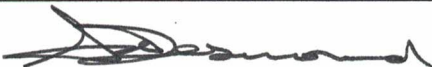



## Product Disclosure Statement ('PDS')

<b>Fund Name:</b>	Andrew Desmond Superannuation Fund	<b>Date of PDS:</b>	15/11/18
<b>PDS Reference No:</b>	SMSF2018-19	<b>Date PDS given to Member:</b>	15/11/18
<b>Trustee Name:</b>	A M DESMOND PTY LTD ACN 163 241 594		
<b>Trustee Address:</b>	c/- Unit 14, 37 Barry Street, Neutral Bay, New South Wales 2089		
<b>Signature on behalf of Trustee*:</b>			
<b>Member Name:</b>	ANDREW MARK DESMOND	<b>Member No:</b>	1
<b>Member Address:</b>	Unit 14, 37 Barry Street, Neutral Bay, New South Wales 2089		
<b>Member Signature upon Receipt of PDS:</b>			

\*If the Trustee wishes to give any additional or non-standard information to members other than the information in this PDS, the Trustee must provide this in writing to each Member before or at the time of providing this PDS to each member. Otherwise, the Trustee considers that only the information in this PDS is relevant. The Fund's deed has been or will be varied to ensure the Fund continues to comply with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth). Compliance with this legislation is required to enable the Fund to retain its concessional tax status. Members' accrued entitlements will not be adversely affected by the variation.

# SMSF PDS

## SMSF PDS — TABLE OF CONTENTS

1.	About SMSFs .....	1
2.	How super works .....	1
3.	Benefits of investing with an SMSF.....	2
4.	Risks of super .....	2
5.	How your money is invested.....	3
6.	Fees and costs.....	4
7.	How super is taxed .....	4
8.	How to open an account .....	6
9.	Additional information .....	7
10.	Abbreviations.....	7

### ANNEXURE: TEMPLATE BINDING DEATH BENEFIT NOMINATION

## IMPORTANT INFORMATION

This PDS has been prepared to provide a summary of significant information that you should consider. It is general information only and does not take into account your personal situation or needs.

More detailed information is available in the SMSF Memo, which builds on this PDS. The SMSF Memo also contains additional information relevant to trustees. It is strongly recommended that you read the SMSF Memo in conjunction with this PDS.

Changes are constantly being made to the superannuation rules and requirements. Numerous reform measures are discussed in the DBA Lawyers SMSF Memo. These materials are no substitute for expert advice given in view of your particular circumstances. Nevertheless, it is recommended that you closely consider them and obtain advice tailored to your circumstances.

To simplify your review, a list of abbreviations appears at the end of this PDS. A list of key rates, figures and thresholds (such as contribution caps, etc) is located at the end of the SMSF Memo.

This PDS is a general guide only in respect of the main features of an SMSF and does not constitute financial product or any other advice. Trustees have an ongoing obligation to ensure this document is kept up to date with relevant information. As superannuation and taxation laws are subject to continual change, expert advice should be obtained wherever in doubt. Unless an ongoing retainer is entered into, there is no obligation on DBA Lawyers to notify our client in respect of any change that may be required to their circumstances or documents. Except to the extent required by law, DBA Lawyers disclaims all and any liability arising in any manner that does not relate to the documentation prepared on our specific instructions. Date of PDS: 1 July 2018

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## 1. About SMSFs

SMSFs are generally only for you, your spouse and a maximum of two other members (provided each member satisfies certain tests). The two other members are generally family members.

In order to qualify as an SMSF, broadly each member of the fund must also be a trustee of the fund (or a director of the fund's corporate trustee) and vice versa. Further, trustees (including directors of corporate trustees) and members must generally not be remunerated for services they provide in respect of an SMSF. The above is subject to some exceptions.

## 2. How super works

### 2.1. What is super?

Superannuation is a means of saving for retirement and is, in part, compulsory. For instance, your employer may be required to make superannuation contributions on your behalf in line with the superannuation guarantee rules.

Superannuation is a long-term investment. Strict rules exist regarding when it can be accessed. Generally, you can only access your super if you retire or attain age 60 (however, if you were born on or before 30 June 1964, the relevant age, known as preservation age, will be lower than 60 for you).

Despite this restricted access, tax concessions and other government benefits generally make superannuation an attractive way to invest.

