

ACCOUNT BASED PENSION PAYMENT AGREEMENT

AQ SUPER FUND

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Account Based Pension Payment Agreement

Parties

Trustee	AQSF CAPITAL PTY LTD - ACN 624 799 248 of 28 Batman Street, ABERFELDIE, VIC 3040
Member	Alan Quinton of 28 Batman Street, ABERFELDIE, VIC 3040

Overview

- A The Trustee is the trustee for the Fund.
- B The Member is a member of the Fund and has satisfied the Condition of Release.
- C The Member has requested, and the Trustee has agreed to pay, the Pension to the Member.
- D The parties agree to be bound by the terms of this document.

Definitions

In this document:

Term	Definition
Commute and Commutation	Means to convert the capital that funds the Pension into a lump sum.
Commencement Date	Means 03 July 2018.
Complying Superannuation Fund	Means a fund which satisfies the definition of a complying superannuation fund under the Superannuation Law.
Condition of Release	Has the meaning set out in Annexure 1.
Corporations Act	Means the <i>Corporations Act 2001</i> (Cth).
Fund	Means AQ Super Fund.
Key Regulation	Means regulation 1.06(9A) of the SIS Regulations.
Payment Split	Has the meaning given to that term in the SIS Regulations.
Pension	Means the pension specified in clause 1.
Pension Statement	Means a statement provided under clause 4.1.
Reversionary Beneficiary	Means: <ul style="list-style-type: none">(a) Leanne Atkinson; or(b) any person to whom the Pension must be paid on the death of another, under this document.
SMSF	Has the meaning given to that term in the SIS Act.

Term	Definition
SIS Act	Means the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
SIS Regulations	Means the <i>Superannuation Industry (Supervision) Regulations 1994</i> and any other regulations made under the SIS Act.
Statutory Authority	Means a regulatory body or person having responsibility for the administration of superannuation.
Superannuation Law	Means any requirement under the following acts and regulations: (a) SIS Act; (b) SIS Regulations; (c) <i>Family Law Act 1975</i> (Cth); (d) <i>Family Law (Superannuation) Regulations 2001</i> (Cth); (e) Corporations Act; (f) <i>Corporations Regulations 2001</i> (Cth); (g) Tax Act; and (h) any other legislation which the Trustee must comply with for the Fund to: (i) qualify for concessional Tax treatment as a Complying Superannuation Fund; or (ii) meet any other requirement of a Statutory Authority.
Tax	Includes any tax, surcharge, levy, impost or duty payable by the Trustee.
Tax Act	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.
Trust Deed	Means the trust deed governing the operation of the Fund as updated from time to time.
Year	Means a period of 12 months ending on 30 June or any other period of 12 months as the Trustee determines.

1 Commencement and payment of Pension

- 1.1 The parties agree an auto-reversionary account based pension will commence to be paid to the Member on the Commencement Date.

2 Pension's term

- 2.1 The term of the Pension is based on the Member's account balance at the end of each Year.
- 2.2 The Trustee must determine the account balance for this Pension on the Commencement Date and is to notify the Member of the balance.

3 Requirements for Pension

- 3.1 The Member must not use the capital value of the Pension or the income from the Pension as security for any borrowing.
- 3.2 In paying the Pension, the Trustee must:
- (a) comply with the law, including Superannuation Law;
 - (b) ensure the Fund maintains its status as a SMSF under Superannuation Law; and
 - (c) ensure that the total Pension payments to the Member in a Year are maintained at a level equal to or above the minimum limits calculated under the SIS Regulations.
- 3.3 For the avoidance of doubt, the Trustee does not have to ensure that the total Pension payments in a Year meet the minimum limit of payments calculated under the SIS Regulations, if that Year commences in June.
- 3.4 The Trustee may segregate those assets which are to fund the Pension, from other assets of the Fund.
- 3.5 After the death of the Member, the Trustee must pay the Pension in accordance with the Trust Deed and this document.
- 3.6 After the Commencement Date, the Trustee must not accept any additional contribution or rollover to the capital supporting the Pension unless permitted by the Superannuation Law.
- 3.7 Notwithstanding any other provision of this document, the Pension must comply with the requirements of the Key Regulation and to the extent of any inconsistency between this document and the Key Regulation, the Key Regulation prevails.

