Minutes of meeting of Directors

Resolution to open bank account

MK DAY Pty Limited
ACN 620 963 644

Held at: **Level 4 16A Bolton Street**
NEWCASTLE NSW 2300

Date: 8 / 8 / 17

Time: 9:00 AM

Present: **Matthew Simon Day**
Kate Elizabeth Day

Chairperson: MATTHEW DAY
was appointed Chairperson of the meeting.

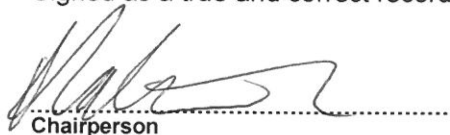
Quorum: The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

Resolution: **IT WAS RESOLVED** that the Company open a bank account with:

COMMONWEALTH BANK AUSTRALIA
Please print name of financial institution

Meeting Closed: There being no further business the meeting was declared closed.

Signed as a true and correct record.



Chairperson

APPLICATION BY MEMBER

To:	The Trustee MK DAY Superannuation Fund
Name:	Kate Elizabeth Day
Address:	45 Carrington Street MAYFIELD NSW 2304
Date of Birth:	24 April 1979

I apply to become a member of MK DAY Superannuation Fund (the 'Fund') and agree to be bound by the Trust Deed and Governing Rules of the Fund. I acknowledge that I have received a copy of the Fund's Product Disclosure Statement which explains the key features of the Fund.

Pursuant to the authorisations for the collection of Tax File Numbers ('TFN's') contained in the law, I hereby agree to provide my TFN as follows:

TFN: 430 037 306

I note that the lawful purpose for which my TFN can be used and the consequences of not quoting my TFN may change in future as a result of legislative changes.

K Day
Kate Elizabeth Day

8th August 2017
Date

MINUTES OF A MEETING OF
MK DAY PTY LIMITED (THE 'TRUSTEE')
AS TRUSTEE OF
MK DAY SUPERANNUATION FUND (THE 'FUND')
ON 8th August 2017

PRESENT: Matthew Simon Day
Kate Elizabeth Day

Notice of Meeting

It was noted that notice of this meeting had been provided to each director in the required manner.

Applications for Membership

Applications for Membership of MK DAY Superannuation Fund received from Matthew Simon Day and Kate Elizabeth Day were tabled.

It was noted that the Members are eligible to join the Fund.

It was resolved that the Applications for Membership would be accepted and that Matthew Simon Day and Kate Elizabeth Day would become members of the Fund with immediate effect.

It was noted that the members had received a copy of the Fund's Product Disclosure Statement.

There being no further business, the meeting closed.

Signed as a true and correct record.

Matthew Simon Day
Director

Kate Elizabeth Day
Director

APPLICATION BY MEMBER

To:	The Trustee MK DAY Superannuation Fund
Name:	Matthew Simon Day
Address:	45 Carrington Street MAYFIELD NSW 2304
Date of Birth:	16 April 1978

I apply to become a member of MK DAY Superannuation Fund (the 'Fund') and agree to be bound by the Trust Deed and Governing Rules of the Fund. I acknowledge that I have received a copy of the Fund's Product Disclosure Statement which explains the key features of the Fund.

Pursuant to the authorisations for the collection of Tax File Numbers ('TFN's') contained in the law, I hereby agree to provide my TFN as follows:

TFN: 199 715 118

I note that the lawful purpose for which my TFN can be used and the consequences of not quoting my TFN may change in future as a result of legislative changes.

Matthew Simon Day

8th August 2017

Date

MK DAY SUPERANNUATION FUND (the 'Fund')
PRODUCT DISCLOSURE STATEMENT

Trustee: MK DAY Pty Limited (the 'Trustee')

Contact Details: Level 4 16A Bolton Street
NEWCASTLE NSW 2300
Ph. 0427 887 682

Date: 8th August 2017

A product disclosure statement (PDS) is a document that must generally be issued to anyone who acquires a 'financial product'. The term 'financial product' has a specific meaning under the *Corporations Act 2001* (Cth) and includes, among other things, joining a super fund.

This PDS explains the significant features of your Fund and super generally, including the risks, benefits and costs.

Not all of the information contained in this PDS will be directly relevant to you or even to your Fund. This is because the law sets out specific rules on what must be covered and the form certain statements must take, regardless of whether or not they apply in your particular case.

Importantly:

- it is a summary of significant information and contains a number of references to important information (each of which form part of the PDS); and
- obviously you have already given considerable thought to your super and this is why you are establishing / joining a self managed super fund. However, the law requires us to remind you that you should consider the information before making a decision about joining the Fund; and
- the information provided in the PDS is general information only and does not take account of your personal financial situation or needs; and
- you should always obtain financial advice tailored to your personal circumstances.

What is covered in this Product Disclosure Statement?

