



EVANS
DIXON

Rules for the
management
and administration
of a Self Managed
Superannuation
Fund

VERSION 3.0

PART A

INTERPRETATION

1. Interpretation

- 1.1. Words and phrases used in these rules have the meaning set out in the Dictionary.
- 1.2. Any words not set out in the Dictionary have their natural meaning or, if defined in Relevant Law, have that meaning.
- 1.3. The headings and the notes to these rules are for the assistance of the reader only, and do not form a substantive part of the document.

2. Deed and rules are subject to Relevant Law

- 2.1. The operation and interpretation of the Deed and these rules are subject to the Relevant Law and the powers and duties of the trustee body are to be read subject to any limitation that may, from time to time, be provided by the Relevant Law.
- 2.2. The covenants of the trustee body and of each member of the trustee body are the covenants provided, from time to time, in Superannuation Law.

Note: Section 52B and 52C of the Superannuation Industry (Supervision) Act 1993, on the date of adoption of these rules, provided eight covenants that trustees of a Self Managed Superannuation Fund must observe.

- 2.3. Where there is an inconsistency between any provision of these rules and any provision of the Relevant Law, the Relevant Law prevails.

- 2.4. Where the Relevant Law imposes an obligation on the trustee body to do any act or thing, including but not limited to observing Operating Standards made in accordance with Superannuation Law, that obligation is taken to be incorporated in these rules as a rule of the Fund and the trustee body has the necessary power to do any act or thing to observe that obligation.

3. Replacement of rules

- 3.1. These rules may be replaced by another set of rules in accordance with rule 18.
- 3.2. All members of the Fund agree to be bound by these rules and any rules which replace these rules.

PART B

THE FUND

4. Purpose

- 4.1. The core purposes of the Fund are the core purposes provided, from time to time, under Superannuation Law.
- 4.2. The ancillary purposes of the Fund are the ancillary purposes provided, from time to time, under Superannuation Law.
- 4.3. If the trustee body is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of old-age pensions.

5. Administration

- 5.1. The trustee body is responsible for the administration of the Fund.

6. Vesting of the Fund

- 6.1. All property of the Fund is vested in the trustee body and is subject to the requirements of the Relevant Law.
- 6.2. The members of the Fund do not, or any one member of the Fund does not, have title to any property, including but not limited to real property, of the Fund.
- 6.3. Title to any real property of the Fund must be held in accordance with Property Law and the Relevant Law.

PART C

THE TRUSTEE BODY

7. The trustee body

- 7.1. The trustee body may be a body comprising any of the following:
 - 7.1.1. a body of at least two individual persons;
 - 7.1.2. a Constitutional Corporation; or
 - 7.1.3. any form of trustee body allowed under Superannuation Law including a trustee body with a Licensed Trustee Company or a Corporation Sole as a member of the trustee body.
- 7.2. Where the trustee body is not a Constitutional Corporation, each member of the trustee body is a trustee, subject to the Relevant Law.

8. Appointment of trustee

- 8.1. Subject to the rule 8.2, a member of the trustee body or the trustee body in its entirety is appointed by the Appointor and holds office until

resignation or until removal by the Appointor.

- 8.2. Where an approved trustee is to be appointed as trustee of the Fund, that appointment is made by the Australian Prudential Regulation Authority.
- 8.3. Where the trustee body of the Fund is not a corporation and the trustee body admits a person as a new member of the Fund, the Appointor must appoint that person as a member of the trustee body and that person is taken to have consented to being so appointed.
- 8.4. Subject to the rule 8.5, where the trustee of the Fund is a corporation, the trustee body must not admit a person as a new member of the Fund unless that person is a director of the corporation at the time of admission as a member of the Fund.
- 8.5. Where, at the time of admission, the person is unable to be a director of the corporation because of age or other legal disability, the parent, guardian or Legal Personal Representative may act in place of the member under the disability.

Note: Superannuation Law provides that a legal disability in these circumstances does not include a person who is a disqualified person within the meaning of section 120 of the Superannuation Industry (Supervision) Act 1993.

9. Members to hold power of appointment

- 9.1. The power to appoint and remove a member of the trustee body or the trustee body in its entirety (the 'power of appointment') shall be held by the members of the Fund.

- 9.2.** The power to appoint and remove a member of the trustee body or the trustee body in its entirety shall be exercised in accordance with Trust Law and in a manner so that the Fund continues to meet the requirements of Superannuation Law as a complying superannuation fund.
- 9.3.** Where there is more than one member of the Fund, a decision to appoint or remove a member of the trustee body or the trustee body in its entirety shall be unanimous and shall be in writing.
- 9.4.** Where a member is under a legal disability because of age or for any other reason, the member's power of appointment may be exercised by the member's Legal Personal Representative.

10. Eligibility of trustee

- 10.1.** A person is eligible for appointment as a trustee and member of the trustee body if the person meets the necessary conditions for appointment as a trustee in accordance with the Relevant Law.

Note: There are special rules that proscribe employees being trustees unless they are related to the employer.

- 10.2.** A corporation is eligible for appointment as the trustee body if the corporation meets the necessary conditions, or is able to meet the necessary conditions, for appointment as a trustee in accordance the Relevant Law.

11. Resignation of trustee

- 11.1.** If the trustee body is made up of natural persons, a member of the

trustee body may resign from the trustee body at any time by notice in writing to the Appointor stating a date upon which the resignation is to be effective.

- 11.2.** If the trustee body is a corporation, the corporation may resign as the trustee by notice in writing to the Appointor of a resolution of the directors of the corporation.

