

WRITTEN RESOLUTIONS
ADOPTION OF UPDATED GOVERNING RULES
Version February 2021

The Hunt Superannuation Fund
ABN 40 583 212 317

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

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1. Explanatory note

- 1.1 These resolutions will permit the trustee ("the Trustee") of the Superannuation Fund to update the governing rules which currently apply to the Superannuation Fund by the adoption of the TBCL Governing Rules Version February 2021.
- 1.2 Version February 2021 of the TBCL Governing Rules has been prepared by Townsends Business & Corporate Lawyers.
- 1.3 These resolutions are suitable for both corporate and individual trustees.
- 1.4 To sign and complete these resolutions:
- (a) each member must sign Part C;
 - (b) each Trustee/director must complete and sign Part E.
- 1.5 Once signed the written resolutions must be kept as part of the Trustee's records of the Superannuation Fund.
- 1.6 Once the resolutions are signed, the Amendment Deed must be signed:
- (a) where a company is the Trustee – by two directors (or the sole director if the company is a single director company);
 - (b) where individuals are Trustees – by all trustees.
- Note: The signature of each trustee must be witnessed by a person who is not a trustee.*
- 1.7 Once the resolutions and the Amendment Deed have been signed then:
- (a) Version February 2021 of the TBCL Governing Rules will apply to the Superannuation Fund (in place of the previous version);
 - (b) (for NT) – stamp duty of \$20 must be paid on the Amendment Deed.

Written resolutions in respect of The Hunt Superannuation Fund ABN 40 583 212 317 (“the Superannuation Fund”)

1. Part A - Purpose of resolution

- 1.1 The purpose of these resolutions is to authorise the amendment of the current governing rules of the Superannuation Fund by completely replacing the existing governing rules with Version February 2021 of the TBCL Governing Rules.
- 1.2 Version February 2021 of the TBCL Governing Rules incorporates various changes which have arisen from legislative and taxation changes and changes in SMSF practice since the governing rules were last updated.

2. Part B – proposed amendment: details & impact on members

2.1 Nature of amendment

The amendment will update the governing rules of the Superannuation Fund as a consequence of legislative and taxation changes which have occurred since the governing rules were last updated, and also new developments in SMSF practice.

In particular, the update will permit the Trustee to undertake the following actions:

(a) **Downsizer Contributions**

The Governing Rules have been amended to allow members to make Downsizer contributions in respect of themselves or their spouse and for the Trustee to receive such contributions.

Downsizer contributions are contributions made from the proceeds of the sale of a current or former principal place of residence of the member. Generally such contributions can only be made when certain conditions are satisfied such as the place of residence has been held for 10 or more years, the sale occurs after 1 July 2018 and the contribution is made after age 65 and within 90 days of the sale. The maximum amount which can be contributed is \$300,000 per member. These contributions are not subject to the “non-concessional contribution cap rules” but they will count towards the total superannuation balance of the member. Further, these contributions do not increase the transfer balance cap (the value of which is \$1.6m for 2020/21 and is \$1.7m for 2021/22).

(b) **First Home Super Saver Scheme**

This scheme permits eligible members to save for their first home using superannuation funds (and their favourable taxation treatment) as the savings vehicle.

Eligible members, by making or having their employer make, voluntary super contributions, can withdraw the net voluntary super contributions and calculated earnings. While there are various rules and restrictions – such as only voluntary super contributions made since 1 July 2017 are eligible, only the first \$15,000 of voluntary super contributions can be counted and the maximum amount of voluntary super contributions which can be accessed is \$30,000.

The Governing Rules have been amended to permit the Trustee to act upon release authorities issued in connection with the First Home Super Saver Scheme and to permit the Trustee to accept, as non-concessional contributions, amounts released under the Scheme which have not been used within the specified period to purchase a first home.

(c) **Early stage innovation companies**

The Governing Rules have been amended to expressly permit investment in companies which qualify as early stage innovation companies. Acquisition of newly issued shares in these companies may give rise to taxation incentives.

(d) **Proposed increase in the maximum number of members from 4 to 6**

The Morrison Government has proposed to increase the maximum number of members of self managed superannuation funds to 6 members from the current limit of 4. This proposal took effect on 1 July 2021.

