


## Product Disclosure Statement ('PDS')

<b>Fund Name:</b>	Thorncroft Family No 2 Super Fund	<b>Date of PDS:</b>	
<b>PDS Reference No:</b>	SMSF2011-12	<b>Date PDS given to Member:</b>	
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# SMSF PDS



## **SMSF PDS**

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## **FORMS**

### **NOTICE OF INTENT TO CLAIM A TAX DEDUCTION**

### **BINDING DEATH BENEFIT NOMINATION**

This SMSF PDS ('PDS') is a general guide only in respect of the main features of an SMSF that has used DBA Lawyers Pty Ltd's SMSF governing rules ('Governing Rules') and does not constitute financial product or any other advice. In particular, section 17 must be completed by the trustee before giving the PDS to the member. Trustees have an ongoing obligation to ensure the PDS is maintained up to date with relevant information. As superannuation and taxation laws are subject to continual change, expert advice should be obtained wherever in doubt. Unless the Trustee subscribes to the Annual Update Service (refer <http://www.dbalawyers.com.au/annual-update-service>) there is no obligation on DBA Lawyers to notify you in respect of any change that may be required to the Governing Rules. Except to the extent required by law, we disclaim all and any liability arising in any manner that does not relate to the documentation prepared on our specific instructions. If any member has any queries they should make further inquiries with the fund's trustee or their advisers.

# SMSF PDS

## 1. This PDS

This product disclosure statement ('PDS') has been prepared to provide information in relation to being a member of a self managed superannuation fund ('SMSF'). Changes are constantly being made to the rules and requirements affecting superannuation funds. Accordingly, this PDS is based only on the law as at the date of this PDS. This PDS is no substitute for expert advice given in view of a person's particular circumstances. Nevertheless, it is recommended that you closely consider this PDS.

In particular, there are a number of reform measures proposed including changes arising from the Federal Budget and changes relating to the Stronger Super review of the superannuation industry. DBA Lawyers offer an Annual Update Service that allows you to keep your SMSF governing rules and PDS up to date each 1 July for small annual cost. Please visit <http://www.dbalawyers.com.au/annual-update-service> for further information.

## 2. Overview of SMSFs

An SMSF can be used by employees, the self-employed and those who seek to manage their own superannuation investments rather than relying on their employer's superannuation fund or a commercial fund. Nevertheless, the alternatives should be carefully considered prior to establishing an SMSF.

To qualify as an SMSF, a superannuation fund must satisfy the following requirements:

### (a) Funds with Two or More Members:

- the fund has fewer than five members (see section 5);
- each member is a trustee or, if the trustee is a company, each member is a director of the corporate trustee;
- no other person is a trustee or director of the trustee company other than eligible members;
- a person who is an employee of another member of the same fund (or of an associated person) cannot be a member unless they are either:
  - a relative of that member of the SMSF;
  - a director of the employer-sponsor; or
  - a relative of another employer member of the fund (typically where two directors are in business together and their non-employed spouses share the same SMSF and the two business directors are employed by the same employer-sponsor company), that is, the 'Director-Spouse' test; and
- no trustee (or director of a corporate trustee) of the fund receives any remuneration for any services performed by the trustee (or director) in relation to the fund.

### (b) Sole Member Funds:

- the fund has a corporate trustee and the member is either the sole director or one of only two directors and the member is not an employee of the other director (or of an associated person) unless the member is either:
  - a relative;
  - a director of the employer-sponsor; or
  - the Director-Spouse test is satisfied; or

- it has two individual trustees, one of whom is the member and the other of whom is not an employee of the other trustee (or of an associated person) unless the member is either:
  - a relative;
  - a director of the employer-sponsor; or
  - the Director-Spouse test is satisfied; and
- no trustee of the fund receives any remuneration for any services performed by the trustee in relation to the fund.

The trustees of the fund must ensure that these requirements are satisfied on an ongoing basis as non-compliance can have serious consequences for the fund. Therefore, steps must be taken to ensure the above requirements are satisfied where there are changes to the membership or trusteeship (including directors of a corporate trustee) of your superannuation fund. In particular, the death of a member of your superannuation fund may result in a breach of the above requirements if timely action is not taken.

### **3. Governing Rules**

You should review and become familiar with the deed and governing rules for your superannuation fund ('Governing Rules'). This document sets out the rules and conditions in respect of which the fund can be operated. The Governing Rules do not cover all the issues but should be referred to when relevant decisions are being made. Due to constant changes to superannuation and tax laws, it is generally recommended that the Governing Rules be updated at least every four years. As a result of regular ongoing changes there are services now available for governing rules to be updated on an annual or more regular basis.

### **4. Costs**

Likely establishment and administration costs should be considered to ensure the benefit of establishing an SMSF is worthwhile. You should consult your financial adviser to determine the costs of administering the fund. You should also see section 17 where the trustee should have completed details of relevant costs that you need to be aware of as a member.

Many commercial funds and industry funds charge ongoing management fees. These must be considered in view of the costs of setting up, running and, if relevant, winding-up an SMSF. Also, certain commercial funds impose additional fees, such as entry and exit fees.

Even if an SMSF is cheaper to set up and operate, the potential income and growth to be gained from the investment strategies of a public offer fund as compared to an SMSF should be considered. That is, will a public offer fund outperform an SMSF?

### **5. Maximum of Four Members**

SMSFs are generally only for you, your spouse and a maximum of two other (generally) family members (provided each member satisfies certain tests). If you have more than four members who are eligible to join the fund, then you should consider setting up another SMSF or joining a public offer fund.

#### **5.1. Non-Family Employees**

If you run a business, you generally cannot have non-family employees join your SMSF. It is generally advisable in any event to have them join a public offer fund or set-up their own SMSF rather than joining your SMSF. This limits the circumstances in which conflicts may occur between employees and your family.

### **6. Strict Laws and Penalties**

Every person who becomes a member of an SMSF must ensure they are aware of the severe penalties that can apply for any breach of superannuation law. All persons who become a trustee (or a director of a corporate trustee) must sign a trustee declaration (in the relevant form

published by the ATO) within 21 days of becoming a trustee or director, acknowledging their trustee duties.

Broadly, any breach, even innocent administrative oversights, can expose an SMSF to 45% tax on its entire assets, apart from non-concessional contributions ('NCC'). The Australian Taxation Office ('ATO') has discretion to waive this tax if there are genuine mitigating circumstances. In addition, a range of civil and criminal penalties can be imposed depending on the nature and severity of the breach.

These substantial penalties for matters that invariably involve complex and technical laws raise the following critical questions: Are you prepared to accept the responsibility that goes with operating an SMSF properly? Will you make sure you are sufficiently familiar with the regulatory regime? Will you seek advice whenever you are in doubt?

Put another way, would you go out and fly a hot-air balloon without having an experienced instructor on board and without receiving special training? Like hot air balloons, SMSFs can be dangerous. Accordingly, trustees and members have a vested interest in making sure they act prudently and become familiar with the main rules and seek advice whenever there is any doubt.

## **7. SMSF Advantages and Disadvantages**

The advantages and disadvantages of an SMSF as compared with other types of funds eg, public offer funds, outlined below should be considered.

### **7.1. Advantages**

- SMSFs allow control of investments and investment choice. Assets may also be transferred to members instead of cash when paying a lump sum benefit (eg, on retirement).
- An SMSF is portable and can move with you from job to job, and can also allow flexibility for retirement.
- Members have the ability to customise the structure, asset allocation and investments to suit their needs and objectives during the different stages of their life.
- There is greater flexibility in deciding when and what type of benefit to take.
- Member account balances can be pooled to facilitate purchase of large assets such as property.
- On the death of a member of an SMSF, the member's benefits can be paid as an in specie lump sum death benefit, eg, shares can be transferred to the member's dependants rather than cash.
- The cost of running an SMSF is largely fixed. By contrast, fees for commercial funds are generally based on a percentage of contributions or assets, without necessarily being linked to performance.

### **7.2. Disadvantages**

- Decision making and ultimate responsibility rests with the trustees (who are, in most cases, the members).
- Each SMSF must complete all relevant administrative and compliance tasks whereas commercial funds take care of these requirements for you.
- SMSFs are more limited, as compared to commercial funds, to the extent they can diversify their investments and obtain economies of scale.
- Any disputes involving SMSFs do not come within the jurisdiction of the Superannuation Complaints Tribunal. Therefore, any disputes must be dealt with by a court of law which may be costly. For more details see section 16.
- If a member becomes bankrupt or otherwise subject to certain agreements under the *Bankruptcy Act 1966* (Cth), they will generally be ineligible to be a trustee, and consequently

a member, of an SMSF. Should this be the case, then the member will need to roll their benefit out of the SMSF and into another superannuation fund (eg, a public offer fund).

