



# ACCOUNT BASED PENSION

L & J DE SILVA SUPERANNUATION FUND

JANE DE SILVA

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# PRODUCT DISCLOSURE STATEMENT

## ACCOUNT BASED PENSION (OR ACCOUNTS BASED PENSION)

### 1. Introduction

A member of a SMSF can generally access their superannuation benefits as a SMSF income stream or lump sum when they are retired as that term is defined in the SIS Regulations 1994. An Account Based Pension (or accounts-based pension as it may also be referred) may be commenced at any time after preservation age even whilst working.

### 2. Corporations Act 2001

The payment of an Account Based Pension by the trustee of a SMSF is a financial product for the purposes of the Corporations Act 2001. As a financial product the Corporations Act 2001 provides as follows:

#### 2.1 Product Disclosure Statement

In terms of the information required to be given to the member of a SMSF to make a confident and informed decision in relation to a SMSF financial product, the Corporations Act 2001, requires a licensee, their authorised representative and the trustee of a SMSF to provide a member of a SMSF with a PDS. This pension PDS has been issued by the trustee of the fund to the member seeking to commence a pension. The PDS should be reviewed by members on an on-going basis.

#### 2.2 Statement of Advice

Section 946A of the Corporations Act 2001 requires that a client be provided with a Statement of Advice ("SoA") where they are provided with a recommendation to acquire or dispose of a SMSF financial product.

### 3. SMSF Account Based Pension

The Account Based Pension laws are simple. Once a person meets a "nil" condition of release in terms of their superannuation benefits they may commence an Account Based Pension (subject to their Pension Transfer Balance Limits). The core conditions of release include retirement or permanent incapacity.

#### 3.1 The definition of "retirement: in SIS Regulation 6.01(7) is:

- a) The member has reached aged preservation age and the Trustee of the Fund is of the opinion that the member will never again be engaged in gainful employment again;
- b) The member has reached age 60 and either:

- The member has ceased one form of gainful employment after age 60;
- The Trustee of the Fund is of the opinion. that the member will never again be engaged in gainful employment again

3.2 Preservation Age is defined to be:

- for a person born before 1 July 1960 – 55 years;
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;
- for a person born after 30 June 1964 – 60 years.

In terms of income payments, the member taking an Account Based Pension must take a minimum pension amount each year but is not limited to the amount they may take as a maximum payment, subject to their account balance. For tax purposes where the person is under age 60 the income stream is fully assessable and will generally attract a 15% tax offset. Once the member is 60 years of age or older the income from the Account Based Pension will be tax free.

At any time, the ABP can be commuted, that is turned into a lump sum. The lump sum can be rolled back to the member's lump sum or accumulation interest in the Fund or taken as a cash payment. Where it is taken as a cash payment, for the income year ending 30 June 2021, the first \$215,000 is tax free for a member under age 60. Once age 60 it is not subject to tax.

3.3 The characteristics of the ABP can be seen in the following table:

Characteristics	Account Based Pension (ABP)
<b>Minimum Payment</b> Under 65 65 - 74 75 - 79 80 - 84 85 - 89 90 - 94 95 +	<b>Minimum Percentage %</b> 4% 5% 6% 7% 9% 11% 14%
<b>Maximum Payment</b>	Pension Account Balance
<b>Roll back to Lump Sum</b>	Yes

Note:

<b>Accumulation Account</b>	
<b>Lump Sum Commutation</b>	Yes and under age 60 the first \$215,000 is tax free with any remainder taxed at 17%.
<b>Tax Status for Member</b>	Assessable to age 60 with a 15% tax offset on the taxable component. Tax free component is tax free as are payments post age 60.
<b>Tax on Pension Assets in the Fund</b>	Tax Exempt but subject to the transfer Balance Limits

*For the 2021 income year all minimum pension valuation factors as noted above are to be discounted by 50%.*

- 3.4 A member may also request the trustee of a SMSF to make the pension auto-reversionary which means that the pension transfers from a deceased member automatically upon their death to a spouse, dependant or legal estate. There are a number of important reasons for ensuring that Account Based pensions are auto-reversionary.