The Governing Rules accommodates the proposal by removing from the references to "four" or "4" as being the maximum number of members and replacing them with a reference to "four, or if a greater number is specified, that greater number".

(e) **Automatic restart of pensions which have not satisfied the pension standards**

New Rule 15.7A has been inserted to ensure that where a pension has failed to satisfy an applicable pension standard in a financial year (typically failing to pay the minimum pension amount), the pension will, unless the pension recipient determines otherwise, have automatically recommenced for taxation purposes immediately upon the start of the following financial year. The recommenced pension will be on the same terms as applied immediately before the start of the financial year in which the pension failed to satisfy the applicable pension standard.

(f) **Binding Death Benefit Nominations**

The Governing Rules have been amended to expressly refer to binding death benefit nominations as being non-lapsing. Binding death benefit nominations under the Governing Rules have always been of indefinite duration (but revocable at any time) and so not subject to any time based lapsing condition. However, to satisfy expectations, Rule 15.18 has been amended to expressly refer to the indefinite duration nominations as non-lapsing.

This change has been effected by amending Rule 15.18 (penultimate paragraph) by inserting "*is both binding on the Trustee and non-lapsing*" for "is binding on the Trustee".

(g) **Extension of crowd-sourced funding regime to proprietary companies**

The Governing Rules have been amended to expressly permit investment in securities issued by unlisted proprietary companies pursuant to offers which qualify as crowd-sourced funding offers. Currently the Governing Rules only permits investment in securities issued by unlisted public companies.

This change has been effected by amending the definition of "CSF Offer" set out in Rule 1.2 as follows: the current definition of "CSF Offer" has been amended to include "*made by an eligible CSF company (within the meaning of s738H and whether a public company or a proprietary company)*".

(h) **Extension of permitted investments to include Foreign Passport Fund Products**

The Governing Rules have been amended to expressly permit investment in foreign investment funds which have been registered in Australia under the Asia Region Funds Passport regime of the Corporations Act for investment by retail investors.

(i) **UK Pension Transfers**

The Governing Rules have been amended to update the provisions relating to UK pension transfers in light of changes made to UK legislation relating to such transfers.

(j) **Abolition of anti-detriment payments**

From 1 July 2017, superannuation funds were only allowed to effect anti-detriment payments of eligible death benefits in respect of members who died on or before 30 June 2017 and the payment had to be made by 30 June 2019. From 1 July 2019, anti-detriment payments were no longer available. Former section 295-485 of the ITAA 1997 which made provision for the tax deductions that enabled anti-detriment payments to be made has been repealed.

• **Legacy amounts in the Anti-Detriment Benefit Account**

Rule 12.9 which allows the Fund to maintain an Anti-Detriment Benefit Account has been retained. This measure is to cater for possible legacy amounts in the Anti-Detriment Benefit Account following abolition of anti-detriment payments. The flexibility to move funds from the Anti-Detriment Benefit Account to expenses account or investment reserve account has also been retained.

The Anti-Detriment Benefit Account is a reserve account and allocation from reserves may in some circumstances be treated as concessional contributions. In SMSFR 2018/11, the ATO recommended that following abolition of anti-detriment payments, existing anti-detriment reserve levels "may be progressively distributed to members bearing in mind the implications of allocations from reserves as defined for the purpose of concessional contributions under reg 291-25.01 of the ITAR 1997."

To comply with the requirements, the allocation must be made on a fair and reasonable basis for all members or class of members of the fund and is less than 5% of the member's interest at the time. This can be done on an annual basis until the account balance is exhausted.

(k) **Transition to Retirement Pension ("TRIS") moving to retirement phase**

A TRIS no longer meets the definition of transition to retirement pension in SIS sub-reg 6.01(2) when the pensioner has met a condition of release in respect of which the cashing restriction is nil. Since 1 July 2017, the TRIS automatically moves into retirement phase as soon as a member reaches age 65. For the other conditions of release, members need to notify the trustee for the TRIS to move

into retirement phase (ATO GN2019/1). The pension will thereafter continue as an account based pension under SIS sub-regulation 1.06(9A) and Schedule A of the Governing Rules.

This change has been effected by the inclusion of Rule 8 in Schedule C of the Governing Rules.