### **7.3. Summary**

SMSFs are primarily for those people who wish to be in control of their financial affairs and who are capable of taking an active role in the management of their fund. People who are not willing to take an active interest in their own financial affairs should consider the possible advantages of leaving their superannuation affairs to professionally managed public offer funds.

## **8. Investment**

An SMSF is an investment vehicle and the trustee is responsible for maintaining the fund's investments in accordance with an appropriate investment strategy which is reviewed and, if necessary, revised on a regular basis. Generally, unless the trustee is experienced with investments, investment and/or financial advice should be obtained to ensure members' superannuation interests are prudently invested and managed.

Superannuation law also imposes a number of strict limitations on the type of investments a fund can make and any breach of these laws can incur serious penalties, including fines and imprisonment. For example, a trustee is broadly prohibited from acquiring assets from a related party of the fund, is limited in the level of 'in-house assets' it may invest in and is also generally prohibited from borrowing, unless a specific exception applies. Expert advice should be obtained if there is any doubt.

Members may request that the trustee make and hold particular investments on their behalf, or on behalf of a class of members. See section 10.8 for further information.

### **8.1. SMSF borrowing arrangements**

Superannuation fund trustees are generally prohibited from borrowing, subject to some limited exceptions. While this general prohibition remains in force, since September 2007 the law permits trustees to borrow on a limited-recourse basis generally to only acquire a single asset which the trustee would ordinarily be permitted to acquire. This means that funds, including SMSFs, can invest in geared property such as real estate and shares.

'Limited-recourse' means the lender's rights against the fund's trustee in the event of default must be limited to the asset being acquired (ie, the lender cannot pursue the fund's trustee for any shortfall). There are numerous other strict requirements including that the asset being acquired be held on trust by another entity outside the fund while the loan is being repaid.

Despite the apparently broad nature of the laws which allow fund trustees to borrow to buy an asset, in practice a number of superannuation compliance issues can arise and careful implementation is required. These are generally sophisticated transactions and also give rise to a number of taxation, property law and stamp duty issues unique to the particular State or territory in which the property is located.

There are also several aspects of the superannuation fund borrowing rules that still need to be clarified (including what is a single acquirable asset, whether any improvement can be undertaken and what is the true nature of a holding trust). Thus, trustees should obtain expert advice before entering into borrowing arrangements.

## **9. Superannuation Contributions**

### **9.1. Concessional Contributions**

Concessional contributions ('CC') are contributions included in the assessable income of a superannuation fund and incur 15% contributions tax in the fund. Typically, this is because the contributions are made from pre-tax moneys and generally qualify for a tax deduction. Contributions made by an employer on behalf of an employee or by an eligible person will

generally be CCs. As discussed at section 10.1, CCs form part of the taxable component of a member's interest in a superannuation fund.

As well as contributions made by an employer on behalf of an employee, CCs also include contributions made by 'eligible persons'. Broadly, an 'eligible person' is a person who has less than 10% of the total of their assessable income, reportable fringe benefits and salary sacrificed amounts attributable to activities undertaken as an employee. Generally, eligible persons will include self-employed people whose predominant income is not from employment and those people who are not employed. An employer and eligible person can receive a full deduction for the entire amount of CCs made (although note that in the case of an eligible person, a deduction cannot create a tax loss).

**Important Note: change to the 10% rule**

Members who have previously qualified as 'eligible persons' under the 10% rule described above should be aware that amounts which are salary sacrificed as superannuation contributions count as employment income. This could adversely affect some members' eligibility.

Eligible persons must give the trustee a Notice of intent to claim a tax deduction (refer ATO form attached to this PDS) indicating how much they intend to claim by way of a tax deduction. This notice should be provided before any amount of the contribution is applied to commence a pension or, in other cases, generally by the time the member's personal tax return is lodged. The trustee of the fund must also provide the person with an acknowledgement of receipt of the notice before the Notice of intent to claim a tax deduction is valid.

CCs will only be concessionally taxed on contribution to a superannuation fund to the extent that they are within the particular member's CC cap (see Item 1 of the Appendix). In this case, they will effectively be taxed at 15% as they are included in the assessable income of the fund for the financial year in which they are contributed. Note that a person only has one CC cap, regardless of how many employers they might have (even if the employers are not associates) or how many superannuation funds the person is a member of.

CCs made in excess of a member's CC cap will be subject to excess CC tax and taxed at a further 31.5% (on top of the 15% tax already levied on CCs). This penalty tax may either be paid by the member or the trustee of the superannuation fund. Excess CCs will also count towards the non-concessional contributions ('NCC') cap (see section 9.2).

Certain taxable contributions made to a superannuation fund are not regarded as CCs. These include directed termination payments (ie, certain payments made in respect of an employee on termination of employment rolled-over to a superannuation fund before 1 July 2012) and certain benefits transferred to an Australian superannuation fund from a foreign superannuation fund.

Note that there are special provisions that can be applied by the ATO to limit deductions where a taxpayer is deriving personal services income and claiming a tax deduction for an associate (eg, spouse or child). If there is any doubt regarding these issues, expert advice should be obtained.

Note also that individuals under 18 years of age will only be eligible to claim a deduction if they have derived income as an employee or from carrying on a business in the financial year in which they seek to make a superannuation contribution.

## **9.2. Non-Concessional Contributions**

NCCs are contributions that are not included in the assessable income of a superannuation fund as they are made from after-tax income. NCCs also include CCs that exceed a person's CC cap. As discussed at section 10.1, NCCs form part of the tax free component of a member's interest in a superannuation fund.

To the extent that NCCs are within a person's NCC cap for the financial year (see Item 2 of the Appendix), they will not be subject to any contributions tax as they are not included in the assessable income of the fund.



The trustee of a fund generally must not accept an NCC if that particular contribution is greater than the person's NCC cap (or three times the member's NCC cap if they are less than 65 years of age).

Any excess amount will be subject to excess NCC tax at 46.5%. This tax must be paid by the member. Note that in a situation where a member has excess CCs that also cause the member to exceed their NCC cap, they will also be subject to excess NCC tax at 46.5%, resulting in an overall tax rate of 93% (ie, 15% + 31.5% + 46.5%) on those amounts.

Members who were aged under 65 at any time in a financial year will be entitled to 'bring forward' the next two years worth of NCCs (based on three times the first financial year's NCC cap). The 'bring forward' will be triggered where a member makes NCCs in a particular financial year that exceed their NCC cap for that financial year.

If a member uses up the entire bring forward amount in the first financial year, they will not be eligible to make further NCCs until the start of the fourth financial year. However, if they do not use up the entire bring forward amount in the first year, they have the next two financial years over which to make contributions up to the 'bring forward' NCC amount. Contributions made in excess of the 'bring forward' NCC amount will be subject to excess NCC tax.

The following contributions do not count towards a member's NCC cap:

- Government co-contributions;
- amounts contributed up to the lifetime CGT cap amount (see Item 3 of the Appendix and section 9.4);
- payments that relate to structured settlements or orders for personal injury; and
- amounts rolled-over from a taxed superannuation fund.

### **9.3. Managing excess contributions**

As outlined above, contributions made in excess of a person's contributions caps can incur significant excess contributions taxes. It is important that members are aware of their caps and the amounts being contributed to their fund. It is strongly recommended that members keep an ongoing record of each and every contribution to review before making any further contribution. This will assist in determining whether any excess contributions tax will arise in respect of any financial year (or 3 successive financial years if the NCC bring forward rule is invoked).

If in doubt, members should contact their adviser and seek assistance before making a contribution. If a member suspects that they might have exceeded their cap or incorrectly contributed an amount to their fund, they should contact their adviser immediately. There is no guarantee that an amount, once contributed, can be returned. However, if the member and their adviser act quickly, there may be more avenues to minimise potential excess contribution situations.

### **9.4. Small Business Contributions**

Up to the CGT Cap Amount (see Item 3 of the Appendix) may be contributed to a fund as an exception to the NCC cap discussed above at section 9.2 in respect of amounts that relate to the small business CGT concessions in Division 152 of the *Income Tax Assessment Act 1997* (Cth) ('ITAA 1997'). These contributions form part of the tax free component in the fund.

