

## A7 - Jeanette Capacity.pdf

(g) has conspired with others to effect the contravention.

### 17A Definition of self managed superannuation fund

*Basic conditions—funds other than single member funds*

- (1) Subject to this section, a superannuation fund, other than a fund with only one member, is a *self managed superannuation fund* if and only if it satisfies the following conditions:
- (a) it has fewer than 5 members;
  - (b) if the trustees of the fund are individuals—each individual trustee of the fund is a member of the fund;
  - (c) if the trustee of the fund is a body corporate—each director of the body corporate is a member of the fund;
  - (d) each member of the fund:
    - (i) is a trustee of the fund; or
    - (ii) if the trustee of the fund is a body corporate—is a director of the body corporate;
  - (e) no member of the fund is an employee of another member of the fund, unless the members concerned are relatives;
  - (f) no trustee of the fund receives any remuneration from the fund or from any person for any duties or services performed by the trustee in relation to the fund;
  - (g) if the trustee of the fund is a body corporate—no director of the body corporate receives any remuneration from the fund or from any person (including the body corporate) for any duties or services performed by the director in relation to the fund.

Note: Section 17B contains exceptions to paragraphs (1)(f) and (g).

*Basic conditions—single member funds*

## Superannuation Industry (Supervision) Act 1993



- C2020C00218

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A7 - Jeanette has dementia. She is unable to sign the super fund documents. Her husband - Mike has enduring power of attorney. Have asked for a copy. SMSF will continue to meet a SMSf definition by 17A (3) (b) (ii) SIS Act 1993

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Note: Section 17B contains exceptions to paragraphs (2)(c) and (d).

*Certain other persons may be trustees*

- (3) A superannuation fund does not fail to satisfy the conditions specified in subsection (1) or (2) by reason only that:
- (a) a member of the fund has died and the legal personal representative of the member is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during the period:
    - (i) beginning when the member of the fund died; and
    - (ii) ending when death benefits commence to be payable in respect of the member of the fund; or
  - (b) the legal personal representative of a member of the fund is a trustee of the fund or a director of a body corporate that is the trustee of the fund, in place of the member, during any period when:
    - (i) the member of the fund is under a legal disability; or
    - (ii) the legal personal representative has an enduring power of attorney in respect of the member of the fund; or
  - (c) if a member of the fund is under a legal disability because of age and does not have a legal personal representative:
    - (i) the parent or guardian of the member is a trustee of the fund in place of the member; or
    - (ii) if the trustee of the fund is a body corporate—the parent or guardian of the member is a director of the body corporate in place of the member; or
  - (d) an appointment under section 134 of an acting trustee of the fund is in force.

*Circumstances in which entity that does not satisfy basic conditions remains a self managed superannuation fund*

- (4) Subject to subsection (5), if a superannuation fund that is a self managed superannuation fund would, apart from this subsection, cease to be a self managed superannuation fund, it does not so cease until the earlier of the following times:

*Circumstances in which entity that does not satisfy basic conditions remains a self managed superannuation fund*

- (4) Subject to subsection (5), if a superannuation fund that is a self managed superannuation fund would, apart from this subsection, cease to be a self managed superannuation fund, it does not so cease until the earlier of the following times:
- (a) the time an RSE licensee of the fund is appointed;
  - (b) 6 months after it would so cease to be a self managed superannuation fund.