

# WRITTEN RESOLUTION ESTABLISHING AN SMSF ON THE SUPERCENTRAL SYSTEM

## BEGS O'DONNELL SUPERFUND

Version: July 2015

**1. Explanatory note:**

- 1.1 This resolution has been drafted for the establishment of SMSFs using the SUPERCentral System. This resolution is not appropriate for any other purposes.
- 1.2 This resolution is suitable for both corporate and individual trustees.
- 1.3 To sign and complete this resolution:
- (a) each Initial Member must complete and sign section 9;
  - (b) complete the "Bank Account" details table on section 8.8;
  - (c) each Trustee/Director must complete and sign section 10.
- 1.4 Once signed the Written Resolution must be kept as part of the Trustee's records of the Superannuation Fund.
- 1.5 Once the resolution is signed, the Superannuation 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.
- 1.6 Once the resolution and the Superannuation Deed have been signed then:
- (a) contributions can be made for the initial Members;
  - (b) the Fund must be registered with the ATO (this must be done within 60 days of signing of the Superannuation Deed otherwise the Superannuation Fund may not be a complying superannuation fund from the date of its establishment);
  - (c) each Trustee/Director must sign the ATO Trustee Declaration form (this form must be signed within 21 days of signing of the Superannuation Deed);
  - (d) the bank account for Superannuation Fund can be opened;
  - (e) (for TAS) – stamp duty of \$50 must be paid on the Superannuation Deed;
  - (f) (for NT) – stamp duty of \$20 must be paid on the Amendment Deed.

- (d) they understand that there is no legal obligation to provide to the Trustee their Tax File Number ("TFN") but they are aware of the adverse consequences of not providing their TFN;
- (e) they authorise the Trustee to use their TFN in the manner set out below.

#### 4.2 Statutory Basis for requesting your TFN

The Trustee is authorised under the SIS Act request and collect TFNs of members and prospective members of the Fund.

#### 4.3 Uses to which TFNs will be put

If a member or prospective member provides their TFN, the Trustee is only permitted to use the TFN for lawful purposes including:

- (a) identifying the members/prospective members superannuation benefits where other information is not sufficient;
- (b) calculating tax due on any superannuation lump sum benefits payable to the member/prospective member;
- (c) providing the TFN to the Commissioner of Taxation for the purpose of assessing any tax on any superannuation benefits payable to the member/prospective member and for assessing any surcharge payable on superannuation contributions and other amounts made by or for the member/prospective member; and
- (d) providing the TFN to the Commissioner of Taxation for the purpose of determining an entitlement of members to a *Government Co-Contribution under the Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*.

The lawful purposes to which TFNs are used may, because of legislative changes, alter in the future.

#### 4.4 No obligation to provide TFN

A member/prospective member is under no legal obligation to provide their TFN. Consequently, by not providing their TFN, a member/prospective member will have committed no offence.

#### 4.5 Consequences of not providing TFN

If a member/prospective member does not provide their TFN then the following may happen:

- (a) more tax than is otherwise due may be withheld from benefits paid to them from the Fund;
- (b) superannuation surcharge or a greater amount of surcharge may be payable in respect of surchargeable contributions of members than would otherwise be the case;
- (c) it may be more difficult to locate, identify and consolidate superannuation benefits in other funds; and

- (g) they have not been convicted (whether in Australia or elsewhere) of any offence involving dishonest conduct; and
- (h) (in respect of Directors) they are either:
  - (i) not disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001*; or
  - (ii) currently disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* however they have been granted permission by ASIC under s206F(5) of that Act or, alternatively, they have been granted permission by a Court under s206G(3) of that Act, to be involved in the management of the company which is the Trustee.

### 6.3 Undertakings by each Trustee/Director

Each Trustee/Director by signing section 10 of this Written Resolution understands that should any of the matters listed above in paragraphs (b) to (g) subsequently apply to them that they will cease to be eligible to act as a Trustee/Director of a superannuation fund regulated under the SIS Act and that they will immediately advise their fellow Trustees/Directors of this occurrence and that they will, as and when required by their fellow Trustees/Directors, resign as a trustee/directors and will, if then a Member, resign as a Member of the Superannuation Fund.