This relief is available to the following contributions made as a result of the disposal of 'active assets' (ie, used in business), subject to satisfying the complex criteria in Division 152 (in particular, the net asset value test or turnover test):

- capital proceeds from the disposal of active assets that qualify for the 15-year exemption;

- capital proceeds from the disposal of active assets that would have qualified for the 15-year exemption except that there was no capital gain and/or the asset was a pre-CGT asset; and
- capital gains from the disposal of active assets that qualify for the retirement exemption, subject to the \$500,000 CGT retirement exemption limit in Division 152.

To be eligible for the exemption from the NCC cap, the contribution must be made on or before the later of when the member is required to lodge their tax return and 30 days after they receive the amount qualifying for the small business concessions. Further, the member must notify the trustee of the fund of their choice to apply the exception on or before the time the contribution is made.

Those who wish to claim small business CGT concessions should seek advice beforehand as there are additional complex rules that must be met and the above is a broad summary only.

## **9.5. Superannuation Guarantee**

Generally, employers are required to contribute the minimum level of employer superannuation support for each employee (ie, Superannuation Guarantee; 'SG') as required by the *Superannuation Guarantee (Administration) Act 1992* (Cth) ('SGAA'). It is important that employers ensure they make the minimum level of superannuation contributions for each employee and any other contractor or person covered by the SGAA. Note that the SGAA requires the minimum superannuation contribution to be made for payments that are wholly or principally for a person's labour.

The minimum level for each employee is 9% of the employee's ordinary time earnings. An employer is not required to contribute more than the minimum level of employer superannuation support to the extent the employee's salary exceeds the maximum contribution base (see Item 4 of the Appendix). In addition, the provisions of a Federal, State or Territory industrial award or industrial agreement may also dictate what type of fund can receive minimum employer contributions (eg, an industry fund). Subject to this qualification, an SMSF can accept SG contributions. There are no similar compulsory contribution rules in respect of self-employed persons.

Employers are required to comply with their SG obligation on a quarterly basis. The quarterly periods end on 30 September, 31 December, 31 March and 30 June each financial year. Employers have 28 days from the end of the relevant quarter in which to satisfy their SG obligations.

There is no requirement to provide SG support if an employee is over 70 years of age, earns less than \$450 per month or the employee is under 18 years and is a part-time employee.

Note, from 1 July 2008 the minimum contribution is based on 'ordinary' time earnings (and certain overtime payments may be excluded); prior to this, employers may have contributed on a different basis under certain awards or provisions in some superannuation funds.

## **9.6. Choice of Fund**

Most employers must give their employees a choice of superannuation fund into which each employee's superannuation guarantee contributions are paid. The fund that an employee chooses may be an SMSF, provided the employee gives their employer certain written information (including the details of their SMSF and how the employer can contribute to it). The ATO has issued a standard choice form for this purpose (NAT 13080). Further information on the choice of fund requirements can be found on the ATO website at [www.ato.gov.au](http://www.ato.gov.au).

## **9.7. Salary Sacrifice**

A tax-effective option for employees may be to organise to 'sacrifice' some of their pre-tax salary or remuneration package for additional employer CCs. Salary sacrifice arrangements enable pre-tax salary to be contributed into the superannuation environment. Although a low tax rate of 15% generally applies when entering the superannuation environment, this may still be beneficial when compared to paying tax at marginal tax rates plus the Medicare levy. The potential tax benefit is only one issue to consider when deciding whether to salary sacrifice. Other issues that

should be considered include a person's overall circumstances, any available tax offsets, preservation issues and income needs.

Note, salary sacrifice contributions are regarded as CCs and therefore count towards a member's CCs cap (see section 9.1). Care should also be taken when making salary sacrifice arrangements with an employer so as to ensure the employer still makes SG contributions (in addition to salary sacrifice contributions) based on pre-salary sacrifice salary.

Salary sacrificing also impacts eligibility for certain Government entitlements (eg, it is included as income for Centrelink income test purposes).

## **9.8. Government Co-Contribution Scheme**

Under the Government Co-Contribution Scheme, a member who makes NCCs to superannuation may be eligible to receive a Government co-contribution.

For every \$1.00 contributed by a member who is eligible to take part in the scheme, the Government will also contribute up to \$1.00. The maximum co-contribution of \$1,000 is reduced by 3.333 cents per dollar where total income (ie, the sum of a person's assessable income and reportable fringe benefits total, or in the case of a self-employed person, gross assessable business income less expenses for the financial year) is over the Lower Income Threshold (see see Item 7 of the Appendix), and is phased at the Higher Income Threshold (see Item 8 of the Appendix).

Broadly, to be eligible to take part in this scheme, a member must:

- make an NCC in the financial year to superannuation;
- have total income below the higher income threshold for the financial year;
- be less than age 71 at the end of the financial year; and
- 10% or more of a member's total income can be attributed to engaging in activities which enable the member to qualify for SG or 10% or more of a member's total income can be attributed to carrying on a business. Note that the reduction for business expenses in respect of self-employed persons does not apply to determining if the 10% test is satisfied.

The Government Co-Contribution will form part of the tax free component once paid to the superannuation fund and, as stated at section 9.2, will not count towards the member's NCC cap.

The ATO administers this system by obtaining information from the taxpayer's and superannuation fund's annual tax returns.

## **9.9. Acceptance of Contributions**

### **(a) Overview**

Contributions can be made to a superannuation fund subject to certain tests being satisfied. The ability of a fund to accept contributions depends on the age of the member and, where they are aged 65 years or over, whether they are gainfully employed. In particular, a person aged 65 years or over must be gainfully employed on at least a part-time basis to be able to contribute to a fund (see sections 9.9(c) to 9.9(d)). 'Part-time basis' is defined, in relation to a financial year, to require employment for at least 40 hours in a period of not more than 30 consecutive days in that financial year.

A member is gainfully employed if they are employed (including self-employed) for gain or reward in any business, trade or profession. The gain or reward must be the receipt of remuneration such as wages, business income (if self-employed) or commissions in return for personal exertion. Mere receipt of investment income, by itself, does not constitute gainful employment.

Furthermore, NCCs cannot be accepted by the Trustee if the member's tax file number is not provided or the NCC exceeds the member's NCC cap (see section 9.2).

**(b) Members under 65 years of age**

Contributions can be accepted in respect of a member under age 65, with no requirement for them to be gainfully employed.

**(c) Members who have reached age 65 but not age 75**

Contributions can be accepted if:

- they are mandated employer contributions;
- they are employer contributions (other than mandated contributions);
- the member is gainfully employed at least on a part-time basis, as defined above (and if the member is over 70 but below 75 years, provided the contributions are made by the member); or
- certain payments from a First Home Saver Account.

If the member is aged 75, the contribution must be made within 28 days after the end of the month in which the member attains age 75.

**(d) Members who have reached age 75 or over**

Contributions can only be accepted if the contribution is a mandated employer contribution.

**9.10. Contributions Splitting**

Generally, only employer contributions (including salary sacrifice contributions) and eligible person contributions made to a fund by or in respect of a member in the prior financial year can be split for the benefit of the member's spouse. NCCs cannot be split.

The maximum taxed amount which can be split by a member is the lesser of:

- 85% of their CCs for that financial year; and
- their CC cap for that financial year.

However, contributions cannot be split in favour of a spouse that has either attained age 65 or has attained their preservation age (refer to section 10.5) and has retired.

SMSFs do not have to allow contributions splitting. However, where this flexibility does exist, members need to forward a request to the trustee specifying details about the desired split after the end of the relevant financial year and generally before 31 October after the end of that financial year. Upon receipt, the trustee then has 90 days to effect the split.

**9.11. Eligible Spouse Contributions**

Where contributions are made for a spouse aged below 65 years, the contributing spouse may be entitled to a tax rebate for the contributions. A maximum \$540 rebate applies if the non-contributing spouse's taxable income is less than \$10,800. No rebate is available where the non-contributing spouse's income exceeds \$13,800. Eligible spouse contributions count towards the receiving spouse's NCC cap and form part of the tax free component.