### 2.2. Methods of contributing

There are various methods of contributing to superannuation. These include:

- voluntary contributions;
- superannuation guarantee payments;
- salary sacrificing arrangements;
- the government co-contribution scheme;
- making contributions from the sale of small business assets in line with div 152 of the *Income Tax Assessment Act 1997* (Cth);
- First Home Super Saver contributions;
- downsizer contributions;
- structured settlement contributions;
- contributions splitting;
- eligible spouse contributions; and
- the Low Income Superannuation Tax Offset (LISTO) (a government contribution whereby eligible low income earners may receive a payment to their superannuation fund).

### 2.3. Choice of fund

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

## **2.4. Limits on contributions**

There are limits or caps on the amount that can be contributed to superannuation on your behalf. Limits also exist on when a superannuation contribution can be accepted by a trustee. Broadly, these limits depend on the 'type' of contribution, your total superannuation balance and your age. Exceeding the allowable limits can result in significant tax liabilities.

## **3. Benefits of investing with an SMSF**

The main advantage of having an SMSF is that it provides trustees (and therefore SMSF members) with control over their investments. More particularly, trustees have the ability to customise the structure, asset allocation and investments of their SMSF to suit their needs and objectives during the different stages of their lives.

Despite the above, running an SMSF also brings added responsibility and risk. For instance, trustees are responsible for all relevant administrative and compliance tasks, whereas commercial funds take care of these requirements for you. Further, SMSFs are more limited in the extent that they can diversify their investments and obtain economies of scale. Superannuation law also imposes a number of strict limitations on the type of investments a trustee can make and any contravention of these laws can incur serious penalties.

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

## **4. Risks of super**

### **4.1. Investment risk**

An SMSF is an investment vehicle and the trustee is responsible for maintaining the fund's investments in accordance with an appropriate investment strategy.

When formulating an investment strategy, the trustee should consider the risk profile of the members. Investments are not all alike and different investment strategies may carry different levels of risk. For instance, in many cases, assets with the highest long-term returns may also carry the highest level of short-term risk. That being said, *all* investments carry risk and even a 'low-risk' investment strategy will not necessarily guarantee a positive return.

The specific risks associated with a particular SMSF will ultimately depend on the investment strategy that the trustee adopts. However, as a general rule, the following is true:

- the value of investments will vary;
- the level of returns will vary and future returns may differ from past returns;
- returns are not guaranteed and you may lose some of your money;
- superannuation laws might change in the future and this could impact fund investments;
- the amount of your future superannuation savings (including contributions and returns) may not be enough to adequately provide for your retirement; and
- the level of risk you face will vary depending on a range of factors (including age, investment timeframes, where other parts of your wealth are invested and risk tolerance).

## **4.2. Compliance risk**

Severe penalties can apply for any contravention of superannuation law. All persons who become a trustee (or a director of a corporate trustee) must sign a trustee declaration acknowledging their trustee duties (in the relevant form published by the ATO) within 21 days of becoming a trustee or director.

Broadly, contraventions can expose an SMSF to 45% tax on its total assets, apart from NCCs. The ATO has discretion to waive this tax if there are genuine mitigating circumstances. In addition, a range of civil and criminal penalties can be imposed depending on the nature and severity of the contravention. Various monetary penalties, education directions and rectification directions can also be applied by the ATO in response to contraventions.

The existence of substantial penalties that can apply to contraventions and the complexity of superannuation law raises the following critical questions. Are you prepared to accept the responsibility that goes with operating an SMSF properly? Will you make sure you are sufficiently familiar with the regulatory regime? Will you seek advice whenever you are in doubt?

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

## **5. How your money is invested**

The trustee is responsible for investing the assets of the SMSF. Naturally, the normal course is that as a member, you will also be a trustee or a director of the corporate trustee. Any investments the trustee makes should be pursuant to a properly considered investment strategy. This investment strategy should be reviewed on a regular basis and, if necessary, revised. Further, it is a superannuation law requirement that trustees consider insurance for their members as part of the fund's investment strategy. Insurance does not necessarily have to be obtained.

Generally, unless the trustee is experienced with investments, investment or financial advice should be obtained to ensure members' superannuation interests are prudently invested.

In determining how to invest, the trustee should consider the likely investment return, the risk associated with the investment and the investment timeframe.

