

# JANE BROOKS SUPERANNUATION FUND

## Trustees Declaration

JANE BROOKS SUPERANNUATION PTY LIMITED ACN: 164081163

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The directors of the trustee company have determined that the Fund is not a reporting entity and that these special purpose financial statements should be prepared in accordance with the accounting policies described in Note 1 to the financial statements.

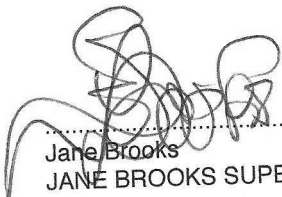
The directors of the trustee company declare that:

- (i) the financial statements and notes to the financial statements for the year ended 30 June 2019 present fairly, in all material respects, the financial position of the Superannuation Fund at 30 June 2019 and the results of its operations for the year ended on that date in accordance with the accounting policies described in Note 1 to the financial statements;
- (ii) the financial statements and notes to the financial statements have been prepared in accordance with the requirements of the trust deed; and
- (iii) the operation of the superannuation fund has been carried out in accordance with its trust deed and in compliance with the requirements of the Superannuation Industry (Supervision) Act 1993 and associated Regulations during the year ended 30 June 2019.

Specifically, the directors of the trustee company declare that:

- in accordance with s120 of the Superannuation Industry (Supervision) Act 1993, no individual trustee has been or is a disqualified person;
- the Fund has satisfactory title to all assets, all assets are unencumbered and free from charge as prescribed by s50 of the Superannuation Industry (Supervision) Act 1993 and reg13.14 of the Superannuation Industry (Supervision) Regulations 1994; and
- to the knowledge of the directors of the trustee company, there have been no events or transactions subsequent to the balance date which could have a material impact on the Fund. Where such events have occurred, the effect of such events has been accounted and noted in the Fund's financial statements.

Signed in accordance with a resolution of the directors of the trustee company by:



Jane Brooks  
JANE BROOKS SUPERANNUATION PTY LIMITED  
Director

19 December 2023

# JANE BROOKS SUPERANNUATION FUND

## Compilation Report

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We have compiled the accompanying special purpose financial statements of the JANE BROOKS SUPERANNUATION FUND which comprise the statement of financial position as at 30 June 2019, the operating statement for the year then ended, a summary of significant accounting policies and other explanatory notes. The specific purpose for which the special purpose financial statements have been prepared is set out in Note 1 to the financial statements.

### **The Responsibility of the Trustee(s)**

The Trustee(s) of JANE BROOKS SUPERANNUATION FUND are solely responsible for the information contained in the special purpose financial statements, the reliability, accuracy and completeness of the information and for the determination that the financial reporting framework used is appropriate to meet their needs and for the purpose that the financial statements were prepared.

### **Our Responsibility**

On the basis of information provided by the Trustee(s), we have compiled the accompanying special purpose financial statements in accordance with the financial reporting framework as described in Note 1 to the financial statements and APES 315: Compilation of Financial Information.

We have applied our expertise in accounting and financial reporting to compile these financial statements in accordance with the financial reporting framework described in Note 1 to the financial statements. We have complied with the relevant ethical requirements of APES 110: Code of Ethics for Professional Accountants.

### **Assurance Disclaimer**

Since a compilation engagement is not an assurance engagement, we are not required to verify the reliability, accuracy or completeness of the information provided to us by management to compile these financial statements. Accordingly, we do not express an audit opinion or a review conclusion on these financial statements.

The special purpose financial statements were compiled exclusively for the benefit of the directors of the trustee company who are responsible for the reliability, accuracy and completeness of the information used to compile them. We do not accept responsibility for the contents of the special purpose financial statements.

Corporation One Pty Ltd

of

Shop 14 458-470 High Street, Penrith, New South Wales 2750

Signed:

Dated: 19/12/2023

# Minutes of a meeting of the Director(s)

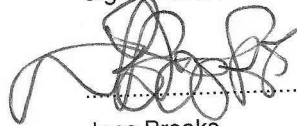
held on 19 December 2023 at 415 Killawarra Road, Duffys Forest, New South Wales 2084

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- PRESENT:** Jane Brooks
- MINUTES:** The Chair reported that the minutes of the previous meeting had been signed as a true record.
- INSURANCE COVER:** The trustee(s) reviewed the current life and total and permanent disability insurance coverage on offer to the members and resolved that the current insurance arrangements were appropriate for the Fund.
- CONTRIBUTIONS RECEIVED:** It was resolved that the contributions during the year be allocated to members on the basis of the schedule provided by the principal Fund employer.
- CLOSURE:** All resolutions for this meeting were made in accordance with the SISA and Regulations.