12. Removal of trustee

- 12.1.** A member of the trustee body must be removed by the Appointor if the member at any time becomes disqualified from holding the office of trustee in accordance with Relevant Law.
- 12.2.** A member of the trustee body must be removed by the Appointor upon the date that the person ceases to be a member of the Fund, unless that person is to be a trustee of a single member Self Managed Superannuation Fund in accordance with Superannuation Law.
- 12.3.** A person who is a director of a corporation that constitutes the trustee body may only remain as a director in accordance with the requirements of Superannuation Law and if these requirements are not met, the corporation must be removed as trustee.

13. Disqualification of trustee

- 13.1.** A member of the trustee body may become disqualified from holding office if the member fails to comply with any term of these rules or any requirement of the Relevant Law that results in the trustee body becoming disqualified.

14. Legal Personal Representative

14.1. The Legal Personal Representative of a member may be appointed, in accordance with the requirements of Superannuation Law, as a member of the trustee body or may become a director of a corporation that constitutes the trustee body where:

- 14.1.1.** the member dies;
- 14.1.2.** the member is under legal disability; or
- 14.1.3.** the Legal Personal Representative has an enduring power of attorney or is an administrator or a manager appointed by a decision of a court or tribunal, in respect of the member.

14.2. Where a member of the Fund is under a legal disability because of age and does not have a Legal Personal Representative, the parent or guardian of the member may be appointed as a member of the trustee body in accordance with the requirements of Superannuation Law.

14.3. The Legal Personal Representative of a member may appoint another person or entity, in accordance with the requirements of the Superannuation Law, as a member of the trustee body or a director of a corporation that constitutes the trustee body where:

- 14.3.1.** the member dies;
- 14.3.2.** the member is under legal disability; or
- 14.3.3.** the Legal Personal Representative has an enduring power of attorney

or is an administrator or a manager appointed by a decision of a court or tribunal, in respect of the member.

15. Trustee Powers for Administration of the Fund

15.1. In addition to any power conferred by any other provision of the Deed or these rules or the Relevant Law, the trustee body has the following powers:

- 15.1.1.** to deal with all property in the Fund in any way that the trustee body chooses as if the trustee body were the absolute and beneficial owner or owners of the property provided that the dealing does not contravene the Relevant Law;
- 15.1.2.** to appoint accountants, administrators or advisors as the trustee body believes appropriate for the responsible operation of the Fund, and pay or recover the reasonable costs of these services from the Fund;
- 15.1.3.** to enter into and execute all contracts, deeds and documents and do all acts, matters or things which the Trustee may deem expedient for the purpose of securing the Benefits to be provided by or from the Fund and for otherwise giving effect to the authorities, powers and discretions conferred on the trustee by this Deed;

- 15.1.4.** to do any act or thing necessary or convenient for the management of the Fund provided that power is exercised in accordance with the Relevant Law;
- 15.1.5.** to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, or otherwise deal with any real property and, without limiting the generality of this rule, to develop any property or retain property and hold or sell, transfer, convey, surrender, lease or license such property provided this does not contravene the Relevant Law;
- 15.1.6.** to open bank accounts and to retain on current or deposit account at any bank the money as the trustee body considers proper, and to make regulations for the operation of the bank accounts including the signing and endorsing of cheques in connection with the bank accounts;
- 15.1.7.** to determine who will be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- 15.1.8.** to give indemnities to or on behalf of any person the trustee body thinks fit;
- 15.1.9.** to appoint one or more persons, firms or companies as the trustee body may think fit to act as a custodian, trustee or nominee subject to conditions as the trustee body may determine;
- 15.1.10.** to delegate to and confer upon each custodian, trustee or nominee powers, discretions and authorities relating to the custody, investment revaluation of that part of the Fund entrusted to it or custody as the trustee body may think fit;
- 15.1.11.** as an expense of the Fund, to pay the custodian, trustee or nominee remuneration for services as the trustee body considers appropriate and having regard to the requirements of the Relevant Law; and
- 15.1.12.** to remove any custodian, trustee or nominee so appointed under these rules at any time;
- 15.1.13.** to delegate to any person, including any individual trustee or director of the trustee body as the case may be, powers, discretions and authorities relating to the management and administration of the Fund as the trustee body may think fit and may remove any delegate appointed under this rule;
- 15.1.14.** to insure or reinsure any risks, contingencies or liabilities of the Fund, the trustee body and/or the members;

15.1.15. to institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;

15.1.16. to make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

15.1.17. to do any act, matter or thing which the trustee body may deem expedient for the purpose of ensuring that a member does not have an excess transfer balance under the Relevant Law;

15.1.18. to commute any pension or other income stream payable under these rules and also to commute any income stream as may be required by any commutation authority issued by the Commissioner of Taxation under the Relevant Law;

15.1.19. to maintain a transfer balance account for each member and to debit and credit amounts to a member's transfer balance account in accordance with the Relevant Law;

15.1.20. to make any choice or election available to the trustee body under the Relevant Law; and

15.1.21. to do any act, matter or thing that the Relevant Law authorises or permits the trustee body to do despite any inconsistent provision or the absence of a specific power in these rules,

provided however that the trustee body in the exercise of any powers granted under this Deed will have regard to and conform with any standard prescribed by the Relevant Law.

Note: (1) The Trustee Act in each State and Territory provides a range of powers for trustees to discharge their duties and responsibilities. For example, trustees have the power to invest trust funds and have all the necessary ancillary powers to manage and administer the investment.

Note: (2) Some of these powers are qualified by Superannuation Law. For example, the Trustee Act 1925 (NSW) provides that trustees may purchase residential property for use by a beneficiary. This is not permitted under Superannuation Law.

