

# **Superannuation Trust Deed for a Self-Managed Fund**

for

---

## **Lethbridge Family Super Fund**

---

McKern & Associates Pty Ltd  
4/5 Executive Drive  
BURLEIGH WATERS QLD 4220  
Tel: 0755223222  
Fax: 0755934409  
pbh@mckern.co  
www.mckern.co

Maddocks Lawyers  
Tel: 1300 307 343  
(c/- Cleardocs)  
[info@maddocks.com.au](mailto:info@maddocks.com.au)  
[www.maddocks.com.au](http://www.maddocks.com.au)

	Interim fund earning rate .....	11
<b>D</b>	<b>Contributions</b> .....	<b>11</b>
	Member contributions .....	11
	Employer contributions .....	11
	Other contributions .....	11
	Participating employers .....	11
	How contributions to be made .....	11
	Late contributions .....	12
	Failure to contribute .....	12
	Contributions etc not accepted .....	12
	Breach of clause headed 'Contributions etc not accepted' .....	12
	Allocation of contributions .....	13
	Reduction of contributions by employer .....	13
	Tax on contributions and shortfall components .....	13
	Termination of employer's contributions .....	13
	Effect of termination on member's contributions .....	14
	No termination on transfer of business to another employer .....	14
<b>E</b>	<b>Investment</b> .....	<b>14</b>
	Authorised investments .....	14
	Forbidden investments .....	15
	Strategy .....	15
	Power to deal with investments .....	15
	Investment choice by members .....	15
	Member or beneficiary may choose strategy .....	15
	Member or beneficiary may not choose particular investments within strategy .....	15
	Chosen strategies to be monitored .....	16
	Sub-accounts etc for investment choice .....	16
	Power to deal with investment choice investments .....	16
<b>F</b>	<b>Benefits: general</b> .....	<b>16</b>
	Limit on payment of preserved payment benefits .....	16
	When payment of preserved payment benefits allowed .....	16
	Payment of non-preserved amount .....	17
	Vesting and compulsory payment .....	17
	Possible addition to entitlement when member ceases to be member .....	17
	Anti-detriment payments (former section 295-485 of the <i>Income Tax Assessment Act</i> 1997) .....	17
	Trustee may retain benefit in fund .....	17
	Transfer of insurance policy .....	17
	Information to be provided to trustee .....	18
	Trustee may adjust benefits for wrong information .....	18
<b>G</b>	<b>Pensions: general</b> .....	<b>18</b>
	Trustee's power to pay pension .....	18
	Member or beneficiary may choose type of pension .....	18
	Actuarial certificate .....	18
	Funding pension through annuity .....	19

<b>K</b>	<b>Provisions relating to the <i>Family Law Act</i></b>	<b>28</b>
	Payment splits	28
	Rules for payment splits	28
	Deferred payment splits	29
	Flagging agreements	29
	Transfer of non-member spouse interests	29
	Refusal to admit as member	29
<b>L</b>	<b>Trustee's powers</b>	<b>30</b>
	All the powers of an individual	30
	Trustee's discretion	30
	Delegation of power	30
	Trustee not subject to direction	30
	Specific powers	30
	Limit on borrowing	31
	Trustee may grant security over asset	32
	When borrowing is allowed (including "limited recourse borrowing arrangements")	32
	Trustee's power to effect insurance	32
	Trustee bound to exercise power in limited cases	32
	Inconsistent conditions in policy	33
	Powers not affected by conflict of interests	33
	Disclosure of conflict of interest	33
	Trustee's power to effect transfer on written request	33
	Form and effect of transfer	33
	Trustee's power to transfer to successor fund	34
	Trustee's power to transfer to eligible roll over fund	34
	Transfer of assets	34
	The trustee's power to receive transfer	34
<b>M</b>	<b>Administration of fund</b>	<b>34</b>
	Dealing with money received	34
	Effect of receipts	34
	Employers to provide information to trustee	35
	Compliance	35
	Trustee may not charge fees	35
	Trustee entitled to be reimbursed for expenses	35
	Trustee to keep records and accounts	35
	Trustee to collect money owing to the fund	35
	Trustee to keep records, accounts, books etc	35
	Documents to be prepared	35
	Annual return	36
	Audit	36
	Disclosure requirements	36
	Availability of books and records	36
	Availability of deed and documents	36
	Appointment of auditor	36
	Appointment of actuary	36

## Overview

For the convenience of users, this superannuation trust deed is written in plain language. It contains only those clauses that are appropriate for the particular form of self-managed superannuation fund that you have chosen. *It is not suitable for any other form of fund.*

If you decide to change the trustees of the fund, for example, replace individual trustees with a corporate trustee or replace a corporate trustee with individual trustees, you will have to use the Cleardocs system to create a replacement deed that incorporates the necessary clauses for the new form of fund.

*You cannot change the form of the fund in any other way.*

qualify for, all available concessional tax treatment under the Tax Act.

## **B Membership**

### **Initial members of the fund**

- 7 The initial members of the fund are named in Schedule 1. Each of them has completed and signed the 'Application to become a Member' in a form that is equivalent to the form set out in Schedule 2.

### **Trustee may appoint additional members**

- 8 The trustee may appoint a person as an additional member of the fund if he or she has completed and signed an 'Application to become a Member' in a form that is equivalent to the form for initial members set out in Schedule 2, or on another form approved by the trustee.

The additional member must consent to doing all things necessary to become a director of the trustee of the fund upon appointment unless the additional member is unable to become a director of a trustee under superannuation law.

### **Beneficiaries as additional members**

- 9 Subject to clause 13, a person who is to receive a death benefit from the fund in the form of a pension becomes a member of the fund when:
- the trustee has accepted that person as an additional member; and
  - that person has received a pension payment from the fund.

### **Applicant to provide information to trustee**

- 10 On written request by the trustee, a member or applicant for membership of the fund must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.
- 11 If a member fails to do so, the trustee may refuse to accept further contributions in respect of that member.
- 12 If an applicant fails to do so, the trustee may decline to accept the applicant as a member.

### **Conditions must be met**

- 13 Subject to clause 29, a person does not become an additional member of the fund, and the trustee must not accept a person as an additional member of the fund, unless each of the following conditions is met:
- the total number of members would be no more than 4;
  - the person is not disqualified from being a director of the trustee of the fund;
  - the person is not in an employment relationship with another member of the fund except another member who is also a relative of that person;

### **Trustee must disclose and report**

- 20 The trustee must ensure that members, former members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the fund, that the superannuation law requires them to be given.

### **Trustee must notify exiting member**

- 21 As soon as practicable after a person ceases to be a member of the fund, the trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be members of the fund.

### **Limit on disclosure**

- 22 A dependant of a member is not entitled to any additional information relating to the operation or conduct of the fund which the trustee thinks it is inappropriate to disclose.

### **Members must inform trustee of change affecting fund compliance**

- 23 A member must immediately inform the trustee if the member becomes aware that either of the following may happen:
- the member may enter into an employment relationship with another member who is not also a relative of the member; or
  - the member may be disqualified from being a director of the trustee of the fund.

### **Members and trustee must ensure fund compliance**

- 24 A member and the trustee must ensure that the member ceases to be a member of the fund within 6 months after either of the following happens:
- the member enters into an employment relationship with another member who is not also a relative of the member; or
  - the member is disqualified from being a director of the trustee of the fund.

### **Trustee and members must rectify non-compliance**

- 25 If a member of the fund enters into an employment relationship with another member who is not also a relative of the member, or becomes disqualified from being a director of the trustee of the fund, the trustee and the members must do whatever is necessary to ensure that, within 6 months after the member entered into the employment relationship or became disqualified:
- no member of the fund is in an employment relationship with another member who is not also a relative of the member; and
  - no member of the fund is disqualified from being a director of the trustee of the fund.



