

## INFORMATION MEMORANDUM

### BINDING DEATH BENEFIT NOMINATIONS

A Member of a superannuation fund is allowed to make a binding death benefit nomination under section 59(1A) of the Superannuation Industry (Supervision) Act 1993 (Cth) ("SIS Act") and regulation 6.17A of the Superannuation Industry (Supervision) Regulations 1994 (Cth) ("SIS Regulations").

In respect of a self managed superannuation fund ('SMSF'), there is a view that regulation 6.17A of the SIS Regulations does not apply and the ability to make a binding death benefit nomination is solely dependant on the terms of the SMSF trust deed.

A binding death benefit nomination is necessary to override the usual discretion which a Trustee of a superannuation fund has in relation to the distribution of any death benefits which may become payable on the death of a Member.

If no binding death benefit nomination is in force at the time when a Member dies, then the Trustee of the superannuation fund has an absolute discretion to decide who to pay the death benefit to.

The steps to making a binding death benefit nomination are as follows:

- a) The rules of the Fund must allow for the making of a binding death benefit nomination. Rule 13.6 of our standard rules allow for the making of such a nomination.
- b) The Trustee must provide a Member with a Statement of Information which informs a Member of their right to make a binding death benefit nomination and enclose with that statement a written binding death benefit nomination notice.

A pro forma Statement of Information has been enclosed as "**Appendix A**".

A pro forma Binding Death Benefit Nomination notice has been enclosed as "**Appendix B**".

- c) A Member can only make an effective binding death benefit nomination if the following conditions are met:
  - (i) A Member can only nominate their "legal representative" or a "dependant" of the Member (section 59(1A) of the SIS Act).

A "legal personal representative" is defined in section 10 of the SIS Act to mean:

- the executor of the will or administrator of the estate of a deceased Member; or
- the Trustee of the estate of a Member under a legal disability; or
- a person who holds an enduring power of attorney granted by the Member.

A "dependant" is defined in section 10 of the SIS Act to mean:

- a Member's spouse; or
- any child of the Member; or

- anyone who is dependent on the Member in the ordinary sense of the word "dependent".
- Any person with whom the member has an interdependency relationship being a relationship where 2 persons (whether or not related by family) have a close personal relationship, live together, one or each of them provides the other with financial support, one or each of them provides the other with domestic support and personal care.

It is noted that the nomination of a Member's personal legal representative may be more tax effective than an outright nomination of a dependant. This is because the personal legal representative can choose the proportions in which a Member's surviving dependants can receive the death benefit.

- (ii) A Member's signature on a binding death benefit nomination must be witnessed by 2 persons who must be over 18 years and who must NOT be nominated as a beneficiary in the nomination record (sub-regulations 6.17A(4) and 6.17A(6) of the SIS Regulations) or a spouse of a beneficiary.
  - d) A binding death benefit nomination takes effect from the date that the notice was signed.
  - e) Where the Trustee of a superannuation fund receives a binding death benefit nomination which is not sufficiently clear to allow the Trustee to know to whom and in what proportions to pay the death benefit, then the Trustee must seek from that Member a written statement to clarify the nomination as soon as practicable after the Trustee receives the Binding Death Benefit Nomination notice (regulation 6.17B of the SIS Regulations).
- A pro forma Letter Seeking Written Clarification from a Member is enclosed as "**Appendix C**".
- f) A superannuation fund which has received a binding death benefit nomination, must under Regulation 7.9.78 of the Corporations Regulations provide in its regular Member Information Reports a statement calling to that Member's attention the following matters:
    - (i) that a binding death benefit nomination is in force; and
    - (ii) the persons or classes of persons mentioned in the binding death benefit nomination; and
    - (iii) the proportions of the Member's death benefit which these persons or classes of persons will receive or how these proportions will be determined; and
    - (iv) that in the event of the Member's death, the Trustee will pay the Member's death benefit to the persons or classes of persons mentioned in the death benefit nomination according to the proportions indicated in that nomination; and
    - (v) that the Member may confirm, amend or revoke the notice in accordance with the SIS regulations; and
    - (vi) the date when the binding death benefit nomination ceases to have effect.