16. Segregation of assets

16.1. The trustee body may maintain sub accounts within each member's accounts on a basis as the trustee body may consider appropriate including for the purposes of:

16.1.1. differentiating between preserved, restricted non-preserved and unrestricted non-preserved benefits within the meaning of the Relevant Law;

16.1.2. identifying minimum Benefits within the meaning of the Relevant Law;

- 16.1.3.** identifying those assets or amounts in respect of the member which are funding current pension liabilities and those assets or amounts that are supporting accumulation phase interests;
 - 16.1.4.** enabling more than one pension to be arranged in respect of a member;
 - 16.1.5.** creating an interest in the fund in favour of the member which may be evidenced by the trustee body setting aside assets or fractions of assets as being referable to any one or more members or any one or more sub accounts of a member and so as to evidence the interest of the member or members in the Fund.
- 16.2.** If the trustee body commences to pay a pension, the trustee body may, subject to the Relevant Law, segregate the assets of the Fund as between those assets that are set aside to fund the Fund's current pension liabilities and those assets that have not been set aside for that purpose.
- 16.3.** Upon assuming a liability to pay a pension and determining to segregate assets for that purpose, the trustee body must ensure that the amount applied to fund the pension is equivalent to the value of the assets which are segregated.
- 16.4.** The trustee body may determine to desegregate assets which have been segregated subject to segregating non-segregated assets of equivalent value.
- 16.5.** Where the trustee body has already commenced to pay a pension, the trustee body may determine in its discretion to commence or cease (as the case may be) the segregation of assets provided that this action is authorised by the Relevant Law.
- 16.6.** If the trustee body is in receipt of a contribution in specie in respect of a member then the asset or assets contributed to create an interest in the Fund in favour of the member may be segregated in favour of the member.
- 16.7.** The trustee body's power to maintain sub accounts applies notwithstanding that certain assets of the Fund may not be treated as segregated current pension assets within the meaning of the Relevant Law (such as disregarded small fund assets as is defined in the Relevant Law).
- 17. Trustee body may borrow**
- 17.1.** The trustee body has all powers necessary to borrow money or maintain a borrowing of money under an arrangement which complies with the requirements to borrow money for investments set out in the *Superannuation Industry (Supervision) Act 1993*, or any equivalent or related provision of Superannuation Law from time to time, and may secure such borrowings by way of mortgage or charge over the asset which is the subject of the borrowing.

18. Trustee body may vary or replace the rules of the Fund

18.1. The trustee body may vary or replace the rules of the Fund including, without limitation, by adopting a replacement set of rules by written resolution of the trustee body or by Deed of Variation.

18.2. The variation or replacement of the rules of the Fund may be either prospective or retrospective, provided that such variation or replacement does not result in a reduction in the Allocated Benefits of a member (unless written consent has been given by that member) and such variation or replacement is in accordance with the Relevant Law.

19. Trustee body may develop compliance material

19.1. The trustee body may develop material, by any means it considers appropriate, to assist in the administration of the Fund and may have regard to any material developed by the Regulator to ensure the Fund remains at all relevant times a Fund that complies with all the requirements of the Relevant Law.

20. Duties of trustee body

20.1. The duties of the trustee body are:

- 20.1.1.** to administer the Fund in accordance with the Operating Standards that may, from time to time, be established by the Superannuation Law;
- 20.1.2.** to observe any other requirement provided by the Relevant Law that may be required; and

20.1.3. to observe all the requirements that trustees are required to observe in law and equity.

21. Failure to meet Operating Standards required by Superannuation Law

21.1. Where it comes to the notice of the trustee body that it may not be complying with the Operating Standards, the trustee body must take immediate action to ensure compliance with the Operating Standards.

21.2. Where:

- 21.2.1.** the trustee body is made up of natural persons; and
- 21.2.2.** one of those persons resigns or is removed from office; and
- 21.2.3.** because of that resignation or removal, the Fund no longer meets the Operating Standards,

the Appointor must as soon as practicable take the action required by the Relevant Law, to ensure the Fund again meets the Operating Standards.

22. Meeting of trustee body

22.1. Any member of the Fund may, at any time, give notice to the trustee body that a meeting is to be held to decide upon any matter in relation to the Fund.

22.2. Where the trustee body is a corporation:

- 22.2.1.** notice of a meeting given to the trustee body is to be given in accordance with the Corporations Law; and

- 22.2.2.** the meeting is to be conducted in accordance with the constitution of the corporation or if none exists, the procedures in the replaceable rules under Corporations Law.
- 22.3.** Where the trustee body is made up of natural persons:
- 22.3.1.** notice of a meeting given to the individual trustees comprising the trustee body is to be given, with the necessary changes being made, in accordance with procedures provided in the Corporations Law; and
- 22.3.2.** the meeting is to be conducted in accordance with the procedures in the replaceable rules under Corporations Law.
- 23. Decisions of trustee body**
- 23.1.** Where the trustee body is made up of natural persons, all decisions of the trustee body must be made by:
- 23.1.1.** unanimous vote of those persons at a meeting of the trustees; or
- 23.1.2.** written resolution of the trustees where all trustees assent to the document containing the written resolution.
- 23.2.** Where the trustee body is a corporation, all decisions of the trustee body must be made by:
- 23.2.1.** approval of the directors of the trustee body in accordance with Corporations Law as it applies to the trustee body; or
- 23.2.2.** written resolution of the trustee where the trustee body assents to the document containing the written resolution.
- 23.3.** For written resolutions of the trustee body (whether the trustee body comprises natural person trustees or is a corporation), the following provisions apply to the extent permitted by the Relevant Law:
- 23.3.1.** separate copies of a document containing the resolution may be used if the wording of the resolution is identical in each copy;
- 23.3.2.** the resolution is passed when the last signatory assents;
- 23.3.3.** each member of the trustee body may signify assent to a document by signing the document or by notifying the trustee body of the trustee's assent in person or by post, facsimile, electronic, telephone or other method of written communication; and
- 23.3.4.** where a document containing the resolution is assented to in accordance with this rule 23.3, the document will also be taken as a minute of the passing of the resolution.
- 23.4.** Where any provision of these rules or Relevant Law requires a decision of the trustee body, then such decisions shall be in writing.
- 23.5.** Records of decisions of the trustee body are to be kept in accordance with the requirements of Superannuation Law.

