

# Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.

- ! Read this declaration in conjunction with *Key messages for self-managed super fund trustees* at [ato.gov.au/smsfessentials](http://ato.gov.au/smsfessentials)



## Who should complete this declaration?

You must complete this declaration if you become a trustee or director of a corporate trustee (trustee) of:

- a new self-managed super fund (SMSF)
- an existing SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you:

- have been directed to do so by us
- are a legal personal representative who has been appointed as trustee on behalf of a:
  - member who is under a legal disability (usually a member under 18 years old)
  - member for whom you hold an enduring power of attorney
  - deceased member.

## Information you need to read

Make sure you read *Key messages for self-managed super fund trustees* at [ato.gov.au/smsfessentials](http://ato.gov.au/smsfessentials). It highlights some of the key points from the declaration and some important messages.

## Before completing this declaration

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

➤ If you have any difficulties completing this declaration or you do not fully understand the information it contains:

- speak to a professional adviser
- visit [ato.gov.au/smsf](http://ato.gov.au/smsf)
- phone us on **13 10 20**.

## When completing this declaration

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

## What should you do with the declaration?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

We recommend that you keep a copy of your completed declaration and refer to it and the information in *Key messages for self-managed super fund trustees* when making important decisions, such as those relating to choosing investments, accepting contributions and paying benefits.

⚠ Do not send your completed declaration to us.

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Published by

Australian Taxation Office  
Canberra  
August 2014

JS 32597



# Self-managed super fund trustee declaration

## I understand that as an individual trustee or director of the corporate trustee of

Fund name

B + A Williams Family Super Fund
----------------------------------

I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### Sole purpose

I understand it is my responsibility to ensure the fund is only maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

### Trustee duties

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- ensure that members only access their super benefits if they have met a legitimate condition of release
- refrain from entering into transactions that circumvent restrictions on the payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

### Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

**Administration**

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**


*By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:*

- I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.
- I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.
- I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.

Trustee's or director's name

Alice Walker

Trustee's or director's signature




Date

Day: 30 / Month: 06 / Year: 2015

Witness' name (witness must be 18 years old or over)

Simone de Medina

Witness' signature



Date

Day: 30 / Month: 06 / Year: 2015

# Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.

- 1 Read this declaration in conjunction with *Key messages for self-managed super fund trustees* at [ato.gov.au/smsfessentials](http://ato.gov.au/smsfessentials)



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- have been directed to do so by us
- are a legal personal representative who has been appointed as trustee on behalf of a:
  - member who is under a legal disability (usually a member under 18 years old)
  - member for whom you hold an enduring power of attorney
  - deceased member.

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We recommend that you keep a copy of your completed declaration and refer to it and the information in *Key messages for self-managed super fund trustees* when making important decisions, such as those relating to choosing investments, accepting contributions and paying benefits.

- ⚠ Do not send your completed declaration to us.

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# Self-managed super fund trustee declaration

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Fund name

B+A Williams Family Super Fund
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I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### Sole purpose

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- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- ensure that members only access their super benefits if they have met a legitimate condition of release
- refrain from entering into transactions that circumvent restrictions on the payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

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- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

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### Investment restrictions

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- lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
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I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**

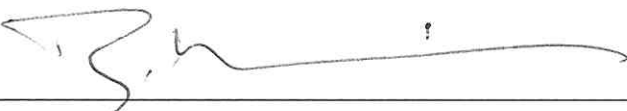
*By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:*

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

Benjamin Paul Williams

Trustee's or director's signature



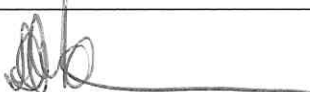
Date

Day: 30 / Month: 06 / Year: 2015

Witness' name (witness must be 18 years old or over)

Simone de Vecchia

Witness' signature



Date

Day: 30 / Month: 06 / Year: 2015



# **DOCUMENTATION SUMMARY AND PROCEDURE INFORMATION FOR THE B & A WILLIAMS FAMILY SUPER FUND (FUND)**

## **1. ESTABLISHMENT OF FUND**

In order to establish the Fund, we enclose the following documents:

### **1.1 (a) Application/s for Membership**

Each initial member must sign and date their Application for Membership form.

