



# The **Strategist** Group

A Tribeca Group Company

## **NOBLE SUPERANNUATION FUND**

- **Product Disclosure Statement**
- **Deed of Establishment**
- **Rules of the Fund**

### **Tribeca Learning (Aust.) Pty Limited**

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# PRODUCT DISCLOSURE STATEMENT

## By Grant Abbott, Tribeca Learning (Aust.) Pty Limited

The *Corporations Act 2001* provides that where a person is being provided with a financial product they must receive a Product Disclosure Statement, commonly referred to as a PDS, detailing all their rights and entitlements in relation to that financial product. Under the *Corporations Act 2001* becoming a member of a self managed superannuation fund (“a Fund” or “a SMSF”) is a financial product. Among other things, so is the ability of existing members of the Fund to commence a pension from the Fund or for the trustee of a Fund to pay a benefit to a deceased member’s dependants.

A PDS is a statement that contains information required by the *Corporations Act 2001* to provide consumers with sufficient information to make informed decisions in relation to acquiring a financial product. The PDS must provide information about any significant benefits in a Fund to which any prospective or existing member may become entitled as well as the circumstances, process and timeframe in which those benefits may be provided.

The PDS must also set out the risks for prospective or existing members associated with holding an interest in a Fund as well as the initial and ongoing costs involved with the Fund.

For the purposes of this PDS the issuer is the trustee whose name and address may be found in the Rules.

This PDS has three parts:

- This general information statement;
- The rules of the Fund - where all rights and entitlements of members, their dependants and trustees of the Fund are to be found.
- A DVD presentation by Grant Abbott covering various aspects of the Fund as well as member’s entitlements under the rules of the Fund. The DVD is supplied as part of this PDS.

It is also recommended that the trustee and any members read the “Guide to Self Managed Superannuation Funds”, written by Grant Abbott and published by CCH, to make themselves thoroughly aware of their rights, entitlements, duties and responsibilities.

## I. Superannuation Products in General

A SMSF is one of a number of types of superannuation funds in which a person may accrue their retirement savings and receive retirement benefits.

The following table is an indicative guide that seeks to highlight the main differences between the most common forms of superannuation.

<b>Feature</b>	<b>Self Managed Superannuation Fund</b>	<b>Retail Superannuation Fund</b>	<b>Industry Superannuation Fund</b>
Investment choice	Unlimited *	Limited	Limited
Control of the fund	Yes	No	No
Compliance responsibilities	Full responsibility of the member as trustee or director of a trustee company	None	None
Fees payable: - Establishment - Ongoing	Yes Flexible	Yes % Funds under management	Nil % Funds under management
Pension types available	Wide range *	Restricted	Restricted
Death benefits available: - Lump Sums - Pensions	Yes Yes	Yes Yes – Limited	Yes Yes – Limited
Disability benefits available - Temporary - Permanent	Yes Yes	No Yes – Limited	No Yes – Limited
Membership	Wide provided act as Trustee	Conditions Applying	Conditions Applying

\* Subject to compliance with the relevant laws

## **II. The Purpose of the Fund**

The Fund is a family superannuation fund. This means that the members of the Fund would normally only be family members. For example the members might be a husband and wife and their children. It may also include brothers, sisters, grandparents and other family members. The trustee of the Fund may accept non-family members into the Fund however as the Fund can only have four members at any time, it may be appropriate to limit membership to immediate family.

The general purpose of a Fund is to provide retirement, death, or incapacity benefits to the members and their dependants. Benefits might be provided by way of lump sum or an income stream (that is a pension). The trustee may also provide benefits by way of a combination of a lump sum and pension.

## **III. Eight Key Benefits of the Fund**

The advantages of a properly structured Fund are:

### **1. The Fund lets you look after your family**

For many people their family is the most important thing in their lives. As such, the provision of financial benefits to the family is a major concern and consideration. The Fund provides members with the possibility to create a number of financial benefits not only for themselves but also for other family members including:

- a retirement income stream to ensure a comfortable retirement;
- an income stream in the event that the member becomes temporarily or permanently incapacitated;
- a benefit by way of a lump sum or pension payable to the member's estate or to a member's dependants in the event of the member's death.

### **2. Providing a secure income in retirement**

In retirement an income from alternative sources other than employment is a necessity. This may come from investments or from other sources such as social security. Upon retirement, a trustee may establish a pension for a member to provide the member with a comfortable lifestyle for the rest of their life. The size and duration of the pension will depend upon a number of factors including the balance of the member's account at the time of retirement, the member's age when the pension commences and also what style of pension is to be taken from the Fund.

For example if the member commences an allocated pension this pension only lasts as long as the underlying pension capital remains. If the capital reduces to nil, then the pension ceases. On the other hand where the member commences a lifetime pension, if allowed under the superannuation laws at the time, the trustee, with help from an actuary will create a pension that provides income for the remainder of the member's life. A pension may also continue for the surviving spouse if desired. However, where a lifetime pension is chosen, generally a smaller income is payable as compared to an allocated pension.

Trustees seeking to pay a member a pension should ensure that they receive advice from a SMSF specialist as the government has recently made a number of important changes to pensions paid from SMSFs. If the trustee breaches these rules the fund may be considered a non-complying SMSF and the trustee may be liable for serious financial penalties and possible imprisonment.

### **3. Offering a financial helping hand if your health deteriorates**

Health is one of those things that can never be taken for granted. A Fund may provide members with income if they become seriously ill or incapacitated. This income is to compensate a member for lost income from employment. It may be payable for a certain period of time if a member is only temporarily incapacitated or until the normal age of retirement if a member is permanently incapacitated. As with retirement income the length and quantum of the income stream depends upon the balance of a member's account at commencement of the income stream. However the amount payable to an incapacitated member may be augmented by reserves, this is known as self-insurance.

Additionally, a trustee may insure against a member becoming incapacitated so as to be able to pay a pension to a member if the member becomes incapacitated.

### **4. Investment choice**

One of the major reasons that SMSFs have become so popular is the ability of the trustee to invest the Fund's assets so as to reflect a member's wishes. However:

- All investments must be made at arm's length;
- The trustee may not lend to members or related parties;
- The trustee may not invest more than 5% of the assets of the Fund in related entities such as a unit trust that the member controls or in shares of an employer that contributes to the Fund;
- The trustee cannot borrow;
- The purpose of any investment is to secure benefits for members in the event of their retirement, incapacity or for their legal estate or dependants in the event of a member's death. Any investment seeking to provide a member or related party with a benefit not having one of these purposes is prohibited;
- Generally the trustee cannot acquire an asset from a member or related party unless the asset is a listed share, managed fund, fixed term deposit or commercial real estate.

### **5. Low taxation fully sanctioned by the government**

If properly established and maintained a Fund is an entity which is tax effective provided it is maintained for the purpose of providing members with retirement and disability benefits or benefits to a deceased member's dependants or legal estate.

A Fund can receive superannuation contributions, which may be tax-deductible or non-tax deductible contributions. Tax-deductible contributions received by the Fund will be included in a Fund's assessable income. The tax deduction available to a person making contributions to the Fund is limited by the age of the person on whose behalf contributions are being made. For the 2006 year the age based limits are:

- \$14,603 for a person under the age of 35 years
- \$40,560 for a person aged between 35 and 49 years
- \$100,587 for a person aged 50 and over

From 1 July 2005 contributions received by the Fund will no longer attract the superannuation surcharge.



Any taxable income (not being special income) earned by the trustee, being assessable income less any deductions, is subject to a concessional tax rate of 15% provided the Fund is a complying SMSF during the income year. A complying SMSF is a fund where the trustee does not breach any of the laws found in the *Superannuation Industry (Supervision) Act 1993* and its regulations, which we will call the superannuation laws, during the income year. Further, the trustee must not breach any of the rules of the Fund, which is why the trustee and members should make themselves familiar with the rules.

Where the trustee of a complying Fund realises a capital gain on the disposal of an asset held for more than one year, only two thirds of that gain will be included in the Fund's assessable income.

Where the trustee of a complying Fund sets aside assets of the Fund to pay pensions to members then any assessable income including capital gains made by the Fund on those assets is exempt from tax. Where a pension is payable by a Fund to a member, the member must include the pension in their assessable income.

Benefits payable to members, either as a lump sum, a pension or combination of both may be subject to concessional rates of tax. This will depend upon whether the benefits taken from a Fund are excessive having regard to reasonable benefit limit rules found in the *Income Tax Assessment Act 1936* ("the Tax Act").

## **6. Looks after your family when you die**

In many instances a Fund is the most flexible, most targeted and the most tax effective vehicle to provide lump sums or income streams to a member's spouse or children when the member dies. For example a Fund may provide a minor dependant of a member with income from a pension payable until the minor reaches age 35. This pension income is tax free to the minor if the minor has no other assessable income and the amount is less than \$25,000. As with incapacity benefits referred to above, the quantum of the benefits payable to a member's dependants or their legal estate may be enhanced where the trustee has chosen to insure or self-insure against the member's life.

## **7. Access to the age pension**

Benefits from a Fund are treated favourably for Centrelink purposes. In terms of the assets test, the member's account balance in the Fund is not tested until the member becomes entitled to an age pension – for a male this is at age 65 and for a female it is currently at age 62 but increasing to age 65 by 2014. On becoming entitled to the age pension the member may commence an assets test favourable pension from a Fund. Where an assets test favourable pension is commenced for a member the underlying capital from which the pension is paid is discounted by 50% for assets test purposes and favourably treated for income test purposes. This may enable some members to access the age pension, on top of the private pension that they receive from a Fund, if they choose to transfer the majority of their assets into the Fund (subject to the investment restrictions and excluding the family home).

## **8. Protection from creditors**

Protecting assets from creditors is a major concern for many people. One of the key benefits of a superannuation fund is that when a person gets into serious financial difficulty, a member's benefits in a Fund – up to a generous limit now in excess of \$1.2 million – may be protected from creditors. However clawback rules apply where a person has sought to escape their creditors by deliberately transferring assets or monies into a SMSF. One downside of bankruptcy is that a person cannot remain as a member of a self managed superannuation fund if they are bankrupt as this will jeopardise the Fund's SMSF complying status. Should this arise the trustee should consider various actions including transferring the member's benefits to a commercial superannuation fund where

they may also be protected. Another alternative is to remove the existing trustees and appoint a professional trustee, also known as an approved trustee.

## IV. Trustee of the Fund

A Fund is a form of trust. This means that the trustee controls the Fund, makes the investment decisions, determines the benefits to be paid and administers the Fund. As a member is required to be a trustee or director of a trustee company, a member has significant influence in the control of a Fund.

There are limited exceptions to the rule that members must be trustees of a Fund. Where a member is a minor the law does not allow them to be a trustee. This means that their legal personal representative, parent or guardian must be appointed as trustee on their behalf until they reach age 18 if the fund is to remain a complying SMSF. Likewise where a person becomes mentally incapacitated and is unable to make sound decisions, a legal personal representative may be appointed to take the incapacitated member's place as trustee.

Quite apart from the requirement for members to be trustees there is an additional requirement that all trustees be members of the Fund. There are also limited exceptions to this rule. In the event of the death of a member the deceased member's legal personal representative – normally the executor of their legal estate - may be appointed as trustee from the time of the member's death until the time when any death benefits commence to become payable. Also from a legal perspective, where there is only one member, there is a need to have more than one trustee since a person cannot be a trustee for themselves. Therefore in a single member Fund, another person must be appointed as trustee provided they are not an employer of the member.

As a final point – it is often the case that a trustee company is appointed as trustee rather than individual trustees. In this case each member must be a director of the trustee company unless they meet one of the exceptions above. Likewise all directors must be members unless they fall into one of the exceptions above. Although there are costs to establish and administer a trustee company:

- A trustee company is able to pay members a lump sum as well as a pension. Under the superannuation laws, it is a requirement that *where the trustees are individuals* then a pension and not a lump sum needs to be taken by the members. This may also include any death benefits payable to dependants or the legal estate of a deceased member.
- There is debate as to where a pension is paid to a member, whether the member is able to claim a 15% tax rebate if the member is also an independent trustee of the same Fund. However if a company is the trustee then the tax rebate applies provided the member is over age 55 or it arises from the permanent disability or death of a former member.
- Where there are individual trustees and a trustee dies, retires or is removed then any assets of the Fund in the name of the departed trustee must be switched into the names of the remaining trustees. This can be time consuming and expensive.
- If a trust incurs a liability, the trustee's personal assets may be exposed. Normally a Fund cannot borrow but nevertheless liabilities can still arise. For example, a contractor engaged to repair a rental property may suffer an injury and can sue the trustee for damages. Alternatively, a fund may invest in a property syndicate that acquires land, which is subject to the hefty costs of an asbestos or environmental clean-up. As companies are subject to limited liability a trustee company will remove the risk that an individual trustee suffers a personal liability in these cases.

## **V. Responsibilities of the Trustee of the Fund**

As previously mentioned trusteeship is about control and choice. It is also about legal responsibility. Broadly, a trustee is required to act honestly, prudently and in the best interests of members in relation to all matters concerning the Fund. Both civil and criminal penalties can be imposed under the superannuation laws for breach of trustee responsibilities. Prior to accepting an appointment as trustee, it is important that a person consider the risks associated with such an appointment. The excuse that the trustee was not aware of the superannuation laws or the rules of the Fund is not valid.

