WAYNE NELSON**
in the presence of:



Witness Name:

Witness Signature:

EXECUTED AS A DEED on the

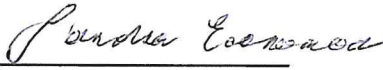
day of

2023


Signed by JOHN LEONARD NELSON
in the presence of


_____[SIGN HERE]

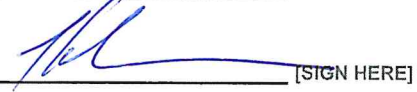
Witness Name:




Witness Signature:



Signed by HEATH WAYNE NELSON
in the presence of


_____[SIGN HERE]

Witness Name:



Witness Signature:

