

# The James NK Super Fund

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**Annexure A**

**Of**

**Deed of  
Variation of  
superannuation  
Trust Deed**

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## SMSF Trust Deed

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**Date of this Deed**

02/03/2016

**Trust Name**

The James NK Super Fund

**Trustees**

Grecian Pty Ltd

A.C.N : 126370456

35 Gellatly Avenue Figtree NSW - 2525 Australia

**Members**

James Nicholas Kosturos

35 Gellatly Ave Figtree NSW - 2525 Australia

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Words with an \* are defined in the definitions section of this deed.  
Generally, defined words only have an \* the first time they appear in this deed.  
The parties to this deed agree to the terms and conditions set out in the deed.  
Liability limited by a scheme approved under Professional Standards Legislation.  
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## **I. Existing Fund**

1. The The James NK Super Fund is a \*self managed superannuation fund as defined in section 17A of the \*SIS Act.
2. The James NK Super Fund (hereinafter called “the fund”) is an indefinitely continuing superannuation fund and is intended by the trustees to be a regulated \*complying superannuation fund.
3. All \*members have consented to act as trustees of the fund and in case the trustee is a \*corporation, all members have consented to act as directors of the trustee corporation. The trustee has made this Trust Deed available to all members.

## **Purpose of the Fund**

4. The sole or primary purpose of the The James NK Super Fund is the provision of old-age pensions. Trustee(s) of The James NK Super Fund have agreed that the fund will be maintained solely for one or more core and ancillary purposes as per section 62 of SIS Act and for other superannuation \*benefits to members listed on Schedule 1 to this deed and their \*nominated \*dependants, who have in the prescribed form applied to become a member of the The James NK Super Fund.
5. From the time of its establishment onwards, the fund is vested in the Trustee(s) of the The James NK Super Fund. The fund shall include the \*assets of the fund (including \*cash, \*contributions to the fund, investments and other property) from time to time held by or on \*account of the Trustee(s) under this deed who shall hold assets of the fund, on trust, for the objects and purposes of this deed.

## **Compliance with Superannuation Law**

6. The Trustee(s) must comply with superannuation \*legislation and this deed and do all such things as are necessary to ensure that the fund complies with superannuation legislation and must not do those things (or fail to do those things) that would make the fund non-complying with superannuation legislation. That is, at all times the Trustee(s) shall ensure that the fund remains a complying superannuation fund.
7. This trust deed complies with superannuation law. In particular, the The James NK Super Fund qualifies as a self managed superannuation fund as defined in section 17A and other relevant sections of the SIS Act and \*SIS Regulations. Further, the The James NK Super Fund qualifies for Concessional tax treatment under the \*Tax Act as amended from time to time.
8. If any provisions of this deed are inconsistent with superannuation law then those provisions shall be severed to the extent of that inconsistency. The superannuation law shall apply to the extent of any inconsistency. Any requirement of superannuation law governing the The James NK Super Fund which is not included in this deed shall be deemed to be included in the deed.
9. If any clause or part of any clause in this deed and the schedules attached to this deed are found to be invalid for any reason, such invalidity shall not affect the validity or operation of the remainder of this deed and attached schedules and such invalid clause shall be deemed to be deleted from this deed from the time that it could affect its invalidity.
10. This deed and the schedules attached will be governed and construed in accordance with the laws of the State or Territory of the Commonwealth of Australia in which the deed is executed which as per clause 11 of this deed.
11. This deed is governed by the law of New South Wales and all members and Trustees agree to the jurisdiction of the courts of New South Wales.

## II. Interpretation and Definitions

### Interpretation

- 12 In this deed, unless the contrary is expressly provided or the context otherwise requires ;
- a reference in the singular includes a reference to the plural and vice versa.
  - a reference to the SIS Act, SIS Regulations and the Tax Act include all amendments made to those Acts from time to time.
  - a person includes a firm, partnership, joint venture, association or corporation. Also, a person includes their \*legal personal representative, assignors or successors.
  - a references to a gender include the other gender.
  - this trust deed includes this document as varied or replaced regardless of any change in the identity of the various parties listed in this trust deed.
  - the headings in the trust deed are for reference purposes only and shall not affect the interpretation of the Trust Deed.

### Definitions

- 13 In this deed, unless the context otherwise requires, the following expressions shall be defined as follows ;

**account** means an account established by the Trustee in accordance with this deed for the administration of the fund.

**account balance for minimum payment amount for a superannuation income stream** means:

- A. the amount of the annuity or pension account balance:
- a. on 1 July in the financial year in which the payment is made; or
  - b. if that year is the year in which the annuity or pension payments commence – on the commencement day; or
- B. if the amount of the annuity or pension account balance under paragraph (A) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity or pension were to be fully commuted – the amount of the withdrawal benefit.

**accumulation account** means the account established for a member by the Trustee.

**account-based pension** means a pension that is provided in accordance with the rules of a fund that:

- (a) are described in regulation 1.06(9A)(a) of the SIS Regulations; and
- (b) meet the standards of regulation 1.06(9A) of the SIS Regulations.

**administration costs** has the same meaning as in regulation 5.01(1) of the SIS Regulations.

**annuity** means what it means under Regulation 1.05 of SIS or any other superannuation law. Essentially, it refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier who undertakes to pay a person an income for a specified time.

**approved benefit arrangement** means an arrangement into which or from which assets of the fund can be transferred without a breach of superannuation law. It includes a roll over fund, a complying superannuation fund, an approved deposit fund and an annuity arrangement.

**approved deposit fund** means a fund which is a complying approved deposit fund under the Tax Act.

**assets** means the cash, investments and other property of the fund held by the Trustee.

**beneficiary** means a person immediately and absolutely entitled to a benefit under this deed for a member and includes a member, a dependant or a pensioner.

**benefit** means an amount payable out of the fund to a member or beneficiary.

**benefit entitlement** means an amount in the fund which may become payable to a member or to a beneficiary.

**binding death benefit notice** means a notice given by a member or beneficiary to the Trustee in accordance with regulation 6.17A of the SIS Regulations, relevant superannuation law and with this deed.

**business day** means Monday to Friday excluding public holidays in the state of New South Wales.

**business hours** means between 9:00 am and 5:00 pm on a business day.

**cash** means what it means under superannuation law.

**cashing restriction**, in relation to a condition of release, means a cashing restriction specified in column 3 of the item in Schedule 1 of regulation 6.01(2) of the SIS Regulations that mentions the condition of release.

**capital gains tax exempt component** has the same meaning as CGT exempt component in section 27A (1) of the ITAA 1936 as in force immediately before 1 July 2007.

**child** has the same meaning given to the term in the SIS Act.

**Collectables and personal use assets:** A collectable or personal use asset is an investment in:

- artwork
- jewellery
- antiques
- artefacts
- coins, medallions or bank notes
- postage stamps or first day covers
- rare folios, manuscripts or books
- memorabilia
- wine or spirits
- motor vehicles
- recreational boats
- memberships of sporting or social clubs

**complying superannuation fund** means a complying superannuation fund under superannuation law.

**concessional contributions** has the meaning given by section 995-1(1) of the ITAA 1997.

**commute** refers to when a right to receive a regular payment (like pension or annuity payments) is converted into the right to receive a lump sum payment.

**concessional contributions cap** has the meaning given by section 995-(1) of the ITAA 1997.

**contributions** means gross contributions made to the fund before tax in accordance with this deed.

**contributions-splitting superannuation benefit** means a payment made in accordance regulation 6.45 (2) of the SIS Regulations.

**corporation** means a constitutional corporation under superannuation law.

**Corporations Act** means the Corporations Act 2001 (Cth) and the regulations and determinations made under the Act.

**crystallised segment** has the meaning given by section 995-1(1) of the ITAA 1997.

**custodian** means the person appointed by Trustee as custodian of the assets of the fund.

**death benefit** means such amount of member's entitlements in the superannuation fund in the account of the member which the superannuation law permits to be paid to the member's dependants and legal personal representatives, upon death of member.

**dependant** - in relation to a member, means each of the following:

- the spouse or widow or widower of the member or former member.
- any child of the member or former member, including a person who, in the Trustee's opinion, is or was actually maintained by the member as the child of the member.
- any person with whom the member has an interdependency relationship.
- any other person who, in the Trustee's opinion, was substantially dependent on the member at the relevant time.
- Any other person who qualifies as a dependant pursuant of superannuation law or ITAA 1997

**doctor** means a registered medical practitioner.

**disqualified person**, in the context of an individual or a company has the same meaning as the SIS Act

**eligible roll over fund** means what it means in Part 24 of the SIS Act.

**eligible spouse contribution** means a contribution made by an individual to a superannuation fund:

- (a) to provide superannuation benefits for the individual's spouse, whether or not the benefits would be payable to the dependants of the individual's spouse if the spouse dies before or after becoming entitled to receive the benefits; and
- (b) in circumstances in which the individual:
  - (i) could not have deducted the contribution under section 82AAC of the ITAA 1936 in the 2006-07 income year or a previous year; and
  - (ii) cannot deduct the contribution under Subdivision 290-B of the ITAA 1997 in the 2007-08 income year or a later year.

**eligible termination payment** means the same as it means in section 27A of the ITAA 1936.

**employee** means a person who is an eligible person under superannuation law.

**employer** means what it means under superannuation law and includes the employer-sponsor and a participating employer.

**employer contributions** has the same meaning as in regulation 1.03(1) of the SIS Regulations.

**employer-sponsor** is the employer named, or the employer that is carrying on business in succession to or in amalgamation with that employer, and has elected to assume the obligations of that employer in accordance with this deed.

**employment relationship** - an employment relationship exists between 2 persons if any of the following applies:

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law.
- one person is an employee of the employer-sponsor of the fund, and that employer is any of the following:
  - a relative of that person;
  - a body corporate of which the other person, or a relative of the other person, is a director;
  - a body corporate related to that body corporate.
  - one person is the Trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
  - one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.



- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the Trustee of which is a partner.

However, an employment relationship does not exist between 2 persons if superannuation law has the contrary effect.

**employment termination payment** has the meaning given by section 995-1 (1) of the ITAA 1997.

ETP means an employment termination payment.

**expenses of the fund** means the expenses for which the Trustee is entitled to be reimbursed under this deed.

**foreign superannuation fund** has the meaning given by section 995-1(1) of the ITAA 1997.

**Fund capped contributions** means the member contributions described in the definition of that expression in regulation 5.01 (1), other than the following:

- a contribution to which a valid and acknowledged notice under section 290-170 of the ITAA 1997 relates;
- a contribution that meets the requirements of section 292-95(1)(d) of the ITAA 1997;
- a contribution that meets the requirements of section 292-100(9) of the ITAA 1997;
- a payment made by the Commissioner of Taxation under section 65 of the *Superannuation Guarantee (Administration) Act 1992* (Cth);
- a payment made by the Commissioner of Taxation under section 61 or 61A of the *Small Superannuation Accounts Act 1995* (Cth);
- a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth);
- a contribution that is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997* (Cth).

**full time gainful employment** - in relation to a member, means gainfully employed on a full time basis within the meaning of superannuation law.

**fund earning rate** means the positive or negative earning rate the Trustee determines after taking account of any provision or reserve for future contingencies.

**fund employer** means the employer-sponsor or a participating employer.

**fund year** means the 12 month period ending on 30 June or a substitute date decided on by the Trustee.

**gainful employment** means what it means under superannuation law. It includes full time and part time gainful employment.

**In-house asset:** An in-house asset of an SMSF, after 11 August 1999, is as defined in Section 71 of SISA and elsewhere in superannuation law, primarily it is either:

- a loan to, or an investment in, a related party of a fund
- an investment in a related trust of a fund
- an asset of a fund, other than business real property, that is subject to a lease or lease arrangement between the trustees of an SMSF and a related party of the fund

**insurance policy** means an insurance policy effected on the life of the member or a beneficiary of the member or for the member's or beneficiary's illness, accident or disablement.

**interdependency relationship** has the same meaning as in the SIS Act.

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth).

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth).

**legislation** generally refers to superannuation law or such other legislation as governs superannuation funds.

**levy** means a levy payable by the fund under superannuation law.

**life expectancy** means the period which a person is expected to live in addition to their age, calculated in accordance with the life expectancy table published by the Australian Government Actuary.

**mandated employer contributions** has the same meaning as in regulation 5.01(1) of the SIS Regulations.

**Market value:** The amount that could be expected to be received from the disposal of an asset in an orderly market. It is the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if all the following assumptions were made:

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

**member contributions** has the same meaning as in regulation 5.01(1) of the SIS Regulations.

**nominated dependant** means a person nominated (except in a death benefit notice) by a member as his or her 'nominated dependant'.

**non-binding nomination form** means a notice given by a member or beneficiary to the Trustee in the form set out in Part 2 of Schedule 2 & 2B, but which does not meet the requirements of regulation 6.17A of the SIS Regulations.

**non-concessional contributions cap** means the amount mentioned in section 292-85(2) of the ITAA 1997.

**non-commutable pension** means a pension provided under rules of superannuation fund that:

- (a) meet the standards of regulation 1.06(2), (7) or (8) of the SIS Regulations; and
- (b) ensure that, if the pension is commuted under regulation 1.06 (2)(e)(i), (7)(g)(i) or (8)(d)(i), the resulting superannuation lump sum cannot be cashed unless:
  - (i) the purpose of the commutation is to cash an unrestricted non preserved benefit; or
  - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'.

**non-member spouse** means a person who is:

- a spouse or former spouse of a member; or
- a non-member spouse within the meaning of that term under Part VIII B of the *Family Law Act 1975*.

**non-preserved amount** means an amount (including a roll over payment) that is payable to or for a member that is not subject to cashing restrictions under superannuation law at the time of payment.

**normal pension age for age pension:** From 1 July 2017, the qualifying age for Age Pension will increase from 65 to 65.5 years. The qualifying age for Age Pension will then rise by 6 months every 2 years, reaching 67 by 1 July 2023.

Born	Women eligible for Age Pension at age	Men eligible for Age Pension at age
before 1 July 1935	60	65
From 1 July 1935 and 31 December 1936	60.5	65
From 1 January 1937 and 30 June 1938	61	65
From 1 July 1938 and 31 December 1939	61.5	65
From 1 January 1940 and 30 June 1941	62	65
From 1 July 1941 and 31 December 1942	62.5	65
From 1 January 1943 and 30 June 1944	63	65
From 1 July 1944 and 31 December 1945	63.5	65
From 1 January 1946 and 30 June 1947	64	65
From 1 July 1947 and 31 December 1948	64.5	65
From 1 January 1949 to 30 June 1952	65	65
From 1 July 1952 to 31 December 1953	65.5	65.5
From 1 January 1954 to 30 June 1955	66	66
From 1 July 1955 to 31 December 1956	66.5	66.5
From 1 January 1957	67	67

**Part 8 associate of a member** whether or not the individual is in the capacity of trustee includes, but not limited to:

- a relative of the individual;
- other members of the super fund;
- if the member is a partner in a partnership, other partners in the partnership and the partnership itself;
- if the partnership mentioned above contains other individuals, the spouse or child of those individuals;
- a company that is sufficiently influenced by, or in which a majority voting interest is held by, an individual and/or their Part 8 associates.

**part time gainful employment** means a person who is employed for at least 520 hours per annum or who meets any other requirement set out in superannuation law.

**participating employer** means an employer the Trustee admits as a participating employer.

**payment split** means a payment split under Part VIIIB of the *Family Law Act 1975*.

**pension** means a pension, annuity or income stream permitted to be paid under this trust deed and superannuation law and which is taken to be a benefit under the SIS Act. It includes any account based pension, allocated pension, market linked pension, transition to retirement income pension or stream and any other type of pension or income stream permitted under the Superannuation Law.

**pension account** means a pension account established under trust deed.

**pension age** means what it means under superannuation law.

**permanent incapacity**, in relation to a member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the member is unlikely, because of the ill health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**preservation age** means what it means under superannuation law. Essentially it is the minimum age after which your preserved benefits may be paid to a member.

Preservation age depends on member(s) date of birth in the following table:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 - 30 June 1961	56
1 July 1961 - 30 June 1962	57
1 July 1962 - 30 June 1963	58
1 July 1963 - 30 June 1964	59
From 1 July 1964	60

**preserved benefits** means a benefit arising from a preserved payment.

**preserved payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**purchase price of pension** means the total amount paid as consideration to purchase the income stream.

**qualified independent valuer** : A valuer will be qualified either through holding formal valuation qualifications or by being considered to have specific knowledge, experience and judgment by their particular professional community. This may be demonstrated by being a current member of a relevant professional body or trade association holding a practicing certificate and appropriate professional indemnity insurance.

**regulator** means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the regulator of taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

**related party:** A related party of an SMSF as defined in superannuation law, primarily it is a:

- member of a fund
- standard employer-sponsor of a fund, or
- Part 8 associate of a member or standard employer sponsor of a fund.

**relative** for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a director of the Trustee means each of the following for a person:

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.
- For any other purpose, means each of the following for a person:
  - the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person;
  - the spouse of the person or of any person listed above.

**relevant legislation** means the superannuation law.

**retires** in relation to employment, means retirement for the purpose of the payment of benefits under superannuation law.

**Retirement** occurs:

- if you have reached a preservation age less than 60, and
  - an arrangement under which you were gainfully employed comes to an end; and
  - the Trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or
- if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end on or after you attained that age; or
- when you reach your normal retirement age and;
  - an arrangement under which you were gainfully employed comes to an end; or
  - superannuation law provides that you have retired despite still being gainfully employed.

**reversionary beneficiary** means a dependant nominated by a pensioner at the commencement of the pension as his or her residuary beneficiary.

**securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities.

**self managed superannuation fund** means what it means in the SIS Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth)

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*, as amended from time to time.

**Social Security Act** means Social Security Act 1991 (Cth) and any regulations or determinations made pursuant to that Act.

**spouse** means a person legally married to the member at any time; and a person who is not legally married to the member, but who, in the Trustee's opinion, lives or lived with the member on a bona fide domestic basis as the partner of that member including a person of the same sex.

**superannuation benefit** has the meaning given by section 995-1(1) of the ITAA 1997.

**superannuation interest** has the meaning given by section 995-1(1) of the ITAA 1997.

**superannuation contributions surcharge** means an amount which you may be liable to pay if your taxable income is greater than the relevant superannuation surcharge level for a year of income.

**superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993* (Cth), *Superannuation Industry (Supervision) Regulations 1994* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the Trustee believes may have retrospective effect.

**tax** includes any form of taxation, surcharge, levy, duty or other government charge that the Trustee is required to pay out of the fund, or a member, former member or beneficiary is required to pay.

**taxable component of a payment** means:

- (a) a taxable component of an ETP within the meaning given by section 995-1 (1) of the ITAA 1997; or
- (b) a taxable component of a superannuation benefit within the meaning given by section 995-1 (1) of the ITAA 1997.

**Tax Act** means the ITAA 1936 or the ITAA 1997, as amended, and the regulations and determinations made under the relevant Act.

**taxation** includes any tax, charge duty or levy of any type paid or payable by the Trustee, or by a member, former member or beneficiary, in relation to any part of the fund.

**tax file number** has the meaning given by section 299W of the ITAA 1936.

**temporary total disablement** means disablement that is not total and permanent disablement that makes the relevant member incapable of continuing in the gainful employment that the member was in immediately before the incapacity.

**terminal medical condition** means what it means in superannuation law

**total permanent disablement** means such total physical or mental disablement that the Trustee is reasonably satisfied that the relevant member is unlikely ever again to be able to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**transaction costs** means cost of any of the following:

- a brokerage paid because of an investment transaction;
- b a cost arising from maintenance of a real property investment;
- c stamp duty on an investment transaction.

**transition to retirement income stream** means:

- (a) an annuity provided under a contract that:
  - (i) is a contract:
    - (A) to which regulation 1.05(11A)(a) of the SIS Regulations applies; and
    - (B) that meets the standards of regulation 1.05(11A) of the SIS Regulations; and
  - (ii) allows total payments (including under a payment split) made in a financial year to amount to no more than 10% of the annuity account balance:
    - (A) on 1 July in the financial year in which the payment is made; or
    - (B) if that year is the year in which the annuity commences – on the commencement day; and
  - (iii) complies with paragraphs (b) and (c) of the definition of non-commutable allocated annuity, as if it were such an annuity; or
- (b) a pension provided from a superannuation fund, the rules of which:
  - (i) are rules:
    - (A) to which regulation 1.06 of the SIS Regulations applies; and
    - (B) that meet the standards of regulation 1.06(9A) of the SIS Regulations; and
  - (ii) allow total payments (including under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:
    - (A) on 1 July in the financial year in which the payment is made; or
    - (B) if that year is the year in which the pension commences – on the commencement day; and
  - (iii) comply with paragraph (b) of the definition of non-commutable allocated pension, as if it were such a pension.

**Trustee** means the persons or company who are the Trustees or is the Trustee of the fund from time to time and Trustees and corporate Trustee shall have a corresponding meaning

**unrestricted non-preserved benefit** means such amounts of a member benefit which is not classified as a preserved and / or restricted non preserved benefit.

**Valuation of assets:** It is usually the valuation process undertaken rather than who conducted it that governs the acceptability of a valuation of assets. In all cases the person who conducts the valuation must base their valuation on objective and supportable data. Depending on the situation, a valuation may be undertaken by a:

- registered valuer
- professional valuation service provider
- member of a recognised professional valuation body
- person without formal valuation qualifications but who has specific experience or knowledge in a particular area.

**voluntary cashing event** means an event which will satisfy the cashing event as listed in the SIS Act, which allows members to cash their benefits in the fund if they so wish upon meeting the requirements of the Act's conditions and without limiting the events prescribed in the SIS Act, that is, attaining preservation age, retirement, \*permanent incapacity or temporary incapacity.

**withdrawal benefit** means the minimum benefit that must be paid to a member on withdrawal from the fund under superannuation law.

### III Membership

#### Adding Members

14. A person, who wishes to be admitted as member of this fund, must provide to the Trustees a completed and signed application form as per schedule 2 or 2B attached to this deed. The Trustees may admit this person as a member of the fund provided that his or her admission would not cause the fund to breach Superannuation Law. Subject to the superannuation Law, a member may remain a member of the fund even if no contributions are made in respect of that member for any \*fund year and he is not under any \*full time \*gainful employment arrangement.
15. All new members must consent to be appointed as Trustees of this fund. If the Trustee is a corporation, all new members must consent and become directors of the Trustee corporation. Once a person becomes a member or Trustee of the fund, the member or Trustee will be bound by this trust deed in all respects as if the member or Trustee was the original party to the deed.
16. The date of commencement of membership of the fund for the member will be:
  - the date when the Trustee accepts the application of the member Or
  - the date of applicationThe member will also become Trustee of the fund at the same time as becoming member of the fund unless a Trustee is appointed as per Section 17A(3) of SIS Act.

#### Minors as Member

17. The Trustee may accept to admit a minor as a member who is under 18 years of age who maybe a \*child of the member, provided all legislative conditions for the membership as per superannuation law are complied specifically Section 17A (3) (c ) of SISA where a parent or a guardian can be a Trustee or a director of a corporate Trustee for a minor.
18. The Trustee may accept application for membership for a minor to be a member of the fund signed either by the parents or legal guardian of the minor in the prescribed format as set out in schedule 5A or 5B. Upon the minor member turning 18 years of age, the minor must become Trustee of the fund or if there is a corporate Trustee then director of the corporate Trustee.

## Further Information from Member

19. The Trustees may request further information or documentation from member from time to time. Member should attend to a medical examination, by a medical \*doctor acceptable to the Trustee, if requested by the Trustee. Each member with the application to become a member must also provide proof of age to the Trustee of the fund.
20. The Trustee may refuse further contributions on behalf of the member, if the member refuses to supply information and documents requested by the Trustee.
21. All members must notify the Trustee if the member becomes aware that either of the following may happen:
  - the member becomes a \*disqualified person as defined in superannuation law
  - the member intends to enter into an \*employment relationship with another member who is not a \*relative of the member; or the member is likely to be disqualified from being a Trustee of the fund or a director of the Trustee corporation.

## Information to be provided by Trustee

22. Trustees must provide each new member of the superannuation fund with a copy of this trust deed and a product disclosure statement as attached in Schedule 6 of this deed. In addition, an individual who becomes a Trustee or a director of the corporate Trustee of the fund must sign a declaration in the approved form stating that they understand their duties and responsibilities as Trustees of the fund. The declaration must be signed no later than 21 days after the individual becomes a Trustee or director of the corporate Trustee of the fund.

## Cessation of Membership

23. The Trustee must ensure that the member ceases to be a member of the fund within 6 months, after either of the following occurs:
  - the member enters into an employment relationship (\*employee) with another member who is not a relative of the member; or
  - the member is disqualified from being a Trustee of the fund or a director of the Trustee corporation unless the requirements of section 17A of the SIS Act would otherwise be met for the fund to be a self managed superannuation fund.

Trustee must provide notice of cessation to the member in writing.

24. A person shall cease to be a member on the occurrence of any of the following:
  - when the Trustee determines that there is no further \*benefit entitlement payable to the member from the fund;
  - when the member dies;
  - when the Trustee notifies the member that the member is no longer a member of the fund;
  - when the member becomes ineligible as Trustee or director of corporate Trustee; or
  - when the member otherwise becomes ineligible to be a member under superannuation law.

When the member ceases to be a member of the fund, this person may continue to act as Trustee of the fund provided the remaining members appoint this person as Trustee of the fund and this appointment is permitted by superannuation law. Otherwise when a member ceases to be a member, this person will no longer be Trustee of the fund. Any member who ceases to be a member must also cease being a director of the corporate Trustee of the fund.



## IV. Trustee

### Who can be a Trustee?

25. The Trustee of this fund cannot be a disqualified person under section 120 of SIS Act or an \*employer of another member unless they are related and paid any remuneration from this fund. No member of the fund may be employed by another member of the fund unless permitted by Superannuation law. A Trustee can be:
- If this fund is a single member fund:
    - The individual member is one of only 2 Trustees where the other individual is a relative of the member; or
    - Constitutional corporation under the \*Corporations act where the member is the sole director or one of only 2 directors where the other director is a relative of the member and directors are not disqualified persons
  - If this fund is not a single member fund (up to a maximum of 4 individual members):
    - All individual members are also Trustees of the fund; or
    - Constitutional corporation under the Corporation act where all members are also directors of the corporation and directors are not disqualified persons
  - An approved entity by the \*regulator under section 17A (3) of SIS Act who satisfies the requirements of superannuation law.

### Appointment and Removal of Trustee

26. The members may appoint a new or additional Trustee, or remove a Trustee, by a written resolution to that effect. A person appointed as Trustee must consent to act as a Trustee or director of corporate Trustee by providing notice of consent to all members.
27. Where a legal representative is appointed by a member or on behalf of a member, the legal representative can be appointed as a Trustee of the fund. In case of a corporate Trustee, all the other directors of the corporate Trustee will assist the legal representative in becoming the director of the corporate Trustee. All the other directors of corporate Trustee must sign and lodge all necessary documents with the regulator (ASIC) to appoint the legal personal representative as a director of the corporate Trustee in place of member as director of the corporate Trustee of the fund.
28. The legal personal representative of a member may exercise that member's powers of appointment and removal of Trustee where that member:
- is under a legal disability for as long as the member is under such a disability;
  - has given to the legal personal representative an enduring power of attorney;
  - is deceased; or
  - is a minor member who does not have a parent or a guardian.
29. A person will no longer be a Trustee or director of corporate Trustee, if he resigns, or is removed or dies or becomes a disqualified person or is no longer a member of the fund, or under any other circumstances prescribed in superannuation law. Once a person ceases to be a Trustee or director of corporate Trustee, his legal representative will no longer be permitted to act as Trustee or director of corporate Trustee of the fund.
30. A person can no longer be a director of a Trustee company, if he resigns, or is removed, or dies or becomes a disqualified person or is no longer a member of the fund, or is no longer a director of the corporate Trustee or any other event as prescribed in superannuation law happens.
31. A company is not permitted to act as Trustee of the fund, if the company is removed as Trustee, becomes a disqualified Trustee under superannuation law or any other event as prescribed in superannuation law happens.



32. Whenever a Trustee leaves the fund, he or she shall return all records, books and accounts of the fund to the remaining Trustees.

### **Additional Trustee**

33. A Trustee may resign at any time by giving notice to the members in writing. If required by superannuation law, upon resignation of Trustee, the members may appoint a new or additional Trustee if required by superannuation law.
34. Trustees may appoint additional Trustee if they receive a notice from a Trustee under clause 33, at any time. If a replacement Trustee needs to be appointed at any stage, that appointment must be made within 6 months of receiving notice under clause 33.
35. Member(s) residing overseas may appoint by proper execution of enduring power of attorney other persons as individual Trustee(s) or director(s) of Trustee corporation and resign as individual Trustees or from directorship of Trustee corporation in Australia and hand over the control and management of the fund to Australian resident Trustee(s) to ensure that the fund remains a complying superannuation fund and obtains tax concessions offered by the regulator. This appointment of Trustee or additional Trustees should be as per superannuation law.
36. The Trustees must appoint within prescribed time additional individual Trustee(s) or replace the fund Trustee with a corporate Trustee, if due to any reason, the fund remains with only one individual Trustee.
37. A single member and director of a corporate Trustee may appoint another person to act as Trustee and appoint that person as additional director of Trustee corporation. This other person need not be a member of the fund as defined in section 17A of the SIS Act.
38. Members of the fund who are directors of a corporate Trustee must appoint a non member person to act as additional Trustee by appointing that person as a director of corporate Trustee of the fund, if that person is acting on behalf as a legal personal representative of a deceased member or a minor member or guardian of minor member or a member with total permanent or temporary disablement or any other person which the legislation may allow to maintain the fund as a complying fund.

### **Meetings of Trustee(s)**

39. Any member or Trustee may call a meeting by giving seven (7) \*business days written notice to all members and Trustees, setting out the time of the meeting during \*business hours and the general nature of business. In case of corporate Trustee, the calling of meeting will be as per the constitution of the corporation.
40. A quorum of meeting will be met if 75% of Trustees are present at the meeting. If there is no quorum, the meeting will be adjourned.
41. In case of a corporate Trustee, the quorum rules will be as per the constitution of the corporation. A Trustee meeting can be in person, or telephone or any other form of communication as agreed by the Trustees.
42. Any one Trustee may be appointed as chairperson. In case of a corporate Trustee, the appointment of chairperson will be as per the constitution of the corporation. A written resolution of all decisions shall be prepared, recorded and signed by the chairperson.
43. The Trustees must maintain minutes of all meetings for a period as required by superannuation law. All minutes of Trustee meetings must be circulated to all Trustees within 21 days of the meeting. The minutes must be signed by the chairperson certifying that the matter has been agreed to by the majority of Trustees.

## Decision of Trustee(s)

44. In a Trustee(s) meeting, each individual Trustee or director of Trustee Corporation will have votes based on the balance of that Trustee(s) member account balance at the time of the meeting. All decision made at the meeting will be by majority vote. Where there is a deadlock in decision making, the chairperson of the meeting will have one casting vote.

## Trustee Covenants, Liability and Indemnity

45. The Trustee(s) covenant that they will perform, follow and abide to the conditions of this deed. All Trustees must act honestly, as prudent person(s) would exercise in dealing with property of another person.

All Trustees must look after the property of the fund for members and on death of member for their dependants and/or their legal personal representative(s) and must keep the property of the fund separate from their own property.

46. A Trustee must not be paid for acting in its capacity as Trustee of the fund. A Trustee may, however, charge arm's length professional fees and disbursements for providing professional services to the fund and reimbursed for any expenses paid on behalf of the fund. All payments to a Trustee must be according to superannuation law specifically Section 17B of SISA.
47. The Trustees are not personally liable for any loss to the fund, unless they acted dishonestly, fraudulently, intentionally or recklessly in discharging their duties as required by superannuation law.
48. If the Trustees act honestly and in good faith, the Trustees are entitled to be indemnified out of the fund for any liability which they incurred on behalf of the fund.

## V. Contributions

### Acceptance of Contributions

49. The Trustees of the fund may accept contributions, as a \*preserved payment, for a member from the following sources, inter alia:
- the \*member contributions;
  - another member;
  - a \*spouse of the member (\*eligible spouse contributions);
  - the member's employer as \*employer contributions;
  - another fund under contribution split rules;
  - any government body e.g. under the superannuation co-contribution scheme and low income super contribution; or
  - any other third party or person as prescribed in superannuation law.
50. Trustees must accept contributions consistently with the terms of the SIS Act and SIS Regulations, as are listed in regulation 7.04, and in particular the table in regulation 7.04 (1) of the SIS Regulations and in accordance with conditions of regulations 7.04 (2), (3), (4) and (6) of the SIS Regulations.
51. The Trustees of the fund may accept contributions in cash or in-specie (transfer of assets) as prescribed in superannuation law. All transactions with related parties must be at arms length and Trustees must follow \*In-house asset rules and its exceptions as specified in Section 71 of SIS Act and superannuation law.

52. The Trustees of the fund must accept a transfer of \*eligible termination payment or roll-over of members balance from another complying superannuation fund, \*foreign superannuation fund, \*approved deposit fund or an \*eligible roll over fund in the form of cash or in specie, i.e. transfer of assets as prescribed in superannuation law. Trustees must provide an \*approved benefit arrangement to all members of the fund.
53. The Trustee may request an employer of a member, or employer of a person who wishes to become a member, to apply to become a \*participating employer in the form set out in schedule 3 of this deed. The Trustee may request an employer of a member, or employer of a person who wishes to become a member, to apply to become a \*fund employer sponsor employer in the form set out in Schedule 4 of this deed.
54. The Trustee may not accept contributions for a member:
  - If the acceptance of such contributions would cause the fund to cease to be a complying superannuation fund;
  - If the Trustee has not received a \*tax file number for that member;
  - any contributions which are a rollover or an \*employment termination payments (\*ETP) from employer of a member; or
  - any contribution otherwise not permitted by superannuation law or are in excess of the amount of contributions that can be made, on the member's behalf by the superannuation law.

If after receiving the contribution on behalf of a member, including \*fund capped contributions, the Trustee becomes aware that any of the above factors apply, the Trustee must refund (and debit the account of the member) with the appropriate amount within a reasonable time after deducting tax payable or amounts which the member has validly authorised the Trustee to pay to the regulator and in such a way as not to contravene superannuation law.

The Trustee on receipt of an offer from the regulator or when superannuation law permits, the Trustee may refund any excess \*concessional contribution received by the fund.

### **Spouse Splitting Arrangements**

55. The Trustees of the fund may accept a request for the transfer of contributions from one spouse member into an account of another spouse member, or a request for the transfer of contributions into another complying superannuation fund in which the spouse of the member is a member, so long as the contribution is accepted consistently with the terms of the SIS Act and SIS Regulations Division 6.7. These requests for transfers of \*contributions splitting \*superannuation benefit must be made in the prescribed form as per superannuation law.
56. The Trustee may accept requests for the following contributions to be split (splittable contributions):
  - 85% of all concessional contributions;
  - nil of non-concessional;
  - any other amount defined in the superannuation law as splittable contributions
57. The Trustee may, in a financial year, only accept this application for roll over, transfer or allot an amount of benefits, for the benefit of the member's spouse, that is equal to an amount of the splittable contributions made to the fund by the member or on behalf of the member, in the last financial year, that ended before the application or in the financial year in which the application is made— where the member's entire benefit is to be rolled over, transferred or cashed in that financial year.

58. The Trustee may only accept application to split contributions, if it is satisfied that the receiving spouse satisfies the conditions set out in Sub regulations 6.44 (2) (c) of SIS Regulations 1994 and the receiving spouse has supplied a statement to the Trustee, that they have satisfied these conditions set therein.
59. The Trustee must process any application to split a contribution within 90 days of receiving the application from a member.

### **Maximum Amount of Contributions - Concessional**

60. A member of the fund may request the Trustee to refuse to accept from a participating employer or another person an amount higher than the \*concessional contribution cap amount applicable to the member. Trustees may follow the request of the member and may refund any concessional contribution which they have received on behalf of a member or any other concessional capped amount prescribed in superannuation law. (Ref: *For financial year ended 30<sup>th</sup> June 2015, cap amount is \$30,000 and \$35,000, if the member is aged 49 years or over on 30<sup>th</sup> June 2014 Section 291.20 of ITAA 1997*).
61. The Trustee may, if permitted by superannuation law, refund a maximum of 85% of any excess concessional contributions if the member provides to the Trustee with an excess concessional contributions election form. Upon application by the member the Trustees may refund to a member for the 2011-12 and 2012-13 financial years any concessional contributions received by the fund, if the members exceed their concessional contributions cap by \$10,000 or less only upon receiving an offer from the Regulator to have the excess concessional contribution to be refunded. The Trustee should debit the account of the member with the amount paid at the time of any payment.

### **Maximum amount of contributions - non - concessional**

62. A member of the fund may request the Trustee to refuse to accept from a member, member's spouse or employer or another person a higher non-concessional contribution than \*non-concessional contribution cap made on behalf of a member. Trustees may refund any non-concessional contribution which they have received on behalf of a member in excess of:
  - amount above the amount as mentioned in Section 292.85 of ITAA 1997 (*non-concessional contribution cap amount*) if the member is over 65 years as on 1<sup>st</sup> July of the relevant contributing year provided they are gainfully employed; or
  - amount above the amount as mentioned in Section 292.85 (4) of ITAA 1997, if the member is under the age of 65 years as on 1<sup>st</sup> July of the relevant contributing year (*Bring forward rule; non-concessional contribution cap amount for the first financial year and for the following two financial years*); and
  - nil, if the member is over 75 years old.

Any refund of non-concessional contribution by the Trustee of the fund will be valid if it is allowed by superannuation law specifically to sub regulations 7.04 (1), 7.04(3), 7.04 (4) & 7.04 (7) of SISR and ATO ID 2007/225 & ATO ID 2012/79.

(Ref: *Section 292.85 (2) for financial year 2009-10 or a later financial year, the amount is 6 times the concessional contribution cap. For financial year 2014-15 \$180,000, Bring Forward Rule \$540,000 - Cap amount of three years*).

63. The member may, if permitted by superannuation law, nominate the fund to pay any extra tax liability imposed by the regulator as a result of non-concessional contributions received by the fund in excess of non-concessional contributions caps prescribed in the SIS Act and regulations. The Trustee should debit the account of the member with this extra tax paid to the regulator.

64. The Trustees may also accept contributions of up to indexed cap amount relevant for that financial year from a member as non-concessional contributions, at any time, from the proceeds of the sale of small business assets. This cap or a higher indexed amount relevant for that financial year may include any capital gain tax exemption allowed to the member under the \*relevant legislation. (Ref: 2014-15 financial year cap \$1,355,000).
65. The Trustee may accept contribution to the fund, from an insurance company or employer of the member or any other person, at any time, the proceeds from a settlement for an injury resulting in permanent disablement as non-concessional contribution on behalf of a member.

### **Insurance Policies**

66. Upon written request from a member the Trustee may, at its absolute discretion, purchase insurance policies with an insurer and may secure the benefit of a member by means of an life individual policy or temporary total disablement or \*total permanent disablement policy or an income protection policy or any other policy allowed by superannuation law.
67. Upon written request from a member the Trustee may purchase an \*insurance policy of a specified type in respect of the member, the Trustee must purchase that policy, except if it is of the opinion that the policy is not in the best interests of the member or the dependants of the member.
68. Once the Trustee has informed a member that a policy of a specified type will be purchased for the member, the Trustee must purchase the policy except if the member has requested the Trustee in writing not to purchase that policy. Any premiums for a policy purchased must be debited to an insured member's \*accumulation account, in absence of an accumulation account, debited to the \*pension account. The Trustee must collect proceeds from the insurer, upon death of the member and credit to the insured members account to pay a benefit as per this deed, after any tax to the \*beneficiary of the member.
69. Trustee may purchase an insurance policy for liquidity of the fund; any premium paid by the fund must be debited to the income account. Any proceeds from these policy or policies, upon the death of the insured member, must be credited to the income account and after paying appropriate taxes the trustee may at the Trustee absolute discretion use the proceeds from such insurance policy or policies including any investment or retiring of any debt of the fund, pay anti-detriment payment or set aside in a reserve account or crediting to all or surviving members various accounts in a fair and reasonable basis.
70. When Trustee to its absolute discretion decides not to purchase a policy or policies for a member, the Trustee is not responsible or liable to a member, or to a member's legal personal representative, beneficiary or dependant of the member.

### **Contribution Reporting and Other Matters**

71. The Trustees of the fund must report to the regulator all contributions received on behalf of all members (concessional and non concessional contributions) each financial year in a form prescribed by superannuation law.
72. A participating employer or an \*employer sponsor may stop making contributions on behalf of a member at any time or by giving written notice to the Trustee that they are temporarily or permanently terminating contributions to the fund.
73. The Trustees may provide a declaration to the nominated or participating employer, if requested by the employer that the member is over 65 years old, that the member is gainfully employed on a \*part time basis. Notwithstanding anything else in legislation, part time basis means that a member works at least 40 hours in a 30 day consecutive period in a year where contributions are made by the member or by the member's employer.

## Allocation of Contributions

74. Trustees may accept contributions on behalf of member and may credit contributions directly to members account or in the interim credit income account or a reserve account of the fund subject to superannuation law & specifically ATO ID 2012/16.

If a Trustee receives a contribution in a month in relation to an accumulation interest of a member, the Trustee must allocate the contribution to the member of the fund within 28 days after the end of the month consistent with SISR 7.8(2)(a).

75. The Trustees may also accept contributions from a government body as a co-contribution on behalf of a member who is an eligible self employed person as prescribed in superannuation law where the member earns 10% or more of total income from Active income.
76. The Trustees may treat certain expenses paid by the member for and on behalf of the fund (eg life insurance) as concessional or non-concessional contributions of the member for superannuation purposes, and credit the account of the relevant member accordingly.

## Transfers and Rollovers

77. The Trustees may, on the request of a member, rollover or transfer the benefit of the member to another complying fund. This rollover or transfer out of account balance of the member can be paid by the Trustee either in-specie, that is, transfer of assets of the fund at \*market value or in cash.
78. The Trustee may accept a rollover or a transfer of a benefit for a member from another complying fund. This rollover or transfer in on behalf of the member can be received by the Trustee either in-specie, that is, transfer of assets of another fund at market value or in cash.
79. The Trustees may, on the request of a member, rollover or transfer the benefit of the member from the pension account of the member to the accumulation account of the member. This internal commutation or rollover within the fund must be as prescribed in superannuation law.

## VI. Investments

### Permitted Investments

80. The Trustee of the fund may make such investments as are permitted by superannuation law. In making investments, the Trustees of the fund must have regard to the formulated investment strategy and risk management strategy of the fund and conform to superannuation law on acquiring assets from related parties including \*Part 8 associates. Investments may be made, inter alia:
- in shares, stocks, options, hedging or swapping or similar arrangement, debentures, bonds, notes, interests, payable with single or payable in periodical instalments and with or subject to any futures, options, rights, benefits, conditions or provisions whatsoever attached or \*securities of listed in any authorised stock exchanges consistently with the SIS Act and SIS Regulations;
  - in real property of any nature, improved or unimproved and wherever situated and whether income producing or not, whether fully or partly paid up and whether involving liabilities or not with or without security. That is purchase of land and buildings or any estate or interest therein alone or in partnership or co-ownership, syndicated or with any person (including a member) payable with single or payable in periodical instalments and with or subject to any options, rights, benefits, conditions or provisions whatsoever attached consistently with the SIS Act and SIS Regulations;
  - in fixed deposits or on call with any bank or building society or with any other corporation or other person;

- in units in a geared widely held unit trust or professionally managed unit trusts owning property or shares or combined or any other allowed investment as prescribed in superannuation law either listed or not listed in any authorised stock exchanges;
  - in units in a related unit trust, provided such investments comply with the rules relating to such investments in the SIS Act and the SIS Regulations;
  - in futures, options and contracts for difference, provided the requirements of the SIS Act and the SIS Regulations and the regulator are met;
  - in certain in-house assets, provided that such assets comprise less than 5% of the total assets of the fund, or such investments that comply with the rules relating to such investments in the SIS Act or the SIS Regulations;
  - in personal use assets and \*collectables or such investments that comply with the rules relating to such investments in the SIS Act or the SIS Regulations specifically Regulation 13.18AA of SISR & Section 62A of SISA;
  - in employee share schemes provided the discount from the market value of shares is appropriately disclosed as a contribution under superannuation law;
  - Life insurance and other policies for the liquidity of the fund;
  - in life insurance policies (including those offering risk cover) for the benefit of the member and their nominated beneficiaries; and
  - in any other investment authorised by superannuation law.
81. The Trustee may appoint an individual(s) or a corporation as administration manager, investment manager, financial planner or as a \*custodian to hold the investment for the fund as a nominee or as a bare trustee for the benefit of the fund. However, the Trustee holds ultimate discretion and responsibility of all investment decisions of the fund.
82. The Trustee must not, except to the extent permitted by superannuation law, perform any of the following: borrow money from the fund ; charge the assets of the fund other than limited recourse borrowing arrangements; borrow to improve a single acquirable asset; acquire an asset intentionally from a \*related party (including \*Part 8 associates); invest in or loan to or provide financial assistance to members or enter into a lease arrangement with a related party; invest in a geared related trust; invest in any asset or investment where the principal sum is at risk; or conduct any business, partnership or joint venture where the principal sum is at risk.

### Investment Strategy

83. Trustees must prepare and implement an investment strategy for the fund. The strategy must take into account all of the circumstances of the fund and must be reviewed regularly (SISR 4.09 (2)) and takes into account the objectives of the fund and retirement goals of its members and:
- Whether the fund should hold a contract of insurance that provides insurance cover for one or more members of the fund as per SISR 4.09 (2) (e);
  - the risks involved in making, holding and realising each investment;
  - the likely return from making each investment;
  - the range and diversity of investments;
  - any risks coming from limited diversification;
  - the liquidity of the fund's investments;
  - expected cash flow requirements including reserving strategy to fund anti-detriment payments and
  - the ability of the fund to meet its existing and prospective liabilities such as paying benefits to its members.
84. No investment by the Trustee for the fund may depart from the investment strategy of the fund.



85. The investment strategy, and all subsequent investments, for the fund may involve investments of an adequate diversity to overcome the risks of investing in any one class of assets. Trustees must consider various types of insurance for assets of the fund. Trustees must take into account personal circumstances of each member of the fund and consider death, salary continuance, temporary & permanent disability and other types of insurance cover for each member of the fund, including when a new member joins the fund or commence a pension.
86. Trustees must record their decision and reasons relating to their investment strategy, including details about:
- developing their strategy; and
  - departing from their strategy.

Trustees should review their investment strategies regularly, to reflect their funds' and member's changing needs and changes in the investment market.

### Offer choice to members

87. The Trustees may offer a choice of investments to each individual member and let the member know that this choice of investments is available to them. However, the Trustee has the right to accept or reject the investment choice made by a member.
88. If a separate investment strategy is implemented for any member of the fund, then the Trustee may segregate assets of that member at the request of that member. Any income (loss) from this separate investment strategy may be credited (debited) to the particular member's account so that it does not affect the investment strategy and return on investments of other members in this fund.
89. If investment choice is offered to a member and the investment strategy is not working to the member's benefit the Trustee may, at its discretion, vary, transfer or change the investment choice or investment strategy of the member in the interest of the member.

### Valuations

90. The Trustees must undertake all valuations of fund assets in Australian dollars on the balancing day at the end of the financial year or when required by superannuation law or where the Trustee otherwise sees fit to do so in case of member leaving or joining the fund during the year. Trustee must transfer any surplus or deficit in the valuation of assets to income account.

Trustee(s) must use a recognised Market valuation method for tax purposes, capital gain tax event and must base it on objective and supportable data. Trustee(s) must ensure that market valuations are arrived at using a 'fair and reasonable' process, where it meets all the following (SISR 8.02B):

- It takes into account all relevant factors and considerations likely to affect the value of the asset.
- It has been undertaken in good faith.
- It uses a rational and reasoned process.
- It is capable of explanation to a third party.

Trustees may use a \*qualified independent \*valuer where the value of the asset represents a significant proportion of the fund's value or the nature of the asset indicates that the valuation is likely to be complex.



91. Trustees must value a real property when an event occurs that may have affect the value of the property since it was last valued (e.g. change in market conditions, macro-events, volatility or a natural disaster). Trustees must adopt market valuation concept where it is
- acquiring or disposing assets to related parties including collectables and personal use assets;
  - investments made and maintained on an arm's-length basis;
  - determining the market value of an in-house assets as a percentage of all assets in the fund;
  - determining the value of assets that support a member's pension.

## VII. Maintain Records and Accounts

### Accounts & Administration

92. The Trustees must deposit all monies belonging to the fund in the fund's bank accounts promptly upon receipt; and keep fund monies separate from their own money (SISR 4.09A). Trustees must promptly pay all \*transaction costs, \*administration costs & expenses to creditors, income tax, supervisory \*levy to the regulator and premiums to insurers of the fund.

If any asset for some legal reason cannot be held by the trustee on behalf of the fund then the Trustees must clearly document the fund's ownership of the asset with a caveat, legal instrument or a declaration of trust.

93. The Trustees of the fund must prepare an operating statement, a statement of financial position, member accounts and an asset register at market value at the end of each financial year; and must also prepare any other accounts, register or statement required by superannuation law.

In preparing accounts of the fund, the Trustees must apply applicable accounting standards and proper accounting practices. All accounting reporting should be in Australian dollars.

94. The Trustee must lodge an income tax return with a regulatory return of the fund and any other return or document required by superannuation law with the regulator in the prescribed format and pay \*taxation within the time required by superannuation law.
95. The Trustee may appoint (or remove) professionals such as accountants, registered tax agent, administration manager, investment manager or custodian of the fund for assisting him with his responsibilities as Trustee of the fund provided the appointment complies with superannuation law. The Trustees are not bound to follow any advice of the appointed professionals and continue to be personally responsible to the regulator to follow this trust deed and superannuation law, even if the responsibilities have been delegated to professionals.
96. The Trustee must keep a record of proper records and accounts of all monies received and all the monies paid by the fund for a minimum period prescribed by superannuation law. The Trustees must record
- a minute book in which all proceedings and resolutions of meetings of the Trustee are recorded;
  - changes of all members and Trustees are recorded;
  - all other documents as required by superannuation law.
97. The Trustee must make this deed and all records of the fund available to all members, regulator, auditor, actuary or any other person prescribed in superannuation law. The Trustee must make the books, records and accounts of the fund available to the beneficiary or legal personal representative of a member in case of death of a member.

## **Audit of Financial Statements**

98. The Trustee must appoint an approved independent auditor as required by superannuation law and from 1<sup>st</sup> July 2013, must ensure is registered with the regulator to conduct an annual audit of the records and accounts of the fund and is suitably qualified as listed under Schedule 1AAA of SISR and conducted an audit as per Auditing and Assurance Standards Board auditing standards including guidance statement GS 009.
99. The Trustee must request the auditor to issue an audit report of the fund in the prescribed format. Trustee must ensure that in the audit report, the auditor must state that the audit has been conducted in accordance with Australian Auditing Standards applicable to the audit of financial reports and state that financial statements are presented fairly in accordance with accounting policies in the prescribed format. The auditor must form an opinion as to whether or not; the Trustee of the fund has complied, in all material respects, with the requirements of SIS Act and SIS Regulations.
100. The Trustee must ensure that the annual audit under clause 98 is completed before lodgement of annual returns of the fund with the regulator by the due date. Trustee must prepare trustee representation letter and issue to the auditor, declaring they have complied with their legal and ethical obligations regarding the fund. Trustee must also provide to the auditor any requested documentation within 14 days of it being requested.

## **Member Accounts**

101. The Trustee must establish at least one account for each member; this account can be either an accumulation account or a pension account.
102. The Trustee may establish more than one account for each member, it may be an accumulation account and a pension account or two or more pension accounts where the member has benefits which are subject to different payment restrictions or different terms of access as prescribed in superannuation law.

## **Additions to and Deductions from Member Accumulation Accounts**

103. The Trustee must credit to the member's accumulation account in the fund each of the following amounts, in accordance with superannuation law:
  - that member's personal concessional and / or non-concessional contributions;
  - concessional and / or non-concessional contributions by an employer for that member or by Government under the co-contribution or low income super scheme;
  - contributions made for that member, like spouse contributions, or other contributions made on behalf of the member so long as such contributions are allowed under this deed and superannuation law;
  - earnings transferred from the income account or reserve account;
  - any amount of transfer or rollover payment for that member;
  - any amount that has been transferred from the pension account of that member (in case of internal rollover or transfer from pension phase to accumulation phase);
  - any proceeds of an \*annuity or insurance policy, which has been effected for that member;
  - any amount that constitutes financial assistance made under section 23 of the SIS Act, which the Trustee thinks appropriate to credit to that member's account;
  - an amount deducted from the spouse accumulation account of the spouse member of any fund in accordance with a contributions-split request made by that other spouse member under this deed and appropriately accepted by the Trustee;
  - any amount due to the member from the accumulation account of the spouse of the member because of any Family Court Splitting order; and
  - any amount that the Trustee sees as appropriate subject to superannuation law.

104. The Trustee must debit to the member's accumulation account in the fund each of the following amounts, in accordance with superannuation law:

- a proportion of the expenses such as administration or life insurance etc, taxes on income & investment losses segregated for the member;
- losses transferred from the income account;
- any extra taxes the Trustee may have to pay on request of the member on concessional and non-concessional contributions received by the fund above the cap limits or above the Employment Termination Payment cap;
- any payment of financial hardship benefit or any payment on compassionate grounds or any payment on total or partial disability of the member provided the payment is with approval of the regulator;
- an amount rolled out from the fund to another complying fund for that member;
- any amount that is transferred to the pension account of the member;
- an amount transferred to the spouse accumulation account of the fund in accordance with a contributions-split request made by the member under this deed and appropriately accepted by the Trustee of this fund or another fund where the spouse is a member;
- any amount paid to accumulation account of spouse of the member because of any Family Court Splitting order;
- any superannuation surcharge levied by the regulator; and
- any amount that the Trustee considers appropriate to debit.

### **Income Account**

105. The Trustee must establish an income account for the fund in which all income and expenses are credited and debited for disbursements or allocation to the various members and member accounts. At the end of fund year or at any other time as Trustee decides or when Superannuation Law requires, the Trustee must determine the earnings of the fund in respect of the period since the previous determination period and the fund earnings rate.

Where the fund is claiming exempt pension income when part of the assets of the fund are supporting a pension, the Trustee must calculate investment \*expenses of the fund for income tax deduction claim as per proportionate expenses rules defined in \*ITAA 1997 including TR93/17 and administrative expenses of the fund as per rules defined in ITAA 1997 including ATO ID 2012/47.

106. The Trustee must perform a valuation of the fund's assets as per clause 90 and 91. The Trustee must then transfer the surplus or a deficiency of asset value from previous period to the income account as unrealized income of the fund.

### **Additions and Deductions to and from Income Account**

107. The income account of the fund must be credited with each of the following, when appropriate, by the Trustee. These types of incomes are termed as "shared income" and are determined by the Trustee to not to be allocated directly to any one particular member account:

- income and capital gains received by the fund such as dividends, interest, capital gains etc.;
- refund of tax on "shared income less expenses received from the regulator;
- income which is not yet received by the fund such as receivables in the financial year;
- proceeds of an insurance policy;
- unrealized capital gain, due to valuation of funds investment assets; and
- any other amount which the Trustee determines is the fund's income, if approved by superannuation law.

108. The income account of the fund must be debited with each of the following, when appropriate, by the Trustee. These types of expenses are termed as “shared expenses” and are determined by the Trustee not to be allocated directly to any one particular member account:

- expenses & losses of the fund, such as bank charges, audit fee, capital losses superannuation levy etc.;
- expenses which are payable and accrued by the Trustee;
- tax on “shared income less shared expenses” paid to the regulator;
- cost of any insurance policy;
- unrealized capital loss, due to valuation of funds investment assets; and
- any other amount which the Trustee determines is the fund’s expense, if approved by superannuation law.

### Allocation of Earnings

109. At the end of the fund year, Trustees must calculate the \*fund earning rate and determine the amount available for distribution to members. The Trustees must allocate the earnings of the fund to each member and member accumulation account or pension account in proportion to the amounts standing to the credit of the account at the beginning of the relevant fund year, having regard to the following:

- the accumulated benefit account balances of members at the beginning of the fund year; any additions or withdrawals during the fund year from the opening balance;
- earnings on the specific investments held for a particular member;
- reserve account balances requirements to be maintained by the Trustees either to pay an anti-detriment payment or for any reason listed in clause 112 of this deed;
- length of membership of the relevant member;
- actuarial advice, if any, obtained by the Trustee;
- any segregation of assets for the member; and
- any other reason permitted by superannuation law.

110. The Trustee may transfer a portion of the income account, at its own discretion, available for distribution, to any reserve account created in the fund, before crediting any member account, for any purpose including payment of anti-detriment payment or for any reason listed in clause 112 of this deed.

111. The Trustee must determine the shared income and shared expenses of the fund to be allocated and credited or debited or timing of allocation to all member accounts in a way that is fair and reasonable as between all the members of the fund and various kinds of benefits of each member of the fund, provided the actions of the Trustee are not contrary to SISA 52(2) (a), (b) & (c) and requirements of superannuation law and allocation of income and expenses are consistent to SISR 5.1 to 5.3.

### Reserves

112. The Trustees may set up any reserve account either to

- stabilise the investment earning of the fund according to reserving investment policy of the fund;
- hold contributions received by the fund which are yet to be allocated to members;
- provide for contingent expenses, or tax to be paid to the regulator;
- fund a pension that are needed for solvency reasons as instructed by an actuary or as otherwise determined by the Trustee;
- make a payment for any anti-detriment payment as per clause 205 of this deed.

113. The Trustee may transfer amounts from the reserve account which the Trustee determines, to any members' accounts in any basis as the Trustee considers equitable with complete discretion. Trustee must consider members contributions cap limits before any such transfer.

The balance in the reserve account shall be transferred to the members' accounts consistently with this clause before the winding-up or crystallisation of the fund.

### **Equalisation Account**

114. At any time, the Trustee has the discretion to establish an equalization account. The equalization account may be credited, whenever appropriate, by any amount which the Trustee determines from time to time from the income account. This account may be used for any purpose, such as to smooth the investment earnings of the fund or to pay any extraordinary expense of the fund or for any other purpose at the discretion of the Trustee subject to provisions of superannuation law.

## **VIII. Powers of Trustees**

### **Limitations of Powers**

115. The Trustee has ultimate possible powers and choice to administer the fund. The Trustee's powers shall be as extensive as is possible under superannuation law, including those powers that any individual would have as the legal and beneficial owner of those assets, and including all the powers conferred upon Trustees under law and specifically conferred by this deed notwithstanding that the Trustee or any director of Trustee company has a direct or personal interest whilst exercising any such powers.
116. The Trustee must act as owner of the property of the fund as a prudent person and should do all such other things as may be incidental to exercise his powers conferred on him by this deed and superannuation law.
117. The Trustee(s) are not required to give reasons for any of their decisions or acts done in the exercise of their permitted discretion unless limited by this deed or superannuation law. All decisions of the Trustee(s) shall be final and binding on all members of the fund. Without prejudice to the powers vested in the Trustee(s) by this deed or otherwise and subject to superannuation law.
118. The Trustee(s) may delegate their powers or duties or appoint any person as the representative or attorney for the purpose of executing any document or on any terms and conditions and execute any power of attorney or other instruments to effectuate the delegation, as long as the person appointed performs the acts on behalf of Trustees and the acts themselves are permitted within superannuation law.