4 Information about the Pension

- 4.1 The Trustee must give to the Member a Pension Statement with the following information at the Commencement Date and at any other time that person requests in writing and the Trustee agrees:
- (a) the account balance;
 - (b) the minimum amount of the Pension to be paid to the Member in that Year; and
 - (c) any other information the Trustee considers appropriate.
- 4.2 As soon as practicable after the Trustee receives a request from the Member for a Pension Statement, the Trustee will:
- (a) give the document under clause 4.1 to the Member; or
 - (b) tell that person that the Trustee will not give a Pension Statement.
- 4.3 The Pension Statement for the Commencement Date is attached at Annexure 1.

5 Variation of Pension terms

- 5.1 The parties may at any time, subject to Superannuation Law, agree to vary the terms of the Pension as follows:
- (a) the total amount of the Pension to be paid in a Year;

- (b) the frequency of payments, to a maximum of 52 in a Year;
 - (c) when the Pension payments are made and whether in advance or in arrears; or
 - (d) the method of paying the Pension.
- 5.2 The parties may not amend the terms of the Pension in any manner that would result in the Pension ceasing to qualify as an account based pension under the Superannuation Laws.

6 Commutation

- 6.1 The Trustee may Commute the Pension in whole or in part, in any of the following situations:
- (a) the Commutation results from the death of the Member; or
 - (b) the sole purpose of the Commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a Payment Split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the Corporations Act; or
 - (c) if the Commutation is for only part of the amount that could be Commuted - the account balance of the Pension immediately after the partial Commutation, would be:
 - (i) at least the minimum limit prescribed under the SIS Regulations (specifically, on the Commencement Date, this refers to Schedule 7 of the SIS Regulations); and
 - (ii) as reduced by the amount of payments already made to the Member or Reversionary Beneficiary in the Year in which the partial Commutation would occur; or
 - (d) in the Year in which the Commutation is to take place, the Member or Reversionary Beneficiary has been paid (through the Pension) at least the minimum amount prescribed under the SIS Regulations (specifically, on the Commencement Date, this refers to regulation 1.07D(2) of the SIS Regulations).

7 End of Pension

- 7.1 The Pension will end on the first to occur of:
- (a) when the amount standing to the credit of the Member's account is insufficient to permit further payment;
 - (b) when the account balance is zero; or
 - (c) when the Member dies, unless the Pension is to be paid to a Reversionary Beneficiary, in which case the Pension ends:
 - (i) if cashed as a lump sum;
 - (ii) when the Reversionary Beneficiary dies;
 - (iii) when an event under clause 7.1(d) of this document occurs; or

- (iv) when an event under clause 7.1(e) of this document occurs;
- (d) when the Reversionary Beneficiary dies and there is no other person to whom the Pension may be paid; and
- (e) when:
 - (i) the Reversionary Beneficiary dies;
 - (ii) the Trustee is not required to pay the Pension to any person; and
 - (iii) the Trustee decides the Pension will end.

8 General and interpretation

Amendments

- 8.1 This document may only be amended by written agreement between all parties.

Assignment

- 8.2 A party may only assign this document or a right under this document with the written consent of each other party, whose consent may not be unreasonably withheld.

No merger

- 8.3 The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

Entire agreement

- 8.4 This document supersedes all previous agreements about its subject matter and any agreements collateral to those agreements. This document embodies the entire agreement between the parties.
- 8.5 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this document.
- 8.6 Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

Further assurances

- 8.7 Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

No waiver

- 8.8 The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- 8.9 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 8.10 A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

Governing law and jurisdiction

- 8.11 The governing jurisdiction is Victoria.

Method of payment

- 8.12 All payments required to be made under this document must be made:
- (a) in cash or by bank cheque; or
 - (b) by crediting the account of the recipient (specified for that purpose) with cleared funds.

Time of the essence

- 8.13 Time is of the essence of this document.