(l) **Minimum pension payment in the year of death of pensioner member**

In the article "Starting and stopping a pension", the ATO has clarified minimum pension payment requirements for account based pensions in the year of death of the pensioner, as below:

- single life pension – no minimum pension payment is required;
- auto-reversionary pension that continues to the reversionary pensioner – minimum pension is payable in the year of death of the pensioner.

To align with the ATO clarification, Rule 3.3(a) of Schedule A (Account-based/ allocated pension rules) and Rule 3.3(a) Schedule C (Transition to retirement pension rules) exclude reversionary pensions from the minimum pension payment exception by inserting the phrase "of a pension that is not a reversionary pension" after "where the commutation results from the death of the pensioner."

(m) **General investment clause**

A general investment clause has been added to Rule 3.4 as an integrity measure to bolster trust fund investments in any authorised investments.

The new Rule 3.4(q) allows the trustee to invest the trust fund in any investments "authorised by the laws of Australia and of its State or Territories for the investment of regulated superannuation funds".

(n) **Clarification of what happens if reversionary beneficiary ceases to be eligible to receive a death benefit income stream**

A reversionary beneficiary may survive the pensioner but as at the death of the pensioner may be a SIS dependent under the SIS Act but not an eligible recipient of a death benefit income stream. This situation arises, for example, when the pensioner's child has been nominated as the reversionary beneficiary, survives the pensioner, but is over 25 or is over 18 and not financially dependent.

In that case, the pension ceases for income tax purposes but the reversionary beneficiary's legal entitlement is not lost under the Governing Rules (Rule 15.26(b) and Rule 4 of Schedule A) and/or the pension agreement.

The intent of the amendments to Rule 15.26(b) is to confirm and clarify that a SIS Act dependent who is nominated by the pensioner as the reversionary beneficiary is legally entitled to the pension account balance (i.e. the lump sum arising from its commutation) even if the trustee is not permitted to pay the value in the form of a SIS complying pension.

Impact on members' benefits

Adopting Version February 2021 of the TBCL Governing Rules will not reduce the amount of a member's accrued benefit and will not restrict the circumstances in which a member's benefit can be accessed.

Impact on existing death benefit nominations

Adopting Version February 2021 of the TBCL Governing Rules will not adversely affect death benefit nominations (whether binding or non-binding) which were made before the adoption of the updated governing rules.

Part C – notice to members & consent of members

As the Superannuation Fund is a self managed superannuation fund, the members are involved in the management of the Superannuation Fund by their participation as trustees or as directors of the company which acts as trustee (as the case may be). The members have had effective notice of the proposed amendment and of the details and consequences.

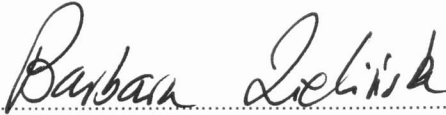
Consent of members

By signing below the members consent to the proposed amendment of the current governing rules of the Superannuation Fund by the Amendment Deed.



.....
John Geoffrey Hunt - Member

Date: 25 / 1 / 2022



.....
Barbara Izabella Zielinska - Member

Date: 25 / 1 / 2022

Part D – resolution of the Trustee

Resettlement/new fund

Noted that signing the Amendment Deed:

- (a) will neither cause a resettlement to occur in respect of the Superannuation Fund nor create a new superannuation fund;
- (b) will not alter the membership of the Superannuation Fund;
- (c) will not give rise to any transfer of value between members; and
- (d) will not alter the identity of the Superannuation Fund for taxation or regulatory purposes.

Amendment Deed

Upon execution of the Amendment Deed, the governing rules currently applying to the Superannuation Fund will be completely replaced by the Version February 2021 of the TBCL Governing Rules.

Execution of Amendment Deed

Resolved that the Amendment Deed be executed by the Trustee.

Notice to members

Resolved that the members have had (by virtue of their participation in the management of the Superannuation Fund and by their signing Part C of these resolutions) sufficient notice of the impact of the amendment on their benefits.

Identification of governing rules

Noted that the Amendment Deed incorporates Version February 2021 of the TBCL Governing Rules.

Part E – Signing & dating – trustees/directors

For the purposes of this Part "Trustee" means the company which acts as Trustee or the group of individuals which constitute the Trustee (as the case may be).