### **Trustee Powers**

119. The Trustees powers shall include the following powers: The Trustee;
- shall have complete management and control of the fund in addition to any powers conferred by the SIS Act and the SIS Regulations;
  - must pay all trust expenses, taxes and collect all income of the fund;

- must pay any tax liability incurred by the member as a result of excess concessional and non-concessional contributions to the fund, where the member has nominated the fund to pay such liability;
- must prepare the accounts, income tax return of the fund and lodge an annual return with the regulator;
- must withhold and pay to the regulator pay as you go withholding tax from earnings of the fund or must withhold and pay to the regulator any pay as you go withholding tax from the benefit payment of a member as prescribed by the regulator;
- must transfer or rollover funds of the member to another complying fund if requested by the member;
- must have the accounts of the fund audited by an approved & registered auditor;
- may enter into contracts on behalf of the fund;
- may carry on a business;
- may offer life insurance to members of the fund;
- may pay benefits out of the fund to a member or a dependant of the member;
- may decide who are dependants for the purposes of this deed;
- may pay or apply benefits to a member or dependant of the member in case of the mental or physical ill health or incapacity of the member without being responsible for application of payment;
- must consider insurance or re-insurance any risk, contingencies or liabilities of the fund for the funds assets or for liquidity purposes;
- must consider insurance for members of the fund as per SIS Regulations 4.09(2) (d);
- must disclose to all members of the fund any conflict of interest in any financial transaction of the fund;
- must carry on or defend any legal proceedings, including handling of leasing of fund property upon the terms and conditions as the Trustee sees fit as prescribed in superannuation law;
- must open and operate a bank account;
- must buy and sell investments consistently with the investment strategy of the fund;
- may pay any amounts that are anti-detriment payments from a reserve account or from proceeds of an insurance policy;
- may borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any of the fund assets as security for any such financial accommodation in compliance with Section 67A & 67B of SIS Act under limited recourse borrowing arrangement;
- may borrow from any one or more entity(s), to acquire a single acquirable asset and to carry out repairs and maintenance to that asset at the time of acquiring that asset, the borrowing can be from any person including member or trustee or a relative of a member or trustee as per ATO ID 2010/162, any company, trust, government or institution or any other related entity and give a charge over, or in relation to, an asset of the fund on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to SMSFR 2012/1 and Superannuation Law;
- may purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property of any nature including off the plan strata titled property and wherever situated & without limiting the generality of this clause, to develop commercial or retail premises & hold or sell, transfer, convey, surrender, lease or licence such premises consistently with superannuation law;
- may grant indemnities to or on behalf of any person the Trustees sees fit and may guarantee the payment of money and the performance of obligations as long as any indemnity or guarantee is consistent with superannuation law;
- may grant or take any put or call option for the purchase of any real or personal property of the fund, whether the sale occurring on exercise of such option results in a profit or not;
- may elect for the fund to be a regulated fund and keep it regulated under SIS Act
- may purchase pensions or an annuity for members;
- may commit the fund upon the winding up of its investments ;

- may invest in its own name or under its control the trust in any one or more of the investments authorised by this deed with power in its absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power in its absolute discretion from time to time to vary or transpose any investments into other investments authorised by this deed.
- may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund.
- may appoint any person or entity as custodian to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the Trustee thinks fit provided that the person or entity is not prohibited from acting as a custodian under Superannuation law.
- may enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund.

The Trustee may engage a qualified professional person to undertake or to advise on any of the above tasks. The Trustee may or may not act on this advice. The Trustee may pay such specialist or professionals out of the income account of the fund for their assistance. The Trustee may do anything which is necessary or required to discharge its obligations under this deed and superannuation law.

Generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

## Declaration of Trust

120. This trust deed sets up a trust in favour of the Trustee of the fund. The Trustee must hold and own assets and investments of the fund in the name of all the Trustees on behalf of this superannuation fund consistent with superannuation law including Section 52B (2) (d) of SISA. In case of individual Trustees, the Trustees must register the assets & investments (such as shares & real property etc) of the fund in the name of all individual Trustees on behalf of this superannuation fund. In case of a corporate Trustee, the Trustee Corporation must hold assets & investments of the superannuation fund, in the name of the corporation on behalf of this superannuation fund. If required by any Act of any State of Commonwealth of Australia or any act of any other country, an asset belonging to the fund which cannot be held by the Trustee in its own name, the Trustee may execute a separate "declaration of trust" for each such asset provided this declaration does not contravene superannuation law.

## IX. Family Law Act - Splitting Arrangements

### Family Law Order

121. The Trustee must comply to any order for \*payment split or agreement pursuant to a family law court order under Part VIII B of the *\*Family Law Act 1975 (Cth)*, in relation to the splitting of a \*superannuation interest of a member with the members spouse on the breakdown of marriage or domestic relationship. The manner of splitting of superannuation interest, with spouse, must be in accordance with superannuation law.



122. The Trustee must take all reasonable steps to ensure that the court order or agreement in relation to splitting of superannuation interest is completed within any time limits stipulated in the court order or agreement. Including any commutation of pensions of a member to comply with a splitting agreement or to comply with the family court order.
123. The Trustee must comply with the court order or agreement and must calculate income of the fund for part of the year, if required, including revaluation of all assets of the fund, and must credit the member's share to the members account (accumulation or pension) on a certain specified date, so that a percentage (as per the court order or agreement) of assets may be allocated to the spouse.
124. The Trustee may refuse to allow the non member spouse to become a member of the fund. However, must ensure the interest of the non member spouse is intact from the day of the court order till physically paid out to the non member spouse or rolled out to a non member superannuation fund. Trustee may transfer this pay out amount to a reserve account till physically paid by the fund.

### **Payment of Split Arrangements**

125. The Trustee must allocate any sum owed to a spouse to a separate account until it is paid out to the \*non-member spouse; or, if the spouse is a member of the fund, until the amount is transferred to the spouse's accumulation account. If the non member spouse so directs in writing and nominates a roll over fund, the Trustee must roll-out the amount or transfer the assets of the fund to another complying superannuation fund and prepare any required documents (e.g. a rollover ETP) for the receiving superannuation fund.
126. The Trustees must keep a record of any splitting court order with which they are required to comply and after split payment, as required by any such order adjust the member's account balance.
127. The Trustee may upon request pay a non member spouse directly in the form of a lump sum, if the non member spouse has satisfied a condition of release under superannuation law.
128. If the Trustee has to employ the services of a professional to assist them in giving effect to a splitting agreement or a court order under the *Family Law Act*, the Trustee may deduct the fee of this professional employed. The balance after deducting the cost of the professional may be paid to the member's spouse complying superannuation fund.

## **X. Payment of Benefits to Member**

### **Preservation Rules**

129. The Trustee may pay a \*preserved benefit, to a member when the member has reached his or her \*preservation age and \*retires from gainful employment; or when the member has satisfied a condition of release as prescribed in superannuation law (such as, \*retirement or when a member becomes totally and permanently or temporarily disabled, or under compassionate or financial hardship grounds, or when the member reaches the age of 65).

At the time of reaching a \*voluntary cashing event and on request from the member, the Trustee may pay with consent of a member or beneficiary to whom a benefit is payable, transfer assets of the fund of an equal value of the benefit in lieu of paying the whole or any part of the amount under the provisions of this deed.

130. On the request of a member the Trustee must pay the benefit as a lump sum or a pension after it is satisfied that the member has satisfied the condition of release as listed in superannuation law.



131. Despite any other provisions in this deed which may be construed to the contrary and subject to superannuation law, Trustee may pay \*unrestricted \*non-preserved components to a member upon that member satisfying a condition of release consistently with the relevant legislation. Restricted non-preserved components may only be paid to a member upon that member satisfying a condition of release consistently with the legislation and upon termination of employment.
132. The Trustee of the fund may pay a member a benefit in any other circumstances permitted by the superannuation law.

### Components of Benefit

133. Trustee when paying a benefit as a lump sum or a pension to a member must pay the benefit to include any tax free and \*taxable components in relevant proportions. These proportions will reflect total superannuation benefits of the member as at 30 June 2007 and any addition to each component from there after as per superannuation law.
134. Trustee must advise a member who is being paid a full or part lump sum benefit or a pension benefit proportion of each tax free and taxable component as per \*crystallised segment rules. The tax free component will be paid to the member without any tax being withheld from the payment. The following amounts will form part of the tax free component:
- all non-concessional contributions made to the fund after 1 July 2007;
  - all pre-July 1983 components;
  - the \*CGT exempt component;
  - the post-July 1994 invalidity component;
  - the concessional component; and
  - un deducted contributions prior to 30<sup>th</sup> June 2007.
- the balance amount will be considered as taxable component.
135. The Trustee may pay a lump sum benefit to a member once requested by a member who has retired (working less than 10 hours per week) and has reached the preservation age. Trustee must withhold Pay As You Go withholding tax from any lump sum payment on any taxable component which is higher than the low rate threshold cap (*Ref: \$185,000 for financial year 2014/15*).

### Permanent or Temporary Disability

136. The Trustee on request from the member must pay any amount up to the balance of the member account as a benefit to a member (or to either guardian or their legal personal representative) who becomes permanently disabled as a disability superannuation benefit to the member. The payment to the member should be when the trustee reasonably believes that due to an accident or illness the member is totally and permanently disabled leaving them unlikely to be engaged in any regular remunerative work for which they are reasonably suited by education, training and experience in their own occupation or otherwise. The Trustee must pay the benefit to the member in accordance with superannuation law and ensure that the payment does not change the funds status as a complying superannuation fund under the SIS Act.
137. The Trustee may claim any insurance policy taken out for the member should the member become permanent and /or temporary disabled. The benefits resulting from the insurance policy and the member balance may be paid to the member, as an income stream or as a lump sum when the member is permanently and totally disabled in accordance with superannuation law. The Trustee may transfer the receipt of the insurance policy to a reserve account and may dispense from the reserve account to the member after consultation with the member or his legal personal representative or guardian in accordance with superannuation law. Trustees may deduct premium from income of the fund as per Section 295 -465 of ITAA 1997 and limits as prescribed in the law with specific regard item 5 and item 6 in the table of subsection (1) as per Taxation Ruling 2012/6.

138. Trustees may allow members with \*terminal medical condition to access their benefits provided the medical condition satisfies condition of release of benefits as per schedule 1 of SISR. Trustee may pay these benefits to a member that have accrued up to that point in time become unrestricted non-preserved lump sum payment. Trustees may not withhold any amounts from these payments or issue payment summary to the member or report such a payment to the regulator.
139. The Trustee on request from the member may pay a benefit to a member who is temporary totally disabled. Such benefits may only be paid as a pension, and must be paid in accordance with superannuation law. This payment may include any receipt from an insurance policy in relation to the member's disablement and any other amount in accordance with superannuation law. The Trustee must not pay a lump sum to the member who is temporary disabled.
140. The Trustee must cease paying benefits to a member who ceases to be temporarily and totally disabled. Trustees may request a medical examination report from a qualified medical doctor on intervals as prescribed in superannuation law. The Trustees must act in accordance with superannuation law and must do all those things to ensure the fund remains a complying superannuation fund.
141. If the member is temporarily totally disabled and has reached preservation age or any other condition of release as per superannuation law, then the member may request the Trustee to pay the whole of the disability superannuation benefit as a lump sum to the member or continue to receive any part of the disability superannuation benefit as a pension from the fund.

### **Financial Hardship & Compassionate Grounds**

142. The Trustee of the fund may pay a member on a written application by a member, under the preservation age, a benefit on the basis of severe financial hardship. Such a payment must accord with APRA's *Trustee Guidelines*. Such a benefit must be paid in accordance with superannuation law.
143. The Trustee of the fund may pay a member on a written application by a member, under the preservation age, a benefit on the basis of compassionate grounds. The Trustee must, before making a payment to the member, request approval of such payment from the regulator. Such a benefit must be paid in accordance with superannuation law.

### **Termination of Employment**

144. On the termination of gainful employment of a member with an employer who had at any time contributed to the fund in relation to the member before the preservation age is met, the Trustee may pay to the member, on written application by the member, a benefit to the member which is classified as restricted non-preserved benefits in accordance with condition 108 of Schedule 1 of SISR.
145. On the termination of gainful employment with an employer of the fund, before a member reaches preservation age, the Trustee may pay to the member, on written application by the member, a benefit classified as preserved benefit in accordance with condition 104 of Schedule 1 of SISR where the members preserved benefits in the fund at the time of the termination are less than \$200.

### **Payment of Low Balance or Excess Concessional Contribution**

146. The Trustee may pay to the member, on written application, a benefit to the member, if the balance of the account of that member is less than \$200 in accordance with condition 111 of Schedule 1 of SISR. Trustee may return a contribution above the concessional contribution cap to the regulator or to any other person superannuation law allows, if offered by the regulator or if the trustee decides and allowed by superannuation law, within 28 days of such an offer of a release authority issued by the regulator or of trustee decision as per item 112A of Schedule 1 of SISR.

## **XI. Pensions**

### **Preservation Rules**

147. The Trustee may, on written request from a member, commence paying a pension to the member from the whole or part of the members benefit (\*purchase price of pension) in accordance with superannuation law. The trustee must ensure that the member is entitled to all of their benefits to be paid as a pension from the fund upon attaining preservation age and no \*cashing restrictions apply to that benefit under superannuation law.

Trustee must provide pension to the member in accordance to terms of this deed, any other governing rules such as pension agreement or any trustee resolutions.

Trustee must not pay a benefit to a member unless the member requests to be paid. An oral request to commence a pension, from the member to the Trustee for pensions commencing at the end of the fund year or beginning of fund year must be deemed adequate election by the member to commence a pension provided a written request by the member is forwarded to the Trustee at a later date, to give adequate time to Trustee to get the accounts of the fund finalized and audited, provided such an oral request does not contravene superannuation law.

148. The Trustee, under this deed may pay to a member a pension in various forms (including pensions being paid as \*transition to retirement pensions) such as:
- allocated pensions (commenced before 20<sup>th</sup> September 2007);
  - market-linked pensions (commenced before 20<sup>th</sup> September 2007);
  - account-based pensions (commenced from 1<sup>st</sup> July 2007); and
  - any other type of pension in accordance with superannuation law.

149. A corporate Trustee of the fund may pay all the benefits in the member account, to the member, as a lump sum, upon their attaining preservation age and satisfying a condition of release. Individual Trustees may pay all the benefits in the member account to the member as a lump sum, upon their attaining preservation age and satisfying condition of release, only if superannuation law permits such a payment. Individual Trustees may pay a lump sum to a member only if the lump sum is a result of commutation of any pension.

### **Pension Benefits Payable on Disablement**

150. The Trustee may pay a benefit, on a written application from a member, an amount determined at its discretion, to the member (or to guardian or to dependants or to his legal personal representative) on total and permanent or temporary disablement of that member's benefit; as a pension, on occurrence of member being totally and permanently incapacitated, the payment should be in accordance with superannuation law.

151. The Trustee may seek a medical opinion to determine whether a member is totally and permanently or temporary disabled before commencing to pay any benefit or do all such things as required in superannuation law. Prior to paying this pension, the Trustee may collect the proceeds of any relevant disablement insurance policy as per superannuation law.

The Trustee may transfer the receipt of any insurance policy to a reserve account and may dispense from the reserve account to the member after consultation with the member or his legal personal representative or guardian in accordance with superannuation law.

### **Reasonable Benefit Limits**

152. The Trustee, from 1 July 2007, need not comply with the reasonable benefit limits calculations and may pay all pensions to members as per Regulations 1.06 of SISR. Trustees must preserve amounts of contributions in respect of members or beneficiaries on the terms and conditions that are required by the Superannuation Law.

## Additions to and Deductions from Pension Account

153. The Trustee must credit members' pension accounts of the fund with each of the following amounts in accordance with superannuation law:

- any amount which the member has nominated to commence the pension from the accumulation account of the member, adjusted by whatever amount the Trustee decides to be necessary to fund that members pension;
- any amount that the Trustee thinks appropriate to credit that pension account, where that amount has been paid into the fund as a transfer or rollover of benefits for the member at the commencement of the pension;
- those earnings of the fund that the Trustee decides, at the Trustee's discretion, to be appropriate to credit to that pension account from the income account or reserve account or equalisation account of the fund;
- any cashing or proceeds of an insurance policy or an annuity, which was initially effected by the Trustee for that member, to the extent that the Trustee decides, at the Trustee's discretion, is appropriate to credit to that pension account; and
- any other amount that the Trustee decides, at the Trustee's discretion, would be appropriate to credit to that pension account provided this credit does not contravene superannuation law.

154. The Trustee must debit to the member pension account of the fund each of the following amounts in accordance with superannuation law:

- any amount which is withdrawn by the member as a pension (within any pension limits as set out in SIS Act and Regulations);
- that portion of the expenses or loss on sale of investments, or any superannuation levy or that the Trustee decides is appropriate to debit to that pension account from the income account;
- on the death of the member, any payments made to \*reversionary beneficiaries or dependants nominated by the member;
- that part or the whole of the cost of an annuity or insurance policy that has been effected by the Trustee for that member;
- any amount that is transferred from that pension account to the accumulation account of the member as per request of the member and consistent with superannuation law;
- those amounts that are taken as a commutation of a pension or transferred from the fund for that member as either a transfer or roll over payment or lump sum payment to that member; and
- any other amount that the Trustee decides, at the Trustee's discretion, would be appropriate to debit to that pension account.

## Payment of Pension

155. The Trustee must transfer the balance of the accumulation account at the beginning of the year to the pension account of the member, before commencing the payment of a pension, if the pension is being purchased by the member on the first day of the fund's financial year. If a member requests the trustee to commence a pension from his accumulation account on any other day, the Trustee must adjust the opening balance of the accumulation account of the member at the beginning of the funds financial year with contributions for the member and any allocation from income account, including change in valuation of investments plus any transfer from a reserve account and equalisation account proportionately to the date when the pension is to commence (purchase date). The Trustee must use adjusted accumulation account balance as the purchase price of pension and calculate terms of pension conditions including minimum income stream pro-rata payments for the funds financial year.

156. The Trustee may use a fund earning rate as calculated per clause 109, acceptable to the member, to make an adjustment under clause 155 proportionate to the member's financial year's opening balance of the accumulation account to the date which is the pension purchase date. The earning rate may be the rate of income of the funds last financial year.
157. The Trustee must within prescribed limits of ITAA 97 advise a member, who is less than 60 years old, any taxable component included in the pension amount paid to the member in the required PAYG summary form.
158. The Trustee may on request from a member pay "lump sum" payments in-specie, which is in the form of assets of the fund instead of cash payment to the member. The Trustee must not pay any pension benefit in-specie. On commutation of any pension, the Trustee may pay a "lump sum" to the member in-specie. The Trustee may fund a pension of the member by purchasing an annuity for the member.
159. Trustee must pay a member who is on a pension as at 30<sup>th</sup> June 2007 in proportion to that member's ratio of "taxable" to "tax exempt" components calculated as at 30 June 2007. The calculations of these components are to be done in accordance with clause 134 & 135 of this deed and in accordance to superannuation law.

### Allocated Pension

160. An allocated pension must comply with the limitations and requirements in regulations 1.06(4), 1.06(5) and 1.07A of the SIS Regulations and any other provision of the superannuation law. Trustee may pay an existing allocated pension from this fund to a member but cannot commence an allocated pension from this fund after 20<sup>th</sup> September 2007. An allocated pension must:
- be paid at least annually (proportionally for number of days in the first year), until there is no more amount to be paid to the member;
  - comply with the minimum and maximum limits as prescribed in Schedule 1A of the SIS Regulations and in superannuation law;
  - be paid only to the member and upon death to the members dependant reversionary beneficiary or in absence of any dependant to the legal personal representative of the member;
  - not be used by the Trustee to borrow money, neither its capital account nor the pension stream; and
  - comply with all other conditions in the superannuation law including payment of \*withdrawal benefit.
161. A member may elect, in writing to the Trustee, to \*commute the pension in favour of a lump sum payment or another pension paid from the remainder of the balance to the member. A member may elect, in writing to the Trustee, to commute the pension and leave the remaining amount in the member account in the accumulation account, and decide not to commence a new pension as per the removal of compulsory cashing restrictions as per superannuation law. The Trustee may accept the election of the member if the election is in accordance with superannuation law and do all those things which are necessary to give effect to the member's election.

### Market Linked Pension

162. A market linked pension (also known as term allocated pensions or TAP) is a \*non-commutable pension where the terms of payment of the pension must comply with the limitations and requirements in Regulation 1.06(8) of the SIS Regulations and other provision of the superannuation law. Trustee may pay an existing market linked pension from this fund to a member but cannot commence a market linked pension from this fund after 20<sup>th</sup> September 2007. A market linked pension must:

- be paid at least annually of at least of withdrawal benefit (proportionally for number of days in the first year), until there is no more amount to be paid to the member;
- comply with the limits of 10% under or over of the amount as prescribed in Schedule 1A of the SIS Regulations and in superannuation law;
- be paid only to the member or, upon death of the member, to the dependant reversionary beneficiary of the member;
- the capital value of the market linked pension, and the income from it, cannot be used as security for a borrowing & comply with all other conditions in superannuation law;
- be paid to the member based on the \*life expectancy (rounded up to the next whole number) of the member, or for the member's life expectancy (rounded up to the next whole number) plus five years or for 100 years or when the pension is reversionary to the spouse of the member, if the spouse's life expectancy is greater than the member, then the amount paid to the member can be based on the life expectancy (rounded up to the next whole number) of the members spouse or for the life expectancy (rounded up to the next whole number) of the spouse plus five years.
- not have any residual capital value;
- not be commuted unless in accordance with clause 163; and
- be transferred only on the death of the member.

