

TOWNSENDS BUSINESS & CORPORATE LAWYERS



7 September 2016

Our Ref: JH:LA:1632052

The Sole Director
Northbound Investments Pty Ltd
c/- Mr Ron Palmer
Palmer's Chartered Accountants
PO BOX 276
DEE WHY NSW 2099

by email only: ron@palmer.com.au

Dear Sole Director

S&P ETERNAL GROWTH SUPERANNUATION FUND – CHANGE OF TRUSTEE

1. Instructions

- 1.1 Thank you for your instructions to prepare documents to change the trustee structure of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857 ("the Fund").
- 1.2 You have instructed us that the current individual trustees, Peter John Berney and Sarah Louise Cox, will be retiring as the Trustees of the Fund with Northbound Investments Pty Ltd ACN 112 194 797, being appointed as the new Trustee.
- 1.3 The documents have been prepared on the basis that the sole director and sole secretary of the new Trustee is Peter John Berney, who will be the sole member of the Fund, while Sarah Louise Cox will no longer be a member of the Fund. You have advised there will be no change of membership at this time. Please contact our office before executing the enclosed documents if this is not the case.

2. Current Rules of the Fund

- 2.1 We note that the Fund exited the SUPERCentral updating system effective on and from 25 June 2013 and your instructions that the rules of the Fund have not been amended since its exit from SUPERCentral.
- 2.2 Accordingly the current rules of the Fund are contained in Version 06/12 of the SUPERCentral Governing Rules and the documents have been prepared on that basis.
- 2.3 Rule 4 of the Trust Deed of the Fund permits the retirement of a Trustee of the Fund where the Trustee has arranged with another person for that person to act as the Replacement Trustee, and has evidenced this arrangement in writing, signed by both parties.

3. Exit of Member

- 3.1 We have prepared the change of trustee documents on the basis that the member exit has occurred before the Deed of Change of Trustee has been signed. Please ensure that the application to exit the Fund and record of decision confirming the application are signed and dated prior to the Deed of Change of Trustee.

Townsend's Business & Corporate Lawyers
Level 9, 65 York Street, Sydney NSW 2000
T: 02 8296 6222 F 02 8296 6200
E: info@townsendslaw.com.au
W: www.townsendslaw.com.au

Liability limited by a scheme approved under Professional Standards Legislation

- 3.2 Generally, depending upon the provisions of the Trust Deed, the member will remain a member until their benefits are paid out of the Fund in an approved manner. You have instructed us that the benefits for Sarah Louise Cox have already been paid out and accordingly she is no longer a member of the Fund.

4. Enclosures

- 4.1 We **enclose** the following documents in relation to the proposed change of trustee in respect of the S&P Eternal Growth Superannuation Fund:

- (a) Deed of Change of Trustee;
- (b) record of decision of the retiring Trustees;
- (c) resolutions of the new Trustee and trustee/director consent forms;
- (d) ATO NAT 3036 – change of details for superannuation entities – instructions;
- (e) ATO NAT 3036 – change of details for superannuation entities – form; and
- (f) ATO NAT 71089 – ATO trustee declaration form;

to be completed, dated and signed with the names of the relevant individuals where necessary.

- 4.2 The retiring Trustees must sign the Deed of Change of Trustee in the presence of an independent adult witness (i.e. the retiring Trustees cannot witness each other's signatures) who signs and inserts their details where required. No witness is required for the sole director's signature.

- 4.3 We **enclose** the following documents in relation to the exited member in respect of the S&P Eternal Growth Superannuation Fund:

- (a) record of decision for exit of adult member (rollover transfer);
- (b) ATO NAT 70764 – superannuation lump sum pre-payment statement;
- (c) ATO NAT 71223 - request to transfer benefits form;
- (d) ATO NAT 70944 – rollover benefits statement; and
- (e) ATO NAT 70945 – how to complete a rollover benefits statement;

to be completed, dated and signed with names of the relevant individuals where necessary.

