

# **SMSF DEED OF REMOVAL AND APPOINTMENT OF A TRUSTEE**

## **J.P. O'SULLIVAN SUPERANNUATION FUND**

# DEED OF REMOVAL AND APPOINTMENT OF TRUSTEE

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**EXECUTED AS A DEED ON: 15 JUNE 2018**

## **PARTIES**

- 1. CURRENT TRUSTEE:** JOHN O'SULLIVAN (MEDICAL) PTY. LTD. - ACN 010 790 557 of c/- Sam Greco, 'Mitcham House' 1355 Gympie Road, Aspley, QLD 4034 (the "**Current Trustee**").
- 2. NEW TRUSTEE:** Goose Gully Pty Ltd - ACN 626 766 149 of 9 Gibson Court, Cashmere, QLD 4500 (the "**New Trustee**").

## **RECITALS**

- A. The Current Trustee acts as Trustee of The J.P. O'Sullivan Superannuation Fund.
- B. The Fund was established by deed dated **30 June 1994** ("the Deed") and subsequently varied on 17 February 2011.
- C. John Peter O'Sullivan and Angela Leong are the Members ("**the Members**") of the Fund.

## **PROVISIONS**

1. The Current Trustee of the Fund hereby removes the Current Trustee pursuant to Rule 8.1(g) of the Fund's Rules.
2. The Current Trustee of the Fund hereby appoints the New Trustee as Trustee of the Fund pursuant to Rule 8.1(b) of the Fund's Rules.
3. The New Trustee by its execution of this Deed accepts the appointment as Trustee of the Fund and to be bound by the governing rules of the Fund.
4. The change in Trustee effected by this Deed does not result in a resettlement of the Fund at law, equity or under any Superannuation Laws.

**EXECUTED AS A DEED BY:**

**The Current Trustee**

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JOHN O'SULLIVAN (MEDICAL) PTY. LTD. - ACN 010 790 557 of c/-  
Sam Greco, 'Mitcham House' 1355 Gympie Road, Aspley, QLD 4034 by being signed by the persons  
authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):

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**John Peter O'Sullivan**  
Director

Dated: 15/06/2018

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**Angela Leong**  
Director

Dated: 15/06/2018

**The New Trustee**

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Goose Gully Pty Ltd - ACN 626 766 149 of 9 Gibson Court, Cashmere, QLD 4500 by being signed by the  
persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001  
(Cth):

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**John Peter O'Sullivan**  
Director

Dated: 15/06/2018

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**Angela Leong**  
Director

Dated: 15/06/2018

# **PRODUCT DISCLOSURE STATEMENT**

## **J.P. O'SULLIVAN SUPERANNUATION FUND**

# SMSF Product Disclosure Statement

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## GENERAL ADVICE WARNING!

The following Product Disclosure Statement (PDS) is for general advice and educational purposes only. The PDS discusses the purpose and structuring of wealth inside self-managed superannuation funds (SMSF).

This PDS is only to be used to assist you in understanding what a SMSF is, and how it can be utilised in the investment process. This PDS does not evaluate your personal circumstances, goals and/or suitability for investing through the use of a SMSF.

You must seek qualified and licensed financial, accounting and legal advisors in ascertaining the benefits and risks of investing in a SMSF.

## SELF MANAGED SUPER FUNDS – WHAT ARE THEY?

Superannuation is a platform for investment, but not a specific investment. Superannuation funds invest in shares, property, cash and other assets, for the benefit of its Members. There are over 28 million superannuation accounts in Australia, which are held in five different types of superannuation funds:

- Employer superannuation funds (generally limited to employees of the employer);
- Industry superannuation funds (generally linked to particular industry sectors, such as the construction industry and Cbus superannuation fund);
- Public superannuation funds (primarily for public servants, such as Comsuper/CSC and Qsuper);
- Retail superannuation funds (generally owned by banks, insurance companies and other companies in the wealth management space, such as AMP); and
- Self-managed superannuation funds (*SMSFs*) – *which are the subject of this PDS.*

A SMSF is a regulated superannuation fund with four or less Members, who are generally related or close associates. The sole purpose of the SMSF is to provide Income Streams and/or Lump Sum benefits to Members in circumstances allowed under the Superannuation Laws (such as on the retirement, death or disability of the Member).

Unlike other superannuation funds, the SMSF is an active collaboration of the Members, who collectively make decisions in respect to the investment and application of the SMSF's resources. Each Member is required to be a Trustee of the SMSF, or a director of a corporate Trustee of the SMSF (with limited exceptions). The Members of a SMSF are involved in each stage of the decision-making and investment of the SMSF resources, and are tied to rules of conduct in line with the Superannuation Laws. Accordingly, the Members must be willing to develop and remain abreast of the Superannuation Laws, as well as having an ongoing understanding of risk management, investment products and performance, and bookkeeping and accounting standards.

A failure of the Members to abide by the Superannuation Laws in respect to the management and investment of the SMSF resources can result in financial loss and possible criminal prosecution.