163. A market linked pension may not be commuted unless according to conditions listed in sub regulations 1.06 (8) (d), 1.06 (8) (f) of SIS Regulations, briefly :

- another market linked pension is commenced with the commutation ETP;
- the commutation occurs within six months after the commencement day of the pension;
- the member dies and the benefit is paid to the nominated beneficiaries, or the spouse also dies if the pension is based on the life expectancy of the spouse;
- the commutation is to pay a superannuation surcharge; or
- to give effect to a transfer to a spouse under the Family Law Split order.

### Account Based Pension

164. An \*account based pension is a pension where the terms of payment of the pension must comply with the limitations and requirements of sub regulation 1.06 (9A) of the SIS Regulations and other provision of the superannuation law.

The Trustee on request from a member may choose to apply the balance of the member's accumulation account to pay a benefit to the member as an account based pension. Trustee may commence an account based pension for the member with the following characteristics;

- payments of a \*minimum amount are to be made at least annually of \*withdrawal benefit; and
- the member may, in receipt of this pension, withdraw as much as they wish above the minimum amount, including the entire amount; and
- the pension may be transferred only on the death of the member to a dependant as prescribed in superannuation law; and
- the member must not use the capital value or income of the pension to borrow any funds from a third party; and
- before a commutation of the pension in a financial year, the Trustee as per Reg. 1.07D (1) (d), must pay pension, in the financial year in which the commutation takes place, at least the minimum amount prescribed by sub-regulation 1.07D (2); and
- do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced as per Reg. 1.06 (1) (a) (ii).



165. A member, who is drawing one, two or more pensions, may request the Trustee to commute one or more pensions and merge it with the other pension account of the member or commute all pensions and commence a new account based pension along with the balance of accumulation account, in the manner and form provided in superannuation law.

### **Compulsory Cashing Requirements**

166. The trustee must pay a member's benefit as soon as practicable after:
- the member dies; or
  - payment has to made according to the terms of this deed or superannuation law.

### **Transition to Retirement Pension**

167. Trustee of the fund may pay any pension as per clause 168 of this deed as a transition to retirement pension, where the member is gainfully employed and is under 65 years. Trustees must not allow the member to withdraw more than maximum annual payment limit of 10% of the account balance at the start of each year or not more than a maximum annual payment limit of 10% of purchase price of the pension, if the pension starts on any date during the fund year.
168. The Trustee, if requested by a member in writing or under a pension agreement can pay either an existing allocated pension, an existing market linked pension or an account based pension as a transition to retirement pension.
169. The Trustee must pay transition to retirement pensions consistently and as defined in regulation 6.01(2) of the SIS Regulations. However, such pensions must not be commuted (subject to certain exemptions) and must comply with limitation and requirements to each form of pension as prescribed in superannuation law.

### **Payment of Existing Pensions after 1 July 2007**

170. The Trustee may convert a current allocated pension and/or transition to retirement allocated pension to an account based pension, in accordance with superannuation law.
171. Trustee may continue to pay all types of pensions from this fund. Including those pensions which can no longer be commenced from this fund (e.g. 20<sup>th</sup> September 2007 an allocated pension and market linked pension) as long as they are being paid in accordance with superannuation law.
172. If the fund is paying an existing complying pension which can no longer be commenced in a self managed superannuation fund, along with an allocated pension or market linked pension or with account based pension, the Trustee must obtain an actuarial certificate as to the adequacy of amount of income allocated to the complying pension account to ensure that there is sufficient amount to meet the requirements of the complying pension, irrespective of whether the assets of the complying pension are segregated from those assets not paying a complying pension.

### **Reversionary Pensions**

173. Trustee must not allow a member or a reversionary beneficiary to nominate a non-dependant of the member or reversionary beneficiary as a nominated beneficiary to receive a pension from this fund. A member or a reversionary beneficiary must only nominate a dependant as defined in section 10 of the SIS Act.
174. Upon death of a member receiving a pension, the Trustee must automatically pay a pension to the reversionary beneficiary nominated by the member unless paying of such reversionary pensions is contrary to superannuation law.

If the reversionary beneficiary is not a dependant of the member the Trustee must not effect the payment of pensions to a non-dependant reversionary beneficiary. In such a situation the Trustee must only pay a lump sum to the non-dependants as per \*binding death nomination or to other dependants at its own discretion.

175. Upon death of a member receiving a pension who did not nominate a dependant reversionary beneficiary, the Trustee must continue to pay the pension of the member automatically to any dependant of the member unless paying of such reversionary pensions is contrary to superannuation law. If there are no dependants alive, the Trustee must pay a lump sum to the non-dependants of the member as listed in the death benefit nomination form.
176. If an individual is in receipt of a reversionary pension is a non-member of the fund, then the Trustees must ensure that the non-member becomes a member of the fund as permitted by this deed and superannuation law.

### **Segregated Accounts of a Member**

177. Trustee may establish segregated pension accounts for members to pay separate pension benefits to each member or segregate all pension assets from accumulation assets of the same member or another member of this fund. If this fund receives contributions for a member who is on a pension, the Trustee may set up an accumulation account for the member for segregating non pension assets of the member including a separate bank account.
178. If a member is being paid two or more types of pensions from this fund, the Trustee must open separate pension accounts for the member and may segregate the assets of the pension accounts, representing each pension account for the purpose of enabling the Trustee to discharge pension payment liability on each pension account.
179. If the pension assets of the fund of a member are not segregated from accumulation assets of the fund the Trustee must do whatever is required to comply with superannuation law, including obtaining an actuary certificate for the fund to calculate whether or not there are adequate funds to meet the pension payment requirement under the superannuation law, and to permit the correct calculation of tax on accumulation assets of the fund. The Trustee must ensure that the fund meets all the requirements of the regulator and must ensure that the fund remains a complying superannuation fund.

### **Actuary Certificates**

180. The Trustee must appoint any actuary in accordance with superannuation law. The Trustee may reduce or increase the payments for any pension by any amount it considers reasonable in consultation with an actuary in accordance with superannuation law. Before making any pension payment for any complying pension, the Trustee of the fund must obtain an actuarial certificate from a registered actuary, if so required by superannuation law.
181. Trustee must obtain appropriate actuarial certificate to claim exempt pension income as per Section 295-390 of ITAA of 1997 such as in the situation where the member is drawing a transition to retirement pension and accumulating superannuation benefits and the assets of the fund are not segregated between accumulating and non-accumulating assets.

When claiming exempt pension income, the trustee must include the total value of all contributions and rollovers when determining proportionate claim of general administration expenses.

### **Commutation of a Pension**

182. Upon written request from a member who is in receipt of a pension, the Trustee must accept to commute a pension and pay a total or partial lump sum to the member, provided the commutation is in accordance with superannuation law and the conditions of release have been met by the member.



The Trustee must pay a partial or full amount as lump sum to the member proportionately to the member in ratio from taxable and tax exempt components as calculated on the crystallization date 30<sup>th</sup> June 2007 as per clause 134 & 135 of this deed and superannuation law.

183. Upon written request from a member who is on receipt of a pension, the Trustee must commute a pension of the member, if the commutation of the pension is in accordance with superannuation law. Any such balance of the pension account from such commutation must be added to any existing accumulation account of the member or in absence of any accumulation account, the Trustee must open a new accumulation account for the member.
184. If the Trustee commutes only a part of the pension to a lump sum, the Trustee must then adjust the amount of the pension payable in accordance with superannuation law.
185. A Trustee may commute a pension if:
- the pensioner dies;
  - to pay a splitting agreement or court order under Part VIII B of the *Family Law Act* to transfer the benefit to a member or non-member spouse or
  - to pay a \*superannuation contribution surcharge;
  - the term of the pension is over; or
  - as otherwise permitted by superannuation law.

The funds of a commuted pension are vested with the Trustees in the account of the member until such time the funds are allocated by the Trustee for the above named purposes.

186. The Trustee may, on request of a member, purchase a pension for the member from an outside source, using the balance in the pension account of the member. Income from this pension and any commuted amount from this pension will be credited to the members pension account.
187. If a member requests in writing to roll over their benefit to another complying superannuation fund, and the Trustee accepts the request, the Trustee must affect this rollover within 30 days. The Trustee must ensure that the receiving fund is a complying fund before any rollover request is accepted. Along with the rolled over funds, the Trustee must send all the documents required by superannuation law to the receiving fund. Trustees may charge a reasonable fee and deduct this fee from the relevant account, before rolling over the amount to the receiving fund.

## **XII. Death of a Member**

### **Death Benefit**

188. In case of death of a member the Trustee may pay the balance of the member's account to the beneficiaries nominated by the member or a legal personal representative, in a \*non-binding death benefit nomination form or binding death benefit nomination form as a \*death benefit.

If the beneficiary is a tax dependant as defined in superannuation law and ITAA specifically Section 302-195, on request from the beneficiary or in the existence of a reversionary pension agreement, the Trustee may pay to the beneficiary the death benefit as a pension automatically; where the beneficiary is a non-tax dependant as defined in superannuation law and ITAA 1997 specifically Section 302-195, the Trustee must only pay a lump sum death benefit.

## **Non-Binding Death Benefit Nomination**

189. A member may fill out a non-binding death nomination form which requests the Trustees as to who should be paid death benefit on death of the member. In this form the member can either list his or her dependants and or legal personal representative, a sample of the form is attached to schedule 2, Part 2 of this deed.

A member may revoke a non-binding death nomination at any time. A non-binding death nomination can be revoked by the member in writing; and the member can supply to the trustee a new non-binding nomination by supplying a new form as per schedule 2 Part 2 of this deed. The Trustees are not bound to follow the request of the member; however the trustee must take the member's wishes into consideration when making a decision as to whom to pay the death benefit.

The Trustee does not have to follow the direction of the member if the member has nominated a person who is a non-dependant, or the payment is to a person not eligible according to superannuation law and ITAA 1997 including Section 302.195.

## **Binding Death Benefit Nomination**

190. A member may fill out a binding death nomination form, which directs the Trustee as to who should be paid a death benefit on death of the member. The member can either list his or her dependants and or legal personal representative on the form listed in schedule 2B, Part 2 of this deed.

191. A member may revoke a binding death nomination at any time. The Trustees are bound to follow the request of the member. A binding death nomination can be revoked by the member in writing; and the member can supply to the trustee a new binding nomination by supplying a new form as per schedule 2B Part 2 of this deed. The form is valid for an indefinite period (non-lapsing) and member's signature must be witnessed by two unrelated non dependant adults.

The Trustee does not have to follow the direction of the member if the member has nominated a person who is a non-dependant, or the payment is to a person not eligible according to superannuation law and ITAA 1997 including Section 302.195.

## **Payment of Death Benefit**

192. The Trustee may pay a death benefit to a beneficiary, in specie, by transferring the member's segregated assets or fund's share of assets, to the beneficiary, or alternatively, the death benefit may be paid in cash as a lump sum payment.
193. If a payment is a death benefit to a non-dependant, the Trustee must withhold tax from the payment as required by superannuation law.
194. If a beneficiary is entitled to the proceeds from a life insurance policy, made out to the Trustees of the fund, then the Trustee may assign the proceeds to be paid directly to the beneficiary.
195. If there is no nomination of dependants in place or if the binding death benefit nomination is invalid or ineffective at the date of death of the member, the Trustees may pay the benefit to the legal personal representative of the estate of the member. If there is no known legal personal representative of the estate of the member available, then the trustee must distribute the benefits of the member as per superannuation law.

196. The Trustee may release an amount, by way of an advance, to the legal personal representative of a member for the purposes of the member's funeral and/or other expenses relating to the death of the member. Trustees must pay the member's death benefit to the beneficiaries as soon as practical.
197. If there are unclaimed monies and no known beneficiaries, the Trustee must pay such unclaimed moneys in accordance with the legislation governing the payment of such unclaimed moneys.
198. Once the Trustee has paid a death benefit, it will no longer be liable to any damages to any person who claims to be entitled to the death benefit.
199. If a death benefit has to be paid to a beneficiary who is under a legal disability or a minor, then the Trustee may make the payment to the legal personal representative or guardian or parent or person who has custody of the beneficiary.

### **Payment of Death Benefit when Member is Accumulating**

200. When a member is in accumulation phase, upon the death of the member, the trustee must pay the benefit to the beneficiary as a lump sum. However, if the beneficiary is above the preservation age and upon the request of the beneficiary, the trustee may pay the benefit to the beneficiary as a pension.

### **Payment of Death Benefit when Member is on Pension**

201. When a member is on pension, upon the death of the member, where there is a valid binding death benefit nomination in place and a valid pension agreement, if there is no reversionary beneficiary nominated in the pension agreement, the Trustees must pay the member's death benefit in accordance with the binding death benefit nomination. However, on request from the beneficiary, the Trustee may pay a reversionary pension to the beneficiary.

When a member is on pension, upon the death of the member, where there is a valid binding death benefit nomination in place and a valid pension agreement, if there is a reversionary beneficiary nominated in the pension agreement, the Trustees must pay the member's death benefit in accordance with the reversionary pension agreement. However, on request from the beneficiary, the Trustee may pay a lump sum to the beneficiary as a death benefit within the time limits stipulated in superannuation law and ITAA 1997.

202. When a member is on pension, upon the death of the member, where there is an invalid binding death benefit nomination or non-binding death benefit nomination in place and a valid pension agreement, if there is no reversionary beneficiary nominated in the pension agreement, the Trustees must pay the member's death benefit at its own discretion. However, on request from the beneficiary, the Trustee may pay a reversionary pension or a lump sum to the beneficiary within the time limits stipulated in superannuation law and ITAA 1997.

When a member is on pension, upon the death of the member, where there is an invalid binding death benefit nomination or a non-binding death benefit nomination in place and a valid pension agreement, if there is a reversionary beneficiary nominated in the pension agreement, the Trustees must pay the member's death benefit in accordance with the pension agreement as a reversionary pension. However, on request from the beneficiary, the Trustee may pay a lump sum to the beneficiary as a death benefit within the time limits stipulated in superannuation law and ITAA 1997.

203. If the member has nominated reversionary beneficiaries in a binding death nomination form or in a pension agreement and no reversionary beneficiaries remain, and that member dies, then the Trustees must pay the balance of the fund to non-dependants as a lump sum.

204. If a death benefit has to be paid to a non-dependant beneficiary of a member who is on pension, then upon the death of the member, if the assets of the fund cannot be transferred to the non-dependant beneficiary, the Trustee must sell all assets, as soon as practical to pay a lump sum to the non-dependant beneficiary. The assets supporting a pension will remain in pension phase for the deceased member until such time the benefit of the member is paid out to the non-dependant beneficiary.

### **Anti detriment payment**

205. In the case of a death benefit, the Trustee may pay the benefit of a member to a beneficiary as a lump sum plus any benefit that would accrue to the fund if a deduction were allowed by reason of the application of section 295-485 of the ITAA 1997. The increased amount may be funded from any amounts set aside in a reserve account created for this purpose or from any insurance proceeds initiated for this purpose.

## **XIII. Variation of Trust Deed**

206. The trustee may, from time to time, vary the terms of this deed, by a deed of variation executed either by the trustee or by Deed Administration Dot Com Dot Au Pty Ltd (A.C.N.: 123 930 021). The amendment to the deed may be on a retrospective or prospective basis. The deed of variation may add a clause to, or delete a clause or all clauses of, this trust deed. Any clauses added to this deed will have the same validity and effect as if they had been originally contained in this trust deed.
207. The Trustee may not vary clause 4 of this deed unless the amendment complies with Superannuation law specifically with Section 17A & 19 of SIS Act and if the amendment will reduce the balance of any member of the fund or rights of any member or accrued entitlements that existed prior to the variation unless ;
- such a reduction is permitted by legislation and is agreed to in writing by the affected member(s);
  - cause the fund to lose complying status, in which case the Trustee must amend the deed to the extent necessary to keep the fund complying with legislation and the regulator must approve the reduction of rights of any member.
208. If the deed is varied, the trustee must give notice to all members of the fund in accordance with superannuation law and advise members of the nature and purpose of any variation the trustee seeks to make and any detrimental effect of the amendment on members' entitlements or rights or the balance of their account.

The trustee must communicate, via a notice, of variation of the deed to all members in the prescribed format and give all members a copy of the updated trust deed. Trustees may appoint Deed Administration Dot Com Dot Au Pty Ltd (A.C.N.: 123 930 021) to give such notice to all members and deliver via email (electronic version instead of written copy) the updated trust deed to all members.

209. Once the trust deed has been varied, the Trustee must, in order to give effect to the variation, organise stamping of the updated trust deed if required by the State legislation of the state where the Trustee resides and pay stamp duty of the prescribed amount, if required by the laws of that State. All expenses of the variation of trust deed may be met by trust funds.

## **IVX. Winding up of fund**

210. The Trustee must wind up the fund if the fund has no members or if all the members agree in writing to wind up the fund, or when superannuation law requires the fund to be wound up.

211. The Trustees must before winding up the fund:
- dispose of all the assets of the fund to pay members benefits;
  - close the income account and reserve account and transfer the balance to the members accounts as prescribed in superannuation law;
  - pay all expenses and taxes of the fund;
  - lodge the last income tax return and regulatory return of the fund and pay whatever expenses are due to creditors and professionals engaged;
  - pay all benefits to the members or transfer and / or roll over member's entitlements to another complying fund as prescribed in superannuation law; and
  - notify the regulator that the fund is wound up.
212. In the case of death of the last member, the Trustee must pay any benefit in such a manner as they feel is equitable having regard to that member's indicative death nomination. In the case of a binding death nomination, however, the Trustee must follow the instructions of the member. If there are no dependants or known beneficiaries the Trustee is required to follow the superannuation law relating to unclaimed monies.

## **XV. Miscellaneous**

213. The Trustee(s) must collect tax file numbers from all existing and new members. If a member does not provide to the Trustee(s) with their tax file number, the Trustees must, on all contributions, which the fund receives on behalf of the member over \$1,000, pay tax to the regulator at the highest tax rate that applies to individuals plus Medicare Levy.
214. The Trustee may provide information to certain government bodies to asset test an income stream for any benefits available to a member under the *Social Security Act 1991* (Cth).
215. The Trustee must hand over their contact details to all members and establish a system to communicate with members, beneficiaries and their dependants.

# The James NK Super Fund

## Schedule 1 to this deed

### Date of this Deed

02/03/2016

### Name & Address of Trustees

Grecian Pty Ltd

A.C.N : 126370456

35 Gellatly Avenue Figtree NSW - 2525 Australia

### Name and address of members

James Nicholas Kosturos

35 Gellatly Ave Figtree NSW - 2525 Australia

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# The James NK Super Fund

## Schedule 2A to this deed

{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}

### Part 1

#### Application for membership

With Indicative Death Benefit Nomination

No Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)

[N.B.: Choices in [square brackets] must be struck out if not relevant].

I hereby apply for membership of this fund as an [initial/additional] member of this fund under the trust deed.

I hereby make the following declarations as listed below:

- I have read and understood the trust deed, including all the terms relating to withdrawal of benefits payable in the deed, and the preceding Product Disclosure Statement (PDS),
- I have read the requirements of supplying my tax file number in the PDS; I hereby supply my tax file number to the Trustee of this superannuation fund.
- I have read and understood the Trust Deed and Product Disclosure Statement and understand my role & responsibility as member and Trustee [director of Trustee Company] of the fund.
- I am not in an employment relationship with [any other member/any other member except a relative of myself].
- I am not a disqualified person, under superannuation law, from being [Trustee/director of the Trustee company] of the fund.
- I will, as member, abide by and comply with all requirements of the Trust Deed.
- I will fully and truthfully disclose any information relating to my membership of the fund that is required by the Trustee, disclosing such information in writing as soon as is practicable upon such a request being made by the Trustee, including:
  - If I have entered into an employment relationship with any other member of the fund who is not also a relative of myself, then any information about the circumstances leading to such a relationship
  - Any information about any circumstance (if any) that may disqualify me under superannuation law from being [Trustee/director of the Trustee company] of the fund.
  - Any information that relates to my medical condition, whether or not I have any medical problems.
- I will also act as a [Trustee/director of the Trustee company] of this fund.

#### Member Details

Name	{Insert applicant's full Legal Name}
Address	{Insert applicant's address}
Place of Birth	{insert applicant's place of birth}
Date of birth	{Insert applicant's date of birth}
Occupation	{Insert applicant's occupation}
Tax File Number	{Insert applicant's tax file number}

Signed \_\_\_\_\_

Dated.....

## Part 2

### Nomination of Dependants

With Indicative Death Benefit Nomination

No Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)

[N.B.: Choices in [square brackets] must be struck out if not relevant].

