

Superannuation Trust Deed for a Self-Managed Fund

for

Mitchell Keast Superannuation Fund

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Overview

For the convenience of users, this superannuation trust deed is written in plain language. It contains only those clauses that are appropriate for the particular form of self-managed superannuation fund that you have chosen. *It is not suitable for any other form of fund.*

If you decide to change the trustees of the fund, for example, replace individual trustees with a corporate trustee or replace a corporate trustee with individual trustees, you will have to use the Cleardocs system to create a replacement deed that incorporates the necessary clauses for the new form of fund.

You cannot change the form of the fund in any other way.

A Establishment of the fund

The establishment of the fund

- 1 The person named in Schedule 1 as the 'person establishing the fund' establishes the Mitchell Keast Superannuation Fund as a self-managed superannuation fund under the SIS Act. It is an indefinitely continuing superannuation fund.

Purpose of the fund

- 2 The sole or primary purpose of the fund is to provide old age pensions and other benefits to members on their retirement.

Trustee of the fund

- 3 The initial trustee is named in Schedule 1 of this deed. The trustee accepts the appointment. The fund is vested in the trustee. No other person (including a member) has any legal or beneficial interest in any asset of the fund except to the extent expressly stated elsewhere in this deed. The trustee must manage the fund in accordance with this deed.

Method of decision by trustee under this deed

- 4 The trustee may only make decisions under this deed in the manner set out in the trustee's constitution.

Deed subject to superannuation law

- 5 This deed is to be interpreted so as to comply with superannuation law. In particular, it is to be construed so that the fund it establishes qualifies as a self managed superannuation fund under superannuation law and so that it qualifies for, and payments from it qualify for, concessional tax treatment under the Tax Act. To the extent that anything in this deed is inconsistent with superannuation law, it is to be severed from the deed. Any obligation imposed by superannuation law in respect of the fund established by this deed that is not expressed in this deed is nonetheless to be regarded as incorporated in it by reference.

Trustee must comply with law

- 6 The trustee must not do or fail to do anything as trustee of the fund that would result in either of the following:
- a breach of law, including superannuation law; or
 - the fund ceasing to qualify as a self managed superannuation fund under superannuation law or to qualify for, or for payments made from the fund to qualify for, concessional tax treatment under the Tax Act.

Effect of becoming member

- 14 An additional member becomes bound by this deed on being accepted as an additional member.

Date of commencement of membership of additional member

- 15 An additional member's membership commences on the date the trustee specifies, when accepting the person as a member. If the trustee does not specify a date, then the additional member's membership commences on the date the trustee received his or her application or the date referred to in clause 9 (if applicable).

Date of additional member's commencement as trustee

- 16 An additional member becomes director of the trustee of the fund on the date his or her membership commences provided that the trustee has done everything necessary to appoint the additional member as a director of the trustee.

Back-dating of membership

- 17 With the trustee's consent, the relevant participating employer may back-date the commencement of an additional member's membership for any period the employer thinks fit. Unless the employer decides otherwise with the agreement of the trustee, that additional period will count as a period of membership.

Conditions on membership

- 18 The trustee may impose any conditions the trustee thinks fit on the membership of an additional member and the additional member's rights and duties. The trustee may remove or vary any condition at any time.

Trustee must notify new member

- 19 As soon as practicable after a person becomes a member of the fund (and not later than 3 months after the person becomes a member), the trustee must ensure that the member is given a product disclosure statement (in the form set out in Schedule 6, updated as required) which the superannuation law requires to be given to new members of the fund.

Trustee must disclose and report

- 20 The trustee must ensure that members, former members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the fund, that the superannuation law requires them to be given.

Trustee must notify exiting member

- 21 As soon as practicable after a person ceases to be a member of the fund, the trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be members of the fund.

- the person ceases to be a director of the trustee of the fund.
- when payment of all the member's benefits is made to the member or to an approved benefit arrangement for the member.
- when benefits payable to or for the member cease to be payable.

When a person ceases to be a member of the fund, the person ceases to be a director of the trustee of the fund, if he or she has not already ceased to act in that role.

Exception to ceasing to be a member

28 A person (**first person**) does not cease to be a member of the fund when the first person ceases to be a director of the trustee of the fund if:

- another person (**second person**) has been appointed to act as a director of the trustee of the fund in the place of the first person; and
- that second person is the first person's legal personal representative, while he or she holds an enduring power of attorney in respect of the first person or while the first person is under a legal disability.

Minor as a member

29 A minor, being a person who is under 18 years of age, may be a member of the fund provided the superannuation law is complied with. In relation to a member who is a minor:

- the minor's parent or guardian must make the application for the minor to become a member in the form set out in Schedule 5 or in the form otherwise approved by the trustee;
- decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
 - the minor turns 18; or
 - after the minor turns 16, the time at which the parent or guardian notifies the fund that the minor will be making decisions in relation to the minor's membership;
- when the minor turns 16, any parent or guardian acting as a director of a corporate trustee in place of the member, may continue acting in that role; and
- when the minor turns 18, the parent or guardian acting as a director of the trustee of the fund must do everything necessary to procure that the minor be appointed as a director of the trustee of the fund in place of them acting in that role.

C Accounts of the fund

Trustee must establish certain types of account

- 30 The trustee must establish:
- an accumulation account or a pension account, or a combination of both, in respect of each member or beneficiary for each class; and
 - an income account.

- 32.5 The cost of any annuity or policy of insurance effected by the trustee in respect of the member or a beneficiary of the member; and the proportion that the trustee thinks equitable of any group policy effected by the trustee in respect of the member or beneficiary and another member or beneficiary.
- 32.6 The amount of a lien in respect of an indemnity exercised by the trustee in accordance with this deed.
- 32.7 An amount forfeited in accordance with this deed.
- 32.8 The proportion that the trustee thinks appropriate of any negative earnings of the fund determined in accordance with this deed.
- 32.9 An amount paid to indemnify the trustee in accordance with this deed.
- 32.10 An amount credited to the pension account of a beneficiary.
- 32.11 The proportion that the trustee thinks appropriate of a levy.
- 32.12 The amount of tax attributable to the member or a beneficiary of the member.
- 32.13 An amount to be allotted and credited to the accumulation account of another member pursuant to a contributions-split request made by the member whose accumulation account is to be debited and accepted by the trustee.
- 32.14 Any other amount the trustee thinks it appropriate to debit.

