



## Deed of variation – The Souvlis Family Superannuation Fund

Christopher Peter Souvlis and Tina Souvlis

# Deed of variation

No duty payable in  
Queensland

Dated

13/11/13

## Parties

**Christopher**

**Christopher Peter Souvlis**

of 106 Villiers Street, NEW FARM, Queensland 4005

**Tina**

**Tina Souvlis**

of 106 Villiers Street, NEW FARM, Queensland 4005

## Background

- A The Fund was established under the Trust Deed.
- B The Trustee wants the assets of the Fund to be held on the trusts set out in the Trust Deed as varied by this document.
- C The variation set out in this document is allowed under rule 12 of the Trust Deed.

## Agreed terms

### 1 Definitions

In this document:

Term	Definition
<b>Fund</b>	means The Souvlis Family Superannuation Fund.
<b>Trustee</b>	means Christopher and Tina.
<b>Trust Deed</b>	means the trust deed for the Fund dated 29 April 1999 as varied by variations dated 27 June 2006 and 4 June 2008.

### 2 Variation

Under the Trustee's power in rule 12 of the Trust Deed and with effect from the date of this document, the Trustee varies the Trust Deed by replacing all the operative provisions of the Trust Deed (including any schedules) with clauses 1 to 8 together with Schedule 1 to Schedule 3 and Annexure A to Annexure E contained in the Annexure.

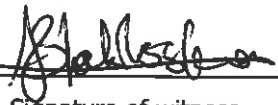
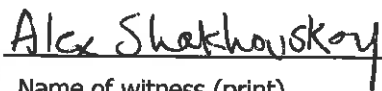
### 3 Confirmation

The Trustee confirms the terms of the Trust Deed of the Fund.

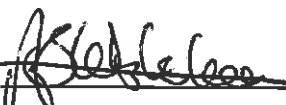
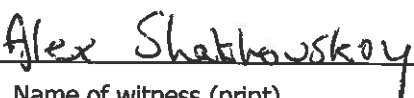
## Execution

EXECUTED as a deed.

Signed sealed and delivered  
by Christopher Peter Souvlis as trustee for The  
Souvlis Family Superannuation Fund in the  
presence of:

  
Signature of Christopher Peter Souvlis  
Signature of witness  
Name of witness (print)

Signed sealed and delivered  
by Tina Souvlis as trustee for The Souvlis Family  
Superannuation Fund in the presence of:

  
Signature of Tina Souvlis  
Signature of witness  
Name of witness (print)

## Annexure

Replacement trust deed provisions

## Table of contents

<b>Agreed terms</b>	<b>1</b>
<b>1 Fund</b>	<b>1</b>
<b>2 Definitions and interpretation</b>	<b>1</b>
<b>3 Other provisions to note</b>	<b>1</b>
3.1 Exercise of powers and rights	1
3.2 Benefits secured	1
<b>4 Governing law</b>	<b>1</b>
<b>5 Structure of the fund</b>	<b>2</b>
5.1 Fund vested in trustee	2
5.2 Composition of the fund	2
<b>6 Fund rules</b>	<b>2</b>
<b>7 Amendment of this document</b>	<b>2</b>
7.1 Method of amendment	2
7.2 Notifying members of amendment	2
<b>8 Counterparts</b>	<b>3</b>
<b>Schedule 1</b>	<b>4</b>
<b>Summary of fund details</b>	<b>4</b>
<b>Schedule 2</b>	<b>5</b>
<b>Fund Rules</b>	<b>5</b>
<b>Schedule 3</b>	<b>37</b>
<b>Definitions and interpretation</b>	<b>37</b>
<b>Annexure A</b>	<b>48</b>
<b>Product disclosure statement summary for The Souvlis Family Superannuation Fund</b>	<b>48</b>
<b>Annexure B</b>	<b>49</b>
<b>Application for membership</b>	<b>49</b>
<b>Annexure C</b>	<b>50</b>

<b>Binding death benefit nomination</b>	<b>50</b>
<b>Annexure D -----</b>	<b>51</b>
<b>    Notice of compliance for Employer – The Souvlis Family Superannuation Fund</b>	<b>51</b>
<b>Annexure E -----</b>	<b>52</b>
<b>    General notice of compliance – The Souvlis Family Superannuation Fund</b>	<b>52</b>

# Replacement trust deed provisions

---

## Agreed terms

### **1 Fund**

---

This document sets out the way in which the Fund must operate and the roles and the responsibilities of the Trustee and any person, company or entity associated with the Fund.

### **2 Definitions and interpretation**

---

The definitions and principles of interpretation set out in Schedule 3 apply to this document.

### **3 Other provisions to note**

---

#### **3.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations granted to or conferred on the Trustee by, under or for the purposes of this document, may be fully and effectively exercised or made by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of those Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if required by the Superannuation Law, by a majority of persons holding the office of Trustee,

if all requirements of the Superannuation Law are satisfied.

#### **3.2 Benefits secured**

The rights of the Members or their Dependants who receive Benefits payable under this document are secured within the meaning of the Superannuation Law.

### **4 Governing law**

---

This document is governed by and construed under the laws of Queensland. The Trustee, Members, Beneficiaries and Employers irrevocably submit to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

## **5 Structure of the fund**

---

### **5.1 Fund vested in trustee**

The Fund is at all times vested in the Trustee and managed by the Trustee upon the terms and subject to the trusts, powers, authorities and discretions in this document.

### **5.2 Composition of the fund**

The gross assets of the Fund consist of all cash, investments and other property for the time being held and received by or on account of the Trustee upon the trusts of this document.

## **6 Fund rules**

---

The operation of the Fund is governed by the rules set out in Schedule 2 (**Fund Rules**).

## **7 Amendment of this document**

---

### **7.1 Method of amendment**

- (a) Subject to clauses 7.1(b), 7.1(c) and 7.1(d) and the Superannuation Law, the Trustee may at any time by resolution or by written instrument amend, alter, vary, modify or delete any provisions of this document with immediate, prospective or, to the extent allowed by the Superannuation Law, with retrospective effect.
- (b) No reduction of the accrued Benefit of a Member may be made without that Member's written consent.
- (c) No amendment may be made under clause 7.1(a) that would cause the trusts contained in this document to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 7.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide, and will continue to provide after the amendment, that the Fund has as its sole or primary purpose the provision of old-age pensions.
- (e) No amendment may be made under clause 7.1(a) that would cause a death benefit nomination made by a Member under clause 38 of Schedule 2 to become invalid or ineffective without the prior written consent of that Member or that Member's Legal Personal Representative.
- (f) No amendment may be made under clause 7.1(a) that would cause a death benefit nomination made by a Member under clause 38 of Schedule 2 to become invalid or ineffective after the date of that Member's death.

### **7.2 Notifying members of amendment**

As soon as practicable after this document has been amended under clause 7.1, the Trustee may give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

## **8 Counterparts**

---

This document may be executed in any number of counterparts. All counterparts together make one instrument.



## Schedule 1

### Summary of fund details

<b>Trustee</b>	Christopher Peter Souvlis Tina Souvlis
<b>Name of Fund</b>	The Souvlis Family Superannuation Fund
<b>Date of Establishment of Fund</b>	29 April 1999

## Schedule 2

### Fund Rules

---

#### 1 Covenants

The Trustee must perform and observe the covenants, trusts, conditions and obligations of this document as and to the extent they are included in this document or deemed to be included in this document by the Superannuation Law.

#### 2 Appointment and change of trustee

##### **Purpose of fund**

- 2.1 Subject to the Superannuation Law, the Trustee must at all times be a Constitutional Corporation or, where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old-age pensions as that term is defined in section 51(xxiii) *Commonwealth of Australia Constitution Act*.

##### **Self managed superannuation funds and approved trustee funds**

- 2.2 Notwithstanding anything in this clause a person is not eligible to be:

- (a) the Trustee; or
- (b) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless clause 2.3 or clause 2.4 is satisfied.

- 2.3 Subject to clause 2.6 the Trustee must either be:

- (a) a Constitutional Corporation where:
  - (i) the Member is the sole Director of the Constitutional Corporation; or
  - (ii) the Member is one of only two Directors of the Constitutional Corporation, and the Member and the other Director are Relatives; or
  - (iii) the Member is one of only two Directors of the Constitutional Corporation, and the Member is not employed by the other Director; or
- (b) two Individual Trustees comprising the Member and another person who is either:
  - (i) a Relative of the Member; or
  - (ii) not an Employer of the Member.

- 2.4 Subject to clause 2.6 the Trustee must be:

- (a) a Constitutional Corporation where each Member is a Director of the Constitutional Corporation and each Director is a Member; or

- (b) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- 2.5 Subject to clause 2.7, the legislation regulating trusts in Queensland does not prevent:
  - (a) a sole trustee from acting; or
  - (b) a retiring trustee from being fully discharged even where only one trustee remains after the retirement.
- 2.6 The requirements in clauses 2.3, 2.4 and 2.5 are subject to any alternative tests or exceptions to the general rules outlined in those clauses contained in section 17A(3) SIS Act, or any other provision of the Superannuation Law.
- 2.7 For the purposes of clause 2.4, no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.

**Appointment of trustee**

- 2.8 Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons as Trustee if the person or persons consent to the appointment in writing and give any other consents or declarations required by the Superannuation Law.
- 2.9 The Legal Personal Representative of:
  - (a) a deceased Member;
  - (b) a Member who has lost legal capacity; or
  - (c) a Member who has appointed that Legal Personal Representative as the Member's attorney under an enduring power of attorney,may exercise that Member's power to appoint a Trustee.
- 2.10 Where a Member is under the age of 18 years, a parent or guardian of the Member may exercise that Member's power to appoint a Trustee.
- 2.11 If the Fund has no remaining Members and no other person mentioned in this clause has the power to appoint a Trustee on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has power to appoint a Trustee.

**Ceasing to act as trustee**

- 2.12 A Trustee must immediately cease to act as Trustee of the Fund:
  - (a) if, being an individual, they die or otherwise lose legal capacity;
  - (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;

- (c) if the Trustee is disqualified from holding office **as a** trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (d) if the Trustee resigns as Trustee of the Fund by written notice to a majority of the Members; or
- (e) subject to the Superannuation Law, if the Trustee is removed from office by written notice given to the Trustee by no less than two-thirds of the Members.

**Continuity of office**

- 2.13 Any person who acts as Trustee must, on ceasing to be Trustee under this clause, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must deliver all records and other books to the remaining or new Trustee or Trustees.

**Remuneration of trustee**

- 2.14 Unless permitted by the Superannuation Law, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or **services** performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

**Member may be trustee**

- 2.15 No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is by virtue of their office or the powers delegated to them by the Trustee disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

**3 Appointment and removal of other persons****Appointment**

- 3.1 The Trustee may appoint in writing one or more persons, as appropriate, as:
- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
  - (b) Actuary, who must be a Fellow of the Institute of Actuaries of Australia or a firm or company of actuaries of which at least one member or director (as the case requires) is a Fellow;
  - (c) Administration Manager, who has power to carry out some or all of the administration of the Fund;
  - (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
  - (e) Custodian, who has powers, discretions and authorities relating to the custody of:
    - (i) title deeds and any other documents of any nature; or
    - (ii) any part of the assets of the Fund,

unless that person is prohibited from acting under the Superannuation Law; and

- (f) other consultants and officers desirable for the proper management and administration of the Fund.

#### **Removal**

- 3.2 The Trustee may remove from office any person or company appointed to any position under clause 3.1 and must remove that person or company if required by the Superannuation Law.

### **4 Investment powers of trustees**

#### **Investment strategy**

- 4.1 The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances and the Superannuation Law.

#### **Power of investment**

- 4.2 Subject to the Superannuation Law and the Fund's investment strategy, the Trustee may invest the whole or any part of the Fund's assets in any one or more of the following investments as if the Trustee were the absolute owner beneficially entitled:
  - (a) the acquisition by original subscription or by purchase or otherwise of debentures, debenture stock, notes or other loan instruments (whether secured or unsecured) of any corporation wherever situated or incorporated and payable or repayable in any currency and whether bearing interest or not;
  - (b) the acquisition by original subscription or by purchase or otherwise of the shares or stocks (whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon) of any corporation wherever situated or incorporated and expressed in any currency;
  - (c) the purchase of (or at interest upon the security of) shares, stocks, funds, securities, warrants, land or other investment or property of any nature and wherever situated (other than an investment of a wasting or speculative nature), whether income producing or not and whether fully or partly paid up or involving liabilities or not;
  - (d) the making of loans upon personal credit with or without security as the Trustee thinks fit;
  - (e) the acquisition by original subscription or by purchase or otherwise of interests or rights (whether partly paid or not and whether having liability thereon or not) in corporations not having a share capital, wherever situated or incorporated;
  - (f) the acquisition of securities of any country or of any state, territory or colony, whether by original subscription, purchase or otherwise;
  - (g) the acquisition of securities of any statutory or municipal body wherever situated and for any period, whether by original subscription, purchase or otherwise;

- (h) the acquisition by original agreement or by purchase or otherwise of options and rights to take up:
    - (i) shares or stock (whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon) of any corporation wherever situated or incorporated; or
    - (ii) interests or rights (whether having liability thereon or not) in corporations not having a share capital, wherever situated or incorporated;
  - (i) the acquisition of units or sub-units of any unit trust, whether by original subscription, purchase or otherwise;
  - (j) the acquisition by any means of land or any interest in land of any tenure, improved or unimproved, and wherever situated;
  - (k) loans to any person or deposited with any person, with or without security and for any period;
  - (l) deposits with any Authorised Deposit-taking Institution for any period;
  - (m) any investment in the erection of buildings or structures or the making of improvements on land with any tenure, improved or unimproved, and wherever situated;
  - (n) any Policy or Annuity with an Insurer and any chose in action, interest for life or any lesser term or any reversion, whether as original Policy holder or by assignment; and
  - (o) any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law,
- with full power to vary, replace, or otherwise deal with investments as fully and effectively as a person absolutely and beneficially entitled dealing with their own property may do so. The Trustee must not invest in loans to or give any financial assistance to a Member or a Relative of a Member unless:
- (p) the Fund was established before 16 December 1985; and
  - (q) until 1 July 1994, the Trustee had express power under the governing rules of the Fund to lend money or give financial assistance to Members or their Relatives.

**Power to hold investment in different names**

- 4.3 An investment may be held in any name, including the name of a nominee (whether an individual or a corporation), as the Trustee decides.

**Disclosure of trustee's interest in investment**

- 4.4 The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed under the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

**Specific investments**

- 4.5 Subject to clauses 4.1 and 4.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee may decide in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes of investment for certain Members or Beneficiaries.