## **10. Benefits**

### **10.1. Components**

A member's interest in a superannuation fund will consist of two components: 'tax free' and 'taxable'. These components are further divided into two sub-components as follows:

<b>Tax Free Component</b>	<b>Taxable Component</b>
<b><i>Crystallised Segment</i></b>	<b><i>Element Taxed</i></b>
<ul style="list-style-type: none"> <li>• Pre-1 July 1983 component</li> <li>• Undeducted contributions pre-1 July 2007</li> <li>• CGT exempt component</li> <li>• Concessional component</li> <li>• Post-June 1994 invalidity component</li> </ul>	<ul style="list-style-type: none"> <li>• Post-30 June 1983 component &amp; CCs</li> <li>• Non-qualifying component</li> </ul>
<b><i>Contributions Segment</i></b>	<b><i>Element Untaxed</i></b>
<ul style="list-style-type: none"> <li>• NCCs post-30 June 2007</li> </ul>	<ul style="list-style-type: none"> <li>• For SMSFs, an element untaxed will generally only exist where insurance forms part of the deceased's benefit and a lump sum death benefit is paid to non-dependants (see sections 13 and 14)</li> </ul>

## 10.2. Proportioning Rule

When a member (or their dependant(s) on their death) takes a benefit (ie, lump sum or pension) from a superannuation fund, the proportioning rule will apply to the benefit. Under the proportioning rule, lump sums and pensions drawn will consist of the same proportions of tax free and taxable components as the proportions of those components in the member's interest in the fund (subject to certain exceptions).

Therefore, if a member's interest in a fund consists of 80% taxable component and 20% tax free component, any lump sum or pension the member draws from their fund must reflect these same proportions. The member cannot, eg, take a pension using just the taxable component or just the tax free component. Further, on death, the tax free component cannot simply be streamed to non-tax dependants.

Note that in an SMSF, the member's accumulation benefits in the fund constitutes one superannuation interest (even if the member has multiple accumulation accounts within the fund). However, where a member of an SMSF is in receipt of a pension, a pension interest is always considered a separate superannuation interest to the member's accumulation (and it is also separate to any other pension interests within the fund).

## 10.3. Payment of Benefits

The sole purpose of maintaining a superannuation fund must be to provide benefits to members on retirement or on reaching their preservation age (see section 10.5), in the event of total and permanent disablement, or upon a member's death to pay a benefit to their dependants. Dependants are generally restricted to a spouse, children, and other persons who were financially dependent on or had an interdependency relationship with the deceased.

There are limited exceptions where benefits can be paid in other circumstances. The main exceptions are:

- to pay a member a transition to retirement income stream ('TRIS') after the member has reached preservation age (see section 12.2);
- where a member suffers from a terminal medical condition;
- on severe financial hardship to the extent approved by the trustee;
- on compassionate grounds to the extent approved by the trustee and the ATO;
- on termination by the member of gainful employment with an employer who has contributed to the fund where the member's benefit is a restricted non-preserved benefit;
- where the benefit is an unrestricted non-preserved benefit;

- on the temporary disablement of a member so long as the benefit is provided only to replace the income of a member as a non-commutable pension over a period which does not exceed the period of temporary disablement. Insurance can be taken out to provide for this risk but a tax deduction can only be claimed for such insurance under limited circumstances;
- a temporary resident withdrawal benefit if a person has been a resident of Australia for a temporary period;
- any other type of permissible benefit under the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA') and *Superannuation Industry (Supervision) Regulations 1994* (Cth) ('SISR');
- the benefit is provided for other miscellaneous purposes approved by the regulator (ie, the ATO for SMSFs) in writing; or
- the benefit is cashed in favour of the Commissioner of Taxation in accordance with a release authority, eg, to pay excess contributions tax.

The amount of benefits available to members generally depends upon the amount in the fund and the members' entitlements. However, the fund can purchase an insurance policy to enable increased death or disability benefits to be provided.

An SMSF is generally conducted as an accumulation fund (rather than a defined benefit fund) whereby benefits accumulate in distinct accounts for members and from which entitlements can be paid on a lump sum or pension basis once a condition of release is satisfied.

The balance of a member's account will depend on a range of factors including the amount contributed to the fund by or on behalf of the member and the net earnings (after expenses and taxes) on those contributions. Unless agreed otherwise, there is no compulsion or obligation to make contributions to a superannuation fund. However, see section 9.5 regarding an employer's compulsory quarterly SG obligations.

Members should be notified of any material change as soon as practicable. They should also be notified of their financial position in the fund after the end of each financial year and on request. In addition, members should be provided with information relating to any changes to the fund's Governing Rules and of such other matters required by the SISA, *Corporations Act 2001* (Cth) ('CA') and other relevant law.

Ordinarily, benefits are calculated as follows:

- in the event of the death or disablement of the member: an amount equal to the member's account balance, plus any insurance proceeds, is generally payable; or
- generally for any other event with no cashing restrictions (eg, on retirement or reaching 65 years): an amount equal to the member's account balance is payable.

However, benefits paid under other circumstances (eg, financial hardship or temporary incapacity) are more restricted. Further, the Trustee may have other amounts (eg, reserves) to supplement a person's benefit.

There are a range of events that may give rise to a benefit described in this PDS. Expert advice should be sought.

#### **10.4. Types of Benefits**

Broadly, the trustee may provide a benefit payable to the member as:

- a lump sum. Note that if the fund has individuals acting as trustees, a lump sum may only be paid if a pension entitlement is requested by the member and then, if permitted by the SISR, surrendered to a lump sum. If a corporate trustee is appointed, a lump sum can be paid without the need to surrender a pension entitlement;
- an account-based pension (see section 12.1);

- a transition to retirement income stream (see section 12.2);
- an annuity which can be acquired from an approved fund. If an SMSF does not wish to have the responsibility of paying a pension and undertaking the administration of same, then the responsibility can be outsourced or transferred completely (eg, by roll-over) to another approved fund. There are various options in regard to an annuity that replicates the types of pensions and benefits discussed above provided by another complying fund;
- a miscellaneous benefit (to the extent the benefit is not one of the above). Miscellaneous benefits include the payment of an income stream on temporary disablement or payment on the grounds of severe financial hardship or compassion. The SISR provide tests that must be satisfied to access benefits for the above reasons;
- any other benefit permitted by the SISR (eg, see section 10.3); or
- a combination of the above which may include more than one of each.

### **10.5. Preservation — Accessing Superannuation Money**

The amount of benefits that can be paid before retirement from the work-force before age 55 (or up to age 60 for persons born after July 1960) are significantly restricted by the preservation rules.

Broadly, the preservation rules require that all 'preserved' benefits must be retained in a superannuation fund until one of the following conditions of release occur:

- a member reaches age 65;
- a member reaches age 60 and either the member ceases a position of gainful employment on or attaining age 60 or the Trustee is reasonably satisfied that the member intends to never again become gainfully employed on a full-time or part-time basis ie, 10 hours or more per week;
- a member reaches preservation age, retires from the work-force and the Trustee is reasonably satisfied that the member intends to never again become gainfully employed on a full-time or part-time basis, ie, 10 hours or more per week. For those born between July 1960 and July 1964 this 'preservation age' progressively increases from age 56 to age 60 (see Item 5 of the Appendix); or
- a member dies, suffers a terminal medical condition or is permanently incapacitated.

Note that once a member has attained their preservation age they may access their benefits by way of a TRIS (see section 12.2), even if they have not retired.

The ability to withdraw benefits by a non-working member should be properly documented if the person has never been gainfully employed. In these circumstances the person must generally attain 65 years to access their benefit. However, a person who becomes gainfully employed and ceases that employment after attaining their preservation age (see above) may be able to access some of their benefit.

Broadly speaking, from July 1999, all benefits contributed into a fund will be preserved, aside from any non-preserved amount accrued before that date or any non-preserved amount that is subsequently rolled-over from another fund. The maximum amount of restricted non-preserved benefits at 1 July 1999 will then be set for future years.

The non-preserved amount is split between a restricted and an unrestricted amount. Typically a member must terminate employment with an employer that has contributed to that fund to become entitled to payment of a restricted amount. However, the unrestricted amount can be paid at any time, subject to the fund's cash-flow position. Members can access unrestricted amounts without having to retire or satisfy another condition of release.

The trustee must maintain records of each member's benefit and the different components that it may comprise. It is recommended that the trustee records each contribution and the nature of

each component immediately on receipt. Unless adequate records are kept, the benefit could be preserved in the fund until a condition of release is satisfied.

## **10.6. When a Payment Must be Made**

The trustee of a fund is only required to pay out a member's benefit on the death of the member. Accordingly, a member may continue to retain funds in the accumulation phase until death. On death, if the Trustee pays the benefit as a lump sum (instead of a pension), a lump sum may only be paid by way of an interim and final amount. Therefore, it cannot be paid by way of multiple lump sum payments.

When a benefit is paid by a fund, various reporting and notifications have to be completed primarily for taxation purposes. Prior to making any payment or withdrawal, you should seek expert advice to ensure all forms and requirements are satisfied.

