

**TRUST DEED**

**OF**

**K & A MCNEILL SUPER FUND**

**(THE 'FUND')**

**THIS DEED** is made on 1 July 2011

**BY:** K & A McNeill Pty Ltd (ACN: 151 796 959)  
32 Bombala Street  
BROADBEACH WATERS QLD 4218

(the '**Trustee**')

**AND:** Kevin George McNeill  
32 Bombala Street  
BROADBEACH WATERS QLD 4218 and

Ann Josephine McNeill  
32 Bombala Street  
BROADBEACH WATERS QLD 4218

(the '**Members**')

**BACKGROUND:**

- A By this Deed, the Trustee establishes an indefinitely continuing superannuation fund to be known as K & A McNeill Super Fund (the '**Fund**') for the purpose of providing superannuation benefits to any person who is a Member of the Fund.
- B The Fund is a self managed superannuation fund as defined in the *Superannuation Industry (Supervision) Act 1993 (Cth)* (the '**SIS Act**').
- C The Trustee has accepted the appointment to act as the initial Trustee of the Fund.
- D The Members are the initial members of the Fund.
- E The Fund is vested in the Trustee and will be controlled, managed and administered by the Trustee on behalf of any person who is a Member of the Fund, in accordance with the provisions of this Deed and the Schedule attached to this Deed.
- F The Trustee will ensure that the Fund continues to maintain its status as a complying self managed superannuation fund in accordance with the SIS Act.

**AGREEMENT:**

- I The Trustee and the Members agree that:
  - (a) the Fund is established on the date of this Deed; and

- (b) the Governing Rules of the Fund are as set out in this Deed and the Schedule attached to this Deed, as amended from time to time.
- II The Trustee declares that the Fund is vested in the Trustee and that the Trustee will control, manage and administer the Fund in accordance with the Governing Rules.
- III This Deed and the Governing Rules are to be interpreted in accordance with the law and if any provision of the Governing Rules is prohibited or unenforceable, then such provision shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Governing Rules and any obligation imposed by law in respect of the Fund that is not expressed in the Governing Rules, is to be regarded as being incorporated into the Governing Rules, by reference.

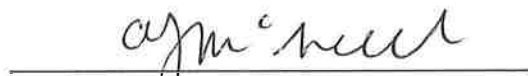
**EXECUTED** as a Deed.

**EXECUTED** by the Trustee

K & A McNeill Pty Ltd (ACN: 151 796 959)  
in accordance with s127 *Corporations Act 2001* (Cth):



Kevin George McNeill  
Director



Ann Josephine McNeill  
Director

**EXECUTED** by the Members

Kevin George McNeill, in the presence of the person below who is over 18 years of age, has legal capacity and is not involved with the contents of this document or related to any of the parties to this document:



Signature of Witness



Signature of Kevin George McNeill

KRISTIAN TANGAN

Name of Witness – please print

123 Eagle Street, Brisbane Qld 4000

Address of Witness – please print

Ann Josephine McNeill, in the presence of the person below who is over 18 years of age, has legal capacity and is not involved with the contents of this document or related to any of the parties to this document:

KTg  
Signature of Witness

ajmcneill  
Signature of Ann Josephine McNeill

KRISTIAN TANGAN  
Name of Witness – please print

123 Eagle Street, Brisbane QLD 4000  
Address of Witness - please print

## **SCHEDULE**

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## 1. INTERPRETATION

Unless it appears otherwise:

- statutes, ordinances, codes or other laws includes regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them;
- a person includes a natural person, partnership, body corporate, unincorporated association, court, government or governmental authority;
- the singular includes the plural and vice versa; and
- headings and sub-headings do not affect the interpretation of the Deed.

## 2. DEFINITIONS

2.1 Unless it appears otherwise, the following words are defined as follows:

**“Act”** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and its Regulations.

**“Binding Death Benefit Notice”** means a notice made under Clause 17 which is binding on the Trustee.

**“Guardian”** means a natural person appointed in writing by a Member in accordance with Clause 7.

**“Legal Personal Representative”** means the executor named in the will of the deceased Member irrespective of whether a formal grant of probate or letters of administration shall have been obtained.

**“Member”** means a natural person who the Trustee has accepted as a Member under this Deed and who has not ceased to be a Member.

**“Member Account”** means an account that the Trustee has set aside on behalf of a Member. A Member may have more than one Member Account.

**“Net Income of the Fund”** means the income earned or loss incurred by the Fund from time to time, calculated in accordance with whatever accounting standards the Trustee considers appropriate for the Fund at that time and after the allocation of any specific amounts in accordance with Clause 12.1.

**“Pension”** means any pension permitted by the Act.

**“Other Account”** means any account that the Trustee has set aside that is not a Member Account. This may include reserves.