Where a reversionary beneficiary is a child over age 25, unless they are a disabled child, the pension cannot continue and must be commuted. For any child pension under age 25, it must be commuted no later than the 25th birthday of the child pension member.

#### 4. Taxation of Pensions

##### 4.1 Trustee of the Fund

Where the trustee commences to pay an Account Based income on assets set aside to fund the ABP is tax free.

Where the trustee of the SMSF as part of the fund's pension assets holds Australian shares paying imputation credits, no tax is payable on the dividend. However, the trustee may use any excess imputation credits to reduce overall tax payable in the fund. If there are excess credits in an income year these will be refunded by the Commissioner of Taxation although it is proposed to change the laws relating to refundable imputation credits.

As can be seen there are significant taxation advantages in running a separate investment strategy for pension assets of the fund subject to the member's pension Transfer Balance Limits.

##### 4.2 Pension Beneficiaries

- a) Benefits paid to a Member

Multiple superannuation interests may be held by a member who has a lump sum account and at the same time commences an ABP. Superannuation interests are important because from these interests flow a superannuation benefit, whether a lump sum from the member's lump sum account or a pension, TRIS or lump sum from the member's pension account. These benefits when paid will have a tax free/taxable component. The proportion of tax free/taxable component is to be determined by the underlying tax free/taxable proportion of the relevant superannuation interest.

The tax free/taxable component determination is crucial as it plays an important part for a pre-60 year old member (such as a member with an Account Based pension) as well as for their dependants and other beneficiaries in the event of the member's death.

b) The proportioning rule

Superannuation benefits whether taken as a lump sum or pension are to be divided by the trustee of the fund into a tax free and a taxable component. The proportion used is the same as the underlying superannuation interest from where the superannuation benefit is sourced.

For example, a 59 year old member of a complying SMSF taking an Account Based Pension may have a tax free/taxable component proportion equal to 40/60. Any income stream benefit taken from that superannuation interest will be 40% tax free and 60% taxable component. This will include a lump sum commutation from the pension at a later time once the member retires.

The tax free/taxable component of any lump sum or pension payment can easily be determined by your SMSF adviser or accountant at the time of commencement of the pension or when a lump sum or pension commutation amount is taken from the fund.

c) The Taxation of Benefits to a Member

Where a superannuation ABP pension payment is made it will be taxed as follows:

- Tax Free Component - Any tax free component payable is always tax free in their hands irrespective of their age. This includes both lump sums and income streams.
- Taxable Component – ABP taxable components are assessable with a 15% tax offset until age 60 whereupon the payment is tax free.
- Untaxed Component – untaxed component is only found in SMSFs with life or self-insurance and a lump sum is paid to a dependant or the member's legal estate in the event of the member's death.

d) Members Pension Transfer Balance Account

The total amounts used to commence an Account Based pension cannot exceed \$1.6M. Each time a pension is commenced a credit of the amount used to commence a pension, is made to the members Personal Transfer Balance Account (PTBA). This is tested against the General Transfer Balance Account – currently \$1.6M and if excessive, then the excess must be withdrawn voluntarily by the member or the excess commutation will be forced by the Commissioner of Taxation.

The excess can be withdrawn as a lump sum commutation or rolled back or transferred back to the Fund's accumulation account. Each time a pension is commenced a further credit hits the member's PTBA. Any roll back creates a debit in the member's PTBA. The roll back amount may see the member's PTBA go into a negative.

In the Commissioners guideline on Pension Transfer Balance Accounts – LCG 2016/9 – he shows the transfer balance rules in action as illustrated in the following example:

“Example 1 – Transfer balance account credits and debits

On 1 July 2018, 61 year old Darius commences an Account Based pension (pension A) with a \$1.1 million value. His transfer balance account commences on this date. Investment returns, and payments made to Darius to meet minimum drawdown requirements change the value of the superannuation interest supporting his pension. Because of this, the value of his superannuation interest at 1 July 2019 is \$1.05 million. These changes, however, do not cause a credit or debit to arise in his transfer balance account and his transfer balance remains \$1.1 million.