5. ATO notification – change of member

- 5.1 You will need to complete and lodge an ATO form entitled "Change of details of superannuation entities" to the following address:

**Australian Taxation Office
PO Box 3373
PENRITH NSW 2740**

within 28 days of the exit of the member. The obligation to provide notice to the ATO is imposed by Reg 11.07AA of the *Superannuation Industry (Supervision) Regulations 1994* and providing it to the ATO on time is a prescribed operating standard with which it is an offence not to comply.

6. ATO notification – change of trustee

- 6.1 You will need to complete and lodge an ATO form entitled “Change of details of superannuation entities” to the following address:

**Australian Taxation Office
PO Box 3373
PENRITH NSW 2740**

within 28 days of the change occurring in the trustee structure of the Fund. The obligation to provide notice to the ATO is imposed by Reg 11.07AA of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) and providing it to the ATO on time is a prescribed operating standard with which it is an offence not to comply.

7. Separate notifications

- 7.1 As the change of member and the change of trustee will occur on different days, separate ATO notifications must be provided.

8. Trustee/director consent form

- 8.1 This form must be signed by the new sole director at the time, or before, the Deed and resolutions are signed.
- 8.2 The signed forms must be kept on the register of the Fund.

9. ATO trustee declaration

- 9.1 The ATO “Trustee Declaration” must be signed within 21 days of the sole director being appointed. Signing the Declaration is obligatory for all new individual trustees and new directors of corporate trustees of superannuation funds appointed after 1 July 2007. Once completed and signed it should be kept on the register of the Fund. The ATO can impose administrative penalties of up to \$1,800 or fines of up to \$9,000 if it is detected on audit that these declarations have not been completed.
- 9.2 The ATO Trustee Declaration must be read in conjunction with the “Key messages for self-managed super fund trustees” information available on the ATO website.

10. Capital gains tax

- 10.1 There are no capital gains tax consequences arising from the mere change of trustee of a superannuation fund. The appointment of a trustee and the retirement of a trustee are not CGT events by reason of paragraph 104-10(2) of the *Income Tax Assessment Act 1997* (Cth).
- 10.2 There may be capital gains tax consequences arising from the exit of the member of a superannuation fund. Where a benefit is paid out as a result of the exit of the member, the assets of the fund may be sold or an in specie payment may be made which triggers a CGT event under the *Income Tax Assessment Act 1997* (Cth).

11. Duty

- 11.1 Duty may be imposed on the Deed of Change of Trustee. Appendix A of this advice provides a summary for each jurisdiction as to whether the Deed of Change of Trustee is dutiable and, if so, the relevant duty.
- 11.2 Duty may also be imposed on any title transfer documents in respect of dutiable property (such as real estate) which are required to be prepared in order to transfer legal title from the former Trustees to the replacement Trustee. Appendix B of this advice provides summaries for each jurisdiction as to whether the title transfer documents are liable for duty and, if so, the amount of the duty. Any duty liability on title transfer documents is determined by the jurisdiction in

which the relevant property is situated.

12. Ownership and titles

- 12.1 The title records of assets of the Fund including land, shares and securities must be updated to reflect the change in trustee structure. This should be done as soon as practicable after the signing of the Deed of Change of Trustee.
- 12.2 The relevant registries will usually need to sight the signed Deed of Change of Trustee as evidence of the change in trustee structure.
- 12.3 Where the asset is land conveyancing is needed to record the new Trustee as the registered proprietor of the land. Conveyancing and registration fees and charges will usually be incurred to effect the updating of title records.
- 12.4 Please note that the ATO requires all fund assets to be held in the name of the corporate Trustee or all of the individual Trustees. This is a matter on which the fund auditor is expected to report. Accordingly, once the Deed of Change of Trustee has been signed, it will be necessary to update the title documents of the Fund's assets to reflect the change in trustee. The asset transfer documents will need to be signed and lodged with the duties authority in your State or Territory. Failure to pay duty is an offence for which fines and penalties apply. Please contact us if you have any queries or would like assistance transferring the assets to the new Trustee.