**5 Trustee powers generally****General powers**

- 5.1 Subject to the Superannuation Law and without prejudice to the powers vested in the Trustee by this document or otherwise, the Trustee may:
- (a) institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund;
  - (b) compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund;
  - (c) commence, carry on and defend legal proceedings to recover damages against any person arising out of any loss suffered by any Member, former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this document;
  - (d) carry on a business;
  - (e) refer any claims or demands by or against the Fund to arbitration and observe and perform any awards arising from that arbitration;
  - (f) make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
  - (g) open bank accounts and retain on current or deposit account at any bank any moneys as it considers proper and make procedures for the operation of those accounts including the signing and endorsing of cheques;
  - (h) enter into a leasing arrangement with any person, including:
    - (i) a finance lease;
    - (ii) an operating lease; or
    - (iii) a hire-purchase agreement;
  - (i) decide who may sign receipts, acceptances, endorsements, releases, contracts and documents on the Fund's behalf;
  - (j) pay Benefits out of the Fund to a Member or a Dependant;
  - (k) decide who are Dependents for the purposes of this document;
  - (l) in case of the mental or physical ill health or incapacity of any person entitled to Benefits, pay or apply those Benefits or any part thereof at the Trustee's discretion to or for the

benefit of any person and the Dependants of that person or any of them as the case may be without being responsible for seeing to the application of payments;

- (m) indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund to the extent that indemnity is not limited by or contrary to the Superannuation Law;
- (n) pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund;
- (o) take and act upon the opinion of any legal practitioner, whether about the interpretation of this document or any other document or statute or the administration of the trusts declared, without being liable to any Member or Dependants for any act done in accordance with that opinion;
- (p) insure and keep insured as it sees fit:
  - (i) any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers); or
  - (ii) the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (q) insure or re-insure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
- (r) provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (s) purchase an Annuity from an Insurer to provide all or a part of the Pension payable in respect of a Member or former Member, in the name of the Trustee or of the Member or former Member;
- (t) enter into any agreement, provide any notice, make any election or undertake any other action (whether revocable or irrevocable) which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (u) seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (v) accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component under this document or the Superannuation Law;
- (w) accept from the trustee of any other trust (including for the avoidance of doubt from the Trustee in its capacity as trustee of any other trust) in the absolute discretion of the Trustee transfers or dispositions of any real or personal property subject to the trust declared in this Fund; and
- (x) borrow money, or maintain a borrowing of money (including by drawing or dealing in any bill of exchange or other negotiable instrument) and secure the repayment of it in a manner and upon terms (including with or without security) that the Trustee decides.



**Power of delegation**

5.2 The Trustee may, subject to the Superannuation Law:

- (a) delegate, in writing, to any person, or (where there is more than one Individual Trustee) to any one or more Individual Trustee(s), any of the powers, duties and discretions conferred on the Trustee under this document, and sign any power of attorney or other document necessary to give effect to that purpose and, where anything contained in this document is required or entitled to be done by deed, the same may be done in writing by a document which states that the power contained in this clause is being exercised, upon any terms that the Trustee decides; and
- (b) vary, limit or revoke that delegation.

**Power to contract with Trustee acting in a different capacity**

5.3 The Trustee may:

- (a) contract with;
- (b) sell, or grant options to buy, any part of the Fund to;
- (c) purchase real or personal property from; or
- (d) enter into any sharefarming or agistment agreement, lease, tenancy or partnership with, the Trustee (or any one or more of them if more than one) in its own or any other capacity either alone or in conjunction with another or other persons.

**Power to become a director and act despite personal interest**

5.4 The Trustee may:

- (a) if permitted by the relevant law relating to companies, become a director of any company in which part of the Trust Fund is invested;
- (b) appoint any person to act as a director of a company in which part of the Trust Fund is invested;
- (c) receive the remuneration attached to that office without accounting to the Trust for it; and
- (d) exercise or concur in exercising all of the powers and discretions contained in this document or otherwise conferred by law, even if the Trustee or any director or shareholder of the Trustee:
  - (i) has or may have a direct personal interest (whether as Trustee of any other trust or in its personal capacity or as a director or shareholder of any company or otherwise) in the mode or result of exercising that power or discretion; or
  - (ii) may benefit either directly or indirectly as a result of the exercise of that power or discretion,

and even if the Trustee is the sole trustee.

## **6 Liability and indemnity of trustee**

### **Liability**

6.1 The Trustee (and, when the Trustee is a Constitutional Corporation, its Directors and officers) are not liable for:

- (a) any act or default done or omitted to be done in the exercise of their powers, duties or discretions;
- (b) any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund are invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited;
- (d) any loss suffered as a result of relying on any professional advice or assistance; or
- (e) any other loss, damage or misfortune,

except if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

### **Indemnity**

6.2 The Trustee (and, when the Trustee is a Constitutional Corporation, its Directors and officers) are indemnified and, subject to the Superannuation Law, have a lien on the Fund for that indemnity against all liabilities incurred by them through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this document or in the proper performance of their duties under this document. The indemnity in this clause is not available if the person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

### **Limitation of clause**

6.3 This clause only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of the indemnity is not limited by or inoperative under the Superannuation Law.

## **7 Trustee to open accounts**

The Trustee may open and operate the Accounts.

## **8 Accumulation account**

### **Establishment**

8.1 The Trustee may establish an accumulation account for each Member or Beneficiary.

**Amounts to be credited**

- 8.2 The Trustee may credit to the Accumulation Account for a Member or Beneficiary any amounts required by this document and the Superannuation Law including:
- (a) Contributions made by or on behalf of the Member or Beneficiary;
  - (b) the portion of the Earnings (if positive) the Trustee determines to credit to that Accumulation Account under clause 10.5;
  - (c) amounts received by transfer from Approved Benefit Arrangements attributable to the Member or Beneficiary;
  - (d) proceeds of any Policy or Annuity attributable to the Member or Beneficiary;
  - (e) any Financial Assistance received by the Fund attributable to the Member or Beneficiary;
  - (f) any amounts transferred or Allotted from other Accounts attributable to the Member or Beneficiary; and
  - (g) any other amounts the Trustee determines and which are permitted by the Superannuation Law.

**Amounts to be debited**

- 8.3 The Trustee may debit the Accumulation Account for a Member or Beneficiary with any amounts in accordance with this document and the Superannuation Law including:
- (a) Benefits paid to the Member or Beneficiary;
  - (b) the portion of the Earnings (if negative) the Trustee determines to debit to that Accumulation Account under clause 10.5;
  - (c) amounts transferred to Approved Benefit Arrangements;
  - (d) attributable to the Member or Beneficiary;
  - (e) any Taxation calculated under clause 17 attributable to the Member or Beneficiary;
  - (f) any amounts transferred or Allotted to other Accounts attributable to the Member or Beneficiary;
  - (g) any Levy or Shortfall Component paid in respect of the Member or Beneficiary;
  - (h) any costs or expenses attributable to the Member or Beneficiary including the cost of any Policies effected by the Trustee in respect of the Member; and
  - (i) any other amounts the Trustee determines and which are permitted by the Superannuation Law.

## **9 Pension account**

### **Establishment**

- 9.1 The Trustee may establish a Pension Account in respect of a Pensioner.

### **Amounts to be transferred**

- 9.2 The Trustee must transfer to the Pension Account for a Pensioner any **assets** of the Fund or amounts determined in accordance with this document which the Trustee believes are necessary to cash the Member's Benefit as a Pension.

### **Amounts to be credited**

- 9.3 The Trustee may credit to the Pension Account for a Pensioner that portion of the Earnings (if positive) that the Trustee determines to credit to that Pension Account under clause 10.5, and any other amounts that the Trustee determines and which are permitted by the Superannuation Law.

### **Amounts to be debited**

- 9.4 The Trustee may debit to the Pension Account for a Pensioner all amounts in accordance with this document and the Superannuation Law including:
- (a) Benefits paid to the Pensioner;
  - (b) that portion of the Earnings (if negative) that the Trustee determines to debit to that Pension Account under clause 10.5; and
  - (c) any other amounts that the Trustee determines and which are permitted by the Superannuation Law.

## **10 Income account**

### **Establishment**

- 10.1 The Trustee must establish an income account for the Fund.

### **Amounts to be credited**

- 10.2 The Trustee must credit the Income Account with all amounts required by this document and the Superannuation Law including the Earnings (if positive) determined under clause 10.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### **Amounts to be debited**

- 10.3 The Trustee must debit the Income Account with all amounts required by this document (including any amounts required under clause 14(b)) and the Superannuation Law, including any losses on sale of investments, any Taxation or Levy not attributed to a Member Account and the cost of any Policy not debited to a Member Account.

**Trustee to determine earnings and fund earning rate**

- 10.4 At the end of each Fund Year or at any other time that the Trustee considers appropriate or the Superannuation Law requires, the Trustee must determine:
- (a) the Earnings in respect of the period since the previous determination; and
  - (b) the Fund Earning Rate.

**Distribution of earnings**

- 10.5 Subject to clauses 11 and 13 and the Superannuation Law, the Fund Earning Rate must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited to other Accounts (including Member Accounts, Pension Accounts or Reserve Accounts) from the Income Account.

**Trustee to notify members**

- 10.6 The Trustee must, when required by the Statutory Authority or the Superannuation Law, notify the Members of the basis of the calculation of the Fund Earning Rate.

**11 Fluctuation account****Establishment**

- 11.1 The Trustee may establish a Fluctuation Account for the Fund.

**Transfers to fluctuation account**

- 11.2 The Trustee must transfer to the credit of the Fluctuation Account any amount remaining in the Income Account after distribution of Earnings under clause 10.5.

**Separation of account moneys**

- 11.3 Amounts credited to the Fluctuation Account do not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account must be credited to the Fluctuation Account.

**Use of fluctuation account**

- 11.4 The Fluctuation Account may be used for the following purposes:
- (a) as part of a reserving strategy to stabilise investment earnings;
  - (b) to supplement the Fund Earning Rate; and
  - (c) to pay any Taxation.

**Adjustment of member account**

- 11.5 The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

## **12 Reserve accounts**

### **Trustee may establish**

- 12.1 Subject to the Superannuation Law, the Trustee may establish and maintain one or more reserve accounts for the Fund and may add, deduct and allocate amounts to or from those accounts as it considers appropriate.

### **Investment strategy**

- 12.2 The Trustee must formulate and implement a separate investment Strategy for any Reserve Account, which strategy must be consistent with:

- (a) the Fund's investment strategy; and
- (b) the Trustee's ability to discharge all liabilities, whether actual or contingent, as and when they fall due.

### **No entitlement**

- 12.3 No Member, nor any other person, has any entitlement to any amount held in a Reserve Account.

## **13 Specific investments**

### **Recording of specific investments**

- 13.1 Where the Trustee invests separately in respect of certain Members or Beneficiaries under clause 4.5, the Trustee must record on whose behalf those specific investments are made for the purposes of determining allocations to the Member Account.

### **Allocation of earnings and costs for specific investments**

- 13.2 The Member Account of the relevant Member or Beneficiary must be credited with any income and profit and debited with any costs, charges or Taxation in proportions applicable to any specific investment made under clause 13.1, in accordance with the Superannuation Law.

## **14 Valuation of fund**

At the end of each Fund Year or at any other time the Trustee considers it appropriate or the Superannuation Law requires, the Trustee must:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments under clause 4.5, to the Income Account; and
- (c) ensure that the records and accounts of the Fund reflect the valuation of each asset.

## **15 Records, reports and audit**

### **Trustee obligations**

#### **15.1 The Trustee must:**

- (a) keep accounts and issue receipts for all money and other assets received into and disbursed from the Fund and of all dealings in connection with that money or those assets;
- (b) collect and promptly pay all moneys due to or received on behalf of the Fund:
  - (i) to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution; or
  - (ii) into a trust account of a lawyer, accountant, investment manager or administration manager;
- (c) pay any premiums to Insurers as required to maintain any Policies or Annuities;
- (d) safely retain all records, books, accounts, minutes, reports and other documents for any period required by the Superannuation Law;
- (e) prepare and lodge all documents required by the Superannuation Law;
- (f) ensure the Fund is audited at the end of each Fund Year or at any other time required by the Superannuation Law and ensure that the Auditor provides any certificates required by the Statutory Authority under the Superannuation Law;
- (g) once each Fund Year, report on the affairs of the Fund to the Members in the form required by the Superannuation Law;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection under the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee under the Superannuation Law until it is validly lifted.

### **Directions of statutory authority**

- 15.2** The Trustee must comply with any direction or requirement of the Statutory Authority or a court in relation to the Fund.

## **16 Policies of insurance**

### **Member policies**

- 16.1** The Trustee may determine to effect Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one and partly in another.

**Member may request a specific policy**

- 16.2 Where a Member makes a written request to the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy unless:
- (a) the Policy would cause the fund to cease being a Complying Superannuation Fund; or
  - (b) the Member has in writing withdrawn, cancelled or altered the Member's original request.

**Trustee to effect Policy if required**

- 16.3 If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of the Member, the Trustee must effect the Policy unless the Member requests the Trustee in writing not to effect the Policy.

**Limitation on liability of Trustee**

- 16.4 Where a Trustee is not required to exercise the power to effect a Policy, the Trustee is not responsible or liable to a Member or a Member's Legal Personal Representative or Dependant if the Trustee decides not to exercise the power to effect that Policy.

**Member to be medically examined**

- 16.5 To effect, increase or otherwise vary any Policy or Annuity, the Trustee may require any Member or any person who has applied to become a Member to be medically examined or to submit other evidence of health or to provide proof of age to the satisfaction of the Insurer or to take steps necessary for those purposes.

**Member refusing to be medically examined**

- 16.6 If any Member or person who has applied to be a Member:
- (a) refuses to undergo medical examination or to undertake any other step which may reasonably be required for those purposes; or
  - (b) fails to do anything where the failure would or might prejudice the Policy or result in the Policy moneys or any part therefore not becoming payable,

the Trustee may adjust the Benefit to be provided by the Fund for an in respect of that Member or person in any manner the Trustee considers appropriate.

**Other Policies**

- 16.7 To avoid doubt, the Trustee may obtain any other Policy it considers appropriate.

**Premiums**

- 16.8 The Trustee may debit premiums for a Policy to one or more Accounts as it considers appropriate.



## **17 Payment of taxation and Levies**

### **Deduction of taxation on benefit**

- 17.1 The Trustee may deduct from any Benefit payable to any Member or Beneficiary under this document any Taxation required to be deducted from it.

### **Taxation on contributions and shortfall components**

- 17.2 The Trustee, or (with the agreement of the Trustee) any other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component before the Contribution or Shortfall Component is credited to the Accumulation Account of a Member.

## **18 Membership**

### **Eligibility for membership**

- 18.1 The Trustee may admit any person who applies for Membership unless their admission would cause the Fund to breach the Superannuation Law.
- 18.2 If the Trustee accepts a person's application for Membership, the person becomes a Member from the date and on the terms that the Trustee determines.

### **Application for membership**

- 18.3 Each application for Membership must be made by the relevant applicant in the form approved by the Trustee.

### **Admission to membership without application**

- 18.4 The Trustee may, subject to the Superannuation Law, admit a person as a Member even though the person has not applied for Membership in accordance with clauses 18.1 and 18.2.

### **Members and beneficiaries to provide information**

- 18.5 Each applicant for Membership and any Beneficiary must whenever requested by the Trustee give the information the Trustee considers appropriate. Where the Trustee is or becomes aware that the information given is incorrect or misleading or any relevant information has been deliberately withheld, the Trustee may alter or amend the Benefits to those amounts which would have been determined had full and accurate information been supplied.

### **Member bound by this document**

- 18.6 Each Member by virtue of their application is deemed to have consented to be bound by this document.

## **19 Membership notification requirements**

### **Product disclosure statements**

- 19.1 The Trustee must give all new Members a Disclosure Document containing information and details of the Fund as required by the Superannuation Law.

**Disclosure and reporting requirements**

- 19.2 The Trustee must annually give Members, former Members and Beneficiaries any written information and copies of accounts, records and documents of the Fund required by the Superannuation Law.

**Former member notices**

- 19.3 The Trustee must give former Members or their Legal Personal Representatives a written statement containing information and details about the Benefits of the former Member as required by the Superannuation Law.
- 19.4 Other than as set out in this clause, no Member or Dependant of a Member is entitled to obtain information about the operation or the conduct of the Fund which, in the opinion of the Trustee, it is inappropriate to disclose.