There being no further business the meeting then closed.

Signed as a true record –



Jane Brooks

Chairperson

19 December 2023

Tony Boys  
Super Audits PO Box 3376  
Rundle Mall, South Australia 5000

Dear Sir/Madam,

**Re: JANE BROOKS SUPERANNUATION FUND  
Trustee Representation Letter**

This representation letter is provided in connection with your audit of the financial report of the JANE BROOKS SUPERANNUATION FUND (the Fund) and the Fund's compliance with the Superannuation Industry (Supervision) Act 1993 (SISA) and SIS Regulations (SISR), for the year ended 30/06/2019, for the purpose of you expressing an opinion as to whether the financial report is, in all material respects, presented fairly in accordance with the accounting policies adopted by the Fund and the Fund complied, in all material respects, with the relevant requirements of SISA and SISR.

The Trustees have determined that the Fund is not a reporting entity for the year ended 30/06/2019 and that the requirement to apply Australian Accounting Standards and other mandatory reporting requirements do not apply to the Fund. Accordingly, the financial report prepared is a special purpose financial report which is for distribution to members of the Fund and to satisfy the requirements of the SISA and SISR. We acknowledge our responsibility for ensuring that the financial report is in accordance with the accounting policies as selected by ourselves and requirements of the SISA and SISR, and confirm that the financial report is free of material misstatements, including omissions.

We confirm, to the best of our knowledge and belief, the following representations are made to you during your audit.

**1. Sole Purpose Test**

The Fund is maintained for the sole purpose of providing benefits for each member on their retirement, death, termination of employment or ill-health.

**2. Trustees are not disqualified**

No disqualified person acts as a director of the trustee company/an individual trustee.

**3. Fund's Governing Rules, Trustees' Responsibilities and Fund Conduct**

The Fund meets the definition of a self-managed superannuation fund under SISA, including that no member is an employee of another member, unless they are relatives and no trustee/director of the corporate trustee receives any remuneration for any duties or services performed by the trustee/director in relation to the fund.

The Fund has been conducted in accordance with its governing rules at all times during the year and there were no amendments to the governing rules during the year, except as notified to you.

The Trustees have complied with all aspects of the trustee requirements of the SISA and SISR.

The Trustees are not subject to any contract or obligation which would prevent or hinder the Trustees in properly executing their functions and powers.

The Fund has been conducted in accordance with the SISA, the SISR and the governing rules of the Fund.

The Fund has complied with the requirements of the SISA and SISR specified in the approved form auditor's report as issued by the ATO, which are sections 17A, 35AE, 35B, 35C(2), 52B(2)(d), 52B(2)(e), 62, 65, 66, 67, 67A, 67B, 69-71E, 73-75, 80-85, 103, 104A, 105, 109 and 126K of the SISA and regulations 1.06(9A), 4.09, 4.09A, 5.03, 5.08, 6.17, 7.04, 8.02B, 13.12, 13.13, 13.14 and 13.18AA of the SISR.

All contributions accepted and benefits paid have been in accordance with the governing rules of the Fund and relevant provisions of the SISA and SISR.

There have been no communications from regulatory agencies concerning non-compliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial report *or we have disclosed to you all*

*known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing the financial report and the Auditor's/actuary contravention report.*

#### **4. Investment Strategy**

The investment strategy has been determined and reviewed with due regard to risk, including recoverability of investments, return, liquidity, diversity and the insurance needs of Fund members, and the assets of the Fund are in line with this strategy.

#### **5. Accounting Policies**

All the significant accounting policies of the Fund are adequately described in the Financial Report and the Notes attached thereto. These policies are consistent with the policies adopted last year.