- corporate trustee in place of the member, may continue acting in that role; and
- when the minor turns 18, the parent or guardian acting as a director of the trustee of the fund must do everything necessary to procure that the minor be appointed as a director of the trustee of the fund in place of them acting in that role.

## **C Accounts of the fund**

### **Trustee must establish certain types of account**

30 The trustee must establish:

- an accumulation account or a pension account, or a combination of both, in respect of each member or beneficiary for each class; and
- an income account.

### **Credits to accumulation accounts**

31 The trustee may credit (and in the case of clause 31.11, allot and credit) each of the following to the accumulation account of a member according to the class to which they are relevant:

- 31.1 Contributions made by a member.
- 31.2 Contributions made in respect of the member or a beneficiary of that member by an employer.
- 31.3 Other contributions allowed under this deed and superannuation law that are made in respect of the member.
- 31.4 Positive earnings transferred from the income account.
- 31.5 A shortfall component paid in respect of that member after any tax that is payable in relation to it has been deducted from it.
- 31.6 An amount paid to the trustee as a transfer or roll over payment in respect of that member which the trustee thinks it appropriate to credit to the account.
- 31.7 A forfeited amount allocated to the member or beneficiary under clause 127.
- 31.8 An amount transferred from the pension account of a beneficiary of the member.
- 31.9 The proceeds of an annuity or insurance policy effected by the trustee in respect of the member or a beneficiary of the member which the trustee thinks it appropriate to credit to the account.
- 31.10 Financial assistance under part 23 of the SIS Act which the trustee thinks it appropriate to credit to the account.
- 31.11 An amount deducted from the accumulation account of another member pursuant to a contributions-split request made by that other member and accepted by the trustee.
- 31.12 Any other amount the trustee thinks it appropriate to credit to the account.

- The request satisfies the requirements of superannuation law.
- The trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and
- The amount of the contributions that the trustee allots, rolls-over or transfers does not exceed the amount in the member's accumulation account, taking into account any amount that the trustee otherwise determines to debit from the member's accumulation account.

### **Credits to the income account**

- 35 The trustee may credit each of the following to the income account of the fund:
- 35.1 Income and profits of the fund.
  - 35.2 Adjustment credits made in accordance with clause 38.
  - 35.3 The proceeds of an insurance policy which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.
  - 35.4 A surplus resulting from a valuation under clause 42.
  - 35.5 Financial assistance received by the fund under part 23 of the SIS Act which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.

### **Debits to the income account**

- 36 The trustee may debit each of the following to the income account of the fund:
- 36.1 The expenses of the fund, except those the trustee debits from a member's or beneficiary's accumulation or pension account.
  - 36.2 Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the fund, except tax the trustee debits from a member's or beneficiary's accumulation or pension account.
  - 36.3 Adjustment debits made in accordance with clause 38.
  - 36.4 The cost of an insurance policy which the trustee decides not to debit from a member's or beneficiary's accumulation or pension account.
  - 36.5 A deficiency resulting from a valuation under clause 42.
  - 36.6 The amount of a levy, except an amount the trustee debits from a member's or beneficiary's accumulation or pension account.
  - 36.7 Any loss on the disposal of an investment of the fund.

### **Tax on income**

- 37 The trustee must make provision for the payment of any tax payable in relation to the taxable income of the fund and must deduct any tax that is payable and that has not already been deducted from the income account or an accumulation or pension account.



### **Interim fund earning rate**

- 43 If the trustee is required to establish an interim fund earning rate, the trustee must do so in accordance with superannuation law on a basis the trustee believes to be equitable. If the Regulator or superannuation law requires it, the trustee must inform members of that basis.

## **D Contributions**

### **Member contributions**

- 44 With the trustee's consent, a member may make any contributions to the fund that the member decides to. With the member's and the participating employer's consent, contributions can be paid by deduction from wages or salary. In that case, the member's employer must pay them to the fund in the way the trustee directs.

### **Employer contributions**

- 45 A participating employer of a member may make any contributions to the fund in respect of that member that the trustee and the employer agree to.

### **Other contributions**

- 46 With the consent of the trustee and the member, any other person including:
- a spouse of that member;
  - another member;
  - another trustee of a regulated superannuation fund (including pursuant to a contributions-split requested by the member's spouse);
  - any State, Territory or Federal government (including under the Federal government's co-contribution scheme);
- may make contributions to the fund in respect of that member.

### **Participating employers**

- 47 The trustee may allow an employer to become a participating employer and to make contributions in respect of a member or an eligible person who wishes to become a member. The trustee may require the employer to apply in the form in Schedule 3 'Application to become a Participating Employer'. The employer becomes a participating employer either on the date appointed by the trustee or the date it begins making contributions on behalf of a member, whichever is the earlier.

### **How contributions to be made**

- 48 A contribution to the fund must be made in the way the trustee directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments under clause 61.

54 If contributions of the nature referred to in clause 51 and clause 53 are made to the fund by or in respect of a member, then the trustee may in appropriate circumstances:

- release funds to the member or the Commissioner of Taxation if the trustee has received a release authority; and
- release funds in any other circumstances, and to such persons, as is permitted under superannuation law.

### **Allocation of contributions**

55 If the trustee receives a contribution in a month, the trustee must allocate the contribution to the relevant member of the fund:

- within 28 days after the end of the month, or any other period as required by superannuation law (**relevant period**); or
- if it is not reasonably practicable to allocate the contribution to the relevant member of the fund within the relevant period – within any longer period as is reasonable in the circumstances.

### **Reduction of contributions by employer**

56 An employer who is under an obligation to make contributions in respect of a member may, with the trustee's consent, reduce the amount of those contributions to the extent that it becomes required to make contributions in respect of that member to another fund of which the member is also a member.

### **Tax on contributions and shortfall components**

57 Either the trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the member's accumulation account.

### **Termination of employer's contributions**

58 A participating employer ceases being a participating employer and may cease making contributions to the fund if any of the following occurs to the employer:

- an administrator, receiver, receiver and manager, controller or similar officer is appointed to the employer (or its property) or a resolution is passed to appoint such an officer;
- an order is made to appoint a liquidator or provisional liquidator of the employer;
- the employer, being a corporation, gives the trustee a written notice that it is, or under applicable legislation the employer is taken to be, unable to pay its debts as and when they fall due;
- the employer, being an individual, commits an act of bankruptcy or becomes insolvent;
- the employer gives the trustee written notice that it is permanently terminating its contributions to the fund.

- 61.12 Any other investment allowed by superannuation law that the trustee thinks appropriate.

### **Forbidden investments**

- 62 The trustee must not invest in any investment that is forbidden by superannuation law. The trustee must not make an investment in the form of a loan or other financial assistance to a member or a relative of a member.

### **Strategy**

- 63 The trustee must formulate one or more investment strategies for the fund in accordance with superannuation law. The trustee must inform members and beneficiaries of the strategies adopted by the trustee. The trustee may review and change a strategy at any time. The trustee must continually monitor the strategies to ensure that they remain appropriate.

### **Power to deal with investments**

- 64 The trustee may sell, transfer or vary any investment at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of members and beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

### **Investment choice by members**

- 65 The trustee may decide to allow one or more members or beneficiaries to choose between investment strategies. If the trustee does this, the trustee must establish a range of possible investment strategies, and may designate particular assets for those strategies. The trustee must provide the members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the member or beneficiary to choose between them on an informed basis. The trustee must also provide them with information concerning their rights under this deed.

### **Member or beneficiary may choose strategy**

- 66 A member or beneficiary who has been offered investment choice by the trustee may choose one or more of the strategies prepared by the trustee by completing any documents the trustee requires. On having done so, the member or beneficiary may direct the trustee to invest any part of the fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.