**Inspection of this document and other documents**

- 19.5 A copy of this document and any other documents required by the Superannuation Law must be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary.
- 19.6 Unless otherwise required by the Superannuation Law, it is sufficient for this clause to make a copy of this document and the documents available to the Member or the Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when the office or business is open.

**Meetings and members**

- 19.7 The Trustee must notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held under the Superannuation Law and for the purposes of this document are to be called and conducted.

**20 Ceasing to be a member**

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of their Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid in accordance with clause 37;
- (c) the Trustee determines that the Member's continued Membership would cause the Fund to cease complying with the Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## **21 Contributions to the fund**

### **Eligibility to make contributions**

- 21.1 Subject to the consent of the Trustee and clause 22, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

### **Allocation of contributions**

- 21.2 Each Contribution must be allocated to a Member within 28 days after the end of the month in which it is received.

### **Guarantee Act**

- 21.3 Where the Trustee accepts Contributions under the Guarantee Act, the Trustee must give all certificates, reports and other information required by the Guarantee Act.

## **22 General provisions concerning contributions**

### **Form of contribution**

- 22.1 A Contribution may be made either in cash or by transfer of an asset or assets if:
- (a) the assets transferred are authorised investments;
  - (b) the assets are transferred in accordance with the Superannuation Law; and
  - (c) the acquisition of the assets is not prohibited by the Superannuation Law.

### **Obligations to contribute**

- 22.2 Subject to the Superannuation Law:
- (a) in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity is under an obligation to make a Contribution to the Fund in respect of any Fund Year; and
  - (b) a Member may remain a Member of the Fund notwithstanding that no Contributions are made in respect of that Member for any Fund Year.

### **Limit on accepting Contributions**

- 22.3 The Trustee must refuse to accept any Contribution or Shortfall Component if:
- (a) under the Superannuation Law the Contribution is not authorised to be made, or is in excess of the amount of Contributions that can be made, on the Member's behalf;
  - (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
  - (c) the Statutory Authority directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component under the Superannuation Law.

**Ineligible contributions**

- 22.4 If any Contribution or Shortfall Component is accepted by the Fund in breach of the Superannuation Law, the Trustee must refund the Contribution or Shortfall Component as required by the Superannuation Law, less any:
- (a) Taxation payable, or which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
  - (b) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to that Contribution or Shortfall Component; and
  - (c) reasonable administration charges,
- and the Trustee must debit the Member Account accordingly.

**23 Contributions splitting****Application**

- 23.1 Subject to the SIS Regulations, the Trustee may accept an application from an Applicant to Split the Applicant's Benefit (up to the Maximum Splittable Amount) if:
- (a) the Benefits are not subject to a Payment Split or Payment Flag;
  - (b) the Applicant has not already made an application for that Financial Year;
  - (c) the Applicant's Spouse is aged:
    - (i) between the relevant Preservation Age and 65 but does not consider themselves to be permanently retired; or
    - (ii) less than the relevant Preservation Age;
  - (d) the Applicant specifies the amount from the Applicant's Taxed Splittable Contributions or Untaxed Splittable Contributions (or both) that the Applicant Seeks to Split; and
  - (e) the amount specified in the application is less than or equal to:
    - (i) for a Split of Untaxed Splittable Contributions – the Non-Concessional Contributions; and
    - (ii) for a Split of Taxed Splittable Contributions – the post-June 1983 component, that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew their entire benefits at the time of the Split.

**Split**

- 23.2 If the Trustee accepts an application under clause 23.1, the Trustee must effect the Split within 90 days after receiving the application, but cannot allot any amount for the benefit of the Spouse unless:
- (a) the requirements of clause 23.1 are satisfied; and

- (b) the Spouse is a Member.

## **24 Transfers from approved benefit arrangements**

### **Request to transfer assets**

- 24.1 A Member, or the Legal Personal Representative of a Member, may request that the Trustee Allot, transfer or rollover all or part of any Member's Account to any other Member's Account or Approved Benefit Arrangement.

### **Transfers from approved benefit arrangements**

- 24.2 The Trustee:

- (a) has the sole discretion to decide whether to accept the whole or part of any transfer requested under clause 24.1 and what (if any) conditions apply to any transfer;
- (b) cannot accept a transfer of an amount to the Fund if acceptance of that amount would cause the Fund to cease being a Complying Self Managed Superannuation Fund;
- (c) must hold all amounts transferred under clause 24.1 as part of the Fund and reflect equivalent rights, entitlements and interests in the Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement; and
- (d) may, at the Trustee's sole discretion, deem the Member to have become a Member of the Fund on the date the Member became a member of the other Approved Benefit Arrangement.

### **Condition of transfer**

- 24.3 Where the Trustee accepts a transfer into the Fund under clause 24.2, those Benefits must be maintained and are only payable:

- (a) as set out in this document; or
- (b) as permitted by the Superannuation Law.

### **Limitation on receiving transferred Benefit**

- 24.4 If the Superannuation Law requires the payment of Benefits from the other Approved Benefit Arrangement to be deferred until the Member reaches a particular age or a specified event occurs, then that same condition must be satisfied before the Member receives from the Fund any Benefit that is attributable to the assets transferred.

## **25 Transfers to approved benefit arrangements**

### **Request to transfer assets**

- 25.1 A Member, or the Legal Personal Representative of a Member, may request that the Trustee Allot, transfer or roll over all or part of any of that Member's Accounts to any other Member's Account or Approved Benefit Arrangement.

**Limitation on transferring assets**

- 25.2 The Trustee must not give effect to any Allotment, transfer or rollover requested under clause 25.1:
- (a) to the extent that the amount to be Allotted, transferred, or rolled over exceeds the amount the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued; or
  - (b) that would breach the Superannuation Law or cause the Fund to cease being a Complying Superannuation Fund.

**Allotment, transfer or rollover**

- 25.3 The Trustee:
- (a) must, if the Trustee is satisfied that an Allotment, transfer or rollover requested under clause 25.1 is required:
    - (i) by the Superannuation Law; or
    - (ii) to give an effect to an agreement or order made under the *Family Law Act 1975* (Cth); and
  - (b) in all other cases, may at the Trustee's sole discretion,
- give effect to the request, and may do so in the manner that the Trustee decides, including as to the assets Allotted, transferred or rolled over and what (if any) conditions apply.

**Effect of Allotment, transfer or rollover**

- 25.4 Once an Allotment, transfer or rollover under this clause has been effected:
- (a) the receipt of the transferred or rolled over Benefit by the proper officer of the Approved Benefit Arrangement is a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee has no responsibility to see to the application of it; and
  - (b) all the rights and interest of that Member under this document (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the amount paid are entirely extinguished.

**Eligible rollover funds**

- 25.5 The Trustee may if permitted by the Superannuation Law, and must if required by the Superannuation Law, transfer a Member's Benefit to an Eligible Rollover Fund and must give any information to the trustee of the Eligible Rollover Fund at the times and in the manner required by the Superannuation Law.

## 26 Types of benefits

### Benefit entitlement

- 26.1 Where a Member becomes entitled to a Benefit under this document and the Superannuation Law, and there are no cashing restrictions that apply to the Benefit under the Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted by the Superannuation Law, including:

- (a) one or more Superannuation Lump Sums; or
- (b) one or more Income Streams.

### Benefit entitlement before 1 July 2007

- 26.2 For the purposes of this clause where a Member was already receiving one or more of the following Income Streams before 1 July 2007:

- (a) an Allocated Pension or non-commutable Allocated Pension under SIS Regulation 1.06(4);
- (b) a life expectancy pension under SIS Regulation 1.06(7);
- (c) a lifetime commutable pension under SIS Regulation 1.06(6); and
- (d) a Market Linked Pension under SIS Regulation 1.06(8),

that Member may continue to receive that Income Stream as permitted by the Superannuation Law.

### Election

- 26.3 Unless the Trustee otherwise determines, an election given by a Member under clause 26.1:
- (a) must be in writing and state the amount to be paid and the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by the Superannuation Law and this document; and
  - (b) must be given to the Trustee before the Benefit starts to be paid to the Member, but is not binding on the Trustee.

### Benefit entitlement – with cashing restrictions

- 26.4 Subject to the Superannuation Law, where a Member becomes entitled to a Benefit under clause 31 of this document, and there are cashing restrictions that apply to the Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with those cashing restrictions.

### Transfer of policy as benefit

- 26.5 Where a Member or a Beneficiary is entitled to be paid a Benefit and that Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the Policy to the Member or Beneficiary or their Dependants.

**Transfer in specie as benefit**

- 26.6 The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to that Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable under this document.

**27 Preservation**

The Trustee must Preserve the amounts of Contributions in respect of Members or Beneficiaries as required by the Superannuation Law.

**28 Payment of unrestricted non-preserved amount**

Notwithstanding any other provisions in this document which may be construed to the contrary and subject to the Superannuation Law:

- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non-Preserved Amount of that Member by giving written notice to the Trustee; and
- (b) the minimum Unrestricted Non-Preserved Amount which may be withdrawn by a Member under clause 28(a) must be determined by the Trustee and notified to Members of the Fund.

**29 Payment of additional benefits**

Where a Member ceases to be a Member of the Fund, the Trustee may pay to the Member's Accumulation Account:

- (a) an Anti-detriment Payment;
- (b) that part of the Fluctuation Account which the Trustee considers equitable for purposes of payment of a Benefit; and
- (c) such other amounts allowed under the Superannuation Law.

**30 Retention of benefit in fund**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may retain all or any part of any Benefit in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until the Benefit is required to be paid under the Superannuation Law or this document.

**31 Compulsory payment of benefits****Payment**

- 31.1 The Trustee must cash a Member's Benefit as soon as practicable after the occurrence of any of the following:
- (a) the Member dies; or



- (b) cashing of the Benefit is otherwise required under this document or the Superannuation Law,

whichever occurs first.

#### **Cashing methods**

31.2 The Trustee may cash a Member's Benefit in any one or more of the following ways:

- (a) by paying the Benefit as a single lump sum;
- (b) by paying the Benefit as an interim lump sum (not exceeding the amount of the Member's Benefit calculated at the date the cashing of the Benefit is required under clause 31.1) and a final lump sum (not exceeding the balance of the Benefit as finally calculated in relation to the event requiring the Benefit to be cashed);
- (c) by starting to pay the Benefit as one or more Pensions; and
- (d) by starting to pay the Benefit as one or more Annuities.

### **32 Voluntary payment of benefits**

Subject to the Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) the Member Retires from Gainful Employment;
- (b) the Member suffers Permanent Incapacity;
- (c) the Member suffers Temporary Incapacity;
- (d) the Member, being a temporary resident, permanently departs Australia in circumstances described in the SIS Regulations, including regulation 6.20A or 6.20B, and requests in writing the release of their Benefits;
- (e) the Member's Gainful Employment with an Employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;
- (f) the Member suffers Severe Financial Hardship;
- (g) the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) the Member attains Preservation Age; or
- (j) any other condition of release permitted by the Superannuation Law is satisfied.

### 33 Pension benefit

The following provisions apply to the payment of a Pension:

- (a) Where the whole or part of a Member's Benefit is to be cashed in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law.
- (b) Subject to the Superannuation Law, where the whole or part of a Member's Benefit is to be cashed in the form of a Pension, the Trustee must cash the Pension under the governing rules of the Fund (including this document, trustee resolutions or any pension agreement).
- (c) Where an instalment of a Pension is to be cashed in respect of a Member and the amount standing to the credit of the relevant Pension Account is less than the instalment to be cashed, the lesser amount must be paid and the Trustee's liability in respect of the cashing of the Pension is discharged.
- (d) Notwithstanding clauses 33(a), 33(b) and 33(c), where a Benefit is to be cashed as a Pension, the Trustee may at its discretion apply an amount representing the capital value of that Benefit in the purchase of an Annuity in its name and may arrange for payments under that Annuity to be made directly to the Member. The Trustee in its discretion may assign the Annuity to the Member if requested and if permitted by the Superannuation Law.
- (e) If a Pensioner:
  - (i) commits an act of bankruptcy; or
  - (ii) becomes or is insolvent including, without limiting the generality of the foregoing, if the Member signs an authority under section 188 *Bankruptcy Act 1966* (Cth), or enters into any deed of assignment or deed of arrangement under Part X of that Act,

then the Pension immediately ceases and the Pension Account becomes an Accumulation Account, provided the cessation of the Pension is not prohibited under the superannuation law.

### 34 Statement of unclaimed benefits

The Trustee must give to the Statutory Authority a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Statutory Authority at the time and in the manner required by the Superannuation Law.

### 35 Limitation on payment

Notwithstanding any other clauses of this document, the Trustee must not pay any Benefits if the payment would cause the Fund to breach the Superannuation Law.

## **36 Forfeited benefits**

### **Forfeiture**

- 36.1 Benefits retained by or payable out of the Fund must, subject to the Superannuation Law, be forfeited if:
- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge those Benefits or part of those Benefits;
  - (b) the Member's interest in any Benefit, whether by the Member's or Beneficiary's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
  - (c) the Member for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit or, in the opinion of the Trustee, is incapable of managing the Member's affairs; or
  - (d) the Member, in the opinion of the Trustee, commits any fraud or is guilty of dishonesty or defalcation.

### **Application of forfeited money**

- 36.2 The whole of the Benefits forfeited by a person under clauses 36.1(a) to 36.1(d) may be applied by the Trustee for the benefit of a Member and their Dependents or any one or more of them as the Trustee determines.

### **Forfeiture account**

- 36.3 The Trustee has power at any time to establish a Forfeiture Account of the Fund and may transfer to the credit of the Forfeiture Account any amounts forfeited under clauses 36.1(a) to 36.1(d) or otherwise forfeited under this document.

### **Treatment of money in forfeiture account**

- 36.4 Whilst any moneys are held in the Forfeiture Account, they do not form part of any other Account and any income derived by the Fund in respect of moneys held in the Forfeiture Account must be credited to the Forfeiture Account.

### **Unclaimed benefits account**

- 36.5 The Trustee may, subject to the Superannuation Law, treat as unclaimed, forfeit and transfer to an account for Unclaimed Benefits, any moneys in the Fund standing to the credit of any Member whose whereabouts are unknown to it if, after making any enquiries it deems appropriate, it is unable to trace positively any person entitled to the benefit of those moneys.

## **37 Death benefits**

### **Payment if binding death benefit nomination**

- 37.1 Subject to clauses 38.6 and 41, if a Member makes a Binding Death Benefit Nomination that at the date of death is valid under clause 38.2, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

**Payment if no binding death benefit nomination**

- 37.2 If a Member has not made a valid Binding Death Benefit Nomination under clause 38.2 at the date of death, the Trustee may pay the Member's Benefit in accordance with clause 39 or 40.

**Commutation of income stream**

- 37.3 Notwithstanding any other clause of this document and subject to the Superannuation Law, the Trustee may, and must where required by the Superannuation Law, discharge its liability to a Member, Dependant or Beneficiary in respect of a Pension by paying to the Member, Dependant or Beneficiary a Superannuation Lump Sum equal to the amount standing to the relevant Pension in the Pension Account.

**Anti-detriment**

- 37.4 Subject to clause 36 and the Superannuation Law, the Trustee may (but is not obliged to) claim the benefit of anti-detriment provisions in the Taxation Act which allow tax paid on the Member's Contributions to be refunded to eligible Beneficiaries in the event of the Member's death.