A trustee must:

- Act honestly;
- Act in the best interests of members and other beneficiaries;
- Keep the money and assets of the Fund separate from the trustee's personal assets and money or those of another person;
- Formulate and implement an investment strategy for the Fund;
- Abide by the rules of the Fund at all times;
- Ensure that the trustee does not breach any of the superannuation laws;
- Ensure proper accounting including the maintenance of member accounts;
- Appoint an auditor and other specialists to the Fund;
- Meet all regulatory obligations.

Failure to properly meet any of these responsibilities may render the trustee liable to a substantial fine and if the breach has been wilful, may result in a term of imprisonment. It is important therefore that the trustee seeks the help of a SMSF adviser where appropriate.

Additionally the Regulator of SMSFs – the Commissioner of Taxation - may also determine the Fund to be a non-complying fund. This would result in the Fund being subject to tax at a penalty rate of 47% on all income and capital gains of the Fund as well as the market value of the Fund's assets at the end of the last financial year.

## **VI. Approved Trustee**

As mentioned earlier there may be circumstances where it is appropriate or necessary to appoint an approved trustee in place of the members being appointed as trustee under the mechanism described above. For example if a member is prohibited by the superannuation laws from acting as a trustee or simply does not wish to assume the role and responsibility associated with being a trustee then an approved trustee may be appointed. The effect of the appointment is that the Fund is converted from a SMSF to a "small APRA fund" as they are commonly known.

These funds are regulated by the Australian Prudential Regulatory Authority (APRA) rather than the Australian Taxation Office (ATO). While the rules of the Fund may permit the appointment of an approved trustee it is usually the case that the newly appointed approved trustee will amend the deed and rules at that time to reflect the change in the type of superannuation fund. A small APRA fund is a public offer superannuation fund and is therefore subject to more stringent regulation in the superannuation laws. The rules attached to this PDS are designed entirely to reflect the intention for a Fund to be a complying SMSF.

## VII. Member Rights and Entitlements

Under the attached rules members have a number of rights and entitlements. It is incumbent upon members and trustees to make themselves aware of these entitlements and more importantly when and how they may be claimed. A thorough reading of the rules is required prior to any person being accepted as a member. The Commissioner of Taxation requires the trustee to ensure that they know the rules of the Fund as well as the superannuation laws that apply to the trustee. Ignorance is no excuse!

Some of the more important rights and entitlements, subject to the superannuation laws include:

- Any person is able to become a member provided the person completes an application form stating that they have read the rules, agree to abide by the rules and will also accept appointment as trustee or become a director of any trustee company and the trustee accepts the person as a member;
- As a member of the Fund the member has the right to become a trustee or appoint a person to become a trustee in their place if allowed;
- A member or any other person may contribute on behalf of the member. These contributions may be made in cash or by an in specie transfer of assets;
- A member may transfer benefits into and out of the Fund;
- A member may request the trustee to set a separate investment strategy in the Fund for the member;
- The trustee may pay the member a retirement benefit by way of a lump sum or a pension;
- The trustee may pay the member an incapacity benefit in the event the member is temporarily or permanently incapacitated;
- The trustee may accept a binding death benefit nomination from a member requiring the trustee to comply with the member's death benefit wishes in the event of the member's death;
- The trustee may pay death benefits by way of a lump sum or a pension to the deceased member's legal estate or their dependants in such proportions and in such manner as the trustee sees fit unless a binding death benefit nomination is operative.

## VIII. Pension Entitlements

There are a variety of pensions that a member or a dependant of a member may become entitled to. These pensions include lifetime, fixed term, allocated and other pensions treated favourably by Centrelink and the Department of Veteran's Affairs. Due to the wide variety of pension possibilities a prospective member should make themselves aware of all the types of pensions outlined in the rules. The different types of pensions and when they may be available are detailed below.

A number of important changes were made in the May 2004 Budget regarding the payment of defined benefit pensions by the trustee of a SMSF. A defined benefit pension is any pension that is not an allocated or a market linked pension. A defined benefit pension may be commenced by the trustee of a SMSF before 1 January 2006 provided the fund was established prior to 12 May 2004, the person seeking the pension was a member before 12 May 2004 and the pension is paid in relation to the person's retirement.

**Warning:** *If a SMSF has not commenced prior to 12 May 2004 the trustee cannot under any circumstances pay a defined benefit pension. However Treasury is undertaking a review of these rules and is due to report to government with a recommendation on whether the regulations prohibiting trustees of a SMSF to pay a defined benefit pension should proceed.*

There are five broad categories of pension – each with its own unique advantages and disadvantages - including:

### **1. The allocated pension**

In essence an allocated pension is a lump sum draw down account where the member must receive at least a minimum amount from the account each year and no more than a maximum amount as laid down in the superannuation laws. An allocated pension is tested against a member's lump sum reasonable benefit limit ("RBL") – see "Part X - Taxation" further on. The advantage of an allocated pension for a member is that they can withdraw a lump sum from their allocated pension account – known as a commutation - at any time. If this is done obviously any future minimum and maximum payment calculations will be adjusted accordingly.

Importantly, where a member dies their estate or dependants should receive any remaining account balance. The major disadvantage of an allocated pension is that when the capital is gone so too is the pension. That is, there is no security of income. There can be no residual capital value or lump sum payable at the end. The possibility of running out of money may cause great concern for allocated pension members of superannuation funds, particularly when investment markets are performing poorly.

### **2. The fixed term commutable pension – a defined benefit pension**

The fixed term commutable pension operates for a set period of time and is essentially guaranteed by the trustee. A fixed term pension falls under a class of pensions known as 'defined benefit pensions'. Consequently the use of a fixed term pension in terms of retirement income and estate planning in a Fund is limited given the May 2004 Budget proposals detailed above.

Where a Trustee is considering this type of pension it is crucial that an actuary is used. Fixed term commutable pensions are a valuable tool, particularly given that the pension might continue to be payable after the death of a member. There is a wide degree of flexibility as to the term – it could be for two years or it could extend to more than 50 years.

Importantly, the pension can also include a residual capital value, which is simply a lump sum payment at the end of the pension term. Like an allocated pension a fixed term commutable pension is tested against a member's lump sum RBL unless more than 50% of the member's benefits have been taken by way of a complying pension. A member may commute the pension although there are limits as to how much may be commuted.

### **3. The lifetime commutable pension – a defined benefit pension**

A lifetime commutable pension is a defined benefit pension that is guaranteed for a member's life and if there is a continuation of the pension to another person, that person's life as well. The pension is generally based on the younger person's life expectancy if the pension is reversionary. A member may commute the pension into a lump sum subject to some limits on the size of the commutation payment. It is subject to the defined benefit pensions rules detailed above.

For the trustee, an actuary must be engaged each year to ensure that the Fund can make its pension commitments now and into the future. The trustee might achieve this by placing 5% - 20% of the original purchase price of the pension aside in a reserve (which will be drawn upon in years when investment returns are poor). One of the key factors driving current interest in lifetime pensions is that if a member dies early, anything left in the Fund is allocated to a reserve, which can be used by the trustee for other members when they take a pension. It is not lost but left to the family for retirement income purposes. As a commutable pension, the lifetime commutable pension will be tested against a member's lump sum RBL unless more than 50% of the member's benefits have been taken by way of a complying pension.

While lifetime commutable pensions are offered by some retail superannuation funds, some or all of the purchase price is forfeited on the death of the last surviving reversionary beneficiary.

#### **4. The complying pension – lifetime, fixed term and market linked**

A complying pension is a lifetime pension, a fixed term pension or a market linked pension. Only the lifetime and fixed term complying pensions are defined benefit pensions.

The key attraction of a complying pension is that if 50% or more of a member's benefits are allocated to a complying pension then the higher pension RBL may be used. In contrast any allocated pension, fixed term or lifetime pension that is commutable must be counted toward a member's lump sum RBL unless more than 50% of the member's benefit is by way of a complying pension. However a complying pension must not be commutable and also can have no residual capital value.

The market linked complying pension is a new pension that is a combination of a fixed term pension and an allocated pension and has only been available since 20 September 2004. It is a fixed term pension in that its term is for the life expectancy of a member or the life expectancy plus five years at the member's choice. If the pension has a reversionary pensioner then their life expectancy is to be used with the five year extension option. It is also like an allocated pension in that the underlying assets for the pension are accumulated in a member's pension account and each year a set drawdown of the account is required. This is based on the member's account balance at the start of the year and a pension valuation factor in the superannuation laws.

The advantage of the market linked pension is that it can be used to access the higher pension RBL (provided 50% of the benefits are taken by way of this type of pension). The disadvantage of the pension is that it cannot be commuted except on the death of a member when the account balance can be paid to the deceased member's legal estate or their dependant.

#### **5. The partially assets test exempt pension – Sections 9A or 9B of the *Social Security Act 1991* and Section 5JA or 5JB of the *Veterans Entitlements Act 1986***

As a further incentive for members to provide for their own retirement by way of a lifetime income stream, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* provides a 50% exemption for assets included in certain pensions. These pensions are very similar to the complying pensions mentioned above, with limited commutability allowed and no residual capital value. For the purposes of these two Acts the assets test provides a means tested threshold that limits the amount of age pension a person can obtain from the government after age pension age. For example if a 66 year old male member with \$500,000 in superannuation benefits commenced a lifetime assets test pension on 1 March 2006, the member would only include 50% of those benefits for assets test purposes.

## **IX. Estate Planning**

A key feature of a SMSF is the ability of a member to directly provide for their dependants in the event of their death. A member may provide the trustee with binding and non-binding nominations as to how their superannuation benefits are to be distributed in the event of their death. Such benefits are called death benefits and may be by way of lump sum or pension. Any lump sum payment does not have to be in cash and may consist of assets of the Fund.

A dependant is a person who is a financial dependant and includes a person who, although is not financially dependant, is the spouse or child of the deceased person. A member may also direct some or all of their superannuation benefits into their legal estate on death and allow those benefits to be distributed according to the deceased's will.

A binding nomination is one where a member requests that the trustee pay all or part of their benefits - either by way of pension or lump sum - to a nominated dependant or dependants. If the trustee accepts the request, then on the member's death the trustee is bound to pay those benefits in accordance with the member's nomination.

On the other hand a non-binding nomination is where the member requests the trustee to make certain payments to specified beneficiaries. However as the nomination is non-binding the trustee is not obliged to carry out the request. If the member dies and no nomination has been made then the trustee has full discretion to choose the manner in which to allocate the deceased member's superannuation benefits.

As the member was a trustee or director of the trustee company at the time of death, then the rules of the Fund require that the deceased member's executor be appointed as trustee of the Fund or director of the corporate trustee. The purpose of this is to ensure that the member's death benefit nominations are carried out according to their wishes. However the appointment can only be in force until the first death benefits are paid out. At that time the executor must resign as trustee otherwise the fund may lose its complying SMSF status.

There are significant taxation advantages of paying a death benefit directly from a Fund to a dependant rather than through the deceased's legal estate. Broadly the following rules apply in relation to death benefits:

- any lump sum payment to a spouse or child under age 18 - provided it is under the member's higher pension reasonable benefit limit at the time of payment - is tax free;
- if the child is over age 18 then the lump sum tax is generally 15% provided that the payment is within the deceased member's pension reasonable benefit limit;
- any lump sum payment in excess of a member's pension reasonable benefit limit is subject to tax at a rate of 47% - excluding Medicare levy;
- any pension income, again provided it falls within the member's pension reasonable benefit limit, is assessable to the dependant at the dependant's normal tax rates less a 15% tax rebate.

Finally the deceased member's will generally has no impact on the superannuation benefits distributed directly from the fund. Whilst the trustee may take the member's will into account in fulfilling any non-binding nominations there is no requirement to do so.

## **X. Taxation of the Fund and Members**

One of the key benefits is that the Fund may be concessional tax on its income and members may be concessional tax on benefits received from the Fund. Importantly these taxation concessions only apply where a Fund is a complying superannuation fund during the income year.

### **Taxation of the Fund**

Broadly the Fund is taxed like any other taxpayer except that:

- any taxable income of a complying superannuation fund is taxed at a 15% rate excluding income that is special income, such as private company dividends and non-arms length income received by the Fund. Special income is taxed at a 47% rate;
- any capital gains earned by the trustee upon the disposal of an asset that has been held for more than one year is subject to a 33 1/3% discount;
- the trustee is to include as assessable income any contributions it receives excluding contributions from a member on their own behalf for which they have not claimed a tax deduction;
- any income or capital gains earned on assets that are being used by the trustee of the Fund for current pension purposes is exempt from taxation;
- the trustee may obtain a tax deduction for premiums paid for life insurance, permanent disability and temporary incapacity provided the term of the contract is no longer than 2 years. The trustee may also receive a tax deduction for self insurance provided an actuary determines the amount to be claimed;
- where a member dies or becomes permanently incapacitated the trustee may obtain a tax deduction based on a proportional amount of benefit paid to the member or the member's dependants or legal estate.