Unlike other superannuation fund types, there is no Complaints Tribunal or government financial assistance in the event of fraud or theft. A SMSF is subject to ATO regulation and guidance, and a Trustee must be ever vigilant to the changes and the implications on the SMSF. Therefore, Members must appreciate the loss of the safeguards available in other types of superannuation funds, when accepting the independence of a SMSF.

Persons considering setting up a SMSF must be willing to run, operate and maintain the SMSF within the restraints of the Superannuation Laws – this should not be a decision taken lightly, and should generally be undertaken only after independent financial, accounting and legal advice.

## HOW SUPERANNUATION WORKS

Superannuation is a wealth management platform, in which most Australians have exposure. Once the primary reserve for employees of public service, banks, life insurance and mining companies, most Australians have at least one superannuation Member interest as a consequence of the imposition in 1992 of the Superannuation Guarantee System (SGC), which requires employers to make minimum contributions of the employee's ordinary earnings. Currently, the SGC rate is 9.5%; however the rate will increase progressively through 2020.

The following **Table 1** is a summary of the current Contribution Rules in respect to payments to a Member's Superannuation Interest (Member's Interest):

Age of Member	Condition**
Under 18	<p><b>Non-Concessional Contributions:</b> Personal (after-tax) contributions, contributions in excess of concessional contribution caps and contributions made by a spouse to the Member):</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$180,000 per annum, or \$540,000 in 3 year period.</li> <li>2. From 1 July 2017: \$100,000 per annum, or \$300,000 in a 3 year bring forward. Once the Member has contributed \$1.6 Million or more, no further Non-Concessional Contributions are allowed.</li> </ol> <p><b>Concessional Contributions:</b> Mandated employer superannuation guarantee amounts, amounts paid under industrial awards, salary sacrifice contributions, contributions split with a spouse and personal contributions for which a tax deduction is claimed:</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$30,000 per annum.</li> <li>2. From 1 July 2017: Up to \$25,000 per annum.</li> </ol> <p><b>Government Co-Contributions:</b> Yes.</p>
Under 49	<p><b>Non-Concessional Contributions:</b> Personal (after-tax) contributions, contributions in excess of concessional contribution caps and contributions made by a spouse to the Member):</p> <p>Up to 30 June 2017: Up to \$180,000 per annum, or \$540,000 in 3 year period.</p> <p>From 1 July 2017: \$100,000 per annum, or \$300,000 in a 3 year bring forward. Once the Member has contributed \$1.6 Million or more, no further Non-Concessional Contributions are allowed.</p> <p><b>Concessional Contributions:</b> Mandated employer superannuation guarantee amounts, amounts paid under industrial awards, salary sacrifice contributions, contributions split with a spouse and personal contributions for which a tax deduction is claimed:</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$30,000 per annum.</li> <li>2. From 1 July 2017: Up to \$25,000 per annum.</li> </ol> <p><b>Government Co-Contributions:</b> Yes.</p>
Under 65	<p><b>Non-Concessional Contributions:</b> Personal (after-tax) contributions, contributions in excess of concessional contribution caps and contributions made by a spouse to the Member):</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$180,000 per annum, or \$540,000 in 3 year period.</li> </ol>

	<p>2. From 1 July 2017: \$100,000 per annum, or \$300,000 in a 3 year bring forward. Once the Member has contributed \$1.6 Million or more, no further Non-Concessional Contributions are allowed.</p> <p><b>Concessional Contributions:</b> Mandated employer superannuation guarantee amounts, amounts paid under industrial awards, salary sacrifice contributions, contributions split with a spouse (the spouse must be under age 65 to receive) and personal contributions for which a tax deduction is claimed:</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$35,000 per annum.</li> <li>2. From 1 July 2017: Up to \$25,000 per annum.</li> </ol> <p><b>Government Co-Contributions:</b> Yes.</p>
Under 75	<p><b>Non-Concessional Contributions:</b> Personal (after-tax) contributions, contributions in excess of concessional contribution caps and contributions made by a spouse to the Member):</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$180,000 per annum (no 3 year bring forward), provided Member meets the Work Test (which requires the Member to engage in gainful employment for 40 hours over a 30 day period).</li> <li>2. From 1 July 2017: Up to \$100,000 per annum (no 3 year bring forward), provided Member meets the Work Test (which requires the Member to engage in gainful employment for 40 hours over a 30 day period). Once the Member has contributed \$1.6 Million or more, no further Non-Concessional Contributions are allowed.</li> </ol> <p><b>Concessional Contributions:</b> Mandated employer superannuation guarantee amounts and amounts paid under industrial awards:</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$35,000 per annum.</li> <li>2. From 1 July 2017: Up to \$25,000 per annum.</li> </ol> <p><b>Government Co-Contributions:</b> Yes.</p>
75+	<p><b>Non-Concessional Contributions:</b> Nil permitted.</p> <p><b>Concessional Contributions:</b> Mandated employer superannuation guarantee amounts and amounts paid under industrial awards only:</p> <ol style="list-style-type: none"> <li>1. Up to 30 June 2017: Up to \$35,000 per annum.</li> <li>2. From 1 July 2017: Up to \$25,000 per annum.</li> </ol> <p>Note: For a Member turning 75, the Contribution must be received no later than 28 days after the end of the month that the Member turns 75.</p> <p><b>Government Co-Contributions:</b> No.</p>

\*\* Transitional arrangements will apply if an individual has not fully used their non-concessional bring forward before 1 July 2017, and the remaining bring forward amount will be reassessed on 1 July 2017 to reflect the new cap amounts. The annual caps will be linked to the indexation of the concessional contribution caps, including, but not limited to the \$1.6 million eligibility threshold above shown.