On 1 July 2020, Darius decides that he is unhappy with the investment returns from his provider and instructs his superannuation Fund to fully commute his pension. Darius' superannuation Fund commutes pension A on 7 July 2020 to a superannuation lump sum of \$1 million on that day. Accordingly, a debit equal to this amount arises in his transfer balance account on this day.

The following table details Darius's transfer balance account and the debits and credits arising from the above transactions.

*Transfer balance account*

<b>Date</b>	<b>Description</b>	<b>Debit/Credit</b>	<b>Transfer Balance</b>
1 July 2018	Commence pension A	\$1.1 million	\$1.1 million
7 July 2020	Commutes pension A	\$1 million	\$0.1

## **5. Lightyear Docs Trust Deed**

The fund's trust deed is the key determinant to what type of pension may be paid from the fund. The Lightyear Docs trust deed allows pensions to be continued where they may have been established many years ago as well as the Account Based and transition to retirement pensions of modern times. Flexibility is a must in superannuation and particularly SMSFs.



# APPLICATION BY JANE DE SILVA TO COMMENCE AN ACCOUNT BASED PENSION

**Date** 1 July 2020

**Name of Fund** L & J De Silva Superannuation Fund

**Members Name** Jane De Silva

**Age of Member** 70

## **Request to commence an Account Based Pension**

The Member hereby requests the Trustee to commence an Account Based Pension with an amount from the Members Lump Sum Superannuation Interest and has reached the relevant pension age and otherwise met all the preservation conditions for the payment of an Account Based Pension. The Account Based Pension is to meet the conditions of a pension pursuant to SIS Regulation 1.06(9A) and is allowed as a "nil" condition of release has been met by the member – such as upon retirement or age 65.

**Proposed ABP Account Balance:** \$235,399

**Date of Commencement:** 1 July 2020

**Condition of Release** Aged 65

**Minimum Annual Income Stream Payment:** \$5,890

**Current Year ABP Payment:** \$5,890

**Tax Free / Taxable Component Proportions:** 24.92% Tax Free/75.08% Taxable

**SIGNED BY THE MEMBER:**

Signed by: Jane De Silva

*J De Silva*

.....  
Jane De Silva  
Member

*1/7/20*

.....  
Date

Witnessed by:

*[Signature]*

.....  
Witness Signature

*1/7/20*

.....  
Date

*BRIAN ROUGIER*

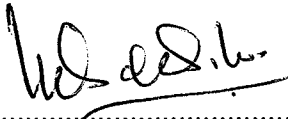
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Witness Name

# BINDING TRUSTEE RESOLUTION: COMMENCEMENT OF AN ACCOUNT BASED PENSION

<b>Date</b>	1 July 2020
<b>Name of Fund</b>	L & J De Silva Superannuation Fund
<b>Attended by</b>	Laknath De Silva and Jane De Silva as directors of L & J DE SILVA PTY LTD - ACN: 160 723 893 of 11 Daniel Street, Granville, NSW 2142.
<b>Held at</b>	33 Cumberland Square, Newington, NSW 2127
<b>Trustee Discussion</b>	<p>The Trustee has received a request by the Member – Jane De Silva to commence an accounts based pension under the following terms and conditions:</p> <p><b>Proposed ABP Account Balance:</b> \$235,399</p> <p><b>Date of Commencement:</b> 1 July 2020</p> <p><b>Condition of Release:</b> Aged 65</p> <p><b>Minimum Annual Income Stream Payment:</b> \$5,890</p> <p><b>Current Year ABP Payment:</b> \$5,890</p> <p><b>Tax Free / Taxable Component Proportions:</b> 24.92% Tax Free/75.08% Taxable</p>
<b>Trustee Resolutions</b>	<p>It was resolved by the Trustee to commence an Account Based Pension on behalf of the Member. The Trustee is to forward this trustee minute to the Member as notification of the commencement of the Pension.</p>

**EXECUTED BY THE TRUSTEE:**

L & J DE SILVA PTY LTD - ACN: 160 723 893 by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:



.....  
Laknath De Silva  
Director

1/7/20

.....  
Date



.....  
Jane De Silva  
Director

1/7/20

.....  
Date