#### Important information for completion

*[This constitutes a direction to the Trustee of the fund as to the manner of apportionment of any benefit from the fund that is payable upon your death; which direction is a non-binding death benefit notice in spite of the existence of which the Trustee shall retain its discretion as to how to apply any benefit that is so payable upon your death.]*

1. This nomination notice is not binding. The Trustee/s will take this document into account in the event that a benefit is paid from the fund on your death. However, the Trustee/s has complete discretion as to which of your dependants and/or legal personal representative may receive the benefit and in what proportions. If there are no dependants or legal personal representative, the benefit may be payable as per the terms of the deed.
2. This nomination notice must be fully completed in accordance with the details below
  - The beneficiaries named in this notice must be dependants and/or your legal personal representative.
  - Your dependants are your spouse including same sex and de facto spouse and your children (including step, adopted and ex-nuptial children of the member or spouse), and any other person financially dependent upon you at the time of your death or a person with whom an independent relationship existed.
  - Your legal personal representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write "legal personal representative" as the name of the beneficiary.
  - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.

#### Nomination of Dependants

Name	Relationship to you	Proportion of benefit
{Insert Name of beneficiary}	{Insert member's relationship with beneficiary}	{Insert percentage of benefit to be paid to this beneficiary}

Allocation 100%

#### Member Declaration

I, {name of the applicant} .....of {address of the applicant}..... hereby direct [the Trustee(s)/the director(s) of the Trustee company] that the [person/persons] named in the above table [is/are] to receive the proportions specified therein of any benefit that is payable upon my death. I understand that

- in the event of my death, the Trustee/s has complete discretion as to which of my dependants and/or estate will receive any death benefit payable.
- this notice revokes and amends any previous notice supplied to the Trustee/s of the fund in regard to my nominated beneficiaries.

Signature of member	Date / /
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# The James NK Super Fund

## Schedule 2B to this deed

{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}

### Part 1

#### Application for Membership

##### With Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)

[N.B.: Choices in [square brackets] must be struck out if not relevant].

I hereby apply for membership of this fund as an [initial/additional] member of this fund under the trust deed. I hereby make the following declarations as listed below:

- I have read and understood the trust deed, including all the terms relating to withdrawal of benefits payable in the deed, and the preceding Product Disclosure Statement,
- I have read the requirements of supplying my tax file number in the PDS; I hereby supply my Tax file number to the Trustee of this superannuation fund.
- I have read and understood the Trust Deed and Product Disclosure Statement and understand my role & responsibility as member and Trustee (director of Trustee Company) of the fund.
- I am not in an employment relationship with [any other member/any other member except a relative of myself].
- I am not disqualified, under superannuation law, from being [Trustee/director of Trustee company] of the fund.
- I will, as member, abide by and comply with all requirements of the Trust Deed.
- I will fully and truthfully disclose any information relating to my membership of the fund that is required by the Trustee, disclosing such information in writing as soon as is practicable upon such a request being made by the Trustee, including:
  - If I have entered into an employment relationship with any other member of the fund who is not also a relative of myself, then any information about the circumstances leading to such a relationship
  - Any information about any circumstance (if any) that may disqualify me under superannuation law from being [Trustee/director of the Trustee company] of the fund.
  - Any information that relates to my medical condition, whether or not I have any medical problems.
- I will also act as a [Trustee/director of the Trustee company] of this fund.

Member Details	
Name	{Insert applicant's full Legal Name}
Address	{Insert applicant's address}
Place of Birth	{insert applicant's place of birth}
Date of birth	{Insert applicant's date of birth}
Occupation	{Insert applicant's occupation}
Tax File Number	{Insert applicant's tax file number}

Signed \_\_\_\_\_

Dated.....

## Part 2

### Nomination of Dependants

#### Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)  
[N.B.: Choices in [square brackets] must be struck out if not relevant].

#### Information about binding directions

*[This is a binding death benefit notice; by the completion and signing of which you require the Trustee to provide any benefit from the fund that is payable upon or subsequent to your death to that person or those persons whom you mention in this notice. Person(s) listed must be one or more of your dependants or your legal personal representative.]*

The operation of the fund, of which you are a member or are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the fund is bound to act in accordance with the Trust Deed in administering the fund.

Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of your death, to pay the Death Benefit, which is payable to your estate or to dependants of yours, and, in what proportions.

However, the Trust Deed also enables you to override the Trustee's discretion by you giving a Binding direction to the Trustee. This is a direction to the Trustee to pay any Death Benefit payable either to your estate or to dependants specified by you and in the proportions that you specify.

You may either elect for the Trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing the direction in this nomination.

#### Important points about binding directions

- If you decide to give a binding direction by completing this nomination, it is important for you to note
1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify on this nomination (or both).
  2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total Death Benefit which is to be paid to each of the estates of your dependants.
  3. You can confirm, amend or revoke this nomination by giving notice to the Trustee.
  4. The direction that you give is non-lapsing and does not cease until you revoke and provide another nomination. If you revoke this nomination and do not provide another similar nomination this direction ceases, the Trustee will have discretion to decide who to pay the Death Benefit to.
  5. If, on this nomination, you direct the Trustee to pay any of your Death Benefit to a person who is not a dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your Death Benefit to.
  6. For the purposes of the Trust Deed, a dependant is as per law (Section 302–195 of ITAA 1997) and below
    - a spouse or former spouse of a member, including a de facto spouse
    - any children of a member, including step-children, adopted and ex-nuptial or the member or of their spouse
    - any other person who is financially dependent on the member at the time of death or a person with whom an interdependent relationship existed

If you are unsure whether someone you wish to nominate to receive any part of your death benefit is a dependant, you should seek advice from the Trustee before completing this nomination.
  7. For this nomination to be effective, it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.

## Important information for completion

1. In order for this nomination notice to be valid, it must be fully completed in accordance with the details below
  - ensure the nomination and member and witness declaration are completed.
  - the beneficiaries must be dependants and/or your legal personal representative.
  - As noted above, your dependants are your spouse including same sex and de facto spouse and your children (including step, adopted and ex-nuptial children of the member or their spouse), and any other person financially dependent upon you at the time of your death or a person with whom an interdependent relationship existed.
  - Your legal personal representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration for your estate.
  - Should you wish to nominate your legal personal representative, please write "legal personal representative" as the name of the beneficiary.
  - for each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.
  - the nomination must be signed and dated by you in the presence of 2 witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
  
2. If any of this information is not provided, then your nomination may be invalid. The Trustee/s will contact you for clarification if this is the case.
  
3. It is not compulsory to complete this nomination. Information on what happens in the situation where there is no valid nomination can be found in the Member Death Benefit section of the Trust Deed.

## Nomination of Dependants

Name	Relationship to you	Proportion of benefit
<i>{Insert Name of beneficiary}</i>	<i>{Insert members relationship with beneficiary}</i>	<i>{Insert percentage of benefit to be paid to this beneficiary}</i>

Total Allocation 100%

Signed \_\_\_\_\_

Dated.....

## Member Declaration

I, *{insert name of member}*.....of *{insert address of member}* .....  
 as a member of the fund, direct the Trustee/s to pay my Death Benefit to the above person(s) in the proportions as shown in the table above.

I understand:

- I can amend or revoke this nomination at any time by providing a new nomination to the Trustee/s of the fund, signed and dated by myself in the presence of 2 witnesses who are aged 18 years or over;
- unless amended or revoked earlier, this nomination is binding on the Trustee/s for an indefinite period from the date it is first signed or last confirmed;
- this nomination revokes and amends any previous notice supplied to the Trustee/s of the fund in regard to my nominated beneficiaries;
- if this nomination is not correctly completed, it may be invalid;
- if I have nominated persons who are not “dependants”, the direction contained in the nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I acknowledge that I have been provided with information by the Trustee/s, including a copy of the trust deed & PDS of the fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this nomination. I declare that I understand the information provided to me and I have had an opportunity to seek legal advice regarding issues which I do not understand.

..... Signature of member	Date / /
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## Witness 1 Declaration

We declare that

- this nomination was signed by the member in our presence
- we are aged 18 or more and
- we are not named as beneficiaries.

..... Signature of witness	<i>{insert name of witness}</i> ..... Name of witness	Date / /
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## Witness 2 Declaration

We declare that

- this nomination was signed by the member in our presence
- we are aged 18 or more and
- we are not named as beneficiaries.

..... Signature of witness	<i>{insert name of witness}</i> ..... Name of witness	Date / /
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# The James NK Super Fund

## Schedule 3 to this deed

*{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}*

### **Application to become a Participating Employer** (This Application Form must be inserted after the Product Disclosure Statement)

*{Employer's Name} {Employer's Address}* applies to become a participating employer of the The James NK Super Fund. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_

Date: \_\_\_\_\_

*{Name of the Authorised Officer}*

# The James NK Super Fund

## Schedule 4 to this deed

*{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}*

<b>Application to become an Employer Sponsor</b> (This Application Form must be inserted after the Product Disclosure Statement)	
<p><i>{Employer's Name} {Employer's Address}</i> applies to become a employer sponsor of the The James NK Super Fund. The applicant agrees to comply with the trust deed.</p>	
Signed by the applicant's authorised officer	
_____	Date: _____
<i>{Name of the Authorised Officer}</i>	

# Schedule 5A to this deed

*{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}*

## Part 1

### Application for membership (if member is a minor)

With indicative Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)

[N.B.: Choices in [square brackets] must be struck out if not relevant].

On behalf of, and as the parent or guardian of, the minor person listed below (hereinafter "the Applicant"), I apply that the Applicant become an [initial / additional] member, under the trust deed, of this fund.

I hereby make the undertakings listed below:

- The Applicant is not in an employment relationship with [any other member/any other member except a relative of the Applicant].
- I am not disqualified, under superannuation law, from being [Trustee/director of the Trustee company] of the fund.
- I have read and understood the Trust Deed and Product Disclosure Statement and understand my role & responsibility as member and [Trustee /director of Trustee Company) of the fund.
- I have read the requirements of supplying my tax file number in the PDS; I hereby supply my tax file number to the Trustee of this superannuation fund.
- I will abide by and comply with all requirements of the Trust Deed and the attached PDS.
- I will fully and truthfully disclose any information relating to the Applicant's membership of the fund that is required by the Trustee, disclosing such information in writing as soon as is practicable upon such a request being made by the Trustee, including:
  - if the Applicant has entered into an employment relationship with any other member of the fund who is not also a relative of the Applicant, then any information about the circumstances leading to such a relationship;
  - any information about any circumstance (if any) that may disqualify me under superannuation law from being [Trustee/director of the Trustee company] of the fund; and
  - any information that relates to the Applicant's medical condition, whether or not the Applicant has any medical problems.
- *[If the parent or guardian is not also a separate member of the fund in their own right]*  
I will act as a [Trustee/director of the Trustee company] of the fund.
- *[If the parent or guardian is also a separate member of the fund in their own right]*  
I am a member of the fund myself and will act as a [Trustee/director of the Trustee company] of the fund
- I have read and understood the Trust Deed and the attached PDS, including all the terms relating to benefits payable under the deed, and the attached Product Disclosure Statement and the information relating to the collection of tax file numbers by the Trustees of superannuation funds.
- In consideration of that fact, the Applicant's status as a minor, I do not attach a completed ATO individual tax file number notification form.

#### Member Details

Name	<i>{Insert minor's full Legal Name}</i>
Address	<i>{Insert minor's address}</i>
Place of Birth	<i>{insert minor's place of birth}</i>
Date of birth	<i>{Insert minor's date of birth}</i>
Parent or guardian Name	<i>{Insert Parent or Guardian's Name}</i>
Parent or Guardian Address	<i>{Insert Parent or Guardian's Address}</i>
Parent or guardian Place of Birth	<i>{Insert Parent or Guardian's Place of Birth }</i>
Parent or guardian Date of Birth	<i>{Insert Parent or Guardian's Date of Birth}</i>

Signed by Parent or guardian \_\_\_\_\_

Dated.....

## Part 2

### Nomination of Dependants (if member is a minor)

With Indicative Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)  
 [N.B.: Choices in [square brackets] must be struck out if not relevant].

#### Important information for completion

*[This constitutes a direction to the Trustee of the fund as to the manner of apportionment of any benefit from the fund that is payable upon the minor's death; which direction is a Non-binding Death Benefit Notice in spite of the existence of which the Trustee shall retain its discretion as to how to apply any benefit that is so payable upon minors death.]*

1. This nomination notice is not binding. The Trustee/s will take into account in the event that a benefit is paid from the fund on your death. However, the Trustee/s has complete discretion as to which of your Parent or legal guardian or legal personal representative may receive the benefit and in what proportions. If there is no Parent or legal guardian or legal personal representative, the benefit may be payable as per terms of the deed.
2. This nomination notice must be fully completed in accordance with the details below:
  - the beneficiaries named in this notice must be Parent or Legal guardian and/or your legal personal representative.
  - minor's legal personal representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write "legal personal representative" as the name of the beneficiary.
  - for each person nominated, minor's parent or legal guardian must provide both their relationships to the minor and the proportion of any benefit that is to be paid to each.

#### Nomination of dependants

Name	Relationship to you	Proportion of benefit
{Insert Name of beneficiary}	{Insert member's relationship with beneficiary}	{Insert percentage of benefit to be paid to this beneficiary}

Allocation 100%

#### Member declaration

I, {name of the parent or legal guardian} .....of {address of the Parent or legal guardian} ..... hereby direct [the Trustee(s)/the director(s) of the Trustee company)] that the [person/persons] named in the above table [is/are] to receive the proportions specified therein of any benefit that is payable upon death of the minor named in the application form.

I understand that

- In the event of the minor's death, the Trustee/s have complete discretion as to which of minor's Parent or guardian and/or estate will receive any death benefit payable.
- This notice revokes and amends any previous notice supplied to the Trustee/s of the fund in regard to the minor's nominated beneficiaries.

Signature of Parent or guardian	Date / /
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# Schedule 5B to this deed

*{This schedule is not to be filled out. It is a pro-forma document to be used when new members join the fund in the future.}*

## Part 1

### Application for Membership (if member is a minor)

With Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)

[N.B.: Choices in [square brackets] must be struck out if not relevant].

On behalf of, and as the parent or guardian of, the minor person listed below (hereinafter "the Applicant"), I apply that the Applicant become an [initial / additional] member, under the trust deed, of this fund.

I hereby make the undertakings listed below:

- The Applicant is not in an employment relationship with [any other member/any other member except a relative of the Applicant].
- I am not disqualified, under superannuation law, from being [Trustee/director of the Trustee company] of the fund.
- I have read the requirements of supplying my tax file number in the PDS; I hereby supply my tax file number to the Trustee of this superannuation fund.
- I have read and understood the Trust Deed and Product Disclosure Statement and understand my role & responsibility as member and (Trustee /director of Trustee company) of the fund.
- I will abide by and comply with the Trust Deed and the attached PDS.
- I will fully and truthfully disclose any information relating to the Applicant's membership of the fund that is required by the Trustee, disclosing such information in writing as soon as is practicable upon such a request being made by the Trustee, including:
  - if the Applicant has entered into an employment relationship with any other member of the fund who is not also a relative of the Applicant, then any information about the circumstances leading to such a relationship;
  - any information about any circumstance (if any) that may disqualify me under superannuation law from being [Trustee/director of the Trustee company] of the fund; and
  - any information that relates to the Applicant's medical condition, whether or not the Applicant has any medical problems.

*[If the parent or guardian is not also a separate member of the fund in their own right]*

- I will act as a [Trustee/director of the Trustee company] of the fund.

*[If the parent or guardian is also a separate member of the fund in their own right]*

- I am a member of the fund myself and will act as a [Trustee/director of the Trustee company] of the fund.
- I have read and understood the Trust Deed and the attached PDS, including all the terms relating to benefits payable under the Trust Deed and the attached Product Disclosure Statement and the information relating to the collection of tax file numbers by the Trustees of superannuation funds.
- In consideration of that fact of the Applicant's status as a minor, I do not attach a completed ATO individual tax file number notification form.

#### Member details

Name	<i>{Insert minor's full legal name}</i>
Address	<i>{Insert minor's address}</i>
Place of Birth	<i>{insert minor's place of birth}</i>
Date of birth	<i>{Insert minor's date of birth}</i>
Parent or Guardian Name	<i>{Insert Parent or Guardian's Name}</i>
Parent or Guardian Address	<i>{Insert Parent or Guardian's Address}</i>
Parent or Guardian Place of Birth	<i>{Insert Parent or Guardian's Place of Birth }</i>
Parent or Guardian Date of Birth	<i>{Insert Parent or Guardian's Date of Birth}</i>

Signed by Parent or guardian \_\_\_\_\_

Dated.....

## Part 2

### Nomination of Dependants (if member is a minor)

#### Binding Death Benefit Nomination

(This Application Form must be inserted after the Product Disclosure Statement)  
[N.B.: Choices in [square brackets] must be struck out if not relevant].

#### Information about binding directions

*[This is a Binding Death Benefit notice; by the completion and signing of which, the minor requires the Trustee to provide any benefit from the fund, that is payable upon or subsequent to his / her death, to that person or those persons whom you (minor) mention in this notice, which persons must be one or more of the minor's dependants or minor's legal personal representative.]*

The operation of the fund, of which a minor is a member or is being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the fund is bound to act in accordance with the Trust Deed in administering the fund.

Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of minors death, to pay the Death Benefit, which is payable to the minor's estate or to dependants of the minor, and, in what proportions.

However, the Trust Deed also enables you (minor) to override the Trustee's discretion by you (minor) giving a Binding direction to the Trustee. This is a direction to the Trustee to pay any Death Benefit payable either to the minor's estate or to dependants specified by the minor and in the proportions that the minor specifies.

A minor may either elect for the Trustee to exercise the discretion given to it to decide who to pay the minors benefit to, in the event of the minor's death, or the minor can give a Binding direction to the Trustee by completing the direction in this nomination.

#### Important points about binding directions

If the minor decides to give a binding direction by completing this nomination, it is important for the minor to note

1. A minor can only direct the Trustee to pay the benefit either to the minor's estate or to the dependants that the minor specifies on this nomination (or both).
2. If minor wishes to give such a direction to the Trustee, the minor must specify the percentage of the minor's total Death Benefit which is to be paid to each of the estates of the minor's dependants.
3. A minor can confirm, amend or revoke this nomination by giving notice to the Trustee.
4. The direction that the minor gives is non-lapsing and does not cease until you revoke and provide another nomination. If you revoke this nomination and do not provide another similar nomination this direction ceases, the Trustee will have discretion to decide who to pay the death benefit to.
5. If, on this nomination, the minor directs the Trustee to pay any of the minor's Death Benefit to a person who is not a dependant (as described below), the direction of the minor will be void and of no effect and the Trustee will be required to decide who to pay the minor's death benefit to.
6. For the purposes of the Trust Deed, a dependant is
  - a spouse or former spouse of a member, including a de facto spouse
  - any children of a member, including step-children, adopted and ex-nuptial or the member or of their spouse
  - any other person who is financially dependent on the member at the time of death or a person with whom an interdependent relationship existedIf a minor is unsure whether someone who he / she wish's to nominate to receive any part of his/her death benefit is a dependant or not, the minor should seek advice from the Trustee before completing this nomination.
7. For this nomination to be effective, it must be signed and dated by a Parent or legal guardian of the minor in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who the minor have nominated to receive a part of the minor's Death Benefit.

## Important information for completion

1. In order for this nomination notice to be valid, it must be fully completed in accordance with the details below
  - ensure the nomination and witness declaration are completed.
  - the beneficiaries must be dependants and/or legal personal representative of the minor.
  - a minor's legal personal representative is either the person named as the minor's executor in the minors will, or, if the minor does not have a valid will at the date of his / her death, the person who applies for and has been granted letters of administration for estate of the minor.
  - should the minor wish to nominate a legal personal representative, please write "legal personal representative" as the name of the beneficiary.
  - for each person nominated, the minor must provide both their relationships to the minor and the proportion of any benefit that is to be paid to each.
  - the nomination must be signed and dated by a Parent or legal guardian in the presence of 2 witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
2. If any of this information is not provided, then the minor's nomination may be invalid. The Trustee/s will contact the minor for clarification if this is the case.
3. It is not compulsory to complete this nomination. Information on what happens in the situation where there is no valid nomination can be found in the Member Death Benefit section of the Trust Deed.

