ACCOUNT BASED PENSION

THE SMITH FAMILY SUPER FUND

JOHN SMITH

Product Disclosure Statement

1. Introduction

A member of a SMSF can generally access their superannuation benefits as a SMSF income stream or lump sum when they are retired as defined in the *SIS Regulations 1994*. A 'Account Based Pension' (or Accounts Based Pension as it may also be referred) may be commenced at any time after preservation age even whilst working.

2. Corporations Act 2001

The payment of an 'Account Based Pension' by the trustee of a SMSF is a financial product for the purposes of the *Corporations Act 2001*. As a financial product the *Corporations Act 2001* provides as follows:

2.1 Product Disclosure Statement

In terms of the information required to be given to the member of a SMSF to make a confident and informed decision in relation to a SMSF financial product, the *Corporations Act 2001* requires a licensee, their authorised representative and the trustee of a SMSF to provide a member of a SMSF with a PDS. This pension PDS has been issued by the trustee of the fund to the member seeking to commence a pension. The PDS should be reviewed by members on an on-going basis.

2.2 Statement of Advice

Section 946A of the *Corporations Act 2001* requires that a client be provided with a Statement of Advice ('**SOA**') where they are provided with a recommendation to acquire or dispose of a SMSF financial product.

3. SMSF Transition to Retirement Pension

The Account Based Pension laws are simple. Once a person meets a 'nil' condition of release under the superannuation cashing restrictions in terms of their superannuation benefits they may commence an Account Based Pension (subject to their Pension Transfer Balance Limits). The core conditions of release include retirement or permanent incapacity.

3.1 The definition of 'retirement' in SIS Regulation 6.01(7) is:

a) The member has reached aged preservation age and the Trustee of the Fund is of the opinion that the member will never again be engaged in gainful employment again;

b) The member has reached age 60 and either:

i. The member has ceased one form of gainful employment after age 60;

ii. The Trustee of the Fund is of the opinion. that the member will never again be engaged in gainful employment again

3.2 Preservation Age is defined to be:

a) for a person born before 1 July 1960 – 55 years;

b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;

c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;

d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;

e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;

f) for a person born after 30 June 1964 – 60 years.

In terms of income payments, the member taking an Account Based Pension must take a minimum pension amount each year but is not limited to the amount they may take as a maximum payment, subject to their account balance. For tax purposes where the person is under age 60 the income stream is fully assessable and will generally attract a 15% tax offset. Once the member is 60 years of age or older the income from the Account Based Pension will be tax free.

At any time, the ABP can be commuted, that is turned into a lump sum. The lump sum can be rolled back to the member's lump sum or accumulation interest in the Fund or taken as a cash payment. Where it is taken as a cash payment, for the income year ending 30 June 2025, the first $235,000 is tax free for a member under age 60. Once age 60 it is not subject to tax.

3.3 The characteristics of the ABP can be seen in the following table:

Characteristics	**Account Based Pension (ABP)**
Minimum Payment Under 65 65 - 74 75 - 79 80 - 84 85 - 89 90 - 94 95 +	**Minimum Percentage %** 4% 5% 6% 7% 9% 11% 14%
Maximum Payment	Pension Account Balance
Roll back to Lump Sum Accumulation Account	Yes
Lump Sum Commutation	Yes and under age 60 the first $235,000 is tax free with any remainder taxed at 17%.
Tax Status for Member	Assessable to age 60 with a 15% tax offset on the taxable component. Tax free component is tax free as are payments post age 60.
Tax on Pension Assets in the Fund	Tax Exempt but subject to the Transfer Balance Limits

3.4 A member may also request the trustee of a SMSF to make the pension auto-reversionary which means that the pension transfers from a deceased member automatically upon their death to a spouse, dependant, or legal personal representative. There are a number of important reasons for ensuring that accounts-based pensions are auto-reversionary.

Where a reversionary beneficiary is a child over age 25, unless they are a disabled child, the pension cannot continue and must be commuted. For any child pension under age 25, it must be commuted no later than the 25th birthday of the child pension member.

4. Taxation of Pensions

4.1 Trustee of the Fund

Where the trustee commences to pay an Account Based income on assets set aside to fund the ABP is tax free.

Where the trustee of the SMSF as part of the fund's pension assets holds Australian shares paying imputation credits, no tax is payable on the dividend. However, the trustee may use any excess imputation credits to reduce overall tax payable in the fund.

As can be seen there are significant taxation advantages in running a separate investment strategy for pension assets of the fund subject to the member's pension Transfer Balance Limits.