Importantly, a Trustee must have a Member's Tax File Number (TFN) before any Contribution may be accepted, and the Trustee may be prevented from accepting Contributions based on the above limitations.



The following **Table 2**, is an explanation of the terms and the tax treatment of the Contributions referred to at **Table 1**:

Term	What it means
Mandated employer superannuation guarantee amounts and amounts paid under industrial awards	<p><b>What is it?</b> These are the “Concessional Contributions” made by your employer in accordance with section 290-60 of the ITAA97. For most Members, this will be the 9.5% superannuation guarantee amount on ordinary earnings (noting, this will increase over time). An “employee” is defined to include a person who is engaged in the business of an employer, and can include a director of a company. The limitations allowed are shown at <b>Table 1</b>.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are assessable income to the SMSF and taxed at 15%.</p> <p><b>How is it recorded to the Member?</b> These amounts, minus the 15% tax, are recorded to the “Taxable” components of the Member’s Interest.</p>
Salary sacrifice contributions	<p><b>What is it?</b> These are the “Concessional Contributions” made by your employer at your direction, in excess of the superannuation guarantee amounts. The limitations allowed are shown at <b>Table 1</b>.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are assessable income to the SMSF and taxed at 15%.</p> <p><b>How is it recorded to the Member?</b> These amounts, minus the 15% tax, are recorded to the “Taxable” components of the Member’s Interest.</p>
Personal (after-tax) contributions	<p><b>What is it?</b> These are the “Non-Concessional Contributions” made by you from after-tax monies (for example, you contribute money from an account that you hold outside superannuation to the SMSF) for which you do not claim a deduction under section 292-85 of the ITAA97. The limitations allowed are shown at <b>Table 1</b>.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are not assessable income to the SMSF.</p> <p><b>How is it recorded to the Member?</b> The total amount is recorded to the “Tax-Free” components of the Member’s Interest.</p>
Personal contributions for which a tax deduction is claimed	<p><b>What is it?</b> These are the “Concessional Contributions” made by you, for which you qualify for a tax deduction in accordance with section 290-15 of the ITAA97. The limitations allowed are shown at <b>Table 1</b>.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are assessable income to the SMSF and taxed at 15%.</p> <p><b>How is it recorded to the Member?</b> These amounts, minus the 15% tax, are recorded to the “Taxable” components of the Member’s Interest.</p>
Government co-contribution	<p><b>What is it?</b> The Government Co-Contribution is an amount up to \$500 paid by the Government, if you are a low or middle-income earner and make a personal (after-tax) superannuation contribution. The eligibility thresholds can be found at the ATO website.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are not assessable income to the SMSF.</p>

	<p><b>How is it recorded to the Member?</b> The total amount is recorded to the "Tax-Free" components of the Member's Interest.</p>
Contribution splitting to a spouse	<p><b>What is it?</b> A person may "split" their "Taxable Contribution" to their spouse to assist their spouse in accumulating the spouse's Member Interest. The amount is calculated by reducing the "Taxable Contribution" by 15%. It is effectively a roll over or transfer of amounts from the person to their spouse. A person may also split an "Untaxed Contribution", provided the amount is no more than the element untaxed of the Taxable Component that the person would have received had they withdrew the benefit.</p> <p><b>How is it taxed in the SMSF?</b> The amounts are assessable income to the SMSF (which is the 15% reduction referred to above).</p> <p><b>How is it recorded to the Member?</b> The total amount is recorded to the "Taxable" components of the Member's Interest of the spouse.</p>

Please note, the ATO has issued guidelines which classify expenses paid by a Member or another party benefiting a Member or Members, as a "Contribution" on behalf of the Members.

Once the Contributions are received, the Contributions become the SMSF's investment resource, to which the Trustee's Investment Strategy is then applied. The benefit of investing through superannuation is that earnings in the fund are taxed at a maximum rate of 15% (excepting in respect to non-arm's length income which is taxed at 49%). Further, capital gains in a SMSF are taxed at an effective rate of 10% (allowing for the discount for capital gains resulting from assets held for 12 months or greater). If the SMSF is paying Income Streams to Members, the income from assets used to pay such amounts are tax free.

Apart from the concessional tax treatment of income of the SMSF, there are also significant benefits to Member's in respect to the treatment of income paid from the SMSF to the Member.