Contributions-split requests

- 33 A member may ask the trustee (in a way that satisfies the requirements of superannuation law) that contributions made to the fund in respect of that member in the previous financial year be:
- 33.1 allotted to the accumulation account of that member's spouse; or
- 33.2 rolled-over or transferred to the trustee of an approved benefit arrangement of which that member's spouse has joined or is eligible to join.
- 34 The trustee must allot, roll-over or transfer the relevant contributions pursuant to a request received under clause 33 provided:
- The request satisfies the requirements of superannuation law.
 - The trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and
 - The amount of the contributions that the trustee allots, rolls-over or transfers does not exceed the amount in the member's accumulation account, taking into account any amount that the trustee otherwise determines to debit from the member's accumulation account.

Credits to the income account

- 35 The trustee may credit each of the following to the income account of the fund:
- 35.1 Income and profits of the fund.
- 35.2 Adjustment credits made in accordance with clause 38.

- 39.4 To pay the expenses of the fund.
- 39.5 To provide for any contingencies the trustee decides to provide for.
- 39.6 To provide an amount to or for a member, former member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law.
- 39.7 To do anything else the trustee decides to do, provided there is no breach of trust or superannuation law.

Credits to equalisation account

- 40 The trustee may credit the equalisation account with any of the following:
- the portion the trustee thinks fit of an amount paid into the fund as a transfer or roll over payment.
 - an amount transferred from the forfeiture account under clause 126.
 - an amount transferred from a pension account under clause 89.

Trustee may establish or maintain other accounts or reserves

- 41 The trustee may establish or maintain any other account for or reserve of the fund that the trustee thinks necessary or desirable or that is required or permitted by superannuation law. The trustee may use such accounts or reserves for any purpose permitted by superannuation law and may credit or debit amounts from such accounts or reserves as the trustee sees fit.

Valuation of fund

- 42 The trustee must value the assets of the fund at market value when superannuation law requires it and when the trustee thinks it appropriate to do so. The trustee may also determine whether there is a surplus or deficiency which it is equitable in the trustee's opinion to transfer to the income account.

Interim fund earning rate

- 43 If the trustee is required to establish an interim fund earning rate, the trustee must do so in accordance with superannuation law on a basis the trustee believes to be equitable. If the Regulator or superannuation law requires it, the trustee must inform members of that basis.

D Contributions

Member contributions

- 44 With the trustee's consent, a member may make any contributions to the fund that the member decides to. With the member's and the participating employer's consent, contributions can be paid by deduction from wages or salary. In that case, the member's employer must pay them to the fund in the way the trustee directs.

- a contribution that is not permitted by superannuation law;
- a contribution or shortfall component the acceptance of which would prevent the fund from qualifying as a complying superannuation fund; and
- an employer contribution or shortfall component which the regulator lawfully directs the trustee not to accept.

Breach of clause headed 'Contributions etc not accepted'

52 If the trustee becomes aware that a contribution or shortfall component has been accepted in breach of clause 51, the trustee must refund the amount within any time specified by, and only as permitted by, superannuation law. However, the trustee may deduct each of the following from that amount:

- any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
- reasonable administration charges; and
- any other amount the trustee considers appropriate, acting reasonably.

The trustee may reduce the benefits of the member to those which the member would have had if the contribution or shortfall component had not been accepted.

Other contributions not accepted

53 The trustee may refuse to accept:

- a contribution that the trustee has determined not to accept because the trustee has not been informed of the relevant member's tax file number;
- excess contributions.

Permissible actions if excess contributions accepted

54 If excess contributions are made to the fund by or in respect of a member, then the trustee may:

- release funds to the member if the trustee has received a member release authority;
- release funds to the Commissioner of Taxation where the trustee has received an ATO release authority; and
- release funds in any other circumstances, and to such persons, as is permitted under superannuation law.

Allocation of contributions

55 If the trustee receives a contribution in a month, the trustee must allocate the contribution to the relevant member of the fund:

- within 28 days after the end of the month, or any other period as required by

No termination on transfer of business to another employer

- 61 If a participating employer amalgamates with another participating employer or disposes of its business to another participating employer, members who were employees of the former participating employer are deemed for the purposes of this deed to have become employees of the latter participating employer, which may then make contributions in respect of them.

E Investment

Authorised investments

- 62 The trustee must invest any assets of the fund that are not required for payment of benefits or other amounts under this deed. The trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- 62.1 Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia.
 - 62.2 Securities in any company incorporated anywhere, whether carrying on business in Australia or not.
 - 62.3 Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, or other registered financial institution.
 - 62.4 Real or personal property, including an improvement to that property.
 - 62.5 Units (including sub-units) in a unit trust established or situated anywhere in the world by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant.
 - 62.6 Futures, options or any other synthetic investment.
 - 62.7 Hedging, swapping or any similar arrangement, even though it is not linked to any property of the fund.
 - 62.8 Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the trustee thinks reasonable. The fact that the trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant.
 - 62.9 A policy or annuity with an insurer, whether by proposal or purchase.
 - 62.10 Instalment warrants or receipts.
 - 62.11 By way of a limited recourse borrowing arrangement in accordance with clause 142.
 - 62.12 Any other investment allowed by superannuation law that the trustee thinks appropriate.

Chosen strategies to be monitored

- 69 The trustee may continually monitor any strategies adopted by members or beneficiaries for investment choice to ensure that they remain appropriate for the members or beneficiaries to whom they are available.

Sub-accounts etc for investment choice

- 70 If a member adopts a strategy for investment choice, the trustee may do each of the following:
- 70.1 Establish a sub-account of the income account in respect of that strategy.
 - 70.2 Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself.
 - 70.3 Allocate earnings attributable to that strategy to the member's or beneficiary's accumulation account or pension account in a way that the trustee thinks equitable.
 - 70.4 Determine a fund earning rate for that sub-account.