4.2 Pension Beneficiaries

a) Benefits paid to a Member

Multiple superannuation interests may be held by a member who has a lump sum account and at the same time commences an ABP. Superannuation interests are important because from these interests flow a superannuation benefit, whether a lump sum from the member's lump sum account or a pension, TRIS, or lump sum from the member's pension account. These benefits when paid will have a tax free/taxable component. The proportion of tax free/taxable component is to be determined by the underlying tax free/taxable proportion of the relevant superannuation interest.

The tax free/taxable component determination is crucial as it plays an important part for a pre-60-year-old member (such as a member with an Account Based pension) as well as for their dependants and other beneficiaries in the event of the member's death.

b) The proportioning rule

Superannuation benefits whether taken as a lump sum or pension are to be divided by the trustee of the fund into a tax free and a taxable component. The proportion used is the same as the underlying superannuation interest from where the superannuation benefit is sourced.

For example, a 59 year old member of a complying SMSF taking an Account Based Pension may have a tax free/taxable component proportion equal to 40/60. Any income stream benefit taken from that superannuation interest will be 40% tax free and 60% taxable component. This will include a lump sum commutation from the pension at a later time once the member retires.

The tax free/taxable component of any lump sum or pension payment can easily be determined by your SMSF adviser or accountant at the time of commencement of the pension or when a lump sum or pension commutation amount is taken from the fund.

c) The Taxation of Benefits to a Member

Where a superannuation ABP pension payment is made it will be taxed as follows:

i. Tax Free Component - Any tax free component payable is always tax free in their hands irrespective of their age. This includes both lump sums and income streams.

ii. Taxable Component – ABP taxable components are assessable with a 15% tax offset until age 60 whereupon the payment is tax free.

iii. Untaxed Component – untaxed component is only found in SMSFs with life or self-insurance and a lump sum is paid to a dependant or the member's legal estate in the event of the member's death.

d) Members Pension Transfer Balance Account

From 1 July 2023 the total amounts used to commence an Account Based pension cannot exceed $1.9M. Each time a pension is commenced a credit of the amount used to commence a pension, is made to the members Personal Transfer Balance Account (PTBA). This is tested against the General Transfer Balance Account – currently $1.9M and if excessive, then the excess must be withdrawn voluntarily by the member or the excess commutation will be forced by the Commissioner of Taxation.

The excess can be withdrawn as a lump sum commutation or rolled back or transferred back to the Fund's accumulation account. Each time a pension is commenced a further credit hits the member's PTBA. Any roll back creates a debit in the member's PTBA. The roll back amount may see the member's PTBA go into a negative.

In the Commissioners guideline on Pension Transfer Balance Accounts – LCG 2016/9 – he shows the transfer balance rules in action as illustrated in the following example:

"Example 1 – Transfer balance account credits and debits

On 1 July 2018, 61-year-old Darius commences an Account Based pension (pension A) with a $1.1 million value. His transfer balance account commences on this date. Investment returns, and payments made to Darius to meet minimum drawdown requirements change the value of the superannuation interest supporting his pension. Because of this, the value of his superannuation interest at 1 July 2019 is $1.05 million. These changes, however, do not cause a credit or debit to arise in his transfer balance account and his transfer balance remains $1.1 million.

On 1 July 2020, Darius decides that he is unhappy with the investment returns from his provider and instructs his superannuation Fund to fully commute his pension. Darius' superannuation Fund commutes pension A on 7 July 2020 to a superannuation lump sum of $1 million on that day. Accordingly, a debit equal to this amount arises in his transfer balance account on this day.

The following table details Darius's transfer balance account and the debits and credits arising from the above transactions.

Transfer balance account

Date	Description	Debit/Credit	Transfer Balance
1 July 2018	Commence pension A	$1.1 million	$1.1 million
7 July 2020	Commutes pension A	$1 million	$0.1

5. Abbott and Mourly Trust Deed

5.1 The fund's trust deed is the key determinant to what type of pension may be paid from the fund. The Abbott and Mourly Trust Deed allows pensions to be continued where they may have been established many years ago as well as the accounts based and transition to retirement pensions of modern times. Flexibility is a must in superannuation and particularly SMSFs.

Application by John Smith to Commence an Account Based Pension

This resolution is dated	12 September 2024
Name of Fund	The Smith Family Super Fund
Members Name	John Smith
Age of Member	64

Request to commence an Account Based Pension

The Member hereby requests the Trustee to commence an Account Based Pension with an amount from the Members Lump Sum Superannuation Interest and has reached the relevant pension age and otherwise met all the preservation conditions for the payment of an Account Based Pension. The Account Based Pension is to meet the conditions of a pension pursuant to SIS Regulation 1.06(9A) and is allowed as a ‘nil’ condition of release has been met by the member – such as upon retirement or age 65.