Section		Page
1	ABOUT THE FUND	2
2	HOW SUPER WORKS	2
3	BENEFITS OF INVESTING WITH THE FUND	4
4	RISKS OF SUPER	4
5	HOW WE INVEST YOUR MONEY	5
6	FEES AND COST	6
7	HOW SUPER IS TAXED	6
8	INSURANCE IN YOUR SUPER	8
9	HOW TO OPEN AN ACCOUNT	8

1. About the Fund

The Fund is a self managed super fund ('SMSF'). By law, a self managed super fund can have up to four members – if more members join, it ceases to be a self managed super fund and must meet different legislative requirements.

One of the key requirements of a self managed super fund is that as a general rule all of the members must be individual trustees or directors of the corporate trustee of the Fund. While you fill both a member and trustee role, it is important to remember that you have quite different rights and responsibilities in each role.

In your capacity as a trustee, you are ultimately responsible for *every* aspect of the operation of your Fund, ie, ensuring the Fund complies with the relevant super legislation. Importantly, whilst the trustee may outsource some functions (for example, administration / accounting, monitoring compliance and investment advice), the trustee remains responsible for ensuring the Fund meets all legislative requirements and is even responsible for issuing this PDS.

Importantly, you should note that the Regulator (ie, the Australian Taxation Office) has the power to impose penalties directly against SMSF Trustees, including administrative (ie, monetary) penalties, rectification directions and / or education directions, the cost of which must be borne *personally* by individual trustees or directors of the corporate trustee.

In your capacity as a member, you are entitled to (say) make contributions to the Fund (or have them made for you by someone else) and to receive benefits such as 'pensions' once you meet certain criteria.

2. How super works

Super is one way of saving for retirement. Super is built up through a combination of:

- **Contributions** – this is money you, your spouse, your employer or even the Government might put into super for you. There are several different types of contributions.

  Some are compulsory – for example, some industrial awards require employers to make super contributions and all employers must make what are known as 'super guarantee' contributions for most of their employees.

  Other contributions are voluntary (eg, contributions you or your spouse make from your own money or via an arrangement with your employer known as 'salary sacrifice'). The Government will even contribute for you if you meet certain conditions and have made contributions of your own (the Government's contributions are known as 'co-contributions').

  You can usually choose which fund receives your contributions, particularly super guarantee contributions.

- **Investment income** – (eg, interest, dividends, trust distributions, capital gains, rental income, etc).

The Government provides generous tax concessions to super funds so that they pay quite low rates of tax on their income (both from investments and contributions) as long as the fund complies with the law. There are also generous tax concessions available to you when you receive a benefit from your Fund and these are discussed further below.

Contributions

The particular rules of this Fund allow anyone to contribute to it, as long as they are allowed to do so by law.

Contributions may be made in cash or by 'in-specie' transfer of certain assets. An example of an 'in specie' contribution would be, say, transferring ownership of some publicly listed shares you already own from your own name to that of the Fund. (Note that super law only allows certain assets to be transferred in this way and there are obviously other issues to consider such as capital gains tax and stamp duty. You should therefore seek advice prior to undertaking such actions.)

There are a number of rules on **when** contributions can be accepted [1].

Contributions can be accepted for anyone up to age 65.

Under super legislation, once you turn 65 contributions from you and / or your employer, can generally only be accepted for you if:

- you have worked (for pay) at least 40 hours during a 30 day period some time earlier in the

[1] Unless you have already done so, you must provide the trustee with your tax file number (TFN) within 30 days of any personal contribution being made to the Fund, otherwise the trustee must return the contribution.

financial year (and the 30 days have to be consecutive); or

- the contributions are 'mandated' employer contributions (this means contributions that the employer is required to make by law – say, to comply with Super Guarantee requirements, or contributions required under an award).

The rules change once you reach 70, eg, personal contributions can only be made on your own behalf (you are unable to receive contributions made on your behalf from your spouse).

The rules change again once you reach 75. As a general rule only 'mandated' employer contributions can be made on your behalf after age 75.

There are also limits on **how much** can be contributed. In the main, these limits are enforced by levying tax on anyone who goes over them. The limits are often referred to as 'contribution caps'.

Just about all super contributions fall into one of two categories:

- **Non-concessional contributions** - generally, personal contributions you make from your own money for which you do not claim a tax deduction, contributions you make for your spouse (or vice versa) or contributions you make for a child under age 18 are 'non-concessional' contributions; and

- **Concessional contributions** - generally, contributions made on your behalf by someone other than your spouse (eg, an employer) or personal contributions for which you *do* claim a tax deduction are classified as 'concessional' contributions.

From 1 July 2017, the **limit on non-concessional contributions** is:

- $Nil if you have "total super balances" of $1.6m or more on 30 June of the previous year; otherwise

- $100,000 pa (indexed periodically).

Special rules apply for people under age 65 – these people may have the ability to 'bring forward' the next two years' worth of the $100,000 cap (ie, a maximum of 3 years 'worth' of contributions - $300,000 – could be made if certain conditions are met) without exceeding this limit.