Power to deal with investment choice investments

- 71 The trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of the relevant members or beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

F Benefits: general

Limit on payment of preserved payment benefits

- 72 The trustee must not pay out to a member or a dependant of a member any preserved payment benefit that superannuation law does not allow the trustee to pay out.

When payment of preserved payment benefits allowed

- 73 The trustee may pay a member or, if applicable, a dependant of a member, a preserved payment benefit in any of the following circumstances:
- 73.1 The member reaches the relevant preservation age and takes a transition to retirement pension in accordance with Part G.
 - 73.2 The member retires from gainful employment on or after reaching the relevant preservation age.
 - 73.3 The member becomes totally and permanently disabled.
 - 73.4 The member becomes totally and temporarily disabled.
 - 73.5 The member reaches age 65.
 - 73.6 The member dies.
 - 73.7 Any other circumstance allowed by superannuation law.

Information to be provided to trustee

- 80 On written request by the trustee, an applicant, member or beneficiary must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.

If an applicant, member or beneficiary fails to do so, the trustee may suspend collection of contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the trustee thinks fit.

Trustee may adjust benefits for wrong information

- 81 The trustee may adjust any benefit payable to or in respect of a member if an applicant, member or beneficiary has supplied false or misleading information to the trustee, or has deliberately withheld information from the trustee, that affects or is likely to affect benefits payable to or in respect of that member.

G Pensions: general

Trustee's power to pay pension

- 82 When any part of a benefit becomes payable to a member under this deed or in accordance with superannuation law, the trustee has a discretion to decide whether to pay one or more pensions to the member or to use the benefit payable to acquire one or more annuities in the name of the member. The pensions or annuities may be of any type permitted by superannuation law (including, without limitation, an account-based pension) and will be in substitution for the relevant part of any lump sum benefit that was payable to the member for the amounts credited to the member's pension account as a transfer of a roll over payment under clause 88.2.

Member or beneficiary may choose type of pension

- 83 The relevant member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund. The pension must be paid in accordance with the requirements of the superannuation law.

Actuarial certificate

- 84 The trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the trustee decides to pay, unless either section 295-390 (or any other provision) of the *Income Tax Assessment Act 1997* (Cth) provides otherwise in which case the trustee has a discretion as to whether to obtain an actuarial certificate.

Funding pension through annuity

- 85 The trustee may fund a person's pension by purchasing an annuity payable to the trustee.

- 89.7 The proportion of an amount payable as taxation in respect of the earnings of the fund that are credited to the pensioner's account or arise from a roll over payment that the trustee thinks equitable.
- 89.8 The proportion of an amount paid in respect of an indemnity to the trustee or other person under this deed that the trustee thinks equitable.
- 89.9 The amount of a levy that the trustee thinks equitable.
- 89.10 An amount transferred to the accumulation account of a beneficiary.
- 89.11 Any other amount that the trustee thinks it appropriate to debit from the account.

Adjustment based on fund earning rate

- 90 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the trustee must make an adjustment to the account that the trustee thinks equitable on the basis of the interim fund earning rate at that date. The adjustment must be made in respect of the period from the beginning of the current fund year to the relevant date. The income account must be credited or debited accordingly.

Segregation of assets and valuation

- 91 The trustee may segregate from other assets those assets which are to fund the pension of a person under this deed. The trustee must value those assets as required by superannuation law. If they are insufficient or more than sufficient to fund the pension, the trustee must do anything that superannuation law requires. The trustee must obtain any certificate of adequacy that the trustee considers necessary in respect of those assets in order to comply with the Tax Act or superannuation law.

Pensions: residue in account

- 92 On the death of a pensioner being paid a pension the trustee must, subject to superannuation law:
 - act in accordance with the terms on which the relevant pension is paid, including as to the payment of the pension to a reversionary beneficiary; and
 - then, if there is no reversionary beneficiary, or if there is any residue in the pension account for any other reason, pay that residue as a death benefit in accordance with Part H of this deed.

Trustee's right to commute pensions generally

- 93 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustee may commute all or any part of a pension and apply the proceeds of that commutation in accordance with superannuation law, including by commuting it to a lump sum and paying it to the relevant person or his or her estate. The following general conditions apply in respect of all types of pension:
 - The commutation must be allowed by, and be in accordance with, superannuation law.
 - The commutation must not disadvantage the fund, an employer, a member or

- 98.2 if there is a death benefit agreement, then any binding death benefit notice is to be treated as not in effect for the purposes of this deed and of regulation 6.17A(4) of the SIS Regulations (but see also clause 98.4 which can overrule this clause);
- 98.3 if there is any inconsistency between the death benefit agreement and the remaining provisions of this deed, then the terms of the death benefit agreement prevail to the extent of that inconsistency — except that clause 5 of this deed prevails over the agreement; and
- 98.4 if part of the death benefit agreement is invalid because it directs the trustee to pay part, or all, of the benefits to a person to whom those benefits may not be paid in accordance with superannuation law (**disallowed benefits**) then:
- clause 98.2 does not apply in respect of the disallowed benefits;
 - clauses 97 and 98.1 to 98.3 apply to any part of the death benefit agreement which remains valid (and to the payment of death benefits other than disallowed benefits); and
 - clauses 98.1 to 98.3 apply for the purpose of determining the disallowed benefits, and the disallowed benefits must be paid in accordance with the remainder of this Part H.

Binding death benefit notice payment arrangements

- 99 After the death of a member or beneficiary who has given the trustee a binding death benefit notice, the trustee must comply with that notice subject to clauses 97 and 98.

Non-binding death benefit notice payment arrangements

- 100 If after the death of a member or beneficiary, not all death benefits have been paid or applied in accordance with a death benefit agreement or binding death benefit notice, then the trustee must pay or apply the relevant benefit in the way the trustee thinks fit in accordance with the following rules:
- 100.1 If the member or beneficiary has left dependants, then the trustee must pay or apply the benefit to or for the benefit of any one or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary. The trustee may do so in any proportions the trustee thinks fit and may take into account a member's wishes contained in a non-binding nomination form.
- 100.2 If the member or beneficiary has not left any dependants but does have a legal personal representative, then the trustee must pay the benefit to the legal personal representatives of the member or beneficiary.
- 100.3 If the member or beneficiary has not left any dependants and has no legal personal representative, then the trustee may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustee may do so in any proportions the trustee thinks fit.
- 100.4 If the trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 100.1 to 100.3, then the trustee must treat the benefit as a forfeited benefit entitlement.

- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, in the way the benefit is paid by the insurer.
- In any other case, in the way the trustee decides.

Member contributions may be suspended: temporary total disablement

- 107 A member may suspend his or her contributions during a period while he or she is receiving a benefit in relation to temporary total disablement.

Membership not affected by temporary total disablement

- 108 A member does not cease being a member because he or she is receiving a benefit in respect of temporary total disablement.

Retirement benefit

- 109 The trustee may pay a member the retirement benefit at the member's request if either of the following applies:
- the member retires from employment on or after reaching normal retirement age; or
 - the member becomes entitled under superannuation law to the payment of a benefit despite still being employed.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

Early retirement

- 110 On request by a member, the trustee must pay a benefit to that member in each of the following cases:
- the member ceased to be employed before normal retirement age, but has reached the relevant preservation age.
 - the member retired from an arrangement under which the member was gainfully employed and has reached 60 or another age prescribed by superannuation law.
 - in any other case as permitted by superannuation law.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

Notification of address etc

- 118 A person to whom a benefit becomes payable must notify the trustee of his or her full residential address, and of any change in that address. He or she must also notify the trustee of a bank account into which he or she asks the benefit to be paid.

Receipt to be given

- 119 On request by the trustee, a person to whom a benefit is paid must give the trustee a receipt and release for the payment in the form required by the trustee.

Person under legal disability

- 120 If a person to whom the trustee is to pay any part of a benefit is under a legal disability, or the trustee believes that it would be in that person's best interests for the trustee not to make the payment to that person, the trustee may make the payment in any of the following ways as the trustee thinks fit:
- To or for the maintenance, education, advancement, support or benefit of the person on any conditions.
 - To, and for the benefit of, another person who appears to the trustee to be any of the following: the trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.

Discharge of trustee

- 121 The receipt by a person of a payment in accordance with clause 120 discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

Transfer of assets

- 122 With the consent of a member or beneficiary to whom a benefit is payable, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

J Forfeiture of benefit entitlements

Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.

Forfeiture account

- 123 The trustee may establish or maintain a forfeiture account into which the trustee must pay any amount forfeited under this deed. Money held in that account does not form part of an accumulation account. The trustee must credit any income from that money to the forfeiture account.

Possible adjustment to entitlements

- 128 If the event that gave rise to forfeiture of an entitlement in respect of a member ceases to affect that member, the trustee may re-establish any rights in the member that the trustee thinks fit. They must not be greater than they were before the forfeiture.

K Provisions relating to the *Family Law Act*

Payment splits

- 129 If the trustee receives a splitting agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served and subject to superannuation law, the trustee may:
- vary the relevant member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the trustee determines from time to time, to the extent permitted by superannuation law; and
 - make a payment to the non-member spouse or a transfer in respect of the non-member spouse in accordance with clause 133.

Rules for payment splits

- 130 The trustee may as it determines from time to time subject to superannuation law, make rules dealing with:
- the valuation of a non-member spouse's benefit or benefit entitlement (including any adjustments);
 - the timing of the calculation of the non-member spouse's benefit or benefit entitlement;
 - other matters relating to the payment split or the non-member spouse's benefit or benefit entitlement.

Deferred payment splits

- 131 If the trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the trustee must:
- record the existence of the agreement or court order; and
 - keep a record of the non-member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the trustee determines from time to time subject to superannuation law.

Flagging agreements

- 132 If the trustee receives a flagging agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustee must:
- record the existence of the agreement or court order; and

Specific powers

- 139 To exclude any possible doubt, the trustee has the power to do any of the following to the extent allowed by superannuation law:
- 139.1 To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the fund.
 - 139.2 To indemnify a person.
 - 139.3 To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities.
 - 139.4 To do anything the trustee considers necessary or desirable in connection with performing its obligations under this deed.

Limit on borrowing

- 140 The trustee must not (except as provided by this deed in clause 142 and superannuation law):
- 140.1 borrow money; or
 - 140.2 maintain an existing borrowing of money.

Trustee may grant security over asset

- 141 The trustee may, to the extent allowed by superannuation law, mortgage, pledge, charge, assign or otherwise provide as security, any asset of the fund for the purpose of the trustee borrowing or maintaining a borrowing of money including (without limitation) for the purpose of a "limited recourse borrowing arrangement" referred to in clause 142.3.

Note: There are strict requirements which must be met for a borrowing, and any associated mortgaging or charging of assets, to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money or mortgages or charges its assets.

When borrowing is allowed (including "limited recourse borrowing arrangements")

- 142 The trustee may borrow or maintain a borrowing of money in any one or more of the following cases:
- 142.1 to enable the trustee to pay a surcharge or advance instalment which the trustee is required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* — as long as the borrowing complies with section 67(2A) of the SIS Act;
 - 142.2 to enable the trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act — as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
 - 142.3 under an arrangement (a "limited recourse borrowing arrangement") which the trustee enters, or has entered into, in which the money borrowed is, or has been,

member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:

- The member or beneficiary is eligible to join or has joined the arrangement.
- The trustee is satisfied that the transfer complies with superannuation law.
- The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 39.

Form and effect of transfer

- 150 The member or beneficiary must complete and execute any documents required by the *Tax Act* for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.

Trustee's power to transfer to successor fund

- 151 The trustee may transfer to the trustee of an approved benefit arrangement that is a successor fund to the fund under superannuation law any part of the amount in the fund that represents a benefit entitlement. The consent of the member or beneficiary is not required. Nor is it necessary that the member already be a member of the successor fund.

Trustee's power to transfer to eligible roll over fund

- 152 In accordance with superannuation law, the trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a member's or beneficiary's benefit entitlement. The trustee must do so if superannuation law requires it.

