



View Legal

**THE C.A. ARCHER SUPERANNUATION FUND**

**MEMBER BINDING DEATH BENEFIT NOMINATION**

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## Binding death benefit nomination

THE C.A. ARCHER SUPERANNUATION FUND (Fund)

To CA ARCHER HOLDINGS PTY LTD - ACN 131 711 898 as trustee for The C.A. Archer Superannuation Fund

### **Binding nomination**

I, Cynthia Archer, being a member of the Fund, direct that the trustee of the Fund is to pay 100% of my benefits in respect of my membership of the Fund on or after my death as nominated in the table below, as a lump sum payment:

<b>Full name of nominated beneficiary</b>	<b>Relationship to member</b>	<b>Share</b>
Michele Marjourie Melbourne	Child	one-third
Nigel William Melbourne	Child	one-third
Victoria Georgina Polzi	Child	one-third
<b>Total</b>		<b>100%</b>

If all of the persons named in the table immediately above do not survive me, or die before the whole of the relevant benefit is paid to them, then I direct that the trustee of the Fund is to pay any benefits in respect of my membership of the Fund on or after my death to my legal personal representative, as a lump sum payment.

For clarity, I confirm the direction above does not apply to any of my benefits which are already subject to a valid reversionary pension nomination.

### **Confirmation**

I confirm:

- 1 my understanding that the payment of benefits in this nomination is permitted under the trust deed and the *Superannuation Industry (Supervision) Act 1993 (Cth) (Act)*;
- 2 this nomination revokes any previous nomination (of any kind) I may have made in relation to my benefits in the Fund and is binding on the trustee of the Fund pursuant to the trust deed;
- 3 this nomination will only terminate if expressly revoked by me in writing; and
- 4 each witness is at least 18 years or older and is not a nominated beneficiary or one of my legal personal representatives.

**Signing**

On the date of 26th Nov 2019

and in the presence of the First Witness and the Second Witness, I sign this binding death benefit nomination in relation to my benefits in the Fund

CA Archer

Full signature of Cynthia Archer

The member signed this binding death benefit nomination in our presence and we have also signed in the presence of the member, and each other, with all of us present at the same time:

[Signature]

Full signature of First Witness

[Signature]

Full signature of Second Witness

LORETTA REEVES

Full name (capitals)

CHRISTOPHER REEVES

Full name (capitals)

DIRECTOR

Occupation

COMPANY DIRECTOR

Occupation

CLEVELAND QLD

Suburb/State

CLEVELAND QLD

Suburb/State

**Important notes**

- 1 As a member of the Fund it is your own responsibility to ensure that the proposed payment of benefits in this nomination complies with the Act.
- 2 You should obtain specialist advice before signing the nomination in relation to:
  - a whether a nominated beneficiary is permitted to receive your benefits under the Act; and
  - b the taxation consequences of the payment of your benefits to your nominated beneficiaries.
- 3 There is other important information provided to members about this nomination in an information sheet that the trustee of the Fund can provide to you.

## Information sheet - Binding death benefit nominations (BDBN)

### The C.A. Archer Superannuation Fund (Fund)

#### **Overview**

- 1 Under the *Superannuation Industry (Supervision) Act 1993 (Cth) (Act)*, the trustee is required to give you the information that it believes you need to understand your rights to require the trustee to pay your member benefits under the Fund.
- 2 The required information is set out below.