## **10.7. Lump Sum and Pension Documentation**

In order to receive benefits from a fund, a member request should be provided to the trustee of the fund and trustee resolutions or other confirming documentation should be prepared noting the trustee's decision to pay the benefit. Where a pension is to be paid to a member, in addition to the usual pension documents a product disclosure statement, specific to the type of pension requested, should be handed to the member on or before payment of the pension. Appropriate adjustments to the fund's records should also be made in the case of payment of a lump sum or pension.

## **10.8. Quarantining Assets and Investments**

The Governing Rules give the trustee power to quarantine particular assets or investments transferred to or acquired by the trustee for the benefit of particular members or a class of membership in the fund.

Broadly, the trustee can quarantine assets and investments in three different ways. First, the trustee can quarantine assets such that other members can potentially benefit from the asset or investment at a later date. Alternatively, the trustee can choose to quarantine assets and investments in the fund for the benefit of particular members of the fund and only those members can benefit from that asset (ie, new members cannot benefit from the asset at a later point in time). Finally, the trustee may quarantine property transferred to the fund by a member such that the property is held within the fund solely for the benefit for that member and that any net income, gain or loss is made on the sale of that asset will flow to that member's account. Quarantining an asset may be required to obtain stamp duty concessions on the transfer of typically business real property in certain states and territories, eg, NSW and WA. Therefore, careful consideration should be given before adopting such a restrictive approach to quarantining assets and investments in the fund.

In all cases, appropriate trustee resolutions and accounts should be prepared.

# **11. Taxation**

## **11.1. Lump Sums**

That part of a lump sum consisting of the tax free component is received by a member tax-free.

The taxable component (consisting of the element taxed) of a lump sum is taxed as follows:

- members younger than age 55: the amount is subject to tax at 20% plus the Medicare levy;
- members older than age 55 but less than age 60: low rate cap amount (see Item 6 of the Appendix) is received tax-free and the balance is subject to tax at 15% plus the Medicare levy. Each person only has one cumulative low tax cap in relation to their taxable component; and
- members age 60 or older: benefits are tax-free.



## 11.2. Pensions

Broadly, where a member is under 60 and is in receipt of a pension, the pension is taxed as ordinary income. However, a 15% tax offset applies to the assessable amount (ie, the taxable component) of the pension payments for those who have attained their preservation age. In addition, the amount of the pension representing the tax free component (see section 10.1) will be received tax-free. Once a member is 60 years or over, all pension payments are received entirely tax-free and are not included in the member's tax return.

The tax treatment of pensions is summarised as follows:

Age of Pensioner	Tax Treatment
Preservation age or over but under 60	Pension payment less the tax free component is subject to tax at the member's marginal tax rate less a 15% offset
60 or over	Pension payments are generally received tax-free

## 11.3. Forms

If the member is under 60 years of age, to the extent that the lump sum consists of a taxable component, a Tax File Number ('TFN') declaration and a Pay As You Go ('PAYG') payment summary must also be completed and lodged with the ATO.

For members under age 60, the trustee has the responsibility for withholding the required amount of PAYG tax from any payments made to members and lodging PAYG payment summaries with the ATO. Thus, the trustee needs to be registered with the ATO as an employer for PAYG tax purposes before paying a benefit from a superannuation fund to a member under age 60 that consists of any amount of taxable component.

## 12. Pensions

A pension is a superannuation income stream payable in instalments over a certain period of time. A pension can be financed from fund assets including fund reserves. Alternatively, annuities can be purchased from an insurance company or a financial institution by a fund trustee or a member.

SMSFs can generally only provide account-based pensions (see section 12.1) or a TRIS (see section 12.2). However, before 20 September 2007, an SMSF could have also provided allocated pensions and market linked pensions (and these can continue to be paid even after this date). Market linked pensions may also be commenced in an SMSF after 19 September 2007 in certain limited cases.

Expert advice should be obtained prior to commencing a pension as the following is only a broad overview. Such advice should, amongst other things, explain in detail the risks, benefits and entitlements of the pension and the requirements of establishing and paying such a pension. Further, appropriate pension documentation should be prepared prior to commencing the pension. A separate PDS is required to be issued in respect of conversion of a member's fund balance to a pension under the CA.

### 12.1. Account-Based Pensions

An account-based pension is a pension paid from a person's account balance in the fund. Therefore, an account-based pension is payable as long as there is a remaining pension account balance.

The amount paid each year must meet at least the minimum annual pension payment amount determined at 1 July each year (except in the year of commencement if the commencement date is a date other than 1 July, in which case only a pro-rated minimum needs to be paid). Broadly, the minimum amount that must be paid is determined by multiplying the pension account balance as at 1 July by the relevant percentage factor set by the SISR, which is based on the age of the

pensioner. There is no cap on the maximum pension payments that may be received in any one year. The annual pension amount and the account balance of an account-based pension may fluctuate from year to year depending of the types of investments held and the performance achieved.

The normal minimum amount payable on an account based pension (including a TRIS, allocated and market linked pension) is 50% of the normal minimum amount for the 2008-09, 2009-10 and 2010-11 financial years and 75% of the normal minimum amount for the 2011-12 financial year.

The account balance can be paid as a pension or a lump sum at any time. Thus, an account-based pension is flexible because the pension can be received without losing access to capital. Further, any remaining balance can be given to dependants or beneficiaries upon the pensioner's death.

## **12.2. Transition To Retirement Income Stream**

A member who has reached their preservation age (see section 10.5) is able to commence a TRIS, even if they have not satisfied a condition of release. Broadly, a TRIS is an account-based pension that has certain restrictions on commutation of the pension. Further, pension payments are limited to 10% of the account balance, determined as at 1 July each year.

The TRIS is designed to provide people with access to their superannuation moneys upon attaining their preservation age without having to retire.

Generally, a TRIS cannot be commuted (ie, converted to a lump sum) unless:

- the member was able to access the moneys before the TRIS was commenced; or
- since the commencement of the TRIS, the member has satisfied a condition of release (see section 10.5).

If either of these conditions do not apply, then the member cannot cash out their benefits. However, the moneys are able to be rolled-back into the accumulation phase (ie, the pension ceases).

Note that, under the DBA Lawyer's Governing Rules, when a member who is receiving a TRIS satisfies a condition of release after commencing the pension, the restrictions on the ability to commute the income stream and the 10% cap on annual pension payments become redundant and the pension is the equivalent of a normal account-based pension.

Note also that where a member wishes to cease a TRIS (at any stage), any amounts that are still preserved must be rolled-back into superannuation, ie, they cannot be cashed out of the fund as a lump sum. However, the ability to cash benefits that were able to be cashed out prior to the commencement of the pension is not affected.

## **12.3. Lump Sums and Pensions**

A long-term view should generally be taken when accessing superannuation benefits.

Therefore, the optimal benefit mix may be a combination of lump sum and pension payments, rather than just one of the pensions described above. A significant tax advantage of a pension is that once the fund starts to pay a pension, the fund is exempt from income tax in respect of those assets used to pay the pension. However, extra administrative work may be involved in maintaining a pension in the fund and the annual minimum payments must be met each year. An actuarial certificate is generally required each year where the pension assets are not segregated. Broadly, segregation involves setting aside specific assets to fund a pension and tracking the earnings and expenses in respect of those assets. The ATO also consider that a fund is segregated if all of its assets are applied towards funding one or more pensions. Expert advice should be obtained to ensure the optimal benefit mix is obtained in the case of each member, given their particular circumstances and needs.

## 13. Insurance

The trustee can take out insurance in respect of a member's death, disablement (temporary or permanent) or both.

The amount of a member's benefit where insurance is received (eg, upon their death or disablement) is generally the balance in their member account plus any policy proceeds. Otherwise, the amount is generally determined solely by reference to the account balance.

The ability to pay for a death benefit via a tax-deductible insurance policy provides an opportunity to increase a member's benefit in a tax effective manner. Tax dependants receive insurance proceeds tax-free. However, non-tax dependants will be taxed at 31.5% on a lump sum death benefit to the extent it consists of an element untaxed. A special formula applies to calculate the element untaxed.

It should be noted that the premium on a term life or disability policy paid by a fund may be tax-deductible to the fund depending on the type of policy. From 1 July 2011 a premium for total and permanent disability ('TPD') will only be tax deductible to the extent it is for a general occupation definition of TPD as opposed to an occupation specific definition (and consequently a higher premium).

It is critical that members consider any impact that changing funds may have on their insurance entitlements. While insurance can be effected in an SMSF, it may not be as cost effective as a public offer fund. Some people may also have difficulty obtaining insurance cover if they have health or other medical conditions.