### **Taxation of Benefits to a Member**

Benefits paid to a member will be taxed dependent upon what type of benefit they are:

#### **1. Excessive Benefits**

Under the Tax Act a member is only allowed to access a certain amount of concessional tax superannuation benefits. For the 2006 year the base amount is \$648,946 where the member takes a lump sum benefit or pension benefit that is not a complying pension. The lump sum amount is to be reduced by 2.5% by every year that a person is under age 55.

Where at least 50% of a member's benefits are taken as a complying pension then the member may access the higher pension benefit limit of \$1,297,886. Any lump sum amount that is excessive as determined by the Commissioner of Taxation is taxed at 47%. If the member is in receipt of a pension benefit then the member will have their rebate entitlements reduced to the extent that the pension is excessive.



## **2. Lump Sum**

Where a member is entitled to and takes a lump sum benefit then if the member is under age 55 the maximum tax rate on the benefit is 20% excluding the Medicare levy. Where the member is over age 55 the first \$129,751 (being the threshold for the 2006 income year) of lump sum benefits taken by the member is tax-free. Any amount over this – except an excessive benefit - is taxed at a maximum rate of 15% excluding the Medicare levy.

## **3. Pension**

Where a member is in receipt of a pension benefit all or part of the pension payment is included in the member's assessable income. Any amount of undeducted contributions used by the member to acquire the pension is excluded from assessable income. The tax free amount for each year of the life of the pension – called the deductible amount - is the amount of undeducted contributions divided by the term of the pension. If the pension is an allocated pension or a lifetime pension then the term will be the member's life expectancy at the time of commencing the pension. Otherwise it is simply the maximum duration of the pension including any reversionary benefit.

In addition, a member may access a 15% tax rebate on assessable pension income where the member is over age 55 and the pension is a pension payable on the retirement, death or permanent incapacity of a member. As noted above to the extent the pension is excessive, the rebate may be reduced by the Commissioner of Taxation.

If the member commutes the pension then lump sum tax rates will be payable as determined above.

## **XI. Appointment of Specialists**

The superannuation and taxation laws (particularly as they apply to self managed superannuation funds) are complicated. Serious breaches may render a fund to be a non-complying superannuation fund (which would mean that it would not be concessional tax) and the trustee may be subject to financial and criminal penalties.

The rules allow a trustee to appoint managers, advisers, and to engage other specialists to assist the trustee in the management of the Fund. It is highly recommended that the trustee appoint an experienced specialist self managed superannuation fund auditor and adviser.

## **XII. Costs and Expenses of the Fund**

There are a number of costs involved in establishing and operating a Fund including expenses relating to:

- The acquisition of the deed and the rules and establishment of the Fund as a regulated self managed superannuation fund;
- Possible acquisition of a trustee company;
- The provision of specialist advice to the trustee or members in relation to the establishment of the Fund including development of the investment strategy or plans for member retirement incomes, incapacity benefits or benefits payable in the event of the member's death;
- The provision of investment advice concerning the development and implementation of the Fund's investment strategy;
- The acquisition by the trustee of insurances for the Fund including life, total and permanent disablement as well as temporary incapacity insurances;

- Administration, accounting and audit fees in relation to the provision of audited accounts and complying certificate as required by the superannuation laws;
- The provision of actuarial advice should the Fund self-insure or the trustee pay a pension to any member or their dependant in the event of the member's death.

Costs associated with any of the above may be obtained in a schedule from the provider of any financial services to the trustee.

### **XIII. Understanding the Rules of the Fund**

The Fund will have a lifecycle. It has to be formed, a trustee appointed and members admitted. It will receive contributions and may receive transfers of benefits from other superannuation funds and will invest those monies or assets. The trustee must comply with the superannuation laws. In particular this means that the Fund must be audited. Benefits will be paid to members. Finally the Fund may be terminated.

To reflect the lifecycle of the Fund the Rules are contained in the following Parts:

Part One	Establishment of the Fund
Part Two	Operation and Administration of the Fund
Part Three	Payment of Benefits by the Trustee
Part Four	Changing or Winding up the Fund

For a more detailed look at what each part contains refer to the index at the start of the rules.

Great care has been taken to ensure that the rules remain as flexible as possible yet still ensure that they meet current standards of the superannuation laws as well as other laws that may impact on the trustee and members of the Fund. These other laws include taxation, bankruptcy, family, social security and trustee laws.

Most rules have been divided into two parts. The first part provides a broad explanation of the rule. This explanation is designed to assist the reader to understand the purpose of the rule. Importantly the explanation does not form part of the rules; rather it is ancillary to them. The second part of each rule is the rule itself.

At the end of the rules are interpretative provisions. When reading the rules, if a particular term or word is capitalised then a definition may be found in the interpretative provisions.

## Establishment of the NOBLE SUPERANNUATION FUND

### Explanation

*A superannuation fund is a form of trust. Trusts are normally required to be established by deed. By execution of this Deed the Trustee formally establishes the Fund.*

*To benefit from concessional taxation rules the sole purpose of the Fund must be the provision of superannuation pension benefits or retirement, incapacity or death benefits to Members (or relatives of deceased Members). The Trustee of the Fund must not carry on a business.*

*In order for this Deed to be admitted as evidence in a court of law, it must if required, be stamped in the local jurisdiction of the Trustee.*

### THE DEED

THIS DEED is made on 1 1 DATE only

BY: NOBLE INITIATIVES PTY LIMITED ACN 109 426 815 ("Trustee")

## **WHEREAS**

- A The Trustee is that person who has executed this Deed or if more than one person, those persons collectively.
- B The Trustee wishes to establish a superannuation fund ("the Fund").
- C The Trustee intends that the Fund should be a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1936*.
- D By execution of this Deed the Trustee signifies its consent to its appointment as the first Trustee of the Fund and acknowledges that they have read and agree to be bound by the Rules.
- E The Trustee intends that the Fund should be a self managed superannuation fund as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

## **NOW IT IS HEREBY AGREED**

### **Establishment of the Fund**

- 1. The Trustee hereby agrees to receive contributions and any other amounts paid to it on behalf of members and will hold those contributions and any income thereon according to the Rules of the Fund.

### **Name of the Fund**

- 2. The Fund will be known by that name as the Trustee shall decide.

### **Rules of the Fund**

- 3. The Rules of the Fund are those rules attached to this Deed or any amendment or substitution of those rules.

### **Purpose of the Fund**

- 4. The purpose of the Fund is to provide individual personal superannuation benefits, pensions or retiring allowances upon the death, incapacity or retirement of a member. Where the trustees of the Fund are individuals the primary purpose of the fund is the payment of a pension. If the trustee of the Fund is a company, a lump sum and /for pension maybe paid to a member in the event of retirement, death, incapacity.

### **Complying Superannuation Fund**

- 5. The Fund must at all times only have that purpose and must only do those things as would entitle it to be a "complying superannuation fund" as defined for the purposes of the *Income Tax Assessment Act 1936*.

### **Self Managed Superannuation Fund**

- 6. The Fund must at all times be maintained as a complying self managed superannuation fund as defined for the purposes of section 42A or any other part of the *Superannuation Industry (Supervision) Act 1993*.

### **Successor Acts**

- 7. A reference to an Act includes a reference to any successor act to that Act.

**EXECUTED AS A DEED ON / /**

**BY NOBLE INITIATIVES PTY LIMITED )**  
ACN 109 426 815 as Trustee by being signed )  
on behalf of the directors of the Company )  
pursuant to the *Corporations Act 2001 (Cth)*: )

\_\_\_\_\_  
GEOFFERY ALLEN NOBLE  
Director

\_\_\_\_\_  
DEBRA ANNE NOBLE  
Director

# THE RULES OF THE FUND

## Part One: Establishment of the Fund

### Purpose of the Fund

#### Rule 1. The Fund must satisfy the sole purpose test

##### Explanation

*The Fund must be established and must be maintained solely for those Core Purposes or Ancillary Purposes as defined in the SIS Act. The SIS Act defines Core Purposes to include the provision of benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.*

*The SIS Act also provides that the Trustee may maintain the Fund for other Ancillary Purposes on the condition that one of the Core Purposes is satisfied. The Ancillary Purposes may include the provision of temporary or permanent incapacity benefits to a Member where the Member terminates employment as a consequence of ill-health.*

*The terms Core and Ancillary Purposes are defined in the Definitions in Rule 58.*

##### Rule

The Trustee must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more Ancillary Purposes and for no other purpose.

### Appointing the Trustee

#### Rule 2. Who may and may not be a Trustee

##### Explanation

*The Fund must have a Trustee. Section 17A of the SIS Act must be satisfied in order for the Fund to be a Self Managed Superannuation Fund. That section requires that:*

- *each Member must be a Trustee or if the Trustee is a company each Member must be a director of that company;*
- *a person who is not a Member may not be a Trustee or a director of a company which is a Trustee;*

*There are limited exceptions for Legal Personal Representatives (which are defined to include persons holding enduring powers of attorney).*

*If a company is appointed Trustee the constitution of that company should be comparable with the Rules.*

*Any person accepting appointment as a Trustee or director of a Trustee Company needs to read and agree to the Rules.*

## Rule

### Who may be a Trustee

- 2.1. Subject to this Rule and Rule 49 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.
- 2.2. Subject to this Rule and Rule 49 below (which applies on the death of a Member) a company may only be a Trustee if all the directors of the company are Members.
- 2.3. Notwithstanding Rule 2.1 and Rule 2.2 if there is only one person who is a Member then:
  - (a) if that Member is also the Trustee, one other person must be appointed as a Trustee provided that person is not an employer of the Member unless they are also the Member's relative, or
  - (b) if a Trustee Company is the Trustee, then the Member must be the sole director of the Trustee Company or one other person may be appointed as a director of that company provided that person is not an employer of the Member unless they are also the Member's relative.
- 2.4. If the Member is under a legal disability then the Legal Personal Representative of the Member may be appointed as a Trustee or director of a Trustee Company in lieu of that Member.
- 2.5. If the Regulator appoints a person or company as a Trustee that person or company may be a Trustee.
- 2.6. Notwithstanding any other provisions of these Rules a person or company shall not be appointed as a Trustee unless they have provided the Trustee with a written consent to that appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.7. Notwithstanding any other provision of these Rules a Member or Legal Personal Representative of a Member may appoint an Approved Trustee as a Trustee in lieu of that Member.

### Who may not be a Trustee

- 2.8. An individual including a Legal Personal Representative cannot be a Trustee unless authorised by the Regulator if:
  - (a) at any time
    - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
    - (ii) a Civil Penalty Order was made in respect of the person; or
  - (b) the person is an insolvent under administration; or
  - (c) a Regulator has disqualified the person (for the purposes of section 120A of the *SIS Act*) and the Regulator has not waived that person's status as a disqualified person.

2.9. A company cannot be a Trustee unless authorised by the Regulator if:

- (a) (i) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the *SIS Act*); and
- (ii) the company knows or has reasonable grounds to suspect that:
  - (1) the person is not eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (2) the person is so eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person but that person will not make an application under subsection 126B(3) of the *SIS Act* seeking a waiver of that status; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property owned by the company; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (d) a provisional liquidator has been appointed in respect of the company; or
- (e) the company has begun to be wound up.

### Rule 3. Appointment of a Trustee

#### Explanation

*This Rule provides the mechanism for appointing those persons eligible to be appointed as Trustees. This Rule also allows an individual to be replaced as a Trustee by a Trustee Company and for a Trustee Company to be replaced as Trustee by an individual.*

*Trustees of the Fund will be personally liable for any liabilities incurred by the Fund (although they may be entitled to indemnity by the Fund). Where there is more than one Trustee each Trustee is jointly and severally liable for the liabilities of the Fund. As a consequence persons causing the establishment of the Fund might prefer that a company be appointed the Trustee of the Fund rather than individuals being appointed Trustees of the Fund.*

#### Rule

- 3.1. Upon establishment of the Fund, those persons who have agreed to be Trustee by reason of execution of the Deed shall be appointed Trustees provided they have consented in writing to becoming a Member and have agreed to be bound by the Rules.
- 3.2. Subject to the provisions of these Rules where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee unless that person or a Legal Personal Representative of that person becomes a director of a company which is the Trustee.



**3.3.** Upon retirement of a Trustee and at the direction of that Trustee one of the following is appointed as Trustee in place of the Trustee who has retired:

- (a) a person who is a Member; or
- (b) a company all the directors of which are Members; or
- (c) an Approved Trustee,

if that person, company or Approved Trustee is not already a Trustee.

## **Becoming a Regulated Superannuation Fund**

### **Rule 4. The Trustee must ensure that the Fund is a Regulated Superannuation Fund**

#### **Explanation**

*The tax concessions contained in the Income Tax Assessment Act 1936 only apply to a Self Managed Superannuation Fund that is a Complying Self Managed Superannuation Fund. A Self Managed Superannuation Fund will not be a Complying Self Managed Superannuation Fund if it is not a Regulated Superannuation Fund.*

#### **Rule**

The Trustee must cause the Fund to be a Regulated Superannuation Fund.