### **Member or beneficiary may not choose particular investments within strategy**

- 67 A member or beneficiary who has directed the trustee to invest any part of the fund that is held for that person in accordance with those strategies may not direct the trustee to invest in any particular investment. However, the member or beneficiary may request the trustee to develop an investment specific strategy and to make it available to that member or beneficiary. The trustee may accept or reject the request.

### **Payment of non-preserved amount**

- 73 With the trustee's consent, a member may withdraw any part of the non-preserved amount in the member's accumulation account. The member must apply to the trustee in writing for the withdrawal in a form acceptable to the trustee. The trustee may set a minimum withdrawal amount by notifying the members of the fund.

### **Vesting and compulsory payment**

- 74 A member's benefit entitlement will vest in accordance with superannuation law. The trustee must cash or commence to cash a member's benefit entitlement as soon as practicable after the member dies or the entitlement has vested. If a lump sum is payable, the trustee may pay it in several stages: an initial payment and then subsequent payments.

### **Possible addition to entitlement when member ceases to be member**

- 75 If a member ceases to be a member of the fund, the trustee may pay an amount that the trustee thinks appropriate from the equalisation account (if any) into the member's accumulation account.

### **Anti-detriment payments (former section 295-485 of the *Income Tax Assessment Act 1997*)**

- 76 Where the trustee is to make a payment because a member has died (a **death benefit**), the trustee may pass on to the recipient of that payment any benefit that would accrue to the fund if a deduction were allowed under former section 295-485 of the *Income Tax Assessment Act 1997*. The trustee may only do so where the member died prior to 1 July 2017. In any case, the trustee may not do so in respect of any benefits paid on or after 1 July 2019.

### **Trustee may retain benefit in fund**

- 77 If a member or beneficiary requests it, the trustee may retain any part of a benefit in the fund. The trustee may do so until one of the following occurs:

- 77.1 The member or beneficiary decides otherwise.
- 77.2 The member or beneficiary dies.
- 77.3 The amount has to be paid under this deed or superannuation law.
- 77.4 The trustee decides otherwise.

Subject to Part H, the payment the trustee then makes must be the amount standing to the credit of the member's or beneficiary's accumulation and pension account(s) at that time.

### **Transfer of insurance policy**

- 78 If a member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the trustee may assign that policy to the member or beneficiary, or to any of the dependants of the member the trustee thinks fit. The trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the trustee nor an employer is liable for any further payment of premiums in relation to the policy.

otherwise in which case the trustee has a discretion as to whether to obtain an actuarial certificate.

### **Funding pension through annuity**

- 85 The trustee may fund a person's pension by purchasing an annuity payable to the trustee.

### **Trustee may allocate benefit between 2 or more spouses**

- 86 If there are 2 or more spouses of a member, the trustee may decide in what proportion each is entitled to a benefit payable under this deed to the member's spouse.

### **Trustee must establish pension account**

- 87 If the trustee decides to pay a pension to a person in accordance with this deed or is required to by superannuation law, then the trustee must establish a pension account in the name of that person.

### **Credits to pension account**

- 88 The trustee may credit each of the following amounts to the person's pension account, subject to superannuation law:
- 88.1 The amount the trustee believes necessary to fund the pension.
  - 88.2 The amount paid into the fund in respect of the pensioner as a transfer or roll over payment which the trustee thinks it appropriate to credit to that account.
  - 88.3 Earnings of the fund which the trustee thinks it appropriate to credit to that account.
  - 88.4 A shortfall component paid in respect of the pensioner.
  - 88.5 Contributions lawfully paid in respect of the relevant member.
  - 88.6 Adjustment credits made in accordance with clause 38.
  - 88.7 Credits from the equalisation account or any other account or reserve of the fund as appropriate;
  - 88.8 The proceeds of an annuity or insurance policy effected by the trustee in respect of the pensioner which the trustee thinks it appropriate to credit to the account.
  - 88.9 Financial assistance under part 23 of the SIS Act which the trustee thinks it appropriate to credit to the account.
  - 88.10 Any other amount the trustee thinks it appropriate to credit to the account.

### **Debits to pension account**

- 89 The trustee may debit each of the following amounts to the person's pension account, subject to superannuation law:
- 89.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
  - 89.2 The proportion that the trustee thinks equitable of any negative earnings of the fund determined in accordance with clauses 38, 69 or 90.

### **Trustee's right to commute pensions generally**

93 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustee may commute all or any part of a pension and apply the proceeds of that commutation in accordance with superannuation law, including by commuting it to a lump sum and paying it to the relevant person, to his or her estate or to a third party as required by the terms of a release authority. The following general conditions apply in respect of all types of pension:

- The commutation must be allowed by, and be in accordance with, superannuation law.
- If the trustee commutes only part of a pension, the trustee must then adjust the amount of the pension payable as required by superannuation law.

### **Commutations related to transfer balance caps**

94 If:

- 94.1 a member has or is likely to exceed that member's transfer balance cap, or the trustee or member has received a transfer determination in respect of a member; or
- 94.2 the member is to be paid a new pension either from the fund (including from an amount transferred into or rolled-over into the fund on the death of another person) or from another fund,

then the trustee and member will work together to decide whether any, and if so which, of the member's pensions will be commuted in whole or in part, taking into account the member's transfer balance cap.

### **Qualification of pensions as asset test exempt income streams**

95 The trustee may decide that a pension should qualify as an asset test exempt income stream (as that term is defined by the *Social Security Act 1991*). If the trustee so decides:

- 95.1 the superannuation law prevails over the terms of this deed to the extent of any inconsistency;
- 95.2 this deed is deemed to contain any provision that is required by superannuation law; and
- 95.3 this deed is deemed not to contain any provision that is required to be excluded by superannuation law.

## **H Death, disability and retirement benefits**

### **Death benefit payments**

96 The trustee may pay the death benefit on the death of a current member of the fund. The trustee can do that under:

- 96.1 a death benefit agreement, clause 98;
- 96.2 a binding death benefit notice, clause 100; or



### **Non-binding death benefit notice payment arrangements**

- 101 If after the death of a member or beneficiary, not all death benefits have been paid or applied in accordance with a death benefit agreement or binding death benefit notice, then the trustee must pay or apply the relevant benefit in the way the trustee thinks fit in accordance with the following rules:
- 101.1 If the member or beneficiary has left dependants, then the trustee must pay or apply the benefit to or for the benefit of any one or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary. The trustee may do so in any proportions the trustee thinks fit, may take into account a member's wishes contained in a non-binding nomination form and may pay the benefit to the member's legal personal representative if satisfied that will be to the benefit of one or more of the member's dependants.
- 101.2 If the member or beneficiary has not left any dependants but does have a legal personal representative, then the trustee must pay the benefit to the legal personal representatives of the member or beneficiary.
- 101.3 If the member or beneficiary has not left any dependants and has no legal personal representative, then the trustee may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustee may do so in any proportions the trustee thinks fit.
- 101.4 If the trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 101.1 to 101.3, then the trustee must treat the benefit as a forfeited benefit entitlement.

### **Death of member or former member**

- 102 If a member or former member who has become entitled to a lump sum benefit dies before the payment is made, then the trustee must pay the amount in accordance with clauses 98 to 101.

### **Discharge of trustee**

- 103 If a dependant, legal personal representative, relative or other person receives any part of a benefit in accordance with clauses 98 to 102, then that discharges the trustee from liability in relation to the benefit. The trustee is not responsible for seeing how the benefit is applied.

### **Total and permanent disablement benefit**

- 104 The trustee must pay a benefit to a member whom the trustee believes to be totally and permanently disabled unless requested otherwise by the member. The benefit may be either of the following:
- A lump sum equal to the full amount standing to the credit of the accumulation account of the member; or
  - One or more pensions or annuities representing that amount.