**Treatment of commutation**

- 37.5 Subject to the Superannuation Law, the Trustee may resolve that the commutation of a Pension Benefit following the death of a Pensioner is treated as a Superannuation Member Benefit or a Superannuation Death Benefit.

**38 Death benefit nominations****Non-binding death benefit nomination**

- 38.1 A Member may at any time make a Non-Binding Death Benefit Nomination designating one or more Dependents or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member; however:
- (a) a Member wishing to designate a Nominated Beneficiary must give a written nomination to the Trustee; and
  - (b) subject to the Superannuation Law, that nomination is not binding on the Trustee.

**Binding death benefit nomination**

- 38.2 A Member may make a Binding Death Benefit Nomination to the Trustee that:
- (a) is in writing;
  - (b) is signed and dated by the Member in the presence of two witnesses, being persons:
    - (i) each of whom has turned 18 years; and
    - (ii) neither of whom is a person mentioned in the nomination; and
  - (c) contains a declaration signed and dated by the witnesses, stating that the nomination was signed by the Member in their presence.

- 38.3 Subject to the Superannuation Law, a Member may in a Binding Death Benefit Nomination nominate:
- (a) the person or persons to whom the Member's Benefit must be paid so long as that person or each of those persons is a Legal Personal Representative or Dependant of the Member;
  - (b) the proportions in which the Benefit is to be paid to that person or each of those persons; and
  - (c) the manner or form (whether by way of pension, lump sum or otherwise) in which those Benefits must be paid to that person or each of those persons.
- 38.4 A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and is otherwise effective until revoked.
- 38.5 A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by written notice to the Trustee.
- 38.6 Where:
- (a) a Member makes a Binding Death Benefit Nomination that is otherwise valid under clause 38.2; and
  - (b) the Binding Death Benefit Nomination contains a nomination in favour of a person who is **deceased** at the date a payment is to be made by the Trustee to that person under the Binding Death Benefit Nomination,
- the Binding Death Benefit Nomination is taken to be invalid to the extent of the nomination in favour of that deceased person and the Trustee must:
- (c) pay the Member's Benefit in accordance with the remaining terms of the Binding Death Benefit Nomination; or
  - (d) if no other person is nominated or if all other persons nominated are also deceased at the date their payments are to be made, pay the Member's Benefit as set out in clause 40 as if the Binding Death Benefit Nomination was invalid at the date of the Member's death.

### **39 Payment if no binding death benefit nomination**

Subject to clauses 37.1 and 41 and the Superannuation Law, any Benefit payable on the death of a Member may be paid or applied as the Trustee decides, by way of one or more Annuities, one or more Pensions or other periodical payment or by one or more Superannuation Lump Sum payments or any combination of those methods of payment (in each case upon the terms that the Trustee decides) to any one of the following, in the proportions the Trustee decides:

- (a) the Nominated Beneficiaries (if any) designated in a Non-Binding Death Benefit Nomination made by the Member;
- (b) the Dependants of the Member; or
- (c) the Legal Personal Representative of the Member.

#### **40 Payment if binding death benefit nomination is invalid or ineffective**

Subject to the Superannuation Law, if a Member makes a Binding Death Benefit Nomination that at the date of death is invalid or ineffective, the Binding Death Benefit Nomination is treated as a Non-Binding Death Benefit Nomination, made at the date of making the Binding Death Benefit Nomination, whether or not validly or effectively binding at that date.

#### **41 Payment if both death benefit nomination and nomination of reversionary beneficiary**

Where a Member who is a Pensioner has:

- (a) made a Binding Death Benefit Nomination or a Non-Binding Death Benefit Nomination or both; and
- (b) nominated a Reversionary Beneficiary in respect of their Benefit,

then unless the nomination of the Reversionary Beneficiary is contrary to the Superannuation Law:

- (c) the nomination of the Reversionary Beneficiary **takes effect** as if the Member has made neither a Binding Death Benefit Nomination nor a Non-Binding Death Benefit Nomination; and
- (d) the Trustee must cash the Member's Benefit as set out in the nomination of the Reversionary Beneficiary.

#### **42 Information to members and non-member spouses**

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must give the Member and the Non-Member Spouse all notices and information (in the appropriate form) required by the Superannuation Law.

#### **43 Trustee may create new interest for non-member spouse**

43.1 The Trustee may admit a Non-Member Spouse in respect of a Payment Split as a Member:

- (a) if the Non-Member Spouse requests the Trustee to do so in writing under the Superannuation Law and in the form prescribed by the Trustee; or
- (b) on its own initiative in the circumstances permitted by the Superannuation Law.

43.2 If the Trustee admits a Non-Member Spouse as a Member under clause 43.1, the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee under the Superannuation Law.

#### **44 Payment or transfer of interest of non-member spouse**

If the Non-Member Spouse in respect of a Payment Split is not admitted as a Member under clause 43, the Trustee must:

- (a) either:
  - (i) transfer or rollover the entitlement of the Non-Member Spouse to an Approved Benefit Arrangement; or
  - (ii) pay the entitlement of the Non-Member Spouse to the Non-Member Spouse if permitted or required by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee under the Superannuation Law.

#### **45 Family law fees**

The Trustee may:

- (a) charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by the Family Law and for which the Trustee is entitled to charge fees; and
- (b) may recoup those fees in accordance with the Superannuation Law from:
  - (i) a Member's Benefit Entitlement; or
  - (ii) the entitlements of the Non-Member Spouse.

#### **46 Satisfaction of entitlement**

- 46.1 The payment, transfer or rollover of the entitlement of a Non-Member Spouse in accordance with a Payment Split is a complete discharge of the Trustee in respect of any liability to that Non-Member Spouse and the Member in respect of that Non-Member Spouse for the amount paid, transferred or rolled over.
- 46.2 The Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Taxation that is calculated by the Trustee to be payable in respect of the entitlement of the Non-Member Spouse.

#### **47 Termination**

##### **Events of termination**

- 47.1 The trusts terminate and the Fund is wound up under this clause if any of the following events happen:
  - (a) there are no Members in the Fund and the Trustee resolves to terminate the Fund;
  - (b) all Members agree to terminate the Fund;

- (c) the Trustee decides that it would not be reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

**Notice to members and closing date**

- 47.2 Upon the trusts terminating under clause 47.1, the Trustee must give notice in writing to the Members that the Fund will be wound up on a specified date, that date being no later than any date on which the Fund is required by clause 47.1(d) to be terminated (**Closing Date**).
- 47.3 From the Closing Date:
- (a) no further Contribution may be made by any Employer or any Member, other than arrears of Contributions due to the Closing Date; and
  - (b) **arrears** of Contributions, if any, must be called in immediately.

**Surplus**

- 47.4 If a surplus remains after paying all Benefits for Members and their Dependants, that surplus must, subject to the requirements of the Superannuation Law and clause 47.6, be paid by the Trustee to or for the benefit of:
- (a) any Members;
  - (b) any former Members;
  - (c) any Dependants of those Members or former Members;
  - (d) the Legal Personal Representatives (in that capacity) of those Members, former Members or Dependants; or
  - (e) any Employer,

as the Trustee determines and, if paid to or for the benefit of two or more persons, in the proportions as the Trustee determines.

**Form of payment**

- 47.5 Subject to clause 47.6, the payments to be made under this clause 47 may be made in cash, transfer of assets, Policies, participation in any other Approved Benefit Arrangement, in specie or otherwise as determined by the Trustee, but must not be paid to or for the benefit of a Member unless permitted under the Superannuation Law.



**Payment to other persons**

- 47.6 If any payment of Benefits under this clause 47 is required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefit which is required to be deferred and the Trustee may make any of the following arrangements with respect to the Benefits required to be deferred:
- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event;
  - (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfies the Superannuation Law;
  - (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event; or
  - (d) purchase a non-commutable Pension payable for life in the name of the Member but only if the Member has permanently retired from the employment.

## Schedule 3

### Definitions and interpretation

#### 1 Definitions

In this document:

Term	Definition
<b>Account</b>	means any one of the following: <ul style="list-style-type: none"> <li>(a) Accumulation Account;</li> <li>(b) Pension Account;</li> <li>(c) Income Account;</li> <li>(d) Fluctuation Account;</li> <li>(e) Forfeiture Account;</li> <li>(f) Reserve Account; and</li> <li>(g) any other accounts required to be opened or maintained by the Trustee under the Superannuation Law or any other accounts the Trustee decides to establish and maintain.</li> </ul>
<b>Account Based Pension</b>	has the meaning given to that term in the SIS Regulations.
<b>Accumulation Account</b>	means the account established on behalf of each Member or Beneficiary as described in clause 8 of Schedule 2.
<b>Actuary</b>	means the actuary (if any) for the time being appointed under this document.
<b>Administration Manager</b>	means a person appointed as administration manager of the Fund under clause 3.1(c) of Schedule 2.
<b>Allocated Pension</b>	has the meaning given to that term in the SIS Regulations.
<b>Allot</b>	has the meaning given to that term in the SIS Regulations.
<b>Annuity</b>	means a Benefit payable by instalments that satisfies the meaning of 'annuity' in regulation 1.05 SIS Regulations or any other provision of the Superannuation Law.
<b>Anti-detriment Payment</b>	means a Superannuation Lump Sum arising from the death of the Member to compensate the fund for the tax payable on Contributions.
<b>Applicant</b>	means a Member who makes a contributions splitting application under clause 23 of Schedule 2.
<b>Approved Benefit Arrangement</b>	means a fund or benefit arrangement other than the Fund (including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement) into which or from which assets can be transferred from or into the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law, and includes an Eligible

Term	Definition
	Rollover Fund.
<b>Approved Deposit Fund</b>	in relation to a year of income means a fund which is a complying approved deposit fund under the Taxation Act.
<b>Auditor</b>	means the auditor for the time being appointed under clause 3.1(d) of Schedule 2.
<b>Authorised Deposit-taking Institution</b>	has the meaning given to that term in the <i>Banking Act 1959</i> (Cth).
<b>Beneficiary</b>	means a person who is presently and absolutely entitled to, or has a contingent right to receive, a Benefit under this document at any given time, and includes a Member, a Dependant or a Pensioner.
<b>Benefit</b>	means any amount which is payable by the Trustee out of the Fund under this document to or in respect of a Member.
<b>Benefit Entitlement</b>	means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled, and includes a contingent right to payment of an amount.
<b>Binding Death Benefit Nomination</b>	means a nomination made by a Member for the payment or application of a death benefit that is binding on the Trustee under the Superannuation Law.
<b>Child</b>	has the meaning given to that term in the SIS Act and SIS Regulations.
<b>Closing Date</b>	has the meaning set out in clause 47.2 of Schedule 2.
<b>Compassionate Ground</b>	has the meaning given to that term in the SIS Act and SIS Regulations.
<b>Complying Superannuation Fund</b>	in relation to a year of income means a fund which is a complying superannuation fund under the Superannuation Law.
<b>Constitutional Corporation</b>	has the meaning given to that term under the Superannuation Law.
<b>Contributions</b>	means payments to the Fund by Members, Employers and other Permitted Entities under this document before the deduction of any Taxation payable in respect of those payments.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Custodian</b>	means a person appointed as custodian under clause 3.1(e) of Schedule 2.
<b>Dependant</b>	in relation to a Member, or former Member, means: <ul style="list-style-type: none"> <li>(a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;</li> <li>(b) any child of the Member or former Member;</li> <li>(c) any person with whom the Member is in an Interdependency Relationship; or</li> <li>(d) any other person who, in the opinion of the Trustee, was financially dependent on the Member or former Member</li> </ul>

Term	Definition
	at the relevant time.
<b>Directors</b>	means (where the Trustee is a Constitutional Corporation) the directors or board of management for the time being of the Trustee as the case requires.
<b>Disclosure Document</b>	means any document required to be given under the Corporations Act to a person applying to be a Member.
<b>Earnings</b>	means all net income and net capital gains derived from the assets of the Fund, whether realised or unrealised, after deducting any capital losses, allowances for expenses and Taxation as the Trustee considers appropriate.
<b>Eligible Rollover Fund</b>	has the meaning given to that term in the Superannuation Law.
<b>Employee</b>	has the meaning given to that term in the SIS Act and SIS Regulations.
<b>Employer</b>	has the meaning given to that term in the SIS Act and SIS Regulations.
<b>Employment Termination Payment</b>	has the meaning given to that term in the Taxation Act.
<b>Family Law</b>	means the Payment Splitting arrangements under the Superannuation Law.
<b>Financial Assistance</b>	means any financial assistance granted to the Fund under Part 23 SIS Act.
<b>Financial Year</b>	means a period of 12 months ending on 30 June or any other period of 12 months as the Trustee determines.
<b>Fluctuation Account</b>	means the account established under clause 11 of Schedule 2.
<b>Forfeiture Account</b>	means the account established under clause 36.3 of Schedule 2.
<b>Full-Time Gainful Employment</b>	means Gainful Employment on a full-time basis within the meaning of the Superannuation Law.
<b>Fund</b>	means The Souvlis Family Superannuation Fund.
<b>Fund Earning Rate</b>	means the earning rate for the Fund (which may for the purposes of this document be negative) calculated under clause 10.4 of Schedule 2 after taking into account any provisions or reserves for future contingencies as the Trustee considers reasonable.
<b>Fund Rules</b>	has the meaning set out in clause 6 of the Agreed Terms.
<b>Fund Year</b>	means a period of 12 months ending on 30 June, or any other period ending on any other date as the Trustee determines.
<b>Gainful Employment</b>	in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law.
<b>Guarantee Act</b>	means the <i>Superannuation Guarantee Charge Act 1992</i> (Cth) which incorporates the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth) and any regulations made to those Acts.