If the ATO advise you that you have exceeded your non-concessional contributions cap, you can elect for the excess contributions (together with a portion of deemed earnings on those contributions, as calculated by the ATO) to be refunded to you.

Should you choose to refund any non-concessional contributions in excess of the limit, the full amount of the deemed earnings will be counted as personal assessable income and taxed at your marginal tax rate, however, you would receive a 15% tax offset to reflect the 15% tax the Fund may have paid in relation to the deemed earnings. Any non-concessional contributions not refunded would be taxed at 45% (plus Medicare Levy).

From 1 July 2017, the **limit on concessional contributions** is $25,000 pa.

Any concessional contributions which cause you to exceed your concessional contributions limit will be counted as personal assessable income and taxed at your marginal tax rate, and be subject to a charge to account for the deferral of tax. You will receive a tax offset to reflect the 15% tax paid on these contributions by the super fund. If the ATO advise you that you have exceeded your concessional contributions cap, you will be able to elect to release an amount of your excess concessional contributions and have this amount paid to you. Any amounts released to you will not count towards your non-concessional contributions cap (outlined above).

Benefit payments

Contributions help you grow your super balance but obviously the ultimate objective is to be able to draw on it to meet your retirement income needs.

Super law imposes strict rules on when you can do this by starting a pension, taking a lump sum or some combination of these.

Once you satisfy a **Condition of Release** you will be able to access your super balance. Depending on which condition of release you meet, there may be restrictions on exactly ***how*** you take your super and ***how much*** you can access. The most common conditions of release include:

- **Retirement** – in the context of super, you generally need to have either:

  - turned 65 (at which point you are considered 'retired' for super purposes even if you are still working full time);

  - turned 60 <u>and</u> subsequently ceased a paying job; or

- reached your preservation age (see below) and decided that you never intend to work in a paid job for 10 or more hours per week again.

- **Reaching preservation age** – the preservation age for people born:
  - before 1 July 1960 is 55;
  - after 30 June 1964 is 60; and
  - somewhere in between for everyone else.

  Once you reach preservation age you are able to commence a **Transition to Retirement pension**. This means that you are able to draw upon your super balance but only in the form of an *income stream* (pension). If you start a transition to retirement pension, you will have to draw a minimum amount each year (linked to the size of your account balance) and you will be restricted to a maximum payment amount of 10% of your account balance each year until your 'retirement' (as defined earlier).

- **Death** – when you die, the trustee must deal with your super balance as soon as practicable. It has to do so by paying it to:
  - your spouse (including de-facto and same sex);
  - your children (including adopted) of any age;
  - someone who was financially dependent [2] on you when you died;
  - someone who was in an interdependency relationship [2] with you when you died; and / or
  - your Estate.

Various other Conditions of Release are contained in the super law. These allow you to access your super if, for example, you are disabled or terminally ill. Your accountant or adviser will be able to explain whether these apply to you.

3. Benefits of investing with the Fund

As the Fund is a self managed super fund, you (in your capacity as trustee) have complete flexibility and control as long as you obey the rules of the Fund and the law. For example, the trustee has considerable discretion over:

- the Fund's investments;
- choice of service providers;
- whether or not the Fund will obtain insurance for its members; and
- how and when benefits will be provided.

The trustee can also quickly adapt to tax and legislative changes (rather than waiting for the systems changes, etc inevitably required for larger funds).

There are also some tax benefits of investing in super generally and these apply to this Fund.

4. Risks of super

One of the major risks of super is that super laws (and taxation laws) may change in the future. Consequently, plans you put in place now to achieve a certain result in the future may need to be adapted should the law change.

In addition, as outlined in Section 5 below, the trustee is required to devise an investment strategy for the Fund. In formulating that strategy the trustee considers numerous factors including, for example, the age and investment timeframes of the members. The level of risk for each member may depend not only on the above factors but also the diversification of the members' overall wealth and the risk tolerance of the members.

In your case:

- your account balance will be directly affected by the investment performance of the Fund. Clearly, this is critical in determining how long your capital will last. If your investments perform poorly, your account balance may not be enough to provide adequately for your retirement - you bear this risk yourself as the value of your account balance is not guaranteed;
- the value of the Fund's investments and level of returns will vary (and future returns may differ to past returns). You bear the risk of this volatility yourself;

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[2] "Financial dependency" and "interdependency relationships" have specific meanings in a super context (and also a taxation context).

- the investments need to generate sufficient cash flow in order for the Fund to meet its liabilities as and when they fall due; and

- similarly, the Fund's investments need to be sufficiently liquid to ensure that if the Trustee needs to sell some of them to meet its cash flow needs, this can be done.

These latter three points are particularly relevant in a self managed super fund because the trustee cannot rely on a large pool of assets (shared between many members) to 'smooth' investment returns, or to achieve the cash flow and liquidity it needs (only the assets in your Fund are available).