- the member becomes entitled under superannuation law to the payment of a benefit despite still being employed.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

### **Early retirement**

111 On request by a member, the trustee must pay a benefit to that member in each of the following cases:

- the member ceased to be employed before normal retirement age, but has reached the relevant preservation age.
- the member, having reached 60 or another age prescribed by superannuation law, retired from an arrangement under which the member was gainfully employed.
- in any other case as permitted by superannuation law.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

## **I Payment of benefit**

### **Trustee must notify that benefit is payable**

112 The trustee must give notice that a benefit is payable to the following persons:

- If the benefit is payable to a member, to that member.
- If the benefit is payable on the death of a member, to the nominated beneficiary, the reversionary beneficiary, the legal representatives of the member, known dependants of the member and any other person the trustee reasonably believes may have an entitlement or interest in the benefit.
- In any other case, any persons the trustee reasonably believes may have an entitlement or interest in the benefit.

### **Method of notice**

113 The trustee must give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies the trustee that he or she is entitled to a benefit, the trustee must notify any persons to whom a notice was required to be sent under clause 112 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the trustee must pay the relevant part of the benefit to that person.

### **Discharge of trustee**

- 122 The receipt by a person of a payment in accordance with clause 121 discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

### **Transfer of assets**

- 123 With the consent of a member or beneficiary to whom a benefit is payable, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

## **J Forfeiture of benefit entitlements**

*Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.*

### **Forfeiture account**

- 124 The trustee may establish or maintain a forfeiture account into which the trustee must pay any amount forfeited under this deed. Money held in that account does not form part of an accumulation account. The trustee must credit any income from that money to the forfeiture account.

### **Circumstances of forfeiture**

- 125 All benefit entitlements of a person are forfeited in each the events in 125.1-125.6 — unless the trustee has determined otherwise within six months after the relevant event. The trustee's determination has effect from the date specified by the trustee which may be a date before the date of the event.
- 125.1 The person assigns or charges, or attempts to assign or charge a benefit entitlement, except in accordance with superannuation law.
- 125.2 The person's interest in a benefit entitlement becomes payable to or vested in another person or a government or public authority.
- 125.3 The person is or becomes insolvent or has committed or commits an act of bankruptcy.
- 125.4 The person is unable personally to receive or enjoy any part of the entitlement.
- 125.5 In the trustee's opinion, the person is incapable of managing his or her affairs.
- 125.6 In the trustee's opinion, the person is guilty of fraud or dishonesty.

This clause does not apply to the extent that it would be made ineffective by the *Bankruptcy Act 1966* or superannuation law.

### **Forfeiture of residue**

- 126 A person forfeits the residue in an accumulation account if the trustee is satisfied that the person has been paid all benefits that he or she is entitled to be paid under this deed.

- the valuation of a non-member spouse's benefit or benefit entitlement (including any adjustments);
- the timing of the calculation of the non-member spouse's benefit or benefit entitlement;
- other matters relating to the payment split or the non-member spouse's benefit or benefit entitlement.

### **Deferred payment splits**

132 If the trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the trustee must:

- record the existence of the agreement or court order; and
- keep a record of the non-member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the trustee determines from time to time subject to superannuation law.

### **Flagging agreements**

133 If the trustee receives a flagging agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustee must:

- record the existence of the agreement or court order; and
- defer payment of the benefit to or in respect of the relevant member until the agreement or court order is lifted.

### **Transfer of non-member spouse interests**

134 If the trustee receives a splitting agreement or court order under Part VIIIB of the *Family Law Act*, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-member spouse under that agreement or order:

- the trustee must pay that amount to the non-member spouse – if the non-member asks for that payment in writing; or
- the trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-member spouse if the non-member asks for that transfer in writing.

Any payment amount under this clause must be in accordance with superannuation law. The receipt by the non-member spouse or the trustee of that other fund will sufficiently discharge the trustee of its liability in respect of that non-member spouse.

### **Refusal to admit as member**

135 Provided that the trustee acts in accordance with superannuation law, the trustee may refuse to admit a non-member spouse as a member of the fund.

- 140.7 To sell, transfer, hire, lease, dispose of, manage, divide or otherwise deal with any assets of the fund.
- 140.8 To purchase, acquire vary, sell, transfer or dispose of any deferred property or rights, or any life, life endowment, term or other policy, and to make any relevant payment or pay any premium from the assets of the fund.
- 140.9 To exercise all rights and perform all duties associated with the trustee holding shares, stock, or debentures in any company an interest of any kind in a company, body corporate, scheme, trust or government authority.
- 140.10 To establish, purchase, acquire, promote or conduct any company, business, profit-making undertaking or scheme (including any partnership or joint venture), either in the trustee's own capacity or in its capacity as trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind up any such company, business, undertaking or scheme.
- 140.11 To appropriate, wholly or partly, any asset of the fund in satisfaction of any interest a person may have in the assets of the fund or any benefit which the trustee determines to pay to or apply for the benefit of, a beneficiary.
- 140.12 To value, or engage a person to value, in whole or in part, the ~~assets or any~~ asset of the fund.
- 140.13 To give receipts for money received.
- 140.14 To grant options in respect of any of the assets of the fund.
- 140.15 To receive any real or personal property by gift or by will as additions to the assets of the fund.
- 140.16 To divide the assets in their own particular form, without first realising those assets, between the trust fund and any other trusts established under this deed.
- 140.17 To take any action to protect the assets of the fund.
- 140.18 To enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward rate agreement and any other financial risk management arrangement.
- 140.19 To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities.
- 140.20 To do anything the trustee considers necessary or desirable in connection with performing its obligations under this deed.

#### **Limit on borrowing**

- 141 The trustee must not (except as provided by this deed in clause 143 and superannuation law):
  - 141.1 borrow money; or
  - 141.2 maintain an existing borrowing of money.

### **Inconsistent conditions in policy**

- 147 If an insurer will only insure a member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the member or beneficiary, the trustee may impose the policy conditions on that benefit despite the conditions stated in this deed.

### **Powers not affected by conflict of interests**

- 148 The trustee may exercise any power under this deed or at law despite the fact that the trustee or a relative of the trustee, or a director or shareholder of the trustee, or a relative of a director or shareholder of the trustee, has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise. An indirect interest or benefit includes, without limitation, where the trustee or a relative of the trustee, or a director or shareholder of the trustee, or a relative of a director or shareholder of the trustee, obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unitholder or beneficiary of a third party with whom the trustee enters into a transaction or arrangement.

### **Disclosure of conflict of interest**

- 149 The trustee and any director of the trustee must disclose conflict of interests of the type described in clause 148 in accordance with superannuation law.

### **Trustee's power to effect transfer on written request**

- 150 On written request by a member or beneficiary, the trustee may transfer to the trustee of an approved benefit arrangement any part of the amount in the fund that represents the member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:
- The member or beneficiary is eligible to join or has joined the arrangement.
  - The trustee is satisfied that the transfer complies with superannuation law.
  - The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 39.

### **Form and effect of transfer**

- 151 The member or beneficiary must complete and execute any documents required by the *Tax Act* for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.



### **Employers to provide information to trustee**

- 158 On written request by the trustee, an employer must give the trustee any information which it has or can obtain that is, in the trustee's opinion, necessary or desirable for managing and administering the fund. The trustee may act on that information and is not required to verify it.

### **Compliance**

- 159 The trustee must comply with superannuation law and with any directions of the Regulator in relation to the fund.

### **Trustee may not charge fees**

- 160 The trustee must not charge any fees in relation to acting as trustee under this deed or performing any services in respect of the fund.

### **Trustee entitled to be reimbursed for expenses**

- 161 The trustee is entitled to be reimbursed from the fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as trustee under this deed.