Interpretation

- 8.14 In this document:
- (a) singular words include the plural, and vice versa;
 - (b) each word suggesting a gender includes all other genders, including neutral gender;
 - (c) a reference to a person includes natural persons, firms, companies and any form of a corporation, trustee, trust, partnership, associations, unincorporated body, government and local authority or agency, or any other entity whether or not it comprises a separate legal entity;
 - (d) a reference to a clause, schedule or annexure are references to this document and references to this document include every clause, the matters set out in the Overview and any schedules or annexures;
 - (e) if any person signs this document on behalf of a party pursuant to a power of attorney, they confirm that there is nothing that impacts on their authority to do so;
 - (f) a reference to a document or agreement (including a reference to this document) means that entire document or agreement (including all schedules or annexures) as amended, supplemented, novated, varied or replaced;
 - (g) a reference to a person includes that person's estate successors, legal personal representatives, executors, administrators, permitted substitutes and permitted assigns;
 - (h) where any word or phrase is defined in this document, its other grammatical forms have a corresponding meaning;
 - (i) a reference to this document includes the agreement recorded by this document;
 - (j) headings and any table of contents are not to be taken into account in the construction of this document;
 - (k) a reference to legislation or to a modified, rewritten, consolidated provision or section of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (l) the applicable time zone for any action required under this document is the one applying in the situs of the person responsible for performing the action;
 - (m) a reference to writing includes printing, typing, copying, facsimile, and any other method of representing words, symbols, figures or drawings in a visible and tangible manner or electronically;

- (n) if any part of this document is illegal or unenforceable it can be severed, with the remaining clauses (or parts of the clause) remaining in force;
- (o) if any part of this document is illegal or unenforceable in any jurisdiction, it can be severed in the relevant jurisdiction, with the remaining clauses (or parts of the clause) remaining in force;
- (p) unless this document provides for a notice or communication to be given orally, any notice or other communication must be in writing and signed by the person giving the notice and be addressed to the address of the person to whom it is to be given;
- (q) a reference to 'month' means a calendar month;
- (r) if any provision of this document is ambiguous, it is to be interpreted broadly to widen and not restrict the provisions;
- (s) where an expression is defined anywhere in this document, it has the same meaning throughout; and
- (t) a reference to 'dollars' or '\$' is to an amount in Australian currency.

Notices

8.15 A notice or other communication is deemed to be received:

- (a) in the case of a posted letter, on the second Business Day after posting where sent by Australia Post's 'express post' service and if not, then on the seventh Business Day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the next business day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent; and
- (e) in the case of transmission by email, on the day of transmission if there is confirmation that the transmission was completed before 5.00pm on a business day, and alternatively, on the next business day. Email service is effective only if there is confirmation that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

Counterparts

8.16 This document may be signed in any number of counterparts and all counterparts together make one document.

Annexure 1 – Pension Statement

Name of Fund	AQ Super Fund
Name of Member	Alan Quinton
Date of Commencement	03 July 2018
Pension Account Balance	\$300,000
Condition of Release	Retirement
Minimum Annual Income Payment	\$11,930
Current Year Pension Payment	\$11,930
Tax Free / Taxable Component Proportions	100.00%/0.00%
Reversionary Pension Beneficiary	Leanne Atkinson

Product disclosure statement

AQ Super Fund

Summary

Purpose of product disclosure statement (PDS)

- A The PDS **attached** to this summary has been prepared by View Legal Pty Ltd. It is designed to help you make a decision about whether to commence a pension from AQ Super Fund (**Fund**).
- B The Law allows you 14 days from the date of issue of the PDS to decide if you wish to commence the pension.

Information in a PDS

- C The PDS generally sets out:
 - (i) the nature of pensions paid by self-managed superannuation funds (**SMSF**), and in particular the Fund; and
 - (ii) the main advantages and disadvantages of commencing the pension.

What you should do

- D If you decide to acquire an interest in the Fund please sign and date the PDS.

Product Disclosure Statement

1 Introduction

- 1.1 A member of a self-managed superannuation fund (SMSF) can generally access their superannuation benefits as a SMSF income stream or lump sum when they are retired (as defined in the *SIS Regulations 1994*). A transition to retirement income stream (TRIS) may be commenced at any time after the member has reached their preservation age, even if they are still working.

2 SMSF Pensions v Lump sums

- 2.1 There are effectively three ways for the trustee of a SMSF to provide the member with access to their entitlements, each of which is outlined below.

Option One: Taking a Pension

- 2.2 The trustee may pay a pension from the fund out of the member's current accumulation benefits.
- 2.3 A member may request that the trustee of the SMSF makes the pension auto-reversionary, which means that the pension transfers from a deceased member automatically upon their death to their nominated spouse, dependant or estate.

Option Two: Living off Lump Sums

- 2.4 Following retirement, a member of the fund may access their benefits as a lump sum. This involves the member leaving their benefits in their accumulation account and drawing them down gradually as lump sums, over a period of time.