**“Regulator”** means the Commissioner of Taxation or any person having the statutory power to regulate self managed superannuation funds.

**“Superannuation Law”** means any law of the Commonwealth of Australia, including but not limited to the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997*, the *Corporations Act 2001* (Cth), the *Social Security Act 1991* (Cth) and the *Family Law Act 1975* (Cth) which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the Fund by the Commissioner of Taxation, the Australian Prudential Regulation Authority (APRA), the Australian Securities & Investments Commission (ASIC) or any other body that has responsibility in connection with the regulation of superannuation and including any changes made since the date of the Deed. It also includes any proposed law or lawful requirement that the Trustee believes may have retrospective effect.

- 2.2 In this Deed, unless a term is specifically defined it shall have the same meaning and definition as set out in the Act.

### 3. COMPLIANCE WITH SUPERANNUATION LAW

- 3.1 Superannuation Law prevails over all other provisions of the Deed in all instances of conflict or inconsistency. In respect of matters not dealt with in the provisions of the Deed, or where there is a conflict between what is permitted by Superannuation Law and what is permitted by this Deed, the Trustee may act in accordance with Superannuation Law.
- 3.2 If Superannuation Law requires certain provisions to be included in the Deed, those provisions are (to the extent they are relevant to the Fund)

deemed to appear in this Deed and override any inconsistent provisions.

- 3.3** Where the Regulator, if permitted by Superannuation Law, determines that a requirement of Superannuation Law does not have to be complied with, either generally or specifically in relation to the Fund or the Trustee, then it is not a requirement of Superannuation Law for the purposes of this Deed unless the Trustee resolves otherwise.

#### **4. TRUSTEE**

- 4.1** The Fund property shall be vested in the Trustee and the Trustee shall hold the Fund property subject to the provisions of this Deed.
- 4.2** The Trustee shall comprise a single constitutional corporation or, subject to Superannuation Law, one or more natural persons.
- 4.3** Where the Trustee comprises one or more natural persons the primary purpose of the Fund will be the provision of old-age pensions.
- 4.4** Subject to Clause 7, the Members may unanimously agree to remove and/or appoint a Trustee at any time. Such a removal or appointment shall be effected by deed or written resolution of the members. Any deed prepared for this purpose does not need to be registered.
- 4.5** The Trustee will hold office until:
- (a) it retires;
  - (b) being a constitutional corporation, it goes into liquidation or has a receiver of any kind appointed or enters into administration;
  - (c) being comprised of natural persons one or more of those persons dies or withdraws their consent to act;
  - (d) it is asked to resign as a result of a unanimous written agreement of the Members; or
  - (e) it ceases to be eligible to act as Trustee under the Act.



## **5. TRUSTEE POWERS, DISCRETIONS AND DUTIES**

### **5.1 Subject to the Superannuation Law, the Trustee may:**

- (a) do anything whatsoever necessary or desirable for the purpose of the maintenance, operation, management, development or promotion of the Fund;
- (b) borrow money but only in accordance with Superannuation Law. Such borrowing may be with or without security as the Trustee deems fit and such security will take priority over the interests of the Members. Any borrowing which does not comply with Superannuation Law shall be immediately repaid by the Fund;
- (c) open and operate bank accounts and retain on current or deposit account at any financial institution such moneys as it considers appropriate;
- (d) draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
- (e) permit Fund investments to be held in the name of a nominee;
- (f) give indemnities to or on behalf of any party the Trustee thinks fit;
- (g) regulate and conduct Trustee meetings, or if the Trustee is a corporation, meetings of its directors, as it considers appropriate; and
- (h) has, in addition to the powers conferred by this Deed, all the powers conferred on a trustee by statute or general law.

For the avoidance of doubt, should there be any inconsistency between this Clause 5 and any other Clause of this Deed, Clause 5 shall prevail.

### **5.2 Where the Trustee comprises a constitutional corporation, Trustee decisions shall be made in accordance with the constitution of the constitutional corporation.**

### **5.3 Where the Trustee comprises two natural persons, Trustee decisions require the unanimous approval of those persons.**

