

# Trustee declaration

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



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





## Self-managed super fund trustee declaration

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

Fund name

**McLeary Superannuation Fund**

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

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

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

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

### SOLE PURPOSE

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

### TRUSTEE DUTIES

I understand that by law I must at all times:

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

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

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

### Investment restrictions

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

- ☐ lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- ☐ acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- ☐ borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)

# McLeary Superannuation Fund

## PRODUCT DISCLOSURE STATEMENT

This Product Disclosure Statement dated 31 / 01 / 2013, presents the main features of the Self Managed Superannuation Fund. Further information should be obtained from an appropriately qualified person or organisation.

Ian McLeary

A handwritten signature in blue ink, appearing to read 'I. McLeary', is written over a horizontal dotted line.

McLeary Superannuation Fund ("the Fund") has been established by the execution of the Trust Deed in accordance with the legislation governing Self Managed Superannuation Funds (SMSF), the main defining features of which are detailed below. The Trust Deed sets out the broad legal framework of the Fund. The Fund Regulator is the Australian Taxation Office (ATO).

## **TRUST DEED**

The Fund Trust Deed evidences the establishment of the Fund and sets out the rules of operation. It is available from the Trustee.

## **ADMINISTRATOR**

The Trustee/s may appoint a Fund Administrator from time to time and at the time of producing this statement was:

Cavendish Superannuation Pty Ltd  
GPO Box 9981  
ADELAIDE SA 5001.

## **TRUSTEESHIP**

Features of the Fund include:

- (i) the Fund must have less than five (5) members;
- (ii) all members must be trustees/directors of the trustee; (except (iii) below)
- (iii) in the case of a sole member fund with individual trustees, another trustee in addition to the member must be appointed;
- (iv) a proposed member is ineligible to be a member if the member would be taken to be employed by another member and they are not related;
- (v) the Trustee is unable to be remunerated by the Fund.

Where the Trustees are individuals the primary purpose is to pay a superannuation pension (with the ability to commute to a lump sum).

## **MEMBERSHIP**

The Trust Deed requires you to complete an "Application for Membership" to lodge with the Trustee/s prior to being admitted and registered with a "Member Account".

## **CONTRIBUTIONS/ROLLOVERS**

After your admission as a member, other superannuation monies and certain assets may be deposited or transferred into your new Member Account together with contributions by yourself, your spouse and any employer subject to contribution caps, indexed in line with the Average Weekly Ordinary Time Earnings (AWOTE), in increments of \$5,000. The Fund has its own unique Bank or Cash Management Trust Account to which contributions and Fund income are credited and expenses debited.

## CONTRIBUTION SPLITTING

You may elect to split up to 85% of your taxed contributions to an account held by your spouse. Splitting can only occur when the receiving spouse has not yet reached preservation age or is between preservation age and 65 but has not retired. Splitting will occur in the following Financial Year after the contribution has been made unless the contributions are rolled over to another Fund prior to 30 June.

## MEMBER ACCOUNT VALUE

The value of your member account is determined from time to time and at June 30<sup>th</sup> each year by valuing your equity in the Fund investments.

The value of your account will reflect contributions, rollovers, taxes, insurance premiums, administration and other expenses and positive or negative movements in the underlying Fund investments.

## BENEFIT PAYMENTS AND PRESERVATION

Benefits may be accessed upon satisfaction of a condition of release including:

- (a) Attaining Preservation Age

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 - 30 June 1961	56
1 July 1961 - 30 June 1962	57
1 July 1962 - 30 June 1963	58
1 July 1963 - 30 June 1964	59
After 30 June 1964	60

- (b) termination of employment after age 60;
- (c) attainment of age 65;
- (d) death;
- (e) total permanent disablement.

Preservation rules which specifically apply to superannuation generally mean that you cannot access your benefit in the form of a lump sum until attainment of preservation age and retirement, notwithstanding that early release of benefits may be considered on compassionate or financial hardship grounds. On attainment of preservation age, without satisfying the retirement requirement, a non-commutable income stream may be commenced.

Your retirement/death/total permanent disablement (TPD) benefits can be paid in whole or part as a lump sum and/or one or more superannuation pension income streams. The value of your account includes your equity in the Fund assets and in the case of death or total permanent disablement, any insurance policy owned by the Trustee in respect of you.

### **Lump Sum Payments**

Your accessible benefit may be paid as a superannuation lump sum in cash or in kind (in specie). A lump sum payable to you aged 60 or over is tax free.

If you are between 55-59 years of age tax at the rate of 16.5% will be withheld by the Fund on the portion of the 'taxed' component that exceeds the lump sum tax free threshold of \$165,000 which is indexed in the line AWOTE in increments of \$5,000.

Lump Sum payments will be apportioned between your taxed and exempt components. You do not have the ability to elect which component to withdraw.

Your "Exempt" (contributions made to the Fund or which no tax deduction was claimed) component of the Superannuation Lump Sum Payment is tax free.

### **Pension Income Streams**

You may elect to commence a pension income stream upon satisfying a condition of release.

Pensions payable to a member aged 60 or over are tax free.

The various types of pensions which can be paid from the Fund are listed below. You may have more than one pension operating within the Fund but from 20 September 2007 may only commence an Account Based Pension.