Of course, all investments carry a level of risk, different investment strategies will carry different levels of risk and assets with the highest expected long term returns may carry the highest level of short term risk (or volatility).

5. How we invest your money

Self managed super funds do not generally have pre-determined or 'default' investment options. Rather, the trustee of the Fund is required to formulate and give effect to an appropriate **Investment Strategy** which is reviewed regularly. As both a member and trustee of the Fund, you will play an active part in deciding on the overall strategy and the investments chosen to put this strategy into place.

The Investment Strategy should set out what the trustee is trying to achieve, how it intends to achieve it and what factors it has considered in making these decisions (such as cash flow, risk, return, diversification and liquidity).

Note also that sometimes the Regulator (ie, the Australian Taxation Office) imposes extra reporting requirements on funds which use particular investments – for example, funds that invest in particular types of derivatives are required to have a 'derivatives risk statement'. If this applies in your case, the trustee will ensure that all investment decisions are made in accordance with this documented strategy and the governing rules of the Fund.

At this stage, the governing rules of your Fund are very broad and essentially allow the trustee to invest in any asset sector / class available in the investment market (subject to the prohibitions outlined below).
Certain investments are *prohibited* in the super environment. In particular:

- super funds cannot borrow except under very particular circumstances. You should therefore ensure that you do not overdraw your Fund's bank account as this is a common cause of unintended borrowing; and

- funds cannot lend money or provide any other form of financial support to members or relatives.

As a general rule, funds cannot buy assets from members. There are some exceptions to this rule. For example, SMSFs ***can*** buy the following from fund members:

- securities listed on a recognised exchange (eg, the ASX);

- units in widely held unit trusts (eg, managed funds); and

- business real property (which is specifically defined in the law).

Any transaction between the Fund and a member must be at market value.

Some investments are *restricted* in that they must not constitute more than 5% of the market value of an SMSF's assets (these types of investments are known as 'in-house assets'). In-house assets are essentially any assets which are:

- loans to / investments in 'related parties'; or

- subject to a lease between the trustee and a 'related party' of the Fund.

Related party is defined very broadly. It can include family members, employers who contribute to the Fund, business partners, companies and trusts controlled by the family group, etc. There are a number of exceptions to these rules. However, you should seek professional advice if you are considering any financial arrangement which involves dealing with a 'related party'.

Large funds will often have detailed policies on matters such as environmental standards, labour standards, social and ethical considerations that they consider when making investments. The trustee of your Fund has no specific policy on these issues when it comes to selecting, retaining or realising these investments.

6. Fees and costs

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 account 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.

Your employer may be able to negotiate to pay loweradministration fees where applicable. Ask the fund or your financial 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 **Australian Securities and Investments Commission (ASIC)** website (www.moneysmart.gov.au) has a super fee calculator to help you check out different fee options.

As outlined in Section 5 above, your Fund does not have specific investment options, rather the Fund trustee has the ability to invest in any asset it chooses subject to the law, the Fund's Investment Strategy and the governing rules of the Fund.

As both a member and trustee of the Fund, you would be aware of the fees and costs relevant to the Fund's investments and operations and be able to negotiate and control fees and costs (such as investment adviser / manager fees, brokerage costs, buy / sell spread, investment switching or exit fees, accounting / administration / audit / actuarial fees, insurance premiums, etc) with the Fund's service providers. This information can be used to compare costs between different super products.

Note that fees and costs could be indirect (eg, an investment fee that reduces the unit price of an investment held by the Fund), or deducted directly from the member account balances within the Fund, or deducted directly from the Fund's investment returns.

7. How super is taxed

Super is potentially taxed at three points:

- When it is contributed;
- When the Fund's investments earn income; and
- When a benefit is paid to you.

Note that one issue which can have an important impact on the tax paid on both your contributions and benefits is whether or not you have provided your tax file number (TFN) to the trustee. You should always provide your TFN when you join any super fund and you will have noticed that it is one of the pieces of information specifically required on your member application form for this Fund. If you do not provide your TFN you may not be able to make contributions to the Fund and you will certainly be subject to extra taxes.

Contributions

Concessional contributions (but not non-concessional contributions) are taxed at 15% when they are received by the Fund. Additional taxes are only paid if your contributions exceed the various limits identified in Section 2 or if you are a very high income earner (ie, the aggregate of your income and your non-excessive concessional contributions exceeds a certain amount – currently $250,000). If you are a very high income earner a further 15% tax will be applied to your concessional contributions that do not exceed your concessional contributions cap.

Investment earnings

If your Fund earns investment income (such as interest, dividends, trust distributions, capital gains, rental income, etc) these are potentially taxed at two rates:

- 0% tax is paid on any investment earnings on the assets underpinning a 'retirement phase' pension balance. A pension is considered a retirement phase pension if the member has satisfied a Condition of Release that gives them *full access* to their pension balance; but
- 15% tax applies to any part of the Fund which is not underpinning a retirement phase pension (eg, accumulation accounts or even 'transition to retirement' pension balances). Note that there are some special discounts where the income is a capital gain.