- 5.4** Where the Trustee comprises more than two natural persons, Trustee decisions require approval of the majority of those persons.
- 5.5** The Trustee may delegate any power or duty on any terms the Trustee thinks fit. The Trustee may alter or revoke any such delegation.
- 5.6** The fact that the Trustee or any shareholder or director or secretary of any corporate Trustee has a direct or indirect personal interest in any proposed dealing affecting the Fund, or may benefit directly or indirectly from its exercise does not of itself limit any of the Trustee's powers.
- 5.7** The Trustee is not subject to direction in exercising any power under this Deed or at law, except to the extent permitted by Superannuation Law.
- 5.8** The Trustee shall record and retain documents evidencing Trustee meetings, Members' meetings or resolutions made in respect of the Fund for the period required by the Act.
- 5.9** To the extent allowed by Superannuation Law, neither the Trustee, nor any of the natural persons comprising the Trustee, nor any of the directors, officers or employees where the Trustee is a constitutional corporation is liable for anything done or not done in connection with acting as Trustee, unless at least one of the following applies:
- (a) they fail to act honestly;
  - (b) they intentionally or recklessly fail to exercise the degree of care and diligence they are required to exercise;
  - (c) they incur a monetary penalty under a civil penalty made in accordance with Superannuation Law; or
  - (d) in any other circumstance specified by Superannuation Law in which their liability may not be excluded or limited.
- 5.10** To the extent allowed by Superannuation Law, the Trustee, each of the natural persons comprising the Trustee and where the Trustee is a constitutional corporation each of its directors, officers and employees are entitled to an indemnity from the Fund in all cases where they are not liable under the preceding clause. The Trustee has a lien on the assets of the Fund for this purpose.

## **6. MEMBERSHIP**

**6.1** Any natural person may make application to the Trustee to become a Member of the Fund.

**6.2** Each natural person admitted as a Member is deemed by their application to have approved of, and become bound by, the Deed.

**6.3** The Trustee must provide the Member with confirmation of their membership in writing.

**6.4** A person becomes a Member of the Fund on the date the Trustee accepts their application for membership in writing or the date otherwise determined by the Trustee in writing.

**6.5** Unless otherwise determined by the Trustee, a person ceases to be a Member of the Fund upon the earlier occurring of:

(a) all of their Member Account(s) being paid out of the Fund; or

(b) when benefits payable to or for the Member cease to be payable; or

(c) subject to Clause 7, the Member dies.

**6.6** A Member of the Fund must provide any information that the Trustee requires from the Member in order to comply with the Deed and Superannuation Law. Such information shall be provided in the manner requested by the Trustee.

## **7. GUARDIANS AND SPECIAL RULES ON DEATH**

**7.1** This Clause 7 operates despite any other provision of this Deed but always subject to Superannuation Law and any Binding Death Benefit Notice made by a Member.

**7.2** A Member may appoint a Guardian specifically for the purposes of this Deed.

**7.3** The appointment of a Guardian must be in writing. The Trustee must be notified in writing if a Member appoints a Guardian and must acknowledge such an appointment in writing for it to be effective.

**7.4** The Guardian may be removed by the Member at any time.

**7.5** The appointment will also be terminated if the Guardian:

(a) resigns;

(b) dies; or

(c) loses their mental capacity.

**7.6** A Member may nominate a successor Guardian to take office should the Guardian be removed under any of these circumstances. The successor Guardian shall have the same rights, powers and responsibilities as the original Guardian.

**7.7** If the Member dies and has not appointed a Guardian, the Member's Legal Personal Representative (if one exists) shall appoint the Member's Guardian.

**7.8** The following special rules shall apply if the Member dies:

(a) If:

(i) the Trustee comprises one or more natural persons; and

(ii) it would not cause the Fund to cease to be a self managed superannuation fund

the Guardian, or another person nominated by the Guardian, shall be entitled but not required to be added to the group of persons comprising the Trustee. This shall be at the sole discretion of the Guardian and does not require the approval of the Trustee or Members; and

(b) until the deceased Member's benefit has commenced to be paid, the Guardian shall have all the rights, powers and responsibilities of the deceased Member as if the deceased had remained a Member. This shall include the removal and appointment of the Trustee under Clause 4.

- 7.9** For the avoidance of doubt, this Clause 7 does not limit the ability of persons other than Guardians to be one of the natural persons that comprises the Trustee or a director of the Trustee where the Trustee is a constitutional corporation.

## **8. CONTRIBUTIONS**

- 8.1** Subject to Superannuation Law, any person may make contributions to the Fund for a Member in cash or by transfer to the Trustee of an asset in-specie.
- 8.2** Subject to Superannuation Law, the Trustee may only accept contributions made on behalf of a Member and has the discretion to refuse the acceptance of any contribution (in part or in full) made on behalf of any Member at any time. Contributions which have been refused by the Trustee shall not form part of the Fund and will instead be held on trust for the contributor. They must be returned to the contributor as soon as practicable.
- 8.3** Contributions allocated to a Member Account may be transferred, rolled over or allotted from the Member Account by the Trustee for the benefit of the Member's Spouse or any other person in accordance with Superannuation Law, provided the requirements of Superannuation Law and this Deed have been satisfied.

## **9. TRANSFERS**

- 9.1** The Trustee may accept an amount in cash or a transfer to the Trustee of an asset in-specie on behalf of a Member from another complying superannuation fund or from such other entity as permitted by Superannuation Law.
- 9.2** The Trustee may arrange the transfer of one or more Member Accounts in full or part thereof in cash or by way of transfer of an asset in-specie within the Fund or out of the Fund to another complying superannuation fund or to such other person or entity as is permitted by the Superannuation Law if requested by the Member or any other person, entity or Court permitted to make the request under Superannuation Law.