Trustees of superannuation funds are required to request a member, on joining the Fund, to provide details of his or her tax file number (TFN) within 30 days of the admission of the member.

Provision of the TFN is not mandatory; however, failure to provide the TFN could result in the member's benefit being taxed at the top marginal rate (currently 45%) plus the Medicare levy.

Further, trustees cannot accept personal contributions (from after-tax income) from members who have not provided their TFN.

In order to benefit from the concessional tax rates available to members of the Fund, each initial member should provide their TFN in the space provided in their Application for Membership.

### **(b) Notice of Compliance – Employer Contributions**

Each initial member has a Notice of Compliance – Employer Contributions form. This form should be signed and dated by the trustee and the member and forwarded by the member to their employer (if they wish for their employer to make superannuation contributions on their behalf to the Fund).

### **(c) Notice of Compliance – Rollover Request**

Each initial member has a Notice of Compliance – Rollover Request form. This form should be signed and dated by the trustee and the member and forwarded by the member to their existing Superannuation Fund(s) (if they wish for their existing Superannuation Fund to roll over their superannuation benefits to the Fund).

### **(d) Non-Binding Death Benefit Nomination Form**

Each initial member has a Non-Binding Death Benefit Nomination form that enables the member to declare his or her preference as to how their death benefits will be paid. Where a Non-Binding Death Benefit Nomination is given to the trustee, the trustee still retains an ultimate discretion as to how the death benefits of the member will be paid. However, the trustee will make its decision in the light of the express wishes of the member. This non-binding nomination allows the member to declare his or her preference.

### **1.2 Consent of Trustees to Act/Consent of Directors of Trustee Company**

Each trustee or director of a corporate trustee must consent in writing to their appointment. The consent includes a declaration that the trustee/director is not disqualified from so acting and also that they understand their obligations and responsibilities as a trustee/director of the trustee company. Each initial member must consent at the time of the execution of the original and duplicate trust deed and each later joining member must consent when making an application for membership.

The consent must be retained in the records of the Fund for a minimum period of 10 years.

**1.3 (a) Resolution of Trustee(s) in relation to Acceptance of Trusteeship and Other Procedural Matters**

This resolution records a number of procedural matters relating to the application for a Tax File Number and Australian Business Number (see section 1.4), establishment of a bank account in the name of the Fund, establishment of an investment strategy and (where the trustee is a company) records the trustee's acceptance of its position as trustee.

The resolution should be completed and executed by the relevant persons and held on the records of the Fund.

**(b) Resolution of Trustee(s) in relation to an Election to Become a Regulated Superannuation Fund**

The enclosed draft resolution should be executed to record the decision of the trustee to complete and lodge the notice of election form (see section 1.4) in order for the Fund to become a regulated superannuation fund. The Fund is established as a self managed superannuation fund supervised by the Australian Taxation Office (**ATO**).

**(c) Resolution of Trustee(s) - Notice to Members**

This resolution deals with the admission of the initial members of the Fund and the requirement to give the members the notices required under the SIS regulations (see section 1.6). The resolution should be completed by the relevant persons and held on the records of the Fund.

**1.4 Australian Tax Office Publications**

**Application for ABN Registration for Superannuation Entities**

The ATO has issued a combined form which is to be used to register the Fund for an ABN, GST and a tax file number and to elect under the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* for the Fund to be regulated.

**Timing Issues**

Under the SIS Act, the election must be made within 60 days of the establishment of the Fund. The Fund will generally be taken to have been established on the date the Deed of Establishment for the Fund was executed or on the date the money or another asset is first put into the fund if this is later.

Under the SIS Act, a fund cannot generally receive tax concessions for a year of income unless it becomes a regulated superannuation fund within 60 days of establishment. This means that the election to become a regulated superannuation fund must generally be made at the time of establishment i.e. it must be executed and lodged within 60 days of the execution of the trust deed for the Fund. If this is not done, then the Fund will not be eligible to receive taxation concessions in its first year of income.