13. Storage

- 13.1 At least one originally signed copy of the Deed should be kept on the register of the Fund.
- 13.2 Circulated written resolutions of directors of a company should be kept on the company register of the company and not on the register of the Fund. Copies of them can also be kept on the register of the Fund for the sake of completeness of the Fund's records.
- 13.3 Record of decisions of individual trustees should be kept on the register of the Fund.

14. Safekeeping

- 14.1 The *Electronic Transactions Act* and the *State and Federal Evidence Act* allow documents to be stored in electronic format and produced in evidence so long as stamp duty and any penalty, if applicable, has been paid.
- 14.2 We suggest that you either send a copy of the signed Deed to us for scanning and electronic storage or that you scan the document and e-mail it to us for that purpose. In this way, problems with lost documents may not arise in the future.

If you have any questions or comments in relation to the enclosed documents please do not hesitate to contact us.

Yours faithfully,
TOWNSENDS BUSINESS & CORPORATE LAWYERS



JULIE HARTLEY
BINST LLB GRAD DIP LEG PRAC SSA™
Solicitor



LAUREN ABSALOM
BA LLB GRAD DIP LEG PRAC ARI
Solicitor

Appendix A – Summary of the Duty Position on the Deed of Change of Trustee

| | |
|-------------------------------------|--|
| Australian Capital Territory | Nil Duty. |
| New South Wales | <p>Nil Duty.</p> <p>There is uncertainty about whether a Deed of Change of Trustee should be registered in NSW under the <i>Trustee Act 1925</i> (NSW) in order to be fully effective. The common view is that if the change of trustee was effected pursuant to an express power in the trust Deed registration is not necessary. This view has not been clearly endorsed by either case law or statute.</p> <p>If the change is not expressly empowered by the trust Deed and the fund is therefore relying on the powers in ss 6, 7 or 8 of the <i>Trustee Act</i>, registration is necessary. Regardless you may want to be prudent and have the Deed registered in any event to avoid any argument in future that the change of trustee is not valid. If so, and you would like our help, please contact us for assistance.</p> <p>We are also aware that some major lenders (such as the National Australia Bank) require that a Deed of Change of Trustee be registered as part of their loan approval process.</p> <p>Registration of the Deed of Change of Trustee will incur a fee of \$136.30 payable to NSW Land and Property Information.</p> |
| Northern Territory | <p>\$20 Duty.</p> <p>Refer to schedule 1 item 3 of the <i>Stamp Duty Act 1978</i> (NT). The Act provides that where a dutiable instrument is required to be lodged for assessment, it must be lodged within 60 days after it is first executed.</p> |
| Queensland | Nil Duty. |
| South Australia | <p>Nil Duty.</p> <p>However, the Deed of Change of Trustee will need to be lodged together with a copy of the Deed establishing the Fund at Revenue SA so that it can be stamped "nil duty payable". This should be lodged within 2 months of execution if executed within South Australia, or 6 months of execution if executed outside South Australia.</p> |
| Tasmania | Nil Duty. |
| Victoria | Nil Duty. |
| Western Australia | <p>Nil Duty.</p> <p>However, we recommend that the Deed be lodged at the Office of State Revenue to be stamped "nil duty payable". This is particularly important if the Fund has any land in Western Australia.</p> |

Appendix B – Summary of the Duty Position on Title Transfer Documents

Title transfer documents are required to be prepared and registered to effect the transfer of legal title from the current trustee or trustees to the new or replacement trustees.