## **10. INVESTMENTS**

- 10.1** Subject to Superannuation Law, the Trustee may invest, dispose of, vary or otherwise deal with all or any part of the money and other assets and property of the Fund in any manner in which they could if they were personally entitled to, and beneficial owners of, those assets.
- 10.2** The Trustee may accept a written or verbal direction from a Member in respect of the investment of money or other assets of the Fund.
- 10.3** The Trustee may allocate all or any part of the money or other assets of the Fund for the benefit of a particular Member Account or Other Account or group of Member Accounts or Other Accounts.

## **11. ACCOUNTS**

- 11.1** The Trustee may establish such accounts in the records of the Fund as it sees fit.
- 11.2** The Trustee shall establish a Member Account for each Member of the Fund for the purpose of recording benefit entitlements under the Deed.
- 11.3** The Trustee may establish as many Member Accounts for a Member as it considers appropriate.
- 11.4** The Trustee may establish one or more Other Accounts (including reserves) subject to Superannuation Law.

## **12. ALLOCATION OF CONTRIBUTIONS, INCOME AND EXPENSES**

- 12.1** Unless otherwise permitted by Superannuation Law, the Trustee must allocate amounts which are directly attributable to a Member to that person's Member Account (or between the various Member Accounts maintained for the Member at the discretion of the Trustee) within the timeframe required by Superannuation Law or at such other times as the Trustee determines, including:

(a) contributions;

(b) transfers;

- (c) insurance premiums;
- (d) net income or expenses from money or other assets allocated specifically to the Member Account in accordance with Clause 10.3;
- (e) insurance proceeds;
- (f) expenses and benefit payments;
- (g) provisions for any tax or surcharge; and
- (h) any other amounts as determined by the Trustee.

**12.2** At times determined by the Trustee, the Trustee shall determine the Net Income of the Fund and this amount shall be allocated to Member Accounts and Other Accounts as determined by the Trustee, subject to Superannuation Law. The Trustee may make an interim or final allocation to Member Accounts and Other Accounts as determined by the Trustee, subject to Superannuation Law.

**12.3** The Trustee may allocate any amount to a Member Account and/or Other Account at its discretion subject to Superannuation Law.

**12.4** The Trustee may augment a Member Account and/or Other Account at its discretion, subject to Superannuation Law.

### **13. ADMINISTRATION REQUIREMENTS**

**13.1** The Trustee must, in accordance with Superannuation Law:

- (a) prepare financial and other statements and returns in respect of the Fund;
- (b) arrange for the audit of records, financial statements and other information in respect of the Fund;
- (c) arrange for the retention of records and other information in respect of the Fund; and

- (d) provide information to beneficiaries, Members, a Regulator and any other person in connection with the Fund.

**13.2** Any notice or other written communication in connection with the Fund is deemed to have been given to a person if it is:

- (a) handed to the person;
- (b) delivered to the person's last known address; or
- (c) posted by ordinary post from within Australia to the person's last known address, in which case it is taken to be received on the third business day after posting.

#### **14. DEED AMENDMENT**

**14.1** The Trustee, with the consent of the Members, may amend any provision of this Deed (including this Clause) at any time by deed.

**14.2** An amendment made under this Clause will take effect from a date specified by the Trustee (whether before or after the date of the deed), or if none is specified, from the date of the deed.

#### **15. SEVERANCE**

**15.1** If any provision of this Deed is wholly or partly invalid, that provision or the relevant part of the provision will be severed. The remainder of this Deed will have full force and effect unless severing the provision would cause this Deed to be contrary to public policy or Superannuation Law.

#### **16. BENEFIT PAYMENTS**

**16.1** Upon receipt of a written request from a Member or other person to whom a benefit would otherwise be payable, the Trustee may pay a benefit in accordance with the request from one or more Member Accounts held on behalf of the Member to any person at any time subject to Superannuation Law.

**16.2** The Trustee must provide a benefit from a Member Account if required by Superannuation Law.



**16.3** Subject to Superannuation Law, the Trustee may provide a benefit from a Member Account in cash or as an asset paid in-specie in any of the following forms:

(a) one or more lump sum payments;

(b) one or more pensions; or

(c) any combination of the above permitted by Superannuation Law.

**16.4** If the Member or other person to whom a benefit would otherwise be payable is under any legal disability or is unable for any reason to satisfactorily deal with such benefit, the Trustee may pay the whole or part of any such benefit to any person in such form and manner and subject to such terms and conditions as the Trustee thinks fit, including retaining the benefit within the Fund.