Term	Definition
<b>Income Account</b>	means the account established under clause 10 of Schedule 2.
<b>Income Stream</b>	means: <ul style="list-style-type: none"> <li>(a) a Pension;</li> <li>(b) an Annuity; or</li> <li>(c) a Benefit payable in a form other than as a Superannuation Lump Sum, as permitted by the Superannuation Law.</li> </ul>
<b>Individual Trustee</b>	means a natural person who is appointed to be a Trustee of the Fund.
<b>Insured Member</b>	means any Member who has a Policy effected in their name by the Trustee.
<b>Insurer</b>	means any insurer with whom the Trustee effects a Policy or Policies.
<b>Interdependency Relationship</b>	has the meaning given to that term in the SIS Act and SIS Regulations.
<b>Investment Manager</b>	means a person appointed as an investment manager of the Fund under clause 3.1(a) of Schedule 2.
<b>Legal Personal Representative</b>	has the meaning given to that term in the SIS Act.
<b>Levy</b>	includes a levy payable by the Fund in accordance with the <i>Superannuation Supervisory Levy Act 1991</i> (Cth), the <i>Superannuation (Fund Assistance Levy) Act 1993</i> (Cth) and any other legislation or regulations which impose a levy or levies on the Fund.
<b>Market Linked Pension</b>	has the meaning given to that term in the SIS Regulations.
<b>Maximum Splittable Amount</b>	has the meaning given to that term in the SIS Regulations.
<b>Member</b>	means a person who has been admitted as a member of the Fund under clause 18 of Schedule 2.
<b>Member Account</b>	means an Accumulation Account or Pension Account as the case may be.
<b>Membership</b>	means a Member's or Beneficiary's membership of the Fund.
<b>Nominated Beneficiary</b>	means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as the Member's Nominated Beneficiary.
<b>Non-Binding Death Benefit Nomination</b>	means a nomination made by a Member in relation to the payment or application of a death benefit that is not a Binding Death Benefit Nomination.
<b>Non-Concessional Contribution</b>	has the meaning given to that term in the Taxation Act.
<b>Non-Member Spouse</b>	in relation to a Member has the meaning given to that term in the SIS Act and SIS Regulations. A person ceases to be a

Term	Definition
	Non-Member Spouse when:
	(a) the entitlement of the Non-Member Spouse in respect of a Payment Split is paid to the Non-Member Spouse or transferred or rolled over under the SIS Act and SIS Regulations; or
	(b) they become a Member.
<b>Normal Retirement Age</b>	means the age of 65 years or any other age not less than the Preservation Age that is acceptable to or required by the Superannuation Law and as the Trustee determines.
<b>Part-Time Gainful Employment</b>	means Gainful Employment on a part-time basis within the meaning of the Superannuation Law.
<b>Payment Flag</b>	has the meaning given to that term in the Superannuation Law.
<b>Payment Split</b>	has the meaning given to that term in the Superannuation Law, and includes a payment split under the SIS Regulations.
<b>Pension</b>	includes a Benefit payable by instalments that satisfies the meaning of 'pension' in regulation 1.06 SIS Regulations or any other provision of the Superannuation Law and includes an Allocated Pension and an Account Based Pension.
<b>Pension Account</b>	means the account established in respect of a Pensioner under clause 9 of Schedule 2.
<b>Pensioner</b>	means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension, and includes a Reversionary Beneficiary in receipt of a Pension.
<b>Permanent Incapacity</b>	has the meaning given to that term in the Superannuation Law SIS Act and SIS Regulations.
<b>Permitted Entity</b>	means any person or entity permitted under the Superannuation Law to make a Contribution in respect of a Member.
<b>Policy</b>	means any policy of assurance including: <ul style="list-style-type: none"> <li>(a) a policy on the life of a Member for endowment, term, disablement, terminal illness, trauma, accident or sickness insurance, effected either as an individual policy or as a group policy for a Member or a former Member; and</li> <li>(b) any policy which provides that benefits are payable to the Trustee on the death or disablement of a Member unless the acquisition of the policy is prohibited by the Superannuation Law.</li> </ul>
<b>Preservation Age</b>	means: <ul style="list-style-type: none"> <li>(a) for a person born before 1 July 1960 – 55 years of age;</li> <li>(b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years of age;</li> <li>(c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years of age;</li> </ul>

Term	Definition
	<p>(d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years of age;</p> <p>(e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years of age; and</p> <p>(f) for a person born after 30 June 1964 – 60 years of age.</p>
<b>Preserved</b>	<p>means subject to the prohibition against paying any amount held in the Fund before a Member:</p> <p>(a) reaches Preservation Age; or</p> <p>(b) is otherwise entitled to be paid that amount under the Superannuation Law,</p> <p>and 'Preserve' has a corresponding meaning.</p>
<b>Preserved Payment</b>	<p>means a payment required to be Preserved in order for the Fund to be a Complying Superannuation Fund, whether made to the Fund by:</p> <p>(a) an Employer;</p> <p>(b) a Permitted Entity;</p> <p>(c) a Member; or</p> <p>(d) a transfer from an Approved Benefit Arrangement.</p>
<b>Relative</b>	<p>in relation to a Member or former Member means any of the following:</p> <p>(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member;</p> <p>(b) the Spouse of the Member, or of any person specified in paragraph (a); or</p> <p>(c) any child of any of the persons specified in paragraphs (a) or (b).</p>
<b>Reserve Account</b>	means an account established under clause 12 of Schedule 2.
<b>Retires from Employment</b>	means enters retirement as defined by the SIS Act and SIS Regulations for the payment of Benefits.
<b>Retires from Gainful Employment</b>	in relation to a Member means enters actual retirement from Gainful Employment or Retires from Employment.
<b>Reversionary Beneficiary</b>	means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit at and from the time of the death of the Pensioner.
<b>Self Managed Superannuation Fund</b>	means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.
<b>Severe Financial Hardship</b>	has the meaning given to that term in the SIS Act and SIS Regulations.

Term	Definition
<b>Shortfall Component</b>	has the meaning given to that term in section 64 Guarantee Act.
<b>SIS Act</b>	means the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>SIS Regulations</b>	means the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth).
<b>Split</b>	<p>means to rollover or transfer out of the Fund or Allot for the benefit of the Applicant's Spouse an amount of the Applicant's Benefits equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:</p> <ul style="list-style-type: none"> <li>(a) the previous Financial Year; or</li> <li>(b) the Financial Year in which the application is made, if the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.</li> </ul>
<b>Splittable Contribution</b>	has the meaning given to that term in the SIS Regulations.
<b>Spouse</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) a person legally married to a Member at any time;</li> <li>(b) a person who (whether of the same sex or a different sex to the Member), although not legally married to the Member, in the opinion of the Trustee lives with a Member on a genuine domestic basis in a relationship as a couple and, in relation to a deceased Member, the term widow or widower includes a person who lived with the Member on such a basis immediately before the Member's death; or</li> <li>(c) a person (whether of the same sex or a different sex to the Member) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the <i>Acts Interpretation Act 1901</i> (Cth) as a kind of relationship prescribed for the purposes of that section,</li> </ul> <p>except that where a person has more than one Spouse, the Trustee must decide:</p> <ul style="list-style-type: none"> <li>(d) which one or more of them is deemed to be that person's Spouse for the purposes of this document; and</li> <li>(e) the proportions in which a Benefit payable to each Spouse is to be divided between them where there is no Binding Death Benefit Nomination.</li> </ul> <p>When determining whether a person meets the requirements of paragraph (b) above:</p> <ul style="list-style-type: none"> <li>(a) the Trustee may have regard to the following criteria with regard to the relationship between the person and the Member: <ul style="list-style-type: none"> <li>(i) the duration of the relationship;</li> <li>(ii) the nature and extent of any common residence;</li> </ul> </li> </ul>



Term	Definition
	<ul style="list-style-type: none"> <li>(iii) whether a sexual relationship exists;</li> <li>(iv) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;</li> <li>(v) the ownership, use and acquisition of their property;</li> <li>(vi) the degree of mutual commitment to a shared life;</li> <li>(vii) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;</li> <li>(viii) the care and support of children; or</li> <li>(ix) the reputation and public aspects of the relationship;</li> </ul>
	<ul style="list-style-type: none"> <li>(b) to remove all doubt, no particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the relationship is on a genuine domestic basis; and</li> <li>(c) the Trustee in determining whether the relationship is on a genuine domestic basis is entitled to have regard to any other matters, and to attach weight to these matters, as may seem appropriate to the Trustee in the circumstances of each case.</li> </ul>
	<p>For the avoidance of doubt, a person can be a Spouse of a Member even if that person or the Member is:</p> <ul style="list-style-type: none"> <li>(a) legally married to someone else; or</li> <li>(b) the Spouse of another person.</li> </ul>
<b>Statutory Authority</b>	<p>means a regulatory body or person having responsibility for the administration of superannuation as the case requires, including the:</p> <ul style="list-style-type: none"> <li>(a) Commissioner of Taxation;</li> <li>(b) Australian Prudential Regulation Authority; and</li> <li>(c) Australian Securities and Investments Commission.</li> </ul>
<b>Superannuation Death Benefit</b>	<p>has the meaning given to that term in the Taxation Act.</p>
<b>Superannuation Law</b>	<p>means any requirement under the:</p> <ul style="list-style-type: none"> <li>(a) SIS Act;</li> <li>(b) SIS Regulations;</li> <li>(c) <i>Occupational Superannuation Standards Act 1987</i> (Cth);</li> <li>(d) <i>Occupational Superannuation Standards Regulations</i> (Cth);</li> </ul>

Term	Definition
	<p>(e) <i>Family Law Act 1975</i> (Cth);</p> <p>(f) Corporations Act;</p> <p>(g) <i>Corporations Regulations 2001</i> (Cth);</p> <p>(h) Taxation Act;</p> <p>(i) <i>Financial Sector (Collection of Data) Act 2001</i> (Cth);</p> <p>(j) <i>Financial Institutions Supervisory Levies Collection Act 1998</i> (Cth); and</p> <p>(k) any other present or future legislation which the Trustee must comply with for the Fund to:</p> <p style="padding-left: 40px;">(i) qualify for concessional Taxation treatment as a Complying Superannuation Fund; or</p> <p style="padding-left: 40px;">(ii) meet any other requirement of the Statutory Authority,</p> <p>and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.</p>
<b>Superannuation Lump Sum</b>	has the meaning given to that term in the Taxation Act.
<b>Superannuation Member Benefit</b>	has the meaning given to that term in the Taxation Act.
<b>Taxation</b>	includes income tax, payroll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary.
<b>Taxation Act</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth) and any regulations or public rulings issued under those Acts.
<b>Taxed Splittable Contribution</b>	has the meaning given to that term in the SIS Regulations.
<b>Temporarily Totally Disabled</b>	<p>in relation to a Member means a state of disablement as a result of illness, accident or injury which:</p> <p>(a) commences on or before the Member attains the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier); and</p> <p>(b) causes the Member to be continuously absent from the Member's Gainful Employment for any period as any Policy effected in respect of the Member in respect of total disablement requires,</p> <p>where the Trustee expects the Member's disablement to be temporary, and 'Temporary Total Disablement' has a corresponding meaning.</p>
<b>Temporary Incapacity</b>	has the meaning given to that term in the SIS Act and SIS Regulations.

Term	Definition
<b>Total and Permanent Disablement</b>	means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health to engage in Full-Time Gainful Employment or Part-Time Gainful Employment for which the Member is reasonably qualified by education, training or experience.
<b>Trustee</b>	means: <ul style="list-style-type: none"> <li>(a) as at the date of this document – Christopher Peter Souvlis and Tina Souvlis; and</li> <li>(b) in all cases – the trustee or trustees for the time being of the Fund, or any one or more of them, whether original, additional or substituted.</li> </ul>
<b>Unclaimed Benefits</b>	means those Benefits described as unclaimed money under Part 22 SIS Act.
<b>Unrestricted Non-Preserved Amount</b>	means an amount (including a rollover payment) payable to or in respect of a Member, which: <ul style="list-style-type: none"> <li>(a) is not required to be Preserved, or at the time of payment is no longer required to be Preserved, under the Superannuation Law; and</li> <li>(b) is an unrestricted non-preserved benefit as that term is defined in the SIS Regulations, including Subdivision 6.1.4 SIS Regulations.</li> </ul>
<b>Untaxed Splittable Contribution</b>	has the meaning given to that term in the SIS Regulations.
<b>Vested Benefit</b>	means any Benefit that has vested to the benefit of a Member under the Superannuation Law.

## 2 Interpretation

In this document:

- (a) the headings and index in this document are for convenience and reference only and do not affect the interpretation of this document;
- (b) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (c) a singular word includes the plural and vice versa;
- (d) a word which suggests one gender includes the other gender;
- (e) a reference to a person includes a body corporate;
- (f) if there is a dispute about the interpretation of this document or the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in this document) the decision of the Trustee is final and binding;

- (g) if:
- (i) any provision of this document is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly; or
  - (ii) notwithstanding clause 1, a provision of this document would still be void, voidable, unenforceable or illegal:
    - (A) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
    - (B) in any other case, the whole provision must be severed,
- and the remainder of this document will be of full force and effect;
- (h) this document is at all times subject to the Superannuation Law and is deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Statutory Authority;
  - (i) if there is an inconsistency between this document and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency;
  - (j) any references to any requirements, consents or approvals being required to be given by the Statutory Authority or for the purposes of satisfying the Superannuation Law, means requirements, consents or approvals of the Statutory Authority or under the Superannuation Law;
  - (k) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
  - (l) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (m) a reference to a document (including a reference to this document) is to that document as amended, supplemented, varied or replaced; and
  - (n) a reference to 'month' means calendar month.

## Annexure A

Product disclosure statement summary for The Souvlis Family Superannuation Fund

---

## **1 Purpose of product disclosure statement (PDS)**

- 1.1 elawyer Pty Ltd's PDS **attached** to this summary is to assist you in making your decision whether to acquire an interest in The Souvlis Family Superannuation Fund (**Fund**).
- 1.2 By law, you have 14 days from the date of issue of the PDS to decide whether you wish to acquire an interest in the Fund.

## **2 Information in a PDS**

The PDS generally sets out:

- (a) the nature of a self managed superannuation fund, in this case the Fund;
- (b) the advantages and disadvantages of acquiring an interest in the Fund; and
- (c) information about contributions, payment of benefits and taxation issues.

## **3 What you should do**

If you decide to acquire an interest in the Fund please sign and date the PDS in accordance with our pencilled instructions.



Annexure A – Product disclosure statement summary for The Souvlis Family Superannuation Fund

## Product disclosure statement

The Souvlis Family Superannuation Fund

## Table of contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
<b>2</b>	<b>Costs and cooling off periods</b>	<b>1</b>
<b>3</b>	<b>Overview</b>	<b>1</b>
<b>4</b>	<b>Establishing an SMSF</b>	<b>3</b>
<b>5</b>	<b>Trustee and member eligibility</b>	<b>5</b>
<b>6</b>	<b>Acquiring investments</b>	<b>6</b>
<b>7</b>	<b>Constraints on investments</b>	<b>6</b>
<b>8</b>	<b>Contributions</b>	<b>7</b>
<b>9</b>	<b>Payment of benefits</b>	<b>10</b>
<b>10</b>	<b>Payment of benefits as an income stream</b>	<b>10</b>
<b>11</b>	<b>Preserved benefits</b>	<b>10</b>
<b>12</b>	<b>Death benefits</b>	<b>11</b>
<b>13</b>	<b>Taxation of SMSF</b>	<b>12</b>
<b>14</b>	<b>General fund information</b>	<b>15</b>



# Product disclosure statement

## Self managed superannuation fund

---

### 1 Introduction

---

- 1.1 This product disclosure statement (**PDS**) has been prepared by elawyer Pty Ltd as a general guide to establishing and maintaining a self managed superannuation fund (**SMSF**) and is not intended as legal advice or financial advice. Anyone intending to take action or inaction based on their understanding of something dealt with in this PDS should obtain expert advice before doing so. This advice can be provided by McCullough Robertson (the founder of elawyer Pty Ltd) or other specialist lawyers, accountants or financial planners.
- 1.2 The PDS generally outlines the nature of SMSFs, their advantages and disadvantages and information about contributions, payment of benefits and taxation issues.

### 2 Costs and cooling off periods

---

#### Costs

- 2.1 Various costs are associated with operating an SMSF, including:
- (a) solicitors' costs in establishing the fund;
  - (b) accountants' costs in preparing regulatory returns and administering the fund; and
  - (c) other ongoing management costs, including audit fees.
- 2.2 These costs vary from firm to firm and must be considered before establishing an SMSF to ensure that the benefits outweigh the costs.

#### Cooling off periods

- 2.3 The purpose of this PDS is to assist you to decide whether to acquire an interest in an SMSF.
- 2.4 By law, a 14 day cooling off period applies from the date of issue of this PDS. During the cooling off period you have a right not to acquire an interest in an SMSF.

### 3 Overview

---

#### What is an SMSF

---

- 3.1 An SMSF is a superannuation fund with fewer than five members (that is, no more than four members) and is established by a trust deed. The members of an SMSF have sole responsibility to manage the fund. This is distinct from larger funds, where the members usually have minimal involvement and the trustee is responsible for all aspects of the fund's management.