#### **6. Fund Books and Records**

All transactions have been recorded in the accounting records and are reflected in the financial report. We have made available to you all financial records and related data, other information, explanations and assistance necessary for the conduct of the audit; and minutes of all meetings of the Trustees.

We acknowledge our responsibility for the design and implementation of internal controls to prevent and detect error and fraud. We have established and maintained an adequate internal control structure to facilitate the preparation of reliable financial reports, and adequate financial records have been maintained. There are no material transactions that have not been properly recorded in the accounting records underlying the financial report.

We have disclosed to you the results of our assessment of the risk that the financial report may be materially misstated as a result of fraud. We have disclosed to you all information in relation to fraud or suspected fraud that we are aware of and that affects the Fund and involves the Trustees or others.

In instances where the fund uses a custodian, we confirm we have not been advised of any fraud, non-compliance with laws and regulations or uncorrected misstatements that would affect the financial report of the fund.

Information retention obligations have been complied with, including:

- Accounting records and financial reports are being kept for five (5) years,
- Minutes and records of Trustees'/Directors of the corporate trustee meetings are being kept for ten (10) years;
- Records of Trustees'/Directors of the corporate trustees' changes and trustees' consents are being kept for at least ten (10) years;
- Copies of all member or beneficiary reports are being kept for ten (10) years; and
- Trustee declarations in the approved form have been signed and are being kept for each Trustee appointed after 30 June 2007.

#### **7. Fraud, error and non-compliance**

There have been no:

- a) Frauds, error or non-compliance with laws and regulations involving management or employees who have a significant role in the internal control structure that could have a material effect on the financial report.
- b) Communications from regulatory agencies concerning non-compliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial report.
- c) Violations or possible violations of laws or regulations whose effects should have been considered for disclosure in the financial report or as a basis for recording an expense.

#### **8. Asset Form and Valuation**

The assets of the Fund are being held in a form suitable for the benefit of the Members of the Fund, and are in accordance with our investment strategy.

Investments are carried in the books at their net market value. Such amounts are considered reasonable in light of present circumstances.

We have no plans or intentions that may materially affect the carrying values, or classification, of assets and liabilities.

We have assessed their recoverability and we are comfortable that the fund will be able, if needed, to realise these assets.

There are no commitments, fixed or contingent, for the purchase or sale of long term investments.

#### **9. Safeguarding Assets**

We have considered the importance of safeguarding the assets of the fund, and we confirm we have the following procedures in place to achieve this:

- Authorised signatories on bank and investment accounts are regularly reviewed and considered appropriate; and
- Tangible assets are, where appropriate, adequately insured and appropriately stored.

#### **10. Significant Assumptions**

We believe that significant assumptions used by us in making accounting estimates are reasonable.

#### **11. Uncorrected misstatements**

We believe the effects of those uncorrected financial report misstatements aggregated by the auditor during the audit are immaterial, both individually and in aggregate, to the financial report taken as a whole. If applicable, a summary of such items is attached.

#### **12. Ownership and Pledging of Assets**

The Fund has satisfactory title to all assets appearing in the Statement of Financial Position. All investments are registered in the name of the Fund, where possible, and are in the custody of the respective Trustee.

There are no liens or encumbrances on any assets or benefits and no assets, benefits or interests in the Fund have been pledged or assigned to secure liabilities of others.

All assets of the Fund are held separately from the assets of the members, employers and the Trustees. All assets are acquired, maintained and disposed of on an arm's length basis and appropriate action is taken to protect the assets of the Fund.

#### **13. Payment of benefits**

Benefits have been calculated and provided to members in accordance with the provisions of the Fund's governing rules and the relevant legislation.

The Trustee has revalued Member/s benefits to market value just prior to paying out a portion or all of a member's account balance.

#### **14. Related Parties**

We have disclosed to you the identity of the Fund's related parties and all related party transactions and relationships. Related party transactions and related amounts receivable have been properly recorded or disclosed in the financial report.

*[Delete this paragraph if not applicable]*

Acquisitions from, loans to, leasing of assets to and investments in related parties have not exceeded the in-house asset restrictions in the SISA at the time of investment, acquisition or at year end.

The Fund has not made any loans or provided financial assistance to members of the Fund or their relatives.

If the Fund owns residential property the members of the Fund or associates or other related parties do not lease, or use the property for personal use.