There is another requirement under regulations 11.03 and 11.04 of the *Superannuation Industry (Supervision) Regulations 1994 (SIS regulations)* that the trustee of a superannuation fund must, within seven days after the establishment of the Fund, provide the ATO with the contact details and other basic information in relation to the Fund and the trustee.

The Application for ABN Registration for Superannuation Entities form (**ABN Application Form**) enables the trustee to provide the information required by the SIS regulations. In order to minimise the administrative tasks in relation to

the establishment of the Fund and to ensure that both sets of requirements are met, the trustee should complete the ABN Application Form within seven days of the establishment of the Fund.

The resolutions have been prepared on the basis that this will occur.

Further instructions regarding the completion and lodgement of this form are included in its accompanying notes and instructions.

A copy of the completed form should be retained on the Fund records.

### **Trustee Declaration and Key Messages for Trustees**

The ATO has issued a standard declaration which all new trustees (and directors of corporate trustees) of a self managed superannuation fund must sign within 21 days of when the trust deed is executed. By signing the declaration, a new trustee (or director of a corporate trustee) states that they understand their duties as a trustee (or director of a corporate trustee). The ATO advises that its fact sheet, "Self managed super fund – Key messages for trustees (NAT 71128)" (**Fact Sheet**) should be read together with the declaration.

The declaration must be witnessed by a person over 18 years of age.

The declaration and Fact Sheet should not be sent to the ATO, but retained by the trustee for its records.

### **Choice of Fund**

Choice of Fund allows employees to choose the superannuation fund or retirement savings account to which their employer will make future superannuation guarantee contributions. If a member elects to have their superannuation contributions paid into the Fund, they must provide the following documents to their employer:

- (i) The ATO "Choice of superannuation fund - Standard choice form".
- (ii) A Notice of Compliance – Employer Contributions form from the trustee
- (iii) A Statement from the Australian Taxation Office that the fund is a regulated superannuation fund. The trustee will automatically receive this notice from the Australian Taxation Office after lodgement of the Fund's first income tax return.

Should the trustee require a copy of the notice to enable the employee to choose the Fund before the income tax return is lodged, the notice can be obtained earlier by making a written request to the Australian Taxation Office at PO Box 277, World Trade Centre Vic 8005, or by faxing the "Australian Taxation Office Superannuation Business Line" on (02) 6058 7104. Lost or misplaced copies can be obtained in the same way.

## **1.5 Member and Trustee Register**

We have included a register of members and a register of trustees listing the initial members and trustees of the Fund. You will need to complete the details of the date members and trustees join the Fund, and the date they cease to be a member / trustee.

## **1.6 Product Disclosure Statement**

Part 7.9 of the Corporations Act 2001 (**Corporations Act**) requires certain information to be given to new members of regulated superannuation funds as a product disclosure statement. However, different requirements apply depending on whether the fund in question is a self managed superannuation fund and the types of members of the fund.

The Fund established upon execution of the Deed of Establishment has been structured to be a self managed superannuation fund.

Trustees of such funds are required to comply with a general requirement only in relation to a product disclosure statement i.e. **all information** that the trustee believes a member would reasonably need as a retail client in considering whether to become a member. The extent of the information to be given to new members of a self managed superannuation fund is therefore a matter for the trustee for the Fund to determine.

However, while there will generally be no need to provide the product disclosure statement to members who are also trustees or directors of the trustee company, it may be necessary for a product disclosure statement to be given in relation to members who may not also be trustees or directors, i.e. child members or those members whose legal personal representative takes their place as a trustee or director.

The enclosed product disclosure statement, in our view, satisfies the requirements of Part 7.9 of the Corporations Act as they may apply to any of the potential types of member in a self managed superannuation fund. The statement should be completed and given to each initial member and any later joining member and copies should be kept with the records of the Fund.

### **Timing**

Product disclosure statements are required to be given before or, where Part 7.9 of the Corporations Act permits, as soon as practicable and no later than three months after a person becomes a member of the Fund.

## **2 DEED OF ESTABLISHMENT**

### **(a) Execution**

The Deed of Establishment must be executed by the trustee/s where indicated and attached to a copy of the *SMSF Governing Rules Version 15.01*.

Schedule A of the Deed of Establishment must also be completed at the time of its execution.