Transfer of assets

- 153 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 151 or 152, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

The trustee's power to receive transfer

- 154 The trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a member or beneficiary of the fund. The trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustee may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

Trustee to collect money owing to the fund

- 162 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

Trustee to keep records, accounts, books etc

- 163 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

Documents to be prepared

- 164 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:
- A statement of its financial position.
 - An operating statement.
 - Any other account or statement required by superannuation law.

Annual return

- 165 The trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

Audit

- 166 The trustee must arrange for the books, accounts and records of the fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

Disclosure requirements

- 167 The trustee must ensure that information and documents are provided to each of the following persons if required by, and in accordance with the requirements of, superannuation law:
- employers.
 - the Regulator.
 - the actuary (if one is appointed).
 - the auditor.
 - any other person.

Availability of books and records

- 168 The trustee must ensure that the books of the fund and information relating to it are available for inspection and copying, and that access is provided to premises where the

Trustee not bound by advice

- 177 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

Liability of the trustee is limited

- 178 To the extent allowed by superannuation law, neither the trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:

- The person fails to act honestly.
- The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise.
- The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

Indemnity

- 179 To the extent allowed by superannuation law, the trustee and each of its directors, officers and employees are entitled to an indemnity from the fund in all cases where the person is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

Other persons who may act

- 180 Subject to superannuation law, the trustee may appoint the following persons to act as director of the trustee of the fund.
- the legal personal representative of a deceased member, from the date of the member's death until the member's death benefits begin to be paid;
 - the legal personal representative of a member, while he or she holds an enduring power of attorney in respect of the member or while the member is under a legal disability;
 - the legal personal representative, parent or guardian of a member who is a minor; or
 - any other person if the superannuation law allows that person to be a director of the trustee and the fund would remain a self managed superannuation fund.

Appointment of members as trustee

- 181 The trustee may appoint the members of the fund as trustees in place of the trustee by executing a deed to that effect. It may only do so if immediately afterwards it executes another deed which provides the mechanisms to enable the members of the fund to act as trustees.

Appointment of replacement corporate trustee

- 182 The trustee may appoint as a replacement trustee a corporation of which the members of the fund are the only directors. The trustee must do everything necessary to vest the fund

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

Employment relationship not affected by this deed

- 188 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

Legal rights of member not affected by this deed

- 189 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

Variation

- 190 Subject to clauses 191 to 193, the trustee may vary this deed either prospectively or retrospectively. The trustee may do so by oral declaration, written resolution or deed. If superannuation law requires it, the trustee must promptly give a certified copy of the resolution or a copy of the deed to the Regulator.

Limits on effect of variation

- 191 If one or more death benefit agreements are in place under this deed, then any variation of the deed does not vary any death benefit agreement or clauses 97 or 98 – unless that variation expressly states that it does vary any one or more of those things. Instead, those agreements and clauses continue to apply in respect of the fund.
- 192 If one or more agreements or arrangements are in place in respect of the fund relating to payment of a pension, then any variation of the deed does not vary those agreements or arrangements – unless that variation expressly states that it does vary one or more of those things. Instead, those agreements and arrangements continue to apply in respect of the fund.

Limits on power to vary

- 193 The trustee does not have power to vary this deed so as to do either of the following:
- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
 - Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

Proper law

197 This deed is governed by the law of Northern Territory. The parties consent to the exercise of jurisdiction by the courts of that place.

*{The fields in all of the following schedules to this deed are left intentionally 'blank' as the schedules are to be used as 'pro-forma' documents if the fund wishes to add members etc. in the future.
These schedules are to be bound in and form part of this Deed.}*

Applicant name [Insert applicant's name]
Applicant address [Insert applicant's address]
Applicant occupation [Insert applicant's occupation]
Date of birth [Insert applicant's date of birth]
Applicant place of birth [Insert applicant's place of birth]

Part 2: Death Benefit: Beneficiary Nomination

If death benefit nomination is to be binding This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after your death to the person or persons you mentioned in this notice, being one or more dependants or your legal personal representative. *Or If death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on your death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on your death.

[If the beneficiary is your legal personal representative only] I direct [Either the trustees Or the directors of the trustee] that my legal personal representative is to receive 100% of any death benefit that is payable if I die.

[If the beneficiary is another person/s or both the member's legal personal representative and other person/s] I direct [Either the trustees Or the directors of the trustee] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
<i>[Insert beneficiary's name. If this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert beneficiary's relationship to member or if this beneficiary is your legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert proportion of the death benefit to be paid to this beneficiary] %</i>
<i>[Add rows to table as required]</i>		

[If death benefit nomination is to be binding (Please note, that this beneficiary direction is valid for only 3 years.)]

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

Second Notice: Consistency of death benefit arrangements with pension terms

It is important to consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be considered together.

For instance, if the pension terms require an automatic reversionary pension, then the death benefit nomination or death benefit agreement has no effect in relation to that pension. If the member wants to ensure all these arrangements – under pension terms, a death benefit nomination or death benefit agreement – are consistent, or to deliberately vary from one to the other, then careful drafting is required and the member should seek professional advice.

Schedule 3 to this deed

Application to become Participating Employer

[Insert name and address, and ACN if applicable, of applicant] applies to become a participating employer in the Mitchell Keast Superannuation Fund. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

[Name of authorised officer]

Date: _____

Annexure A to Application to become Participating Employer

[Here you need to attach the Product Disclosure Statement from Schedule 6.]

Schedule 5 to this deed

Application to become a member (if member is a minor)

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

Part 1 Application and undertakings

- I apply, as the parent or guardian of, and on behalf of, the person listed below (**Applicant**), that the Applicant become an initial member of this fund under the trust deed.
- I make each of the following undertakings:
 - [Either The Applicant is not in an employment relationship with another member. Or The Applicant is not in an employment relationship with another member who is not a relative of the Applicant.]
 - I am not a disqualified under superannuation law from being a [Either trustee Or director of the trustee] of the fund.
 - I will comply with the trust deed.
 - Upon request, I will fully disclose in writing any information required by the trustee in respect of the Applicant's my membership of the fund. This includes disclosing:
 - Any circumstance which may lead to the Applicant entering into an employment relationship with any other member of the fund who is not also a relative of the Applicant.
 - That I may become disqualified under superannuation law from being a [Either trustee Or director of the trustee] of the fund.
 - Any information in relation to the Applicant's medical condition.