#### **15. Acquisitions from related parties**

No assets have been acquired by the Fund from members or associates or other related parties of the Fund other than those assets specifically exempted by Section 66 of SISA.

#### **16. Borrowings**

The Fund has not borrowed money or maintained any borrowings during the period, with the exception of borrowings which were allowable under SISA.

### **17. Subsequent Events**

No events or transactions have occurred since the date of the financial report, or are pending, which would have a significant adverse effect on the Fund's financial position at that date, or which are of such significance in relation to the Fund as to require mention in the notes to the Financial Statements in order to ensure they are not misleading as to the financial position of the Fund or its operations.

### **18. Outstanding Legal Action**

*[Delete this paragraph if not applicable]*

We confirm that you have been advised of all significant legal matters, and that all known actual or possible litigation and claims have been adequately accounted for, and been appropriately disclosed in the financial report.

There have been no communications from the ATO concerning a contravention of the SISA or SISR which has occurred, is occurring or is about to occur.

### **19. Going Concern**

We confirm we have no knowledge of any event or conditions that would cast significant doubt on the fund's ability to continue as a going concern.

### **20. Residency**

The Trustees declare that the Fund was a resident Australian superannuation fund at all times during the year of income.

### **21. Investment Returns**

Investment returns of the Fund have been allocated to members in a manner that is fair and reasonable.

### **22. Insurance**

Where the Fund has taken out a life insurance policy on behalf of a member, the Trustee confirms that the Fund is the beneficial owner.

The Trustee also confirms that the Fund has not purchased a policy over the life of a member, where the purchase is a condition and consequence of a buy-sell agreement the member has entered into with another individual.

### **23. Limiting powers of Trustees**

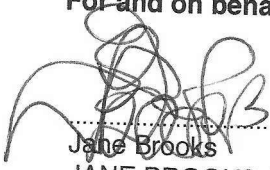
The Trustees have not entered into a contract or done anything else, that would prevent the Trustees from, or hinder the Trustees in, properly performing or exercising the Trustees' functions and powers.

### **24. Collectables and Personal Use Assets**

If the Trustees own collectables and/or personal use assets these assets are not being used for personal use.

We understand that your examination was made in accordance with Australian Auditing Standards and applicable Standards on Assurance Engagements and was, therefore, designed primarily for the purpose of expressing an opinion on the financial report of the Fund taken as a whole, and on the compliance of the Fund with specified requirements of SISA and SISR, and that your tests of the financial and compliance records and other auditing procedures were limited to those which you considered necessary for that purpose.

Yours sincerely,  
**For and on behalf of the Trustee(s)**



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Jane Brooks  
JANE BROOKS SUPERANNUATION PTY LIMITED  
Director  
19 December 2023



19/12/2023

To the trustee of the  
JANE BROOKS SUPERANNUATION FUND  
415 Killawarra Road,  
Duffys Forest  
New South Wales,2084

30 June 2019

Dear Trustees,

**RE: JANE BROOKS SUPERANNUATION FUND**

In concluding the audit of the above mentioned superannuation fund for the year ended 30 June 2019, we highlight the following matter for the attention of the trustees.

**OVERVIEW**

On the whole, we were satisfied that the fund complied with the sections and regulations as provided in the Superannuation Industry (Supervision) Act 1993 (SIS Act) and Superannuation Industry (Supervision) Regulations 1994 (SIS Regs).

We did not detect any instances of fraudulent conduct, or the existence of deficiencies during the course of the audit. We do however take this opportunity to highlight the following matter for the attention of the Trustees:

**GST CLAIMABLE PORTION**

Input tax credits are able to be claimed in relation to certain financial supplies. To provide a fairer system for all entities, a system of reduced input tax credits were introduced, so that larger financial institutions were not at a competitive pricing advantage compared to small financial institutions.

As a self managed superannuation fund is effectively a small financial institution, they are able to claim reduced input tax credits provided they register for GST. For a reduced input tax credit, the fund is permitted to claim 75% of the GST.

Whilst reviewing the BAS's prepared for the fund, we noted that in some instances, the full GST amount had been claimed on expenses, when only 75% of the GST was permitted to be claimed. The Trustee should ensure that they are familiar with which expenses the full GST is permitted to be claimed and which only 75% is permitted to be claimed.