## Nomination of dependants

Name	Relationship to you	Proportion of benefit
<i>{Insert Name of beneficiary}</i>	<i>{Insert minor's relationship with beneficiary}</i>	<i>{Insert percentage of benefit to be paid to this beneficiary}</i>

Total Allocation 100%

\_\_\_\_\_  
Signed By Parent or Legal Guardian

Dated.....

## Member declaration

I, {insert name of Parent or Legal guardian}.....of {insert address of parent or Legal guardian} ... as a member of the fund, direct the Trustee/s to pay the minors Death Benefit to the above persons in the proportions as shown in the table above.

I understand:

- a minor can amend or revoke this nomination at any time by providing a new nomination to the Trustee/s of the fund, signed and dated by Parent or Legal guardian in the presence of 2 witnesses who are aged 18 years or over
- unless amended or revoked earlier, this nomination is binding on the Trustee/s for an indefinite period from the date it is first signed or last confirmed
- this nomination revokes and amends any previous notice supplied to the Trustee/s of the fund in regard to my nominated beneficiaries
- if this nomination is not correctly completed, it may be invalid
- if the minor has nominated persons who are not "dependants", the direction contained in the nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I {insert name of parent or legal guardian} acknowledge that I {insert name of parent or legal guardian} have provided with information by the Trustee/s, including a copy of the trust deed & PDS of the fund that enables the minor me to understand his / her rights to direct the Trustee/s to pay minors Death Benefit in accordance with this nomination. I declare that I understand the information provided to me and I have had an opportunity to seek legal advice regarding issues which I do not understand.

..... Signature of Parent or Legal Guardian	Date / /
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## Witness 1 declaration

We declare that

- this nomination was signed by the member in our presence
- we are aged 18 or more and
- we are not named as beneficiaries.

..... Signature of witness	{insert name of witness} ..... Name of witness	Date / /
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## Witness 2 declaration

We declare that

- this nomination was signed by the member in our presence
- we are aged 18 or more and
- we are not named as beneficiaries.

..... Signature of witness	{insert name of witness} ..... Name of witness	Date / /
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# The James NK Super Fund

Schedule 6 to this deed

## Product Disclosure Statement

*The Corporation Act 2001 (Cth) requires Trustees to provide a Product Disclosure Statement to all prospective members of a self managed superannuation fund and any employer who will contribute for a member to this self managed superannuation fund.*

*Attach this Product Disclosure Statement to each member application form and to any participating employer or employer-sponsor application form.*

### Trustee Details

Grecian Pty Ltd

A.C.N : 126370456

35 Gellatly Avenue Figtree NSW - 2525 Australia

### Member Details

James Nicholas Kosturos

35 Gellatly Ave Figtree NSW - 2525 Australia

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## Introduction

*The Trustee recommends that all members should get their own legal and financial advice from a qualified financial advisor before joining this self managed superannuation fund or to begin making contributions to this fund. All members must obtain advice on their own suitability to join this fund, taking into account your financial situation, retirement needs and investment objectives. This Product Disclosure Statement ("PDS") should not be taken as a recommendation to you to join this fund.*

This PDS explains to members and employers the impact of joining this superannuation fund and the risks and costs associated with this fund. This PDS also explains significant features and how you can take your super as a lump sum and/or as a pension, how this fund is taxed and issues that are taken into account before you decide to invest in this superannuation fund.

This PDS includes all the amendments to the Superannuation Law (*Tax Laws Amendment (Simplified Superannuation) Law 2006*) that were introduced as part of the May 2006 Federal Budget and became law on 15 March 2007 and all amendments up to 15<sup>th</sup> May 2014.

This PDS is simply a summary of some of the more significant features of this Fund and your super lump sum pension benefits. However, it is not a complete and exhaustive statement. If there is a conflict between the PDS and the Rules and the Superannuation Law, the Rules and Superannuation Law will prevail over the PDS.

## What is a Self Managed Superannuation Fund?

1. The *Superannuation Industry (Supervision) Act 1993* (Cth) ("SIS Act") section 17A and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) ("SIS Regulations") define a self managed superannuation fund. A self managed super fund ("SMSF") is constituted by a trust deed. SMSFs hold contributions and roll overs made to the fund for the benefit of the members in trust for the members until the members retire from employment or are permanently unable to work due to disablement.

In case of the death of a member, the benefits are held for beneficiaries of the member and can be paid as a lump sum or a pension. If the SMSF complies with the SIS Act and the SIS Regulations it receives concessional tax treatment under income tax legislation. The members can become Trustees of the fund or they can form a corporation under the Corporations Act to act as Trustee of the SMSF.

2. The trust deed of a SMSF sets out the governing rules of the fund. Section 17A defines a SMSF; broadly, a superannuation fund is a SMSF if it meets the following conditions:

- has fewer than 5 members;
- each individual Trustee of the fund is a fund member;
- each member of the fund is a Trustee;
- no member of the fund is an employee of another member of the fund, unless those members are related;
- no Trustee of the fund receives any remuneration for his or her services as a Trustee.

A SMSF can also have a company as a Trustee (i.e. a corporate Trustee) if:

- the fund has fewer than 5 members;
- each director of the Trustee company is a member of the fund;
- each member of the fund is a director of the Trustee company;
- no member is an employee of another member (unless related); and
- the Trustee does not receive remuneration for their services as a Trustee.

3. Superannuation funds are created for a sole purpose. Each Trustee of a regulated superannuation fund must ensure that the fund is maintained for a sole purpose which is broken down to a core purpose and ancillary purposes:-

The Fund is created:

- (a) for one or more of the following purposes (the *core purposes*):

- (i) the provision of lump sum or pension benefits for each member of the fund on or after the member's retirement from any business, trade, profession, vocation, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund);
  - (ii) the provision of lump sum or pension benefits for each member of the fund on or after the member's attainment of preservation age;
  - (iii) the provision of lump sum or pension benefits in respect of each member of the fund on or after the member's death, if:
    - (A) the death occurred before the member's retirement (or attaining preservation age) from any business, trade, profession, vocation, occupation or employment in which the member was engaged; and
    - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (b) for one or more of the core purposes and for one or more of the following purposes (the *ancillary purposes*):
- (i) the provision of lump sum or pension benefits for each member of the fund on or after the termination of the member's employment with an employer; or due to ill health (whether physical or mental);
  - (ii) the provision of lump sum or pension benefits in respect of each member of the fund on or after the member's death, if:
    - (A) the death occurred after the member's retirement (or attaining the preservation age) from any business, trade, profession, vocation, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund); and
    - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
  - (iii) the provision of such other benefits as the Regulator approves in writing.

4. The Fund provides superannuation in the form of accumulation benefits which can be taken either as: as lump sums; or as account based pension benefits. From 1 July 2007 new account based pension or an allocated pensions, non-commutable allocated pensions ("AP"), market linked pensions ("MLP") and non-commutable market-linked pensions (market-linked pensions are also called term allocated pensions ("TAP")); or any combination of lump sums and account-based pensions may be paid. All MLP, TAP, Allocated pension or existing complying, flexi, life time etc pensions can be paid by a SMSF but can no longer be commenced from a SMSF, only account based pensions can commence from this SMSF.

5. There are substantial civil and criminal penalties consequences of contravening, or of being involved in a contravention of, not maintaining the sole purpose test. The Trustees must inform the regulator within 21 days from ceasing to be a SMSF.

6. The Australian Taxation Office ("ATO") together with the Australian Prudential Regulation Authority ("APRA") regulate superannuation funds. For a current copy of the SIS Act and Regulations please visit [www.apra.gov.au](http://www.apra.gov.au)

7. The requirement that all members be Trustees ensures that each member is fully involved and has the opportunity to participate in the decision-making processes of the fund. This promotes true self-management. The ATO regulates superannuation funds that meet the definition of an SMSF.

## Advantages of setting up a self managed superannuation fund

8. Some of the advantages of operating a superannuation fund are:
- individuals can have greater investment freedom;
  - individuals feel their money's are safer if invested by them as Trustees;
  - members are able to chose the investment portfolio
  - members can actively participate in the management of the fund;
  - there are reduced formal reporting requirements;
  - members can choose a retirement strategy, that is custom made for them



- take advantage of Transition to Retirement Pensions if not available by their superannuation fund;
- own business real property of own business with or without borrowing; control the timing of paying income tax on income of the fund; transfer In-specie contributions to the SMSF; and
- invest in direct property with or without borrowing.

However, setting up a SMSF is not for everyone. Individuals considering setting up a self managed superannuation fund should familiarize themselves with the requirements of running a fund. It is also prudent to discuss this option with a professional adviser (e.g. an accountant, financial planner etc) before taking the next step.

## Key responsibilities of Trustees

9. A Trustee of a SMSF must act in accordance with:

- the provisions of the SIS Act;
- the clauses of the superannuation fund trust deed; and
- other general rules, for example, those imposed under tax law and trust law.

10. The SIS Act contains covenants or rules that impose certain requirements on Trustees and are deemed to be included in the trust deed of every regulated fund. These covenants reflect the duties imposed on a Trustee under trust law in general. They require Trustees to:

- act honestly in all matters;
- exercise the same degree of care, skill and diligence as an ordinary prudent person;
- act in the best interest of the fund members;
- keep the assets of the fund separate from other assets (e.g. the Trustee's personal assets);
- retain control over the fund;
- develop and implement an investment strategy; and
- allow members access to certain information.

11. Whilst Trustees are not prevented from engaging or authorizing other persons to do certain acts or things on their behalf (e.g. engaging the services of an investment adviser), they are bound to retain control over the fund. Ultimate responsibility and accountability for running the fund in a prudent manner lies with the Trustees.

12. Trustees of the fund must keep money and other assets of the superannuation fund separate from their own personal assets. Similarly, the assets of the superannuation fund must also be kept separate from those belonging to a business (e.g. a business run by two partners who decide to set up an SMSF).

Money belonging to the fund must not, under any circumstance, be used for personal or business purposes. This money is for retirement purposes and generally cannot be accessed until retirement. The fund's assets must not be viewed as a form of credit or emergency reserve when faced with a sudden need.

13. The Trustee decides the suitability of investments. In making investment decisions the Trustees must act in accordance with the fund's trust deed, investment strategy and the provisions of SIS Act. Some of the more important issues to consider when investing a SMSF's assets include the formulation of an appropriate investment strategy and investment restrictions.

14. The Trustee must establish investment strategies in writing, setting out how fund assets are to be invested, and may make a broad range of investments only in accordance with this strategy. The strategies may be altered by the Trustee, so long as they remain appropriate. Members may choose between more than one strategy offered by the Trustee, but may not choose how the Trustee is to execute the strategy.

15. SIS Act sets out various rules and restrictions on investments. These include:

- lending to members and their relatives
- acquiring assets from 'related parties' of the fund
- borrowing
- in-house assets; and
- making and maintaining investments on an 'arms length' basis.



16. Trustees are also responsible for the fund's 'housekeeping' including:
- complying with record keeping requirements (such as minutes, books and financial records);
  - preparing and lodging annual returns with the ATO; and
  - getting the fund's accounts audited annually.

Appointing auditors can be a daunting task. According to a statement by the Commissioner of Taxation, 70% of all auditors who are auditing SMSFs, audit less than five SMSFs. The ATO is concerned that these auditors do not fully understand the role and responsibilities of an auditor of a SMSF. For further reference <http://www.ato.gov.au/content/downloads/nat11375.pdf>

17. If a Trustee fails to act in accordance with the rules and obligations imposed on them, the Trustee may be sued by affected fund members and/or may jeopardize a fund's eligibility for tax concessions. In addition, the SIS Act imposes substantial penalties on Trustees who have failed to carry out their duties.

The above does not provide an exhaustive coverage of responsibilities of Trustees. Many more obligations are imposed on Trustees under different laws including numerous administrative requirements. Trustees need to be familiar with them and when in doubt about these requirements, professional advice should be sought. For more information please refer to [www.ato.gov.au/super](http://www.ato.gov.au/super).

## Costs of operating a SMSF

18. Annual compliance costs can be broken down to accounting, audit and income tax return preparation and lodgement. Trustees can employ professionals to take over some of the functions however audit has to be conducted by a qualified auditor.

19. Due to recent changes in legislation Trustees may also need to incur legal fees in keeping their trust deed up to date with the SIS Act.

20. The Trustees may incur investment costs by employing a financial planner in helping them to formulate an investment strategy. Trustees may also incur costs in implementing the fund's investment strategy like share broker costs or if purchasing a property, stamp duty and associated legal costs.

21. Trustees while employing accountants should be aware that the SIS Act is a complex Act and changes frequently. Hence, employing a non-specialist accountant can mean that the advisor may give wrong or no advice, in any case the ultimate responsibility of the fund rests with the Trustees of the fund.

## Cost of Valuations

Trustee(s) may need to employ qualified independent valuer at various times. Below is the summary of valuation requirements.

ATO recommends the use of a qualified independent valuer where the value of the asset represents a significant proportion of the fund's value or the nature of the asset indicates that the valuation is likely to be complex.

Event	Valuation Requirement
Preparing the SMSF financial accounts and statements	Assets should be reported at market value. The valuation should be based on objective and supportable data.
Collectables and personal use assets - acquired after 1 July 2011. Transfer or sale to a related party	Must be made at a market price determined by a qualified independent valuer
Collectables and personal use assets - acquired before 1 July 2011. Transfer or sale to a related party	For the period 1 July 2011 to 30 June 2016 transfers to related parties do not require valuation by a qualified independent valuer. However, these transfers should be made at an arm's length price that is based on objective and supportable data. From 1 July 2016 transfers to related party must be made at a market price determined by a qualified independent valuer.

Transfers between SMSFs and related parties	Acquisitions of permitted assets must be made at market value. Disposals of assets must be made on an arm's length basis.
Transfers between SMSFs and unrelated parties	A valuation is not required however the transfer must occur at arms length.
Determining the value of assets that support a super pension	The account balance needs to be determined on the commencement day of the pension or, for ongoing pensions, on 1 July of the financial year in which the pension is paid. An annual valuation is generally not required unless there has been event that significantly affects the value of the asset. The valuation should be based on objective and supportable data
Testing whether the market value of the SMSF's in-house assets exceed 5% of the value of total assets held by the fund	The value of a fund's total assets needs to be determined on 30 June of the financial year the in-house assets are held. An annual valuation is generally not required unless there has been event that significantly affects the value of the asset. The valuation should be based on objective and supportable data

22. A SMSF is taxed on its investment income, realised capital gains and on the concessional (deductible) contributions made by the member or employer or some other person. However, a SMSF is entitled to claim deductions while earning its income, including the cost of certain life insurance for its members. There is no income tax to be paid on non-concessional (un deductible) contributions, or contributions for a spouse or for a child.

If an investment is held for more than one calendar year, the fund is entitled to reduction of the capital gain. This reduction is currently one third of the gain. A SMSF may reduce the amount of tax payable through its entitlement to income tax credits it receives (e.g. franking credits arising from franked dividends). Currently the tax rate that applies to SMSFs is 15% on its taxable income.

A SMSF does not pay any income tax on investment income and realised capital gains that arise from assets which are used to support the payment of all types of pensions to members. If excess tax (highest marginal tax rate plus Medicare levy) is paid for over the cap concessional or non-concessional contributions, the tax on these contributions will be levied on the member and the member may transfer the tax liability to the fund which will pay the liability and debit the member's account balance.

23. Any special income of the SMSF such as private company distributions, non arm's-length income and trust distributions is taxed at the highest individual tax rate.

24. As a member you may request the Trustee to obtain risk insurance covers on your life so that if you should: die, become totally and permanently disabled; or become totally and temporarily disabled; then an insurance benefit will be paid to you or your dependants. The amount of insurance required and the cost of this insurance and the terms upon which insurance benefits will be paid will be advised to you by the Trustee.

In the case of death or total and permanent disablement, the insurance benefit is usually a lump sum that will be added to your account. Usually, In the case of total and temporary disablement, the insurance benefit is generally a monthly payment from the insurance company replacing in part or whole your income earning capacity for the period you are totally and temporary disabled.

25. The costs of administering your SMSF will affect the net after cost returns of your SMSF. Members of a SMSF must ensure that there are enough funds to warrant commencement of a SMSF to administration and compliance costs as well as providing a comparable return to the members. If costs are higher then income, the negative returns will reduce members account balance.

26. The ATO has drafted a statement for prospective members, for further reading <http://www.ato.gov.au/content/downloads/N13447-05-2005.pdf>

ASIC and the ATO have drafted a joint statement for prospective members for further reading [http://www.ato.gov.au/content/downloads/n13556-05-2005\\_w.pdf](http://www.ato.gov.au/content/downloads/n13556-05-2005_w.pdf) For illegal arrangements to withdraw your superannuation early for further reading <http://www.ato.gov.au/content/downloads/n14542-05-2006.pdf> For information on why the money can be withdrawn for further reading <http://www.ato.gov.au/content/downloads/nat11393.pdf> For role and responsibilities of Trustees for further reading <http://www.ato.gov.au/content/downloads/n11032-11-2005.pdf>

## Accumulation Benefits

27. Every member has an account in a SMSF. If the member is being paid a pension and is also contributing to the fund, the member can have an accumulation account and a pension account. If a member is getting two or more pensions - one member can have more than one account in a SMSF. All accounts work like accumulation account - money can go in an account and monies can come out of the account.

Concessional and non-concessional contributions and earnings of the fund are credited to the account and relevant expenses, insurance and taxes are debited to the account. Your superannuation fund is the balance of the opening balance and the result of the activities during the year. The superfund balance can be used only for sole purpose as explained above and not withdrawn before certain events.

28. Your spouse can also make a contribution for you. Your spouse will get a tax rebate if your income is low. The amount of the rebate is dependent on the contribution made by your spouse and your assessable income. The details of the rebate are

Spouse's assessable income	Maximum rebatable contributions ("MRC")	Maximum rebate (18% of the lesser of the following)
\$0 - \$10,800	\$3,000	MRC or actual contributions
\$10,801 to \$13,799	\$3,000 - (AI - \$10,800)	MRC or actual contributions
\$13,800	\$0	\$0

For further information please visit

<http://www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006>

29. Children under the age of 18 can also become members of a SMSF. Any person can make a contribution of up to \$3,000 in each 3 year period for a child member.

30. A Trustee can also have a reserve account for members. This account is not for any specific member. Proceeds from this reserve account may be used as prescribed in SIS Act including paying anti-detrimental payments on death of a member. A reserve account is generally used to smooth the investment returns credited to member accounts over a period of time

31. The Government has introduced a policy, for 2003/04 and later years, to provide superannuation contributions for low income earners. These contributions will be paid for you from the Government's own money. Initially this scheme was for employed members of a super fund. However, the Government has extended the co-contribution scheme to self employed super members from 1 July 2007, who earns 10% or more of their total income from active income.

Briefly, if your income is below \$31,920 and contribute \$1,000 to a complying fund from your after tax income as non-concessional contributions the government will contribute \$500 which will taper off for income above \$31,920 to permanently cut off at income of \$46,920.

In accordance with section 10A of the *Superannuation (Government Co-contributions for Low Income Earners) Act 2003*, the lower income threshold is indexed in line with AWOTE each income year. The new indexed amount is generally available each May. However, note that the amounts have been frozen for the 2010-11 and 2011-12 years. This government contribution is not taxable to the SMSF and is treated as non-concessional contribution (un deducted). A member has to meet other conditions to receive co-contributions.

From 1 July 2012, the Government provides a low income superannuation contribution (LISC) of up to \$500 annually for eligible individuals on adjusted taxable incomes of up to \$37,000.

The amount payable under this measure will be calculated by applying a 15 per cent matching rate to concessional contributions made by, or for individuals on adjusted taxable incomes of up to \$37,000, with an annual maximum amount payable of \$500 (not indexed). The amount will be paid into a superannuation account of the individual to directly boost their retirement savings. Concessional superannuation contributions made from 1 July 2012 will be eligible for the LISC. The first payments will be made in the 2013-14 income year.

## Contributions

32. A SMSF can accept contributions that are made in respect of a member from any person for a member under the age of 65 years without any restrictions.

33. A SMSF can accept contributions that are \*mandated employer contributions or if the member has been gainfully employed on at least a part - time basis during the financial year in which the contributions are made; as employer contributions (except mandated employer contributions); or as member (self employed) contributions for a member who is between 65 years to 70 years. The “40 hour /30 day” test requires that the member has been gainfully employed for at least 40 hours during any 30 consecutive days within the financial year in which the contributions have been made.