### **Trustee to keep records and accounts**

- 162 The trustee must keep proper records and accounts of all money received by the fund and paid out by it, including adequate details of all dealings by the fund in connection with that money.

### **Trustee to collect money owing to the fund**

- 163 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

### **Trustee to keep records, accounts, books etc**

- 164 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

### **Documents to be prepared**

- 165 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:
- A statement of its financial position.
  - An operating statement.
  - Any other account or statement required by superannuation law.

- an auditor who is appropriately qualified and is independent according to criteria specified by superannuation law.

#### **Appointment of administration manager**

- 173 The trustee may appoint one or more suitably qualified persons to act as administration manager of the fund or a specified part of the fund.

#### **Appointment of investment manager**

- 174 The trustee may appoint one or more suitably qualified persons to act as investment manager of the fund or a specified part of the fund in accordance with superannuation law.

#### **Appointment of custodian**

- 175 The trustee may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund, including (without limitation) as part of a limited recourse borrowing arrangement referred to in clause 143.3.

#### **Superannuation law to be observed**

- 176 Any appointment by the trustee must be in accordance with superannuation law.

#### **Trustee may remove person from office**

- 177 The trustee may remove from office a person the trustee has appointed to an office.

#### **Trustee not bound by advice**

- 178 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

#### **Liability of the trustee is limited**

- 179 To the extent allowed by superannuation law, neither the trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:
- The person fails to act honestly.
  - The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise.
  - The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

#### **Indemnity**

- 180 To the extent allowed by superannuation law, the trustee and each of its directors, officers and employees are entitled to an indemnity from the fund in all cases where the person is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

statutory provisions relating to the appointment of new trustees, including statutory provisions which may otherwise require registration of the relevant deed or instrument.

## **N Miscellaneous**

### **Trustee may elect to wind up fund**

186 The trustee may elect to wind up the fund on a specified date in either of the following cases:

186.1 The trustee decides to wind up the fund.

186.2 There are no longer any members of the fund.

The trustee must elect to wind up the fund on a specified date if the Regulator requires the fund to be wound up.

### **Notice of winding up**

187 The trustee must give notice to each participating employer and member that the fund is to be wound up on the specified date.

### **Payment etc on winding up**

188 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustee must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

### **Employment relationship not affected by this deed**

189 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

### **Legal rights of member not affected by this deed**

190 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

### **Dispute resolution**

- 196 If superannuation law requires it, the trustee must establish a system complying with that law for dealing with enquiries and complaints from members, beneficiaries and dependants.

### **Interpretation**

- 197 A reference in this deed to:

- a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and assigns of that person;
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
- a clause, schedule or appendix is reference to a clause, schedule or appendix in or to this deed;
- this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- '\$' or 'dollars' is a reference to Australian dollars;
- the word 'includes' in any form is not a word of limitation;
- the singular includes the plural and vice versa; and
- a gender includes the other gender.

### **Proper law**

- 198 This deed is governed by the law of Queensland. The parties consent to the exercise of jurisdiction by the courts of that place.

*{The fields in all of the following schedules to this deed are left intentionally 'blank' as the schedules are to be used as 'pro-forma' documents if the fund wishes to add members etc. in the future.  
These schedules are to be bound in and form part of this Deed.}*

Applicant name [Insert applicant's name]  
 Applicant address [Insert applicant's address]  
 Applicant occupation [Insert applicant's occupation]  
 Date of birth [Insert applicant's date of birth]  
 Applicant place of birth [Insert applicant's place of birth]

## Part 2: Death Benefit: Beneficiary Nomination

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after your death to the person or persons you mentioned in this notice, being one or more dependants or your legal personal representative. *Or If death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on your death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on your death.

*[If the beneficiary is your legal personal representative only]* I direct [Either the trustees Or the directors of the trustee] that my legal personal representative is to receive 100% of any death benefit that is payable if I die.

*[If the beneficiary is another person/s or both the member's legal personal representative and other person/s]* I direct [Either the trustees Or the directors of the trustee] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
<i>[Insert beneficiary's name. If this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert beneficiary's relationship to member or if this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert proportion of the death benefit to be paid to this beneficiary] %</i>
<i>[Add rows to table as required]</i>		

*[If death benefit nomination is to be binding (Please note, that this beneficiary direction is valid for only 3 years.)]*



When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

#### **Second Notice: Consistency of death benefit arrangements with pension terms**

It is important to consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be considered together.

For instance, if the pension terms require an automatic reversionary pension, then the death benefit nomination or death benefit agreement has no effect in relation to that pension. If the member wants to ensure all these arrangements – under pension terms, a death benefit nomination or death benefit agreement – are consistent, or to deliberately vary from one to the other, then careful drafting is required and the member should seek professional advice.

### **Schedule 3 to this deed**

*[This schedule contains the form of an application to become a participating employer. It may be required in the future if an employer wishes to become a participating employer in the fund. See clause 47 for further information.]*

#### **Form of Application to become Participating Employer**

*[Insert name and address, and ACN if applicable, of applicant]* applies to become a participating employer in the Lethbridge Family Super Fund. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_  
*[Name of authorised officer]*

Date: \_\_\_\_\_

#### **Annexure A to Application to become Participating Employer**

*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*

## Schedule 5 to this deed

*[This schedule contains the form of an application to become a member (if member is a minor). It may be required in the future if the fund wishes to add members who are under 18 years of age. See clause 29 for further information.]*

### Form of Application to become a member (if member is a minor)

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

#### Part 1 Application and undertakings

- I apply, as the parent or guardian of, and on behalf of, the person listed below (**Applicant**), that the Applicant become an initial member of this fund under the trust deed.
- I make each of the following undertakings:
  - *[Either The Applicant is not in an employment relationship with another member. Or The Applicant is not in an employment relationship with another member who is not a relative of the Applicant.]*
  - I am not a disqualified under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
  - I will comply with the trust deed.
  - Upon request, I will fully disclose in writing any information required by the trustee in respect of the Applicant's my membership of the fund. This includes disclosing:
    - Any circumstance which may lead to the Applicant entering into an employment relationship with any other member of the fund who is not also a relative of the Applicant.
    - That I may become disqualified under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
    - Any information in relation to the Applicant's medical condition.

*[If the parent or guardian is NOT also separate member of the fund in their own right, then]*

- *[Either I will act as a trustee of the fund. Or I will act as a director of the trustee of the fund.]*

*[If the parent or guardian IS a separate member of the fund, then]*

- *[Either I am a member of the fund myself and I will act as a trustee of the fund. Or I am a member of the fund myself and will act as a director of the trustee of the fund.]*
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.

*If the death beneficiary nomination is binding* (Please note that this beneficiary direction is valid for only 3 years.)

Signed by the  
parent/guardian: \_\_\_\_\_

Date: \_\_\_\_\_

*[Insert parent or guardian's name]*

*[If the death benefit is not binding]*

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Or

*If the death benefit is to be binding* The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

**First Notice: The types of death benefit arrangements and the order in which they take effect**

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- **death benefit agreement** — which binds the trustee and which does not expire, see clauses 98 and 99;

**Annexure A to Application to become a Member (where member is a minor)**

***[Here you need to attach the Product Disclosure Statement from Schedule 6.]***

# Product Disclosure Statement

## Introduction

This PDS contains a summary of the important provisions of the fund's deed and the effects which those provisions may have on you. The *Corporations Act* requires that you be given this PDS within 3 months after you become a member of the fund.

If you have any questions at any time, you should refer those to the trustee. However, the trustee can only provide you with information – so you will need to seek your own legal, accounting and financial advice.

Terms which are capitalised in this PDS are either defined in the fund's deed or are contained in Schedule 1.