## **Trustee Operations and Obligations**

### **Rule 5. Removal and Retirement of a Trustee**

#### **Explanation**

*The purpose of this Rule is to provide a mechanism for the removal or retirement of a person or company as a Trustee.*

#### **Rule**

**5.1.** A Member may retire as a Trustee provided:

- (a) a company of which the Member is a director is appointed as Trustee; or
- (b) a Legal Personal Representative of that Member is appointed as a Trustee.

**5.2.** Notwithstanding Rule 5.1 a Member may retire as a Trustee if the Fund is no longer a Self Managed Superannuation Fund irrespective of whether or not some other Trustee is appointed in place of that Member.

**5.3.** A company may retire as a Trustee provided all directors of that company or Legal Personal Representatives of those directors who are Members are appointed as Trustees or another company is appointed as a Trustee, provided the directors of that company are all Members of the Fund.

- 5.4. Subject to these Rules and the Act a person or company is removed as a Trustee:
- (a) if the Trustee is a person – upon that person ceasing to be a Member;
  - (b) if the Trustee is a company – on that date four months from the time one or all of the directors of the company cease to be Members;
  - (c) if the Trustee is prohibited from being a Trustee by reason of Rule 2.8 or Rule 2.9 – on that date a Trustee is so prohibited from being a Trustee;
  - (d) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-complying Self Managed Superannuation Fund – on the day before the day the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-complying Self Managed Superannuation Fund.

## Rule 6. Remuneration and Indemnification of a Trustee

### Explanation

*A Fund will not be a Self Managed Superannuation Fund if the Trustee receives any remuneration for acting as Trustee unless the Trustee is an Approved Trustee.*

### Rule

- 6.1. A Trustee shall not be entitled to be remunerated for acting as a Trustee unless the Trustee is an Approved Trustee.
- 6.2. A Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee for expenses incurred by itself or a former Trustee in managing or administering the Fund provided:
- (a) the Trustee or the former Trustee acted honestly in the matter in respect of which the indemnification is sought;
  - (b) the Trustee or the former Trustee did not intentionally or recklessly fail to exercise, in relation to the matter in respect of which indemnification is sought, the degree of care and diligence that the Trustee or the former Trustee was required to exercise.

## Rule 7. Trustees' meetings

### Explanation

*If there is more than one Trustee, the Trustees should meet to decide matters such as the:*

- *appointment of various professional advisers to the Fund including the Auditor,*
- *establishment of the Fund's cash account,*
- *setting of an investment objective and investment strategy for the Fund,*
- *admission of Members to the Fund,*
- *acquisition and disposal of investments pursuant to the investment strategy,*
- *approval of the payment of Benefits to a Member (including a payment of a Pension),*
- *payment of a Death Benefit to a Dependant or Legal Personal Representative of a deceased Member,*
- *acceptance of a Binding Death Benefit Nomination from a Member,*
- *review of audit reports,*
- *creation of any Reserves.*

*Normally the Manager, the person whom the Trustees have appointed to be responsible for the day-to-day administration of the Fund, will call meetings. However Members with Members' Account balances equal to 50% or more of the balances of all Members' Accounts can also call a meeting.*

*Where the Trustee is a company decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case meetings of the company must be held in accordance with the constitution of that company. This is another reason why it is important that the constitution of a Trustee Company is comparable with the Rules.*

### Rule

- 7.1. If there is more than one Trustee the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision pursuant to these Rules.
- 7.2. The Manager or Members must give reasonable notice of any such meeting to each of the Trustees (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by each Trustee) unless the Trustees unanimously agree that the meeting may be held on some earlier date. Such written notice must:
  - (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the business of the meeting.

- 7.3. Where, through a link established by means of any system of telephone, audio or audio-visual communication approved by the Trustees for the purpose of any meeting of the Trustees, the Trustees will be taken to be assembled together at a meeting and all proceedings of the Trustees, conducted with the aid of the link, will be as valid and effectual as if conducted at a meeting at which all Trustees were physically present.
- 7.4. At any meeting of the Trustees a quorum is equal to that number of Members, or the Legal Personal Representatives of those Members, the balance of whose Members' Accounts, is equal to more than one half of the balance of all Members' Accounts.
- 7.5. At any meeting of the Trustees, unless the Trustees unanimously agree otherwise, a Trustee shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that Trustee.
- 7.6. A resolution shall not be passed at any meeting of the Trustees unless it is passed by the casting of a majority of the votes entitled to be cast by Trustees who are present at that meeting.
- 7.7. A Trustee may appoint a person to act as that Trustee's proxy at any meeting of the Trustees.
- 7.8. If a circulating minute, containing a statement that the Trustees are in favour of a resolution in the terms set out in that document, has been signed by all Trustees, a resolution in those terms will be taken to have been passed at a meeting of the Trustees held on the day and at the time at which the document was last signed by a Trustee. Two or more separate documents containing statements in identical terms, each of which is signed by one or more Trustees, will together be taken to constitute one document for the purposes of this Rule.

## **Rule 8. Trustee's records**

### **Explanation**

*A written record must be kept of all decisions made by the Trustee in relation to the Fund. Those records should be held for ten years.*

### **Rule**

- 8.1. If there is only one Trustee that Trustee must make a written record of all decisions made by the Trustee as Trustee.
- 8.2. If there is more than one Trustee the Trustees must keep minutes of every meeting held by those Trustees.
- 8.3. If the Trustee is a company the minutes of the meetings of the directors of that company shall be deemed for the purposes of this Rule to be records of the Trustee.
- 8.4. Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

## Rule 9. Trustee's covenants

### Explanation

*The Act requires that the rules of a Regulated Superannuation Fund contain certain covenants (if the rules do not contain these covenants the Rules are deemed to contain those covenants). Whilst some of those covenants are contained elsewhere in these Rules, they have all been reiterated here to highlight the code of conduct that a Trustee must adopt as a Trustee.*

### Rule

A Trustee by accepting appointment as a Trustee agrees:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another with whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by a Trustee personally or,
  - (ii) that are money or assets as the case may be, of a Standard Employer-Sponsor, or an Associate of a Standard Employer-Sponsor, of the Fund;
- (e) not to enter into any contract or do anything else, that would prevent the Trustee from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and implement a written investment strategy in accordance with the provisions of the Act;
- (g) if there are any Reserves of the Fund – to formulate and implement a written strategy for the prudential management of those Reserves consistent with the Fund's investment strategy and its capacity to discharge liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Member access to Prescribed Information and any Prescribed Documents.

## Admittance of Members

### Rule 10. Who may become a Member

#### Explanation

*There are generally no restrictions on who can be a Member of the Fund provided the Member or their Legal Personal Representative is eligible to be appointed a Trustee. For example a child or a person that is not employed may become a Member of the Fund.*

*This Rule would also allow the Trustee to admit a non-member spouse as a Member to facilitate a payment splitting arrangement established under Part VIIIB of the Family Law Act 1975. However a trustee is not forced under any circumstances to admit a person as a member of the fund.*

#### Rule

- 10.1.** The Trustee may in its absolute discretion admit a person as a Member provided:
- (a) that person has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
  - (b) admission of that person as a Member would not result in the Fund losing its Complying Self Managed Superannuation Fund status; and
  - (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee.
- 10.2.** Subject to these Rules and the Act the Trustee must admit a person as a Member where that person is in receipt of a Pension from the Fund.

### Rule 11. Members have read and are bound by the Rules

#### Explanation

*The Corporations Act 2001 requires any new Member of the Fund to be made aware of all matters, events, rights and circumstances that may arise where they acquire an interest in a Self Managed Superannuation Fund.*

#### Rule

By applying for membership of the Fund a Member acknowledges having read the Product Disclosure Statement and agrees to be bound by the terms of the Deed and the Rules. A Trustee may prohibit a person becoming a Member of the Fund if they are of the opinion that the person has not read and understood the Fund's Product Disclosure Statement, the Deed and the Rules of the Fund.

## Rule 12. Application Form

### Explanation

*Prospective Members are required to provide the Trustee with an Application Form.*

*The Application Form may (amongst other things) require a prospective Member to:*

- *acknowledge that the person has read the Product Disclosure Statement;*
- *agree to be bound by the Rules;*
- *be a Trustee of the Fund or a director of a company which is a Trustee of the Fund;*
- *provide such information (including medical information) to the Trustee as the Trustee requires;*
- *provide the Trustee with a death benefit nomination.*

### Rule

- 12.1. A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has completed an Application Form in the form required by the Trustee and has agreed in writing that they have read the Product Disclosure Statement, Deed and Rules of the Fund as well as agree to be bound by the Fund's Rules.
- 12.2. Where a person may be entitled to be paid a Pension following the death of a Member and that person does not wish to become a Member or the Trustee decides that the person is not to become a Member, then the Trustee is to transfer an amount as would have been added to a Member's Pension Account to fund the payment of a Pension for the benefit of that person to another Complying Superannuation Fund or eligible rollover fund. Any such transfer is to be made in accordance with Rule 24 and must occur within three months of the time that the person became entitled to be paid a Pension.

## Rule 13. Receipt of an Application Form

### Rule

- 13.1. On receipt of an Application Form from a person and after that person produces such documents and evidence, and submits to such medical examination and checks, as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.
- 13.2. Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for membership whether or not that person has been accepted for admission as a Member and whether or not any conditions will be attached to that person's membership.
- 13.3. If the Trustee has agreed to accept a person as a Member but subject to conditions as to that person's membership that person can within 6 weeks of notification by the Trustee pursuant to Rule 13.2 either accept or reject that offer of membership.

## Death Benefit Nominations

### Rule 14. Binding Death Benefit Nomination

#### Explanation

*If the Trustee decides to accept Binding Death Benefit Nominations from Members then the Trustee must put in place a binding death benefit nomination policy, details of which are to be sent to all members.*

*Before accepting a Member's request for a Binding Death Benefit Nomination, the Trustee should assess the cash flow requirements that may be faced by the Fund in the event of the Member's death and any death benefit becoming payable.*

*The Trustee might seek professional advice from an actuary. If the Trustee is of the view that the Trustee may be unable to comply with the Member's request the Trustee may, after discussion with the Member, request that the Member resubmit the Binding Death Benefit Nomination. Alternatively, the Trustee may reassess the Fund's insurance plan and increase any life insurance cover.*

*Any Binding Death Benefit Nomination may be amended by the Member at any time provided the Trustee is notified in writing of that amendment.*

*A Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member. However the Rules provide for the Trustee to exercise discretion to extend the Member's Binding Death Benefit Nomination where the Member's circumstances remain unchanged except that the Member may have become mentally incapacitated.*

#### Rule

- 14.1. The Trustee must provide Members with information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 14.2. A Member may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 14.3. The Trustee may accept or reject a Binding Death Benefit Nomination. If the Trustee accepts a Binding Death Benefit Nomination the Trustee shall be bound to act in accordance with that Binding Death Benefit Nomination. If the Trustee does not accept a Binding Death Benefit Nomination within six months of its submission it is deemed to have been rejected. If the Trustee rejects the Binding Death Benefit Nomination the Member may submit another Binding Death Benefit Nomination.



**14.4. A Binding Death Benefit Nomination:**

- (a) must be in writing;
- (b) must require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
- (c) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
  - (i) each of whom has turned 18; and
  - (ii) neither of whom is a person capable of benefiting under the notice; and
- (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member in his or her presence.
- (e) will cease to have effect after three years from the date of acceptance by the Trustee unless the Trustee, in its absolute discretion considers that a Member's Binding Death Benefit Nomination should continue to have effect.

**Rule 15. Non-binding Death Benefit Nomination**

**Explanation**

*A Member might request the Trustee to pay their Death Benefits in a particular way and to particular persons. Such requests or directions are at the discretion of and non-binding upon the Trustee.*

**Rule**

- 15.1.** A Member may provide the Trustee with a Non-binding Death Benefit Nomination. This Nomination may request the Trustee, at its discretion, to provide benefits on death of the Member to persons named by the Member in that nomination.
- 15.2.** The Trustee may accept, amend or reject a Non-binding Death Benefit Nomination. If the Trustee amends or rejects the Non-binding Death Benefit Nomination the Member may submit another Non-binding Death Benefit Nomination.
- 15.3.** A Non-binding Death Benefit Nomination is not binding upon the Trustee.
- 15.4.** A member of a Fund may also direct the Trustee to act, do or carry out a particular course of action on their death or incapacity. However the Trustee is not bound by any such direction and the Trustee must not comply with that direction if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

# Part Two: Operation and Administration of the Fund

## Termination of Membership

### Rule 16. Expulsion of a Member

#### Explanation

*The object of this Rule is to allow the Trustee to expel a Member for any reason the Trustee considers necessary. For example, where a person becomes bankrupt or does anything else to jeopardise the status of the Fund as a Complying Self Managed Superannuation Fund they must be removed as Trustee. In these circumstances they are no longer eligible to remain as a Member unless the Trustee appoints an Approved Trustee as Trustee.*

#### Rule

- 16.1.** The Trustee may expel a Member as a Member of the Fund for any reason that the Trustee determines. At the same time the person must retire as Trustee of the Fund.
- 16.2.** If a Member is expelled from the Fund pursuant to Rule 16.1 the balance of the Member's Accounts are to be transferred to such other Superannuation Entity as requested by the Member and if the Trustee of the Fund has not received a transfer notification from a Member or former Member within a period of sixty days from the time the Trustee notified the Member of their expulsion, the Trustee may transfer the Member's Accounts to an Eligible Rollover Fund.