Option Three: Taking both Lump Sums and an Income Stream

- 2.5 A member can also choose to provide the majority of their lifestyle income by way of pension with a further lump sum only taken if and when it is required by the member.
- 2.6 Under this approach, the member retains some of their superannuation benefits in their lump sum account when the pension is commenced.
- 2.7 The amount retained in each account depends on a range of factors, such as:
- (a) what level of ongoing lifestyle income is required;
 - (b) the minimum draw-down rules for the pension. If the member's pension account balance is too high, excessive income may be required to be withdrawn, thereby forcing the removal of funds from a concessional tax environment;
 - (c) where the trustee invests on behalf of a lump sum account, the fund is subject to tax at a rate of 15% on income and 10% on capital gains (in respect of assets held for more than 12 months). In comparison income earned on assets used by the trustee to fund a pension account is tax free.
 - (d) the member's personal transfer balance cap. From 1 July 2017, each member is limited to a cap amount of \$1.6 million (subject to CPI indexing in \$100,000 increments) that can support retirement income streams. The balance in excess of

the cap must remain in the accumulation account or leave the superannuation system.

3 Account Based Pension

- 3.1 If the member chooses to commence an account-based pension, the member must take a minimum payment each year. They may elect to commute the whole or part of the pension into a lump sum at any time.
- 3.2 The member may request that the trustee of the SMSF makes the account-based pension auto-reversionary, which means that the pension transfers from a deceased member automatically upon their death to their nominated spouse, dependant or estate.
- 3.3 The impact of the transfer balance cap rules need to be considered before an account-based pension is commenced.
- 3.4 In particular, the capital value of any pension which is commenced becomes a credit item to the member's personal transfer balance account and is subject to the rules mentioned above.

4 Taxation of Pensions

Trustee of the Fund

- 4.1 Where the trustee commences to pay a pension, the trustee is entitled to a tax exemption on income and capital gains arising in relation to assets set aside to meet the fund's income stream liabilities.
- 4.2 Where the trustee runs a pooled investment strategy (meaning the assets of the fund are pooled to pay all member benefits including pensions), then the trustee will obtain a proportional tax exemption on income and gains earned by the fund and must engage the services of an actuary to determine the relevant proportion.
- 4.3 In contrast, where the trustee of the fund runs a separate investment strategy for the pension account (segregating assets from the rest of the fund), then any income or gains earned on these assets is tax free.
- 4.4 The segregation of assets is a book keeping exercise that can be undertaken by the accountant or administrator to the fund. Importantly if the assets have accrued capital gains in the accumulation accounts, then the allocation of the assets to the new pension account will not create a tax liability at the time of transfer.

5 Taxation in relation to the Pension Beneficiaries

Benefits paid to a member

- 5.1 Superannuation benefits will generally have a tax free component and a taxable component when they are paid to the member, regardless of whether they are paid as a lump sum or an income stream.
- 5.2 The split between these amounts is determined by the underlying proportion of tax free and taxable interests held by the member in the SMSF and can be determined by the member's SMSF adviser or accountant at the time the income stream is commenced.

The taxation of benefits to a member

5.3 Where a superannuation benefit is paid to a member, either as a lump sum commutation of a pension or direct pension payment it will be taxed as follows:

- (a) **Tax Free Component** - Any tax free component payable is always tax free when received by the member, irrespective of their age. This includes both lump sums and income streams.
- (b) **Taxable Component** – The following table highlights the taxation treatment of taxable benefits payable to a member. It should be noted that the preservation age for a person born prior to 1960 is age 55.
- (c) **Untaxed Component** – untaxed component is only found in SMSFs with life or self-insurance and a lump sum is paid to a dependant or the member’s legal estate in the event of the member’s death.


Taxation of the Taxable Component

Type of Benefit	Under preservation age	Between preservation age and age 60	Age 60 and over
Lump sum	20%	First \$205,000 is tax free with any remainder taxed at 17%	Tax free
Income stream	Assessable income	Assessable income + 15% tax offset	Tax free

SMSF Trust Deed

5.4 The fund’s trust deed is the key determinant to what type of pension may be paid from the fund and should be reviewed (and potentially updated), prior to any income stream being commenced.

Date: 20/11/19


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Signature of Alan Quinton