

**SUPERANNUATION FUND INFORMATION
MEMORANDUM/PRODUCT DISCLOSURE STATEMENT**

DARRYL BIRCH SUPER FUND

Dated: 12 / 3 /2009

WHAT IS THIS DOCUMENT ABOUT?

The Trustee has determined to establish a private superannuation fund (**Fund**) as a *self managed superannuation fund* (**SMSF**) as defined in the Superannuation Industry (Supervision) Act to be governed by that Act and the Regulations (**SIS**).

Under the Corporations Act there may be an obligation on the Trustee to provide a Product Disclosure Statement (**PDS**) on the basis the Trustee (as **issuer**) is issuing a **product**.

The purpose of this document is to provide information from the Trustee to the members which the Trustee believes the member should be advised about, and, if the Corporations Act does in fact require a PDS then this document is designed to satisfy those requirements.

This document is referred to as an Information Memorandum (**IM**) or Product Disclosure Statement (**PDS**).

This IM/PDS provides a general overview, as well as information specific to the Fund.

It is not a substitute for personal advice and members are advised they should obtain their own advice in relation to their rights as members, their obligations in their capacity as Trustees or directors of the Trustee company, and their personal tax position, as well as advice in relation to investment matters.

Words in italics are readily understandable but are also technical terms, generally defined in legislation. For completeness members may obtain further detail from the Trustee on the precise meaning.

1. NATURE OF THE INVESTMENT

- 1.1 The investment by the members is in an SMSF, which is a superannuation fund. As a result almost all of the SIS rules applicable to superannuation funds apply.
- 1.2 There are a number of specific concessions for SMSFs including:
 - (a) less stringent reporting requirements;
 - (b) all members must be Trustees, or directors of the Trustee company (with two very limited exceptions);
 - (c) fund assets may be registered in the name of a custodian who is not an approved custodian under SIS;
 - (d) *business real property* may be acquired from, and leased to, members and associates.
- 1.3 Broadly however the whole of the requirements of SIS and other legislation (eg the Corporations Act) apply to the Fund as it does to other superannuation funds. There are limitations on withdrawing money from the Fund, as per all other superannuation funds.

2. TYPES OF FUNDS

- 2.1 A summary of the three broad categories of superannuation funds available in the market place (not including corporate employer sponsored funds) and the key differences are as follows:

Issue	This Fund (ie SMSF)	Retail Superannuation Fund	Industry Superannuation Fund
Control of the Fund	You control the Fund (as Trustee)	External party (APRA approved) Trustee controls	External party Trustee controls
Ensuring obligations are met	You as Trustee are responsible	Third party responsible	Third party responsible
Decision as to investments	You as Trustee decide	Third party as Trustee decides	Third party as Trustee decides
Limitations on investment	No limitations (as long as consistent with SIS)	There is generally some choice of different managed investments	There may be some limited choice

Costs	Ongoing costs of running the Fund (eg accounting and audit) plus costs of buying, holding and selling investments	Generally a fee on contributions, plus an ongoing percentage fee, possibly an exit fee.	Generally a flat weekly or other regular fee
Guarantee on benefits/investment return	None (unless the Trustee chooses to make investments in guaranteed products)	Generally there is an option of acquiring guaranteed type investment portfolios	Generally there is no guarantee
Insured Benefits (Death and/or disability)	As organised by you as Trustee	May be available (and may have the advantage of lower premium rates)	May be available (and may have the advantage of lower premium rates)
Payment of benefits	Lump sums and different pension types (including as authorised by SIS and as per Department of Social Security guidelines)	Lump sums, and there may be limited types of pensions available	Lump sums, and there may be limited types of pensions available
Membership	On invitation by you as Trustee	Generally no restriction	Generally limited to employees of a participating employer
Complaints	No complaint resolution mechanism	The Fund must have a complaints resolution procedure, and an appeal may be possible to the Superannuation Complaints Tribunal	The Fund must have a complaints resolution procedure, and an appeal may be possible to the Superannuation Complaints Tribunal
Access to information and reporting	Reporting is less, but you as Trustee should know all of the information relating to the Fund	Comprehensive reporting requirements, further limited information on request	Comprehensive reporting requirements, further limited information on request
Availability of tax concessions	All superannuation tax concessions available	All superannuation tax concessions available	All superannuation tax concessions available
Loss of tax concessions in the Fund	In the event of a breach there is a possibility the Fund can lose its tax concessions	No loss of tax concessions	No loss of tax concessions
Tax payable on benefits	All tax concessions available	All tax concessions available	All tax concessions available
Flexibility	Considerable flexibility, consistent with SIS	Little flexibility, although generally there is investment and insurance choice	Relatively inflexible but may be some investment and insurance choice
Who regulates the Fund	Australian Taxation Office (ATO)	Australian Prudential Regulation Authority (APRA)	APRA