| | |
|-------------------------------------|--|
| Australian Capital Territory | <p>\$20 Duty per Title Transfer Document.</p> <p>Lodgement Period – within 90 days.</p> |
| New South Wales | <p>\$50 Duty per Title Transfer Document.</p> <p>Lodgement Period – within 3 months.</p> |
| Northern Territory | <p>\$20 Duty per Title Transfer Document.</p> <p>Lodgement Period – within 60 days.</p> |
| Queensland | <p>Ordinarily a change of ownership of certain assets (including land) attracts duty. However, there is an exemption if the transfer of assets is merely to reflect a change of trustee. When the assets are transferred, the transfer documents and the Deed of Change of Trustee will have to be lodged with the Queensland Office of State Revenue in order to claim the exemption and be stamped as “nil duty payable”.</p> <p>Lodgement Period – within 30 days of first execution.</p> |
| South Australia | <p>Transfers of property into the name of the new trustees/continuing trustees are not liable to duty, although certain transfer documents may need to be presented to Revenue SA to have the stamp duty exemption noted on those documents.</p> <p>Lodgement Period – within 2 months of execution if executed within South Australia, or within 6 months of execution if executed outside South Australia.</p> |
| Tasmania | <p>\$50 Duty per Title Transfer Document.</p> <p>The Trustee will need to lodge the transfer instruments together with the Deed of Change of Trustee and the original Trust Deed at the Tasmania State Revenue Office within 3 months of the change of trustee to avoid stamp duty penalties.</p> |
| Victoria | <p>Transfers of property into the name of the new trustees/continuing trustees are not liable to duty, although certain transfer documents may need to be presented to the Victorian Revenue Office to have the stamp duty exemption noted on those documents.</p> <p>Lodgement Period – within 30 days of first execution.</p> |
| Western Australia | <p>\$20 Duty per Title Transfer document.</p> <p>Lodgement Period – within 2 months.</p> |

EXIT OF A MEMBER FROM A SUPERANNUATION FUND

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Tel 02 8296 6222 www.townsendslaw.com.au

Checklist

1. This template is only appropriate for the situation where a person is transferring his or her entire interest in the Superannuation Fund to another superannuation fund (or other similar entity) and the person will cease to be a member of the Superannuation Fund.
2. The Exiting Member must complete the Application where indicated.
3. Generally, the Member must also cease to participate in the management of the Superannuation Fund by ceasing to be a trustee or a director of the corporate trustee.
(If the fund will have a single member as a result of the exit, the exiting member need not cease to be a trustee or director).
4. The Trustee/Directors must be satisfied that the nominated transfer fund is a regulated super fund, ADF or an RSA.
5. The Trustees/Directors must sign the Resolution (including the Exiting Member).
6. The Trustee/Directors must issue a "Rollover Benefits Statement" (ATO form 70944) to the receiving fund within seven days of payment of the benefit and provide a copy to the exiting member within 30 days of payment of the benefit.
7. The ATO must be notified of the cessation of membership of the Exiting Member. Use ATO Form 3036.
The form must be submitted to the ATO within 28 days of the cessation of membership.

Important Points

Exiting the Superannuation Fund means any insurance cover taken out by the Trustee in respect of the Exiting Member will cease.

The Exiting Member must also advise his or her employer to pay contributions to another fund.

Application for transfer of entire benefit of Exiting Member S&P Eternal Growth Superannuation Fund ("the Superannuation Fund")

I request that the Trustee transfer my entire benefit in the Superannuation Fund to the superannuation entity which is nominated below ("the nominated entity").

I acknowledge that the Trustee will only transfer my entire benefit to the nominated entity if the Trustee is satisfied that the nominated entity is either:

- (a) a regulated superannuation fund,
- (b) an approved deposit fund, or
- (c) a retirement savings account,

and, in either case, the trustee/operator of the nominated entity is willing to accept the transfer of the benefit.

I further acknowledge that once the transfer is completed, I will cease to be a member of the Superannuation Fund (and any insurance cover in respect of me taken out by the Trustee will cease) and that the Trustee will be discharged from all further liability in respect of the benefit transferred to the nominated entity.

