

SUPERCENTRAL



SUPERCENTRAL DEED UPDATE

TRUSTEE AND MEMBER INFORMATION SHEET

Version 05115

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Tel 02 8296 6222 www.townsendslaw.com.au

Due to recent legislative changes and to further improve the flexibility of the SUPERCentral Governing Rules, they will be updated on and from **20 May 2015**.

This information sheet outlines the changes which will be made, the benefits to each Participating Fund, and the impact of the changes on the members of the Fund.

We have also included a FAQ section in respect of the changes.

Q1. What changes will be made?

The principal changes relate to appointment of the legal personal representative as trustee (during the period between the death of the member and the payment of the death benefit) and saving provisions dealing with partial Binding Death Benefit Nominations and nominations which nominate the estate of the deceased member using colloquial terms.

Q2. What are the details of the changes?

The details of the various changes to the SUPERCentral Governing Rules are set out in the following paragraphs.

Q3. Medical evidence for removal of trustees

A provision has been included by which a trustee ceases to hold office if two independent medical certificates are provided by legally qualified medical practitioners certifying that the trustee is not able to manage their own affairs. The certificates are prima facie evidence of incapacity.

Q4. Appointment of Legal Personal Representative as trustee in the period from death of member to payment of death benefits

Provisions have been included to permit a member to appoint their legal personal representative as a trustee from the death of the member until the benefits of the member have been allocated and paid out. The legal personal representative must be the executor or administrator of the estate of the member.

Q5. Saving provisions for Binding Death Benefit Nominations

A provision has been included to provide that a reference to "Trustee of Deceased Estate" in a death benefit nomination is to be taken to be a reference to the Legal Personal Representative of the member's estate. This change addresses an issue identified in the recent case of *Munro v Munro* [2015] QSC 61, a decision of the Supreme Court of Queensland.

Another saving provision has been included to ensure that a binding death benefit nomination which nominates less than the entire death benefit will be valid and the balance of the death benefit will be allocated by the trustee to or amongst the dependants and/or estate of the member.

Q6. Release Authorities – Refund of excess non-concessional contributions

The definition of "Release Authority" has been updated to permit the release of excess non-concessional contributions and associated earnings which relate to the 2013114 or later financial years.

Q7. Grandfathered & other insurance arrangements

The Governing Rules have been amended to expressly provide that insurance cover in place as at 30 June 2014 for a particular member can be maintained after that date.

Additionally, the power of the trustee to effect insurance on the lives of the members for liquidity purposes has been set out in its own provision – (previously this power was set out in Rule 5.2(c)).

QS. Trustee Authorised Investments

The list of authorised investments has been expanded to include Simple Corporate Bonds and exchanged-traded Australian Government Bonds. Also, the leasing power of the Trustee has been modified to expressly permit the Trustee to grant long term leases (in excess of the period permitted by the relevant Trustee Act).

Qg. Commutation of Transition to Retirement Pensions

The Governing Rules have been amended to expressly provide that where the purchase price of a transition to retirement pension includes an unrestricted non-preserved component, the pension may be commuted to the extent the pension balance consists of the unrestricted non-preserved component even though the member has not attained age 65 or retired for superannuation purposes.

What are the details of the changes made to SUPERCentral's Governing Rules?

The principal amendments to the Governing Rules are summarised below:

1. Medical evidence for removal of trustees

- Rule 1.1 amended – new paragraph (p) inserted for the purposes of Rule 4.6(f).
- Rule 4.6(f) has been amended.

2. Appointment of Legal Personal Representative as trustee in the period from death of member to payment of death benefits

- New Rule 4.16A has been inserted dealing with the appointment of the legal personal representative as a trustee including requirement that the representative must consent to the appointment as trustee and not be disqualified from appointment.
- Rule 15.29 has been inserted to provide machinery provisions as to the appointment of the trustee: such as when the appointment as trustee ends, that appointment must be made within 6 months of the death of the Member and preventing the death benefit being allocated unless and until the appointment has been made or 6 months have elapsed since the death of the member.
- Rule 15.29 also provides that reversionary nominations of pensions are not affected by the appointment of the legal personal representative as a trustee and continue to operate.