3. OPERATION OF THE FUND

- 3.1 The Fund, in order to be an SMSF under SIS, must have no more than four (4) members.
- 3.2 No member can be an *employee* of another member unless they are related (note that *employee* has an extended meaning). Thus SIS encourages SMSFs to be established by family members.
- 3.3 All members must (with very limited exceptions eg death, legal disability) be represented at trustee level. This means that each member must be a Fund Trustee, or must be a director of the Fund Trustee.
- 3.4 A person must not act as a Trustee (or be on the board of a corporate Trustee) if the person has ever been convicted of an offence of dishonest conduct. The same disqualification will apply if the person is an undischarged bankrupt or if the person has had a *civil penalty order* made against him or her under SIS.

If a disqualified person intentionally acts as a Trustee there is a maximum penalty of imprisonment for two years.

- 3.5 Except in the case of a single member fund, there must be no other Trustee, or director of the corporate Trustee other than the members. In the case of a single member fund the choices are:
 - (a) a company with the member as sole director.
 - (b) a company with two directors, one of whom is the member, the member is not an *employee* of the other person unless related.
 - (c) two individual trustees, one of whom is the member, the member is not an *employee* of the other person unless related.
- 3.6 If the Fund has individual Trustees, SIS requires the sole or primary purpose of the Fund must be the payment of old age pensions.

As at the date of this IM/PDS the administrative guidelines are that a fund with individual trustees will meet this test as long as:

- (a) the Deed states that the sole or primary purpose of the Fund is a payment of old age pensions and;
 - (b) members have the opportunity to receive pensions. The Deed meets these requirements and all members have the opportunity to receive pensions.
- 3.7 The Deed meets these requirements and all members have the opportunity to receive pensions. This requirement may change, and Government may make pensions compulsory.
 - 3.8 The operation of the Fund is under the control of the Trustee.
 - 3.9 SIS requires that the Fund is established for the sole or primary purpose of providing superannuation benefits, and it is important to ensure that all Fund activities are for this purpose.
 - 3.10 Meeting all obligations, including arranging and making investments, ensuring compliance with tax and SIS obligations, and all other matters pertaining to the Fund are the responsibility of the Trustee.

As you must be involved at Trustee level, this responsibility therefore falls on you (and your fellow Trustees or Trustee directors).

You may obtain independent advice and assistance. You must ensure that the Fund is audited by an independent auditor who meets the SIS standards.

There is no external party who guarantees the performance of the Fund or that it will meet its obligations.

4. TAXATION CONCESSIONS

4.1 If the Fund Trustee makes an election for the Fund to be a *regulated fund* under SIS, then it is eligible to receive the taxation concessions available to *complying* superannuation funds.

In order to obtain the taxation concessions (ie be *complying*) the Fund must be *regulated* and either:

- (a) not breach the SIS requirements during the year; or
- (b) breach the SIS requirements but the breaches are not so serious as to cause the fund to fail a *culpability test* specified in SIS.