PART D**MEMBERS****24. Members of the Fund**

- 24.1.** The trustee body may admit any person to become a member of the Fund in accordance with the requirements of the Relevant Law.
- 24.2.** Where these rules are adopted on the establishment of the Fund, any person admitted to membership becomes a member of the Fund on the date that membership is recorded in Schedule 1.
- 24.3.** Where these rules are adopted under a Deed of Variation or written resolution of the trustee body, the members of the Fund shall be recorded as members in the member register with the date of commencement being the date upon which the member of the Fund was admitted to membership of the Fund as originally established.

25. Members with a nil balance

- 25.1.** The trustee body may accept a person as a member of the Fund provided that membership is in accordance with the Relevant Law, including where such a member has a member account with a nil balance.

Note: Some members may have a nil balance for a range of reasons. For example, in the first year of a Self Managed Superannuation Fund only one of the members may contribute and the other member may delay contribution until later in that year or later years.

26. General prohibition

- 26.1.** The trustee body shall not admit any person as a member of the Fund where that admission is not

in accordance with the Operating Standards or with the requirements of the Relevant Law.

27. Resignation of member

- 27.1.** Any member may resign their membership by notice in writing to the trustee body in accordance with the requirements of the Relevant Law.
- 27.2.** Where a member resigns their membership, the member entitlement must be transferred to another complying superannuation fund in accordance with the requirements of Superannuation Law.

28. Member register

- 28.1.** The trustee body shall maintain a member register and record the date of admission as a member and the date the member ceases to be a member.

29. Report to member

- 29.1.** The trustee body shall provide a report to each member about their entitlements in the Fund in accordance with the requirements of the Relevant Law.
- 29.2.** A member may make a written request for a report about their entitlements in the Fund at any time and the trustee body shall, as soon as practicable after the request is received, provide that report to the member.

30. Disqualification of member

- 30.1.** A person shall not be a member of the Fund (a “disqualified member”) at any time the person is not a member of the trustee body or a director of a company that is the trustee of the Fund, as the case requires.
- 30.2.** To avoid doubt, a person is not a disqualified member because the person is not a member of the trustee body or a director of a corporation that constitutes at a time when the person’s Legal Personal Representative, parent or guardian is acting as a member of the trustee body or a director of a company that is the trustee of the Fund.
- 30.3.** Where a person is or becomes a disqualified member, that person’s name shall be removed from the member register and the member’s entitlements shall be transferred or Rolled Over to another complying superannuation fund in accordance with the requirements of the Relevant Law.

requirement providing the payment of such Benefits is permitted by the Relevant Law.

- 31.2.** The trustee body may pay Benefits in accordance with this rule in any manner and form permitted by the Relevant Law, including but not limited to payment by way of lump sum, pension, or any permitted combination of lump sum and pension.
- 31.3.** Benefits under this rule 31 may be paid in cash or, where not contrary to the Relevant Law, in specie.

32. Transfer or Rollover of member benefits

- 32.1.** Where a member requests that their Benefits be transferred or Rolled Over to another superannuation fund, the trustee body must, where such a transfer or Rollover is permitted by the Relevant Law, transfer or Rollover those Benefits to the superannuation fund nominated by the member in accordance with the requirements of Relevant Law.

**PART E
MEMBER BENEFITS**

31. Payment of member benefits

- 31.1.** Where:
 - 31.1.1.** a member requests that Benefits be paid; or
 - 31.1.2.** Benefits are required to be paid for any reason including death or incapacity (whether permanent or temporary);the trustee must pay those Benefits in accordance with the request or

PART F**REVERSIONARY PENSIONS****33. Reversionary Pensions**

- 33.1.** A pension may be restricted by the member such that, on the death of the member, a dependant of the deceased member is automatically entitled to receive the pension and the pension automatically reverts to that dependant (Reversionary Pension). This may be implemented by way of a written pension contract or arrangement between the trustee body and the member. Where a pension is restricted in this way, upon the member's death the trustee body is required to continue paying the pension to the nominated dependant provided such dependant is in the class of persons permitted by the Relevant Law to receive a Reversionary Pension from the deceased member.
- 33.2.** Where a pension is not initially a Reversionary Pension, it may at any subsequent time but before the death of the member, be varied to become a Reversionary Pension by way of a written pension contract or arrangement between the trustee body and the member.
- 33.3.** A member may also apply to, and the trustee body may also determine to, vary a Reversionary Pension to become a pension that is not a Reversionary Pension or to vary the reversionary dependant beneficiary. This may be varied by way of a written pension contract or arrangement between the trustee body and the member. If a Reversionary Pension is varied to become a pension that is not a Reversionary Pension, the member

may deal with where it passes upon their death in a manner that is binding on the trustee body by way of a Binding Death Benefit Nomination.

- 33.4.** A member may unilaterally terminate the automatic reversion of the Reversionary Pension to the elected reversionary beneficiary by notice in writing to the trustee body.

PART G**BENEFITS PAYABLE ON DEATH****34. Benefits payable on death**

- 34.1.** This object of this Part is to set out the rules for the payment of Benefits upon the death of a member.