[If the parent or guardian is NOT also separate member of the fund in their own right, then]

- [Either I will act as a trustee of the fund. Or I will act as a director of the trustee of the fund.]

[If the parent or guardian IS a separate member of the fund, then]

- [Either I am a member of the fund myself and I will act as a trustee of the fund. Or I am a member of the fund myself and will act as a director of the trustee of the fund.]
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
- I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

Signed by the
parent/guardian: _____

Date: _____

[Insert parent or guardian's name]

[If the death benefit is not binding]

Witness: _____ Name: _____

Or

If the death benefit is to be binding The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

Date: _____ Date: _____

Witness: _____ Witness: _____

Witness name: _____ Witness name: _____

Witness name: _____ Witness name: _____

First Notice: The types of death benefit arrangements and the order in which they take effect

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- **death benefit agreement** — which binds the trustee and which does not expire, see clauses 97 and 98;
- **binding death benefit notices or binding nomination forms** — which bind the trustee but which expire after 3 years or earlier if replaced or revoked; and

Annexure A to Application to become a Member (where member is a minor)

[Here you need to attach the Product Disclosure Statement from Schedule 6.]

and obtain advice on, the suitability of the fund in view of your investment objectives, financial situation and retirement planning needs.

Information about your potential benefits

1 Details of potential lump sum benefits

1.1 On your retirement

On your retirement, you will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your retirement. As the definition of retirement in Schedule 1 suggests, there will be some circumstances in which you will become entitled to payment of a retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age. Your trustee will be able to advise you further in this regard at the relevant time.

1.2 Total and permanent disability

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account. Your trustee will be able to advise you further in this regard at the relevant time.

1.3 Temporary total disability

If you become totally disabled temporarily, you may become entitled to payment of a pension or annuity representing the amount:

- decided by the trustee, provided it does not infringe the limit set out in the superannuation law; or
- payable to the trustee under an insurance policy which the trustee may have purchased and which covers the disability you suffer. (Premiums for these insurance policies are generally paid by the trustee from your Accumulation Account but may be paid out of other Accounts of the fund (such as the Income Account)).

1.5 Other circumstances

'Severe Financial Hardship' – in the case of severe financial hardship, you may be able to apply to have all benefits owing to you, paid to you by the trustee. There are certain conditions to be met and the benefits can only be paid to you to meet expenses in the nature of treatment of life-threatening illnesses, prevention of foreclosure under a mortgage, medical transport costs, palliative care costs and so on.

2 Details of potential income benefits

Income benefits where you retire or reach your preservation age

When you become entitled to payment of a **lump sum benefit**, the trustee may allow you to choose to receive that lump sum in the form of regularly paid income. This is called a pension. The fund can only provide you with an 'account-based pension'.

The rules for an 'account-based pension' include:

- **Minimum annual amount:** a minimum amount of the capital funding the pension must be paid to the pensioner each year. The minimum, which is expressed as a percentage of the capital, is determined by reference to the pensioner's age. You should speak to your adviser about relief from minimum pension payment amounts as the government does provide relief from time to time.
- **No maximum:** there will be no maximum amount that can be paid in a year, reflecting the fact that pensions and lump sums will be taxed in the same way. RBLs do not apply from 1 July 2007.
- **But a maximum for transition to retirement pensions:** pensioners being paid a transition to retirement pension will only be able to be paid a maximum of 10% of the capital per annum.
- **Transfer on death:** on death, the pension may only be transferred to a Pension Dependant or cashed as a lump sum to the pensioner's dependants or estate.

Existing pensions

If this PDS is being provided as a consequence of an update to the fund's existing deed, and the fund is presently paying you a pension, then:

- the pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time;
- if the pension is a complying pension (such as a life pension) then it will only be able to be terminated pursuant to the rules as they were in force before 1 July 2007; and
- if the pension is an allocated pension then it may be transferred to an 'account-based' pension without having to first be commuted.

Social Security Eligibility

Your eligibility for a government age pension is means tested.

The assets test reduces the amount of any aged pension payments to which a member may be eligible. This will give you a part pension, which will reduce to zero once your

3.3 Death benefits

Benefits paid in the event of your death are taxed as follows:

- **Lump sum benefits** to a member's dependant are tax free, as long as they are also a death benefits dependant as defined in section 302-195 of the ITAA97. Lump sum benefits paid to a dependant (who is not a death benefits dependant for ITAA97 purposes) have the taxable component taxed at 16.5% (incl Medicare levy).
- **Reversionary pensions** are taxed according to the age of the primary and reversionary beneficiaries. If the primary beneficiary was aged 60 or over at the time of death, then the payments to the reversionary will be tax free. If the primary beneficiary was aged less than 60, then the payments will be taxed at the reversionary beneficiary's marginal tax rate until the reversionary turns 60 (then it will be tax-free). However, a reversionary pension will only be payable to a Pension Dependant. Also a pension paid to a Pension Dependant who is a child will have to be cashed to a lump sum when the child turns 25 (unless they're permanently disabled).
- Pensions can only revert to a Pension Dependant: simply being a dependant is not sufficient. Therefore, these benefits must be paid as a lump sum to a dependant or the member's estate.

Information about risks associated with the fund

4 Details of risks: General

The assets of the fund must be invested in accordance with an appropriate investment strategy as devised by the trustee. Although the trustee decides on an investment strategy aimed at increasing the value of the fund's assets, this value can be reduced by movements in the underlying value of the fund's assets, for instances movement in share or property prices. This may mean the value of the assets held in the fund for your benefit, or to pay you a pension, may be reduced. Indeed, if the performance of the fund's assets is very poor, the value of the assets held in the fund for your benefit, or to pay you a pension, may be less than the value of the contributions made to the fund on your behalf. Poor investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 10 below.