A benchmarking study by the ATO in the 2002 financial year found that less than 45% of Self Managed Superannuation Funds were fully compliant, and that 9% had serious compliance issues. There was also evidence that only 70% of Self Managed Superannuation Funds lodged their tax and regulatory returns on time. As a result in 2006 the Government increased funding to the ATO to regulate SMSFs by \$112 million over the forward estimates period. Your Trustees need to ensure that your Fund is compliant.

If the Fund's complying status is lost then:

- (a) the Fund is subject to tax at the highest marginal rate, of the Fund assets valued at the previous 30 June (less *undeducted contributions*); and
- (b) the Fund income is thereafter tax at the highest marginal rate.

4.2 Trustee or Trustee directors may be penalised for breaches by prosecution.

5. KEY BENEFITS OF THE FUND

5.1 Taxation concessions

Subject to maximum limits, tax deductions may be claimed for contributions to the Fund (see clause 5.4), investment earnings within the Fund are concessionally taxed (see clause 5.6), as are benefits paid from the Fund (see clause 5.7).

5.2 From 1 July 2007:

- (a) Superannuation benefits paid from a taxed fund either as a lump sum or pension would be tax free when paid to people aged 60 and over;
- (b) Superannuation preservation rules would not change. If an individual reaches preservation age (currently 55), they would still be able to access their superannuation benefits before age 60 (as a pension only), although their benefits would be taxed (broadly in the same manner as they are now but under some simplified rules); and
- (c) RBLs for superannuation would be abolished.

5.3 Flexibility in manner of payment of benefits

The Fund allows the payment of benefits in the form of lump sums, different types of pensions, or a combination of both.

The Fund Trust Deed is designed to give considerable flexibility in the manner of payment of benefits (as allowed under legislation).

5.4 Contributions

The Fund can accept superannuation contributions from any person who is eligible to contribute including employers, employees, a person who is gainfully employed, and by a person in respect of his or her spouse and his or her children. Generally a member may make superannuation contributions if they are under 65, or if aged between 65 and 75 they satisfy certain **work tests** (being 40 hours worked in a 30 day period during the financial year in question).

From 1 July 2007 self-employed people to be able to claim a full deduction (up to \$50,000) for contributions to age 75 (remember that between 65 and 75 the member needs to satisfy the **work test**) as well as being eligible for the Government co-contribution scheme for personal (after-tax) contributions.

From 1 July 2007 age-based limits on employer deductions for super contributions are to be abolished however concessional deductible contributions (being superannuation contributions made from pre-tax income for which a tax deduction can be claimed) to your superannuation will be limited to \$50,000 per person per annum. These contributions will be taxed at 15%. This same rule would apply to self-employed persons. A transitional arrangement is to be established for individuals aged 50 years or over between 1 July 2007 and 30 June 2012 to enable deductible contributions in the amount of \$100,000 rather than \$50,000.

Amounts contributed in excess of the deductible contribution limits will be taxed at the top marginal tax rate plus Medicare and will be payable by the individual. These amounts will also count towards the person's non-concessional contributions referred to below.

From 1 July 2007, contributions made from a person's after-tax income (referred to as either non-concessional contributions, post-tax contributions, after-tax contributions) are to be limited to \$150,000 a year or \$450,000 averaged over three years (under age 65) on a "bring forward" basis.

The Fund is only to be able to accept undeducted (ie after-tax contributions) if the Member's tax file number (TFN) has been quoted. In addition, the top marginal tax rate plus Medicare levy applies where taxable contributions for a pre 1 July 2007 member exceeds \$1,000 and no TFN has been quoted. This \$1,000 threshold will not apply for accounts opened on or after 1 July 2007.

The Deed allows contributions (or benefits accruing from the contribution) to be reallocated to the member's spouse. The legislation allowing this applies to contributions made on or after January 2006.

5.5 Rollovers

The Fund may accept *rollovers* whether in cash or by the transfer of assets.