Note: Section 59 of the Superannuation Industry (Supervision) Act 1993 and Regulation 6.17A of the Superannuation Industry (Supervision) Regulations 1994 do not apply to Self Managed Superannuation Funds and do not apply to the Fund.

35. Nomination of member in relation to death Benefit

- 35.1.** A member may execute a nomination which is:
- 35.1.1.** binding on the trustee body (a Binding Death Benefit Nomination) nominating the person or persons to whom Benefits are to be paid in the event of the death of the member; or
 - 35.1.2.** not binding on the trustee body ("non-binding death benefit nomination") but advisory only nominating the person or persons to whom Benefits are to be paid in the event of the death of the member.

36. Binding Death Benefit Nominations

- 36.1.** A Binding Death Benefit Nomination is a nomination that directs the trustee body, in the event of the death of that member, to pay Benefits to which that member would otherwise have been entitled in accordance with the terms of the Binding Death Benefit Nomination.
- 36.2.** A Binding Death Benefit Nomination may nominate alternative beneficiaries for the event that the nominated beneficiary fails to survive the member.
- 36.3.** A Binding Death Benefit Nomination shall be in writing and shall:
 - 36.3.1.** nominate the person (the ‘nominated beneficiary’) or persons to whom the Benefits are to be paid provided that such persons are in a class of persons permitted by the Relevant Law;
 - 36.3.2.** be signed and dated by the member making the nomination; and
 - 36.3.3.** be witnessed by two adults.
- 36.4.** A Binding Death Benefit Nomination may, but need not, direct that before making the payment of the death Benefit, the trustee body must confirm that the nominated beneficiary has signed an acceptance of the nomination and if such direction is made and there is no signed acceptance, then the nomination is not binding on the trustee body. If there is no such direction in the Binding Death Benefit Nomination, the Binding Death Benefit Nomination will be

binding on the trustee body subject to the Relevant Law.

- 36.5.** A Binding Death Benefit Nomination may direct the manner, form and proportion of payment of the member’s Benefits, provided that the manner, form and proportion is permitted by Relevant Law. The manner, form and proportion of payment of the member’s death Benefits must be in accordance with any requirement of Relevant Law and may include but is not limited to:
 - 36.5.1.** payment by way of lump sum, pension or any permitted combination of lump sum and pension; and
 - 36.5.2.** the time and manner of payment.
- 36.6.** A Binding Death Benefit Nomination shall remain in force and shall not lapse until the first to occur of the following:
 - 36.6.1.** until such time as stated in the nomination; or
 - 36.6.2.** if no time of lapsing is expressly stated, then until the nomination is revoked or a new nomination is made.

37. Where a Binding Death Benefit Nomination is not valid

- 37.1.** Where a Binding Death Benefit Nomination is not valid, the trustee body may exercise its discretion to pay the death Benefit in accordance with the requirements of the Relevant Law.

38. Non-binding death benefit nominations

- 38.1.** A non-binding death benefit nomination is a nomination that requests the trustee body, in the event of the death of that member, to pay Benefits to which that member would otherwise have been entitled in accordance with the terms of the non-binding death benefit nomination.
- 38.2.** A non-binding death benefit nomination may nominate alternative nominees in the event the nominated death benefit nominee fails to survive the member.
- 38.3.** A non-binding death benefit nomination shall be in writing and shall:
- 38.3.1.** nominate the person (the 'nominated beneficiary') or persons to whom the Benefits are to be paid provided that such persons are in a class of persons permitted by the Superannuation Law;
 - 38.3.2.** be signed and dated by the member making the nomination.
- 38.4.** A non-binding death benefit nomination may request the trustee body to make the payment of the member's Benefits in the manner, form and proportion requested, provided that the manner, form and proportion is permitted by the Relevant Law. The manner, form and proportion of payment of the member's death Benefits must be in accordance with any requirement of the Relevant Law and may include but is not limited to:
- 38.4.1.** payment by way of lump sum, pension or any permitted combination of lump sum and pension; and
 - 38.4.2.** the time and manner of payment.
- 38.5.** A non-binding death benefit nomination shall remain in force and shall not lapse until the first to occur of the following:
- 38.5.1.** until such time as stated in the nomination; or
 - 38.5.2.** if no time of lapsing is expressly stated, then until the nomination is revoked or a new nomination is made.

39. Death of a member

- 39.1.** If the member dies and the said deceased member had nominated by way of a written pension contract or arrangement a dependant to receive a Reversionary Pension at the time of his or her death, the trustee body must apply or pay in accordance with the terms of the Reversionary Pension provided such beneficiary is in a class of persons permitted by the Relevant Law to receive a Reversionary Pension from the deceased member and/ or otherwise as a lump sum death Benefit to such beneficiary.
- 39.2.** If the member dies and a Binding Death Benefit Nomination has been executed by the member in accordance with the terms of these rules, and the Binding Death Benefit Nomination is a valid nomination, then:
- 39.2.1.** the trustee body must determine that the death Benefit is to be paid in

accordance with the nomination as a pension or a lump sum to the beneficiary/ies;

39.2.2. if the payment of a death Benefit income stream pursuant to sub-rule 39.2.1 would result in the beneficiary's transfer balance cap being exceeded, then the Binding Death Benefit Nomination shall be amended if requested by the deceased member's beneficiary to the extent necessary to allow the amount of the death Benefit that would cause the beneficiary to exceed the pension transfer balance cap to pass as a lump sum to the beneficiary in accordance with the written request of the member's beneficiary; and

39.2.3. if the payment of a death Benefit pension to a beneficiary results in a taxation liability under the Relevant Law, the liability in respect to such taxation shall be the liability of the beneficiary as provided under the Relevant Law.