If you choose to receive a pension then the amounts you receive are calculated by reference to the value of the assets in the fund. Therefore, if the value of the assets decreases, there may be a corresponding decrease in benefit or pension amounts payable to you and you effectively bear the risk associated with potentially poor investment performance of those assets. Broadly speaking, 100% of the amount used to fund the pension will be taken into account for the aged pension means test.

Finally, if a benefit payable to you is commuted so that the trustee may purchase:

- an annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or

Tax on concessional contributions: A tax of 15% applies to superannuation contributions by individuals who exceed a high income threshold of \$300,000. Where an individual's adjusted income and low-tax contributions are greater than \$300,000, they may have to pay an extra 15% tax on either of the following amounts, whichever is less:

- excess over the threshold; or
- actual taxable contributions.

This means that:

- if your excess is greater than your taxable contributions, then you will pay the extra 15% tax on all your taxable contributions; alternatively
- if your excess is less than your taxable contributions, then you will pay the extra 15% tax (30% tax in total) on the excess and 15% tax only on the rest of your taxable contributions.

Caps on concessional contributions: This paragraph sets out the cap which applies to concessional contributions. How much you can contribute to your super before having to pay extra tax depends on your age at the end of the financial year:

Financial Year	Concession (General Cap)	Age	Tax on amounts over the cap
2011 – 2012	\$25,000	under 50 years old	31.5%
2012 – 2013	\$25,000	under 50 years old	31.5%
2013 – 2014	\$25,000	under 50 years old	Included in your income tax return and taxed at your marginal rates.
	\$35,000	59 years old or over on 30 June 2013	
2014 – 2015	\$30,000	under 49 years old	
	\$35,000	49 years old or over on 30 June 2014	

There is 15% tax payable by your fund on concessional contributions paid into your superannuation fund (subject to the discussion above about the high income threshold). For 2013-14 and later years, if you exceed your concessional contributions cap the excess contributions are included in your taxable income. You will receive a non-refundable tax offset equal to the 15% tax paid by your fund on this amount. Generally, concessional contributions can only be made by employers or persons who are self-employed.

8 Other application of income

The trustee also:

- maintains an income account: This is a general account of the fund and does not relate to a specific member. Amounts such as the income and profits of the fund or proceeds of insurance policies (which the trustee decides not to pay to a member or beneficiary) are paid into this account. From this income account the trustee can make payments to your Accumulation Account, but it may also make deductions from the income account to:
 - pay the expenses of the fund;
 - pay taxes due and payable, or likely to become due and payable;
 - pay costs of insurance policies;
 - meet losses suffered on disposal of an asset of the fund and so on.
- may maintain an Equalisation Account: This is also a general account of the fund. The trustee may decide to pay amounts into this account to:
 - smooth the investment earnings of the fund (that is, to even out years of good growth and performance with years of poor growth and performance);
 - provide for tax liabilities;
 - pay fund expenses;
 - otherwise provide for contingencies of the fund.

The trustee is not permitted to charge fees in relation to the services it provides to the fund.

Other significant information about the fund

9 Preservation Age

Set out below are the Preservation Ages relevant to members of the fund:

- for a person born before 1 July 1960 – 55 years
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years
- for a person born after 30 June 1964 – 60 years.

10 Investment of fund assets

The trustee is permitted to make a wide range of investments provided that they accord with the trustee's investment strategy. The trustee is required to establish an investment strategy or strategies, outlining how the assets of the fund will be invested. The trustee can alter the strategy or strategies provided they remain appropriate. If the trustee offers more than one strategy, you may choose the appropriate strategy but you cannot choose the investments the trustee is to make within the strategy.

The trustee cannot loan money from the fund to a member or a member's relative.

12.2 **Pension earnings**

Generally, while you are alive the fund will not have to pay income tax on income or capital gains attributable to the assets in your pension account.

12.3 **Contributions**

Contributions to the fund (made by your employer, yourself, your spouse, etc) are generally treated as contributions of capital and will not be included in the fund's Income. However, if the person making a contribution is entitled to a tax deduction in relation to that contribution, then the contribution will usually be treated as fund Income and will be taxed as outlined in paragraph 12.1 above.

Information about the deductibility of contributions is in paragraph 6 above.

12.4 **Surcharge on High Income Earners**

With effect from 1 July 2005 the superannuation contributions surcharge was abolished in respect of all contributions made **on or after 1 July 2005**. However it still applies to contributions made before that date. From 1 July 2012 the arrangements in respect of a high income threshold of \$300,000 apply (see discussion at paragraph 6).

12.5 **Low Income Spouse Offset**

If a person makes a contribution on behalf of a member who is their low income (or no income) spouse, the person making the contribution may be entitled to a tax offset.

A member who makes a contribution can get the full tax rebate if:

- they contribute at least \$3,000 to their spouse's account; and
- their spouse's assessable income is less than \$10,800 for the financial year.

If you contribute less than \$3,000, the tax offset will be equivalent to 18% of your contributions. If your spouse's income is higher than \$10,800, the tax offset reduces until it cuts out when your spouse's income reaches \$13,800.

Examples of how to calculate the offset can be found [here](#).

Product Disclosure Statement – Schedule 1

Definitions

Where a term is capitalised in this PDS, the meaning is either explained below or is explained in the trust deed:

Accumulation Account means the account established for you by the trustee. Each member of the fund has an Accumulation Account, into which are paid that member's contributions or contributions made on behalf of that member, as well as other amounts specific to that member (such as the proceeds of an insurance policy taken out by the trustee for your benefit).

Annuity means what it means under superannuation law. Essentially, it refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier who undertakes to pay you an income for a specified time. Unlike a pension, the capital disappears when you purchase the annuity and you receive a contractual right to receive income.

Commute has the same meaning as under superannuation law. Generally, it refers to when a right to receive a **regular payment** (like pension or annuity payments) is converted into the right to receive a **lump sum payment**.

Dependant – in relation to a member, former member or beneficiary (the 'primary person'), means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

Pension refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier, who invests the lump sum, manages that investment, and pays you a regular income from the proceeds of those investments. As well as paying you the proceeds of the investments, the financial product supplier may include in your payments part of the initial capital you contributed.