Full Name of Exiting Member: Sarah Louise Cox

Residential Address of Exiting Member: 84 Patrick Street Avalon NSW 2107

Date of Birth Exiting Member: 28/07/1963

Details of the Nominated Entity

| | |
|---|----------------------------------|
| Name of Nominated Entity | Essential Super |
| ABN of Super Entity | 56 601 925 435 |
| Type of Nominated Entity (eg super fund, ADF, RSA) | Super Fund |
| Contact details of Entity (phone number, postal address) | Reply paid 86495 Sydney NSW 2001 |
| Membership details (if applicable) | 067979003269169 |
| Superannuation Product Identification Number (SPIN) (if applicable) | FSF1332AU |

Exiting Member SARAH LOUISE

**Written Resolution of the Trustee of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857
("the Superannuation Fund")**

Purpose of Resolution

The purpose of this Resolution is to:

- (a) accept a benefit transfer request from the Exiting Member;
- (b) authorise the payment of the benefit of the Exiting Member to the superannuation fund nominated as the receiving fund;
- (c) authorise the issue of a Rollover Benefits Statement in respect of the transferred benefits; and
- (d) authorise various actions to be undertaken as a consequence of the cessation of membership of the Exiting Member.

**Contributions in respect
of Applicant**

Resolutions in relation to the Exiting Member

Noted that the Exiting Member had by signing the Application for transfer of entire benefit has requested that the entire benefit of the Exiting Member be transferred to the nominated superannuation entity.

Further noted that the request is conditional upon the nominated superannuation entity being a regulated superannuation fund, approved deposit fund or an RSA and upon the willingness of the trustee/operator of the entity to accept the transfer of benefits.

Resolved that the entire benefit in the Superannuation Fund of the Existing Member be transferred to the superannuation entity nominated by the Exiting Member conditional upon the nominated superannuation entity being either a regulated superannuation fund, an approved deposit fund, or an RSA, and upon the willingness of the trustee/operator of the entity to accept the transfer.

Resolved that the administrator of the Fund be instructed to advise the ATO of the change in the persons associated with the Superannuation Fund by reason of the termination of membership of the Exiting Member by completing and submitting ATO Form NAT 3036 within the required period of 28 days.

Resolved that no further contributions in respect of the Exiting Member be accepted by the Superannuation Fund.

Resolved that the administrator of the Fund be instructed to adjust the membership records of the Superannuation Fund to reflect the cessation of membership of the Exiting Member.

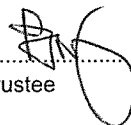
Resolved that the administrator of the Fund be instructed to provide to the trustee/operator of the nominated entity a completed Rollover Benefits Statement (NAT 70944) in respect of the transfer of the benefit of the Exiting Member within 30 days of the transfer.

Signed as a Written Resolution of the Trustees of S&P Eternal Growth Superannuation Fund
ABN 47 353 451 857

Trustee



Trustee



Dated:

19/08/2016

CHANGE OF TRUSTEE RECORD OF DECISIONS – RETIRING TRUSTEES

S&P Eternal Growth Superannuation Fund
ABN 47 353 451 857

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Tel 02 8296 6222 www.townsendslaw.com.au

Liability limited by a scheme approved under Professional Standards Legislation

Record of Decisions of the Retiring Trustees of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857 ("the Fund")

1. Change of Trustee

Noted that Northbound Investments Pty Ltd ACN 112 194 797 is willing to act as Trustee of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857 ("the Fund").

Noted that Northbound Investments Pty Ltd ACN 112 194 797 and its sole director are not disqualified from acting as Trustee (or as a director of such a company) of a superannuation fund which has elected under s 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth) to be a regulated superannuation fund.

Noted that the appointment of Northbound Investments Pty Ltd ACN 112 194 797 will not cause the superannuation fund to cease to satisfy the definition of "self managed superannuation fund" as defined in the *Superannuation Industry (Supervision) Act 1993* (Cth).

2. Appointment of Trustee

Noted that Rule 4 of the current Trust Deed of the Fund confers on the Retiring Trustees the power to appoint a replacement Trustee where the Retiring Trustees have arranged for the Replacement Trustee to act as Trustee and the Replacement Trustee has evidenced its consent in writing.