**16.5** Where a Member advises the Trustee in writing that he or she is not legally disabled, the Trustee must obtain contrary evidence from two appropriately qualified medical practitioners in order to pay a benefit in accordance with Clause 16.4. The Member must do all things necessary to assist the Trustee to obtain medical evidence for this purpose.

**16.6** At all times while a Member is bankrupt:

(a) any increase of that bankrupt Member's Pension amount requires the consent and approval of the Trustee; and

(b) where the Trustee is solely controlled by the bankrupt Member, the Trustee cannot increase the Pension amount other than as required by Superannuation Law.

**16.7** The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full.

## **17. DEATH BENEFITS**

**17.1** A Member may prepare a notice in writing relating to the payment of benefits on his or her death. This notice may be provided in any form chosen by the Member.

- 17.2** The Member may amend or revoke this notice at any time prior to the Member's death. The notice may relate to some or all of that person's Member Accounts within the Fund and may address any matter relating to the payment of a death benefit. This includes but is not limited to the identity of one or more beneficiaries and the form in which the benefit is to be paid.
- 17.3** Subject to Clause 17.4, a Member may specify in writing to the Trustee that a particular notice made under Clause 17.1 is binding on the Trustee. This written instruction may be made in any form chosen by the Member. The Trustee must regard such a notice as a Binding Death Benefit Notice.
- 17.4** Despite Clause 17.3, a notice regarding the Member's benefits on his or her death that was prepared prior to the commencement of this Clause and was binding on the Trustee at the time this Clause took effect must also be regarded as a Binding Death Benefit Notice.
- 17.5** A Binding Death Benefit Notice shall only cease to apply if:
- (a) it is revoked by the Member;
  - (b) it specifies a date on which the Binding Death Benefit Notice lapses and that date has passed; or
  - (c) following the instructions contained in the Binding Death Benefit Notice would cause the Fund to breach Superannuation Law.
- 17.6** In the absence of any written instruction from the Member that a notice made under Clause 17.1 is binding on the Trustee, the notice will not be a Binding Death Benefit Notice.
- 17.7** Where a Member has made a Binding Death Benefit Notice the Trustee shall ensure that the instructions contained in a Binding Death Benefit Notice are followed, unless the Trustee and the person to whom a benefit is to be paid agree to an amendment to that benefit.
- 17.8** Subject to Superannuation Law and any Binding Death Benefit Notice the Trustee may provide a benefit from a Member Account on the death of the Member in any of the following forms:
- (a) one or more lump sum payments;

(b) one or more Pensions; or

(c) any combination of the above.

- 17.9** Subject to Superannuation Law, if the Trustee is obliged to pay a death benefit it may, at the request of the beneficiary, meet that obligation wholly or partly by transferring an asset or part of an asset in-specie to the beneficiary.

**18. FUND WIND UP**

- 18.1** If required by Superannuation Law, the Trustee must wind up the Fund as soon as practicable or within the timeframe required by Superannuation Law.

- 18.2** The Trustee may arrange for the Fund to be wound up at its discretion, including:

(a) when the Fund has no Members; or

(b) when otherwise determined by the Trustee.

- 18.3** The Trustee must decide on a specific date when the Fund is to be wound up and the Trustee must inform the Members of its decision to wind up the Fund in writing.

- 18.4** The Trustee must determine the Net Income of the Fund as at the date referred to in Clause 18.3 and this amount shall be allocated to Member Accounts and Other Accounts, as determined by the Trustee, subject to Superannuation Law.

- 18.5** Subject to Superannuation Law, the Trustee may pay benefits or make transfers in cash or as an asset in-specie from Member and Other Accounts on winding up to any of the following parties at its discretion:

(a) Members or former Members;

(b) dependants of Members or former Members; and/or

(c) any other person permitted to receive the payment by Superannuation Law.

Date: 1 July 2011

## To Whom It May Concern

### K & A McNeill Pty Ltd (the 'Company') - Consent to Act as Trustee

We, the undersigned, consent to the appointment of the Company as Trustee of K & A McNeill Super Fund (the 'Fund') under the provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth) (the 'SIS Act') and in accordance with the documents which regulate the Fund.

We confirm that we are not disqualified persons and that the Company is not a disqualified person as defined in Section 120 of the SIS Act, an extract of which is shown below:

#### Extract: Superannuation Industry (Supervision) Act 1993

##### SECTION 120 DISQUALIFIED PERSONS

###### *Individuals*

- (1) For the purposes of this Part, an individual is a disqualified person if:
- (a) at any time (including a time before the commencement of this section):
    - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
    - (ii) a civil penalty order was made in relation to the person; or
  - (b) the person is an insolvent under administration; or
  - (c) either:
    - (i) to the extent that the Regulator is the Commissioner of Taxation – the Regulator has disqualified the individual under section 126A; or
    - (ii) to the extent that the Regulator is APRA – the Federal Court of Australia has disqualified the individual under section 126H.