5.6 Tax in the Fund

Tax is payable by the Fund on investment earnings, including capital gains. These tax rates are:

- (a) 15% on ordinary income, including contributions and some *rollovers* (there may have been additional costs of up to 15% on some contributions and *rollovers* if they were (prior to 1 July 2005) subject to what was known as the *superannuation surcharge*. The government has abolished superannuation surcharge in relation to contributions and rollovers received after 1 July 2005;
- (b) 15% on capital gains for assets sold within 12 months of acquisition;
- (c) 10% on capital gains made on assets held for over 12 months;
- (d) 0% (or possibly close to 0%) on income earned and capital gains made where the income and gains are made to pay pensions to members.

There is no tax payable by you on the investment earnings within the Fund. Tax is payable by you as a member upon the payment of benefits to you.

5.7 Availability of Tax Concessions on Benefits

Benefits payable from the Fund are able to be concessionably taxed as per all other payments from superannuation funds (and like entities such as RSAs) including:

- (a) concessional rates of tax on lump sums;
- (b) a rebate of up to 15% on superannuation pensions, and
- (c) in some circumstances (eg death and some payments to a person over 55, see below) benefits can be tax free.

As mentioned above, as from 1st July 2007 no tax will be imposed on (any) benefits from taxed funds (as SMSFs are) if the recipient is aged 60 or above.

The new Transition to Retirement rules allow a Member to receive regular payments in the form of a **non-commutable income stream** from a super fund, without the need to retire. This measure applies once the Member reaches their preservation age ie between 55 and 60, depending on their date of birth. This means that the Member may be able to switch to part time work without reducing their income. These provisions take effect on 1 July 2007 and include that an individual will not be able to take out more than 10% of their annual opening balance when utilising a transition to retirement pension. As mentioned above, access to your preserved benefits depends on your

preservation age which is calculated on your date of birth:

Date of birth	Preservation age
Before 1/7/60	55
1/7/60 - 30/6/61	56
1/7/61 - 30/6/62	57
1/7/62 - 30/6/63	58
1/7/63 - 30/6/64	59
After 30/6/64	60

5.8 **Control of the Fund**

The Fund is controlled by the Trustee, and as indicated above, you as a member must (except in very limited circumstances such as legal disability) be involved at Trustee level.

Individual Trustees must make decisions jointly, and the directors of a corporate Trustee must together (as directors) make decisions for the Trustee company.

It is your obligation to be involved in and participate in Trustee decisions.

If you are not involved then:

- (a) you will be in breach of your obligations; and
- (b) you may have little or no right to complain of decisions that have been made by other Trustees or Trustee directors.

6. **ASSET PROTECTION**

6.1 Reasonable benefit limits have been abolished as part of the governments recent "plan to simplify and streamline superannuation". It seems that the new limits on contributions (see above) have the consequence of limiting the funds that creditors cannot pursue (in a bankruptcy). The Courts will decide whether the member's pattern of contributions had the intention of (if the member was to become insolvent) placing assets beyond the reach of creditors by making 'out of the ordinary' superannuation contributions. However, the primary consideration will remain whether the insolvent person's objective was to defeat the claims of their potential creditors.

This asset protection does not apply in the case of a family law dispute. Government legislation enables the Family Court to make orders splitting superannuation interests.

6.2 **Family Claims on Death**

The Fund, as an SMSF, is not subject to review by the Superannuation Complaints Tribunal in relation to the division of benefits on death (or whether or not a person is entitled to disability benefits). This is therefore likely to reduce the prospect of dispute between family members.

As assets are in the Fund it is generally unlikely that the legislation in the various States giving rights to family members to dispute the division of the deceased member's estate will apply (unless the Trustee decides to pay death benefits to the deceased member's estate).

As a result it is very important that:

- (a) family members who are intended to benefit, comprise the Trustee, or control it; or
- (b) a binding death benefit nomination is made (see below).

6.3 **Death Benefit Nominations**

The Fund allows a member to make a binding death benefit nomination. If this nomination is valid and subsisting, the Trustee is obliged to follow it.

6.4 **Investment choice**

Investment decisions are made by the Trustee, who has an obligation to formulate and implement an investment strategy having regard to the matters laid down in SIS, including:

- (a) the Fund's objectives;

- (b) the Fund's liability to pay members' benefits and other liabilities;
- (c) risk and diversification;
- (d) all of the circumstances of the Fund.