#### **Nomination alternatives**

- 3 Under the Act, a member can require the trustee of the Fund to pay benefits in a certain way on their death.
- 4 There are essentially six possible scenarios in relation to any death benefit payment and these are summarised below. A reference to BDBN means **Binding Death Benefit Nomination**.
  - a no nomination – the member may have made no direction or nomination to the trustee. In this situation, the trustee has complete discretion as to how to distribute the death benefit payment;
  - b non-BDBN – if the member has made a nomination which does not satisfy the requirements of a BDBN, the trustee retains complete discretion as to how to distribute the death benefit, although it should still take into account what is set out in the non BDBN;
  - c lapsing BDBN – where there is a valid BDBN, the trustee must pay the death benefit in accordance with it. The only situation where the trustee need not follow the lapsing BDBN is where, even though it is otherwise validly prepared, it is stated to be enforceable for a defined period (often three years) and that period has expired. If the member dies outside the relevant period, then the trustee is not bound to follow the BDBN;
  - d non lapsing BDBN – it is possible for members to create BDBNs that are non-lapsing. If they are validly prepared, they are binding on the trustee;
  - e SMSF will – BDBNs can be set out in an SMSF Will, in a form approved by the Trustee. Often an SMSF Will is embedded (or hardwired) into the trust deed. Specialist advice should be obtained in relation to this approach, which is generally adopted where there are concerns that a nomination, even if otherwise a valid BDBN, may not be followed; and
  - f reversionary beneficiary – where a member has been receiving an income stream, it is possible to establish that income stream in a way that it automatically reverts or passes to another person, regardless of any nomination that may have been made. This means that if a reversionary pension has been commenced, the terms of that reversionary pension will usually prevail to the extent of any inconsistency with a subsequent BDBN.
- 5 The interplay between death benefit payments and a member's estate plan can be complex and best practice dictates that members should implement a comprehensive estate plan and complementary strategy in relation to their superannuation entitlements.

- 6 The impact of incapacity should also be considered. For example, if a lapsing BDBN is to be implemented, thought should be given to allowing your legal personal representative to have the power to sign an updated BDBN on your behalf.

#### ***Requirements for BDBNs***

- 7 Any BDBN must comply with the requirements set out in the trust deed for the Fund. Some trust deeds mandate that a specific BDBN template must be used or require specific notification requirements to be met, in which case the documents here are unlikely to be appropriate.
- 8 The requirements usually include:
- a specifying the form of the nomination;
  - b providing clear direction as to who is to receive what benefit; and
  - c confirming that the intended recipient is a 'dependant' as defined under the Act (a dependant includes - spouse, any child of the member (regardless of age), and any person who is financially dependent on the member) or your legal personal representative (as defined under the Act).

#### ***Trust Deed***

- 9 The trust deed for the Fund must allow for BDBNs to be given to the trustee. You should review the deed and satisfy yourself that the proposed BDBN is allowed under these rules. For instance, you should ensure the deed allows non-lapsing BDBNs and does not contain any rules requiring BDBNs to automatically lapse every 3 years.

#### ***Advantages of BDBNs***

- 10 Three of the main advantages of BDBNs are:
- a reduced risk of successful disputes over death benefit payments;
  - b tax planning opportunities for members with infant children; and
  - c asset protection planning.

#### ***Disadvantages of BDBNs***

- 11 Three of the main disadvantages of BDBNs are:
- a the tax and estate planning issues in relation to the payment of superannuation death benefits are complex and difficulties can often arise with BDBNs that prove to be inappropriate;
  - b if a member's circumstances change and they have failed to update their BDBN, the original BDBN will remain binding on the trustee; and
  - c a number of court decisions since 2012 have resulted in significant confusion about the exact requirements to ensure a BDBN is valid.

#### ***Process from here***

- 12 If you have doubts about any aspect of an intended BDBN, you must obtain specialist advice before signing the nomination.
- 13 In this regard, specific advice should be obtained in relation to the interaction between a BDBN and any reversionary pension nominations.

- 14 Commercially, you should also be aware that on the death of:
- a each member of the Fund, there will need to be sufficient liquid assets to pay a death benefit or fund any continuing pension payments; and
  - b the last member of the Fund, it is highly likely that all assets of the Fund will need to be liquidated, or distributed in specie due to the rules under the Act relating to death benefit payments.



## Director resolution

CA ARCHER HOLDINGS PTY LTD - ACN 131 711 898

### *Binding death benefit nomination*

- 1 The Company is the trustee of The C.A. Archer Superannuation Fund (**Fund**).
- 2 A completed binding death benefit nomination from Cynthia Archer in relation to the Fund has been provided to the Company.

### *Resolution*

- 3 To permit members of the Fund to provide the Company with binding death benefit nominations in respect of their benefits in the Fund.
- 4 The Company acknowledges the binding death benefit nomination is binding on it pursuant to the trust deed for the Fund.
- 5 To accept the nomination effective immediately.

### **The Director**

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Signed by Cynthia Archer:



**Cynthia Archer**  
Director

Dated: 20th Nov. 2019.