Signed as a written resolution of the Trustee of the Superannuation Fund


.....
John Geoffrey Hunt - Director

Date: 25 / 1 / 2022


.....
Barbara Izabella Zielinska - Director

Date: 25 / 1 / 2022

SELF MANAGED SUPERANNUATION FUND AMENDMENT DEED

The Hunt Superannuation Fund
ABN 40 583 212 317

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TOWNSENDS BUSINESS & CORPORATE LAWYERS

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THIS AMENDMENT DEED is made on the Date set out in the Reference Schedule by the Trustee.

RECITALS

- A. The Trustee is the trustee of the Superannuation Fund identified in the Reference Schedule which Superannuation Fund is currently governed by the Current Deed.
- B. The Superannuation Fund is a self managed superannuation fund and is a regulated superannuation fund.
- C. The Trustee intends to amend the Current Deed of the Superannuation Fund by completely replacing all of the provisions of the Current Deed with the provisions of this Amendment Deed and the Governing Rules.
- D. The Trustee is empowered under the Amendment Power identified in the Reference Schedule to make the proposed amendment.
- E. The proposed amendment is not intended to and does not adversely affect a member's right or claim to benefits accrued immediately before the date of this Amendment Deed or to the amount of those accrued benefits.
- F. The proposed amendment is not intended to constitute a resettlement of the Superannuation Fund or the establishment of a new superannuation entity.
- G. The Current Members consent to the proposed amendment as evidenced by their signing this Amendment Deed.

OPERATIVE PART

1. Continuation of superannuation fund

1.1 Continuation of Fund

The Trustee holds the trust fund of the Superannuation Fund pursuant to the trusts, powers and discretions applying to the Superannuation Fund for the benefit of the Members and their Dependants.

1.2 Indefinitely continuing

The Superannuation Fund continues as an indefinitely continuing fund which provides individual personal benefits, pensions or retiring allowances for the Members and their dependants.

1.3 Name

The Superannuation Fund will be known by the name set out in the Reference Schedule or by such other name as the Trustee determines.

1.4 Current Members

Each Current Member continues to be a Member of the Superannuation Fund.

2. Replacement of current provisions

2.1 Replacement of Rules

- (a) Pursuant to the amendment powers conferred on the Trustee (whether under the Current Deed or otherwise) the Current Deed is amended with effect on and from the date of this Amendment Deed by completely replacing all the provisions of the Current Deed with the provisions of this Amendment Deed and the Governing Rules.
- (b) For the purposes of clause 2.1(a), the Governing Rules are expressly incorporated into this Amendment Deed as if they had been set out at length in this Amendment Deed.

3. Amendment Powers

3.1 The Trustee may, subject to clause 3.4, by deed amend, vary, add to, delete or replace (separately and collectively referred to in this Amendment Deed as “an amendment”) any or all of the provisions of this Amendment Deed.

3.2 The Trustee may by either an instrument in writing or by written resolution amend any or all of the provisions of the Governing Rules.

3.3 Any amendment, whether made pursuant to either clause 3.1 or 3.2, may:

- (a) be retrospective and apply from a date preceding the date on which the amendment is made;
- (b) be prospective and apply from a date following the date on which the amendment is made; and
- (c) operate by way of complete replacement of all of the current provisions with new provisions.

3.4 Limitations to the scope of amendments

The amendment powers:

- (a) at any time when the Trustee consists of one or more natural persons – cannot be used to change the primary purpose of the Superannuation Fund from the provision of old-age pensions;
- (b) at any time when the primary purpose of the Superannuation Fund is not the provision of old-age pensions – cannot be used to remove the requirement that the Trustee of the Superannuation Fund be a constitutional corporation;
- (c) cannot be used to reduce the amount standing to the credit of the benefit accounts of a Member unless that Member has consented to the reduction or the reduction is permitted by Superannuation Law, by the Regulator or by Court Order;
- (d) cannot be used to amend this clause 3.4.

3.5 Trustee and Members bound by amendments to the Governing Rules

The Trustee, each Member and each potential beneficiary of the Superannuation Fund is bound by any amendment made pursuant to this clause in the same manner as if the amendment had been made immediately before the Member joined the Superannuation Fund or the beneficiary acquired an interest (as the case may be).

4. Deed, Schedule & Governing Rules

4.1 Deed includes schedule and governing rules

This Amendment Deed includes the Reference Schedule to this Deed and the Governing Rules (including the schedules to the Governing Rules) as amended from time to time.