### Rule 17. Ceasing to be a Member

#### Explanation

*Normally a Member will only cease being a Member:*

- *if the Member dies; or*
- *the Member ceases to be eligible to be a Trustee (or ceases to be eligible to be a director of a company which is a Trustee);*
- *The Trustee also has the power to determine that a Member should no longer be a member (for example this may follow the separation of spouse members).*

#### Rule

Unless prohibited by the Act a Member shall be deemed to have ceased to be a Member on the first to occur of the following:

- (a) upon the Member no longer being entitled to Benefits from the Fund;
- (b) upon the Trustee determining that the Member should no longer be a Member;
- (c) the death of the Member or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member remains as Trustee or director of the Trustee Company;

- (d) the date being no later than the earliest of either:
- (i) three months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee (unless the Member has appointed a replacement Trustee that meets any conditions laid down in Rule 2); or
  - (ii) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee (unless the Member has appointed a replacement Trustee that meets any conditions laid down in Rule 2).

## Members' Accounts

### Rule 18. The Trustee must keep Members' Accounts

#### Explanation

*The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one account may be kept for each Member.*

#### Rule

- 18.1.** The Trustee must keep accounts for each Member, which record Contributions received, income earned, amounts allocated to or from Reserves, Benefits paid and all other amounts added to or deducted from the Member's Account.
- 18.2.** The balance of a Member's Account must be positive.
- 18.3.** More than one Member's Account can be kept for a Member.
- 18.4.** A Member's Account can be an Accumulation Account or a Pension Account.

## Rule 19. Additions to a Member's Account

### Explanation

*Additions to a Member's Account will normally represent Contributions, roll-overs or Earnings. They may also include an allocation made by the Trustee from a Reserve into a Member's Account. The amount of Earnings added to a Member's Account is to be determined by the Trustee (see Rule 33) and may depend on the investment strategy adopted by the Trustee.*

### Rule

On the last day of each month or such other time as the Trustee might determine the Trustee shall add to a Member's Account:

- (a) the amount of Contributions received by the Trustee for the benefit of the Member;
- (b) at the discretion of the Trustee the amount of such Earnings of the Fund as the Trustee believes should be added to that Member's Account; and
- (c) such other amounts including allocations of Reserves as the Trustee might determine,
- (d) provided that any such additions do not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## Rule 20. Deductions from a Member's Account

### Explanation

*Deductions from a Member's Account will normally represent expenses directly attributable to the Member or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include any losses or a transfer made by the Trustee from a Member's Account to a Reserve or another Member's Account.*

### Rule

On the last day of each month or such other time as the Trustee might determine the Trustee shall deduct from a Member's Account:

- (a) the amount of such expenses that the Trustee believes should be deducted from that Member's Account;
- (b) the amount of any losses that the Trustee believes should be deducted from that Member's Account;
- (c) the amount of any payments of Benefits made to the Member or any other person from that Member's Account;
- (d) the amount of any Taxes payable by the Trustee that the Trustee believes should be deducted from that Member's Account; and
- (e) any other amount which the Trustee believes should be deducted from that Member's Account, including any amount to be transferred to a Reserve or to another Member's Account, provided that the amount of any such deduction would not cause the balance of the Member's Account to be less than that Member's Minimum Benefits unless allowed under the Act; and

provided that any such deduction does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## Appointment of Auditor and Specialists

### Rule 21. The Trustee must appoint an Approved Auditor and may appoint a Specialist.

#### Explanation

*The Trustee is bound by the laws contained in the Act to appoint an Auditor each year to audit the Fund. One of the requirements of these laws is for the Trustee to appoint an Auditor to audit the Fund both financially and also from a compliance perspective each and every year. The Auditor should produce an annual report to be considered at a meeting of the Trustees.*

#### Rule

- 21.1. On establishment of the Fund and for every subsequent year of income the Trustee must appoint an Auditor for the Fund who must give to the Trustee a report in the form required by the Act in respect of the operation of the Fund for that year. The Trustee must consider the report and implement any action recommended by the Auditor.
- 21.2. On establishment of the Fund and thereafter as the Trustee shall determine the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in ensuring that the Fund remains a Complying Self Managed Superannuation Fund as well to assist the Trustee in the management and administration of the Fund.

## Contributions, Roll-Overs and Transfers

### Rule 22. Who can make Contributions

#### Explanation

*The Trustee may accept Contributions from:*

- (i) a Member;*
- (ii) a Member's employer;*
- (iii) a Member's Spouse;*
- (iv) a relative of a Member;*
- (v) an employer of the Spouse or relative of the Member;*
- (vi) the Regulator;*
- (vii) the Government, or*
- (viii) any other person or entity,*

*provided the Contributions are made in accordance with the Act. Contributions may be made in cash or by an in specie transfer of assets. However care needs to be taken that the rules in the Act dealing with the acquisition of assets from Members are not contravened.*

#### Rule

A person may make Contributions to the Fund for the benefit of a Member provided the Fund will not, by reason of acceptance of those Contributions:

- (a) become a Non-Complying Self Managed Superannuation Fund, or
- (b) be in breach of the Act.

## **Rule 23. The Trustee may accept a transfer from another Superannuation Entity**

### **Explanation**

*A Member may request the Trustee to accept a transfer of a Member's superannuation benefits from another Superannuation Entity.*

*The Trustee has absolute discretion as to whether to accept any such transfer from another fund. The Trustee can make an acceptance subject to conditions. Where the Trustee resolves to accept an in specie transfer of assets in respect of a Member, the Trustee must ensure that the transfer of the asset to the Fund does not breach the Act or the Rules of the Fund.*

### **Rule**

A Member may request that the Trustee accept a transfer of superannuation benefits to the Fund from another Superannuation Entity. The Trustee shall in its sole discretion determine whether or not to accept the whole or part of such amount and whether or not conditions should apply to the acceptance of that transfer. The Trustee cannot accept a transfer to the Fund if acceptance of that transfer would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## **Rule 24. The Trustee may transfer a Member's Entitlement**

### **Explanation**

*A Member may request the Trustee to transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account. The Trustee also has this discretion.*

*This may be required where a Member of the Fund is separated from their Spouse or where a Member terminates membership of the Fund due to the operation of another Rule.*

### **Rule**

**24.1.** If a Member:

- (a) requests the Trustee to transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account, and
- (b) the Trustee is satisfied that any such transfer or rollover will not cause the Fund to be a Non-Complying Self Managed Superannuation Fund,

then the Trustee shall, within such period as required by the trustees to give effect to the transfer or rollover, transfer or rollover the whole or that part of the Member's Account to that other Superannuation Entity or to the other Member's Account.

**24.2.** The Trustee, at its sole discretion may transfer the balance of a Member's Account to another Complying Superannuation Fund or to another Member's Account provided that in so doing the Fund does not become a Non-Complying Self Managed Superannuation Fund or breach the Minimum Benefit Standards of the Act.

**24.3.** The Trustee may effect the transfer or rollover in the manner and form of its choice including whether the transfer is by way of cash or assets or has conditions attached.

## Investments

### Rule 25. The Trustee must formulate an investment strategy

#### Explanation

*The Trustee must prepare and implement a written investment strategy. This is a requirement of the Act. The investment strategy:*

- *must reflect the purpose and circumstances of the Fund and have particular regard to the membership profile, Benefit structure, tax position and liquidity requirements of the Fund;*
- *should set out the investment objectives of the Fund and detail how the Trustee will achieve those objectives;*

*Breaches of the investment strategy requirement may result in the Trustee being fined or sued for loss or damages. In addition, the Fund could become a Non-Complying Superannuation Fund.*

*At certain times the Trustee may receive cash from Contributions for a Member or in respect of the disposal of an asset. In such cases the investment strategy is to be automatically adjusted for any such changes provided the change is for a period no longer than two months. If the adjustment is for a longer period the Trustee is required to adjust the investment strategy.*

#### Rule

**25.1.** The Trustee must formulate and implement an investment strategy that considers the whole of the circumstances of the Fund including, but not limited to, the following:

- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments considering its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;

**25.2.** The investment strategy must be documented in writing and signed by the Trustee.

**25.3.** The investment strategy may consist of one strategy for the whole of the Fund or separate investment strategies for the various parts of the Fund including for particular Members or specific Benefits payable to a Member.

**25.4.** The Trustee may amend an investment strategy from time to time. If the Trustee amends an investment strategy all Members affected by any such amendment shall be advised in writing of all details of the amendment.

**25.5.** A Member may at any reasonable time request the Trustee to produce the investment strategy for inspection and the Trustee shall comply with this request by the Member.



- 25.6. The Trustee must also set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the Reserve or such other requirements as laid down in the Act.
- 25.7. In setting the investment strategy the Trustee may act on the advice of an investment adviser provided the Trustee reasonably believes that the adviser is qualified and has the necessary skills to provide such advice.
- 25.8. The Trustee may receive cash from Contributions for a Member or in respect of the disposal of an asset. In such cases the investment strategy is to be automatically adjusted for any such changes provided the change is for a period no longer than four months.

## **Rule 26. The Trustee must invest the assets of the Fund**

### **Explanation**

*The Trustee must invest the assets of the Fund.*

*The Trustee must ensure all investment decisions are made in accordance with the investment strategy.*

*While all of the assets of the Fund might be in cash, the Trustee of the Fund must have determined in an investment strategy that cash is the appropriate investment of Fund assets at this time.*

### **Rule**

The Trustee must, as allowed by these Rules, invest all Contributions, Reserves and Earnings of the Fund in accordance with the Fund's investment strategy.

## **Rule 27. A Member can request the Trustee to invest their account separately or jointly**

### **Explanation**

*The Trustee may adopt a "pooled investment strategy" or a "separate investment strategy" for the Fund. The Rules provide that a Member may request that the trustee operate an investment strategy for each of their Member accounts in the Fund or in respect of a group of Member accounts. Where a separate investment strategy is used, specific assets should be set aside or segregated to meet the needs of the separate investment strategy.*

### **Rule**

A Member can request the Trustee to invest Contributions, transfers or rollovers made to the Fund for the benefit of that Member and income on those Contributions, transfers and rollovers separately from any other investment of the Fund. The Trustee may or may not accept that request.

## Rule 28. Authorised investments

### Explanation

*These wide provisions are to ensure that there is no doubt as to a Trustee's ability to make various investments. The Trustee should not make investments if that would cause the Fund to fail the "sole purpose test" or become a Non-Complying Self Managed Superannuation Fund.*

### Rule

- 28.1.** Subject to the Act, these Rules and provided any investment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund the Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets. In investing the assets of the Fund the Trustee shall exercise that diligence and prudence as an ordinary prudent person would exercise in conducting their own affairs.
- 28.2.** Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any moneys requiring to be invested under these Rules either alone or in partnership or co-ownership with any person or persons:
- (a) *Authorised investments:* in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
  - (b) *Real and personal property:* in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
  - (c) *Property development:* in developing and turning to account any real or personal property or any interest therein, or any property right or interest which is or may be subject to these trusts and without limiting such generality by constructing, reconstructing, maintaining or improving any buildings or by laying out and preparing land for subdivision, conversion to strata or similar title and for buildings;
  - (d) *Shares:* in the acquisition of fully or partly paid shares including; redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
  - (e) *Option and rights:* in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
  - (f) *Deposit:* on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;

- (g) *Insurance:* in the acquisition of any policy of assurance or insurance of any kind whatsoever;
- (h) *Loans:* in making loans to any person or company except to Members of the Fund;
- (i) *Precious objects:* in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (j) *Commodity contracts:* in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (k) *Permanent building society:* in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- (l) *Deferred property:* in the acquisition of any reversionary or deferred property or rights of any description.

## Rule 29. Trustee Powers

### Explanation

*This Rule is designed to give the Trustee sufficient powers to administer the Fund and manage the investments of the Fund.*

### Rule

- 29.1.** In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall have the following powers:
- (a) *Generally deal with Fund assets:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
  - (b) *Real property:* to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
  - (c) *Personal property:* to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
  - (d) *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
  - (e) *To let:* to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;

- (f) *Engage specialists:* to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in this deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- (g) *To lend:* subject to these Rules and the Act to lend and advance moneys;
- (h) *Bank accounts:* to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- (i) *Management expenses:* to pay out of the assets, Reserves or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (j) *Pay general expenses:* to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;
- (k) *Corporate securities:* with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned (“securities”) to exercise the following powers in addition to powers conferred by law:
  - (i) to pay calls on securities or to permit securities to be forfeited and sold;
  - (ii) to purchase securities and to take up securities of a new issue;
  - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
  - (iv) to sell securities at such price and upon such terms with or without security as the Trustee decides;
  - (v) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and

- (vi) to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- (l) *Unit trust interests:* to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust;
- (m) *Franchises:* to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;
- (n) *Subdivision of property:* to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- (o) *Maintain property:* to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (p) *Power to set aside:* to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (q) *Future contracts and options:* to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange provided the Trustee maintains a risk management strategy;
- (r) *Trustee's power to deal with itself:* notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;

- (s) *Policies:* to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member; to pay premiums transfer, surrender, change the situs of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons; to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- (t) *Agency and licences:* to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (u) *Choses-in-action:* to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (v) *Receive gifts or distributions:* to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- (w) *Legal proceedings:* to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (x) *Intellectual property:* to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (y) *Release of powers:* by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (z) *Incidental powers:* to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee.