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

You may request that the trustee makes and holds particular investments on your behalf, or on behalf of a class of members.

## 6. Fees and costs

### DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your fund balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from \$100,000 to \$80,000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

You may be able to negotiate to pay lower contribution fees and management costs where applicable. Ask the SMSF trustee or your financial adviser.

### TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) has a superannuation investment fee calculator to help you check out different fee options.

Likely establishment and administration costs should be considered to ensure the benefit of establishing an SMSF is worthwhile. You should consult your financial adviser to determine the costs of administering the fund.

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

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

## 7. How super is taxed

### 7.1. Contributions

#### (a) Contributions generally

Three types of contributions broadly exist: CCs, NCCs and downsizer contributions. Generally, CCs include contributions made by an employer on behalf of an employee and contributions made by members who have claimed a personal deduction. CCs are included in the assessable income of a superannuation fund. NCCs, on the other hand, are typically those contributions made from after-tax income and are not included in the assessable income of a superannuation fund. Downsizer contributions are eligible contributions made by members aged 65 years in respect of the disposal of their main residence (subject to certain criteria).

**Warning** — contributions made in excess of your contribution caps can give rise to significant issues! Refer below.

**Warning** — it is critical to ensure that your tax file number is provided to the trustee, as extra tax can be imposed otherwise. Moreover, the fund cannot accept any member contributions unless a TFN is provided.

**(b) Concessional contributions**

CCs will only be taxed concessionally on receipt by a superannuation fund to the extent that they are within your CC cap. In this case, they will effectively be taxed at 15% as they are included in the fund's assessable income in the FY of receipt. Note that you only have one CC cap, regardless of how many employers or superannuation funds you may have.

CCs made in excess of the CC cap are included in your assessable income and taxed at your marginal tax rate. An additional interest charge also applies. Also, a maximum 15% tax offset applies in your personal tax return.

**(c) Non-concessional contributions**

To the extent that NCCs are within your NCC cap for the FY, they will not be subject to any contributions tax as they are not included in a fund's assessable income. If you exceed your NCC cap, this will mean you are faced with a choice as to how the excess is taxed. The first option is electing to release the excess as well as 85% of any associated earnings amount from your superannuation fund(s). The full associated earnings amount will be included in your personal assessable income and taxed at your marginal rate. A maximum tax offset equal to 15% of your associated earnings will be applied. The offset conceptually recognises tax paid by your superannuation fund. You will receive a release authority with the assessment, which you must give to your superannuation fund(s) to withdraw money to pay the tax. The second option is choosing not to release the excess and therefore paying excess NCC tax on the excess amount. The excess NCC tax rate is 47%.

**(d) Downsize contributions**

Broadly, downsizer contributions are not included in a fund's assessable income and therefore are not subject to any contributions tax. Downsizer contributions are neither a CC nor NCC and, accordingly, they do not count towards your contributions caps. There is a maximum of up to \$300,000 total downsizer contributions a member can make. Where a downsizer contribution does not satisfy the relevant criteria, it will either be allocated as an NCC (if within the member's NCC cap) or refunded to the member. Downsizer contributions do not count towards a member's total superannuation balance in the FY the contribution is made.

**(e) Managing excess contributions**

As outlined above, contributions made in excess of your contribution caps can incur significant tax. It is important that you are aware of the caps and the amounts being contributed to the fund. It is strongly recommended that you keep an ongoing record of each and every contribution made, before making any further contributions. This will assist in determining whether any excess contributions will arise in respect of any FY.

Where you have exceeded your CC cap, you may elect to have up to 85% of the excess amount released from the fund. This also reduces the amount of your NCCs (and if the full 85% is released, NCCs will not be impacted by the excess CCs).

If in doubt, you should contact your adviser and seek assistance before making a contribution. If you suspect that you might have exceeded your cap or incorrectly contributed an amount to your fund, you should contact your adviser immediately. If you and your adviser act quickly, there may be avenues available to minimise any adverse impact.

**(f) Extra 15% contributions tax for high income earners (div 293 tax)**

People who earn more than \$250,000 for FY2019 pay an extra 15% tax on their CCs to the extent their CCs exceed their adjusted income thresholds. If this applies, it essentially means these CCs will be taxed at a maximum rate of 30% instead of the usual 15%.