The Trustee does not intend at the date of this IM/PDS to consider labour standards or environmental, social or ethical consideration in formulating and implementing the Fund's investment strategy.

As you as a member must be represented at Trustee level, you have a high degree of control in deciding what investments to make.

6.5 Borrowing Powers

Section 67(4A) of the Superannuation Industry (Supervision) Act 1993 enables superannuation trustees to borrow providing they adhere to the documentation requirements set out in that clause and comply with their obligations under SIS.

Prior to obtaining a finance facility to leverage the Fund's assets/cashflow, the Trustees must consider:

- (a) **Sole purpose test** - any investment must be assessed carefully to ensure that it is being made for the purpose of the provision of Member benefits, and not for some other purpose;
- (b) **In-house asset rules** - these still apply;
- (c) **Arm's length** - if a Member is providing the loan funds, the terms and conditions of the borrowing arrangement must effectively be as if negotiated at arm's length;
- (d) **Related party acquisition rule** - the prohibition of acquiring assets from Members and related parties. There are exceptions including the acquisition of business real property and listed securities (if acquired at market value);
- (e) **Cash flow requirements** - if the income to be received from the Superannuation Asset will be insufficient to meet the interest payments due under the Finance Agreement, there must be adequate income from other assets owned by the Fund that may be used to meet the interest payments;
- (f) **Commercial issues** - if on analysis the investment does not provide commercially acceptable returns, this may raise both investment strategy and sole purpose test concerns;
- (g) **Tax considerations** - Capital Gains Tax, GST (on assignments to the SMSF Trustees), land tax and stamp duty.

There are substantial risks associated with any type of borrowing. Depending on the asset to be acquired, the risk may be financial risk (including interest rates, cash flow), geographic risk, or economic risk (downturn in commodity prices).

Under the section 67(4A) procedure, the financier is to have limited recourse rights against only the asset being acquired however, if the Fund have paid for say 20% of the equity of the asset, that is what the Fund stands to lose if the investment does not work out.

6.6 Some Investments are prohibited by SIS

Fund assets should not be used by members contrary to SIS (particularly the *in-house asset* restrictions).

Commercial Property - the Fund may own *business real property*, acquire it from, and lease it to, members and associates.

Shares - the Fund may acquire ASX listed shares from members and associates.

7. OTHER KEY DIFFERENCES/DISADVANTAGES OF THE FUND

7.1 Control

The Fund is not controlled by an independent professional trustee. It requires both time and effort from the members since each member is either one of the Trustees, or a director of the corporate Trustee.

You may obtain the benefit of independent services and advice, such as accounting and investment advice, but you, in your capacity as Trustee, are responsible for the Fund.

7.2 Diversification

There may be less opportunity to fully diversify Fund investments.

The Fund Trustee may decide to diversify by buying managed investments etc, but in other instances the Trustee's decisions may result in relatively low diversification (eg a large property, significant cash holdings etc.).

7.3 Cost

Industry funds, and corporate employer sponsored funds, are likely to have lower costs, and if the Fund is small retail funds may also have lower costs.

7.4 Cost of insurance

Some alternative Funds, particularly corporate employer sponsored funds, may offer lower insurance costs because of the existence of a group policy.

7.5 Limit on Benefits

The Trustee may obtain insurance so that in the event of death or disability the Fund receives a payment under the policy. Except to the extent to which benefits are insured benefits are limited to the assets of the Fund.

The assets of the Fund will increase with investment earnings, but will decrease with investment losses, including loss of capital.

There is therefore no guarantee as to the amount of benefits which will ultimately be payable.

The Fund is what is called an *accumulation fund* as compared to a *defined (or promised) benefit fund*. This investment risk is with you as member.

Like all investments in a superannuation fund (including an *RSA*) you can only withdraw benefits on retirement, reaching age 65 etc (see clause 14 below).