###### *Bodies corporate*

- (2) For the purposes of this Part, a body corporate is a disqualified person if:
- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is:
    - (i) for a person who is a disqualified person only because he or she was disqualified under section 126H – disqualified from being or acting as a responsible officer of the body corporate; or
    - (ii) otherwise – a disqualified person; or
  - (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
  - (c) an administrator has been appointed in respect of the body; or
  - (d) a provisional liquidator has been appointed in respect of the body; or
  - (e) the body has begun to be wound up.

SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS

- (1) An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:
  - (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
  - (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).
- (2) For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:
  - (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
  - (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

We confirm that we will carry out our duties as Directors of the corporate Trustee of the Fund in accordance with the documents which from time to time regulate the Fund.

Yours sincerely



Kevin George McNeill  
Director



Ann Josephine McNeill  
Director

# Trustee declaration

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



Read this declaration in conjunction with *Self-managed super funds – Key messages for trustees* (NAT 71128).

## WHO SHOULD COMPLETE THIS DECLARATION?

You must complete this declaration if you became, on or after 1 July 2007, a **new** trustee (or director of a corporate 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 legal personal representative who holds an enduring power of attorney granted by a member may be a trustee or a director of the corporate trustee of the SMSF, in place of the member and is also required to complete and sign this declaration.

## INFORMATION YOU NEED TO READ

Make sure you read *Self-managed super funds – Key messages for trustees* (NAT 71128). It highlights some of the key points from the declaration and some important messages for you.

## 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 [www.ato.gov.au](http://www.ato.gov.au)
- phone us on **13 10 20**.

If you're not familiar with some of the terms used in this declaration or you need more information, refer to *Running a self-managed super fund* (NAT 11032).

## 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 over the age of 18 years).

## WHAT SHOULD I 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 *Self-managed super funds – Key messages for trustees* (NAT 71128) and refer to them when making important decisions, such as those relating to investments, making contributions and paying a pension or lump sum.



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

K & A McNeill Super 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.

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

- impose administrative penalties on me
- 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 a significant tax penalty on the fund
- prosecute me under the law, which may result in fines or imprisonment.

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.

### SOLE PURPOSE

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to its members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies.

### TRUSTEE DUTIES

I understand that by law I must:

- 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 retirement benefits are only accessed by members upon a legitimate condition of release being met
- not enter 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)
- not enter 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
- prepare and implement an investment strategy that takes the whole of the fund's circumstances into account, which includes, but is 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
- 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.

### 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 the following:

- 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 listed securities, business real property, in-house assets, mergers and special determinations) 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 recourse borrowing arrangements
- 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 on behalf of the fund 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 reflects their market value).



## Accepting contributions and paying a benefit

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

## 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 annual returns lodged
  - 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
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- notify the ATO within 28 days of any changes in the
  - membership of the fund, trustees, directors of the corporate trustee or members of the fund
  - name of the fund
  - details of the contact person and his/her contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing as soon as practicable (not later than 28 days) after becoming aware that the fund has ceased to be a SMSF or ceased to exist
- notify the ATO in writing within 28 days of the fund being wound up
- ensure that an approved auditor is appointed to audit the fund for each income year and provide that auditor with documents as requested
- lodge the fund's annual return by the due date.

## 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.*

Trustee's or director's name

Kevin George McNeill

Trustee's or director's signature



Date

Day Month Year  
01 / 07 / 2011

Witness' name (witness must be over the age of 18 years)

KRISTIAN TANGAN

Witness' signature



Date

Day Month Year  
01 / 07 / 2011

# Self-managed super funds – key messages for trustees

**!** Read this fact sheet in conjunction with the *Trustee declaration* (NAT 71089). Keep a copy of this fact sheet with you and refer to it when making important decisions on behalf of your fund.

From 1 July 2007, if you are a new trustee (or director of a corporate trustee) of a self-managed super fund (SMSF), you must complete and sign a *Trustee declaration* (NAT 71089) to show you understand your duties and responsibilities under the super laws.

A legal personal representative who holds an enduring power of attorney granted by a member may be a trustee or a director of the corporate trustee of the SMSF, in place of the member and is also required to complete and sign the declaration.

## YOU'RE RESPONSIBLE FOR MANAGING THE FUND

Becoming a trustee of an SMSF is an important decision that carries certain duties and responsibilities, with your primary concern being the management of the fund for the benefit of members for their retirement. You must also ensure the fund's assets are held in trust and invested on behalf of the members.

You are responsible for ensuring your fund is properly managed and complies with all rules (including the fund's trust deed and super laws). These rules apply to you in your capacity as a trustee of the fund. You will also need to make important decisions that may affect the retirement savings of the fund's members.