In both cases, franking credits are used to reduce the total tax payable and if they are actually higher than the Fund's tax bill, the franking credits are refunded.

Generally, funds where the members have entirely converted to 'retirement phase' pensions pay no tax on any investment income they generate – even when they realise capital gains that have arisen over many years (including before the pensions commenced).

Limit on amounts transferred in to a 'retirement phase' pension

From 1 July 2017, there is a limit of $1.6m on the amount that can be transferred into a 'retirement phase' pension. Any *new* 'retirement phase' pension will be assessed against this limit when the pension starts whereas pensions already in place on 1 July 2017 were subject to a once off check at that time. Amounts in excess of this limit at the *time of assessment* must be removed from the pension by either withdrawing money from the fund entirely, or simply taking some money out of the *pension account(s)* but leaving it in super (where it would go back to 'accumulating' in the fund) or some combination. This limit does *not* apply to transition to retirement pensions. Note, however, that a once a member meets a Condition of Release that gives them full access to their transition to retirement pension balance, it will be considered a 'retirement phase' pension at will be assessed against this limit at that time.

If this limit is exceeded, the member will need to remove the excess together with a portion of deemed earnings on the excess (calculated using a statutory interest rate) from the pension balance. The member will be lpersonally iable for taxation on the amount of deemed earnings at 15% / 30%.

Benefit payments

The way in which your super is taxed depends primarily on three things - your age, the 'tax components' of your balance and who is receiving it (ie, is it you or some other beneficiary on your death?).

You pay no tax on any payment (pension or lump sum) you receive from your own super after your 60th birthday.

This applies whether you are working or not and does not depend on the amount involved. Payments to you from your own super in this Fund after age 60 are not even reported on your personal income tax return and therefore have no impact on the tax you might pay on other (non super) income.

Tax is potentially paid, however, if you are under 60 or if someone else receives your super on your death. Then, the underlying 'tax components' become important.

All your super in the Fund is divided into two components for tax purposes:

- **a tax free component** – generally, this component represents the 'non-concessional' contributions made for you. It also includes Government co-contributions, certain payments arising from the sale of a small business or a personal injury settlement.

  If you built up some of your super prior to 1 July 2007 (even if it was in another fund) you may have an additional amount in your 'tax free' component - your accountant or adviser will be able to tell you.

- **a taxable component** – this is the rest of your super.

The trustee periodically works out the size of these two components for your total balance in the Fund and any benefit you take must be divided proportionately between them.

Tax on pension payments

When a pension starts, the trustee expresses its tax free component as a percentage of the total pension balance.

That percentage is then locked in and used to calculate the tax free component of any future payment from the pension - regardless of whether that payment is a pension to you, a lump sum paid to you or a payment to a beneficiary when you have died. The percentage is fixed even if your balance grows over time (so your tax free component could actually grow even though you are not making any more contributions).

The percentage is not affected by other contributions you are making to the Fund. The new contributions are kept quite separate and are recorded in a separate member account.

The tax rates that apply to pension payments from super funds are generally as follows:

	Tax free component	**Taxable Component**
Aged 60 or over	As no tax is payable, the tax components are not relevant here	
Preservation age – age 59	N/a	Marginal tax rate plus Medicare Levy less 15% tax offset
Under preservation age	N/a	Marginal tax rate plus Medicare Levy

The tax free components of pensions paid to people under age 60 are not reported on their personal income tax returns.

Note that the tax treatment is different if you receive a super pension because someone (say your spouse) has died:

- if they died after reaching age 60 **or** you are over 60, the pension is not shown on your tax return and is not taxed (regardless of the tax components of the pension); otherwise
- the taxable component will be added to your other personal income and taxed accordingly until you reach age 60. You will get the 15% tax offset even if you are under your preservation age.

Tax on Lump Sum payments

The tax rates that apply to lump sum payments from super funds are generally as follows:

	Tax free component	**Taxable component**
Aged 60 or over	As no tax is payable, the tax components are not relevant here	
Preservation age – age 59	N/a	Amount up to low rate threshold [3] – 0% Amount in excess of low rate threshold – 15% plus Medicare Levy
Under preservation age	N/a	20% + plus Medicare Levy

If a lump sum is paid to someone because you have died, tax may be payable on the taxable component of the benefit. The rates of tax depend upon the ultimate beneficiary of your super.

In some cases no tax will apply – for example, your super will be tax free if it is paid to:

- your spouse;
- minor children; and / or
- anyone who was financially dependent [2] on you or an in interdependency [2] relationship with you.

In other cases, however, tax will apply to the taxable component at the rate of 15% - 30% (plus Medicare Levy). Your accountant or adviser will be able to tell you which rate will apply.