### Advantages and disadvantages of SMSFs

- 3.2 There are a number of potential advantages and disadvantages associated with running an SMSF, as outlined below.
- 3.3 The advantages of an SMSF include:
- (a) trustees can select particular investments as part of the fund's overall investment strategy, for example, specific ASX listed stocks; a particular residential property; a commercial property that is leased back to a member's business;
  - (b) SMSFs have the ability to borrow to acquire an **asset** in accordance with specific borrowing rules;
  - (c) an SMSF is a tax effective structure to build wealth for retirement with a 15% tax rate applying to fund income and 10% tax rate for capital gains made on investments held for at least 12 months;
  - (d) an SMSF is a tax effective structure to hold retirement capital and pay income streams (pensions) to members (for those aged 60 and over, pensions are entirely tax free);
  - (e) an SMSF allows for implementation of strategies to build wealth for retirement, including Transition to Retirement Income Stream (**TRIS**) – a member of a SMSF can have multiple accounts within the one fund, including an accumulation account to receive contributions and a pension account;
  - (f) an SMSF allows for complementary estate, including non binding and non lapsing death benefit nominations which give significant control over distributions of benefits on death;
  - (g) an SMSF allows flexibility in relation to the level of insurance cover to provide benefits in the event of sickness, incapacity or death;
  - (h) an SMSF can provide for intergenerational wealth management (subject to the maximum member limit of four people at any one time);
  - (i) family members who are regarded as dependants or who have an interdependent relationship with a member can (within certain limitations) obtain tax-free payments when the member dies;
  - (j) **assets** of the SMSF can be transferred to members upon retirement 'as are' (or 'in specie'), instead of being sold and the cash distributed;
  - (k) an SMSF can protect superannuation assets from a member's creditors where benefits are taken in a particular form;
  - (l) regulatory reporting requirements are generally less stringent than those for larger funds; and
  - (m) generally, there is the ability to access a lower fee structure than that for larger funds due to the autonomy given to the trustees in choosing investments and the ability to invest at a wholesale level.

3.4 The disadvantages of an SMSF include:

- (a) considerable time, personal involvement, responsibility and specialised knowledge is required to manage the fund;
- (b) the management costs can be greater than those for larger funds, particularly if the SMSF has modest assets;
- (c) the SMSF can have no more than four members; and
- (d) there are strict Australian residency rules for SMSFs which if not adhered to can result in severe penalties.

## 4 Establishing an SMSF

---

4.1 Setting up an SMSF requires a number of formalities, many of which are summarised below.

**Creation of a trust deed**

4.2 A trust deed setting out the governing rules by which the Trustee administers the SMSF must be prepared. All Trustees are bound by the trust deed and are equally responsible for any breach of the deed.

4.3 The deed must be dated, signed and periodically reviewed and updated for any changes to superannuation and taxation law.

**Appointment of trustees**

4.4 Trustees are appointed to manage the fund. The *Superannuation Industry Supervision Act 1993* (Cth) (**SIS Act**) stipulates that an SMSF must have either a corporate Trustee or individual Trustees. If there are individual Trustees, the purpose of the fund must be the provision of old age pensions.

4.5 A sole purpose corporate Trustee can give significant benefits, including:

- (a) greater certainty and control because, unlike an individual Trustee, a corporate Trustee can exist indefinitely; and
- (b) fewer administrative costs if control of the SMSF changes.

4.6 For example, the removal or admission of an individual Trustee will require title to each asset of the fund (i.e. real property, shares, bank accounts, etc.) to be changed. For a corporate Trustee, all that is required when a director is removed or admitted is for that person to become or cease to be a director of the company. Title in the assets of the fund remains in the name of the corporate Trustee.

4.7 Where a company acts solely as Trustee for an SMSF there are lower annual Australian Securities and Investment Commission (**ASIC**) lodgement fees as compared to other companies.

**Trustee eligibility**

- 4.8 To be an individual Trustee or a director of a corporate Trustee a person must be:
- (a) at least 18 years of age; and
  - (b) not an undischarged bankrupt, insane or a 'disqualified person'.
- 4.9 A 'disqualified person' is a person who:
- (a) is insolvent;
  - (b) has been convicted of an offence relating to dishonest conduct (wherever and whenever committed); or
  - (c) is subject to a civil penalty order for breaches of the SIS Act.

**Minimum standards of care**

- 4.10 Minimum standards of care are imposed on a Trustee in managing an SMSF. Trustees must act honestly, prudently and in the best interests of members.
- 4.11 The Trustee must also comply with the standards of care prescribed under the SIS Act. A breach of these standards of care can make the Trustee liable for civil and criminal penalties.

**Remuneration**

- 4.12 Trustees cannot be paid for performing their trustee duties in managing the fund.

**Election to become regulated**

- 4.13 For an SMSF to be concessionally taxed, the Trustee must notify the Australian Taxation Office (ATO) of the fund's election to be regulated under the SIS Act within 60 days of establishing the fund.

**Application for TFN, ABN and GST**

- 4.14 Trustees must complete an 'Application to Register for the New Tax System Superannuation Entity' form to obtain a Tax File Number (TFN), Australian Business Number (ABN) and, if necessary, to register for the Goods and Services Tax (GST).
- 4.15 Trustees must seek appropriate advice to decide whether to register an SMSF for GST.
- 4.16 An SMSF must register for an ABN to comply with its Pay As You Go (PAYG) obligations. Trustees should consult with their accountants or administrators, as the PAYG system generally requires quarterly tax instalments to be paid on an ongoing basis.
- 4.17 Banks and investment bodies must also be notified of the SMSF's TFN to ensure that the SMSF's investment income is not subject to withholding tax at the top marginal tax rate.

**Establishment of bank account**

- 4.18 A Trustee must establish a bank account to hold all money belonging to an SMSF separate from the accounts of members, the Trustees and contributing employers.

- 4.19 Any cheques paid to an SMSF must be clearly marked, for example, 'XYZ Pty Ltd as trustee for the DIY Fund'.
- 4.20 Any investments by an SMSF must also be kept separate from any personal investments of members.

## **5 Trustee and member eligibility**

---

- 5.1 Special rules apply to admission as a Trustee or member of an SMSF depending on whether the SMSF has individual or corporate Trustees and whether it is a single member fund.

### **SMSF with individual Trustees**

- 5.2 Where an SMSF is controlled by individual Trustees, the Trustees must ensure that the fund has fewer than five members, that each individual Trustee is also a member of the fund and vice versa, and that no member is an employee of another member of the fund unless they are related.

### **SMSF with corporate Trustee**

- 5.3 Where an SMSF is controlled by a corporate Trustee, the Trustee needs to comply with essentially the same rules as those for an SMSF controlled by individual Trustees, except that each director of the Trustee company must be a fund member and vice versa.

### **Single member SMSF**

- 5.4 Where an SMSF has a single member, the SMSF must satisfy one of the following rules:
- (a) the fund has a corporate Trustee, and the member is the sole director of the corporate Trustee;
  - (b) the fund has a corporate Trustee, and the member is one of only two directors and the other director is either a relative, or a person who is not a relative and also not an employer, of the member; or
  - (c) the fund has two individual Trustees, one of whom is the member and the other is either a relative, or a person who is not a relative and also not an employer, of the member.

### **Exceptions**

- 5.5 The Trustee and member rules are subject to the following exceptions:
- (a) a parent or guardian can act as Trustee or director for a member under 18;
  - (b) where a member is deceased, a legal personal representative (**LPR**) can act as Trustee for that member until a death benefit starts to be paid;
  - (c) an LPR can act as a Trustee for a disabled member;
  - (d) a beneficiary of a pension (e.g. a payment arising due to a death benefit) paid from an SMSF is considered a member of the fund if that beneficiary is not already a member; and

- (e) a person with an enduring power of attorney can act as a Trustee or director for a member under the SIS Act without being a member.

## 6 Acquiring investments

---

### **Sole purpose test**

- 6.1 An SMSF must comply with the 'sole purpose test' in the SIS Act in acquiring any investments. This means the investments must be acquired for the sole purpose of providing retirement benefits for members and must comply with a number of investment rules.
- 6.2 Failure to comply with the sole purpose test or investment rules can give rise to significant penalties being imposed.

### **Written investment strategy**

- 6.3 Before acquiring any investment, an SMSF must have a written investment strategy taking into account cash flow, risk, return, diversification, liquidity and ability of the fund to meet liabilities when they arise.
- 6.4 Risk profiles of individual members must be considered. For example, it might be appropriate that members nearing retirement have a higher proportion of their funds invested in low risk, capital preserving investments. In contrast younger members might be more focused on growth rather than capital preservation. These members may therefore find higher risk investments to be more suitable.
- 6.5 Trustees wanting investment advice must obtain advice from a financial advisor or investment manager holding an Australian Financial Services Licence.
- 6.6 Trustees must regularly review and update the fund's investment strategy to incorporate changing needs and circumstances.

### **Types of investments**

- 6.7 An SMSF can generally invest in shares, bonds, property, cash and other types of investments authorised by the fund's trust deed. However, speculative investments, even in those asset classes (e.g. share futures trading), may not be considered a prudent investment due to their high risk.
- 6.8 The ATO also considers certain 'lifestyle' investments such as beach houses, yachts, motor vehicles and artworks that can be enjoyed, leased or used personally by fund members or their related parties inappropriate.
- 6.9 Trustees must seek specialist advice if in doubt about the types of investments that can be acquired by an SMSF.

## 7 Constraints on investments

---

- 7.1 The SIS Act sets out a number of constraints on the types of investments an SMSF may make. A brief summary of these restrictions is set out below.

**General constraints**

- 7.2 SMSFs cannot lend money or give financial assistance to members or related persons.
- 7.3 An SMSF generally cannot borrow money except where it is in accordance with the specific rules under the superannuation law. These rules include:
- (a) limited recourse loan arrangements;
  - (b) settlement of share transactions within seven days and the value of the transaction is not more than 10% of the value of the fund; and
  - (c) benefit payments where the amount borrowed is not more than 10% of the value of the fund and the period of the borrowing is not more than 90 days.
- 7.4 SMSFs should not engage in transactions with non arm's length parties where the SMSF is in a position that is different to that which would exist if it was dealing with an arm's length party.

**Specific constraints**

- 7.5 A SMSF cannot have more than 5% of the market value of its assets in 'in-house assets'. In-house assets include investments in or loans to a related party or a lease arrangement with a related party. There is also a prohibition on a fund lending or providing financial assistance to a member or their relative. This prohibition is absolute, that is there is no 5% threshold.
- 7.6 Related parties include fund members and their associates (i.e. relatives, business partners and any companies and trusts controlled by the member or their associates).
- 7.7 Related parties also include all employer-sponsors of the fund and their associates.
- 7.8 The general prohibition against an SMSF acquiring an asset from a member or a related party of a member does not apply to:
- (a) securities listed on an Australian Securities Exchange and certain other exchanges in Australia and overseas;
  - (b) business real property, as defined in the SIS Act;
  - (c) an interest in a widely held unit trust; or
  - (d) an interest in an ungeared unit trust.
- 7.9 Trustees should consult with an accredited specialist SMSF Advisor regarding the application of any of the exceptions, as strict criteria must be satisfied.

**8 Contributions**

---

- 8.1 Contributions to an SMSF can generally be made by an employer of a member, the member and a spouse of the member. The amount of concessional (formerly referred to as 'deductible') contributions is subject to an annual contribution limit for each employee in respect of whom such contributions are made. Concessional contributions which count towards the concessional cap include all employer contributions (e.g. super guarantee, salary sacrifice), member contributions which are claimed as a tax deduction and certain allocations from fund reserves.

- 8.2 The amount of non-concessional (formerly referred to as 'undeducted') member contributions is also subject to an annual contribution limit.

#### Contribution limits

- 8.3 The maximum amount of concessional and non-concessional contributions that may be paid by an employer, a self employed person or a member for the 2013/2014 year of income without being subject to excess contributions tax, is set out below:

Contribution type	Contribution limit
Concessional contributions	\$25,000 per annum per person under 60* \$35,000 per annum per person aged 60 years and over^
Non-concessional contributions	\$150,000 per annum per person*; or \$450,000 per person under 65 averaged over three years#

\* This amount has not been indexed for the 2013/2014 financial year. Indexation will resume in the 2014/2015 financial year, when this amount will be indexed by Average Weekly Ordinary Time Earnings (AWOTE) each year rounded down to the nearest multiple of \$5,000.

^ This is a temporary increase to the concessional contributions cap for the 2013/2014 financial year. The temporary increase will apply per person aged 50 years and over from the 2014/2015 financial year and will cease when the general cap indexes to \$35,000.

# Where a 'bring forward' of \$450,000 has been triggered, the two future years' entitlements are not indexed.

- 8.4 Contributions made to an SMSF can be less than the maximum deductible contributions. When contributions are made, they will be credited to a member's accumulation account by no later than 28 days after the end of the month in which they are received.

#### Contributions by self employed person

- 8.5 Self employed people are ineligible for tax deductions for superannuation contributions where more than 10% of their income is derived from any income or salary they earn as employees. Included in the definition of 'income' are reportable fringe benefits and reportable employer superannuation contributions.
- 8.6 A self employed person wishing to claim a tax deduction for concessional contributions must notify the Trustee in writing and receive an acknowledgement from the Trustee of receipt of the notice within the prescribed time limit and in the approved form.

#### Contributions by person under 65

- 8.7 Anyone under the age of 65 can make contributions without restrictions.

#### Contributions by person between the ages of 65 and 74

- 8.8 Contributions from a person aged 65 to 74 can be made if the person has been gainfully employed on at least a part time basis during the financial year, i.e. has worked at least 40 hours in a period of not more than 30 consecutive days in the financial year.



### **Contributions by person aged over 75**

- 8.9 Individuals cannot make personal superannuation contributions from 28 days after the end of the month in which they turn 75.

### **Contributions by person under 18**

- 8.10 Persons under the age of 18 are entitled to a deduction for contributions only if, during the year, the contributor has derived income from the carrying on of a business or from eligible employment. If income from eligible employment exceeds 10% of total income for the year, a deduction is not available.

### **Spouse contributions**

- 8.11 Eligible spouse contributions may be accepted by an SMSF (assuming the spouse is a member of the fund) at any time if the spouse is under the age of 65. If the spouse is aged 65 to 74, eligible spouse contributions may only be accepted if the spouse is gainfully employed on at least a part time basis. If the spouse is 75 or over, the fund cannot accept eligible spouse contributions.

### **Contributions for children under 18**

- 8.12 Parents, grandparents and friends may contribute to superannuation on behalf of children, subject to the normal rules relating to members under the age of 65.
- 8.13 Contributions made by an employer of the child or by the child are subject to the normal rules relating to members under the age of 65.

### **Co-contribution for low income earners**

- 8.14 If you are eligible and make personal super contributions to a complying super fund, the Government will match your personal super contribution with a co-contribution up to certain limits as per the summary table below which applies from 1 July 2013:

<b>Lower income threshold</b>	<b>Higher income threshold</b>	<b>What will I receive for every \$1 of personal super contributions</b>	<b>What is my maximum entitlement</b>
\$33,516	\$48,516	\$0.50 for every \$1, up to a maximum super co-contribution of \$500 a year.	Your maximum entitlement is \$500. However, you must reduce this by 3.333 cents for every dollar your total income, less business deductions is over \$33,516, up to \$48,516.