It is also possible for the trustee to take out a trauma insurance policy for a member. However, in the event of trauma and when insurance proceeds are paid into the fund, the member might not be able to access these immediately if they have not satisfied a relevant condition of release (eg, trauma might not necessarily make the member permanently disabled).

Expert advice should be obtained regarding what type of insurance is appropriate, if any, and what tax and other implications should be considered.

## 14. Estate Planning

### 14.1. Payment of Death Benefits

Subject to where a binding death benefit nomination ('BDBN') (see section 15) is in place, the trustee is given the power to choose between paying a deceased member's benefit directly to the deceased member's dependants and/or legal personal representative ('LPR') of the deceased member's estate (ie, the executor), to be dealt with in accordance with their Will.

If a member dies, the trustee may only pay a deceased member's benefits directly to their dependants as follows:

- to a tax dependant: as a pension or lump sum death benefit, and if the dependant is a child of the member:
  - the child is under 18 years of age (and the pension must generally be commuted on the day the child attains age 25); or
  - the child is financially dependent on the member and less than 25 years of age (and the pension must generally be commuted on the day the child attains age 25); or
  - the child is permanently disabled; or
- to a non-tax dependant: as a lump sum death benefit.

In the case of direct payment of a death benefit from a superannuation fund, nominated dependants are paid despite entitlements (if any) of the dependant under the estate of the deceased member. This can be an advantage as family disputes relating to a deceased person's affairs can delay or reduce entitlements under a deceased estate.

It is possible for an LPR to step in as trustee (or director of a corporate trustee) of the fund on the member's death. However, this does not happen automatically and special documentation can be put in place to plan for smooth succession. Further, the LPR can generally only act up until the time that death benefits commence to be payable: see section 14.4 on the role of trustee after death.

## 14.2. Consequences for Wills

A member's superannuation does not form part of their estate unless the trustee of the deceased's superannuation fund pays their interest in the fund to their LPR. Therefore, care must be taken in preparing a person's Will to cater for the event that superannuation forms part of the deceased member's estate. Wills should be reviewed on a regular basis with professional assistance to ensure that consequences under superannuation funds and trusts, in which the member is also involved, are adequately dealt with.

There is much to be gained in consulting professionals with expertise in Wills, tax and superannuation to ensure that all planning is integrated to ensure the right assets pass to the right persons at the right time.

## 14.3. Tax Payable on Death Benefits

The amount of tax payable on a lump sum paid by a superannuation fund upon the death of a member depends on whether the member is a dependant for tax purposes. A dependant for tax purposes includes a spouse, a child under age 18 or any person who was financially dependent on or in an interdependency relationship with the pensioner. Accordingly, an adult child will generally be taxed as a non-dependant.

On the other hand, pensions can only be paid to persons who are tax dependants (recall adult children generally cannot receive a pension: see section 14.1). For pensions, the tax treatment depends on the ages of both the recipient (at the time pension payments are received) and the deceased (on the date of death).

The tables below indicate how lump sums and pensions are taxed on the death of the member:

<b>Lump Sum Death Benefit</b>	<b>Tax Treatment</b>
Dependant	<ul style="list-style-type: none"> <li>Entire balance received tax-free</li> </ul>
Non-Dependant	<ul style="list-style-type: none"> <li>Tax free component received tax-free</li> <li>Taxable component is taxed at 16.5% (if the fund had insurance, this rate might be higher: see section 13).</li> </ul>
<b>Pension Death Benefit</b>	<b>Tax Treatment</b>
Deceased died aged 60 or over	<ul style="list-style-type: none"> <li>Payment to dependant is received tax-free</li> </ul>
Deceased died under age 60 but dependant is aged 60 or over	<ul style="list-style-type: none"> <li>Payment to dependant is received tax-free</li> </ul>
Deceased died under age 60 and dependant is also under age 60	<ul style="list-style-type: none"> <li>To the extent the pension payment reflects: <ul style="list-style-type: none"> <li>a taxable component, it is taxed at the dependant's marginal rate less a 15% tax offset</li> <li>a tax free component, it is tax-free</li> </ul> </li> <li>Pension payments will become tax-free once the dependant attains age 60</li> </ul>

Given the considerable tax concessions available in respect of benefits paid to dependants, most funds are encouraged to take out suitable insurance policies. However, as noted extra tax will apply if such proceeds are paid to non-dependants (see section 13).

There are also some tax deductions that may be available to the fund upon a member's death. Expert tax advice should be obtained to ensure these deductions are maximised.

#### **14.4. Succession to the Role of Trustee**

Succession to the role of trustee is an important succession planning issue. On the death of a member, the trustee is responsible for the administration of the fund, including (where there is no BDBN: see section 15) the decision as to how the deceased member's benefits will be paid out. If the deceased member did not have a BDBN in place, this decision is at the trustee's discretion. Furthermore, the continued operation of the SMSF (eg, where there are other surviving members or where an SMSF will continue to operate to pay out the deceased member's reversionary pension to a dependant) relies on there being a reliable trustee in place.

SMSF members should be aware that on their death, neither their LPR nor any other person automatically steps in for that deceased person as trustee; the LPR or other persons must be formally appointed, or a valid nomination of successor trustee must have been made but only where this is permitted by the SMSF's governing rules. Under the DBA Lawyer's Governing Rules it is possible for an individual trustee to nominate a successor trustee during their lifetime who will automatically step in as trustee after their death (or during their lifetime when they suffer legal incapacity), provided this satisfies the rules for SMSFs.

Where an SMSF has a corporate trustee, the appointment of directors (including the appointment of 'successor directors') is governed by the corporate trustee's constitution and therefore SMSF members who wish to plan for succession to their corporate trustee should ensure they have an appropriate constitution in place (note, many constitutions do not have any 'succession' provisions that are found in DBA Lawyer's constitution). Moreover, the ownership of shares in the company should also be considered as well as what voting rights are attached to them.

Where a deceased member made no nomination during their lifetime, the surviving members may still appoint the LPR of that deceased member as trustee (or such other person as satisfies the rules for SMSFs), however this does not automatically occur and relies on the members taking this step. A nomination made during a member's lifetime can therefore provide greater certainty.

### **15. What is a Binding Death Benefit Nomination?**

A BDBN offers certainty to a member as to how their superannuation benefits will be paid on their death. This is because the trustee is bound to pay a deceased member's benefit to the dependants nominated in a valid BDBN as opposed to the payment being left to the discretion of the trustee.

Where there is no such BDBN in place, generally the decision as to who receives the deceased member's death benefits is left to the discretion of the trustee. That is, in an SMSF context, if no BDBN is made, the successor trustee (generally, the surviving spouse or children) can exercise discretion as to who gets the deceased member's superannuation benefit. For this reason, a BDBN can restrict flexibility as to payment of benefits on death and could be problematic where a member has not updated their BDBN to reflect changes in their circumstances.

The manner in which the member's benefit is to be paid (eg, as a pension or lump sum) can also be specified in a BDBN under DBA Lawyer's Governing Rules, subject to section 14.1).

Note that the nomination of a preferred dependant in the 'Application for Membership' form that accompanies the Governing Rules is of some importance. This form should be carefully completed and reviewed by members from time to time to ensure that any nomination in it reflects their current wishes. However, unlike a BDBN, this is considered a non-binding death benefit

nomination, and accordingly, the trustee is still able to utilise its discretion in paying out member benefits. However, the trustee is required to take this nomination into account.

### **15.1. Who Can Be Nominated?**

As previously mentioned, a BDBN directs the trustee to pay a member's benefit upon death to their dependants or LPR. For superannuation purposes, 'dependant' includes a spouse of the member, a child of the member, and a person who was either financially dependent on the member or in an interdependency relationship with the member at the time of the member's death.

A 'spouse' includes a person, who, although not legally married to the member, lives with the person on a genuine domestic basis in a relationship as a couple. (This includes a same-sex spouse.)

In addition to biological children, a 'child' can also include an adopted and step-child of the member.

A person is in an 'interdependency relationship' with the member if they live with the member as part of a close personal relationship with the member, and one or each of them provides the other with personal care and financial and domestic support. Alternatively, a person can also be in an interdependency relationship with the member if they are in a close personal relationship with the member, but do not satisfy the other criteria as either one or both of them are being cared for professionally as they suffer from a physical, intellectual or psychological disability.

### **15.2. Issues to Consider before Signing**

Before a BDBN is considered, a review of the fund's governing rules should be undertaken to ensure that it enables a BDBN to be made. The Governing Rules provide for such a nomination to be made.