Schedule B of the *SMSF Governing Rules Version 15.01* should not be completed, as this provides an indicative form of application for membership to be used for persons seeking to become members of the Fund, and Applications for Membership in respect of the initial members are provided for at Document 1.1(a).

### **(b) Duty**

Following the execution of the Deed of Establishment, it may be necessary to arrange for payment of stamp duty or for the Deed of Establishment and the *SMSF Governing Rules Version 15.01* to be denoted as not being dutiable.

The Deed of Establishment and Governing Rules may be required to be stamped in two or more States, depending on a number of factors such as the place of execution of the Deed of Establishment and the location of the place of administration and the assets of the Fund. You should confirm with each relevant State Revenue Office whether or not the Deed of Establishment and Governing Rules are dutiable, and whether or not it should be submitted so as to be denoted as not being dutiable, as the requirements of the Offices vary.

Once executed, Deed of Establishment and Governing Rules must be retained in a safe place.



### **3. BINDING AND NON BINDING DEATH BENEFIT NOMINATION**

The governing rules for the Fund permit the members of the Fund to complete a Reversionary Pension Nomination (**RPN**), a Binding Death Benefit Nomination (**BDBN**), a Death Benefit Rule (**DBR**), a Non-Binding Death Benefit Nomination (**NBDBN**) and / or to appoint a Death Benefit Guardian (**DBG**) in relation to the distribution of their death benefits from the Fund.

We recommend that you speak to a suitably qualified legal practitioner in regards to completing a BDBN or DBR or to appoint a DBG.

Set out below is a summary of the operation of the governing rules with respect to the ability of a member to nominate the recipients of a death benefit.

#### **Operation of the Governing Rules**

Rule 34 of the governing rules deals generally with the payment of benefits on the death of a member.

Rule 34 provides that a member or beneficiary may give the trustee a BDBN (rule 34.1), DBR (rule 34.3) or a NBDBN (rule 34.5). In addition, rule 37 provides that a member may nominate a DBG in relation to the distribution of their death benefits from the Fund and rule 38.3 provides for RPNs.

#### **Reversionary Pension Nomination**

Where a RPN is given to the trustee, the trustee is bound to give effect to the RPN and continue to pay the pension or pensions to the nominated recipient or recipients (unless this cannot be done under the Relevant Law).

#### **Binding Death Benefit Nominations**

Where a BDBN is given to the trustee, the trustee is bound to give effect to the BDBN (unless this cannot be done under the Relevant Law). A RPN will take priority over a BDBN in the instance of conflicting directions provided in the respective nominations.

Members should note that neither a RPN nor a BDBN permits them to require the trustee to pay any part of their death benefit payment to a person who is not their dependant or (BDBN only) their legal personal representative. Additional limitations apply to dependants who are able to receive a death benefit in the form of a pension. Members should consult the trustee for further details with respect to taking up the option of a RPN or a BDBN.

RPNs and BDBNs do not need to be updated at any particular interval in order to remain binding on the trustee. Rule 34.6 makes it clear that a BDBN will not lapse by reason only of the passage of time. However, because members' circumstances change, we suggest that each Fund member be provided with an opportunity at least annually to confirm, revoke or amend the BDBN.

#### **Death Benefit Guardian**

Members have the option to appoint a Guardian, including a DBG, that prevents the trustee from exercising certain powers, rights, decisions, discretions, appointments and other authorisations without the prior consent in writing of the Guardian.

If appointed, a DBG's consent would be required by the trustee prior to making death benefit payments where a reversionary pension, valid BDBN or DBR are not in place. This can protect the deceased member's benefits.

#### **Non-Binding Death Benefit Nominations**

Where a NBDBN is given to the trustee, the trustee still retains an ultimate discretion as to how the death benefits of the member are to be paid. However, the trustee

should make its decision in the light of the express wishes of the member. This non-binding nomination allows the member to declare his or her preference. If this form of nomination was desired, a member would complete a notice in the form of Schedule B of the governing rules for the Fund.

### **Timing Issues**

A nomination in either a binding or non-binding form need not be completed immediately or at all. It may be given by a member at any time, and either nomination can be changed at any time if circumstances change.

