

**Australian Securities and Investments Commission  
Corporations Act 2001 – Subsection 601QA(1) – Exemption and Declaration**

- 1 Under paragraph 601QA(1)(a) of the *Corporations Act 2001 (Act)* the Australian Securities and Investments Commission (*ASIC*) exempts the person specified in Schedule A from paragraph 601FC(1)(d) of the Act in relation to allowing a member of a Perpetual Fund to withdraw in accordance with section 601KEA of the Act as notionally inserted by this instrument.
2. Under paragraph 601QA(1)(b) of the Act ASIC declares that Chapter 5C of the Act applies to the person specified in Schedule A in the case set out in Schedule B as if Part 5C.6 of the Act were modified or varied as follows:

(a) after subsection 601KA(3), insert:

“(3AA) Subsection (3) does not apply to withdrawal in accordance with section 601KEA.”

(b) after subsection 601KE, insert:

**“601KEA Hardship Withdrawals**

*Power to allow withdrawal in case of member hardship*

(1) The responsible entity of a registered scheme may allow a member to withdraw from the scheme in accordance with a provision of the scheme’s constitution that provides for the member to have a right to withdraw when the responsible entity is satisfied that the member has experienced hardship or is likely to experience hardship or, where the member is an operator, a person who has asked the operator to exercise a right to withdraw has experienced hardship or is likely to experience hardship if the member is not allowed to withdraw (a *hardship withdrawal*).

(1A) In this section an *operator* means a person who is a member of the scheme in its capacity as responsible entity or custodian of a registered scheme, trustee of a trust, trustee or custodian of a superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993*, trustee of a self-managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* or provider or acquirer in relation to a custodial arrangement as defined in section 1012IA.

(2) The responsible entity may only allow one hardship withdrawal because of the hardship of a person, and must not allow a hardship withdrawal unless the responsible entity is satisfied that:

- (a) following that withdrawal the scheme property would include sufficient liquid assets for the day to day operation of the scheme; and

- (b) satisfying the hardship withdrawal request would not breach the person's hardship withdrawal cap; and
- (c) any amount paid on withdrawal to an operator will be paid to the person who asked the operator to make a hardship withdrawal request after deduction of any fees and charges payable to the operator.

Note: In making any payment to a person on whose behalf a request for hardship withdrawal has been made, an operator must comply with any obligations under the terms of the relevant trust or arrangement under which it acts and other applicable laws. For example the responsible entity of a registered scheme must comply with Part 5C.6 as modified by any relief applicable to that scheme and the trustee of a superannuation entity or self managed superannuation fund must comply with requirements under the Superannuation Industry (Supervision) Act 1993.

(3) For the purposes of this section the *hardship withdrawal cap* for a person is the lesser of:

- (a) the specific amount the subject of a hardship withdrawal request in respect of hardship of the person; and
- (b) \$20,000 plus 50% of the balance of the person's interest in the scheme, however held.

(4) If a constitution includes a provision permitting the responsible entity to exercise a discretion in relation to a hardship withdrawal the responsible entity must comply with subsections (5) to (7).

*Exercise of discretion must be reasonable*

(5) The responsible entity or its nominee must act reasonably in exercising a discretion covered by subsection (4).

Note: The responsible entity is also subject to its general duties under section 601FC including the duty to act in the best interests of the members of the scheme.

*Documentation of exercise of discretion*

(6) The responsible entity must ensure that the records which it keeps under section 988A document how and why a decision to permit or refuse a hardship withdrawal was made.

*Access to and retention of documents*

(7) The responsible entity must retain the documents covered by subsection (6) for 7 years after they cease to be current."

**Schedule A**

Perpetual Investment Management Ltd ACN 000 866 535 in its capacity as responsible entity of a Perpetual Fund.

**Schedule B**

Where a decision to allow withdrawal from each Perpetual Fund is based on the criteria and conditions set out in Appendix A to this instrument.

**Interpretation**

In this instrument:

*Perpetual Fund* means each of the following registered schemes:

- Perpetual's Mortgage Fund ARSN 106 129 659
- Perpetual's Monthly Income Fund ARSN 088 692 808
- Perpetual's Liquidity Pool Fund ARSN 105 128 336
- Perpetual's Mortgage Pool Fund ARSN 094 407 066
- Perpetual's Term Fund ARSN 092 387 874
- Perpetual Wholesale Monthly Income Fund ARSN 093 211 682
- Private Investor Mortgage Fund ARSN 092 603 873
- Perpetual's Fund 4 ARSN 106 135 424
- Perpetual's Fund 47 ARSN 116 306 140
- Perpetual Fund 57 ARSN 128 338 965

Dated this 27th day of November 2008



Signed by Kathleen Cuneo  
as a delegate of the Australian Securities and Investments Commission

## APPENDIX A

	<u>Hardship Withdrawal Criteria</u>	<u>Condition</u>
1	Severe Financial Hardship	The amount requested is needed to enable the member to meet reasonable and immediate living expenses for themselves or their dependents.
2	Compassionate Grounds	<p>The amount requested is needed by the member (or a member's dependent):</p> <ul style="list-style-type: none"> <li>(a) to help pay for medical costs (and transport costs) required to treat a life-threatening illness or injury, to alleviate acute or chronic pain, or to alleviate an acute or chronic mental disturbance where 2 registered medical practitioners (at least one of whom must be a specialist) have provided certified statements confirming the medical condition to this effect;</li> <li>(b) to fund specific modifications (to a principal place of residence or vehicle) that are necessary to accommodate special needs arising from a severe disability;</li> <li>(c) to assist with funeral and other expenses related to the death of the former member or a former dependent of the member;</li> <li>(d) to enable the member to provide care for a person who is dying from a terminal illness, including home care;</li> <li>(e) to prevent a member's mortgagee (lender) from selling the member's principal place of residence;</li> <li>(f) to meet a binding financial obligation entered into by a member prior to the responsible entity determining the registered scheme is non-liquid or otherwise determining that withdrawals should be suspended; or</li> <li>(g) to meet expenses in other cases consistent with grounds mentioned in (a) – (f);</li> </ul> <p>where the member does not otherwise have the financial</p>

		capacity to meet the expense.
3.	Permanent Incapacity	Where a member has ceased gainful employment by reason of mental or physical ill-health and the responsible entity is satisfied that the member is unlikely ever again to engage in gainful employment of the type for which the member is reasonably qualified by education, training or experience.