**29.2.** These powers shall be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules or by law.

**29.3.** These powers shall not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law.

**29.4.** In exercising these powers the Trustee must ensure at all times that the Fund remains a Complying Self Managed Superannuation Fund.

- 29.5. A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it unless that appointment would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 29.6. Subject to the terms of these rules the Trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

### **Rule 30. The assets of the Fund are to be held in the Trustee's name**

#### **Explanation**

*The Act as well as the Rules of this Fund require that all the assets of the Fund be in the Trustee's name and held separately from any assets held by the Trustee personally, a Member personally or by an employer of a Member of the Fund. No Member has any entitlement to a specific asset of the Fund.*

#### **Rule**

- 30.1. All the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member personally, by an employer of a Member or any other person unless authorised under the Act.
- 30.2. No Member shall have any entitlement to a specific asset of the Fund nor can a Member direct a Trustee:
- (a) to allocate a specific asset or asset interest to a Member's Account;
  - (b) to apply a specific asset to pay either a lump sum or pension benefit on behalf of a Member; or
  - (c) to transfer a specific asset as a death or disablement Benefit.

### **Rule 31. Trustee may receive distributions or gifts**

#### **Explanation**

*The Trustee of the Fund may receive gifts or distributions, quite apart from any distributions received by the Trustee in respect of assets of the Fund, from:*

- (i) any company;
- (ii) any trust including a family trust, testamentary trust or the legal estate of a deceased person;
- (iii) any partnership;
- (iv) any government or statutory body;
- (v) any business, commercial or investment enterprise;

*so long as the acceptance of any such gift or distribution does not jeopardise the Fund's status as a Complying Self Managed Superannuation Fund. Distributions may be in cash, property or in kind.*

## Rule

- 31.1.** A person may make a distribution or gift in cash, property or in kind to the Fund for the benefit of the Trustee, a Member or Members or for any other purpose provided the Fund will not by reason of acceptance of those distributions result in the Fund:
- (a) becoming a Non-Complying Self Managed Superannuation Fund, or
  - (b) be in breach of the Act.
- 31.2.** The Trustee may allocate any such distribution or gift at its discretion to the Fund's earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines including the payment of a pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

## Rule 32. The Trustee must not borrow

### Explanation

*Normally the Trustee cannot borrow. A borrowing includes an overdraft. This is a prohibition imposed by the Act. These Rules reflect that prohibition. As such this prohibition may prevent the Trustee from acquiring a particular investment. If the Trustee wishes to borrow they should first obtain advice from a specialist or the Auditor.*

## Rule

Except as otherwise provided by the Act the Trustee must not:

- (a) borrow money; or
- (b) maintain an existing borrowing of money.

## Determination of Earnings

### Rule 33. The Trustee must determine the Earnings of the Fund

#### Explanation

*The Trustee must determine the Earnings of the Fund each year or for such other period that the Trustee chooses.*

## Rule

The amount of a Fund's Earnings during any period is to be determined by the Trustee and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's Earnings.



## Reserves

### Rule 34. The Trustee may establish a Reserve

#### Explanation

*The Trustee may create a Reserve. Normally a Reserve would be created to meet an expected liability of the Fund.*

*The Trustee might establish the following Reserves:*

- *An investment reserve to which Earnings will be added before being allocated to Members or another Reserve.*
- *A contributions Reserve to which Contributions will be added.*
- *A pension Reserve to which amounts will be added (generally on the advice of an actuary) so as to ensure that the Trustee has sufficient funds to pay a Pension.*
- *A miscellaneous Reserve to which amounts will be added so as to provide the Fund with funds to be held in reserve for unexpected contingencies.*
- *A self-insurance Reserve.*
- *A section 279D Reserve from which amounts may be paid to the Legal Personal Representative or Dependant of a Member in the event of the Member's death.*

*The Trustee should determine at the time of establishment of a Reserve:*

- *What amounts are to be added to or deducted from the Reserve,*
- *The investment strategy to be adopted for that Reserve,*
- *The proposed application of that Reserve.*

#### Rule

- 34.1. The Trustee may from time to time establish such Reserves and add, deduct and allocate amounts to those Reserves as it considers appropriate (except that it may not establish a Reserve or add or deduct any amount to or from a Reserve if those actions would result in the Fund becoming a Non-Complying Self Managed Superannuation Fund).
- 34.2. The Trustee must formulate and implement a separate investment strategy for the prudential management of assets in any Reserve. The investment strategy must be consistent with the Fund's investment strategy and with the Trustee's ability to discharge liabilities wherever actual or contingent, as and when they fall due.

## Taxation

### Rule 35. Payment of Tax and allocation to Members' Accounts

#### Explanation

*The general rule is that a Complying Superannuation Fund will be assessed to Tax on:*

- (i) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (ii) Earnings derived by the Fund on investment of Contributions; less*
- (iii) Deductible expenses incurred by the Fund (which might include insurance expenses)*

*Tax is levied at a rate of 15% on the net income of the Fund except special income where Tax is levied at a rate of 47%. The allowance of any imputation credits received on franked dividends derived by the Fund will reduce the effective rate of Tax payable by the Fund.*

*Where the Trustee holds assets for the purposes of paying a Pension or Pensions the Trustee will not be subject to Tax on any income or gains derived from the investment of assets used to fund payment of those Pensions.*

*The Fund might also be subject to a Superannuation Contributions Surcharge imposed on the gross amount of Contributions received by the Fund.*

*Tax payable by the Fund need not be deducted from the Member's Account of any particular Member.*

#### Rule

- 35.1. The Trustee must pay all Tax properly assessed to the Trustee.
- 35.2. The Trustee may in its discretion deduct from a Member's Account Tax paid or payable by the Trustee:
  - (a) as a consequence of the receipt by the Trustee of a Contribution for the benefit of a Member,
  - (b) payable on any income added to a Member's Account, and
  - (c) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.
- 35.3. The Trustee may in its discretion deduct from any account, including a Reserve, Tax paid or payable by the Trustee.
- 35.4. If the Trustee receives a refund of Tax the Trustee may add that refund to such Members' Accounts or Reserve as it so determines.

## Insurance

### Rule 36. The Trustee may establish an insurance plan

#### Explanation

*The Trustee may establish an insurance plan. The insurance plan may provide, amongst other things, lump sum or annuity cover payable in the event of a Member's death or disablement. The insurances that may be acquired by the Trustee include sickness and accident, trauma, permanent disability and life insurance.*

#### Rule

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including the payment of Death or Disability Benefits) to Members, the Member's Dependants or the Legal Personal Representative of the Member in the event of the Member's death, disablement, illness or other event referred to by the Act.

### Rule 37. The Trustee may self insure

#### Explanation

*The insurance plan may also require the Trustee to self-insure the Fund (so as to enable the Trustee to pay a Benefit to a Member or to a Member's Legal Personal Representative). In the event that the Trustee seeks to self-insure the Trustee should:*

- (i) engage an actuary to provide such advice to the Fund;*
- (ii) determine the scope of the Fund's self insurance needs;*
- (iii) establish a self insurance Reserve;*
- (iv) set a separate investment strategy for the self insurance Reserve.*

#### Rule

The Trustee can elect to self insure and may establish a self insurance Reserve to which will be added, deducted and allocated such amounts as the Trustee determines.

### Rule 38. The Trustee has discretion as to the application of any insurance proceeds

#### Rule

- 38.1. Subject to the Act the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the proceeds to any Member's Account or to Reserves of the Fund.
- 38.2. No Member or their Legal Personal Representative has any interest in any insurance proceeds that might be received by the Fund.

## Annual Accounts

### Rule 39. The Trustee must prepare annual accounts

#### Rule

- 39.1. The Trustee must keep such accounting records as correctly record and explain the transactions of the Fund.
- 39.2. Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited.
- 39.3. The Trustee must as soon as practical after the end of each Financial Year:
- (a) prepare a balance sheet recording the assets and liabilities of the Fund as at the end of that preceding Financial Year,
  - (b) prepare a profit and loss account recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year),
  - (c) arrange for the Fund's balance sheet, profit and loss account and accounting records to be audited by an Approved Auditor,
  - (d) arrange for all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required.
- 39.4. The Trustee must retain the accounts and statements prepared in accordance with rule 39.3 for a period of 5 years after the end of the Financial Year to which they relate.

## Fund Compliance

### Rule 40. The Trustee must maintain the Fund's complying status

#### Explanation

*The Trustee must ensure that at all times the Fund maintains its status as a Complying Self Managed Superannuation Fund. This means that it must at all times comply with the provisions of the SIS Act and its regulations and the Rules of this Fund.*

*In certain cases the Trustee may become aware that it has taken an action whether advertently or inadvertently that may result in the Fund losing its status as a Complying Self Managed Superannuation Fund. In these circumstances the Trustee of the Fund must put in place a Compliance Plan that results in the Fund returning to or ensuring its Complying Self Managed Superannuation Fund status.*

*The action required under the Compliance Plan may result from advice from the Fund's Auditor, an adviser to the Fund or the Regulator.*

## Rule

Where the Trustee becomes aware or is notified by the Auditor, an adviser to the Fund or the Regulator that the Fund may lose its status as a Complying Self Managed Superannuation Fund the Trustee must:

- (a) liaise with the Auditor, adviser or Regulator to determine a Compliance Plan to ensure the Fund's status as a Complying Self Managed Superannuation Fund is maintained;
- (b) notify Members of any action required under the Compliance Plan;
- (c) take such action as is required under the Compliance Plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

## Fund Insolvency

### Rule 41. The Trustee must develop a Solvency Plan

#### Explanation

*It is very important for the Trustee of the Fund to ensure that the Fund is able to pay out Benefits and expenses as and when it is required to do so. In certain cases the Trustee may become aware that it has taken an action whether advertently or inadvertently that may result in the Fund becoming insolvent. In these circumstances the Trustee of the Fund must put in place a Solvency Plan that results in the Fund returning or maintaining a solvent position.*

*The action required under the Solvency Plan may arise from advice from the Fund's actuary, the Auditor, an adviser to the Fund or the Regulator. The Trustee must make every attempt and take any action to ensure that the Fund remains solvent or returns to a position of solvency.*

#### Rule

Where the Trustee becomes aware or is notified by the Auditor or the Fund's actuary that the Fund is or may become insolvent, the Trustee must:

- (a) meet with the actuary or Auditor to determine a Solvency Plan to ensure the Fund's solvency including but not limited to reducing any Members' Accounts or Members' Benefits;
- (b) notify Members of any action required under the Solvency Plan;
- (c) take such action as is required under the Solvency Plan prior to the lodgement of the Fund's next regulatory return.

## Part Three: Payment of Benefits by the Trustee

### Benefits Payable to a Member

#### Rule 42. Benefits payable to a Member

##### Explanation

*If the Trustee is a company Members can elect whether to receive a Lump Sum Benefit or a Pension Benefit (or both a Lump Sum Benefit and a Pension Benefit). If the Trustee is not a company the principal purpose of the Fund must be the provision of Pension Benefits*

##### Rule

A Member or a Dependant of a Member or the Legal Personal Representative of a Member or any other person may be entitled to receive one or more of:

- (a) a Lump Sum Benefit,
- (b) a Pension Benefit,
- (c) a Temporary Incapacity Benefit,
- (d) a Permanent Incapacity Benefit, or
- (e) such other Benefit as the Trustee might determine.

provided that any such Benefit would not result in the Fund breaching the Minimum Benefit provisions, the Fund becoming a Non-Complying Self Managed Superannuation Fund or would be in breach of the Act or these Rules.

#### Rule 43. When must Benefits be paid to a Member

##### Explanation

*The Act requires a Member's Benefits to be taken from the Fund when the Member reaches a specified age and is no longer working. This is the case even though the Member may not wish to receive a Benefit.*

##### Rule

Subject to any other provision of these Rules, a Benefit must be paid to the Member as soon as practical after the date:

- (a) the Member
  - (i) has attained age 65 but not age 75 or was age 75 on or before 30 June 2004 and does not meet the Specified Work Test under the Act; or
  - (ii) the Member has attained age 75 after 30 June 2004; or
- (b) the Member dies; or

- (c) the Member requests payment of a Benefit and the Trustee is of the opinion that a payment may be made to the Member and that the making of the payment will not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund; or
- (d) otherwise required under the Act.