It is important to note that the Governing Rules do not require a BDBN to expire at the end of three years. (Some other superannuation funds automatically require a BDBN to expire at the end of three years). Nevertheless, once a BDBN is made, it should be reviewed on a regular basis to take into account the member's changing circumstances. Accordingly, it is generally recommended that a BDBN be reviewed and, if needed, revised at least every three years.

A simplified BDBN form is provided as an annexure to this PDS. This form allows the member to nominate their dependants or their LPR as the recipients of their death benefit. The proportion of benefit distributed to the dependants or LPR must total no more than 100%.

The BDBN form provided as an annexure to this PDS does not cover the situation where the nominated dependants may predecease the member, allowing a further level of nomination. It also does not allow the member to nominate how the benefit is to be paid, ie, by way of pension or lump sum.

A lawyer can draft a detailed BDBN which specifies to whom the benefit is to be paid if the first named dependants predecease the member. This may be appropriate in some cases to ensure that all circumstances are addressed and that the BDBN does not fail because the named persons have predeceased the member.

For example, a member may wish to have their death benefit paid to their spouse. However, if the spouse does not survive them, then they may want their benefit to be paid to their children. Provision may also be made to cover the situation where the member's children have predeceased them but have children of their own (ie, the member's grandchildren if they qualify as dependants) who have survived them. However, typically this would involve reviewing the person's Will as well.

A BDBN which covers the above situations requires special drafting and consideration of the member's circumstances. Each member's Will should also be reviewed in conjunction with preparing a BDBN. Note that it is recommended that a BDBN be prepared by a lawyer with

superannuation and estate planning expertise as there is a vital link between a person's Will and their BDBN.

## **16. Complaints and Cooling-Off**

Members should discuss any query or complaint they may have in relation to the fund in the first instance with the trustee. Although the trustee will generally attempt to accommodate member's wishes and resolve complaints, the trustee is bound to act in accordance with the Governing Rules, and the trustee's decision will be final and binding. If the trustee is unable to resolve a dispute, legal advice should be sought. SMSFs are specifically excluded from the Superannuation Complaints Tribunal's jurisdiction and complaints are generally dealt with via the courts. In any event, trustees should be given the opportunity to respond to any complaint or dispute. Members will be advised by the trustee about any commission, or other similar payments, that may impact on the amount of members' accounts.

Members should note that, generally, no 'cooling-off' regime applies to an SMSF (subject to the exception in the paragraph below). Thus, there is no easy way to cease to be a member and have contributions to the SMSF returned. Once a contribution is made it is preserved in the superannuation system and members can generally only obtain access to such moneys when they meet a relevant condition of release.

Note that a SMSF is subject to 'cooling off' requirements when a member elects to convert their benefits from the accumulation phase to the pension phase. Generally, this means that a member has a right to have a pension stopped and the monies returned to accumulation phase by notifying the trustee, generally within 14 days.

## **17. Additional Details Provided by the Trustee**

This PDS must provide all information that a reasonable person would require in relation to their membership of an SMSF. However, given that certain features of an SMSF depend upon how it will be managed, its assets invested and the future plans for the fund and its members, the trustee has disclosed such further information that cannot be included in a pro-forma PDS on the following pages. Accordingly, in so far as the PDS does not contain all the information required to be contained in a PDS under the CA, the authors of this PDS, their officers, employees and agents disclaim liability for any loss or damage however arising.

### **17.1. Additional Information**

**Trustee to complete this part before handing PDS to each member**

#### **(a) The costs of the superannuation interest.**

Unless otherwise stated below, costs may include (but are not limited to) accounting, investment advice, transaction costs and ongoing administration costs.

The nature and level of costs will depend on, amongst other things, the level of turnover of investments in the fund, the number of transactions and the costs for administering these. The trustees can seek to minimise these costs by undertaking some of these tasks themselves or incur costs to engage others to assist, eg, accountants and financial advisers.

Usually, expenses will be allocated at least annually on a proportionate basis among members' accounts. However, the trustee does have power to debit or allocate expenses on a different basis, eg, if the trustee allows the members to choose different investment portfolios, then there can be selective allocations of earnings and expenses based on these portfolios.

The trustee should not charge any commissions or fees while the trustee acts as trustee for an SMSF. However, the fund may incur commissions and similar fees in respect of its investments (eg, if the fund was to invest in a managed investment trust or public offer fund). Members will be

advised by the trustee of any commission or other similar payments that may impact on the amount of member's accounts.

.....  
.....  
**(b) The costs payable by a member in respect of the superannuation interest after its acquisition and the times at which those amounts will or may be payable.**

Unless otherwise stated below, costs payable by a member are largely related to the costs incurred by the trustee in administering the fund as outlined above at (a) and complying with the regulatory requirements. The trustee of the fund does not charge a fee merely in respect of the member's interest and there are no entry and exit fees.

.....  
.....  
**(c) Information regarding any commission or other fees, expenses or charges that may be incurred by the fund.**

Refer to (b) above. No commissions or other fees, expenses or charges are imposed by the trustee unless otherwise stated below.

.....  
.....  
**(d) Information regarding investments of the fund and the fund's proposed investment strategy. The trustees should ensure they have a detailed investment strategy and review it on a regular basis and give such information to the members at the earliest available opportunity.**

Refer to trustee resolutions or other documentation detailing the fund's investment strategy or as otherwise provided below.

.....  
.....  
**(e) If the trustee takes into account labour standards for the purpose of selecting, retaining or realising the investment, further detail should be provided as to:**

- (i) the policy or standards that the trustee considers to be labour standards for that purpose; and
- (ii) the extent to which the trustee takes that policy or those standards into account in the selection, retention or realisation of the investment.

Labour standards will not be taken into account unless specified here.



(f) **If the trustee takes into account environmental, social or ethical considerations for the purpose of selecting, retaining or realising the investment, further detail should be provided as to:**

(iii) the policy or standards that the trustee regards as environmental, social or ethical for that purpose; and

(iv) the extent to which the trustee takes that policy or those considerations into account in the selection, retention or realisation of the investment.

Environmental, social and ethical issues will not be taken into account unless specified here.

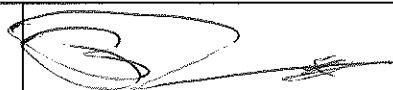
.....  
.....  
(g) **Information that might have a material influence on the decision of a reasonable person to become a member of the fund or any other information the trustee considers relevant.**

Refer to information detailed in this PDS and as may be provided below.

.....  
.....  
(h) **Any other relevant or material information should be inserted below or on a separate annexure.**

.....  
.....  
Please contact the trustee at the address shown on the front cover of the SMSF PDS if you require any further information:

**Signed by the  
Trustee**



## APPENDIX: FIGURES FOR 2011–12

### **Item 1      Concessional Contributions Cap**

\$25,000\* per person per financial year

\* A transitional concessional contributions cap of \$50,000 per person per financial year applies until 30 June 2012 for persons aged 50 years or over.

### **Item 2      Non-Concessional Contributions Cap**

\$150,000 per person per financial year\*

\* Persons under 65 years may contribute up to \$450,000 in non-concessional contributions over a three-year period

### **Item 3      CGT Cap Amount**

\$1,205,000

### **Item 4      Superannuation Guarantee Charge**

Maximum Contribution Base per Quarter	\$43,820
---------------------------------------	----------

### **Item 5      Preservation Age**

Date of Birth	Preservation Age
Before 1 July 1960	55 years
During the year 1 July 1960 to 30 June 1961	56 years
During the year 1 July 1961 to 30 June 1962	57 years
During the year 1 July 1962 to 30 June 1963	58 years
During the year 1 July 1963 to 30 June 1964	59 years
After 30 June 1964	60 years

### **Item 6      Low Rate Cap Amount**

\$165,000

### **Item 7      Lower Income Threshold**

\$31,920

### **Item 8      Higher Income Threshold**

\$61,920

# Deduction for personal super contributions

How to complete your *Notice of intent to claim or vary a deduction for personal super contributions*

**!** This form should only be used for personal contributions made after 1 July 2007.

## WHO SHOULD COMPLETE THIS NOTICE?

You should complete this notice if you:

- ▣ intend to claim a tax deduction for your personal contributions, or
- ▣ want to vary a previous notice of intent you gave your super fund.

Your super fund may request the information in this notice:

- ▣ when you make your contribution
- ▣ at the end of the financial year, or
- ▣ as part of another form.

When you decide whether to claim a deduction for super contributions, you should consider the effect on your super co-contribution eligibility.

**➤** For more information about super co-contributions and tax deductions, refer to *Super co-contribution* (NAT 10596).