## You should consider getting professional advice about the fund

Your decision to become a member of the fund is important and involves issues including retirement planning, estate planning, taxation, and social security. The trustee strongly recommends that you consider consulting an appropriately qualified adviser before you decide to become a member or to have contributions made to the fund on your behalf.

This PDS is prepared for your general information only and is not, and is not intended to be, a recommendation to become a member of the fund. This PDS does not take into account your investment objectives, financial situation or retirement planning needs. You should not base a decision whether to become a member solely on the information in this PDS. You need to consider, and obtain advice on, the suitability of the fund in view of your investment objectives, financial situation and retirement planning needs.

## Information about your potential benefits

### 1 Details of potential lump sum benefits

#### 1.1 On your retirement

On your retirement, you will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your retirement. As the definition of retirement in Schedule 1 suggests, there will be some circumstances in which you will become entitled to payment of a retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age: in some circumstances those benefits may only be paid as a pension, rather than a lump sum. Your trustee will be able to advise you further in this regard at the relevant time.

#### 1.2 Total and permanent disability

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account. Your trustee will be able to advise you further in this regard at the relevant time.

#### 1.3 Temporary total disability

If you become totally disabled temporarily, you may become entitled to payment of a pension or annuity representing the amount:

- decided by the trustee, provided it does not infringe the limit set out in the superannuation law; or



earlier or later death benefit agreement that you sign; and

- if any part of a death benefit agreement is invalid, then the trustee (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

#### 1.5 Other circumstances

'Severe Financial Hardship' – in the case of severe financial hardship, you may be able to apply to have all benefits owing to you, paid to you by the trustee. There are certain conditions to be met and the benefits can only be paid to you to meet expenses in the nature of treatment of life-threatening illnesses, prevention of foreclosure under a mortgage, medical transport costs, palliative care costs and so on.

## 2 Details of potential income benefits

*Income benefits where you retire or reach your preservation age*

When you become entitled to payment of a **lump sum benefit**, the trustee may allow you to choose to receive that lump sum in the form of regularly paid income. This is called a pension. The fund can only provide you with an 'account-based pension'.

The rules for an 'account-based pension' include:

- **Minimum annual amount:** a minimum amount of the capital funding the pension must be paid to the pensioner each year. The minimum, which is expressed as a percentage of the capital, is determined by reference to the pensioner's age. You should speak to your adviser about relief from minimum pension payment amounts as the government does provide relief from time to time.
- **No maximum:** there will be no maximum amount that can be paid in a year, reflecting the fact that pensions and lump sums will be taxed in the same way.
- **But a maximum for transition to retirement pensions:** pensioners being paid a transition to retirement pension will only be able to be paid a maximum of 10% of the capital per annum. This also means that there are restrictions on when you can commute your transition to retirement pension.
- **Transfer on death:** on death, the pension may only be transferred to a Pension Dependant or cashed as a lump sum to the pensioner's dependants or estate.
- **Transfer balance cap:** rules apply from 1 July 2017 which limit the amount you may have (whether held in one or more superannuation funds) to fund the payment of a pension. This is discussed in paragraph 4 below.

#### **Existing pensions**

If this PDS is being provided as a consequence of an update to the fund's existing deed, and the fund is presently paying you a pension, and is not a regular account-based pension (so, for example, it was one of the following pensions), then:

- for a pension which started before 20 September 2007, the pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time (and continues to be paid in accordance with those rules);
- if the pension is a complying pension (such as a life pension) then it must be

fund pensions paid to you from other funds. Your 'transfer balance account' must not, at any time, exceed the 'transfer balance cap'. Where your transfer balance account exceeds the transfer balance cap, either you or the trustee will be required to remove the excess assets from the pension account and either:

- 4.1 transfer the excess capital back into your accumulation account (with any earnings attributable to the excess assets being taxed in accordance with the Tax Act); or
- 4.2 withdraw the excess assets from superannuation.

If you or the trustee become aware of your transfer balance account breaching the transfer balance cap, you should immediately consult with the trustee to take the necessary action. This may involve withdrawing the excess assets from the pension account under this fund, or it may involve withdrawing the excess assets from the pension account you have with another fund, or both. Withdrawing the excess occurs by 'commuting' part or all of your pension.

Where the fund has borrowed money under a limited recourse borrowing arrangement, and the loan is secured by property which supports a retirement phase income stream — any repayment of the loan sourced from money in the fund's accumulation account (without a proportional repayment from the pension account) will result in a credit to your transfer balance account which is equal to the proportional amount of the loan repayment which should have been funded from the pension account. As such, you and the trustee will need to ensure that repayments of this loan are made appropriately from your accumulation account and pension account.

If on or before 30 June 2017, the value of your transfer balance account is between \$1,600,00.00 and \$1,700,000.00, then the trustee will have until 31 December 2017 to transfer the excess capital out of your relevant pension accounts (again, using one of the methods described in items 4.1 and 4.2 above). No penalty will apply within this period.

If on or before 30 June 2017, the value of your transfer balance account is above \$1,700,000.00, then by 30 June 2017 the trustee will be required to remove the excess assets using one of the methods described in items 4.1 and 4.2 above.

## 5 **Taxation of benefits**

### 5.1 **Seek advice**

This section is general only. You must seek professional advice concerning your own circumstances and how tax will impact on your participation in the fund and on amounts payable to you.

### 5.2 **Benefits paid to you**

Superannuation benefits paid to persons **aged less than 60** are taxed as follows:

- **Lump sum benefits** have two components: an exempt component and a taxed component. The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is tax free up to a low rate threshold (2014-2015 \$185,000, 2015-2016 \$195,000, 2016-2017 \$195,000, and 2017-2018 \$200,000). After that threshold, it is taxed in accordance with applicable rates. These rates, and the relevant thresholds, are available on the ATO website.

investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 18 below.

If you choose to receive a pension then the amounts you receive are calculated by reference to the value of the assets in the fund. Therefore, if the value of the assets decreases, there may be a corresponding decrease in benefit or pension amounts payable to you and you effectively bear the risk associated with potentially poor investment performance of those assets. Broadly speaking, 100% of the amount used to fund the pension will be taken into account for the aged pension means test.

Finally, if a benefit payable to you is commuted so that the trustee may purchase:

- an annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or
- an 'account-based' pension from a third party (such as a life assurance company), then the situation is the same as for an 'account-based' pension from the trustee and you effectively bear the risk associated with the variations in the value of the assets which fund the pension.

## **7 Regulatory Risk**

The fund is a self-managed superannuation fund regulated by the ATO. As a member, you will also have to be a trustee, or a director of the corporate trustee. These persons are responsible for ensuring the fund complies with all relevant superannuation laws, as enforced by the ATO.

Serious consequences flow if the fund is operated in a manner inconsistent with these rules. The consequences include prosecution by the ATO or a determination by the ATO that the fund is non-complying, with the result that the concessional tax treatment of the fund ends, and the fund will receive a very significant tax assessment which is aimed at recouping the value of tax concessions previously received by the fund. Accordingly compliance of the fund with regulatory requirements is essential.

You must ensure that you are familiar with, and understand these rules. If you are not confident of this, then you should seek professional advice as to whether you will be in a position to comply with these obligations on joining the fund as a member.

## **Information about amounts paid to the fund for or by you**

### **8 Contributions**

If you have an employer, who is an Employer-Sponsor or a Participating Employer of the fund, then they must contribute a certain portion of your income to superannuation. In most cases, you can choose for those contributions to be made to the fund. In this situation, contributions made personally by you are unlikely to be deductible for taxation purposes although if you are on a smaller wage, you may be entitled to a co-contribution from the Federal Government.

If you are unemployed or self-employed, then you may make contributions to the fund yourself. These contributions are deductible for tax purposes, subject to the caps discussed immediately below.