## Rule 44. Payment of a Lump Sum Benefit

### Explanation

*Normally Lump Sum Benefits can only be paid to a Member on retirement of the Member (provided the Member is at least 55 years of age), the Member is permanently disabled, or if the Member turns 65 years of age. The Trustee may also be able to make payments to a Member on compassionate grounds or if that Member is suffering severe financial hardship.*

### Rule

- 44.1. Provided the Fund remains a Complying Self Managed Superannuation Fund and subject to the Rules, a Member can at any time request and the Trustee may at its discretion pay a Lump Sum Benefit to the Member.
- 44.2. Subject to Rule 44.3 the Trust may only pay a Lump Sum Benefit to a Member that does not exceed the balance of that Member's Accumulation Account.
- 44.3. The Trustee may determine that the whole or any part of a Reserve can be paid to the Member in addition to the payment of that amount made pursuant to Rule 44.2.

## Rule 45. Payment of a Pension Benefit

### Explanation

*The Rules allow the Trustee to pay Pensions. The Trustee can decide whether the Pension should be an Allocated, Market Linked, Asset Test Exempt, Complying or Flexi Pension as defined in Rule 59 of the Rules or some other Pension allowed under the Act. The Trustee must not pay a Pension that results in the Fund becoming a Non-Complying Self Managed Superannuation Fund. A Member or his or her Legal Personal Representative may request the Trustee to pay a Pension Benefit. The Trustee may require the services of an actuary to decide the type of Pension that may be paid and the terms and conditions of that Pension. A Pension may be paid from a Reserve.*

### Rule

- 45.1. A Member or the Member's Legal Personal Representative may request the Trustee to pay a Pension to the Member, a Dependant of the Member or a Legal Personal Representative of the Member, provided the Pension is of a type defined in Rule 59. The payment of any Pension must not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.
- 45.2. Prior to the payment of a Pension, excluding a Pension Benefit referred to as an allocated pension or a market linked pension in Rule 59(b), the Trustee must consult with an actuary to determine the amount to be set aside by the Trustee to fund the Pension, any Reserves required and the relevant terms and conditions of the Pension.

- 45.3. The Trustee in its sole discretion may apply any amount standing in a Member's Accumulation Account, Pension Account or a Reserve for the benefit of the provision of a Pension to a Member, a Dependant of the Member or a Legal Personal Representative of the Member.

## Incapacity

### Rule 46. Member to advise Trustee of incapacity

#### Rule

- 46.1. As soon as practical after becoming incapacitated, unless the Trustee is otherwise aware, a Member or the Member's Legal Personal Representative shall advise the Trustee of that Member's incapacity. The Member shall submit to whatever medical examination might reasonably be required by the Trustee.
- 46.2. On receipt of that advice or upon the Trustee becoming aware of the Member's incapacity and upon receipt of notice of the result of any medical examination, the Trustee shall determine whether the Member has been Temporarily or Permanently Incapacitated.

### Rule 47. Benefits payable for Temporary Incapacity

#### Explanation

*The Trustee can pay a Member a Temporary Incapacity Benefit provided that the amount of that Pension is not greater than the amount the Member was receiving from Gainful Employment. An amount received from Gainful Employment would include salary, wages, a share of the profit of a partnership, a distribution from a trust, a bonus, or any other form of Benefit provided it was linked to the provision of services by the Member.*

*The Trustee can pay a Temporary Incapacity Benefit if the Trustee has insured the Member (for such incapacity) or has established sufficient Reserves or has sufficient funds to pay such Benefits.*

#### Rule

- 47.1. Where the Trustee is of the opinion that the Member is suffering from Temporary Incapacity the Trustee may pay a Temporary Incapacity Benefit to the Member, provided such payment does not jeopardise the Fund's status as a Complying Self Managed Superannuation Fund, for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before that Temporary Incapacity,
  - (b) that date on which the Trustee forms an opinion that the Member has become Permanently Incapacitated,
  - (c) the date of the death of the Member;
  - (d) or such other time as is allowed under the Act.
- 47.2. Subject to the Act the amount of the Benefit (referred to at Rule 47.1.) shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.



- 47.3. The Trustee may draw upon any Reserves of the Fund to pay a Temporary Incapacity Benefit or, if there are no Reserves, deduct an amount from the Member's Account or any other account the Trustee so determines.

## **Rule 48. Benefits payable for Permanent Incapacity**

### **Explanation**

*Where a Member is Permanently Incapacitated the Trustee may pay a Member a Benefit until such time as the Member retires, recovers from the incapacity or dies. The Benefit may be a Lump Sum, a Pension or a mixture of a Lump Sum and Pension.*

*The funds for the payment of the Member's Permanent Incapacity Benefit may be sourced primarily from the Member's Account however the Trustee may use any Reserves to fund Permanent Incapacity Benefit payments. The Trustee may also be able to claim a tax deduction for the payment of a Permanent Incapacity Benefit. The deduction may be used by the Trustee to offset any assessable income in the current or future income years.*

### **Rule**

- 48.1. If the Trustee is of the view that a Member has been Permanently Incapacitated and provided that any such payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee, in its absolute discretion may:
- (a) pay all of any balance of the Member's Accumulation and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit;
  - (b) pay part of any balance of the Member's Accumulation and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit and the balance of the Member's Accounts (as increased from time to time) to the Member as a Pension Benefit;
  - (c) pay all of any balance of the Member's Accumulation and Pension Accounts (as increased from time to time) to the Member, a Dependant or Legal Personal Representative of the Member as a Pension Benefit;
  - (d) the Trustee may also allocate any Reserves of the Fund to the benefit of a Member, a Dependant or Legal Personal Representative of the Member in the event of their Permanent Incapacity for the purposes of paying a Lump Sum Benefit, Pension Benefit or combination of both.

## Death Benefits

### Rule 49. What must happen on death of a Member

#### Explanation

*A purpose of the Fund is to provide Benefits to a Member's Dependants or Legal Personal Representative on death of the Member. Where a Member dies the Trustee may pay a Benefit to the Member's Dependants or Legal Personal Representative in accordance with any Binding or Non-Binding Death Benefit Nominations made by the Member. The Benefit may be a Lump Sum, a Pension or a combination of a Lump Sum and Pension.*

*Prior to any Benefits being paid out a person must be appointed Trustee in place of the deceased Member. Typically this is the Legal Personal Representative of the Member. That person may only remain Trustee for the period until death Benefits commence to be paid otherwise the Fund may lose its complying status.*

#### Rule

##### 49.1. On death of a Member:

- (a) if the Member was a Trustee the deceased Member's Legal Personal Representative is by reason of this Rule appointed a Trustee for the period from the date of death of the Member until the date of payment of any death Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative is eligible, pursuant to these Rules, to be a Trustee and has consented to act as such;
- (b) if the Member was a director of a company which is a Trustee that company may continue as a Trustee from the date of death of the Member until the date of payment of any death Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative of the Member is appointed as a director of the company for any such period and provided the company and the Legal Personal Representative is otherwise eligible pursuant to these Rules to be a Trustee and has consented to act as such. If the Trustee resigns then all Members are to become Trustees, including the deceased Member's Legal Personal Representative and provided the Legal Personal Representative is eligible, pursuant to these Rules, to be a Trustee.

49.2. The Trustee shall determine whether it holds a death benefit nomination or a replacement to a prior death benefit nomination signed by the deceased Member.

49.3. The Trustee shall pay such death Benefits as it is required to pay by reason of Rule 50 below.

49.4. The Trustee, in its absolute discretion may do any thing or act as directed by the deceased Member or their Legal Personal Representative but is not bound to do so and must not do any thing or act if it may result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

## Rule 50. Payment of a Death Benefit

### Explanation

*The payment of a death Benefit may be made from the Member's Account or a Reserve. The Trustee may also be able to claim a Tax deduction for the payment of a death Benefit.*

*The following is to apply in relation to the payment of a death Benefit:*

- (i) Where the Trustee has accepted a Binding Death Benefit Nomination the Trustee must pay out the Benefits as required under the Binding Death Benefit Nomination;*
- (ii) Where the Trustee has received a Non-Binding Nomination for a deceased Member the Trustee, at its sole discretion may pay out Benefits in accordance with the nomination but otherwise may apply them to any person or Reserve provided the application does not jeopardise the Fund's Complying Self Managed Superannuation Fund status;*
- (iii) Where the Trustee has received no nomination from the Member or where any nominations are invalid the Trustee, at its sole discretion, may pay out Benefits in accordance with the Nomination but otherwise may apply them to any person or Reserve provided the application does not jeopardise the Fund's Complying Self Managed Superannuation Fund status;*
- (iv) Where the Trustee has received directions from the Member in relation to the Fund the Trustee, in its sole discretion may comply with the directions provided that any such compliance does not detrimentally affect remaining Member Accounts or result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.*

### Rule

#### 50.1. If a Member dies:

- (a) if the Member has not made a Binding Death Benefit Nomination the Trustee shall distribute, as a Benefit under Rule 42, the balance of the Member's Accounts to one or more of the Member's Dependants, the Member's Legal Personal Representative or any other Account in the Fund including another Member's Account or a Reserve as the Trustee in its absolute discretion may decide. In exercising that discretion the Trustee must consider but is not bound by any Non-Binding Death Benefit Nomination previously supplied by the deceased Member to the Trustee;
- (b) if the Member has made a Binding Death Benefit Nomination the Trustee shall distribute, as a Benefit under Rule 42, the balance of the Member's Accumulation Account to those persons, the Member's Legal Personal Representative or an Account of the Fund as the Member nominated and in the manner and form required under the Binding Death Benefit Nomination. However the Trustee is not required to pay out that part of any death Benefit under a Binding Death Benefit Nomination that may result in the Fund becoming insolvent.

#### 50.2. Notwithstanding Rule 50.1 the Trustee is authorised to pay such additional amounts to a Dependant or the Legal Personal Representative of a deceased Member as the Trustee in its absolute discretion may decide, including an amount from a Reserve, provided the payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

- 50.3. The Trustee may comply with any directions left by a Member in terms of the Fund at its sole discretion provided that any such direction does not detrimentally affect any remaining Member of the Fund.
- 50.4. The Trustee must not exercise any obligation or discretion imposed or conferred by this Rule if the exercise of that obligation or discretion would result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

## Conversion of Benefits

### Explanation

*Members in receipt of Benefits have the flexibility of converting their Benefits to another style of Benefit provided that such a conversion is allowed under the Act and does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.*

## Rule 51. Conversion of a Lump Sum Benefit into a Pension Benefit

### Rule

- 51.1. At the request of a Member or, in the event of the Member's death, the Member's Dependant or Legal Personal Representative and subject to the Rules and the Act, the Trustee shall convert any Lump Sum Benefit payable to the Member into a Pension Benefit payable to the Member.
- 51.2. The Member or, in the event of the Member's death, the Member's Dependant or Legal Personal Representative must notify the Trustee of the type of Pension as required under Rule 45 and the Trustee is to use the Lump Sum entitlement to fund any Pension.
- 51.3. The Trustee may also apply any amount from a Fund Reserve for Pension purposes.

## Rule 52. Commutation of a Pension Benefit into a Lump Sum Benefit or another Pension Benefit

### Rule

- 52.1. At the request of a Member or, in the event of the Member's death, the Member's Dependant or Legal Personal Representative and subject to the Rules and the Act, the Trustee shall commute part or the whole of any Pension Benefit payable to the Member into a Lump Sum or a new Pension Benefit payable to the Member, a Dependant or Legal Personal Representative of the Member.
- 52.2. Prior to commuting the Pension the Trustee must determine the possible taxation consequences or commutation limits that may arise in relation to the commutation of the Pension Benefit and notify the Member, the Dependant or Legal Personal Representative of the Member of this information.
- 52.3. In determining the possible taxation consequences or commutation limits the Trustee may seek the advice of a specialist.

# Part Four: Winding up or Changing the Fund

## Termination

### Rule 53. Termination of the Fund

#### Explanation

*On termination of the Fund the Trustee should:*

*Step One – have the Fund audited;*

*Step Two – determine the Market Value of the Fund's assets;*

*Step Three – determine if the cash assets of the Fund are sufficient to discharge the Fund's debts and liabilities. If not the Trustee shall determine which assets will be disposed of to obtain sufficient cash;*

*Step Four – pay out all expenses of the Fund including any Taxes, administration costs, government imposts, amounts due to Members, other expenses plus any expense incurred to wind up the Fund;*

*Step Five – declare a final distribution amount (being that amount that is equal to the value of the assets of the Fund less expenses paid).*

*Any final distribution amount may at the Trustee's discretion (and subject to the Act) be distributed by the Trustee to any of:*

- (i) Members and former Members of the Fund;*
- (ii) relatives of any Member or former Member;*
- (iii) any Legal Personal Representative of a Member or former Member;*
- (iv) any other person;*
- (v) a charity or public benevolent institution.*

#### Rule

**53.1.** The Fund shall be wound-up and terminated on the first to occur of the date:

- (a) on which the Trustee resolves that the Fund should be wound up and terminated;
- (b) the Fund must be wound up for the purpose of the Act;
- (c) the Fund ceasing to have Members.