If a member dies without giving either nomination, the trustee can use its own discretion to distribute the death benefits between dependants and the legal personal representative.

## **4. OTHER RELEVANT ISSUES**

### **4.1 Preserved Benefits**

The preservation rules determine the age at which benefits may be accessed by a member from the Fund and what type of benefits may be accessed prior to that age.

#### **(a) Preservation Age**

The Government requires preservation of certain benefits until a member retires from the workforce after attaining the preservation age or in such earlier circumstances as are acceptable to the ATO i.e. the total and permanent disablement of the member, terminal illness or other approved early release.

The preservation age for a member of a superannuation fund is between 55 and 60 years, based on the member's date of birth.

For all people born before 1 July 1960, the preservation age is 55 but for someone born after 30 June 1964, the preservation age is age 60.

The phase-in schedule is set out below:

<b>Date of Birth</b>	<b>Preservation Age</b>
After 30/06/64	60
After 30/06/63 and before 01/07/64	59
After 30/06/62 and before 01/07/63	58
After 30/06/61 and before 01/07/62	57
After 30/06/60 and before 01/07/61	56
Before 01/07/60	55

#### **(b) Types of Benefits to be Preserved**

In general, all benefits in a superannuation fund are required to be preserved until the member's preservation age except:



- (i) the amount of the member's benefits in the Fund which were not required to be preserved as at 30 June 1999 (this amount is not subject to indexation); and
- (ii) a member's non-preserved benefits in another fund and which are transferred into the Fund.

The amounts in paragraphs 3.1(b)(i) and (ii) may be accessed by a member upon satisfaction of conditions relevant to those amounts.

**(c) Payment of Preserved Benefits**

The governing rules allows for the payment of preserved amounts in all of the circumstances allowed under the Relevant Law. The governing rules also permit the payment of benefits rendered non-preserved by operation of the Relevant Law to be withdrawn by a member.

#### **4.2 Trustee Structure**

As noted, the governing rules for the Fund are structured to meet the requirements for a self managed superannuation fund. These include that (subject to some exceptions) each member of the Fund must either be an individual trustee or a director of a company which is the trustee for the Fund.

When signing the application for membership, each member confirms that they consent to acting as a trustee or a director of the trustee.

#### **4.3 Qualification to Act as Trustee/Director of a Trustee Company**

Once the trustee has made an irrevocable election as described in section 1.4, the Fund becomes a regulated superannuation fund. A consequence of this is that a person may be liable for a penalty of a maximum of two years' imprisonment for acting as a trustee of a regulated superannuation fund while disqualified under the SIS Act. In a self managed superannuation fund, all members must be a trustee or a director of the trustee company. The disqualified person requirements are therefore central to the continuing operation of the Fund as a self managed superannuation fund.

Generally, the SIS Act provides that the following persons are disqualified from acting as a trustee:

- (a) persons who have prior convictions involving dishonest conduct, wherever or whenever such conviction may have occurred;
- (b) persons who are insolvent and who have entered into arrangements with their creditors, or who are bankrupt;
- (c) persons in respect of whom a civil penalty order under the SIS Act has been made;
- (d) persons expressly declared not to be a 'fit and proper' person under section 120A(3) of the SIS Act;
- (e) a company of which a director, secretary or executive officer is disqualified under paragraphs 3.3(a), (b), (c) or (d);
- (f) a company in receivership, official management or liquidation.

#### **4.4 Income Streams**

Any member of the Fund or beneficiary who is entitled to a lump sum benefit may apply to the trustee to receive the whole or part of their benefit by way of a superannuation income stream.

The superannuation income stream can be provided by payment of an account-based pension or by the trustee's purchase of an annuity outside the fund for the

member. Provision is also included for a transition to retirement income stream to be paid, where the member so requests and has reached their preservation age.

The governing rules for the Fund include provisions for other types of pensions to be paid if allowed by the Regulator and by the Relevant Law, to allow flexibility should other pension types become allowed in due course.

Detailed rules apply to the provision of benefits as pensions. Such rules should be discussed with the trustee prior to a member or beneficiary exercising this option.

## Opening a Bank Account

It is the responsibility of the trustee/s of the Superannuation Fund to open a suitable bank account for the Fund, in the name of the trustee/s.