39.3. If the member dies and a non-binding death benefit nomination has been executed, the trustee body must consider, but is not bound by, the nomination in determining the payment of the death Benefit in respect of the deceased member.

39.4. If the member dies and the deceased member's Benefits are not payable as a Reversionary

Pension referred to in rule 39.1 or in accordance with a valid Binding Death Benefit Nomination pursuant to rule 39.2, then:

39.4.1. the trustee body must determine that the death Benefit is to be paid either as:

- (i) a pension for one or more beneficiaries provided such persons are in a class of persons permitted by the Relevant Law; or
- (ii) a lump sum for one or more beneficiaries provided such person/s are in a class of person/s permitted by the Relevant Law; or
- (iii) as a lump sum to the Legal Personal Representative of the deceased member; or
- (iv) a mix of (i) to (iii) inclusive; and

39.4.2. if the payment of a death Benefit pension to a beneficiary results in a taxation liability under the Relevant Law the liability in respect to such taxation shall be the liability of the beneficiary as provided under the Relevant Law.

- 39.5.** The trustee body is permitted to pay or apply a deceased member's Benefits for the benefit of a beneficiary in his or her personal capacity, notwithstanding such beneficiary also acts as the Legal Personal Representative of the deceased member or is a member of the trustee body.
- 39.6.** The trustee body may allocate part or all of any life insurance held in respect of a deceased member to a reserve or reserves, if the following conditions are met:
- 39.6.1.** the Legal Personal Representative of the deceased member consents;
 - 39.6.2.** it is not in conflict with any Reversionary Pension or Binding Death Benefit Nomination, or if it is, the nominated beneficiary (and if there is more than one nominated beneficiary, all beneficiaries) consent; and
 - 39.6.3.** it is permitted by the Relevant Law.
- 39.7.** In making a payment in accordance with a Binding Death Benefit Nomination or a non-binding death benefit nomination, the trustee has discretion to pay the nominated proportion/s of the member's death Benefits (whether as a pension or lump sum as permitted under Part G) from any source or superannuation interest of the member in the Fund.
- 39.8.** If the Legal Personal Representative exercising the powers of a deceased member or a member under a legal disability is comprised of more than one person, whether acting jointly or jointly and severally, then the persons comprising the Legal Personal Representative shall jointly have one vote only in any decision making by the members and that vote shall only be weighted once in relation to the value of the member for which they are acting, as the case requires.
- 39.9.** In the event of a conflict between a valid Reversionary Pension and a valid Binding Death Benefit Nomination in so far as the Binding Death Benefit Nomination purports to deal with the same member interests that the Reversionary Pension does, the Reversionary Pension will prevail.

PART H ADMINISTRATION

40. Reference to compliance material in performing administration

- 40.1.** The trustee body may agree to adopt any compliance or reference material that is available the purpose of the adoption being to assist the trustee body to comply with the Relevant Law.
- 40.2.** To assist in making decisions regarding the administration of the Fund, the trustee body may agree to make reference to the compliance or reference material so adopted to assist the trustee body to comply with the Relevant Law.

41. Member accounts

- 41.1.** The trustee body must establish and keep an account for each member (the "member account") and make additions to and deductions from the member account in accordance with these rules and Relevant Law.

41.2. The trustee body may keep more than one account for a particular member where it is necessary for the compliance with the Relevant Law.

42. Additions to member accounts

42.1. The trustee body may, within the time (if any) specified by the Relevant Law, accept any of the following, whether in cash or in specie, in respect of a member (“additions to member accounts”):

42.1.1. contributions;

42.1.2. investment earnings;

42.1.3. transfers or Rollovers; or

42.1.4. any other property where permitted or required by Relevant Law and not contrary to Relevant Law.

42.2. Any additions to member accounts may be made by any person or body in any manner permitted by the Relevant Law.

42.3. The trustee body must not accept additions to member accounts in respect of a member where the addition is not permitted by the Relevant Law.

43. Deductions from member accounts

43.1. The trustee body may, within the time (if any) specified by the Relevant Law, deduct any of the following, whether in cash or in specie, in respect of a member (“deductions from member accounts”):

43.1.1. expenses relating to the management of the Fund;

43.1.2. losses from investment earnings;

43.1.3. payments to or on behalf of

the member;

43.1.4. taxation liabilities of the members and the Fund; or

43.1.5. any other deduction where permitted or required by Relevant Law and not contrary to Relevant Law.

43.2. Any deductions from member accounts may be made by any person or body in any manner permitted or required by the Relevant Law.

43.3. The trustee body must not make any deduction from member accounts in respect of a member where the deduction is not permitted by the Relevant Law.

44. Investment

44.1. Before investing any property of the Fund, the trustee body must agree upon an investment strategy in relation to investments (“investment strategy”).

44.2. The investment strategy may include a strategy in relation to reserves.

44.3. The investment strategy must comply with the Relevant Law.

44.4. The investment strategy may be amended at any time by agreement of the trustee body.

44.5. The trustee body must invest all property of the Fund in accordance with the investment strategy.

44.6. Subject to the Relevant Law, all property of the Fund must be held separately from the property, whether real or personal, of the trustee body or any member of the trustee body.