### **Minimum employer contributions**

- 8.15 Employers must contribute a minimum amount of superannuation support for each employee as set out in the *Superannuation Guarantee (Administration) Act 1992* (Cth). The minimum amount contributed by an employer from 1 July 2013 is 9.25% of the employee's notional earnings base. This will gradually increase to 12% by 1 July 2019. Also, the superannuation guarantee age limit of 70 years has been abolished from 1 July 2013.

## 9 Payment of benefits

---

- 9.1 The SMSF established under elawyer Pty Ltd's trust deed (**Trust Deed**) is conducted as an allocated accumulation fund. This means that the total amount of a member's accumulation account will ultimately form the basis of the member's benefit entitlements in the fund.
- 9.2 Your benefit entitlement in the Fund is therefore represented by the total amount held in your accumulation account as at one of the benefit entitlement events referred to below.
- 9.3 Your accumulation account at any such date will be made up of all contributions and rollover payments credited to your accumulation account, together with income on those amounts, less your share of all expenses and taxation referable to your entitlement in the Fund.

### **Benefit entitlement events**

- 9.4 Benefits are payable as follows:
- (a) lump sum – a member is entitled to a lump sum benefit on retirement from employment;
  - (b) income stream – member is entitled to an income stream benefit on retirement from employment as set out below;
  - (c) disability superannuation benefit – the benefits payable if a member has suffered physical or mental ill health and two qualified medical practitioners certify that the member is unlikely to be gainfully employed again in a position for which the member is reasonably qualified due to their education, experience or training;
  - (d) early retirement from employment – the benefits payable on retirement from employment in circumstances other than as a result of retirement at normal retirement age, death or disability as outlined above;
  - (e) death – the benefits payable on the death of a member; and
  - (f) TRIS – member is entitled to a non commutable income stream upon attaining the relevant preservation age.

## 10 Payment of benefits as an income stream

---

- 10.1 Any member of the fund or beneficiary who is entitled to a benefit may apply to the Trustee to receive the whole or part of the benefit by way of an income stream.
- 10.2 Certain rules apply to these income streams, including the requirement for actuarial assessment in establishing the period of payment and the permissible value of the pension instalments. These rules must be discussed with the Trustee and appropriate professional advisers before a member or beneficiary commences an income stream.

## 11 Preserved benefits

---

- 11.1 The Government requires preservation of certain benefits until a member retires from the workforce on or after attaining the preservation age or in such earlier circumstances as are acceptable to the ATO, for example total and permanent disablement or a TRIS.

Annexure A – Product disclosure statement summary for The Souvlis Family Superannuation Fund

- 11.2 The preservation age for a member of a superannuation fund is currently being lifted from 55 to 60 years, based on the member's date of birth.
- 11.3 For all people born before 1 July 1960 the preservation age will remain 55, but for someone born after 30 June 1964, the preservation age will rise to 60.
- 11.4 The phase-in schedule is set out below:

Date of birth	Preservation age
After 30 June 1964	60
After 30 June 1963 and before 1 July 1964	59
After 30 June 1962 and before 1 July 1963	58
After 30 June 1961 and before 1 July 1962	57
After 30 June 1960 and before 1 July 1961	56
Before 1 July 1960	55

- 11.5 In general, all benefits in a superannuation fund must be preserved until the member's preservation age except:
- (a) 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
  - (b) a member's non-preserved benefits which are transferred into the fund from another fund.
- 11.6 The amounts in paragraphs 11.5(a) and 11.5(b) may be accessed by a member upon satisfaction of conditions of release relevant to those amounts.

## 12 Death benefits

- 12.1 Where a member dies, the member's superannuation benefit must be paid to a dependant, as defined under the SIS Act, known as a 'SIS Dependant' or the member's estate. Only where there is no SIS Dependant and the deceased member's estate can not be located can the benefit be paid to any other person. A beneficiary who is a SIS Dependant may not qualify as a dependant for tax purposes (known as a 'Tax Dependant').
- 12.2 For tax purposes, a Tax Dependant includes any spouse or former spouse of the deceased, any children of the deceased under the age of 18 and any other person who was dependant upon or had an interdependency relationship with the deceased.
- 12.3 Different taxation arrangements apply to the payment of a superannuation death benefit to a person who is a dependant of the deceased person for tax purposes, a 'Tax Dependant', in comparison to a person who is not a dependant of the deceased for tax purposes.
- 12.4 The taxation arrangements also differ depending on whether the amount is paid as a lump sum or an income stream and, in the case of an income stream, the ages of the deceased person and the recipient.
- 12.5 A person who is not a Tax Dependant of the deceased cannot receive a superannuation income stream.

## 13 Taxation of SMSF

### Tax on payments

- 13.1 Where a member of an SMSF becomes eligible to receive a benefit, the benefits will be taxed either as a Tax Free Component or a Taxable Component.
- 13.2 Specialist advice should be sought in relation to the taxation treatment of benefits. A summary of the taxation treatment is below:

Lump sums	Age/dependant status	Tax treatment (Tax Rate %)	
		Tax Free Component	Taxable Component
Paid from a super fund	Under 55	0%	20%
	55 to 59	0%	Up to low rate threshold <sup>^</sup> : 0% Balance: 15%
	60 and over	0%	0%
Death benefit	Tax dependant	0%	0%
	Non-tax dependant	0%	15%, or 30% on certain insured benefits
Pensions	Age		Tax treatment
Paid from super fund	55 to 59	0%	[Taxable component x marginal tax rate] – 15% rebate
	60 and over	0%	0%
Death pension – reversionary pension paid to tax dependant (RB) of a primary beneficiary (PB) on death	PB < 60 and RB < 60	0%	[ Taxable component x marginal tax rate] – 15% rebate
	PB < 60 and RB > 60	0%	0%
	PB > 60	0%	0%

<sup>^</sup> The low rate threshold is \$175,000 for the 2012/2013 financial year, and \$180,000 for the 2013/2014 financial year. This amount is reduced by any amount previously applied to the low rate threshold.

- 13.3 Where benefits have not been subject to contributions tax in the fund (i.e. there is an element untaxed in the fund), an untaxed plan cap applies. This cap is set at \$1,255,000 for the 2012/2013 financial year, and \$1,315,000 for the 2013/2014 financial year.

### Rollover payments

- 13.4 Where the member's benefits are rolled over into another superannuation fund, approved deposit fund or annuity, no tax is payable until the benefit is ultimately received by the member in the future. Details of any proposed rollover payments must be discussed with the Trustee.

**Taxation – concessional contributions**

- 13.5 The contributions made by all employers or by self employed persons to the fund from 1 July 2012 within the concessional contribution limit are taxable in the hands of the Trustee at 15% for members with a taxable income of up to \$300,000, and at 30% for members with a taxable income above \$300,000. Any contributions above the concessional contribution limit incur an additional tax on top of the tax paid by the Trustee.
- 13.6 Employees cannot claim deductions for personal contributions, so these contributions are not taxable. However, employees may qualify for the government co-contribution (see paragraph 8.14 above).
- 13.7 Self employed persons, substantially self employed persons and employees who receive little or no employer superannuation support may claim a deduction by lodging the required notice, in the approved form, with the fund.
- 13.8 Personal contributions in respect of which a tax deduction has been claimed are taxable in the hands of the Trustee at 15% for members with a taxable income of up to \$300,000, and at 30% for members with a taxable income above \$300,000.

**Taxation – non-concessional contributions**

- 13.9 Personal non-concessional contributions within the non-concessional contribution limit will be are not subject to any fund income tax.
- 13.10 Any non-concessional contributions above the non-concessional contribution limit will be taxed at the top marginal rate of 46.5%, plus Medicare Levy.

**Low income spouse rebate**

- 13.11 An income tax rebate of up to \$540 per annum is available to a person who makes a superannuation contribution to a complying superannuation fund on behalf of a low or no income spouse under the age of 65 years.
- 13.12 The rebate is calculated as 18% of superannuation contributions, up to a maximum of \$3,000.
- 13.13 Where the spouse is aged between 65 and 74, he or she must be gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in the financial year before contributions can be made.
- 13.14 To qualify for the rebate, certain conditions must be satisfied. These include that the contributions must be from after tax income and the spouse's assessable income must be less than \$13,800.

**Income tax**

- 13.15 The standard rate of tax payable for a superannuation fund is 15%. However certain 'special' income is taxed at 46.5%. Special income includes income where the fund and the other entity are not dealing with each other at arm's length. It also includes certain trust distributions (from discretionary trusts as well as unit trusts) where the distributions are not at arm's length.
- 13.16 Special income is taxed after any deductions relating to the derivation of that income are deducted.

- 13.17 The 15% concessional tax rate may be reduced by imputation credits paid to an SMSF. For example, a fund is generally entitled to franking rebates for dividends it receives as a company shareholder.
- 13.18 When franking rebates exceed the 15% rate, an SMSF can use the excess to offset its tax liability against other income derived by the fund.
- 13.19 An SMSF is also entitled to a refund of excess imputation credits if there is no other assessable income and therefore no tax liability to take advantage of the excess rebate.

**Deductions**

- 13.20 General rules for deductions apply to SMSFs, i.e. expenses are deductible to the extent to which they are incurred in gaining or producing assessable income. Some expenses of an SMSF which are ordinarily deductible include:
- (a) administration fees;
  - (b) actuarial costs;
  - (c) accountancy and audit fees;
  - (d) costs of providing death or disability benefits such as insurance premiums; and
  - (e) investment advisor fees.

**Capital gains tax (CGT)**

- 13.21 A one-third discount applies on any capital gain an SMSF realises if the asset has been held by the SMSF for more than 12 months.
- 13.22 Capital gains tax retirement exemption of a lifetime limit of \$500,000 from the sale of an 'active business asset' by a member can be rolled into an SMSF. However, strict criteria must be met before this can be done. Trustees must obtain specialist advice to determine what criteria must be satisfied.
- 13.23 Any pre-existing SMSF with assets as at 30 June 1988 is deemed to have acquired those assets on 30 June 1988. This means the SMSF is liable for tax on capital gains realised on the disposal of assets on or after 1 July 1988, including assets acquired before 20 September 1985 (i.e. before the introduction of CGT).

**Goods and services tax (GST)**

- 13.24 Generally the investment activities of a superannuation fund do not have GST consequences. However, certain transactions may constitute taxable supplies, in which case the SMSF must collect GST and remit it to the ATO.
- 13.25 Any GST payable by an SMSF on taxable activities can be offset against the GST payable to the ATO by claiming an input tax credit.

- 13.26 Financial supplies such as services provided by banks and investment services do not entitle an SMSF to claim input tax credits for inputs relating to that supply. However, superannuation funds may be eligible for a reduced input tax credit of 75% when acquiring certain financial services, including:
- (a) fees paid to a financial planner or accountant providing fund management services to the SMSF; and
  - (b) fees paid to a securities dealer for selling shares on behalf of the SMSF.
- 13.27 Professional services such as legal, accounting and taxation advice in the course of professional practice are not financial supplies and therefore do not entitle an SMSF to reduced input tax credits.

## 14 General fund information

---

### Medical evidence

- 14.1 The Trust Deed allows the Trustees to effect insurance for death and disability. The insurance company that undertakes the insurance may require certain information about your medical condition. You may need to undertake a medical examination and give full details of your medical history to the Trustee. You may also need to give medical evidence as part of the assessment of any disablement claim you make.

### Deed variation

- 14.2 The Trust Deed allows the Trustee to vary the Trust Deed.
- 14.3 A variation cannot reduce the accrued benefits of a member without the consent of that member except where the reduction is required to enable the fund to continue to comply with legislative requirements, or where the member affected or the Commissioner of the ATO consents to the reduction.

### Forfeiture

- 14.4 The Trust Deed allows your rights to an entitlement under the Fund to be forfeited in certain circumstances, including:
- (a) on an attempted assignment or charge of your benefit; and
  - (b) where in the opinion of the Trustee any fraud, defalcation or serious misconduct as a member or employer has occurred.
- 14.5 Upon forfeiture, your entitlement can be dealt with by the Trustee for the benefit of another member and their dependants or any one or more of them as the Trustee decides.
- 14.6 Under the requirements of the *Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)*, the Trustee cannot:
- (a) do anything which adversely affects a member's accrued benefits;
  - (b) give effect to or recognise charges in relation to benefits which must, under the SIS Regulations, either be vested in you as a member of the fund or preserved; or

(c) give charges over or in relation to the assets of the fund.

- 14.7 Similarly, the Trustee cannot give effect to clauses in the Trust Deed which allow the forfeiture of benefits upon insolvency or bankruptcy.
- 14.8 Your benefits, subject to certain criteria, are protected under the *Bankruptcy Act 1966* (Cth) from the claims of your creditors in the event of your bankruptcy or insolvency. If a member becomes bankrupt, the Trustee must obtain specialist advice to determine whether the benefit is protected.

#### **Fund expenses, fees and other charges**

- 14.9 Administration expenses and other costs of operating the fund can be debited to members' accumulation accounts, including:
- (a) the costs of any insurance policy or annuity effected by the Trustee;
  - (b) any taxation payable on contributions, investment earnings or other fund income or benefits payments;
  - (c) other costs, charges and expenses incurred by the Trustee in the administration of the fund, such as the costs of preparing and lodging the annual ATO returns;
  - (d) the members' share of any investment loss incurred by the fund; and
  - (e) such other amounts as the Trustee decides and are allowed by the SIS Act.

#### **Annual statement to members**

- 14.10 The Trustee may issue an annual statement to the members advising them of their current entitlements in the fund.

#### **Eligible rollover fund**

- 14.11 If a fund has a participating employer and a member cannot be located or is otherwise 'lost' for 90 days after his or her benefit becomes payable under the Trust Deed before the member's retirement age (e.g. upon resignation), the Trustee may transfer the member's benefit to another fund, called an 'eligible rollover fund', which has been specifically approved for this purpose by the relevant government authority.

#### **Binding death benefit nominations (BDBNs)**

- 14.12 The Trust Deed allows for BDBNs which, if implemented by a member, direct the Trustee to pay the member's benefits to their nominated dependants upon the member's death.
- 14.13 The BDBN can also specify the manner in which the member's benefit is to be paid, e.g. by way of lump sum or an income stream or both, at the member's election.
- 14.14 Trust deeds that do not allow for binding nominations must be amended before a BDBN can be made. Trustees must seek specialist advice before amending a deed to ensure no adverse tax or stamp duty consequences arise.



14.15 The advantages of a BDBN include:

- (a) payments can be made directly from the SMSF to dependants, avoiding family disputes which can delay or reduce a person's entitlement if the deceased's estate is challenged; and
- (b) greater certainty and control over the direction of a member's benefit, as the Trustee is bound to pay any benefits to the dependants nominated in the election (as opposed to the payment of benefits being left to the discretion of the Trustee if a BDBN is not made).

14.16 There are also a number of disadvantages to using a BDBN and specialist advice should be sought before implementing a BDBN.

14.17 Members may also implement standard (non binding) nominations, which give the Trustee guidance as to where to pay a benefit but need not be followed by the Trustee.

**Winding up funds**

14.18 The Trust Deed allows for the Fund to be wound up.

14.19 A superannuation fund can be wound up at any time. The Trustee must notify the ATO of the decision to wind up the fund.

14.20 Where benefits are preserved, they must be rolled over to another complying superannuation fund. A rollover of member benefits to another complying superannuation fund can be achieved by either cash or, where the receiving fund allows, the transfer of assets 'in-specie'. Alternatively, they can be transferred to the members, as an 'in-specie' benefit payment, if the benefits are not preserved.