*<Delete if not applicable>*

**TIMING OF CONTRIBUTIONS**

Furthermore, we highlight that given <Member Name> is over 65 years of age, prior to a contribution being made in a financial year, he must work 40 hours over a consecutive 30 day period. As a result, the trustee should give consideration to the timing of contributions to the fund in this context.

*<Delete if not applicable>*

**ARM'S LENGTH TRANSACTION**

Section 109 of the SIS Act, provides that the trustee of a superannuation fund must not enter into a transaction involving the investments of the fund, unless the trustee and the other party to the relevant transaction are dealing with each other at arm's length.

Arms length means that the transaction entered into is on normal commercial terms.

- During the course of our audit, it was noted that the rent received from the < Property Name> property (<Property Address>) appears low, only earning a yield of around <Rate of Return>%. Furthermore the loan to <Insert Borrower> is generating a <Interest Rate>% interest rate, which while arguably a little high, appears reasonable given the nature of the investment.

We highlight these matters for the trustees' consideration and request the trustees confirm the rent received on <Property Address> is fair market value.

- Rent on property owned by the <Related Unit Trust>

The Trustee of the Fund must deal with related parties of the fund as if they were independent and unrelated parties in that all transactions must be entered into and dealt with on normal commercial terms. This not only applies to transactions of the JANE BROOKS SUPERANNUATION FUND, but also transactions of the <Related Unit Trust> – because the JANE BROOKS SUPERANNUATION FUND holds units in the <Related Unit Trust>.

We note that rent received on the <Property Name>property only earned approximately \$<Amount Earned>, when the property is valued at around \$<Property Value>. This represents around a <Rate of Return>% income yield which is not reasonable for such a property in that location.

We request that the Trustee of the <Related Unit Trust> undertake a review of the trust's rental agreement and ensure that all rents are in line with rental amounts that are more reasonable for such a property.

<Delete if not applicable>

### **BANK ACCOUNTS AND INVESTMENT HOLDINGS TO BE IN THE NAME OF THE TRUSTEE**

The SIS Act also requires bank account to be in that name of the trustee. We have noted that the bank account is held under <Name on Bank account> as trustees for the fund. The bank account should be held in the name of <Insert Trustee names> as trustees of the fund. We request that the trustee to change the name of the bank account to the name of the trustees.

<Delete if not applicable>

### **TFN WITHHELD**

Upon completion of the accounts, we have found that Tax File Number withholding tax has been deducted from the Fund's holdings in <Insert relevant holding>. We suggest that you provide the Fund's Tax File Number to the relevant Share Registry as soon as possible.

<Delete if not applicable>

### **ORIGINAL DOCUMENTATION**

As auditors of your fund, we are required to sight original source documentation and also to ensure all investments are managed under normal commercial arrangements. As a result, for a superannuation fund that owns investment properties, we are required to sight the current lease agreements. Please provide copies of these lease agreements for <Property address> in order for us to finalise our audit.

<Delete if not applicable>

### **LEASE AGREEMENT AND TITLES FOR PROPERTIES**

- We require for our files copies of all lease agreements for all properties held by the <Bare Unit Trust>. In addition, the <Property address> property which was transferred into the JANE BROOKS SUPERANNUATION FUND requires an update to the lease to show <Insert Lessor Name> as the Trustee of the JANE BROOKS SUPERANNUATION FUND as the lessor of the property.

Please ensure copies of all lease agreements, including the updated lease for <Property Address> are provided for our audit files.

In addition, we require for our audit files copies of titles for all properties held by the <Bare Unit Trust>. Please arrange for these to be provided at your earliest convenience.

- Since undertaking the audit for the year ending 30 June 2019, we have obtained copies of rental agreements for the <Insert Number of Properties within the fund> property(ies). Accordingly, this qualification will be able to be removed from future audit reports of the Fund. The Trustee must ensure that rental agreements are maintained in this regard, and new agreements prepared and executed, should there be any amendments to the agreement. We advise the Trustee that we will continue to monitor this issue closely in the future.