4.2 Inconsistency between parts of Deed

Where any provision of the Governing Rules is inconsistent with the Amendment Deed, then to the extent of the inconsistency, the provision of the Amendment Deed shall take precedence.

5. Notification of amendments

5.1 The Trustee must, within a reasonable time of any amendment, notify the Members in writing of the nature and effect of each exercise of the amendment powers conferred by clause 3.1 or clause 3.2.

5.2 Despite clause 5.1 the Trustee is under no obligation to notify a Member of any exercise of the amendment powers where that Member participated in the exercise of the powers by reason of being a trustee or a director of the corporate trustee.

5.3 An amendment of this Amendment Deed or the Governing Rules is not invalid simply because the Trustee failed to comply with clause 5.1 in whole or in part.

5.4 If the Member notifies the Trustee that the Member may be contacted by email and provides that Member's email address then the Trustee may use that email address for this purpose of notifying the Member pursuant to clause 5.1.

6. Definitions and interpretation

6.1 Definitions

In this Amendment Deed and in the Governing Rules, unless the context clearly indicates to the contrary, the following words and phrases have the following meanings as ascribed to them in this clause namely:

"this Amendment Deed" means this deed of amendment of the Current Deed;

"Amendment Power" means the clause in the Current Deed which empowers the Trustee to execute and give effect to this Amendment Deed and being the amendment power referred to in the Reference Schedule;

"Current Deed" means the trust deed currently applying to, regulating and governing the Superannuation Fund being the deed referred to in the Reference Schedule;

"Current Members" means the current members of the Superannuation Fund being those persons identified in the Reference Schedule as the Current Members;

"Governing Rules" means the governing rules that apply from time to time to the Superannuation Fund and which, commencing on the execution of this Amendment Deed, will be the governing rules attached hereto;

"Member" means a member of the Superannuation Fund at any time whether before or after the date of this Amendment Deed;

"Reference Schedule" is the reference schedule set out in and incorporated into this Amendment Deed;

"Superannuation Fund" means the superannuation fund referred to in the Reference Schedule; and

"Trustee" means the current trustee or trustees of the Superannuation Fund as at the date hereof who or which is executing this Amendment Deed.

6.2 Interpretation

In this Deed, unless the context clearly requires otherwise:

- (a) the singular includes the plural and vice versa; -
- (b) a gender includes all genders;
- (c) headings are for convenience only and do not affect the interpretation of this Deed;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) reference to a document includes the document as amended from time to time and any document replacing it;
- (f) the Reference Schedule forms part of this Amendment Deed;
- (g) "person" includes a natural person and any body or entity whether incorporated or not;
- (h) reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time; and
- (i) "include" or any form of that word must be construed as if it were followed by "(without being limited to)"

REFERENCE SCHEDULE – The Hunt Superannuation Fund ABN 40 583 212 317

Date of Amendment Deed

25 / 1 / 2022

Name of Current Trustee or Trustees

Huntski Pty Ltd ACN 150 694 018
of 35 Barry Street, Neutral Bay NSW 2089

Name and Current Deed of Superannuation Fund

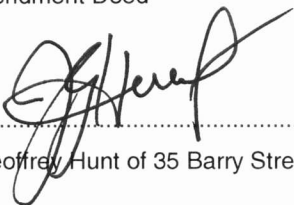
The Hunt Superannuation Fund ABN 40 583 212 317 established by a deed dated 5 February 1997 as subsequently amended.


Amendment Power

Rule 8 of the Current Deed.

Consent of Current Members

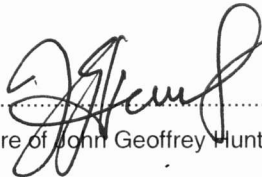
By signing the Members consent to the amendment of the Current Deed of the Superannuation Fund as set out in this Amendment Deed


.....
John Geoffrey Hunt of 35 Barry Street, Neutral Bay NSW 2089


.....
Barbara Izabella Zielinska of 35 Barry Street, Neutral Bay NSW 2089

EXECUTED AS A DEED

Executed by Huntski Pty Ltd ACN 150 694 018
in accordance with s.127(1) of the *Corporations Act 2001* (Cth):


.....
Signature of John Geoffrey Hunt – Director


.....
Signature of Barbara Izabella Zielinska – Director