In the case of Directors, should the permissions referred to in subparagraph (h)(ii) cease to apply to them that they will cease to be eligible to act as a director of a company which acts as trustee of a superannuation fund regulated under the SIS Act and that they will immediately advise their fellow directors of this occurrence and that they will, as and when required by their fellow directors, resign as a director and will, if then a member, resign as a member of the Superannuation Fund.

Each Trustee/Director understands that should they cease to be an Australian resident for taxation purposes, the Superannuation Fund may not accept contributions, rollovers and transfers by or in respect of them and they will, if then a Member and if requested by the other Trustees/Directors, resign as a member of the Superannuation Fund.

## 7. Fund compliance statement

If a statement is made by or on behalf of the Trustee of the Superannuation Fund to the effect that the Fund is a resident regulated superannuation fund and that the Fund is not subject to any direction from the ATO under s63 of the SIS Act (ie a direction not to accept employer contributions) and the statement is provided to an employer sponsor at or before the contribution is made by an employer then it will be presumed, for the purposes of the Superannuation Guarantee (Administration) Act 1992 and s290-75 of the *Income Tax Assessment Act 1997*, that the employer has made the contribution to a complying superannuation fund.

#### 8.6 Identification of Governing Rules

Noted that the Superannuation Deed incorporates the SUPERCentral Governing Rules being the version of the SUPERCentral Governing Rules applying at the date on which the Superannuation Deed is signed by the Trustee.

Noted further that if at the date of signing of the Superannuation Deed, the SUPERCentral Governing Rules are being updated (by Super Governing Rules Pty Ltd having signed a deed which, once the notice period has expired, will replace the current version of the SUPERCentral Governing Rules with a new version of those rules), then at the end of the notice period, the new version of the SUPERCentral Governing Rules will then be incorporated into the Superannuation Deed instead of the current version.

#### 8.7 Notice of Updates to the SUPERCentral Governing Rules

Noted that any notice of an update to the SUPERCentral Governing Rule will be by electronic means whether by email or publication on such website as Super Governing Rules Pty Ltd considers appropriate.

Further noted that if the notice is by means of:

- (a) an email then the email address which has been provided for this purpose by or on behalf of the Trustee will be used; and
- (b) website publication of the notice must be on a publicly viewable page on that website which is notified to the Trustee and to which the Trustee has access.

Also noted that:

- (c) if an email is sent or a notice published before 5pm Australian Eastern Standard Time (or Australian Eastern Standard Daylight Saving Time, if applicable) on a day then it will be treated as having been received on that day and otherwise it will be treated as having been received on the next day;
- (d) the inadvertent failure to notify the Trustee will not invalidate the notice;
- (e) the use of an email address (even if out of date) provided to Super Governing Rules Pty Ltd or its agent for this purpose will not invalidate the notice;
- (f) notice to one Trustee or Director will be treated as being notice to all Trustees or Directors; and
- (g) notice to a former Trustee or Director will be treated as being notice to all current Trustees or Directors if Super Governing Rules Pty Ltd or its agent has not been advised of the change of Trustee or Director.

**9. Initial members-signing**

Each person who is to be admitted as an Initial Member of the Superannuation Fund by signing this section confirms the information and provides the consents, undertakings and authorisations set out in section 4 of the Resolution.

Member Eliot O'Donnell

Current Residential Address 23 Mountview Avenue, Gwynneville NSW 2500

Date of Birth

18/6/1976

Tax File Number

196 054 664

Signature



Sign here

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Member Sarah O'Donnell

Current Residential Address 23 Mountview Avenue, Gwynneville NSW 2500

Date of Birth

20/2/1982

Tax File Number

430 962 465

Signature



Sign here

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