Proposed ABP Account Balance:	$950,000
Date of Commencement:	1 July 2024
Condition of Release	Retirement
Minimum Annual Income Stream Payment:	$38,000
Current Year ABP Payment:	$60,000
Tax Free / Taxable Component Proportions:	54% Tax Free / 46% Taxable
Amounts over minimum	To be treated as commutation payments if

pension payment	requested by member for each income year
Not meeting minimum payments	A promissory note for the amount of any deficit in meeting the minimum pension payment is to be deemed to be in force at 30 June of the income year.
Reversionary ABP Beneficiary	Sally Smith if entitled under the Superannuation Laws
Terms & Conditions of the Reversionary ABP *(Terms & Conditions only valid if allowed under the Superannuation Laws)*	a) In the event that the beneficiary remains alive at the time of my death, they are to take 100% of my pension in any manner or form that they desire as the Superannuation Laws allow. b) In the event of my death and the death of the beneficiary my superannuation pension is to go proportionately to each of my bloodline children that remain alive at the time of my death who may continue the pension or take as a lump sum as the Superannuation Laws allow. If the reversionary pension beneficiary is a child that is under age 25 the pension is to have the following conditions: it is to be paid as a non-commutable pension to age 25 with any drawdown in any income year to be limited to no more than 20% of the pension account balance. Any child over age 25 must take the pension as a lump sum commutation. If my bloodline child is not alive at the time of my death then it is to pass to any of their children who are my bloodline provided the Superannuation Laws allow and subject to the following conditions: it is to be

paid as a non-commutable pension to age 25 with any drawdown in any income year to be limited to no more than 20% of the pension account balance and thereafter as per the Superannuation Laws.

c) In the event that neither the beneficiary nor my bloodline children or grandchildren who are my dependants remain alive at the time of my death my superannuation benefits are to pass to my estate to form part of any Superannuation Proceeds Trust which is to be primarily for my bloodline.

Signed by the Member:

....

John Smith Date

Member

Witnessed by:

....

Witness Signature Date

………………………………………………

Witness Name

Legal Note: The document is to be witnessed in the presence of independent witnesses who are not parties to the document.

Binding Trustee Resolution: Commencement of an Account Based Pension

This resolution is dated	12 September 2024
Name of Fund	The Smith Family Super Fund
Members Name	John Smith
Age of Member	64
Attended by	John Smith and Sally Smith
Held at	Online
Trustee Discussion	The Trustee has received a request by the Member – John Smith to commence an accounts based pension under the following terms and conditions
Proposed ABP Account Balance:	$950,000
Date of Commencement:	1 July 2024
Condition of Release	Retirement
Minimum Annual Income Stream Payment:	$38,000
Current Year ABP Payment:	$60,000
Tax Free / Taxable Component Proportions:	54% Tax Free / 46% Taxable

Amounts over minimum pension payment	To be treated as commutation payments
Not meeting minimum payments	A promissory note for the amount of any deficit in meeting the minimum pension payment is to be deemed to be in force at 30 June of the income year.
Reversionary ABP Beneficiary	Sally Smith if entitled under the Superannuation Laws
Terms & Conditions of the Reversionary ABP *(Terms & Conditions only valid if allowed under the Superannuation Laws)*	a) In the event that the beneficiary remains alive at the time of my death, they are to take 100% of my pension in any manner or form that they desire as the Superannuation Laws allow. b) In the event of my death and the death of the beneficiary my superannuation pension is to go proportionately to each of my bloodline children that remain alive at the time of my death who may continue the pension or take as a lump sum as the Superannuation Laws allow. If the reversionary pension beneficiary is a child that is under age 25 the pension is to have the following conditions: it is to be paid as a non-commutable pension to age 25 with any drawdown in any income year to be limited to no more than 20% of the pension account balance. Any child over age 25 must take the pension as a lump sum commutation. If my bloodline child is not alive at the time of my death then it is to pass to any of their children who are my bloodline provided the Superannuation Laws allow

and subject to the following conditions: it is to be paid as a non-commutable pension to age 25 with any drawdown in any income year to be limited to no more than 20% of the pension account balance and thereafter as per the Superannuation Laws.

c) In the event that neither the beneficiary nor my bloodline children or grandchildren who are my dependants remain alive at the time of my death my superannuation benefits are to pass to my estate to form part of any Superannuation Proceeds Trust which is to be primarily for my bloodline.

Trustee Resolutions

The Trustee has resolved to commence an accounts based pension for the Member on the exact terms and conditions above with this binding resolution to be provided to the Member and become part of the Fund's governing rules.

Executed by the Trustee:

SMITH INVESTMENTS PTY LTD - ACN: 214 214 588 OF 13 PITT STREET, SYDNEY NSW 2000, SYDNEY, NSW 2000 by being signed by the persons authorised to sign for the company pursuant to section 127 of the *Corporations Act 2001*:

.... John Smith Director	.... Date
.... Sally Smith Director	.... Date