The name of the account should identify the name of the trustee/s, as well as the name of the Superannuation Fund. For example, if the trustee/s established a Superannuation Fund named the 'Smith Family Superannuation Fund' and the trustee company was 'Jim Jones Pty Ltd', the bank account should be in the name of:

JIM JONES PTY LTD AS TRUSTEE FOR THE SMITH FAMILY SUPERANNUATION FUND

All transactions relating to the administration of the Superannuation Fund should be processed from the Superannuation Fund's bank account, including all investments and payments made on behalf of the Fund, and all monies being transferred into the Fund.

As a general rule, the following documentation is required to open a bank account for the Superannuation Fund:

- √ A signed and dated copy of the Deed of Establishment and Governing Rules;
- √ Proof of Identification\* for each Individual trustee that will be a signatory on the account or;
- √ Proof of Identification\* for each director of the corporate trustee that will be a signatory on the account.
- √ Certificate of incorporation of the company (if a corporate trustee).

\*Proof of Identification generally consists of a 100 point Identification Check. To determine the documents required to meet 100 points of Identification, or to see if your chosen Institution requires additional information to open an account, you should contact the Institution you will be opening the account with.

Determining the Institution, and account type, for the Superannuation Fund's bank account is a decision best made in conjunction with your accountant or licensed financial advisor.

## Stamping your Documents

### Stamping your documents

The following information should be used as a guide only. As stamp duty requirements change over time, you should contact your local revenue office at the time of the establishment of your super fund to confirm your stamp duty obligations and the required documentation to be lodged, or seek advice from an appropriately qualified person in this area of law.

All Australian states except Queensland, Victoria, New South Wales, Western Australia and the Australian Capital Territory require trustees of newly established SMSFs to have their establishment documentation stamped by their local revenue office.

Residents of the Northern Territory, South Australia, and Tasmania are required to have their Deed of Establishment and Governing Rules stamped by the relevant state revenue office. Details of these state revenue offices, as well as the applicable duty payable for the stamping of the Fund's Deed of Establishment and Governing Rules are as follows:

#### **Northern Territory:**

Territory Revenue Office  
Level 4, Cavenagh House  
38 Cavenagh Street  
Darwin Northern Territory  
**Duty Payable - \$20.00**

#### **Tasmania**

Department of Treasury and Finance  
4<sup>th</sup> Floor, 80 Elizabeth Street  
Hobart Tasmania  
**Duty payable - \$50.00**

#### **South Australia**

Ground Floor  
State Administration Centre  
200 Victoria Square  
Adelaide, South Australia  
**Duty Payable \$0.00<sup>1</sup>**

### **Procedure to Stamp your Deed**

You can organise the stamping of your Deed of Establishment and Governing Rules in two ways. If you would like to have the Deed of Establishment and Governing Rules stamped in person, take an executed and dated original copy of the Deed of Establishment and Governing Rules to your local state revenue office as listed above.

Alternatively you may wish to post an executed and dated original copy of the Deed of Establishment and Governing Rules to your local revenue office. If this is your preferred option, please attach the covering letter supplied in your establishment package, and a cheque for the amount of duty payable, to your executed and dated Deed of Establishment and Governing Rules and post them to the address noted on the covering letter.

Please note, in addition to the above, the Northern Territory and South Australia revenue offices require you to complete a stamp duty lodgment form. These forms are available for download at the following addresses:

#### **Northern Territory Stamp Duty lodgment form:**

<http://www.nt.gov.au/ntt/revenue/pdf/F-SD-001.pdf>

#### **South Australia stamp duty lodgment form**

[https://www.revenuesa.sa.gov.au/data/assets/file/0004/6790/SD\\_Opin\\_1014.pdf](https://www.revenuesa.sa.gov.au/data/assets/file/0004/6790/SD_Opin_1014.pdf)

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<sup>1</sup> Revenue SA advises that the Trust Deeds of SMSFs established in South Australia are exempt from duty and are not required to be stamped by Revenue SA. Revenue SA does advise that should you wish to have the Super Fund Trust Deed stamped, you can, and you will not be charged to do so.