A pro forma Member Information Statement on a Member's binding death benefit nomination has been enclosed as "**Appendix D**".

At the same time as the Trustee provides the Member Information Statement, the Trustee is required to give the Member forms which allow the Member to confirm, revoke the binding death benefit nomination or make a fresh nomination, in accordance with the SIS Regulations (Regulation 7.9.78 of the Corporations Regulations). (Appendices E, F & B respectively).

- g) A binding death benefit nomination made under the SIS Regulations only lasts for 3 years from the date when it was first signed, or from the date it was last confirmed in writing by the Member, or for a shorter period as fixed by the Fund's governing rules (sub-regulation 6.17A(7) of the SIS Regulations).

However, in the case of a SMSF, our rules permit the nomination to last until revoked. Accordingly, there is no need for a SMSF using our rules adopted after 18 November 2008 to provide a confirmation notice every 3 years.

A binding death benefit nomination can be renewed by the Member providing the Trustee with a signed and dated confirmation notice (sub-regulation 6.17A(5)(a) of the SIS Regulations).

There are no witness requirements related to the signing of a confirmation notice.

A confirmation notice takes effect from the date when the notice is signed.

- h) A Member can revoke a binding death benefit nomination at any time, by providing the Trustee with a revocation notice, or in the case of a SMSF using our rules adopted after 18 November 2008, giving a new binding death benefit nomination to the trustee of the SMSF.

Where the fund is not a SMSF, a Member's signature on a revocation notice must be witnessed by two witnesses who are over 18 years and who are NOT nominated as beneficiaries (sub-regulation 6.17A(5)(b) of the SIS Regulations).

A revocation notice takes effect from the date when the notice was signed.

A sample revocation notice has been enclosed as "**Appendix E**".

## APPENDIX A

### STATEMENT OF INFORMATION CONCERNING BINDING DEATH BENEFIT NOMINATIONS

This is a notice from the Trustee informing Members of their right to make a binding death benefit nomination under the rules of the Fund.

There is a statutory regime under section 59(1A) of the Superannuation Industry (Supervision) Act 1993 (Cth) ("SIS Act") and regulation 6.17A of the Superannuation Industry (Supervision) Regulations 1994 (Cth) ("SIS Regulations") for the making of a binding death benefit nomination, however the view is that the statutory regime does not apply to a self managed superannuation fund ('SMSF'). The rules of the Fund comply very closely to the statutory regime.

#### 1. Why is a Binding Death Benefit Nomination Necessary?

A binding death benefit nomination is necessary to override the usual discretion which a Trustee of a superannuation fund has in relation to the distribution of any death benefits which may become payable for a Member upon their death.

If no binding death benefit nomination is in force at the time when a Member dies, then the Trustee of the superannuation fund must pay the benefits in accordance with the governing rules of the Fund and the SIS Act. This usually results in the Trustee having absolute discretion to decide who to pay the death benefit to.

A Member need not make a binding death benefit nomination if they do not wish to.

A Member can also choose to make a non-binding death benefit nomination if they wish. A non-binding death benefit nomination would be a nomination that does not meet the formal requirements of rule 13.6 of the trust deed of the Fund.

The Trustee of the Fund would usually take a non-binding death benefit nomination into account when exercising its discretion in determining who will receive the death benefit.

#### 2. How do I make a Binding Death Benefit Nomination?

A Member of this Fund can make a binding death benefit nomination by completing the attached binding death benefit nomination notice in accordance with the Fund rules.

In order to comply with the Fund Rules and the SIS Act and the SIS Regulations a Member should note the following points:

- a) The persons who can be nominated as a beneficiary of a death benefit is restricted to the "legal personal representative" of a Member or a "dependant" of a Member (section 59(1A) of the SIS Act).

A "legal personal representative" is defined in section 10 of the SIS Act to mean:

- the executor of the will or administrator of the estate of a deceased Member; or
- the Trustee of the estate of a Member under a legal disability; or

- a person who holds an enduring power of attorney granted by the Member.