Alternatively you may make contributions, or another person may make contributions on your behalf.

- if your excess is less than your taxable contributions, then you will pay the extra 15% tax (30% tax in total) on the excess and 15% tax only on the rest of your taxable contributions.

12

**Caps on concessional contributions:** This paragraph sets out the cap which applies to concessional contributions. How much you can contribute to your super before having to pay extra tax depends on your age at the end of the financial year:

Financial Year	Concession (General Cap)	Age	Tax on amounts over the cap
2011 – 2012	\$25,000	under 50 years old	31.5%
2012 – 2013	\$25,000	under 50 years old	31.5%
2013 – 2014	\$25,000	under 50 years old	Included in your income tax return and taxed at your marginal rates plus the excess concessional contributions (ECC) charge.
	\$35,000	59 years old or over on 30 June 2013	
2014 – 2015	\$30,000	under 49 years old	Included in your income tax return and taxed at your marginal rates plus the excess concessional contributions (ECC) charge.
	\$35,000	49 years old or over on 30 June 2014	
2015 – 2016	\$30,000	under 49 years old	Included in your income tax return and taxed at your marginal rates plus the excess concessional contributions (ECC) charge.
	\$35,000	49 years old or over on 30 June 2015	
2016 – 2017	\$30,000	under 49 years old	Included in your income tax return

**Caps on non-concessional contributions:** This paragraph sets out the caps which apply to non-concessional contributions:

Financial Year	Non-Concession Cap	Tax on amounts over the cap
2011 – 2012	\$150,000	46.5%
2012 – 2013	\$150,000	46.5%
2013 – 2014	\$150,000	46.5%
2014 – 2015	\$180,000	47%
2015 – 2016	\$180,000	49%
2016 – 2017	\$180,000	49%
2017 – 2018	\$100,000	49%

In addition, if you are under 65 and eligible to contribute to super, then you may bring forward two years of contributions and contribute non-concessional contributions up to three times your cap in one year (the 'bring-forward' option), and not make any contributions for the following two years. If you brought forward your contributions in 2014-2015, the 'bring-forward' cap would be \$540,000 (3 x \$180,000).

From 1 July 2017, the 'bring-forward' option in 2017-2018 will be \$300,000 (3 x \$100,000) provided your total superannuation balance is not greater than or equal to \$1.6 million. Where your balance is close to \$1.6 million, you will only be eligible to bring forward the annual bring forward cap amount for the number of years that would take your balance to \$1.6 million. From 1 July 2017, if your total superannuation balance is \$1.6 million or more, you will no longer be eligible to make non-concessional contributions.

There are transitional rules which apply to those people who triggered the bring-forward cap in either the 2015-2016 year, or the 2016-2017 year, which produces a combined figure based on the \$180,000 annual cap which applied before 1 July 2017, and the \$100,000 annual cap which applies on and from 1 July 2017. It is important that you seek professional advice to calculate these caps correctly.

#### **Going over the non-concessional contributions cap**

For 2013-14 and later years, if you exceed your non-concessional contributions cap (as set out in the above table) you have the following options:

- Withdraw the excess non-concessional contributions (and 85% of all associated earnings on these contributions) from your fund by requesting that a release authority be issued to the trustee, which is a process pursued with the ATO. If you choose this option then the total amount of associated earnings will be included in your assessable income and taxed at your marginal tax rate. You will

## **Other significant information about the fund**

### **17 Preservation Age**

Set out below are the Preservation Ages relevant to members of the fund:

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

### **18 Investment of fund assets**

The trustee is permitted to make a wide range of investments provided that they accord with the trustee's investment strategy. The trustee is required to establish an investment strategy or strategies, outlining how the assets of the fund will be invested. The trustee can alter the strategy or strategies provided they remain appropriate. If the trustee offers more than one strategy, you may choose the appropriate strategy but you cannot choose the investments the trustee is to make within the strategy.

The trustee cannot loan money from the fund to a member or a member's relative.

The trustee may borrow money to make any investment — but only in restricted circumstances. In such cases:

- the only fund asset that may be used as security for the borrowing is the asset that the fund is acquiring with the borrowed money;
- the asset acquired must be an asset which the fund could ordinarily and lawfully acquire (for example, the fund is prohibited from acquiring assets which do not satisfy the sole purpose test in section 62 of the SIS Act – this stays the same even though the fund is borrowing to acquire the asset);
- the terms on which the asset is acquired must meet strict requirements set out in superannuation law.

The risks associated with any investment (as described generally under "Details of risks: General" at paragraph 6 above) increase when made using borrowed money. You should always obtain professional advice before making any such investment.

The trustee is required to hold money and other assets of the fund separately from those which it holds personally.

When preparing statements of the fund's financial position, the fund's operating statement or any other account or statement required by the SIS Act or the SIS Regulations, the trustee is required to value the fund's assets at their market value. Market value has the same meaning as in the SIS Act.

### **19 Valuation of fund assets**

The Trustee will ensure that the fund's assets are valued at their market value. Market value has the same meaning as in the SIS Act.



If you contribute less than \$3,000, the tax offset will be equivalent to 18% of your contributions. If your spouse's income is higher than \$10,800, the tax offset reduces until it cuts out when your spouse's income reaches \$13,800.

From 1 July 2017, the 18% offset of up to \$540 will be extended from those with an income of up to \$10,800 to those with an income of up to \$37,000. Similarly, the point at which the tax offset reduces will be increased from \$13,800 to \$40,000.

No changes to the current age based contributions rules will apply from 1 July 2017. The spouse receiving the contribution must be under age 70 and meet a work test if aged 65 to 69.

21     **Insurance**

As part of its investment strategy, the trustee will consider whether to hold a contract of insurance that provides insurance cover for one or more members of the fund.

22     **The fund deed**

The fund deed is written in plain English. Provisions that are not relevant to the particular fund of which you are a member have been excluded. For example, if individuals are trustees of the fund, then all provisions relevant to a company being a trustee of the fund have been removed. Therefore, if a company is later appointed as trustee, the fund deed will have to be varied to include the relevant provisions.

You should read the trust deed and seek professional advice if you do not understand it.

23     **Other considerations concerning investments made by the fund**

The trustee is required to inform you of whether labour standards or environmental, social or ethical considerations are, or will be, taken into account when the trustee selects, retains or realises an investment. At this stage, the trustee does not take any such considerations into account. However, the trustee is obviously free to incorporate this into its investment strategy if it sees fit.

24     **Contacting the trustee for additional information**

If at any time you require further information including information concerning the fund, the fund deed, the fund's performance or your rights as a member, you can contact the trustee using the contact details at the beginning of this PDS.



- the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or
- if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end and either of the following circumstances apply;
  - you have attained that age on or before ending employment; or
  - the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time).

**Superannuation Contributions Surcharge** means an amount which you may be liable to pay if your taxable income is greater than the relevant superannuation surcharge level for a year of income.

**Tax Act** means the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997*, as appropriate, and the regulations made under the relevant Act.

**Total Superannuation Balance** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance Account** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance Cap** has the same meaning as in section 995-1(1) of the Tax Act.

7 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.

8 The parties agree that:

8.1 the member may terminate this Agreement by serving a notice terminating the Agreement on the trustee;

8.2 this Agreement may be replaced by the trustee and the member executing a later death benefit agreement at which time this Agreement terminates; and

8.3 this Agreement is not terminated, varied or otherwise affected by any variation to the Fund's Deed from time to time, unless the trustee and the member expressly agree to the contrary.