Decided that, pursuant to the said Rule 4, the Trustees appoint Northbound Investments Pty Ltd ACN 112 194 797 as the Trustee of the Fund.

Noted that Northbound Investments Pty Ltd ACN 112 194 797 will evidence its consent to act as Trustee by its sole director executing the trustee/director consent document.

3. Exit of member

Noted that Sarah Louise Cox has exited the Fund before the Deed of Change of Trustee will be signed and consequently, the Fund will continue to satisfy the definition of "self managed superannuation fund".


4. Resignation of Trustees

Decided that, pursuant to the said Rule 4, the Trustees resign as the trustees of the Fund.


5. Deed

Decided that the Trustees execute a Deed to effect the resignation and appointment accordingly.

Signed as a Record of Decisions by all of the Trustees of the S&P Eternal Growth Superannuation Fund ABN 47
353 451 857


.....
Peter John Berney – Trustee

Date: 07 / 09 / 2016


.....
Sarah Louise Cox – Trustee

Date: 07 / 09 / 2016

CHANGE OF TRUSTEE
WRITTEN RESOLUTIONS AND CONSENT –
NEW TRUSTEE

S&P Eternal Growth Superannuation Fund
ABN 47 353 451 857

Document provided by

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Tel 02 8296 6222 www.townsendslaw.com.au

Liability limited by a scheme approved under Professional Standards Legislation

Written Resolutions of the sole director of Northbound Investments Pty Ltd ACN 112 194 797

These resolutions are dated on the date that the sole director signs (s248B Corporations Act 2001 (Cth))

1. Invitation to become a SMSF Trustee

Noted that the Company has been invited to become the Trustee of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857 in the place of the Retiring Trustees, Peter John Berney and Sarah Louise Cox.

2. Qualifications of sole director

Noted that the sole director named below has confirmed that they are not a disqualified person and therefore can be appointed as, and act as, a director of a corporate Trustee of a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) ("SIS Act").

3. Consent of sole director

Noted that by signing below, the sole director consents to act as a director of a company which is to act as a corporate Trustee of a regulated superannuation fund under the SIS Act.

4. Acceptance of invitation

Resolved that the Company accept its appointment as the Trustee of the S&P Eternal Growth Superannuation Fund ABN 47 353 451 857, the powers, duties, rights and obligations that it entails and that the Company indemnify the Retiring Trustees, Peter John Berney and Sarah Louise Cox accordingly.


5. Exit of member

Noted that Sarah Louise Cox has exited the Fund before the Deed of Change of Trustee will be signed and consequently, the Fund will continue to satisfy the definition of "self managed superannuation fund".

6. Deed

Resolved that the Company execute a Deed accordingly.

Signed by the sole director of Northbound Investments Pty Ltd ACN 112 194 797


.....
Peter John Berney – Sole Director

Date: 07 / 09 / 2016

Self Managed Superannuation Fund – Trustee/Director Consent

Peter John Berney

I consent to act as a director of the company which is or will be appointed as the Trustee ("Corporate Trustee") of S&P Eternal Growth Superannuation Fund ABN 47 353 451 857 ("the Fund"). By signing below, I make the following declaration:

- (a) I have attained the age of 18 years;
- (b) I am not an insolvent under administration;
- (c) I have not been convicted of any offence involving unlawful or dishonest conduct, whether in Australia or elsewhere;
- (d) no notice of disqualification has been given to me pursuant to s 126A of the *Superannuation Industry (Supervision) Act 1993* (Cth) ("SIS Act");
- (e) no civil penalty order under the SIS Act has been made against me; and
- (f) I am not disqualified from managing corporations under Part 2D.6 or any other provisions of the *Corporations Act 2001* (Cth). Alternatively, if I am so disqualified, I have obtained leave from the appropriate Regulator or the Court to manage corporations and can act as a director of the Corporate Trustee in accordance with s206F(5) or s206G of the *Corporations Act*.