A "dependant" is defined in section 10 of the SIS Act to mean:

- a Member's spouse; or
  - any child of the Member; or
  - anyone who is dependent on the Member in the ordinary sense of the word "dependent".
  - Any person with whom the member has an interdependency relationship being a relationship where 2 persons (whether or not related by family) have a close personal relationship, live together, one or each of them provides the other with financial support, one or each of them provides the other with domestic support and personal care.
- b) A Member's signature on a binding death benefit nomination must be witnessed by 2 persons who must be over 18 years and who must NOT be nominated as a beneficiary in the nomination notice (sub-regulations 6.17A(4) and 6.17A(6) of the SIS Regulations) or be a spouse of such beneficiary.

A binding death benefit nomination takes effect from the date that the notice is signed.

### **3. How long does my Binding Death Benefit Nomination Last?**

A Member's binding death benefit nomination lasts until it is revoked or replaced with a new binding death benefit nomination.

### **4. How do I Revoke my Binding Death Benefit Nomination?**

A Member can revoke a binding death benefit nomination at any time by sending the Trustee of this Fund a revocation notice (sub-regulation 6.17A(5)(b) of the SIS Regulations).

The revocation notice should be witnessed by 2 persons who are over 18 years and who must NOT be persons mentioned in the notice (sub-regulations 6.17A(5) and 6.17A(6) of the SIS Regulations).

A pro forma revocation notice is attached. (Appendix E)

### **5. Information which the Trustee must provide to me if I do make a Binding Death Benefit Nomination**

If a Member chooses to make a binding death benefit nomination, the Trustee of this Fund is required under regulation 7.9.78 of the Corporations Regulations, to provide the Member with a yearly statement calling to that Member's attention the following matters:

- (a) that a binding death benefit nomination is in force; and
- (b) the persons or classes of persons mentioned in the binding death benefit nomination; and
- (c) the proportions of the Member's death benefit which these persons or classes of persons will receive or how these proportions will be determined; and

- (d) that in the event of the Member's death, the Trustee will pay the Member's death benefit to the persons or classes of persons mentioned in the death benefit nomination according to the proportions indicated in that nomination; and
- (e) that the Member may confirm, amend or revoke the notice in accordance with the SIS regulations; and
- (f) the date when the binding death benefit nomination ceases to have effect.

This statement must be provided with the current member information reports which the Trustee provides you.

At the same time as the Trustee provides a Member with this statement, the Trustee is required to provide the Member with revocation and nomination notices (Appendices E & B respectively) which allow the Member to revoke or make a fresh binding death benefit nomination (sub-regulation 7.9.78 of the Corporations Regulations).

## APPENDIX B

### BINDING DEATH BENEFIT NOMINATION

To: The Trustee of RAY JOHNSON SCRAP SUPERFUND

Name of Member:

Address:

I, \_\_\_\_\_, being a Member of RAY JOHNSON SCRAP SUPERFUND, hereby revoke all previous binding death benefit nominations made by me.

I nominate the following person(s) to be my Nominated Beneficiaries and to receive any death benefit which may become payable in respect of me from the Fund in the following proportions:

<b>Full Name of Dependant*</b>	<b>Address</b>	<b>Relationship to Member</b>	<b>Proportion of Benefit</b>
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In the event of any of the above Nominated Beneficiaries pre-deceasing me I nominate the following person(s) to substitute for the deceased Nominated Beneficiaries and to receive any proportion of the death benefit payable in respect of me, which the deceased Nominated Beneficiaries would have received in the following proportions:

<b>Full Name of Dependant*</b>	<b>Address</b>	<b>Relationship to Member</b>	<b>Proportion of Deceased Nominated Beneficiaries' Benefit</b>
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\*\* If you wish to nominate your legal personal representative as trustee for your estate, write "My legal personal representative as trustee for my estate" in the first column and leave the rest of the columns blank.

**SIGNED** by the Member as and for his )  
binding death benefit nomination in the )  
presence of us both being present at the same )  
time who at his request in his presence and in )  
the presence of each other have hereunto )  
subscribed our names as witnesses. )  
)

Address of Witness



**APPENDIX C**  
**RAY JOHNSON SCRAP SUPERFUND**

[DATE]

[NAME & ADDRESS OF MEMBER]

Dear

**CLARIFICATION OF BINDING DEATH BENEFIT NOMINATION**

I refer to your binding death benefit nomination notice dated .