Pension Dependant means a dependant of a member to whom a pension may be paid on the member's death, as defined by regulation 6.21(2A) of the SIS Regulations.

Preservation Age means what it means under superannuation law. Essentially it is the minimum age after which your benefit arising from a preserved payment may be paid to you. Those ages are set out in paragraph 9 above.

Preserved Payment means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

Retirement occurs:

- if you have reached a Preservation Age less than 60, and
 - an arrangement under which you were gainfully employed comes to an end; and

Schedule 7 to this deed

Death Benefit Agreement – Mitchell Keast Superannuation Fund (Fund)

- 1 This Agreement, executed as a deed, is between the Fund's trustee listed below and the Fund's member listed below.
- 2 This Agreement is an addition to the "Superannuation Trust Deed for a Self-Managed Fund" for the Fund (**Deed**). It has effect in the way described in Part H of that Deed. This Agreement is not a binding death benefit notice given in accordance with regulation 6.17A of the *Superannuation Industry (Supervision) Regulations*. Therefore:
- 2.1 it continues in force until amended or terminated; and
- 2.2 it does not end after 3 years as binding death benefit notices are required to do by the law.
- 3 On execution, this Agreement forms part of the Deed.

[If the beneficiary is the member's legal personal representative only:

- 4 The member directs the trustee that, on the member's death, the member's legal personal representative is to receive 100% of any death benefit that is payable.

[If the beneficiary is another person/s or both the member's legal personal representative and other person/s:

- 5 The member directs the trustee that, on the member's death, the persons named in the following table are to receive the proportion specified in that table of any benefit that is payable:

Person	Relationship to member	Proportion of death benefit
<i>[Insert beneficiary's name. If this beneficiary is the member's legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert beneficiary's relationship to member or if this beneficiary is the member's legal personal representative, insert "Legal personal representative"]</i>	<i>[Insert proportion of the death benefit to be paid to this beneficiary] %</i>
<i>[Add rows to table as required]</i>		
Total (which must total to 100%)		100%

- 6 The trustee consents to acting on this direction as evidenced by it executing this Agreement.
- 7 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.

Executed by the parties as a deed:

Dated: _____

Signed sealed and delivered by
[Insert name of member making death benefit
arrangements]
in the capacity of member in the presence of:

Signature of witness

Signature of member

Name of witness (please print)

[If the Fund's trustee is a company and signs under common seal, then it uses this sort of signing clause:]

The common seal of [Insert company name]
ACN [Insert ACN]
in its capacity as trustee, was affixed in
accordance with section 127(2) of the
Corporations Act 2001 (Cwth) in the presence
of:

Signature of director/Sole director and sole
company secretary

Signature of director/secretary

Name of director/Sole director and sole
company secretary (please print)

Name of director/secretary (please print)

[If the Fund's trustee is a company then use this sort of signing clause:]

What you need to consider

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

Second Notice: Consistency of death benefit arrangements with pension terms

It is important to consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be considered together.

For instance, if the pension terms require an automatic reversionary pension, then the death benefit nomination or death benefit agreement has no effect in relation to that pension. If the member wants to ensure all these arrangements – under pension terms, a death benefit nomination or death benefit agreement – are consistent, or to deliberately vary from one to the other, then careful drafting is required and the member should seek professional advice.

Contributions means gross contributions made to the fund before tax in accordance with this deed.

Corporation means a constitutional corporation under superannuation law.

Death Benefit Agreement means all, or that part of, an agreement (in the form set out in Schedule 7 to this deed) describing the trustee's obligations concerning the payment of benefits on a member's death which:

- directs the trustee to pay the benefits to a person to whom those benefits may be paid in accordance with superannuation law;
- has been executed by the trustee and the member; and
- has not later been:
 - terminated by the member; or
 - replaced by a separate death benefit agreement with the agreement of the trustee and the member.

Dependant, in relation to a member, former member or beneficiary (the 'primary person'), means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

Doctor means a registered medical practitioner.

Eligible roll over fund means what it means in Part 24 of the SIS Act.

Employee means a person who is an eligible person under superannuation law for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*.

Employer means what it means under superannuation law and includes a participating employer.

Employment relationship – an employment relationship exists between 2 persons if any of the following applies:

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law.
- one person is the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
- one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.
- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the trustee of which is a partner.

Participating employer means an employer the trustee admits as a participating employer under clause 47 including the participating employer specified in schedule 1.

Payment flag means an agreement or court order referred to in clause 132.

Payment split means a payment split under Part VIIIB of the Family Law Act.

Pension account means a pension account established under clause 87.

Pension age means what it means under superannuation law.

Pension dependant means a dependant of a member to whom a pension may be paid on the member's death, as defined by r6.21(2A) of the SIS Regulations.

Preservation age means what it means under superannuation law.

Preserved payment means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

Preserved payment benefit means a benefit arising from a preserved payment.

Regulator means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the Regulator of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

Relative for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a director of the trustee, means each of the following in respect of a person:

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.

For any other purpose, means each of the following in respect of a person:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person;
- the spouse of the person or of any person listed in the previous bullet point.

Retires in relation to employment, means retirement for the purpose of the payment of benefits under superannuation law.

Reversionary beneficiary means an eligible dependant for the purpose of superannuation law, including a Pension Dependant, nominated by a pensioner at the commencement of the pension, or otherwise in accordance with the terms of the pension, as the person to whom the pension must be paid after the pensioner dies.

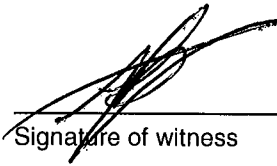
Roll over payment includes a transitional employment termination payment made or received by the trustee in accordance with superannuation law and an eligible benefit payment rolled out of or in to a complying superannuation fund.


Securities includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required.


Self managed superannuation fund means what it means under the SIS Act.

Signed sealed and delivered

by Deidre Keast in the capacity of principal in
the presence of:



Signature of witness

Signature of individual

Name of witness (please print)

NT STAMP DUTY	16/04/15
4268 14140601 copy duty	\$5.00
pursuant to instrument stamped-	
4268 14140601 DD duty	\$20.00