## 7.2. Investment earnings

Broadly, superannuation investment earnings are taxed at 15%. However, typically no tax is payable on investment earnings that arise from assets that are being used to support a pension. Generally a \$1.6 million limit (known as the transfer balance cap) applies to the amount of assets that can commence a pension that are eligible for a tax exemption.

## 7.3. Member benefits upon withdrawal

### (a) Preservation age

Your preservation age affects the tax treatment of certain benefits. Your preservation age is 60 unless you were born on or before 30 June 1964, in which case your preservation age can be as low as 55.

### (b) Lump sums

That part of a lump sum consisting of the tax free component is received by you as non-assessable non-exempt income (ie, 'tax free'). The taxable component (consisting of the element taxed) of a lump sum is taxed as follows:

Age of recipient	Tax treatment
Younger than preservation age	The amount is subject to tax at 20% plus levies.
Over preservation age but less than age 60	Low rate cap amount is received income tax free and the balance is subject to tax at 15% plus levies. You only have one lifetime cumulative low rate cap in relation to your taxable component.
60 or over	The amount is income tax free.

### (c) Pensions

Broadly, if you are under 60 and in receipt of a pension, the pension is taxed as ordinary income. However, a 15% tax offset applies to the assessable amount (ie, the taxable component) of the pension payments if you have attained preservation age. In addition, the amount of the pension representing the tax free component will be received tax free. Once you are 60 years or over, pension payments are income tax free and are not included in your income tax return.

The tax treatment of pensions is summarised as follows:

Age of pensioner	Tax treatment
Preservation age or over, but under 60	Pension payment less the tax free component is subject to tax at the member's marginal tax rate plus levies less a 15% offset.
60 or over	Pension payments are generally received income tax free.

### (d) Death benefits

The amount of tax payable on a payment from a superannuation fund after you die depends on whether the beneficiary who receives the payment is a dependant for tax purposes and what form the payment takes (ie, lump sum or pension).

## 8. How to open an account

### 8.1. Complaints and cooling-off

You should discuss any query or complaint you may have in the first instance with the trustee. If the trustee is unable to resolve a dispute, legal advice should be sought.



Generally, no 'cooling-off' regime applies to an SMSF (except where you elect to convert your benefits from the accumulation phase to the pension phase). Thus, there is no easy way to cease to be a member and have contributions to the SMSF returned. Once a contribution is made, it is preserved in the superannuation system and you can generally only obtain access to such monies when you meet a relevant condition of release.

## 9. Additional information

Unless the trustee advises you that different information should apply, the information below is relevant to you.

The costs of being a member of the SMSF may include (but are not limited to) accounting, investment advice, transaction and ongoing administration costs. The nature and level of costs will depend on, among other things, the level of turnover of investments in the fund, the number of transactions and the complexity of the fund's transactions.

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

The trustee should not charge any commissions or fees while the trustee acts as trustee for an SMSF. However, depending on the investments chosen, the fund's expenses might include commissions and similar fees (eg, if the fund was to invest in a managed investment trust or public offer fund). You will be advised by the trustee of any commission or other similar payments that may impact on the amount of your interest. The trustee does not charge a fee merely in respect of your interest and there are no entry and exit fees.

The investment strategy of the fund is or will be detailed in a trustee resolution unless otherwise provided for.

Unless otherwise decided by the trustee, labour standards and environmental, social or ethical considerations are not taken into account in selecting, retaining or realising investments.

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

## 10. Abbreviations

Abbreviation	Meaning
ATO	Australian Taxation Office
CC	concessional contribution
FY	financial year
NCC	non-concessional contribution
PDS	product disclosure statement
SMSF	self managed superannuation fund
TFN	tax file number

## BINDING DEATH BENEFIT NOMINATION (use only with DBA Lawyers' governing rules)

This Binding Death Benefit Nomination ('BDBN'), when completed, will bind the trustee as to how to pay your death benefit. Please read the SMSF Memo before completing this BDBN.

We strongly recommend that you contact your adviser and your lawyer before completing this BDBN. If this document is inappropriately or incorrectly completed, significant negative implications can arise.

### SUPERANNUATION FUND DETAILS

Name: ..... ('Fund')

### TRUSTEE DETAILS

Name: ..... ('Trustee')

Address: .....

