

# **SUPERCENTRAL**



## **Written Resolution Establishing an SMSF on the SUPERCentral System**

### **Nicholas Family Super Fund**

This document has been prepared by **TOWNSENDS BUSINESS & CORPORATE LAWYERS**.

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**1. Explanatory Note:**

- 1.1 This resolution has been drafted for the establishment of SMSFs using the SuperCentral System. This resolution is not appropriate for any other purposes.
- 1.2 This resolution is suitable for both corporate and individual trustees.
- 1.3 To sign and complete this Resolution:
- (a) each Initial Member must complete and sign Part I;
  - (b) complete the "Bank Account" details table on section 8.8;
  - (c) each Trustee/Director must complete and sign Part J.
- 1.4 Once signed the Written Resolution must be kept as part of the Trustee's records of the Superannuation Fund.
- 1.5 Once the resolution is signed, the Superannuation Deed must be signed:
- (a) where a Company is the Trustee – by two directors (or the sole director if the company is a single director company);
  - (b) where Individuals are Trustees - by all Trustees.
- Note: The signature of each Trustee must be witnessed by a person who is not a Trustee.
- 1.6 Once the Resolution and the Superannuation Deed have been signed then:
- (a) contributions can be made for the initial Members;
  - (b) the Fund must be registered with the ATO (this must be done within 60 days of signing of the Superannuation Deed otherwise the Superannuation Fund may not be a complying superannuation fund from the date of its establishment);
  - (c) each Trustee/Director must sign the ATO Trustee Declaration form (this form must be signed within 21 days of signing of the Superannuation Deed);
  - (d) the bank account for Superannuation Fund can be opened;
  - (e) (for TAS and NT) – stamp duty of \$20 must be paid on the Superannuation Deed.

## **Written Resolution of the Trustee of the Nicholas Family Super Fund (“the Superannuation Fund”)**

### **1. Part A - Purpose of Resolution**

The purpose of this resolution is to:

- 1.1 establish the Superannuation Fund as both a superannuation fund regulated under the Supervision Industry (Supervision) Act 1993 (“the SIS Act”) and as a self managed superannuation fund by executing the superannuation trust deed;
- 1.2 attend to various matters following upon the establishment of the Superannuation Fund; namely:
  - (a) that the Trustee makes an election under s19 of the SIS Act that the Superannuation Fund be a regulated superannuation fund for the purposes of the SIS Act;
  - (b) that a bank account be opened in respect of the Superannuation Fund; and
  - (c) to permit the making of a statement on behalf of the Trustee to the effect that the Superannuation Fund is a resident regulated superannuation fund and that the Trustee is not subject to a direction under s63 of the SIS Act (ie that there is no direction from the ATO prohibiting the Trustee from accepting employer contributions).

### **2. Part B – Superannuation Deed**

A deed to establish a new superannuation fund has been prepared. This deed will incorporate the SUPERCentral Governing Rules as those rules are amended from time to time pursuant to the amendment powers conferred by the Superannuation Deed.

### **3. Part C – Product Disclosure Statement**

A Product Disclosure Statement (“PDS”) has been prepared in respect of the Superannuation Fund a copy of which is attached. The PDS describes the significant features of the Superannuation Fund and superannuation benefits which will be provided to Members of the Superannuation Fund upon their admission.

### **4. Part D – Initial Members - Confirmations, Consents, Disclosures & Undertakings**

Each of the Initial Members, by signing Part I of this Written Resolution, confirms in respect of themselves the following:

- (a) they have (and know that they have) access to a Product Disclosure Statement in respect of superannuation interests in the Superannuation Fund;
- (b) they understand that as a member of the Superannuation Fund they will be bound by the provisions of the Superannuation Deed (including the provisions of the SUPERCentral Governing Rules) which apply to the Fund, as those provisions are amended from time to time;
- (c) they are making an application to be admitted as a member of the Superannuation Fund;
- (d) they understand that there is no legal obligation to provide to the Trustee their Tax File Number (“TFN”) but they are aware of the adverse consequences of not providing their TFN;
- (e) they authorise the Trustee to use their TFN in the manner set out below.

#### **4.1 Statutory Basis for requesting your TFN**

The Trustee is authorised under the Superannuation Industry (Supervision) Act, 1993 to request and collect TFNs of members and prospective members of the Fund.

#### **4.2 Uses to which TFNs will be put**

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

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

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

#### **4.3 No obligation to provide TFN**

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

#### **4.4 Consequences of not providing TFN**

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

- (a) more tax than is otherwise due may be withheld from benefits paid to them from the Fund;
- (b) superannuation surcharge or a greater amount of surcharge may be payable in respect of surchargeable contributions of members than would otherwise be the case;
- (c) it may be more difficult to locate, identify and consolidate superannuation benefits in other funds; and
- (d) an entitlement to a Government Co-Contribution may not be payable.

The consequences of not providing TFNs may, because of legislative changes, alter in the future.

#### **4.5 Providing TFN to other Superannuation bodies**

The Trustee may provide a member's TFN to the trustee of another superannuation fund or to a Retirement Savings Account provider where that trustee or provider is to receive from the Fund any of the transferred/rolled over benefits of a member or prospective member. However, a TFN will not be provided to another superannuation body if the member/prospective member instructs the Trustee not to provide their TFN.