<Delete if not applicable>

## **BINDING DEATH NOMINATION**

A review of the Trust deed of the JANE BROOKS SUPERANNUATION FUND has revealed that the members of the fund are not entitled to make a binding death benefit nomination. Rather, the Trustee has full discretion as to whom death benefits should be paid, despite the fact the member may have made a nomination.

A binding death benefit nomination compels the Trustee to pay a deceased member's superannuation entitlements according to the member's specific wishes.

<Delete if not applicable>

## **IN-HOUSE ASSETS**

Generally a SMSF is permitted to hold investments in almost any form, subject to a number of restrictions imposed on the nature and form of certain investments. The SIS Act discusses the concept of in-house assets and prescribes specific rules in relation to these types of investments by superannuation funds.

**Section 71** of the SIS Act provides:

"an in-house asset of a superannuation fund is an asset of the fund that is a loan to, or an investment in, a related party of the fund...".

As the Fund loaned money to you and you are a related party of the Fund (being a member and Trustee of the Fund), the Fund has contravened this provision of the SIS Act. The in-house assets are all encompassing, and by virtue of contravening section 71, further sections of the SIS Act are also contravened. As a result, the following sections have also been contravened:

- Section 82, in that the Fund's in-house assets must not exceed 5% of the market value of the fund's assets.
- Section 83, in that the Fund must not acquire an in-house asset that would result in the market value ratio of the in-house asset exceeding 5%.
- Section 84, in that the in-house asset provisions have not been complied with.

Furthermore, **section 65** of the SIS Act provides that a Trustee of the Fund must not lend money of the Fund to a member of the Fund or a relative of the member. As a result, in these circumstances, the Fund has also contravened this section of the SIS Act.

As a result of the above, we have qualified our audit opinion. As required under **section 82**, the Trustee is required to put into place a written plan to ensure that the in-house asset is reduced to an acceptable level. We request that the Trustee prepare a loan agreement and ensure the market value ratio of the in-house asset is reduced to less than 5%.

<Delete if not applicable>

## **MONEY AND ASSETS OF FUND MUST BE KEPT SEPARATE FROM ASSETS OF THE TRUSTEE**

Section 52B(2)(d) of the SIS Act provides that money and assets of the fund must be separated from money and assets of the trustee and members (in their personal names). This primarily serves to safeguard the assets of the fund, and ensures the fund is maintained in accordance with the law for the retirement of the members to ensure the assets, income and expenses of the fund are not confused with those of the individual members and Trustees. It is also important that income of the fund is received by the fund and not banked into other entities (and vice versa). The same applies to fund expenses – these should be paid by the fund – not by another entity and reimbursed at a later date.

- The superannuation fund has paid some expenses (such as electricity and insurance) related to the property at the <Insert Property Address>. This property was transferred out of the fund on <Insert Date>, and as the fund no longer owns the property during the 2015 financial year, the Trustees should ensure that the expenses incurred by the property during the year are not paid by the super fund. The SIS Act and the ATO require that the transactions of the fund are kept separate from the transactions of the individual members or other entities. The Trustee must ensure compliance with these requirements at all times. Therefore, the Trustee should evaluate whether the expenses paid after the property was disposed of were in relation to the period of ownership. If not, then the Fund should be reimbursed by the new owner for these costs incorrectly paid by the fund.

- During the course of our audit, we noted that the fund's bank account had been closed off and rental income received, had been deposited into the trustee's personal account.
- Also, it has been noted that dividends for <Insert Holdings> have not been banked into the Fund's bank account. Please arrange for the cheques representing these dividends to be banked as soon as possible.
- It was noted during the course of audit that rent for property belonging to the <Insert Unit Trust> had been banked directly into the fund's bank account. We advise the trustee that rent from the unit trust's property should be banked to the unit trust's bank account. We will be monitoring this in the 2019 audit.

<Delete if not applicable>

### **TRUSTEES MEETINGS AND MAINTENANCE OF MINUTES**

The SIS Act requires that trustees of superannuation funds, must prepare and retain minutes of their meetings for a minimum of 10 years (Section 103). The minutes of Trustee's meetings are vital in assessing whether the Trustee has discharged its obligations with respect to the SIS Act, the Trust Deed and also the members, through monitoring of investment performance and other key management functions. As the Fund's auditors, we must be satisfied this has occurred.