Once a Member satisfies a condition of release, the tax treatment of the payment depends on the proportion of "Taxable Components" and "Tax Free Component" of the Member's Interest. The Taxable Component is non-assessable income to the Member. The Taxable Component consists of two elements: the "Element Taxed" and the "Element Untaxed". The Tax treatment of the payment of a Member's Interest (disregarding the Element Untaxed) is shown at **Table 3**:

Type of Benefit	Tax-Free Component	Taxable Component: Under preservation age	Taxable Component: Between preservation age and age 60	Taxable Component: Age 60 and over
<b>Lump sum</b>	Tax Free	20%	First \$195,000 is tax free with any remainder taxed at 17%	Tax free
<b>Income stream* and **</b>	Tax Free	Assessable income	Assessable income + 15% tax offset	Tax free
<b>Permanent disability income stream</b>	Tax Free	Assessable income + 15% tax offset	Assessable income + 15% tax offset	Tax free
<b>Temporary disability benefit</b>	Tax Free	Assessable income	Assessable income	Assessable income

\*From and following 1 July 2017, Pension Interests will be subject to the \$1.6M capping standards.

\*\* from and following 1 July 2017, transition to retirement pension interests are subject to different taxing standards. The Assets supporting the transition to retirement pension interest is taxable as ordinary income in the SMSF. The payment is made in the above percentages, subject to the earnings having been assessed at the Fund level.

## GETTING STARTED

Once you have decided on settling a SMSF, you must ensure the Fund has a Trustee. All trustees and directors of a corporate trustee must consent in writing to their appointment. Also, each must sign a declaration to the ATO stating that they understand their obligations and responsibilities as trustees. The declaration must be signed within 21 days of becoming a trustee or director or a corporate trustee, and lodged with the ATO. Declarations must be held for 10 years.

The SMSF is generally settled by a trust deed, but section 10(1) of the SISA only requires an "instrument having the effect of a deed." The trust deed establishes the SMSF, and should include rules about the structure and purpose of the SMSF, the details of the trustees (and any replacement powers and processes), the decision-making powers and authorities of the trustees, an identification of who can become members and make contributions, a process for accounting for the member's contribution and payment of benefits (as well as the process for determining a member's benefit entitlements), provides investment powers, dictates the mechanism and manner of keeping records, audit requirements and disclosure generally, and appoints and/or identifies the manner in which an actuary, auditor, manager and other advisors are appointed to assist the trustee. The NowInfinity SMSF Trust Deed offers each of these requirements.

Once established, the SMSF must elect to be regulated under SISA and comply with the Superannuation Laws generally. A failure to make such election will prevent the SMSF from obtaining the valuable tax concessions provided to complying regulated funds.

Finally, the Trustee must open bank accounts and collect Contributions, which Contributions are then applied in accordance with the Investment Strategy created by the Trustee having regard to the Member's circumstances (to be discussed more below).

## RISK OF SUPERANNUATION AND SMSFS

All financial decisions carry risk. It is critical to consider investment options, whilst balancing risk against potential benefits. Superannuation is a retirement vehicle; accordingly, the decision is to self-manage in the form of an SMSF, or to leave the decision and management to others, such as industry and commercial superannuation funds.

Merely having the ability to control and invest your superannuation resources, does not give rise to unfettered discretion.

To assist you in appreciating some of the restrictions you will be working with should you chose to self-manage, we provide the following:

### A. **Sole Purpose Test – Section 62 of the SISA**

The Sole Purpose Test limits the benefits a Trustee can provide to the SMSF Members. In essence, the Trustee can provide benefits, including SMSF Income Streams and Lump Sums to Members of the SMSF who have retired, are aged 65, or are permanently or temporarily incapacitated. In addition, the Trustee may provide a transition to retirement Income Stream to a Member who has reached age preservation age and is still working or self employed – whether full time or part time.

It is important for the Trustee to ensure that the assets of the SMSF are held for the benefit of all Members of the SMSF and not be used to provide non-super benefits for a Member, to actively run a business or for some other non-super benefit. For example, if the SMSF owns a vacation unit and the Trustee allows a Member to stay in the unit without paying rent, such a use would

violate the "Sole Purpose Test" (not to mention possibly triggering a breach of other limitations in respect to the In-House Asset Test).

#### **B. Making contributions to the SMSF – Part 7 of the SISA**

Part 7 of the *Superannuation Industry (Supervision) Regulations 1994* allow the Trustee of the SMSF to accept contributions on behalf of a Member under aged 65 at any time. These contributions may be by way of cash or by way of assets – an "in-specie contribution".

In terms of in-specie contributions, there are limitations on the types of assets which can be transferred to the SMSF under section 66 of the SISA. The Trustee may accept the transfer of listed shares, managed funds, fixed interest, fixed term deposits and business real property – including business real property leased to the Member's business. However, residential property, unlisted shares and units in a private unit trust or company cannot be transferred into the SMSF. There are limited exceptions to this rule. For example, a property developer's vacant land is held by the property developer as business real property, which would be an exemption from the general restriction. Also, primary production land (including land having a residential property with no greater than two hectares in private use land) may qualify to be transferred to the SMSF as business real property.

#### **C. Transferring Assets to the SMSF – Section 66 of the SISA**

Section 66 of the SISA prohibits the acquisition of certain types of assets from Members or related parties of the SMSF. Members and related parties of the SMSF may also sell the assets to the SMSF on arm's length terms based on market value pricing.