The Trustee may provide your TFN to the Commissioner of Taxation.

## **5. Part E – Admission of Initial Members**

Each person identified in the Superannuation Deed as an Initial Member will on the signing of the Superannuation Deed, be admitted as a Member of the Superannuation Fund by virtue of the provisions of the Superannuation Deed.

Each Initial Member has either received a copy of a Product Disclosure Statement in respect of the Superannuation Fund or has (and knows that they have) access to a Product Disclosure Statement in respect of the Superannuation Fund.

## **6. Part F – Trustees/Directors – Consents, Disclosures & Undertakings**

### **6.1 Consent to acting as trustee/director**

Each Trustee/Director by signing Part J of this Written Resolution consents in writing to acting as a trustee of a regulated superannuation fund or acting as a director of a company which is trustee of a regulated superannuation fund (as applicable).

### **6.2 Disclosures in respect of acting as trustee/director**

Each Trustee/Director by signing Part J of this Written Resolution confirms:

- (a) they understand that the Superannuation Fund is both a regulated superannuation fund and also a self managed superannuation fund;
- (b) they are eligible to participate in the trusteeship of a self managed superannuation fund;
- (c) they have attained the age of 18 years;
- (d) no notice of disqualification has been made in respect of them pursuant to s120A of the SIS Act;
- (e) they are not an insolvent under administration;
- (f) no civil penalty order under the SIS Act has been made against them;
- (g) they have not been convicted (whether in Australia or elsewhere) of any offence involving dishonest conduct; and
- (h) (in respect of Directors) they are either:
  - (i) not disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001; or
  - (ii) currently disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001 however they have been granted permission by ASIC under s206F(5) of that Act or, alternatively, they have been granted permission by a Court under s206G(3) of that Act, to be involved in the management of the company which is the Trustee.

### **6.3 Undertakings by each Trustee/Director**

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

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

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

## **7. Part G – Fund Compliance Statement**

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

## **8. Part H – Trustee Resolutions**

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

### **8.1 Signing of Superannuation Deed**

Resolved that the Superannuation Deed be signed by the Trustee.

### **8.2 Approval, dating and Issue of Product Disclosure Statement**

Resolved that:

- (a) the Product Disclosure Statement (a copy of which is attached) is approved;
- (b) the Product Disclosure Statement be dated as of the date of this resolution; and
- (c) the Product Disclosure Statement be issued to the initial Members, and to prospective members.

### **8.3 Election to be regulated**

Resolved that an election be made under s19 of the SIS Act that the Superannuation Fund is a regulated superannuation fund for the purposes of that Act.

### **8.4 Authority to complete & submit Fund Registration Form**

Resolved that the Trustee will complete and submit to the Australian Taxation Office the ATO Form "An Application to Register for Superannuation Entities" (NAT 2944) which will, upon acceptance by the Australian Taxation Office constitute an application for a Tax File Number for the Superannuation Fund, an Australian Business Number for the Superannuation Fund and the election to be regulated under the SIS Act as a regulated superannuation fund.

### **8.5 Authorisation of Fund Compliance Statement**

Resolved that upon confirmation being received from the ATO that the Superannuation Fund has been registered and while the Fund:

- (a) is a regulated superannuation fund;
- (b) is a resident Australian superannuation fund, and
- (c) has not received a direction under s63 of the Superannuation Industry (Supervision) Act, 1993 not to accept employer contributions:

then, any Trustee/Director is authorised to make on behalf of the Trustee the following statements to any employer sponsor or prospective employer sponsor of the Fund that:

- (d) the Fund is a resident regulated superannuation fund; and
- (e) the Fund is not subject to a direction under s63 of the Superannuation Industry (Supervision) Act 1993 not to accept employer contributions.

### **8.6 Identification of Governing Rules**

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

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

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

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

Further noted that if the notice is by means of:

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

Also noted that

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

**8.8 Bank Account**

Resolved that a bank account be opened in respect of the Superannuation Fund as follows:

<b>Bank</b>	
<b>Branch</b>	
<b>Name of Account</b>	
<b>Signatories</b>	



**9. PART I – Initial Members-Signing**

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

Member Bruce Ian Nicholas  
Current Residential Address 18 James Wheeler Place, Wheeler Heights NSW 2097  
Date of Birth ..... 7-2-57 .....  
Tax File Number ..... 114 170 457 .....  
Signature ..... *Bruce Nicholas* .....  
Sign here

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Member Rhonda Maree Nicholas  
Current Residential Address 18 James Wheeler Place, Wheeler Heights NSW 2097  
Date of Birth ..... 28/12/1959 .....  
Tax File Number ..... 256 325 533 .....  
Signature ..... *Rhonda Nicholas* .....  
Sign here

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**10. PART J – Signing & Dating–Trustees/Directors**

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

Signed as a Written Resolution of B & R Nicholas Pty Ltd ACN 110 273 357 as Trustee of the Superannuation Fund

*Bruce Ian Nicholas*

.....  
Bruce Ian Nicholas - Director

*Rhonda Maree Nicholas*

.....  
Rhonda Maree Nicholas - Director

**Dated:**

*20, 12, 2012*