Warning: You should provide your TFN to the trustee of the Fund prior to drawing a benefit. If you are under age 60 and the trustee does not hold your TFN, the trustee must withhold tax from the taxable component of your payment at the top marginal rate of tax (currently 45% plus Medicare Levy).

8. Insurance in your super

The Trustee is required to consider whether or not insurance should be offered to members, although they are not obliged to provide this if they do not consider it appropriate.

The governing rules of your Fund allow the Trustee to purchase any insurance cover permitted by law including, for example, policies covering the death of a member, permanent and / or temporary incapacity of a member.

The level and type of cover available, the cost of cover (and how it will be paid for), your eligibility to obtain and cancel cover, and the conditions and exclusions applicable to any insurance cover should be discussed directly with the trustee. They are outside the scope of this PDS.

9. How to open an account

In order to become a member of the Fund, you and the trustee simply need to complete and execute the paperwork that accompanies this PDS.

Many large funds have a 'cooling off period' (ie, a period during which you can change your mind about belonging to their fund). Given the unique nature of self managed super funds, there is no cooling off period in your case.

Similarly, there is no legislative requirement for the trustee to have dispute resolution mechanisms in place to deal with situations where you and the trustee disagree on something to do with your super. In fact, the body that normally deals with complaints and disputes for large funds (the Super Complaints Tribunal) does not have jurisdiction to deal with your Fund.

[3] The low rate threshold amount is indexed (increased) periodically and is a lifetime limit - ie, if you take several payments (even in different financial years) they are added together to determine whether you have exceeded the limit. The low rate threshold is $200,000 for 2017/18.

Heffron
SMSF Solutions

INFORMATION CONCERNING DEATH BENEFITS

1. What happens to my super when I die?

When you die, your balance in the Fund must be paid to your 'dependants' (and this term has a specific meaning – see below) and / or your estate. If it is paid to your estate, it will then be dealt with in accordance with your will.

Under super law, your dependants are:

- your spouse (this includes de facto and same sex spouses);
- your children and your spouse's children (regardless of their age - age only becomes relevant when determining how much tax to pay on the benefit);
- anyone who is genuinely dependent on you in the ordinary sense (for example someone who relies on you financially in order to meet their usual costs of living); and
- anyone with whom you have an 'interdependency relationship'. This is another term with a specific meaning. It generally includes (say) someone you live with (other than a spouse or child), with whom you have a close personal relationship and where one or both of you provides the other with financial support, domestic support and personal care. You should check the precise wording in the legislation if this is likely to apply to you.

Your super can be paid to one beneficiary (ie, one of your dependants or your estate) or it can be divided up between several beneficiaries. However, it cannot be paid to anyone other than your dependants and / or your estate (say, directly to an individual who is not one of your dependants) unless you have no dependants and no estate is formed on your death.

2. How can my super be paid out when I die?

Super benefits can be paid either as lump sums, pensions or some combination of
the two.

However, there are some additional restrictions placed on death benefits as follows:

- Generally, adult children cannot receive your death benefit as a pension;
- Minor children can receive your death benefit as a pension, but generally only for a limited time (until age 25);
- Providing they are paid to someone who is eligible to receive them (such as a spouse) your death benefit can include any number of pensions. However, each beneficiary can only receive up to two lump sums.

Note that your beneficiaries (ie, your dependants and / or your estate) can receive your super on your death even if they have not yet reached the age at which their own super is available. While their age (and yours) may affect issues such as how the benefit they receive is taxed and in what form the benefit may be paid in, it does not have any impact on whether they are able to receive it.

Finally, it is important to be aware that when you die your super must be paid out in some way *as soon as practicable*. This means that a lump sum should be paid or a pension started promptly after your death. It is not possible, for example, to simply leave your balance accumulating and / or add it to a beneficiary's own super account. They must either receive a cash payment or (in the case of lump sums only) have assets transferred to their name from the super fund.

3. Who decides who receives my super, and how it is paid, when I die?

A super fund is a trust and like any other trust, it is controlled by its Trustee.

When you die, the default position is that the Trustee has absolute discretion (subject to the law) as to who receives your death benefit.

Importantly, your super is **not** controlled by your will unless the Trustee pays it to your estate.

However, there are some steps you can take to either guide or instruct the Trustee on how your death benefit is to be dealt with, should you wish to do so.

You can put in place:

- a written notice indicating your *preference* as to how your benefit should be distributed on your death;
- a Reversionary Pensioner on any Pension balance you hold within the Fund;
- a Binding Death Benefit Notice

or some combination of the three.

Note that there is no legal requirement to do any of these things – it is entirely legitimate to do nothing and simply leave the Trustee to exercise its discretion at the time.

4. Written notice : Nomination of preferred beneficiary

You can provide the Trustee with a written notice indicating your *preference* as to how your benefit should be distributed on your death. This notice can relate to all of your super within the Fund, or just part of it.