7.6 Legal Obligations

As a member must be a Trustee or a director of the Trustee company, you have to understand your legal obligations, and ensure they are met. The law is complex and although this is an SMSF, the vast majority of SIS and other legislation (including the Income Tax Assessment Act and the Corporations Act) apply to the Fund.

You should ensure that these obligations are understood and are met, and should for that purpose ensure that you have appropriate advice from suitably qualified advisors.

7.7 Poor Administration

You must keep the Fund assets separate from other investments as if you do not, there is the risk of:

- (a) failure to meet your obligations as Trustee; and
- (b) loss of assets in the event of litigation if you are unable to prove that the asset is owned by the Fund.

We advise all new funds to open a bank account. The name of the account will be DARRYL DENNIS BIRCH, MAXINE ALISON DAWSON as trustee for DARRYL BIRCH SUPER FUND.

We also strongly advise Trustees that if the Fund is to purchase real estate, then a caveat is placed over the title to ensure that the interests of the members are protected.

8. SIGNIFICANT RISKS

8.1 The Fund may lose its **complying** status if SIS is breached, with serious tax implications. we draw your attention to our comments in clauses 4, 5.6 and 5.7.

Breaches of SIS may also result in penal action against the Trustee or Trustee directors.

9. COSTS

9.1 There are a number of costs associated with the Fund including:

- (a) costs of establishing the Fund.
- (b) costs (if applicable) of incorporating a company to act as Trustee.
- (c) annual accounting and audit costs.
- (d) tax payable by the Fund.
- (e) costs of obtaining actuarial reviews and certificates if necessary (this will generally arise only upon the Fund commencing to pay a pension).
- (f) costs of buying, holding and selling investments including:
 - (i) stamp duty;
 - (ii) brokerage or other agent's fees
 - (iii) selling commission;
 - (iv) management fees.

The costs can be broken into regular ongoing costs, and those costs that are incurred as a result of investment activity.

- 9.2 The Trustee is unable to give further detail on the costs, which will vary from year to year, but you as member and a Trustee or a director of the Trustee, should be aware of the costs.
- 9.3 The Trustee must not charge for its services, whether as an administration fee, contribution fee or management fee.
- 9.4 This Fund differs in its cost structure markedly from other types of funds.
- 9.5 The costs will be shared between the members on a proportional or other equitable basis, and if investments are held for specific members, the cost of those investments will be directly debited to those particular members' accounts.
- 9.6 The costs may be greater as a percentage of Fund assets than would be incurred in another type of fund, or may be less. The costs are never likely to be less than an industry fund or a corporate employer sponsored fund.
- 9.7 You should make due inquiry of other cost structures and if thought appropriate, obtain independent advice on the most cost effective structure. Costs are only one part of a decision making process and you should also consider other advantages and disadvantages of this Fund compared to other funds.

10. CREDITING OF FUND EARNINGS

- 10.1 The Trustee has flexibility in utilisation of Fund profits, including by:
 - (a) crediting members' account balances pro-rata to those balances;
 - (b) establishing a reserve and crediting all or part of those earnings to a reserve.
- 10.2 The Fund may make specific investments for members, in which case earnings on those assets are credited solely to those members.
- 10.3 You as a Fund member and therefore a Trustee or director of the Trustee company should be involved in all decisions relating to the crediting of investment earnings.
- 10.4 There are no guarantees in relation to earnings, and the Fund may make investment losses.

11. REPORTING TO MEMBERS

- 11.1 The Fund, as an SMSF, is not subject to the same strict member reporting requirements as apply to other types of funds.

The Trustee (to comply with the information requirements contained in the Corporations Act and Regulations) must give information to Fund members.

- 11.2 It is to be expected that the formal information given will be a copy of Fund accounts, and statements of members' balances.
- You as a member will also be a Trustee or a director of a Trustee company and should therefore have all the information available to you that the Trustee has.
- 11.3 You may obtain further information in your capacity as Trustee by seeking the advice of advisers, including specialists in:
- (a) investment matters;
 - (b) auditing and accounting matters;
 - (c) taxation matters;
 - (d) compliance matters (eg meeting the legal requirements under SIS, the Income Tax Assessment Act and the Corporations Act).