14.21 Numerous issues must be considered when winding up a fund, including:

- (a) taxation, stamp duty and other costs associated with the transfer of any assets;
- (b) any restrictions or requirements regarding the winding up that are outlined in the fund's trust deed;
- (c) whether there are sufficient funds to pay any liabilities, outstanding tax and charges;
- (d) preparation and lodgement of income tax and regulatory returns; and
- (e) organising the winding up of any corporate trustee if necessary.

14.22 Specialist advice should be sought before winding up an SMSF.

DATED the \_\_\_\_\_ day of \_\_\_\_\_

Signed by Christopher Peter Souvlis as trustee:

▲ \_\_\_\_\_  
Signature of Christopher Peter Souvlis

Signed by Tina Souvlis as trustee:

▲ \_\_\_\_\_  
Signature of Tina Souvlis

## Annexure B

Application for membership

---

## Application for membership

The Trustee  
**The Souvlis Family Superannuation Fund**

I apply for admission to membership of the Fund and I:

- (a) agree to be bound by the Fund's trust deed as varied from time to time;
- (b) will make full written disclosure of any information requested by the Trustee about my membership of the Fund including any medical condition;
- (c) understand the terms of the trust deed, particularly those about the benefits payable;
- (d) agree to the Trustee acting as trustee of the Fund; and
- (e) have read and understand the information about the collection of tax file numbers by the trustees of superannuation funds set out on the **attached** Individual Tax File Number Notification form.

<b>Name</b>	
<b>Address</b>	
<b>Date of birth</b>	

<b>Nominated beneficiaries</b>	
For the purposes of the definition of 'Nominated Beneficiary' of the trust deed for the Fund, I nominate the following people as my Nominated Beneficiaries:	
<b>Full name</b>	
<b>Relationship</b>	
<b>Total benefit</b>	%

Signed by  
on / /20



Signature of

## Individual tax file number notification

**This form may only be used to pass on your tax file number to your superannuation fund.**

### Fund details

<b>Fund name</b>	The Souvlis Family Superannuation Fund
<b>Fund address</b>	106 Villiers Street, NEW FARM, QLD 4005
<b>Employer name (if applicable)</b>	

### Your details

<b>Full name</b>	
<b>Date of birth</b>	
<b>Tax file number</b>	

**By signing this document, I agree to provide my tax file number to The Souvlis Family Superannuation Fund.**

Signed by  
on     /     /20

▲     Signature of \_\_\_\_\_

Collection of tax file numbers is authorised by tax laws, the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Privacy Act 1988* (Cth). Changes to the tax file number law require trustees to ask you to give your tax file number to your superannuation fund. Completing this form and giving it to your fund allows your fund trustee to use your tax file number for the purposes contained in the *Superannuation Industry (Supervision) Act 1993* (Cth) and for the purpose of paying employment termination payments.

The purposes currently authorised include:

- taxing employment termination payments at concessional rates;
- finding and amalgamating your superannuation benefits where insufficient information is available;
- passing your tax file number to the Australian Taxation Office where you receive a benefit or have unclaimed superannuation money after reaching the aged pension age; and
- allowing the trustee of your superannuation fund to give your tax file number to a superannuation fund receiving any benefits you may transfer. Your trustee won't pass your tax file number to any other fund if you tell the trustee in writing that you don't want them to pass it on.

You are not required to give your tax file number. Declining to quote your tax file number is not an offence. However, if you do not give your superannuation fund your tax file number, either now or later:

- you may pay more tax on your superannuation benefits than you have to; and
- it may be more difficult to find your superannuation benefits if you change address without notifying your fund or to amalgamate any multiple superannuation accounts.

The lawful purposes for which your tax file number can be used and the consequences of not quoting your tax file number may change in future, as a result of legislative change.

# Minutes of meeting of trustee

## The Souvlis Family Superannuation Fund

Held at

**Present**

**Chairman**

**Date**

**Time**

### 1 Membership of the Fund

- 1.1 Completed applications for membership received from the following persons are **attached**.

Name	Address

#### Resolution

- 1.2 To admit the listed persons **as** members of the Fund effective today.

### 2 Closure

There being no further business, the meeting was closed.

**Confirmed**

**Chairman**

## Annexure C

Binding death benefit nomination

---

## Binding death benefit nomination

To: The Trustee  
The Souvlis Family Superannuation Fund

I, \_\_\_\_\_, being a member of

The Souvlis Family Superannuation Fund (**Fund**), in the presence of

\_\_\_\_\_ [name of witness 1]

and \_\_\_\_\_ [name of witness 2]:

(a) require the trustee of the Fund to pay any benefits in respect of my membership of the Fund on or after my death as follows (select one):

- ☐ 100% of my benefit to my legal personal representative for distribution under the terms of my will;
- ☐ 100% of my benefit as set out in the table below:

Full name of dependant	Relationship (circle one)	Percentage
	spouse/child/a person who is financially dependent on me	%
	spouse/child/a person who is financially dependent on me	%
	spouse/child/a person who is financially dependent on me	%
	spouse/child/a person who is financially dependent on me	%
	spouse/child/a person who is financially dependent on me	%
	<b>Total</b>	<b>100%</b>

provided that if any person named in the table above does not survive me, or dies before the whole of the relevant benefit is paid to them, then the share of the benefit to which they would otherwise have been entitled (or that part of the benefit which remains unpaid) must be paid to my legal personal representative for distribution under the terms of my will;

- (b) declare that the payment of benefits in this way is allowed under the *Superannuation Industry (Supervision) Act 1993* (Cth);
- (c) confirm that this nomination revokes any previous nomination (binding or non-binding) I may have made in relation to my benefits in the Fund; and



(d) confirm that this nomination does not lapse unless expressly revoked by me in writing.

**Signed**

Signed by \_\_\_\_\_

on     /     /

in the presence of:

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Signature of witness 1

\_\_\_\_\_  
Signature of witness 2

\_\_\_\_\_  
Name of witness 1 (print)

\_\_\_\_\_  
Name of witness 2 (print)

**Notes**

- 1 It is your responsibility as a member of the Fund to ensure that the payment of benefits set out in this nomination complies with the restrictions under the *Superannuation Industry (Supervision) Act 1993* (Cth) (**Act**). If you are unsure whether any payment of benefits to a nominated beneficiary is permitted under the Act, you should seek appropriate advice before signing this form.
- 2 The payment of benefits as set out in this nomination may have taxation consequences, even if the nomination of beneficiaries is permitted under the Act. There may be alternative estate planning approaches you could take that would have different or no taxation consequences, and you should seek appropriate estate planning and taxation advice before signing this form.
- 3 This form has been prepared on a non-lapsing basis. It is your sole responsibility to review how you would like your benefits to be paid regularly, and promptly update or revoke your nomination of beneficiaries if your circumstances change. You may prefer to sign a 'lapsing' nomination form that would automatically expire after three years from the date it is signed, and you should seek appropriate assistance with preparing a lapsing nomination form in this case. Alternatively, you may prefer to sign a non-binding death benefit nomination.
- 4 For more information, see the information sheet headed 'Information for members – binding death benefit nomination'. Please contact the trustee of the Fund if you do not have a copy of this information sheet.

## Declaration – witness 1

I am a witness to the binding death benefit nomination made by

\_\_\_\_\_ [name of member], and declare as follows:

- (a) I am 18 years or older;
- (b) I am not a person mentioned in the nomination; and
- (c) the nomination was signed by \_\_\_\_\_ [name of member], in the presence of myself and \_\_\_\_\_ [name of witness 2], the other witness.

Signed by \_\_\_\_\_

on     /     /

\_\_\_\_\_ [name of witness 1 and date]

^ \_\_\_\_\_ Signature

## Declaration – witness 2

I am a witness to the binding death benefit nomination made by

\_\_\_\_\_ [name of member], and declare as follows:

- (a) I am 18 years or older;
- (b) I am not a person mentioned in the nomination; and
- (c) the nomination was signed by \_\_\_\_\_ [name of member], in the presence of myself and \_\_\_\_\_ [name of witness 1], the other witness.

Signed by \_\_\_\_\_

on     /     /

\_\_\_\_\_ [name of witness 2 and date]

^ \_\_\_\_\_ Signature

## Information for members – binding death benefit nomination

---

Dear Member

- 1 Under regulation 6.17A(3) *Superannuation Industry (Supervision) Act 1993* (Cth) (**Superannuation Act**), the trustee is required to give you information that the trustee reasonably believes you reasonably need for the purpose of understanding your rights to require the trustee to provide benefits under The Souvlis Family Superannuation Fund (**Fund**).
- 2 Under the Superannuation Act, a member can direct the trustee of the Fund as to who receives the benefits payable on the member's death.
- 3 If you do not give the trustee a binding death benefit nomination, you may make a non-binding beneficiary nomination for your death benefit to be paid to a particular person or to your legal personal representatives. The trustee will consider a non-binding nomination in deciding where to pay your benefit on death, but is not bound by such a nomination and has an absolute discretion as to where your death benefit will be paid. Where a non-binding nomination is made, any decision by the trustee as to how to distribute the benefit can be challenged.

### Requirements for binding death benefit nominations

- 4 Any binding death benefit nomination must comply with the requirements in paragraphs 5 to 8.

#### The Trust Deed must allow binding nominations

- 5 The trust deed for the Fund (Trust Deed) must allow for binding death benefit nominations to be given to the trustee of the Fund. The Trust Deed currently contains such provision in clause 38.

#### The people nominated must be 'dependants'

- 6 The people you nominate must be either your 'dependants' or your legal personal representatives. 'Dependant' is defined under the Superannuation Act as including a spouse, any child of the member (regardless of age), and any person who is financially dependent on the member. If a person you nominate is not your dependant, the trustee cannot pay the benefit to that person. If you are in any doubt as to whether the people you nominate are 'dependants' under the Superannuation Act, you should seek professional advice.

#### The benefit must be ascertainable

- 7 The proportion of the benefit to be paid to each dependant must be certain or readily ascertainable from the nomination.

#### Form of nomination

- 8 A binding nomination must:
  - (a) be in writing;
  - (b) be signed by you in the presence of two witnesses who are at least 18 years old and not mentioned in the nomination; and

- (c) contain a declaration signed and dated by each witness, stating that the witness was present when the nomination was signed.

### **Subsequent nominations**

- 9 Any nomination you give confirming, amending or revoking an earlier nomination must also comply with paragraph 8.

### **When is the nomination no longer binding**

- 10 Your nomination continues to have effect until you **expressly** revoke it in writing.

### **Status of beneficiary**

- 11 Under this binding nomination, an additional requirement is that, to receive your superannuation benefit, your nominated beneficiary must be alive at the date of your death and also be alive at the date of receiving the payment.

### **Member choices**

- 12 As a member of the Fund, you now have three choices for specifying what should happen in relation to your superannuation entitlements on death.

#### **Option 1 – No nomination**

- 13 If you do not make a nomination, the trustee is bound to deal with your benefit in your best interests. The trustee will normally make enquiries as to your family situation, who your dependants are, the provisions of your will and other relevant circumstances before making a decision.

#### **Option 2 – Non-binding nomination**

- 14 Until the legislative changes in 1999, all nominations were non-binding. The trustee will handle these types of nominations in the same way as it always has and that is by using the nomination as a guide before reaching its own decision. A non-binding nomination can be made at any time by giving written nomination to the trustee. The formal requirements set out above do **not** need to be followed.

#### **Option 3 – Binding nomination**

- 15 If the requirements in relation to making a binding nomination set out above are satisfied, then the trustee is obliged to distribute your death benefits in accordance with this nomination.

### **Advantages of binding nominations**

- 16 There are a number of advantages to using binding nominations. In particular, they:
  - (a) have the potential to allow members to protect their death benefits from disputes; and
  - (b) can be used as part of a member's overall estate plan, including, for example, as part of a tax planning strategy for infant children or an **asset** protection strategy for adult children.

## Disadvantages of binding nominations

- 17 There are however a number of disadvantages to using binding nominations:
- (a) The trustee has no discretion to pay death benefits other than in accordance with a valid binding nomination. If a member's circumstances change and they have failed to update their nomination, it will continue to be binding on the trustee. If you believe you are unlikely to review your binding nomination regularly, you should consider making a non-binding nomination.
  - (b) The taxation consequences of the payment of superannuation death benefits are complex. You should consider receiving specialist advice in relation to these taxation consequences.
  - (c) If you nominate certain persons to receive a benefit and they do not survive you then the nomination will fail unless you have validly nominated an alternative beneficiary. Thought should always be given to providing for a situation where the person you have appointed to receive your benefits fails to survive you.
- 18 If you would like to make a binding death benefit nomination in respect of your entitlements in the Fund, please sign and complete the **attached** binding death benefit nomination in accordance with the instructions set out above and return it to us.

### Signing

Signed by Christopher Peter Souvlis as trustee:

▲ \_\_\_\_\_  
Signature of Christopher Peter Souvlis

Signed by Tina Souvlis as trustee:

▲ \_\_\_\_\_  
Signature of Tina Souvlis

# Minutes of meeting of trustee

The Souvlis Family Superannuation Fund

Held at

---

**Present**

**Chairman**

**Date**

**Time**

## 1 Binding death benefit nominations

---

- 1.1 Completed binding death benefit nominations received from the following persons are **attached**.

Name	Address

### Resolution

- 1.2 To note the nominations in the records of the Fund effective today.

## 2 Closure

---

There being no further business, the meeting was closed.

**Confirmed**

**Chairman**

## Annexure D

Notice of compliance for Employer – The Souvlis Family Superannuation Fund

---

## Notice of compliance for Employer

### The Souvlis Family Superannuation Fund

---

**This statement is made under section 25 *Superannuation Guarantee (Administration) Act 1992* (Cth), where the Employer is contributing in respect of a Member for the first time.**

To: \_\_\_\_\_  
[name of Employer]

This statement is to confirm that, for the year of income to date, The Souvlis Family Superannuation Fund (**Fund**):

- (a) is a resident regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**);
- (b) has been conducted as a complying and self-managed superannuation fund within the meaning of sections 17A and 42A of the SIS Act; and
- (c) is not subject to a direction under section 63 of the SIS Act.

It is intended that the Fund will continue to be maintained as a complying superannuation fund.

The Australian Business Number for the Fund is \_\_\_\_\_.

DATED the \_\_\_\_\_ day of \_\_\_\_\_

Signed by Christopher Peter Souvlis as trustee:

\_\_\_\_\_  
Signature of Christopher Peter Souvlis

Signed by Tina Souvlis as trustee:

\_\_\_\_\_  
Signature of Tina Souvlis



## Annexure E

General notice of compliance – The Souvlis Family Superannuation Fund

---

## The Souvlis Family Superannuation Fund

1 The Souvlis Family Superannuation Fund (**Fund**) was established on 29 April 1999;  
2 the Fund is a regulated superannuation fund under the *Superannuation Industry (Supervision)*  
*Act 1993* (Cth) (**SIS**);  
3 it is intended that the Fund will be managed in compliance with the SIS legislation and guidelines  
issued by both the Australian Securities and Investments Commission and the Australian Taxation  
Office;  
4 the Fund complies with the requirements of the SIS and the *Income Tax Assessment Act 1936*  
(Cth) and *Income Tax Assessment Act 1997* (Cth), as amended;  
5 the trust deed governing the Fund allows contributions to be accepted and benefits to be  
transferred or rolled over from other regulated superannuation funds, and allows benefits to be  
transferred or rolled over to other regulated superannuation funds;  
6 members may only cash preserved benefits from the Fund in the circumstances permitted under  
the SIS legislation; and  
7 the members of the Fund are:

Name	Address	Date of birth

 Signature of Tina Souvlis