34. A SMSF can accept contributions that are made in respect of the member that are mandated employer contributions; or if the member has been gainfully employed on at least a part - time basis during the financial year in which the contributions are made contributions received on or before the day that is 28 days after the end of the month in which the member turns 75 that are (i) employer contributions (except mandated employer contributions); or (ii) member (self employed) contributions made by the member who is between 70 to 75 years old.

35. Concessional contributions include:

- employer contributions (including contributions made under a salary sacrifice arrangement)
  - personal contributions claimed as a tax deduction by a self-employed person.
- If you have more than one fund, all concessional contributions made to all your funds are added together and counted towards the cap.

### Concessional contributions general cap

Income year	Amount of general cap
2014-15	\$30,000
2013-14	\$25,000

In accordance with section 960-285 of the *Income Tax Assessment Act 1997*(ITAA 1997), the concessional contributions cap is indexed in line with average weekly ordinary time earnings (AWOTE), in increments of \$5,000 (rounded down). The new indexed amount is generally available each February.

**People aged 59 years or over on 30 June 2013, and 49 years or over on 30 June 2014.** The concessional contributions cap will be temporarily increased to \$35,000 for the:

- 2013-14 financial year if you are aged 59 years or over on 30 June 2013
- 2014-15 financial year or a later financial year if you are aged 49 years or over on the last day of the previous financial year.

36. From 1 July 2007 a SMSF must not accept any non-concessional contributions (undeducted) if the member’s tax file number has not been quoted (for superannuation purposes) to the Trustee of the fund.

37. A SMSF must not accept any fund-capped non-concessional contributions in a financial year in respect of a member that exceed:
- if the member is 64 or less from 1 July 2007 in a financial year – six times the amount of the concessional contributions cap (for 2012/13 , 2013/14 year \$25,000 & 2014/15 \$30,000); on 1<sup>st</sup> July 2014 \$180,000 or the bring forward of next two years which equals to \$540,000.
  - if the member is 65 but less than 75 in 2014/15 financial year– the non-concessional contributions cap which is \$180,000 provided the member is gainfully employed. If the Trustees receive a higher non-concessional amount, the member will have to pay tax at the highest marginal tax rate plus the Medicare Levy.
38. If the fund receives any non-contribution inconsistent with the above rules, the SMSF must return the amount to the member within 30 days of becoming aware that the amount was received in a manner that was inconsistent with the above rules.
39. The Trustee may accept a contribution splitting request from a spouse to split 85% of all concessional (deductible) received from 1 January 2006 and 100% of non-concessional (un deductible) contributions received from 1 January 2006 up to 5 April 2007. Any splitting with spouse can only take place for contributions made in the preceding financial year.
40. Until 30 June 2007 a member who is unemployed or self-employed, can make their own contributions; and these contributions are likely to be deductible provided the member files with the Trustee a suitable declaration under section 80AAT of the Income Tax Assessment Act 1936 (Cth). 100% of all contributions are deductible to the concessional cap limit provided the 10% rule for supported employee is not breached by self employed who are also employed during the year.
41. Employers can claim a deduction for any amount of contribution for their employees or the self employed for them self's. Contributions made by an employer for an employee who is a member of a complying fund will be fully tax deductible, even if the amount of the contributions exceeds the \$35,000 (\$35,000 for members over 49 years as on 1<sup>st</sup> July 2014) concessional contribution cap limit.

Any excess concessional contributions received by the superannuation fund will be added in the member's taxable income and taxed at their marginal tax rate plus the Medicare Levy. The member may withdraw 85% of any contributions above the cap amount from super. The government may offer the fund to return concessional contributions of less than 10,000 for 2011/12 and 2012/13 financial year.

## When can I access my super benefit?

42. You can access your superannuation benefits in full when:
- you attain age 65; you have attained age 60 and you subsequently cease gainful employment;
  - you have attained your preservation age but not attained age 60 and: you have ceased gainful employment (whether before or after attaining your preservation age); and the Trustee is reasonably satisfied that you intend never to again be gainfully employed; and you become permanently incapacitated.
- in which case, your benefit can be paid as a lump sum or as a pension or as a mixture of both. You must not confuse obtaining a pension from your self managed superannuation fund with obtaining age pension from the government. Even if you are receiving a pension from your self managed superannuation fund, you could be eligible for age pension at your \*normal pension age for age pension depending on asset and income tests.
43. You can also access all or part of your superannuation benefit after attaining your preservation age (whether or not you have ceased gainful employment), so long as your benefit is paid as a non-commutable allocated pension or as a non commutable market linked pension up to 20 September 2007 or as a new account based pension from 1 July 2007.
44. You may also be able to access all or part of your benefit when:
- you cease to be gainfully employed with an employer who contributed to the Fund; and you are in severe financial hardship;
  - there are compassionate grounds to access your benefit and the ATO/APRA/ Regulator has authorised the payment.

45. On retirement, you may be entitled to a lump sum benefit that is equal to whatever amount is in your accumulation account at that time. You may be entitled to a payment of a pension or annuity if you become totally and temporarily disabled, where the pension or annuity represents the amount:

- that the Trustee decides on, as long as the amount is within superannuation law; or
- any amount that is payable to the Trustee under any insurance policy arranged and purchased by the Trustee which covers that disability.

46. Pension benefits received by members will be taxed in the following manner:

- if paid as a lump sum or a pension to a member aged 60 or more - tax free;
- if paid as a lump sum to a member will be split into an exempt component (which will be tax free) and a taxable component (which will be taxed at 30% if aged under 55 and taxed at 15% if aged between 55 and 59); any lump sums received between age 55 and 59, the member will be entitled to have the first \$175,000 for 2012/13 year; \$180,000 for 2013/14; \$185,000 for 2014/15 low rate threshold as tax free and balance tax at 15% if paid from a taxed source (only some government payments are from untaxed source).
- if a pension paid to a member between the age of preservation age and 59 the tax rate will be the marginal tax rate of the member, however the pensioner will be able to claim tax free component and will be entitled to a 15% tax rebate on the full amount without any regard to the reasonable benefit limits ("RBL") which are abolished on 30 June 2007.

47. Lump sums and part lump sums payment of benefits will be divided into exempt and taxable portions as at 30<sup>th</sup> June 2007 and the account of a member (crystallized).

The exempt portion will be equal to the sum of:

un deducted contributions (i.e. contributions which were not tax deductible to the person making them) plus non-concessional contributions after 1 July 2007 plus non-concessional contributions made from the proceeds of a sale of a small business (within the limit which applies to this type of contribution) plus proceeds from a settlement for an injury resulting in permanent disablement plus pre-July 83 component, concessional component and post-June 1994 invalidity component.

The taxable portion will be the balance (mostly post-1983 component).

48. Pension benefits will be included in your assessable income and taxed at your marginal tax rate. However, part of each pension payment may be tax exempt. Any un-deducted contribution used to purchase the pension will be divided by the life expectancy factor (provided by the government actuary) to arrive at the un-deductible purchase price of the pension.

If the pension is an allocated pension (non-complying) then 15% tax rebate will apply up to the lump sum RBL limit of the purchase amount of the pension and if the pension is a complying pension then the 15% tax rebate will apply up to the Pension RBL limit of the purchase amount of the pension. From 1<sup>st</sup> July 2007 RBL are abolished and 15% rebate is available to all pensioners under the age of 60 to the full purchase price of the pension.

49. Rebate will not apply to pension payments received before age 55 except where the pension is payable by reason of total and temporary or permanent disablement.

50. Once you start a pension or annuity on or after 1 July 2007, a minimum amount is required to be paid each year. There is no maximum amount other than the balance of your super account, unless it is a transition to retirement pension in which case the maximum amount is 10% of the account balance. The minimum payment amounts have been halved for certain pensions and annuities for the 2008-09, 2009-10 and 2010-11 years and reduced by 25% for the 2011-12 and 2012-13 years.

Item	Age of Beneficiary	Percentage factor
1	Under 65	4
2	65 - 74	5
3	75 - 79	6
4	80 - 84	7
5	85 - 89	9
6	90 - 94	11
7	95 or more	14



51. The term of the pension is: for allocated pensions - usually your life expectancy (or if the pension is reversionary, the life expectancy of you or the reversionary pensioner - whichever is the greater; and for market-linked pensions - the number of years over which the pension must be paid. This can either be the life expectancy of the pensioner or plus 5 years or 100 years or if the pension is reversionary to the spouse then if the spouse is younger than life expectancy of the spouse or plus 5 years. You cannot commence these pensions after 20<sup>th</sup> September 2007 from a self managed super fund.

52. For all deductible contributions made on or after 1 July 2005 by an employer or a member, the superannuation's contributions surcharge has been abolished. However, contributions preceding that date still attract surcharge.

## What is an Allocated Pension?

53. An allocated pension is a non-complying pension as defined in SIS Regulation 1.06(4), assets used to pay an allocated pension that earn income or capital gain are exempt from income tax, the main features of an allocated pension are:

- the pension payments are made from member capital account and can be paid as long there is a balance in the account; investment performance of the fund, fees and charges, withdrawals, will decide the closing balance of the pension account at the end of the financial year;
- there must be at least one minimum pension payment (unless the pension commenced on June of the financial year) in a financial year and can be any amount within a range which is determined at the commencement of the pension and then at the start of each financial year by dividing the new account balance of the pension fund by the prescribed minimum and maximum factors in SIS Regulation Schedule 1A;
- the pension cannot be more than the amount prescribed as maximum amount, if the pensioner withdraws more than the maximum amount then the amount can be treated as a commutation of a pension and withdrawal of a lump sum.
- the pension cannot be transferred to another person other than to a reversionary beneficiary on death; the pension can be reversionary to your spouse, child or other dependant and from 1 July 2007 cannot revert to a non-dependant;
- the pension (or a portion of the pension) can at any time be converted into a lump sum (commutation) or into another type of pension; if the pension is converted into a lump sum (commuted) during the year, then the minimum amount of pension (as per number of days) must first be paid to the pensioner; and lump sums payable on death and which are paid to your spouse, children under 18 and other dependants are tax free.

54. A transition to retirement pension can be an allocated pension, marked linked pension or an account based pension. You do not have to first retire to commence this pension. This pension can be paid if you have attained your preservation age (which is an age between 55 and 60 depending on your date of birth). This type of allocated pension is a non-commutable allocated pension and can be commuted on certain limited circumstances.

While the non-commutable allocated pension cannot be commuted, you can roll back the pension into accumulation phase or recommence another non commutable pension from a part of the earlier amount. Once you retire, become permanently incapacitated or attain age 65 (whichever first occurs), the commutation restrictions cease.

55. Upon commencement of a pension, the member is required to complete a Tax File Number Declaration. The member will be issued with a yearly payment summary by the Trustee detailing the amount paid to the pensioner. The Trustee may withhold tax from the pension payment and remit to the tax office. The pensioner must include the payment summary in his or her income tax return. From 1<sup>st</sup> July 2007 any pension income paid to a 60 year old pensioner is not to be included in their income tax return consequently no payg payment summary has to be issued by the super fund.

56. Existing allocated pensions and transition to retirement pensions will be deemed to meet the new requirements if they commenced prior to 1 July 2007 and should they meet the existing rules. Existing allocated pensions may be transferred to a "new account based pensions" product without being forced to commute.

57. Any pension or lump sum receipt to members over the age of 60 years will no longer have to be reported in the income tax return of a member.

## What is a Market Linked Pension?

58. A Market Linked Pension (“MLP”) is a complying pension as defined in the SIS Regulations, assets used to pay an MLP that earn income or capital gains are exempt from income tax, the main features of a MLP are:

- the pension payments are made from member capital account and can be paid as long there is a balance in the account;
- investment performance of the fund, fees and charges, withdrawals, will decide the closing balance of the pension account at the end of the financial year;
- there must be at least one minimum pension payment (unless the pension commenced on June of the financial year) in a financial year and can be any amount within a range which is determined at the commencement of the pension and then at the start of each financial year by dividing the new account balance of the pension fund by the prescribed factor in SIS Regulation Schedule 1A; an amount less than 10% or more than 10% can be withdrawn.
- the pension cannot be transferred to another person other than to a reversionary beneficiary on death;
- the pension can be reversionary to your spouse, child or other dependant and from 1 July 2007 cannot revert to a non-dependant;
- lump sums payable upon death and which are paid to your spouse, children under 18 and other dependants are tax free.
- the term of the pension should be determined at the commencement of the pension and can be the number of years over which the pension must be paid. This can either be the life expectancy of the pensioner or plus 5 years or 100 years or if the pension is reverting to the spouse, then if the spouse is younger then the pensioner, the life expectancy of the spouse or plus 5 years.

59. A transition to retirement pension can also be a MLP. You do not have to first retire to commence this pension. This pension can be paid if you have attained your preservation age (which is an age between 55 and 60 depending on your date of birth). This type of MLP is a non-commutable allocated pension and can be commuted only in certain limited circumstances.

While the non-commutable allocated pension cannot be commuted, you can roll back the pension into accumulation phase or recommence another non commutable MLP. Once you retire, become permanently incapacitated or attain age 65 (whichever occurs first), the commutation restrictions cease.

60. Upon commencement of a MLP, the member is required to complete a Tax File Number Declaration. The member will be issued with a yearly payment summary by the Trustee detailing the amount paid to the pensioner. The Trustee may withhold tax from the pension payment and remit it to the ATO. The pensioner must include the payment summary in his or her income tax return. The pension is to be included in the pensioner’s income tax return and 15% tax rebate applies up to the pension RBL limit of the purchase price of the pension.

61. Existing MLP and ML transition to retirement pension cannot be converted to the new “account based pension”. These pensions cannot be commuted unless to pay for a surcharge or to pay a benefit in case of spouse splitting under a family law court order. However, MLP can be commuted within the cooling off 6 months period.

62. Any pension or lump sum receipt to members over the age of 60 years after 1 July 2007 will no longer have to be reported in the income tax return of the member. The main difference between allocated pensions and market-linked pensions is its non-commutability and its relative inflexibility.

## What happens to my super in case of my death?

63. In the event of your death, the Trustee may pay the balance of your fund as a death benefit to your dependants, or else, pay to the persons that are named in your “death benefit: beneficiary nomination” included on your application for membership. This may be paid as a lump sum benefit out of your accumulation account of if you are on pension from your pension account. If there is no



nomination is in place, then the trustee must pay the benefit to the legal personal representative of the estate of the member.

64. If the Trustee has taken out a life insurance policy for you, your dependants or other persons may also be entitled to a lump sum death benefit under that policy. The Trustee will collect the proceeds of this policy before paying the death benefit as listed above.

65. Death benefits paid out of a super fund will remain concessionally taxed. All lump sum payments to a dependant (as defined in the *Income Tax Assessment Act 1936*) are tax free.

66. Lump sum payments to someone who is a non-dependant (as defined in the *Income Tax Assessment Act 1936*) but a dependant for SIS Act purposes will have the taxable component of the death benefits taxed at 15% plus the Medicare Levy.

67. In the event of death of a member who was on a pension, all reversionary pensions will be tax-free if the original beneficiary was 60 years or over. If the original beneficiary was less than 60, then if the reversionary beneficiary is 60 years or over, the pension will be tax free, however if the beneficiary is less than 60 years, the pension shall be taxed at his or her own marginal tax rate until he or she turns 60, when the pension becomes tax free.

68. In event of death of a member who was on a pension, reversionary pensions can only be paid to a dependant (as defined in the *Income Tax Assessment Act 1936*) of the original beneficiary. A non-dependant (as defined in the *Income Tax Assessment Act 1936*) cannot be paid a pension; they can only be paid a lump sum (provided they are still a SIS Act dependant).

69. You can give Trustee instructions, on how your death benefit needs to be paid. These instructions must be on "binding death nomination form". Any instructions on the non-binding death nomination form may be considered by the Trustee, but is not bound, by your instructions.

70. A binding death nomination form is valid for a period of three years from the date it is handed to the Trustee. To be effective it has to be renewed and witnessed by two adults who are not beneficiaries.

71. On death of the member, lump sum benefits of the member can be paid by the trustee to non-dependants in cash or in assets of the fund transferred to the non-dependant at market value.

## Information about risks associated with the fund

72. The significant risks which a member must consider before joining this fund, include the following:

- the Trustee may not invest the funds wisely, resulting in negative realised and unrealised gains;
- the fund may cease to be a complying superannuation fund either because of any action or inaction of the Trustees. For example, the fund can become a non-complying fund as the Trustees may not be in resident of Australia and / or breaches the SIS Act or the SIS Regulations;
- future government policies may remove the current tax treatment of all SMSF. This may adversely affect the future planning of prospective member;

- by mistake the Trustee may pay less than the minimum amount of pension, resulting in the fund to be a non-complying fund. Please note that there is no maximum amount that can be paid to a pensioner.
- as Trustee of the fund, you are responsible for maintaining the accounts, books and minutes and if are not a meticulous person, you may not be able to devote sufficient time to properly administer the fund;
- since a SMSF is an audited entity, if you are not a pedantic person, who would keep all the documents safely for a successful audit, the auditor may issue a qualifying report;
- you may not keep your trust deed up to date or conduct activities (such as trading in futures) which are not allowed by your trust deed or SIS Act, this will result in your SMSF being non-complying fund and lose all tax concessions.
- you may not be entitled to a government pension due to asset test - 50% exemption for complying income streams will be abolished from 20 September 2007. Pension payments shall be reduced by \$1.50 per fortnight for every \$1,000 in assets held by the pensioner.

As a Trustee you will be involved in day to day management of your SMSF, you should be in a better position to manage the above risks and protect your retirement benefits.

## Providing your Tax File Number to Trustees

73. AS per SIS Act, Trustees of this fund may request you to supply your tax file number to them. You are not obliged by law to provide your tax file number to them, however may pay higher tax if you do not supply your tax file number, in some cases, Trustees cannot accept contributions for you, if you have not supplied your tax file number.

Trustees need your Tax File Number to report concessional, non-concessional contributions and Employment termination received on your behalf to the regulator or when you are on pension to issue you a PAYG payment summary or In case of rolling over to another superannuation fund, your benefit has to be transferred with your tax file number. You must provide your tax file number to the Trustee or else you will pay higher tax on concessional and non-concessional contributions and employment termination payments or your benefits cannot be rolled out to another fund

## Super Funds can borrow - We strongly recommend specific legal advice

74. Sec 67A & 67B of SIS Act - new exemption on borrowing - instalment warrants. This subsection talks about a "borrowing structure" which has to be in place for an exempted borrowing as per section 67(1) of SIS Act. The borrowing structure should have the following characteristics;

- The money is used to purchase a new asset,
- The asset is held in trust so that the SMSF acquires a beneficial interest,
- The SMSF has a right to acquire ownership of the asset by making instalment payments, this must be a right and not an obligation,
- In case of default, the rights of the lender are limited against only the asset financed.

This type of borrowing is a synthetic product although this trust deed allows this type of borrowing, Trustees may require attention to their current investment strategy and risk management strategy which may need to be formulated and implemented.

These rules were amended on 7<sup>th</sup> July 2010 and as per the new rules:

- A member can lend to his SMSF on commercial terms - at any interest rate;
- A SMSF can purchase any asset including real estate. However, the same in-house rules apply as prior to new legislation, such as; you cannot sell residential property to your SMSF and no associates can live in a residential property owned by the SMSF etc.
- Members may give personal guarantee over assets owned by them - this will give additional security to the lender. This personal guarantee may erode the non-recourse nature of the loan and the regulator has issued a tax alert on this issue - however as long as other assets of the SMSF are protected from default, the loan arrangement should satisfy the SIS Act Section 67A & 67B conditions.

Members must remember that in any case - if rental / dividend income is not sufficient to meet interest costs, any shortfall has to be funded by other income of the super fund or by new contributions by the members. We recommend that members take financial advice before getting involved with instalment warrants transactions within a Self managed super fund.

## Contacting Trustee for additional information

75. If you need further information regarding the fund, this trust deed, the fund's performance or your member rights, please contact the Trustee on the address on the top page.

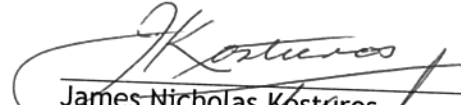


# Execution

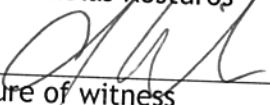
Executed as a deed.

Dated: 02/03/2016

Signed for and on behalf of  
Grecian Pty Ltd  
126370456  
As director of trustee company

  
\_\_\_\_\_  
James Nicholas Kosturos

in the presence of:

  
\_\_\_\_\_  
Signature of witness

TROY MOTSOSKI CPA  
\_\_\_\_\_  
Witnesses' name and title (please print)