During the course of our audit, it was noted that minutes pertaining to the operations of the fund were not maintained. As a result, we have had to qualify for section 103 in our audit opinion.

We advise the trustee that we will continue to monitor this issue, and we look forward to reviewing the minutes of meetings of the Trustee during subsequent audits of the fund.

<Delete if not applicable>

### **INELIGIBLE CONTRIBUTIONS**

During the year ended 30 June 2019, you contributed \$<Contribution Amount> to the JANE BROOKS SUPERANNUATION FUND. As you are over 75 years of age, you are not permitted to make contributions to the fund, and accordingly, this amount is treated as an ineligible contribution.

According to <Insert Clause> of the JANE BROOKS SUPERANNUATION FUND trust deed if the Trustee ascertains that any contributions have been accepted in breach of the provisions of <Insert Clause>, the Trustee must refund such contributions within any time period which may be required by the relevant Law and reduce the benefits held for the member in the fund to those which would have been held if such contributions had not been received.

Accordingly, please arrange for the sum of \$<Contribution Amount> to be refunded to you before the year ending 30 June 2019.

<Delete if not applicable>

### **SUPERANNUATION FUNDS MUST NOT HAVE BORROWINGS IN THE FUND**

Section 67 of the SIS Act prohibits the superannuation fund to carry any borrowing in the fund. This primarily serves to safeguard the assets of the fund, should the situation arise where a bankruptcy occurs and liquidators are trying to reclaim any assets which can be used to extinguish debts.

During the course of our audit, we noted that the fund acquired some instalment warrants under a shareholder application arrangement with the <Insert Investment>. This type of investment constitutes a borrowing.

We have therefore qualified our audit opinion in this regard. We request that the trustee disposes off all the instalment warrants purchased. This should be done by 30 June 2019.

We highlight to the Trustee that we will monitor this issue in the 2019 and subsequent audits of the fund.

### **ACTION TO BE TAKEN WITH REGARDS TO THE QUALIFICATIONS**

In relation to the above mentioned audit qualification, we have qualified the compliance section of our audit opinion. In accordance with our requirements as auditors, we have prepared an Auditor Contravention Report for the year ending 30 June 2019. In this contravention report, we have included:

- which section of the SIS Act has been breached;
- the reasons for the breach;
- that the breach has been rectified or the action taken to rectify the breach; and
- that the Trustee has taken steps to ensure the breach does not occur again in the future.

We do request that the Trustee responds to our management letter in writing, so that we are able to obtain a level of comfort that the Trustee has been made aware of the qualifications of the SIS Act, and that they are endeavouring to ensure the breaches are rectified. We request that the Trustee respond in writing by no later than <Insert Date>.

### **IN-HOUSE ASSETS**

Generally a SMSF is permitted to hold investments in almost any form, subject to a number of restrictions imposed on the nature and form of certain investments. The SIS Act discusses the concept of in-house assets and prescribes specific rules in relation to these types of investments by superannuation funds.

Section 71 of the SIS Act provides:

*“an in-house asset of a superannuation fund is an asset of the fund that is a loan to, or an investment in, a related party of the fund...”*

The Fund did not receive the total amount of contributions paid by your employer. Given that you are a related party of the Fund (being a member of the Fund), the contributions amount that was not received could be perceived as a loan to you and therefore the Fund may have contravened this provision of the SIS Act.

The in-house assets are all encompassing, and by virtue of contravening section 71, further sections of the SIS Act are also contravened. As a result, the fund may be in breach of Section 84, in that the in-house asset provisions have not been complied with.

### **LEADING MONEY TO MEMBERS**

Section 65 of the SIS Act provides that a Trustee of the Fund must not lend money of the Fund to a member of the Fund or a relative of the member. As a result, in these circumstances, the Fund has also contravened this section of the SIS Act.

We have not qualified our audit opinion. We do request however that the Trustee responds to our management letter in writing, so that we are able to obtain a level of comfort that the Trustee has been made aware of the possible contraventions of the SIS Act, and that they are endeavouring to ensure the breaches are rectified. We request that the Trustee respond in writing by **no later than <Insert Date>**.

Yours sincerely

TonyBoys  
Partner