### MEMBER DETAILS

Name: ..... ('Member')

Address: .....

### BINDING DEATH BENEFIT NOMINATION DETAILS

I, the Member, revoke and terminate all of my prior BDBNs, death benefit agreements and binding and non-binding directions or instructions relating to death benefits made in relation to my membership in the Fund and declare this to be my last BDBN. This BDBN is binding on the Trustee. **I DIRECT, BIND and COMPEL** the Trustee, or any other company or natural person(s) that is the trustee of the Fund at or after the date of my death, to pay any and all benefits that may be payable in respect of my membership of the Fund ('My Benefit') on my death as follows:

*(Please complete this box. The directions in this box are referred to as the First Tier Directions)*

To my Dependants named below	Share of My Benefit (specify %)

**AND:**

My Legal Personal Representative ('LPR') (ie, my estate).	
<b>TOTAL:</b>	<b>100%</b>

**AND:**

*(BDBN continues next page)*

.....  
Signature of Member

.....  
Signature of Witness 1

.....  
Signature of Witness 2

## BINDING DEATH BENEFIT NOMINATION (continued)

### SECOND TIER DIRECTIONS

To the extent that the First Tier Directions do not deal with 100% of My Benefit (including by reason of any of the Dependants named above predeceasing me), **I DIRECT, BIND and COMPEL** the Trustee to follow the direction below in relation to that part of My Benefit that is not dealt with by the First Tier Directions ('Residual Benefit'):

*(Please tick **one** of the boxes below — if no box is ticked or more than one box is ticked, option 3 applies)*

#### Option 1:

☐ pay the Residual Benefit as follows:

To my Dependants named below	Share of Residual Benefit (specify %)
My LPR	
<b>TOTAL:</b>	<b>100%</b>

#### Option 2:

☐ pay the Residual Benefit to my **LPR**

#### Option 3:

☐ treat the Residual Benefit **at its discretion**, in accordance with the Fund's governing rules while taking into consideration whom I wish to benefit as expressed in this document

#### Automatically reversionary pension(s) to spouse — *OPTIONAL* — *please tick box below, if desired*

☐ In relation to this BDBN, to the extent that my Spouse will benefit under this BDBN, I **DIRECT, BIND and COMPEL** the Trustee that, in relation to each Account-Based Pension and Transition to Retirement Income Stream that I am receiving just before my death ('Income Stream'), the Income Stream automatically reverts upon my death to my Spouse as an Automatically Reversionary Pension (to the extent allowable under the Standards). This BDBN forms part of the governing rules of the Income Stream to the extent required for the Income Stream to be an Automatically Reversionary Pension.

To the extent that the directions in this BDBN do not deal with 100% of My Benefit, I direct the Trustee to treat that part of My Benefit at its discretion, in accordance with the Fund's governing rules while taking into consideration whom I wish to benefit as expressed in this document. The terms in this BDBN have the same meanings as the terms in the Fund's governing rules at the date of making this BDBN. This BDBN is non-lapsing and lasts indefinitely unless revoked.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
Signature of Witness 2

## BINDING DEATH BENEFIT NOMINATION (continued)

### EXECUTION

I have signed this BDBN this ..... day of ..... 20.....

Signed by the **MEMBER** in the presence of us )  
both being present at the same time who at the )  
Member's request and in the Member's )  
presence and in the presence of each other )  
have signed as witnesses: )

.....  
*Signature of **Member***

#### WITNESS 1

I declare that I:

- am over 18 years of age;
- do not benefit under this BDBN; and
- was present when the member signed this BDBN.

Signature: .....

Full Name: .....

Home Address: .....

Occupation: .....

#### WITNESS 2

I declare that I:

- am over 18 years of age;
- do not benefit under this BDBN; and
- was present when the member signed this BDBN.

Signature: .....

Full Name: .....

Home Address: .....

Occupation: .....

*(OPTIONAL — Failure to execute the below does not affect the validity of this BDBN. However, under your prior BDBN or similar arrangement, you may have to provide this document to the trustee to revoke the prior BDBN or similar arrangement. You should seek advice if unsure.)*

Signed on behalf of the **TRUSTEE** as )  
confirmation and acceptance of this BDBN and )  
any revocation of any prior BDBN or binding )  
nomination, agreement or arrangement: )

.....  
*Signature of any trustee or director of the trustee*