#### **D. Investing in In-House Assets – Section 71 of the SISA**

The Trustee may not invest more than 5% of the SMSF total resources in the acquisition or holding of one or more "In-House Assets". An In-House Asset is defined to be an investment in, a loan to or a lease of SMSF property to a Member or related party of the SMSF. A related party includes a Member or any other entity such as a family trust, which a Member of the SMSF or Trustee has the ability to control the entity. An exception to this rule is a lease back of business real property to a Member or related party of the SMSF. Notwithstanding, the lease must be on arms' length terms based on market value pricing.

#### **E. Investment Strategy – Section 52 of SISA**

The Trustee must consider and maintain an Investment Strategy in accordance with section 52B(2)(f) of the SISA, which considers:

- i. The risk involved in making, holding and realising, and the likely return from, the SMSF's investments having regard to its objectives and its expected cash flow requirements;
- ii. The composition of the SMSF's investments as a whole including the extent to which the investments are diverse or involve the SMSF in being exposed to risks from inadequate diversification;
- iii. The liquidity of the SMSF's investments having regard to its expected cash flow requirements; and
- iv. The ability of the SMSF to discharge its existing and prospective liabilities.

It is your responsibility, in a SMSF, to ensure that the SMSF's investments are tailored to

suit the circumstances of the SMSF's Members, having regard to the Member's ages, level of risk and objectives - which likely will require a diversified approach to investing the SMSF's resources for its Members.

Diversification is an investment approach that asks you, as trustee, to consider the number of eggs you place in any one basket from an asset holding standpoint. In other words, a trustee should consider whether holding a majority of the SMSF's assets in a single asset type, or single investment, adequately protects the membership from risks associated with a failure of that asset or investment. Spreading investments of the SMSF across a range of investments or investment types assists in insulating the SMSF from volatility and market risks associated with one or more investment or investment types. Diversification does not guarantee the SMSF's performance or solvency - as all investments carry risk, but diversification can help prevent larger SMSF losses.

Setting aside risk, diversification is also beneficial with mixed memberships. For example, if the SMSF has a member in their 40's, this member is likely amicable to aggressive investments (for example, leveraging facilities and unlisted investments). However, if the SMSF also has a member in their 70's, this member is likely looking for defensive investments (for example, term deposits and annuities). In this situation, the trustee would want to consider diversification in the investments of the SMSF to ensure each of the members' objectives are considered.

Ultimately, it is up to the Trustee (which represents the membership of the SMSF) to decide on the extent of diversification.

This is not to say that you are prevented from engaging financial, accounting and legal professionals to assist you - indeed, the other forms of superannuation funds do, and the costs come out of your Member interests. It is the case, however, in a SMSF that you pick your advisors, and you negotiate their charges - which gives you greater control.

## OTHER IMPORTANT RISKS FOR SMSFS

### Non-Compliance Risk

As discussed above, the Trustee must comply with the Superannuation Laws, which are complex and intentionally restrictive, given the significant tax concessional treatment of the superannuation wealth platform. If the Trustee (Members) fail or refuse to comply with the Superannuation Laws, the consequences could include the loss of tax concessions, significant financial penalties and possible criminal prosecution.

### Trust Deed Risk

The Trustee must ensure the trust deed is current and appropriate to the Superannuation Laws. It is the Trustee's responsibility to undertake reviews of the trust deed and to update the deed to accommodate legislative changes and modern strategies. It is highly advisable the trust deed be updated at least every two years.

### Borrowing Risk

The Superannuation Laws allow the SMSF to borrow money to acquire a Single Acquirable Asset, such as a residential or commercial property, and in some cases a collection of shares having the same characteristics (such as market value, class of share, acquisition date). However, with any borrowing, there is a risk that the underlying investment may perform poorly and the lender may seek to foreclose on the borrowing.

The Superannuation Laws restrict the Trustee from borrowing generally; however, the Trustee may undertake a borrowing type commonly known as a Limited Recourse Borrowing Arrangement (LRBA). An LRBA limits the recourse a borrower may exercise in the default of a borrowing to the Single Acquirable Asset. Whilst related parties may lend

to the SMSF, the terms must be on arm's length and commercial terms, and the SMSF may require insurance to fund liquidity requirements should a Member become disabled and/or die and early access obtained.

## HOW THE SMSF INVESTS YOUR MONEY

The Trustee of a SMSF has broad investment powers, which are listed in the SMSF Trust Deed. Generally, the Trustee can invest in company shares; cash and fixed interest; commercial, rural and residential property; unit trusts and pooled superannuation trusts and is able to engage in property development and other pursuits provided the investment is in accordance with the Superannuation Laws.

The Trustee may also borrow to acquire a Single Acquirable Asset, provided the acquisition of the permitted by the Superannuation Laws. The structure for any borrowing must be by way of a holding trust to ensure the borrowing is non-recourse. The borrowing may be from a bank, building society, non-bank or a related party. The ATO has issued extensive guidelines in relation to SMSF borrowing.

The Trustee can create separate investment strategies for each Member. The Trustee may also establish separate investment strategies in circumstances in which a Member has two or more accounts, such as an accumulation account and a pension account. The Trustee may also create a pooled investment strategy which provides diversification sufficient to accommodate the circumstances of each of the Members.

An investment must be made in accordance with the SMSF's written "Investment Strategy." The ATO has established guidelines as to the matters to be addressed in an Investment Strategy", which can be found on the ATO's website. (See *Investment Strategy and Investment Restrictions – SMSF (NAT 2063)*).