The following matters were unclear in your binding death benefit nomination notice:

1. *[E.g.: the method of calculating the proportion of death benefit which each nominated beneficiary will receive is unclear.]*
- 2.
- 3.

Pursuant to regulation 6.17B of the Superannuation Industry (Supervision) Regulations 1994 (Cth), the Trustee of RAY JOHNSON SCRAP SUPERFUND seeks from the Member a written clarification of these matters. Please forward a written clarification to the Trustee as soon as possible.

Yours faithfully

For the Trustee of RAY JOHNSON SCRAP SUPERFUND

## APPENDIX D

### MEMBER INFORMATION STATEMENT CONCERNING THE MEMBER'S BINDING DEATH BENEFIT NOMINATION

Name of Member:

Address:

Pursuant to regulation 7.9.78 of the Corporations Regulations, the Trustee of RAY JOHNSON SCRAP SUPERFUND advises the Member that:

1. The Member has made a binding death benefit nomination which is still in force.
2. The Nominated Beneficiaries whom the Member has nominated to benefit from any death benefit which may become payable upon the Member's death, and the proportions of the death benefit which these Nominated Beneficiaries will receive are described below:

<b>Full Name of Dependant</b>	<b>Address</b>	<b>Relationship to Member</b>	<b>Proportion of Benefit</b>
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In the event of any of the above Nominated Beneficiaries pre-deceasing the Member, then the Member has nominated the following person(s) to substitute for the deceased Nominated Beneficiaries and to receive any proportion of the death benefit which the deceased Nominated Beneficiaries would have received in the following proportions:

<b>Full Name of Dependant</b>	<b>Address</b>	<b>Relationship to Member</b>	<b>Proportion of Deceased Nominated Beneficiaries' Benefit</b>
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3. The Trustee confirms that the Trustee will pay any death benefit which may become payable in respect of a Member upon their death, in accordance with the Member's binding death benefit nomination.

4. The binding death benefit nomination which the Member has made is effective until *[date]*.
5. The Member may choose to amend or revoke their binding death benefit nomination by completing the appropriate form attached to this statement, and sending the form to the Trustee. Attached to this statement are a Binding Death Benefit Nomination notice and a Revocation Notice.

Where a Member wishes to amend their binding death benefit nomination, the Member should complete the Binding Death Benefit Nomination notice.

Where a Member wishes to revoke a binding death benefit nomination, the Member should complete the Revocation Notice.

The Binding Death Benefit Nomination Notice must be witnessed by 2 persons who must be over 18 years and who must NOT be mentioned in the Notice or a spouse of the beneficiary mentioned in the notice.

The Revocation Notice should (but is not essential) be witnessed by 2 persons who must be over 18 years and who must NOT be mentioned in the Notice or a spouse of the beneficiary mentioned in the notice.

A nomination or revocation will take effect from the date when such Notice is signed.

For the Trustee of RAY JOHNSON SCRAP SUPERFUND

**APPENDIX E**

**REVOCATION OF BINDING DEATH BENEFIT NOMINATION**

To:     The Trustee of RAY JOHNSON SCRAP SUPERFUND

Name of Member:

Address:

I, \_\_\_\_\_, being a Member of RAY JOHNSON SCRAP SUPERFUND, **HEREBY REVOKE** the binding death benefit nomination made by me on *[date]*

**IN WITNESS WHEREOF** I have hereunto set my hand to this my revocation of my binding death benefit nomination this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and \_\_\_\_.

**SIGNED** by the Member as and for the \_\_\_\_\_ )  
revocation of his binding death benefit \_\_\_\_\_ )  
nomination in the presence of us both being \_\_\_\_\_ )  
present at the same time who at his request in \_\_\_\_\_ )  
his presence and in the presence of each other \_\_\_\_\_ )  
have hereunto subscribed our names as \_\_\_\_\_ )  
witnesses. \_\_\_\_\_ )

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Signature of Witness

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Print name of Witness in full

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Address of Witness

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Signature of Witness

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Print name of Witness in full

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Address of Witness