- 44.7.** Subject to the Relevant Law, all property of the Fund must be held either in the name of the trustee body or, where any law does not permit the holding of property in the name of a trust, the property must be held as property of the Fund in any manner that is permitted by the Relevant Law.
- 44.8.** The trustee body has all the necessary power and may do any act or thing required to invest property of the Fund in any form of investment whatsoever and may do any act or thing necessary to facilitate the investment provided that the investment and the necessary act or thing is in accordance with the investment strategy and is not contrary to the Relevant Law.
- 45. Reserves**
- 45.1.** The trustee body may maintain reserves but before doing so must agree upon a strategy in relation to maintaining reserves (“reserve strategy”).
- 45.2.** The reserve strategy may be part of the investment strategy or it may be a separate strategy.
- 45.3.** The reserve strategy must comply with the Relevant Law.
- 45.4.** The reserve strategy may be amended at any time by agreement of the trustee body with a new reserve strategy.
- 45.5.** A member of the Fund is not entitled to any property held in accordance with the reserve strategy and the trustee body is not required to allocate any property held in reserve to any member other than by way of allocation in accordance with the reserve strategy.
- 45.6.** The trustee body has all the necessary power and may do any act or thing required to place property of the Fund in a reserve account and may do any act or thing necessary to facilitate the reserve provided that the reserve and the necessary act or thing is in accordance with the reserve strategy and is not contrary to the Relevant Law.
- 46. Records and accounts**
- 46.1.** The trustee body must maintain a record of all matters in relation to the administration of the Fund, including but not limited to a record of all accounts of the Fund (“records and accounts”), in accordance with the requirements of the Relevant Law.
- 46.2.** The records and accounts must be prepared and kept in such form and for such periods of time as required by the Relevant Law.
- 46.3.** The trustee body must maintain records and accounts in relation to the entitlement of each member in relation to both quantum and type, as required by the Relevant Law.
- 46.4.** The trustee body must make all records and accounts of the Fund available for inspection by the Regulator, an auditor or any other person as required by Relevant Law.
- 46.5.** The trustee body may create any type of account permitted by the Relevant Law or not contrary to the Relevant Law, including reserve accounts to hold amounts not allocated as a benefit to a member, for any purpose that is permitted by the Relevant Law and for any purpose not contrary to the Relevant Law.

47. Assistance to comply with the Relevant Law and Regulator

- 47.1.** The trustee body is responsible for all matters in relation to the administration of the Fund to ensure compliance with the Relevant Law including the preparation of accounts, audits and returns or any other documentation as required by the Relevant Law and the Regulator.
- 47.2.** The trustee body may appoint advisors, accountants and administrative service providers, howsoever described, to prepare the accounts, audits and returns of the Fund and to assist the trustee body to comply with Relevant Law.

48. Trustees to appoint an Approved Auditor

- 48.1.** The trustee body must appoint an Approved Auditor for the Fund in accordance with the requirements of Superannuation Law.

49. Mediation

- 49.1.** In the event of a dispute between the members, between the members of the trustee body or between the directors of the trustee body being a corporation, the parties to the dispute must endeavour to settle the dispute by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232) or the Chair's designated representative.
- 49.2.** The Resolution Institute Mediation Rules shall apply to the mediation.

- 49.3.** It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.

- 49.4.** If the dispute or difference is not settled within 30 days of referral to mediation (unless such period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules.

50. Winding up of Fund

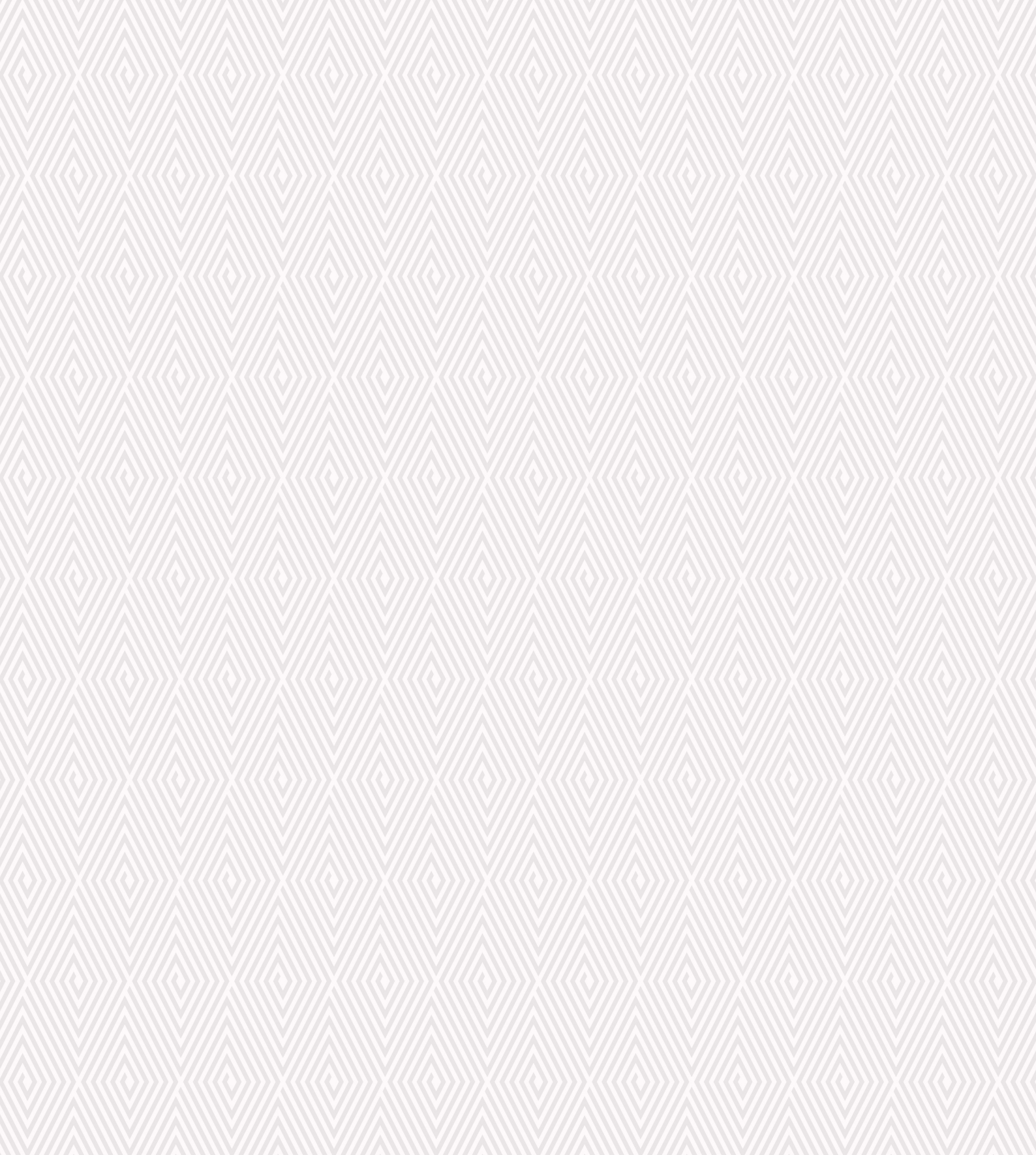
- 50.1.** The trustee body may wind up the Fund at any time in accordance with the winding up procedures of the Relevant Law.