3. Saving provisions for Binding Death Benefit Nominations

- Rule 15.19(d) has been inserted to provide that partial nominations are valid nominations.
- Rule 15.19(e) has been inserted to provide that references to "Trustee of Deceased Estate" in a nomination are to be read as references to "legal personal representative" of the deceased estate of the member.
- Rule 15.25(f) has been inserted to permit the trustee to rely on digital or photocopies of signed nominations.

4. Release Authorities – Refund of excess non-concessional contributions

- Definition of "Release Authority" in Rule 1.1 has been amended to include release authorities associated with the refund of excess non-concessional contributions and statutory references have been updated.
- Consequential amendments have been made to Rule 6.1(g) of Schedule B; Rule 3.3(b) of Schedule C and Rule 6.1(g) of Schedule D.

5. Grandfathered insurance arrangements

- Rule 5.2(c) has been amended.
- New Rule 5.2(ca) has been inserted.

6. Trustee Authorised Investments

- Rule 1.1 amended to include definitions of "Simple Corporate Bond" and "Exchange-traded Australian Government Bond".
- Rule 3.4(a) has been amended to include "Simple Corporate Bonds".
- Rule 3.4(aa) has been included to cover Government Bonds and, in particular, exchanged-traded Australian Government Bonds.
- Rule 5.2(k) has been amended to permit the trustee to issue long terms leases.
- Rule 5.3(p) has been amended to permit the trustee to issue long term leases.

7. Commutation of Transition to Retirement Pensions

- Rule 3.1(b) of Schedule C has been amended.

S. Other changes

- These changes are to improve expression, correct typographical errors, update legislative and cross references or are consequential to the principal changes

FAQs for the Trustees

Q1. Can Trustees view the updated Governing Rules?

Yes. Trustees can view the updated Governing Rules by going to the SUPERCentral website and logging in using their user-id and password.

Trustees can also view a marked-up copy of the updated Governing Rules on the SUPERCentral website. The mark-up shows the text which has been included and the text which has been deleted.

Changes which are merely formatting (eg changes in indenting, page breaks, font size and pagination) or are immaterial are not shown.

The marked-up copy will be available for viewing until the end of June 2015.

Q2. Can Trustees obtain a copy of the updated Governing Rules?

Yes. The updated Governing Rules can be downloaded from the SUPERCentral website and, if desired, printed.

Q3. Do Trustees have to do anything for the updated SUPERCentral Governing Rules to apply to their Fund?

No. The updated Governing Rules will apply automatically after the 14-day notice period has ended. The notice period commences on 6 May 2015 and ends on 19 May 2015. The updated Governing Rules will apply on and from 20 May 2015.

The SUPERCentral updating process is automatic. The Trustees do not have to sign any document or give any notice for the updated rules to apply.

However Trustees may, if they wish, record their consideration of the update to the SUPERCentral Governing Rules by completing a template minute which is available from the SUPERCentral website. A link to this template minute is contained in the Notice to the Trustee.

Q4. Can Trustees reject the updated Rules?

The Trustees can reject the update by giving notice to Super Governing Rules Pty Ltd on or before 19 May 2015.

If Trustees reject the update then their Fund will cease to be part of the SUPERCentral System.

Q5. Do Trustees have to notify the members of the changes in the SUPERCentral Governing Rules?

Yes. We recommend that Trustees give their members a copy of this information sheet.

FAQs for the Members

Q1. Will the amendments adversely affect my member benefits or have any other adverse consequences?

The amendments do not adversely affect current benefit entitlements.

The amendments will not adversely affect the compliance status of your Fund. The amendments will not cause the Fund to cease to be a complying superannuation fund or cease to be a self managed superannuation fund.

Q2. Do I, as a member, have to do anything to accept these amendments?

No. Provided the trustee of your Fund does not reject them, these amendments will apply to your Fund on and from **20 May 2015**.

Q3. Where can I access further information?

Should you require any further information about the update please contact your SMSF adviser.

Q4. Can I obtain a copy of the updated Governing Rules?

Yes – your Trustee will be able to provide a copy of the updated Governing Rules.