The key principles raised by the Commissioner of Taxation in terms of Investment Strategies are:

- the Trustee of a SMSF is solely responsible and directly accountable for the prudential management of the Members' benefits – whilst the Trustee may seek advice, the responsibility for the Investment Strategy remains that of the Trustee;
- the Trustees of a SMSF are required to prepare, implement and evolve the Investment Strategy in a written format, which details the investment methods and the objectives of the Members;
- the Investment Strategy must reflect the purpose and circumstances of the SMSF, including but not limited to the Membership profile, benefit structure, tax position and liquidity requirements of the SMSF;
- the SMSF investments must be made, implemented, documented and revised as necessary having regard to the performance of the investments; and
- a breach of the Investment Strategy may result in the Trustee being fined or sued for loss or damages, as well as the loss of the SMSF's complying superannuation fund status and concessional tax treatment.

## INSURANCE IN YOUR SUPER

The Trustee must have regard to appropriate insurances to address liquidity risks, in the event that Member's die or become totally and permanently incapacitated. This insurance requirement may be ever more pressing in circumstances in which the SMSF has borrowings or is involved in projects which may lock the SMSF's resources for a period of time – and which would not be easily unwound in the circumstances of a Member's call upon their Member Interest.

The Trustee should also have adequate insurance for assets of the SMSF, including public liability and replacement/reinstatement levels of coverage on real property assets.

The Trustee is obligated to consider insurance as part of the Investment Strategy.

## PAYMENT OF SUPERANNUATION BENEFITS FROM THE SMSF

The Trustee must be cognizant of the potential for the Members to access their superannuation interests. Members may access superannuation interests upon the occasion of certain events and/or reaching relevant ages.

We summarise in the following **Table 3**, the types of benefits which may be obtained by Members of a SMSF:

<b>When a Member can take a benefit</b>	<b>What type of benefit</b>
Temporary incapacity – includes sickness	Temporary incapacity Income Stream
Permanent Incapacity – includes disabled children	Lump Sum or Income Stream
While working and over Preservation Age: a) For a person born before 1 July 1960 – 55 years; b) For a person born during the year 1 July 1960 to 30 June 1961 – 56 years; c) For a person born during the year 1 July 1961 to 30 June 1962 – 57 years; d) For a person born during the year 1 July 1962 to 30 June 1963 – 58 years; e) For a person born during the year 1 July 1963 to 30 June 1964 – 59 years; and f) For a person born after 30 June 1964 – 60 years.	Transition to Retirement Income Stream
Retired after Preservation Age	Lump Sum or Income Stream
Age 65	Lump Sum or Income Stream
Death	Lump Sum or Income Stream (limited to Dependants)
At any time	May accumulate as a Lump Sum until death
Severe Financial Hardship/Compassionate Grounds	Limited access, subject to SISA restrictions and Trustee discretion

If a Member commences an Income Stream, the Member may direct the Income Stream to be rolled back into an accumulation account at any time. Additionally, a Member may have multiple accounts, such as one account for new contributions, and a separate account paying an Income Stream. For example, if a Member is age 56 years of age, they may start a transition to retirement pension over their existing superannuation interest – but have a separate superannuation interest in which their SGC (employer made) contributions are paid into. If the Member then retires, the Member may choose to commence an account based pension, or may opt to continue to hold their interest in an accumulation account. There is no requirement for a Member to commence a pension or take a Lump Sum payment, until the Member's death – upon which a Death Benefit must be paid to either the Member's Dependants or the legal personal representative of the Member's estate.

In a SMSF, as each Member is also a Trustee or director of a corporate Trustee of the SMSF, each Member is involved in this decision-making process.

Assuming a Member qualifies to take an Income Stream, the Superannuation Laws impose restrictions on the amounts paid from a Member's superannuation interest, which we show at **Table 4:**

<b>Member's Age</b>	<b>Account Based Pension</b>	<b>Transition to Retirement Income Stream</b>
Under 65	4%	4%
65-75	5%	Once age 65 or retired, the Income Stream becomes an accounts base pension
75-85	6%	
85-89	9%	
Maximum Payment	No Maximum	10% of account balance
Roll back to Lump Sum	Yes	Yes
Take a Lump Sum Commutation	Yes	No

On the death of a Member, the whole of the Member's superannuation interests must be dealt with. If a pension is paid to a Member's Dependant, then there may be an opportunity to minimize liquidity issues. However, if the Death Benefit cannot be paid to a Member's Dependant, or the Death Benefit is required to be paid as a Lump Sum, then the Trustee may have significant liquidity issues if the SMSF's resources are locked to an illiquid asset. This is why the Trustee's Investment Strategy must plan for a range of possibilities, to ensure the SMSF can accommodate demands on liquidity.

A Member's Death Benefit can be paid in accordance with a Binding Death Nomination (BDN) or SMSF Will, provided the Death Benefit is directed to an eligible beneficiary. The following are eligible beneficiaries of a Member's Death Benefit (Superannuation Death Benefit Dependents):

- The deceased Member's spouse or de facto spouse;
- A child of the deceased Member (any age);
- A person in an interdependency relationship with the deceased Member (which is a close relationship between two people who live together, where one or both provides for the financial, domestic or personal support of the other); and/or
- The legal personal representative of the deceased Member's estate.