**53.2.** The Trustee shall on Termination Date:

- (a) dispose of assets of the Fund in order to have sufficient cash with which to meet any debts and liabilities of the Fund. The Trustee has discretion to determine which of the Fund's assets are to be disposed of;
- (b) pay out any debts and liabilities of the Fund;

- (c) determine to whom any Benefits are to be paid including former Members, trusts that former Members were beneficiaries of, the Legal Personal Representative of former Members or any other person. The Trustee retains sole discretion as to where Benefits are to be paid and how they are to be made including in-specie or cash Benefits and is to ensure that the payment of any Benefits does not breach the sole purpose test;
- (d) pay out any Benefits due by the Fund to the Members. The Trustee retains sole discretion as to how these amounts are to be paid including making an in-specie transfer of assets or cash amounts;

53.3. The Trustee may in its sole discretion pay out the balance of the Fund to such charities or public benevolent institutions as it might determine provided any such payment does not breach the sole purpose test or otherwise render the Fund a Non-complying Self Managed Superannuation Fund.

## Amendments

### Rule 54. The Trustee may amend the Deed or the Rules

#### Explanation

*Given that constant changes are made to the Act it is important the Rules of the Fund can be amended so as to ensure continued compliance with the Act.*

#### Rule

The Trustee may in its absolute discretion amend the Deed or the Rules (in whole or in part) by way of written resolution provided:

- (a) if there is more than one Member the change is authorised at a meeting of the Trustees or if the Trustee is a company, at a meeting of the directors of the Trustee Company;
- (b) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the Act;
- (c) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member has in writing consented to any such amendment;
- (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the Rules then provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, or
- (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

# Interpretation

## Governing Law

### Explanation

*The governing law is simply that law which is to be applied by a court if the court is required to consider the Rules.*

### **Rule 55. The governing law is to be nominated by the Trustee.**

#### Rule

The Deed and the Rules are to be interpreted according to that law the Trustee nominates at any time or if the Trustee makes no nomination, according to the laws of New South Wales. Such nomination shall be made by written resolution of the Trustee.

## Status of the Act

### **Rule 56. The Act is paramount**

### Explanation

*The Act is defined in Rule 58 as the SIS Act, the various Income Tax Acts and regulations made pursuant to all of those acts. If the provisions of the Act are not adhered to the Fund might lose its status as a Complying Self Managed Superannuation Fund (with the result that it would not be concessional tax).*

*The Trustee might be subject to a fine or criminal penalty. This Rule is designed to protect the status of the Fund, both in the event that the Rules of the Fund and the provisions of the Act contain some unintentional inconsistency but more importantly, in case the provisions of the Act change (and it is almost certain that the provisions of the Act will change).*

#### Rule

The Rules are subject to the Act. If there is any inconsistency between the provisions of the Act and the Rules the provisions of the Act shall prevail. The Trustee shall not act contrary to any provision of the Act.

## **Interpretation**

### **Rule 57. Rules as to interpretation.**

#### **Rule**

- 57.1.** Explanations accompanying a Rule are for information and disclosure purposes only and may be taken into account in interpreting a Rule:
- (a) in considering the purpose or object underlying a Rule; or
  - (b) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
  - (c) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
  - (d) in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.
- 57.2.** A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.
- 57.3.** Words importing any one gender include all genders and words importing the singular number include the plural and vice versa.
- 57.4.** In determining whether the Fund will or will not be a Complying Superannuation Fund or Self Managed Superannuation Fund the Trustee shall only consider whether or not any course of action to be followed by the Trustee in relation to the Fund would or would not cause the Fund not to be a Complying Superannuation Fund or Self Managed Superannuation Fund and must not take into account any discretion which might or might not be exercised by the Regulator.
- 57.5.** A reference to a provision of an Act includes a reference to any similar provision in any successor Act.
- 57.6.** A reference in these Rules to "pay" includes a reference to "credit" or "distribute".



## Definitions

### Rule 58. Definitions

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act</i> , the <i>Income Tax Assessment Act 1936</i> , the <i>Income Tax Assessment Act 1997</i> , the <i>Corporations Act 2001</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> .
<b>Application Form</b>	An application form as referred to at Rule 12.
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act or otherwise determined by the Regulator.
<b>Approved Trustee</b>	A trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
<b>APRA</b>	The Australian Prudential Regulatory Authority or any successor authority to that authority.
<b>Associate</b>	A person who is an associate as defined by section 12 of the <i>SIS Act</i> .
<b>Benefit</b>	A benefit or entitlement payable by the Fund in cash or in kind.
<b>Binding Death Benefit Nomination</b>	A death benefit nomination made by a Member in accordance with Rule 14 that must be followed by the Trustee in the event of the Member's death.
<b>Child</b>	Any person as defined for the purposes of the Act.
<b>Compliance Plan</b>	A plan established for the purpose of Rule 40.
<b>Constitutional Corporation</b>	A body corporate which is:  (a) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> ),  (b) a financial corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> ).

<b>Complying Self Managed Superannuation Fund</b>	A Fund which is a complying self managed superannuation fund for the purposes of section 42A of the <i>SIS Act</i> .
<b>Core Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> .
<b>Contributions</b>	Amounts paid or transferred in cash or in kind to the Trustee for the benefit of a Member or Members.
<b>Deed</b>	The deed establishing the Fund as from time to time as amended.
<b>Dependant</b>	In relation to a person includes a financial dependant, the Spouse, any Child of the person and any other such person determined as a dependant for the purposes of the Act.
<b>Earnings</b>	The earnings of the Fund determined in accordance with Rule 33.
<b>Financial Year</b>	A year ended 30 June or that period of twelve months adopted by the Trustee as the Fund's financial year.
<b>Fund</b>	The Superannuation Fund established by the Deed.
<b>Gainfully Employed</b>	Activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.
<b>Legal Personal Representative</b>	The executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.
<b>Lump Sum Benefit</b>	A Benefit which is payable to a Member pursuant to Rule 44.
<b>Manager</b>	The person or entity appointed by the Trustee to manage the Fund which may include the Trustee itself.
<b>Market Value</b>	The amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> <li>(a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</li> <li>(b) the sale occurred after proper marketing of the asset;</li> <li>(c) the buyer and seller acted knowledgeably and prudently in relation to the sale.</li> </ul>

<b>Member</b>	Any person who is accepted by the Trustee as a member of the Fund and includes the Member's Legal Personal Representative.
<b>Member's Account</b>	An account established by the Trustee on behalf of a Member including a Member's Accumulation Account and a Member's Pension Account.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustee, the balance of which is the amount that can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit and / or a Pension Benefit.
<b>Member's Benefit</b>	The amount of a Benefit payable to a Member, their Dependant or Legal Personal Representative in the event of the Member's death as determined by the Trustee and may include any allocation by the Trustee from a Reserve to the benefit of the Member.
<b>Member's Pension Account</b>	A Member's Account established by the Trustee, the balance of which is determined by the Trustee as equal to such amount, as is required by an actuary, to fund any Pension paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Pension Benefit.
<b>Minimum Benefits</b>	A Minimum benefit is that amount determined by the Trustee of the Fund as a minimum benefit for a Member pursuant to Part 5 of the <i>Superannuation Industry (Supervision) Regulations 1994</i> .
<b>Non- Binding Death Benefit Nomination</b>	A death benefit nomination as referred to in Rule 14 that is not binding upon the Trustee.
<b>Non-Complying Self Managed Superannuation Fund</b>	A superannuation fund that is not a Complying Self Managed Superannuation Fund.
<b>Pension Benefit</b>	A Benefit which is a pension as defined by Rule 59.
<b>Permanent Incapacity Benefit</b>	A Benefit payable pursuant to Rule 48.

<b>Permanently Incapacitated</b>	In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) where the Trustee is reasonably satisfied that that Member is unlikely, because of the ill health, ever again to be Gainfully Employed in any employment for which that Member is reasonably qualified by education, training or experience.
<b>Prescribed Documents</b>	Any documents that are prescribed documents for the purposes of the <i>SIS Act</i> .
<b>Prescribed Information</b>	Any information which is prescribed information for the purposes of the <i>SIS Act</i> .
<b>Product Disclosure Statement</b>	The product disclosure statement of which these Rules form part.
<b>Regulated Superannuation Fund</b>	A superannuation fund that is a regulated superannuation fund as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or such other government body appointed to regulate a self managed superannuation fund as defined in section 10(1) of the <i>SIS Act</i> .
<b>Related Party</b>	A person who is a related party as defined in section 10(1) of the <i>SIS Act</i> .
<b>Reserve</b>	An account established by the Trustee in accordance with Rule 34.
<b>Responsible Officer</b>	<ul style="list-style-type: none"> <li>(a) a director of a company, or</li> <li>(b) a secretary of a company; or</li> <li>(c) an executive officer of a company.</li> </ul>
<b>Rules</b>	The rules of the Fund.
<b>Self Managed Superannuation Fund</b>	A fund which is a “self managed superannuation fund” as defined in section 17A of the <i>SIS Act</i> .
<b>SIS Act</b>	The <i>Superannuation Industry (Supervision) Act 1993</i> .
<b>SIS Regulations</b>	The <i>Superannuation Industry (Supervision) Regulations 1994</i> .

<b>Specified Work Test</b>	Those conditions found in Part 6 of the <i>SIS Regulations</i> determining the time at which a person must be paid a Benefit from the Fund.
<b>Solvency Plan</b>	A plan established for the purposes of Rule 41.
<b>Spouse</b>	In relation to a person includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person or such other person as the Act may allow or determine.
<b>Standard-Employer-Sponsor</b>	A person who is a standard-employer-sponsor as defined in section 16(2) of the <i>SIS Act</i> .
<b>Superannuation Entity</b>	<ul style="list-style-type: none"> <li>(a) a Regulated Superannuation Fund, or</li> <li>(b) an approved deposit fund, or</li> <li>(c) a pooled superannuation trust.</li> </ul>
<b>Tax</b>	Any tax levied by any taxation law including any surcharge levied pursuant to the <i>Superannuation Contributions Tax Imposition Act 1997</i> (or any successor legislation).
<b>Temporarily Incapacitated</b>	In relation to a Member means a Member who has ceased to be gainfully employed, including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed, because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.
<b>Temporary Incapacity Benefit</b>	A non-commutable income stream payable pursuant to Rule 47.
<b>Termination Date</b>	The date on which the Fund terminates.
<b>Total Member Entitlements</b>	That amount equal to the total value of all Members' Accounts.
<b>Trustee</b>	A person or company appointed a trustee of the Fund under Rule 3.

## Rule 59. Pension Definitions

### Explanation

*The Trustee may pay any pension authorised under the Act including those pensions defined in the SIS Regulations, the Social Security Act 1991 and the Veterans' Entitlements Act 1986 which include:*

**Complying Pension** - *Includes a lifetime complying pension that meets the standards found in Regulation 1.06(2) of the SIS Regulations, a fixed term complying pension that meets the standards found in 1.06(7) of the SIS Regulations and a market linked pension that meets the standards of 1.06(8) of the SIS Regulations at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying a complying pension.*

**Allocated Pension** - *Includes a pension that meets the standards found in Regulation 1.06(4) and 1.06(5) of the SIS Regulations at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying an allocated pension.*

**Flexi Pension** - *Is a pension that may be offered by the trustee to members of the fund that is flexible as to term, pension payment and residual capital value provided it meets the standards laid down for the flexi pension in Regulation 1.06(6) of the SIS Regulations at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying a flexi pension. A flexi pension includes a lifetime commutable pension and a fixed term commutable pension.*

**Assets Test Exempt Pension** - *Is a pension that is exempt from the assets test to the extent provided under the social security and veterans' entitlement laws.*

*A number of changes have been made precluding the Trustee of a Fund paying a defined benefit pension in certain circumstances including where the Fund was established after 11 May 2004. In such circumstances the Fund should limit any Pensions to Members to Allocated and Market Linked Pensions only. Otherwise the Fund may become a Non-Complying Self Managed Superannuation Fund. For those Funds in existence on or before 11 May 2004 a defined benefit pension can be commenced prior to 1 January 2006 provided it is paid in respect of the Member's retirement and the person was a Member of the Fund on or before 11 May 2004.*

*Given the danger of non-compliance the Trustee should ensure that they take advice from a qualified self managed superannuation fund adviser before commencing any Pension Benefit from the Fund.*

### Rule

A Pension Benefit for the purposes of the Fund is any series of payments including payments by way of property or in kind that are determined or held to be a Pension under any Act, law, court or otherwise and includes any Pension that meets the conditions of:

- (a) a lifetime complying pension pursuant to Regulation 1.06(2) and (3) of the *SIS Regulations*;
- (b) an allocated pension pursuant to Regulation 1.06(4) and (5) of the *SIS Regulations*;
- (c) a flexi pension pursuant to Regulation 1.06(6) of the *SIS Regulations*;
- (d) a fixed term complying pension pursuant to Regulation 1.06(7) of the *SIS Regulations*;

- (e) a market linked pension pursuant to Regulation 1.06(8) and (9) of the *SIS Regulations*;
- (f) a lifetime partially assets test exempt pension payable pursuant to Section 9A of the *Social Security Act 1991*;
- (g) a fixed term partially assets test exempt pension payable pursuant to Section 9B of the *Social Security Act 1991*;
- (h) a lifetime partially assets test exempt pension payable pursuant to Section 5JA of the *Veterans' Entitlements Act 1986*;
- (i) a fixed term partially assets test exempt pension payable pursuant to Section 5JB of the *Veterans' Entitlements Act 1986*;

provided the payment of any such pension does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.