The Trustee is *not* obliged to comply with your notice, rather it simply indicates your preference or wishes (in fact, they are often called an 'expression of wishes' or a 'non binding death benefit nomination') and may be a useful guide to assist the Trustee in its decision.

Written notices of 'preferences' are quite common in self managed super funds. This is because the Trustee of the fund (after the member's death) is often other family members who are effectively making decisions about their own inheritance. Such notices (or even no notification of preferences at all) leaves the other family members scope to make whatever decisions are best (for example, most tax effective) for the family as a whole.

This written notice could take any form - it could be as simple as a letter or a minute which indicates your preference. A sample written notice called a 'Nomination of preferred beneficiary' form is enclosed which you could use, should you wish to do so (but note you do **not** need to do so.)

In the event that your death benefit is the subject of a dispute, a court *may* take your written notice into consideration, however, the court will *not* need to comply with it when deciding how to distribute your super.

5. Reversionary Pensioner

If you start to draw a **Pension** from your super, you are able to incorporate various terms and conditions that are to apply to your Pension, and which the Trustee *must* follow.

One such term or condition you could include is for your Pension to automatically continue (ie, revert) to another person on your death. This person is known as your 'Reversionary Pensioner' and the pension they continue to receive is known as a 'Reversionary Pension'.

Importantly, if you incorporate a Reversionary Pensioner to your Pension, the rules governing the Fund require the Trustee to continue to pay your Pension to that person (ie, it *must* do so) as long as they are allowed under super law to receive it (remember, your spouse is always allowed to continue to receive your Pension on of your death, however, your adult children are generally not able to). Otherwise, the rules governing the Fund require the Trustee to pay a lump sum benefit to that person (ie, once again it *must* do so).

It is also important to note that:

- if there is any inconsistency between the terms and conditions that apply to the Pension payable to your Reversionary Pensioner; and
- any Binding Death Benefit Notice (discussed below) that you put in place

the rules governing the Fund prescribe that the Reversionary Pensioner's entitlement will take precedence. In other words, that entitlement will *not* be overridden by any Binding Death Benefit Notice.

Note that this Reversionary Pensioner approach is only possible if you start one or more Pensions from your super *before* you die. If your balance is still *accumulating* when you die, it is simply not possible to incorporate a Reversionary Pensioner to your accumulation account.

Similarly, if only part of your balance has been used to start a Pension, your Reversionary Pensioner will only have an automatic entitlement to that particular Pension balance, not your entire benefits within the Fund.

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6. Binding Death Benefit Notice

Finally, the super law and the rules governing the Fund allow you to make any written notice given to the Trustee regarding the distribution of your benefits on your death **binding** on the Trustee - ie, your written notice can become a Binding Death Benefit Notice. If so, the Trustee will be legally obliged to follow the instructions in your Binding Death Benefit Notice unless doing so would breach super law. Importantly, note that this obligation applies even if your circumstances have changed since you provided the Binding Death Benefit Notice and your original instructions no longer provide the best result for your family.

You can make a written notice a Binding Death Benefit Notice simply by instructing the Trustee that it is to be bound by the written notice, and ensuring the notice is in writing, is signed and dated by you, and is given to the Trustee. While some funds stipulate that you must use a specific form or meet certain conditions (for example, having the notice witnessed by two people who are over 18), this is not required in your case - your notice can be in any form you wish as long as it is in writing, is signed and dated by you, and is given to the Trustee.

You can also change or revoke a Binding Death Benefit Notice, or a part of the Notice, at any time and in any form you wish as long as it is in writing, is signed and dated by you and makes reference to your earlier Notice, and is given to the Trustee.

In some funds, binding notices expire after three years. This is not the case in your fund – a Binding Death Benefit Notice will only cease to apply if you specifically revoke it or if you incorporate an expiry date in the notice itself.

The Notice can specify virtually anything you wish in relation to your death benefit, including for example:

- who should receive all or part(s) of your death benefit;
- the form in which it should be paid (pension or lump sum); or
- whether it should be paid in cash or via the transfer of specific assets to your beneficiary.

The only restrictions are that it can only instruct the Trustee to do things which are permitted by the law.

If any part of your Binding Death Benefit Notice is not valid (say for example, you instruct the Trustee to pay a benefit to a person who is not a dependant (as outlined above) of yours, or your Notice is not signed and dated by you) that part (and only that part) of your Notice fails to be binding on the Trustee - in other words, the Trustee is not obliged to act in accordance with your instructions in relation to that part of your Notice.

Given the complexities that can arise, you should seek appropriate advice before putting a Binding Death Benefit Notice in place.

7. Your Guardian – protecting your interests after death

It is clear that the Trustee of your Fund may have considerable power over your benefit when you die (unless you start a Pension and impose a term or condition that your Pension is to continue to your Reversionary Pensioner, or you put a Binding Death Benefit Notice in place).