The NowInfinity SMSF Deed allows for a non-lapsing BDN – meaning the BDN of the Member does not expire. This is an exceptional benefit of the NowInfinity SMSF Deed, because the Member can have peace of mind that his/her requirements should not be prevented due a lapsing of time.

Many industry and commercial retail superannuation funds do not allow for a non-lapsing BDNs, and Members must instead renew the BDN every three years – or the nomination ceases to be "binding" on the Trustee and the Trustee has absolute decision power over who receives the Member's Death Benefits.

Not only does the NowInfinity Superannuation Trust Deed allow for a non-lapsing Binding Death Nomination, but it allows for the making of a SMSF Will, which allows a Member to create alternative nominations. For example, the Member may appoint his wife, but if his wife does not survive him then the Legal Personal Representative of his Estate or children (or any combination thereof).

The Member may, instead, leave a non-Binding Death Nomination – which provides guidance to the Trustee, but does not require the Trustee to pay the Member's interests in accordance with the nomination. Alternatively, the Member may leave no Death Benefit nomination – meaning the Trustee has absolute discretion over who receives the Member's superannuation interests.

A common misunderstanding is that a Member can direct their superannuation through their Will – this is incorrect. Whilst the Member may create a binding or non-binding Death Benefit nomination,



and nominate the legal personal representative of the Member's estate – the Member's Will has no authority over the determination of the Member's superannuation interest.

Each Member should obtain specialist legal advice in respect to the making of his/her Death Benefit nominations, which advice is best served with a holistic planning of the Member's total wealth (including family trusts, joint venture interests, personal assets and joint assets held with other parties). In New South Wales, this is especially important as a Court may set aside a Member's Binding Death Nomination in a notional estate matter.

## TAXATION TREATMENT ON DEATH

There are two categories of "Dependants" in respect to the payment of a Member's Death Benefits from his/her superannuation Member Interest.

The Superannuation Death Benefit Beneficiaries ("SIS Dependants") are the beneficiaries allowed under the SISA to be paid a Death Benefit of a Member's Interest. The following are a Member's SIS Dependants:

- The deceased Member's spouse or de facto spouse;
- A child of the deceased Member (any age);
- A person in an interdependency relationship with the deceased Member (which is a close relationship between two people who live together, where one or both provides for the financial, domestic or personal support of the other); and/or
- The legal personal representative of the deceased Member's estate.

The tax treatment of the Death Benefit in the hands of the SIS Dependant is dictated by the *Income Tax Assessment Act 1997*, which allows the following "Tax Dependants" to receive Lump Sum and Income Stream Death Benefits as non-assessable (tax free):

- The deceased Member's spouse or de facto spouse;
- The deceased Member's former spouse or de facto spouse;
- A child of the deceased Member under 18 years old;
- A person financially dependent on the deceased Member;
- A person in an interdependency relationship with the deceased and/or
- A child of the deceased Member of any age who suffers a disability and is in receipt of the disability pension.

The "taxable component" of a Lump Sum Death Benefit paid to any other person (including the legal estate of the deceased Member, where one or more Tax Dependants does not benefit from the Death Benefit) is assessable income.

If the "taxable component" is a "taxed element" of a Lump Sum Death Benefit, then a non-Tax Dependant will be assessed at the lower of 17%, or their marginal rate, plus the Medicare Levy on the taxed element of the taxable component.

If the "taxable component" of a Lump Sum Death Benefit is an "untaxed element" (usually a Member interest paid into a government superannuation fund which was not taxed at contribution and/or the taxable component sourced from an insurance payout), then a non-Tax Dependant will be assessed at the lower of 32%, or their marginal rate, plus the Medicare Levy on the untaxed element of the taxable component.

The "tax free" component of a Lump Sum Death Benefit is not assessable to any beneficiary, including a non-Tax Dependant.

A Death Benefit may also be paid as an Income Stream (also known as Pension) to a Tax Dependant, excepting that an Income Stream paid to a child of a deceased Member must be commuted by or before the child's 25<sup>th</sup> birthday (excepting if the child is in receipt of a disability pension).

**Table 5** summarises the tax treatment of Death Benefits paid to a Tax Dependant:

Age of deceased Member at death	Type of Death Benefit	Age of Beneficiary	Taxation of taxable component	
			Taxed element	Untaxed element
Any age	Lump Sum	Any age	Not assessable.	Not assessable.
Age 60 and above	Income Stream	Any age	Not assessable.	Marginal rate of beneficiary, minus 10% tax offset
Below age 60	Income Stream	Age 60 and above	Not assessable.	Marginal rate of beneficiary, minus 10% tax offset

**Table 6** summarises the tax treatment of Death Benefits paid to a Non-Tax Dependant:

Age of deceased Member at death	Type of Death Benefit	Age of Beneficiary	Taxation of taxable component	
			Taxed element	Untaxed element
Any age	Lump Sum	Any age	Max 15%	Max 30%
Any age	Income Stream	Any age	Not allowed from 1 July 2007, although Death Benefit Income Streams commenced prior to 1 July 2007 will be taxed in the same manner as if paid to a Tax Dependant Beneficiary.	