All trustees are equally responsible for managing the fund and making sure it complies with the law. This is the case even if one trustee is more actively involved in the day-to-day running of the fund than the others, or you use a professional to do certain tasks on your behalf (for example, an accountant, lawyer, investment advisor, super fund administrator or tax agent). All trustees are responsible and accountable for running the fund and making decisions. A trustee who is also a member must always put their trustee obligations first, whenever a conflict occurs between their wishes as a member (such as using an asset of the fund) and the legal requirements as a trustee.

If you use a professional to help you manage your fund, it's important you get one that's right for you and your circumstances. It's essential to make sure any financial,

investment and legal advice you receive comes from a qualified professional, as your decisions will have an impact on the retirement income of the fund's members.

You must manage the fund separate to your own affairs. This means you must keep the fund's assets, including money, separate from your personal and business assets and ensure they are used solely for fund purposes.

You must not allow money to be withdrawn from the fund earlier than is legally permitted, as it is meant for retirement. You must preserve members' benefits in the fund until they retire or reach their preservation age (currently not before 55 years old, and then rising to 60 years old for those born after 30 June 1964). Early access is only allowed in very limited circumstances – for example, in cases of severe financial hardship, on tightly restricted compassionate grounds, on diagnosis of a terminal medical condition or in the event of permanent incapacity.

## YOU MUST UNDERSTAND YOUR DUTIES AND RESPONSIBILITIES

Your trustee duties and responsibilities include:

- making sure the purpose of the fund is to pay retirement benefits to members
- organising an investment strategy and making investment decisions
- accepting contributions and paying benefits (pension and lumps sums) in accordance with the super laws and the fund's trust deed
- ensuring an approved auditor is appointed for each income year
- undertaking administrative tasks such as lodging annual returns and record-keeping.

You must also ensure the fund's trust deed and investment strategy are regularly reviewed and updated in accordance with the law and the needs of the members.

**!** To avoid penalties, make sure you understand and comply with your duties and responsibilities under the super laws.



Australian Government  
Australian Taxation Office

## MORE INFORMATION

For more information about your role and responsibilities as a trustee, refer to *Running a self-managed super fund* (NAT 11032).

To keep up to date with the latest information on SMSFs, subscribe to our online newsletter *SMSF News*.

To subscribe, visit [www.ato.gov.au](http://www.ato.gov.au) and search for 'SMSF News'.

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

- visit [www.ato.gov.au](http://www.ato.gov.au)
- phone **13 10 20**
- phone our automatic publications distribution service on **1300 720 092**
- write to us at  
**Australian Taxation Office**  
**PO Box 3100**  
**PENRITH NSW 2740**

If you do not speak English well and need help from us, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone us through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on [www.relayservice.com.au](http://www.relayservice.com.au) and ask for the ATO number you need.

## OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our information in this publication and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at [www.ato.gov.au](http://www.ato.gov.au) or contact us.

This publication was current at **June 2010**.

# Trustee declaration

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



Read this declaration in conjunction with *Self-managed super funds – Key messages for trustees* (NAT 71128).



## WHO SHOULD COMPLETE THIS DECLARATION?

You must complete this declaration if you became, on or after 1 July 2007, a **new** trustee (or director of a corporate 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 legal personal representative who holds an enduring power of attorney granted by a member may be a trustee or a director of the corporate trustee of the SMSF, in place of the member and is also required to complete and sign this declaration.

## INFORMATION YOU NEED TO READ

Make sure you read *Self-managed super funds – Key messages for trustees* (NAT 71128). It highlights some of the key points from the declaration and some important messages for you.

## 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 [www.ato.gov.au](http://www.ato.gov.au)
- phone us on 13 10 20.

If you're not familiar with some of the terms used in this declaration or you need more information, refer to *Running a self-managed super fund* (NAT 11032).

## 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 over the age of 18 years).

## WHAT SHOULD I 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 *Self-managed super funds – Key messages for trustees* (NAT 71128) and refer to them when making important decisions, such as those relating to investments, making contributions and paying a pension or lump sum.

❗ 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

K & A McNeill Super 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.

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

- impose administrative penalties on me
- 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 a significant tax penalty on the fund
- prosecute me under the law, which may result in fines or imprisonment.

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.

### SOLE PURPOSE

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to its members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies.

### TRUSTEE DUTIES

I understand that by law I must:

- 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 retirement benefits are only accessed by members upon a legitimate condition of release being met
- not enter 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)
- not enter 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
- prepare and implement an investment strategy that takes the whole of the fund's circumstances into account, which includes, but is 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
- 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.

### 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 the following:

- 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 listed securities, business real property, in-house assets, mergers and special determinations) 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 recourse borrowing arrangements
- 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 on behalf of the fund 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 reflects their market value).