I understand that should any of the statements listed in (b) to (f) of the above declaration cease to apply to me, I will cease to be eligible to act as director of the Corporate Trustee. If such an event occurs, I undertake to immediately inform the other director(s) of the Corporate Trustee and take any action that may be required in order for the Fund to continue to qualify as a self managed superannuation fund under s 17A of the SIS Act.



.....

Signature of Director

Name of Director: Peter John Berney


Name of Corporate Trustee: Northbound Investments Pty Ltd ACN 112 194 797

Name of Fund: S&P Eternal Growth Superannuation Fund ABN 47 353 451 857

Date: 07/09/2016

Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.

 Read this declaration in conjunction with *Key messages for self-managed super fund trustees* at ato.gov.au/smsfessentials

Who should complete this declaration?

You must complete this declaration if you become a trustee or director of a corporate trustee (trustee) of:

- a new self-managed super fund (SMSF)
- an existing SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you:

- have been directed to do so by us
- are a legal personal representative who has been appointed as trustee on behalf of a:
 - member who is under a legal disability (usually a member under 18 years old)
 - member for whom you hold an enduring power of attorney
 - deceased member.

Information you need to read

Make sure you read *Key messages for self-managed super fund trustees* at ato.gov.au/smsfessentials. It highlights some of the key points from the declaration and some important messages.

Before completing this declaration

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

🔍 If you have any difficulties completing this declaration or you do not fully understand the information it contains:

- speak to a professional adviser
- visit ato.gov.au/smsf
- phone us on **13 10 20**.

When completing this declaration

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

What should you do with the declaration?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

We recommend that you keep a copy of your completed declaration and refer to it and the information in *Key messages for self-managed super fund trustees* when making important decisions, such as those relating to choosing investments, accepting contributions and paying benefits.

🔍 Do not send your completed declaration to us.



Self-managed super fund trustee declaration

I understand that as an individual trustee or director of the corporate trustee of

Fund name

| |
|--|
| S&P ETERNAL GROWTH SUPERANNUATION FUND |
| |

I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- ☐ impose administrative penalties on me
- ☐ give me a written direction to rectify any contraventions or undertake a course of education
- ☐ enter into agreements with me to rectify any contraventions of the legislation
- ☐ disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- ☐ remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- ☐ prosecute me under the law, which may result in fines or imprisonment.

Sole purpose

I understand it is my responsibility to ensure the fund is only maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

Trustee duties

I understand that by law I must at all times:

- ☐ act honestly in all matters concerning the fund
- ☐ exercise skill, care and diligence in managing the fund
- ☐ act in the best interests of all the members of the fund
- ☐ ensure that members only access their super benefits if they have met a legitimate condition of release
- ☐ refrain from entering into transactions that circumvent restrictions on the payment of benefits
- ☐ ensure that my money and other assets are kept separate from the money and other assets of the fund
- ☐ take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- ☐ refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- ☐ allow all members of the fund to have access to information and documents as required, including details about
 - the financial situation of the fund
 - the investments of the fund
 - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- ☐ the risks associated with the fund's investments
- ☐ the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- ☐ investment diversity and the fund's exposure to risk due to inadequate diversification
- ☐ the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- ☐ whether the trustees of the fund should hold insurance cover for one or more members of the fund.

Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- ☐ lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

Administration

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
 - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
 - records of all changes of trustees, including directors of the corporate trustee
 - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
 - all trustee declarations
 - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
 - an annual statement of the financial position of the fund
 - an annual operating statement
 - copies of all annual returns lodged
 - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
 - membership of the fund, or trustees or directors of the corporate trustee
 - name of the fund
 - contact person and their contact details
 - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

DECLARATION


By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

PETER JOHN BERNEY

Trustee's or director's signature



Date

Day Month Year
07 / 09 / 2016

Witness' name (witness must be 18 years old or over)

RONALD GEORGE PALMER

Witness' signature



Date

Day Month Year
07 / 09 / 2016