## WHEN SHOULD I COMPLETE THIS NOTICE?

You must lodge a notice of intent to claim a deduction with your super fund before whichever of the following occurs first:

- ▣ the day you lodge your income tax return for the year the contributions were made, or
- ▣ the end of the income year after the income year in which you made the contributions.

This does not apply, if you are varying a notice as a result of us not allowing a deduction and you are reducing the amount of a previous notice by the amount that is disallowed.

**➤** For more information about deductions for personal super contributions, refer to *Claiming deductions for personal super contributions* (NAT 71975).

**!** In this publication when we refer to a super fund, we mean:

- ▣ a super fund
- ▣ a retirement savings account, or
- ▣ an approved deposit fund.

## HOW DO I COMPLETE THIS NOTICE?

### Section A: Your details

Provide your personal details so your super fund can identify you, including your:

- 1 tax file number (TFN)
- 2 name
- 3 date of birth
- 4 postal address, and
- 5 daytime phone number (including the area code).

**!** You don't have to provide your TFN to your super fund. However, if your fund does not have your TFN, they may not be able to accept your contributions. Providing your TFN will also assist your fund in correctly identifying you.

### Section B: Super fund's details

Provide your super fund's details including their:

- 6 fund name
- 7 fund Australian business number (ABN), and
- 8 member account number that has received your personal contributions.

**!** You can find your super fund's ABN in your product disclosure statement or member statement. You can also search for their details on the *Super Fund Lookup*. This is available at [www.abn.business.gov.au](http://www.abn.business.gov.au)



## Section C: Contribution details

### Personal contributions details

Provide the financial year you made, or intend to make, the personal contribution to your super fund.

Provide the amount of the personal contribution that you made, or intend to make, that are covered by this notice. If you have made, or intend to make, more than one contribution in the year, this amount does not have to cover every contribution. But you should not include any amounts covered by a previous notice for the year unless you are varying the amount to be deducted.

If you are making a variation to an earlier notice to reduce the amount you intend to deduct, place an 'x' in the applicable box to indicate that you are making a variation.


Show the amount of the contributions you want to claim as a tax deduction. If you are varying the amount covered by a previous notice, the amount cannot be greater than the amount recorded on the original notice.

## Section D: Declaration


Read the declaration that applies to you. If it is correct, print your full name, sign and date the declaration.

Choose one of the following:

- 1 If you have not previously notified your super fund that you are intending to claim a tax deduction for the personal contributions you have detailed in this notice, you need to complete the **Intention to claim a tax deduction declaration**, or
- 2 If you wish to vary a previous notice of intent, you need to complete the **Variation of previous deduction notice declaration**. You can apply for a variation if
  - you have not yet lodged your income tax return and it is on or before 30 June in the financial year following the year you made the contribution, or
  - we have disallowed your claim for a deduction and you are applying to reduce the amount claimed as a deduction by the amount that we have disallowed.

 You can only vary a previous notice of intent to **reduce** the amount you are claiming as a personal deduction.

## HOW DO I CLAIM OR VARY MY DEDUCTION?

-  Send this completed notice to your super fund.




Your super fund will send you an acknowledgment. Once your notice of intent to claim a deduction has been acknowledged, you cannot revoke or withdraw it, but you can apply to reduce it.

You must have received acknowledgment from your super fund before you lodge your income tax return. Once you have lodged your tax return you cannot apply to vary the amount you are claiming as a personal deduction, except if we have disallowed your claim for the deduction.

### MORE INFORMATION

For more information about personal super contributions, refer to *Claiming deductions for personal super contributions* (NAT 71975).

To obtain a copy of our publications or for more information:

-  visit our website at **www.ato.gov.au**
-  phone **13 10 20** between 8.00am and 6.00pm, Monday to Friday, or
-  write to us at  
**PO Box 3100  
PENRITH NSW 2740**

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.



# Notice of intent to claim or vary a deduction for personal super contributions

## WHEN COMPLETING THIS STATEMENT

- Print clearly in BLOCK LETTERS using a black pen only.
- Use BLOCK LETTERS and print one character per box.

S M I T H S T

- Place ☒ in ALL applicable boxes.

**i** The instructions contain important information about completing this notice. Please refer to them for more information about how to complete and lodge this notice.

## Section A: Your details

### 1 Tax file number (TFN)

**i** You don't have to provide your TFN to your super fund. However, if your fund does not have your TFN, they may not be able to accept your contributions. Providing your TFN will also assist your fund in correctly identifying you.

### 2 Name

Title: Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other

Family name

First given name

Other given names

### 3 Date of birth

Day   / Month   / Year

### 4 Current postal address

Suburb/town/locality

State/territory

(Australia only)

Postcode

(Australia only)

Country if outside of Australia

### 5 Daytime phone number (include area code)

## Section B: Super fund's details

### 6 Fund name

### 7 Fund Australian business number (ABN)

### 8 Member account number

## Section C: Contribution details

### 9 Personal contribution details

Financial year ended 30 June 20

My personal contributions to this fund covered by this notice

\$    ,    .

Is this notice varying an earlier notice?

No ☐

Yes ☐

The amount of these personal contributions I will be claiming as a tax deduction

\$    ,    .

Section D: Declaration

Complete and sign one of the following statements that applies to you

INTENTION TO CLAIM A TAX DEDUCTION

Use this declaration if you have not previously lodged a notice with your super fund for these contributions.

I am lodging this notice before both of the following dates:

- the day that I lodged my income tax return for the year stated in section C, and
- the end of the income year after the year stated in section C.

At the time of completing this notice:

- I intend to claim the personal contributions stated in section C as a tax deduction.
- I am a member of the super fund stated in section C
- my super fund stated in section B still holds these contributions
- this super fund has not begun to pay a superannuation income stream based in whole or part on these contributions,
- I have not included these contributions in an earlier notice

The information given on this notice is correct and complete.

Name (Print in BLOCK LETTERS)

Signature

Date

OR

VARIATION OF PREVIOUS DEDUCTION NOTICE

Use this declaration if you have already lodged a notice with your fund for these contributions and you wish to reduce the amount stated in that notice.

I intend to claim the personal contributions stated in section C as a tax deduction.

I wish to vary my previous notice for these contributions by **reducing** the amount I advised in my previous notice.

I confirm that either:

- I have not yet lodged my income tax return for the relevant year and this variation notice is being lodged on or before 30 June in the financial year following the year the contribution was made, or
- the Tax Office has disallowed my claim for a deduction for the relevant year and this notice reduces the amount stated in my previous notice by the amount that has been disallowed.

The information given on this notice is correct and complete.

Name (Print in BLOCK LETTERS)

Signature

Date

Send your completed notice to your super fund.

**Do not send it to us.** The information on this notice is for you and your super fund. We don't collect this information; we only provide a format for you to provide the information to your super fund.

## BINDING DEATH BENEFIT NOMINATION

This Binding Death Benefit Nomination ('BDBN'), when completed, will provide a binding direction to your trustee as to whom your death benefit is to be paid upon your death. Please read section 15 of the PDS before completing this BDBN. We strongly recommend that you contact your adviser and your lawyer before completing this BDBN due to the risks of adversely impacting your estate plans if this task is not properly completed.

### SUPERANNUATION FUND DETAILS

Name: .....

### TRUSTEE DETAILS

Name: .....

Address: .....

### MEMBER DETAILS

Name: .....

Address: .....

### BINDING DEATH BENEFIT NOMINATION DETAILS

I revoke all of my prior binding and non-binding death benefit nominations and declare this to be my last BDBN.

I **DIRECT** the Trustee or any other company or natural person(s) that is the trustee at or after the date of my death to pay any benefit that may be payable in respect of my membership of the fund ('Benefit') on my death as follows:

(Please tick appropriate box(es))

☐ **My Dependants**

Name	Address	Occupation	Relationship to member	Share of Benefit%

AND/OR

☐ **My Legal Personal Representative**

<b>Total Benefit</b>	<b>100%</b>

**EXECUTION**

**Member:**

Signed by the Member the said	)	
	)	
in the presence of us both being present	)	Member's signature
at the same time who at the Member's request	)	
and in the Member's presence and in the	)	Date    ---/---/---
presence of each other have hereunto subscribed	)	
our names as attesting witnesses:	)	

**Witnesses:**

**Witness 1**

**Witness 2**

<i>Signature</i> -----	<i>Signature</i> -----
Full Name        -----	Full Name        -----
Home Address    -----	Home Address    -----
-----	-----
Occupation       -----	Occupation       -----
who declares that they have been present when the Member has signed this BDBN	who declares that they have been present when the Member has signed this BDBN
Date    ---/---/---	Date    ---/---/---