## FEES AND COSTS

There are a range of costs associated with establishing, operating and maintaining a SMSF. The level of costs will depend on the extent to which the Trustee has sought expertise in meeting its obligations under the Superannuation Laws.

The Trustee's costs should be compared against the costs charged by industry and commercial retail superannuation funds, which most consumers do not appreciate. Whilst the costs charged to Members of industry and/or commercial retail superannuation funds may not be readily transparent, they vary significantly.

A SMSF Trustee should not lose sight of the benefits of obtaining appropriate financial, accounting and legal advice – which advice the industry and commercial retail superannuation funds acquire and charge to its Members. What may seem a savings in failing to obtain advice, can give rise to costly mistakes of investment, strategy and Member interest management (including succession to Member’s beneficiaries on the death of a Member). A SMSF Trustee faces personal financial liability and potential imprisonment for violations of the Superannuation Laws – it therefore stands to reason that the SMSF Trustee should not act independently of appropriate professional advice.

## HOW SUPER IS TAXED

As discussed above, Non-Concessional Contributions are contributions made to the SMSF from “after-tax” money and are not subject to tax on the contribution or withdrawal stages. The definition is found at section 292-90(1) of the *Income Tax Assessment 1997* (ITAA97), and include, for example, un-deducted contributions, capital gains tax amounts which exceed the CGT cap, and non-assessable amounts from overseas transfers.

Concessional Contributions of Members are taxable to the SMSF, and are defined at section 291-25(2) of ITAA97, and include the employer paid superannuation guarantee, salary sacrifice amounts, self-employed contributions where a deduction is claimed.

Once the Contributions are received, the Contributions become the SMSF’s investment resource, to which the Trustee’s Investment Strategy is then applied. The benefit of investing through superannuation is that earnings in the fund are taxed at a maximum rate of 15% (excepting in respect to non-arm’s length income which is taxed at 49%). Further, capital gains in a SMSF are taxed at an effective rate of 10% (allowing for the discount for capital gains resulting from assets held for 12 months or greater). If the SMSF is paying Income Streams to Members, the income from assets used to pay such amounts are tax free.

## CLOSING THE FUND

In accordance with the provisions of the Superannuation Laws, the SMSF will continue in perpetuity or until the SMSF is wound up. The SMSF may be wound up under the following circumstances:

- The Members resolve to roll out all Member Interests and wind up the SMSF;
- On the death of the last Member, the replacement Trustee resolves to wind up the SMSF; and/or
- On direction of the Regulator or any other person or body authorised to wind up the SMSF under the Superannuation Laws resolves the SMSF to be wound up;

In the event of the SMSF is wound up, the Trustee must disburse any remaining proceeds, cash or assets of the SMSF to any of the following parties:

- Members and former Members of the Fund;
- Relatives of any Member or former Member;
- The Legal Estate of a Member or former Member; or
- Such entity or trust of a charitable, public benevolent, sporting, animal or political nature, which the Trustee elects.

## CONTACTING THE FUND TRUSTEE

The contact details for the SMSF will be the registered office of the SMSF’s corporate Trustee which may be obtained from the company’s directors or the SMSF’s administrator or accountant.

Alternatively the details may be retrieved from the Australian Securities and Investment Commission – [www.asic.gov.au](http://www.asic.gov.au).

As all Members must be Trustees or directors of the corporate Trustee, details of other Trustees or directors are kept on file at the Trustee's office or registered address.

## OTHER INFORMATION

The ATO offers a wide range of articles and guidance papers to Trustees and Members, which can be accessed via the ATO website at: [www.ato.gov.au](http://www.ato.gov.au).

**Disclaimer:** This PDS is offered for general educational purposes, based on the laws at 1 January 2017. As the Superannuation Laws are continuously evolving, this PDS may not be appropriate after this date. You are required to seek independent financial, accounting and legal advice to ascertain whether the matters referred to in this PDS are relevant and/or appropriate for your circumstances. Copyright of the content of this PDS is owned by NowInfinity, and reproduction of the content may only be permitted where expressly authorised by NowInfinity.



## I understand that as an individual trustee or director of the corporate trustee of

Fund name

J.P. O'Sullivan Superannuation Fund
-------------------------------------

I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### Sole purpose

I understand it is my responsibility to ensure the fund is only maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

### Trustee duties

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- ensure that members only access their super benefits if they have met a legitimate condition of release
- refrain from entering into transactions that circumvent restrictions on the payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

### Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

### Administration

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

### DECLARATION

*By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:*

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

**John Peter O'Sullivan**

Trustee's or director's signature

[Signature box]

Date 15/06/2018

Witness' name (witness must be 18 years old or over)

[Witness name box]

Witness' signature

[Witness signature box]

Date



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  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
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- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

**Trustee's or director's name**

Angela Leong

**Trustee's or director's signature**

[Signature box]

Date 15/06/2018

**Witness' name** (witness must be 18 years old or over)

[Witness name box]

**Witness' signature**

[Witness signature box]

Date