- i. Account Based Pension
- ii. Allocated Pension #
- iii. Market Linked Pension #
- iv. Fixed Term/Life Expectancy \*
- v. Lifetime Pension \*

\* Only payable if you were a member of your fund prior to 11<sup>th</sup> May 2004 and commenced the pension prior to 1 January 2006

# You could commence an Allocated Pension or Market Linked Pension prior to 20 September 2007 however these pensions will not be available after that date. Existing pensions can be maintained within the SMSF

Details of the pension/s you elect to receive will be set out in an Appendix/s provided at the commencement of the pension.

A tax rebate will be available to any of the above income streams if:

- a) the income was received by you on or after attaining preservation age and prior to age 60, or
- b) the income is payable due to the death the primary beneficiary who was aged below 60 and the reversionary pensioner is also aged below 60, or
- c) the income is payable due to permanent invalidity.

The tax rebate of 15% is applicable to the 'taxed' portion of the pension stream paid from the Fund.

### **DEATH AND TOTAL PERMANENT DISABLEMENT INSURANCE**

You may request the Trustee/s to effect Death or Death and Total Permanent Disablement insurance on your life. The inclusion of this insurance will be subject to underwriting acceptance.

In the event of the Insurer accepting a claim, the proceeds will be paid to your Fund account.

## **BENEFICIARY NOMINATION**

You may advise the Trustee/s in one of two ways who you would like to receive the value of your superannuation in the event of your death:

- (a) A non binding "Nomination of Beneficiary" is only an indication of your wishes and the Trustee can apply the benefit at their discretion to one or more of your dependants which includes your surviving spouse, children and financial dependants.
- (b) A "Binding Nomination" obliges the Fund Trustee to distribute the benefit in accordance with your wishes provided the nominee is your legal personal representative or dependant which include your surviving spouse, children and financial dependants.

## **INVESTMENT STRATEGY AND IMPLEMENTATION**

Your Self Managed Superannuation Fund can be invested in a broad range of assets. Regulations require the Trustee/s to document and implement an investment strategy taking into account such matters as risk, return, diversification, cash flow and liquidity, for the "sole purpose" of generating benefits for the members while adhering to proper commercial standards.

Investments generally fit into the following categories:

- Listed Shares
- Managed Investments
- Mortgage Loans
- Cash
- Real Property
- Unit Trust
- Term Deposits
- Fixed Interest Securities

The Trustee/s may utilise the services of appropriately qualified persons or organisations to assist in investment matters in an endeavour to tailor the Fund investments to the expected risk/return.

Your Self Managed Superannuation Fund may purchase or receive as a contribution, personally held assets such as listed securities and "business real property," thereby providing enhanced flexibility in investment, taxation and retirement planning.

## **RISK AND MITIGATION**

It is the Trustee/s responsibility to ensure the Fund complies with all aspect of legislation relevant to self managed superannuation including:

- Formulating and implementing the Fund investment strategy
- Maintenance of Fund minutes
- Preparation and lodgement of Fund Returns
- Maintenance of insured member benefits
- Annual Audit
- Appropriate Actuarial Certification

Breaches of legislative requirements could expose the Fund to non-complying status which may carry jail and/or taxation penalties up to the highest personal marginal tax rate of the Fund value.

The Administrator assists the Trustee/s in the preparation of all compliance documentation and lodgement including:

- Annual Fund Financial Statements
- Annual Member Benefit Statement
- ATO Income and Regulatory Return Preparation and Lodgement
- ATO Member Contribution Statement Preparation and Lodgement
- Business or Instalment Activity Statement
- Arrange Audit
- Superannuation Pension Documentation
- Pension Actuarial Certification
- Benefit Payment Documentation and Processing

As the investment strategy of the Fund is determined and implemented by the Trustees your benefit will be a consequence of this process.

Fund investment returns are not guaranteed. The value of your account will rise and fall as it is directly related to the Fund's investments. Generally this applies to all accumulation funds, not only Self Managed Superannuation Funds.

#### **ASSIGNMENTS, CHARGES AND BANKRUPTCY**

Unless permitted by the SIS legislation, the Trustee of your Fund must not recognise, or in any way encourage or sanction, an assignment of your superannuation interests or charge over assets of the Fund.

The Bankruptcy Act excludes your interest in a Regulated Superannuation Fund from property divisible among creditors. The superannuation pension income paid to a bankrupt is not excluded.

#### **TAXATION**

Income tax is payable at the rate of 15% of tax deductible superannuation contributions (TDC) credited to your Member Account. Contributions will be reported to the Taxation Office by the Trustee.

The Fund also pays tax on its net income at the rate of 15%. The effective rate of tax can be reduced by adopting an appropriate investment strategy. Income and capital gains earned on assets supporting a member's pension/s are TAX FREE. Any excess tax credits, including deriving imputation credits, are reimbursed by the ATO to the Fund.

Expenses incurred by the Fund excluding income and surcharge tax are tax deductible.

#### **MEMBER ACCOUNT EXPENSES**

The Fund administration, audit fees, stamp duty, taxes, investment and other expenses are incurred by each member to the extent of each member's relative interest in the Fund. Fees associated with administration, audit and other compliance issues are detailed in the Cavendish Fee Schedule and Administration Agreement.



## **ENQUIRIES**

Further information should be obtained from the Trustee/s.

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