To give you some extra protection that the Trustee's decisions will reflect your wishes after you die, the rules governing the Fund allow you to appoint a 'Guardian' whose role is to either approve of the Trustee's own decision regarding the distribution of your benefits after your death, or instruct the Trustee how to distribute your benefits.

Should you wish to appoint a Guardian, the appointment can be in any form you wish as long as it is in writing, specifies the full legal name of the Guardian, is signed and dated by both you and your Guardian, and is given to the Trustee prior to the payment of your death benefits. If you wish to revoke your Guardian's appointment, you can do so at any time, in any form and the revocation need not be in writing - you would need to notify the Trustee of this revocation prior to your death.

The role of the Guardian is therefore an important one – it provides some scope for you to ensure that your interests are protected after you die. Accordingly, you should seek appropriate advice before nominating a person to be your Guardian.

In conclusion

Your super balance might well be a significant asset when you die and it should therefore be considered very carefully in your estate planning.

This is particularly important given that it will not automatically be covered under your will.

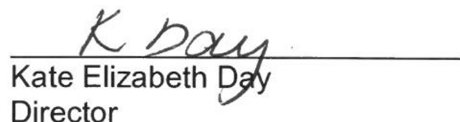
MINUTES OF A MEETING OF
MK DAY PTY LIMITED (THE 'TRUSTEE')
AS TRUSTEE OF
MK DAY SUPERANNUATION FUND (THE 'FUND')
ON 8th August 2017

PRESENT:	Matthew Simon Day Kate Elizabeth Day
Notice of Meeting	It was noted that notice of this meeting had been provided to each director in the required manner.
Nominations of preferred beneficiaries	Completed Nominations of preferred beneficiaries notices received from Matthew Simon Day and Kate Elizabeth Day were tabled. It was noted that the Fund's Trust Deed allows a Member to provide a notice indicating their preference as to how their benefit should be distributed on their death. It was further noted that, in the event of the death of Matthew Simon Day or Kate Elizabeth Day, the notice may be taken into consideration, however, it will not need to be complied with. Receipt of the completed Nomination of preferred beneficiaries Notices were acknowledged.

There being no further business, the meeting closed.

Signed as a true and correct record.

Matthew Simon Day
Director



Kate Elizabeth Day
Director

NOMINATION OF PREFERRED BENEFICIARIES

To: The Trustee
MK DAY Superannuation Fund (the 'Fund')

Name of Member: Kate Elizabeth Day

I revoke any and all previous written notices nominating my preferred beneficiary(ies).

In the event of my death, I nominate the following person(s) to receive the benefit payable from the Fund in respect of me:

Full name of preferred beneficiary(ies) (Insert 'My legal personal representative' if you wish for your superannuation to be paid to your Estate)	**Relationship to Member**	**Birthdate of preferred beneficiary(ies)**	**Amount of benefit (eg, % or $ amount)**	**Type of benefit (lump sum or pension)**
my legal personal representative			100%	

In the event of any of the above nominated beneficiary(ies) pre-deceasing me, I nominate the following person(s) to receive the benefit payable from the Fund in respect of me:

Full name of preferred beneficiary(ies) (Insert 'My legal personal representative' if you wish for your superannuation to be paid to your Estate)	**Relationship to Member**	**Birthdate of preferred beneficiary(ies)**	**Amount of benefit (eg, % or $ amount)**	**Type of benefit (lump sum or pension)**

I understand that this notice is not a Binding Death Benefit Notice as defined in the Governing Rules of the Fund and that the Trustee is not obliged to follow these instructions.

K. Day
Signature

28/8/17
Date

NOMINATION OF PREFERRED BENEFICIARIES

To: The Trustee
MK DAY Superannuation Fund (the 'Fund')

Name of Member: Matthew Simon Day

I revoke any and all previous written notices nominating my preferred beneficiary(ies).

In the event of my death, I nominate the following person(s) to receive the benefit payable from the Fund in respect of me:

Full name of preferred beneficiary(ies) (Insert 'My legal personal representative' if you wish for your superannuation to be paid to your Estate)	Relationship to Member	Birthdate of preferred beneficiary(ies)	Amount of benefit (eg, % or $ amount)	Type of benefit (lump sum or pension)
My legal Personal representative.			100%	

In the event of any of the above nominated beneficiary(ies) pre-deceasing me, I nominate the following person(s) to receive the benefit payable from the Fund in respect of me:

Full name of preferred beneficiary(ies) (Insert 'My legal personal representative' if you wish for your superannuation to be paid to your Estate)	Relationship to Member	Birthdate of preferred beneficiary(ies)	Amount of benefit (eg, % or $ amount)	Type of benefit (lump sum or pension)

I understand that this notice is not a Binding Death Benefit Notice as defined in the Governing Rules of the Fund and that the Trustee is not obliged to follow these instructions.

Signature

28-08-2017.

Date