DICTIONARY

Wherever the following terms are used in this document, they shall have the meaning as set out in this dictionary.

TERM	MEANING
Appointor	A person who holds the power of appointment in accordance with rule 9 of these rules.
Approved Auditor	A person who meets the definition of “approved auditor” in the Superannuation Law.
Allocated Benefits	Benefits which have been allocated to a member.
Benefit/s	(In respect of a member) the amount a member is legally entitled to, whether presently or contingently.
Binding Death Benefit Nomination	A written direction executed by a member as to how a member wishes their benefits to be paid in the event of their death that complies with the requirements of these rules.
Constitutional Corporation	A corporation that is defined in Section 51(xx) of the <i>Commonwealth of Australia Constitution Act</i> .
Corporations Law	The <i>Corporations Act 2001 (Cth)</i> , the Replaceable Rules made thereunder and a constitution of a corporation (if any).
Deed	The deed which is a declaration of trust establishing the Fund and any subsequent deed or written resolution adopting or amending, varying or replacing the rules of the Fund.
Deed of Variation	The deed executed by the trustees adopting the rules as a replacement for the rules under which the Fund previously operated or which otherwise amends or varies the rules of the Fund.
Fund	The fund referred to in the Deed.
Legal Personal Representative	Means the executor of the will or administrator of the estate of a deceased member, the administrator or manager of a member appointed by a decision of a court or tribunal, or a person who holds an enduring power of attorney granted by a member.
Operating Standards	The system of prescribed standards made, from time to time, for the purpose of governing the operation of Self Managed Superannuation Funds under the Superannuation Law.
Property Law	Any Act of a Parliament of a State or Territory of the Commonwealth or any common law dealing with the law of real property within that jurisdiction.

TERM	MEANING
Relevant Law	Any legislation or common law that may expressly or impliedly apply to the operation of a Self Managed Superannuation Fund, including but not limited to any of the following: <i>Superannuation Law;</i> <i>Income Tax Assessment Act 1936 (Cth);</i> <i>Income Tax Assessment Act 1997 (Cth); and</i> <i>Trust Law.</i>
Regulated Superannuation Fund	A regulated superannuation fund for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> .
Regulator	The Australian Taxation Office, or such Commonwealth Department or Agency given the power, from time to time, to regulate Self Managed Superannuation Funds.
Reversionary Pension	Has the meaning as set out in rule 33.
Rollover	(in respect of a member) superannuation Benefits transferred to or from another superannuation fund.
Rolled Over	(in respect of Benefits) the action of making a Rollover.
Self Managed Superannuation Fund	A fund that conforms with the requirements of Superannuation Law so that it meets the definition, from time to time, of Self Managed Superannuation Fund.
Superannuation Law	<i>Superannuation Industry (Supervision) Act 1993</i> and any regulations or other legislative instrument made thereunder or binding rulings or determinations by the Regulator that must be observed in order for a Fund to remain compliant as a Regulated Superannuation Fund.
Trust Law	The relevant trustee legislation applicable for the proper law of the Fund, and any common law that may expressly or impliedly apply to the operation of the Fund, where “relevant trustee legislation” means the following legislation (or equivalent legislation enacted in its place), for the following jurisdictions that are deemed to be the proper law of the Fund: <ul style="list-style-type: none"> a. New South Wales: <i>Trustee Act 1925 (NSW)</i> b. Victoria: <i>Trustee Act 1958 (VIC)</i> c. Australian Capital Territory: <i>Trustee Act 1925 (ACT)</i> d. Queensland: <i>Trusts Act 1973 (QLD)</i> e. South Australia: <i>Trustee Act 1936 (SA)</i> f. Western Australia: <i>Trustee Act 1962 (WA)</i> g. Tasmania: <i>Trustee Act 1898 (TAS)</i> h. Northern Territory: <i>Trustee Act (NT)</i>.



SYDNEY
Level 15,
100 Pacific Hwy
North Sydney NSW 2060
PO Box 29
Crows Nest NSW 1585

MELBOURNE
Level 2,
250 Victoria Pde
East Melbourne VIC 3002
PO Box 140
Fitzroy BC VIC 3065

CANBERRA
Level 1,
73 Northbourne Ave
Canberra ACT 2601
GPO Box 1481
Canberra ACT 2601

BRISBANE
Waterfront Place Building
Level 4,
1 Eagle Street
Brisbane QLD 4000

P 1300 883 158
F 1300 883 159

EVANSDIXON.COM.AU