## Accepting contributions and paying a benefit

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

## 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 annual returns lodged
  - 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
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- notify the ATO within 28 days of any changes in the
  - membership of the fund, trustees, directors of the corporate trustee or members of the fund
  - name of the fund
  - details of the contact person and his/her contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing as soon as practicable (not later than 28 days) after becoming aware that the fund has ceased to be a SMSF or ceased to exist
- notify the ATO in writing within 28 days of the fund being wound up
- ensure that an approved auditor is appointed to audit the fund for each income year and provide that auditor with documents as requested
- lodge the fund's annual return by the due date.

## 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.

Trustee's or director's name

Ann Josephine McNeill

Trustee's or director's signature



Date

Day Month Year  
01 / 07 / 2011

Witness' name (witness must be over the age of 18 years)

KRISTIAN TANCAU

Witness' signature



Date

Day Month Year  
01 / 07 / 2011

# Self-managed super funds – key messages for trustees

**!** Read this fact sheet in conjunction with the *Trustee declaration* (NAT 71089). Keep a copy of this fact sheet with you and refer to it when making important decisions on behalf of your fund.

If you are a new trustee (or director of a corporate trustee) of a self-managed super fund (SMSF), you must complete and sign a *Trustee declaration* (NAT 71089) to show you understand your duties and responsibilities under the super laws.

A legal personal representative who holds an enduring power of attorney granted by a member may become a trustee or a director of the corporate trustee of the SMSF in place of the member. If they do, they are also required to complete and sign the declaration.

## YOU'RE RESPONSIBLE FOR MANAGING THE FUND

Becoming a trustee of an SMSF is an important decision that carries certain duties and responsibilities, with your primary concern being the management of the fund for the benefit of members for their retirement. You must also ensure the fund's assets are held in trust and invested on behalf of the members.

You are responsible for ensuring your fund is properly managed and complies with all rules (including the fund's trust deed and super laws). These rules apply to you in your capacity as a trustee of the fund. You will also need to make important decisions that may affect the retirement savings of the fund's members.

All trustees are equally responsible for managing the fund and making sure it complies with the law. This is the case even if one trustee is more actively involved in the day-to-day running of the fund than the others, or you use a professional to do certain tasks on your behalf – for example, an accountant, lawyer, investment advisor, super fund administrator or tax agent. All trustees are responsible and accountable for running the fund and making decisions. A trustee who is also a member must always put their trustee obligations first, whenever a conflict occurs between their wishes as a member (such as using an asset of the fund) and their legal requirements as a trustee.

If you use a professional to help you manage your fund, it's important you get one that's right for you and your circumstances. It's essential to make sure any financial,

investment and legal advice you receive comes from a qualified professional, as your decisions will have an impact on the retirement income of the fund's members.

You must manage the fund separate to your own affairs. This means you must keep the fund's assets, including money, separate from your personal and business assets and ensure they are used solely for fund purposes.

You must not allow money to be withdrawn from the fund earlier than is legally permitted, as it is meant for retirement. You must preserve members' benefits in the fund until they retire or reach their preservation age (currently not before 55 years old, and then rising to 60 years old for those born after 30 June 1964). Early access is only allowed in very limited circumstances – for example, in cases of severe financial hardship, on tightly restricted compassionate grounds, on diagnosis of a terminal medical condition or in the event of permanent incapacity.

**!** It is illegal to set up an SMSF to gain early access to your super savings. If benefits are unlawfully released significant penalties, including fines and jail terms of up to five years, can apply to you, your fund and the recipient of the early release.

## YOU MUST UNDERSTAND YOUR DUTIES AND RESPONSIBILITIES

Your trustee duties and responsibilities include:

- making sure the purpose of the fund is to pay retirement benefits to members
- organising an investment strategy and making investment decisions
- accepting contributions and paying benefits (pension and lumps sums) in accordance with the super laws and the fund's trust deed
- ensuring an approved auditor is appointed for each income year
- undertaking administrative tasks such as lodging annual returns and record-keeping.



**Australian Government**  
**Australian Taxation Office**



You must also ensure the fund's trust deed and investment strategy are regularly reviewed and updated in accordance with the law and the needs of the members.

❗ To avoid penalties, make sure you understand and comply with your duties and responsibilities under the super laws.

### ➤ MORE INFORMATION

For more information about your role and responsibilities as a trustee, refer to *Running a self-managed super fund* (NAT 11032).

To keep up to date with the latest information on SMSFs, subscribe to our online newsletter *SMSF News*. To subscribe, visit [www.ato.gov.au](http://www.ato.gov.au) and search for 'SMSF News'.

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**Australian Taxation Office**  
**PO Box 3100**  
**PENRITH NSW 2740**

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This publication was current at **May 2011**.