***[If the Fund's trustee is a company:***

9 The details of the trustee are:

9.1 Trustee Company Name: .....

9.2 Trustee ACN: .....

9.3 Trustee Address: .....

10 The member is:

10.1 Member's name and address: .....

***[If the Fund's trustees are individuals:***

11 The trustees are:

11.1 Trustee 1 Name and address: .....

11.2 Trustee 2 Name and address: .....

11.3 Trustee 3 Name and address: .....

11.4 Trustee 4 Name and address: .....

12 The member is:

12.1 Member's name and address: .....

Executed by

[Insert company name]

ACN [Insert ACN] in its capacity as trustee, in accordance with section 127(1) of the Corporations Act 2001 (Cwth):

\_\_\_\_\_

\_\_\_\_\_  
Signature of director/Sole director and sole company secretary

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director/Sole director and sole company secretary (please print)

\_\_\_\_\_  
Name of director/secretary (please print)

**[If the Fund's trustees are individuals, then each of them needs one of these signing clauses]**

Signed sealed and delivered by

[Insert trustee's name]

in the capacity of trustee in the presence of:

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

\_\_\_\_\_  
Signature of trustee

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

**First Notice: The types of death benefit arrangements and the order in which they take effect**

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- **death benefit agreement** — which binds the trustee and which does not expire, see clauses 98 and 99;
- **binding death benefit notices or binding nomination forms** — which bind the trustee but which expire after 3 years or earlier if replaced or revoked; and
- **non-binding nomination forms** — which do not bind the trustee but which do not expire until replaced or revoked.

**Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.**

## Superannuation Trust Deed Definitions

**Annuity** means what it means under superannuation law.

**Approved benefit arrangement** means an arrangement into which or from which assets of the fund can be transferred without a breach of superannuation law. It includes a roll over fund, a complying superannuation fund, an approved deposit fund and an annuity arrangement.

**Approved deposit fund** means a fund which is a complying ADF under the Tax Act.

**Amount standing to the credit** in relation to an accumulation account, includes an amount the trustee decides to pay to that account from the equalisation account (if any).

**Assets** means the cash, investments and other property of the fund held by the trustee (or by a nominee or custodian for the trustee) on the trusts established by or under this deed, including:

- any amount standing to the credit of the fund on or after the date when this deed commences.
- contributions made by a member.
- contributions made by an employer.
- contributions allowed by this deed that are superannuation lawfully made by another person.
- interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income.
- the proceeds of any annuity or insurance policy effected by the trustee.
- the value of any annuity or insurance policy effected by the trustee.
- money, investments and other property received by the trustee as a roll over payment.
- shortfall components and financial assistance received by the trustee.

**Beneficiary** means a person immediately and absolutely entitled to a benefit under this deed in respect of a member. It does not include a member except where that member is immediately and absolutely entitled to a benefit under this deed in respect of another member.

**Benefit** means an amount payable out of the fund to or in respect of a member or beneficiary.

**Benefit entitlement** means an amount in the fund which may become payable to a member, dependant or beneficiary, but to which that person has not become absolutely entitled. It includes a contingent right to payment.

**Binding death benefit notice** means a notice given by a member or beneficiary to the trustee in accordance with regulation 6.17A of the SIS Regulations and with this deed.

**Business day** means Monday to Friday excluding public holidays in the state or territory identified in clause 198.

**Business hours** means between 9:00 am and 5:00 pm on a business day.

**Cash** means what it means under superannuation law.

**Commutation authority** means a commutation authority issued under Subdivision 136-B of Schedule 1 to the Tax Administration Act.

**Complying superannuation fund** means a complying superannuation fund under superannuation law.

**Excess contributions** means contributions by or on behalf of a fund member which exceed the annual cap amounts for concessional contributions and non-concessional contributions as defined in the Tax Act.

**Expenses of the fund** means the expenses for which the trustee is entitled to be reimbursed under this deed.

**Family Law Act** means the *Family Law Act* 1975 (Cth).

**Fund earning rate** means the positive or negative earning rate the trustee determines after taking account of any provision or reserve for future contingencies.

**Fund year** means the 12 month period ending on 30 June or a substitute date decided on by the trustee. At the beginning of the trust, and at the end of the trust, it means the lesser period ending on that date, or commencing on the following day.

**Gainful employment** means what it means under superannuation law. It includes gainful employment on a full-time basis and gainful employment on a part-time basis.

**Insurance policy** means an insurance policy effected on the life of the member or a beneficiary of the member or in respect of the member's or beneficiary's illness, accident or disablement.

**Interdependency relationship** has the same meaning as in the SIS Act.

**Levy** means a levy payable by the fund under superannuation law.

**Life expectancy** means the period which a person is expected to live in addition to their age, calculated in accordance with the life expectancy table published by the Australian Government Actuary.

**Market value** has the same meaning as in the SIS Act.

**Nominated dependant** means a person nominated (except in a death benefit notice) by a member as his or her 'nominated dependant'. The nomination must, in the trustee's opinion, be in accordance with superannuation law.

**Non-binding nomination form** means a notice given by a member or beneficiary to the trustee in the form set out in Part 2 of Schedule 2, but which does not meet the requirements of regulation 6.17A of the SIS Regulations.

**Non-member spouse** means a person who is:

- a spouse or former spouse of a member; or
- a Non-Member Spouse within the meaning of that term under Part VIIIB of the Family Law Act.

**Non-preserved amount** means an amount (including a roll over payment) that is payable to or in respect of a member that is not subject to cashing restrictions under superannuation law at the time of payment.

**Normal retirement age** means 65, or a substitute age that is at least 55 (or, if the trustee is not a corporation, 60) that is accepted or required by superannuation law and is agreed by the trustee.

**Participating employer** means an employer the trustee admits as a participating employer under clause 47 including the participating employer specified in schedule 1.

**Payment flag** means an agreement or court order referred to in clause 133.

**Payment split** means a payment split under Part VIIIB of the Family Law Act.

**Pension account** means a pension account established under clause 87.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*, as amended from time to time.

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*, as amended from time to time.

**Spouse** means a person legally married to the member at any time; and a person who is not legally married to the member, but who, in the trustee's opinion, lives or lived with the member on a bona fide domestic basis as the partner of that member.

If there are 2 or more persons who are spouses within this definition, 'spouse' means that person or those persons whom the trustee decides to treat as the spouse or spouses.

**Superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Tax** includes any form of taxation, surcharge, levy, duty or other government charge that the trustee is required to pay out of the fund, or a member, former member or beneficiary is required to pay.

**Tax Act** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as appropriate, and the regulations made under the relevant Act.

**Tax Administration Act** means the *Tax Administration Act 1953*.

**Taxation** includes any tax, charge duty or levy of any type paid or payable by the trustee, or by a member, former member or beneficiary, in relation to any part of the fund.

**Temporary total disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means total physical or mental disablement that is not total and permanent disablement that makes the relevant member incapable of continuing in the gainful employment that the member was in immediately before the incapacity.

**Total permanent disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means such total physical or mental disablement that the trustee is reasonably satisfied that the relevant member is unlikely ever again to be able to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**Transfer balance** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer balance cap** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer determination** means an excess transfer balance determination issued under Subdivision 136-A of Schedule 1 to the Tax Administration Act.

**Transition to retirement pension** means a transition to retirement income stream paid as a pension, as defined by r6.01(2) of the SIS Regulations.

**Transitional employment termination payment** means the same as it means in section 82-130 of the *Income Tax (Transitional Provisions) Act 1997* (Cth).

**Unclaimed benefits** means benefits described as 'unclaimed money' under superannuation law.

**Unrestricted non-preserved benefit** means what it means under superannuation law.

## Execution

Executed as a deed.

Dated: 21-5-18

Executed by  
LJ Lethbridge Super Pty Ltd ACN 626170376,  
in its capacity as trustee, in accordance with  
section 127(1) of the *Corporations Act* 2001  
(Cwth):

  
\_\_\_\_\_  
Luke Lethbridge, sole director and sole  
company secretary