12. TRUST DEED

- 12.1 The Fund is governed by a Trust Deed which specifies in detail the duties and obligations of the Trustee and the rights and entitlements of Fund members.
- 12.2 In a number of respects the legislation, particularly SIS, overrides the Trust Deed.
- 12.3 The Deed has a provision which deems some legislative requirements to be incorporated in order to ensure the Fund meets its obligations, particularly under SIS.
- Those obligations can change from time to time, and will therefore operate to automatically change the terms upon which the Fund is governed.
- 12.4 The Trustee needs to ensure it meets the obligations contained in the Deed to:
- (a) meet its obligations to the members;
 - (b) comply with SIS and other legislative requirements;
 - (c) maintain the Fund's complying status.
- 12.5 The Deed is comprehensive and should be read and understood by you:
- (a) as a member to understand your rights and entitlements particularly in relation to benefits;
 - (b) as Trustee or director of a Trustee company to understand your obligations as Trustee.

13. REGULATION OF THE FUND

- 13.1 All SMSFs are regulated by, and send reports to, the ATO.
- If a Fund fails the requirements to be a SMSF then an independent approved trustee must be appointed and the Fund will thereafter become regulated by APRA.
- 13.2 To be an SMSF requires:
- (a) no more than four (4) members;
 - (b) the members and Trustee rules (see above) are met; and
 - (c) the Trustee is not remunerated.
- 13.3 An annual report must be lodged with the ATO specifying whether or not the Fund has met the SIS requirements to be a *complying* fund, and any breaches of SIS must be notified.
- This report must be signed by the auditor.
- Any breach brings with it the risk of the ATO, as regulator, removing the Fund's complying status (as well as instigating penal action against the Trustee and/or Trustee directors). Removal of complying status results in particularly severe taxation penalties (see above).

14. PAYMENT OF BENEFITS

- 14.1 Benefits are payable in circumstances such as retirement, termination of employment over age 60, attaining age 65, death and *permanent disability*.

In some circumstances, benefits must be paid, and in other circumstances there is a choice as to whether benefits are paid or not.

Rules in relation to benefit payment are specified in SIS, as well as covered by the Trust Deed.

- 14.2 The Deed sets out the circumstances and the methodology of paying benefits, all of which must be done in a manner which is consistent with SIS.

The Deed gives considerable flexibility as to when, and in what manner, benefits are payable.

The Deed allows the payment of lump sums, as well as numerous types of pensions.

- 14.3 On your death:

- (a) your benefits must be paid as soon as practicable after your death, either to your *dependants* or your estate;
- (b) if you are already in receipt of a pension then the pension may, if you have specified a reversionary pensioner, continue for the benefit of that person or persons.

The remaining Trustees or directors of the Trustee company will come to control the Fund, and there is an opportunity for your legal personal representative (executor or administrator of your estate) to also be joined at Trustee level.

- 14.4 Unless there is a binding nomination, the Trustee decides who receives the benefit.

The Trustee's decision is not subject to review by the Superannuation Complaints Tribunal, which does not have jurisdiction over SMSFs.

You should therefore ensure that control of the Fund passes in a manner which is appropriate and consistent with your estate planning wishes.

- 14.5 You may make a binding death benefit nomination, which will direct how the Trustee deals with your benefits upon your death. The trustee must give you information so you can understand how important this decision is, and you must make the nomination in the manner specified by the Trust Deed.

- 14.6 Alternatively you may make a non-binding nomination. This is merely an indication as to how you would like your benefits to be paid on your death, but is not binding on the Trustee.

15. JOINING THE FUND

- 15.1 To join the Fund requires you to:

- (a) complete the application form which is part of this package;
- (b) consent to be a Trustee or director of the Trustee company;
- (c) become a Trustee of the Fund, or director of the Trustee company;
- (d) be admitted by the Trustee as a member.

- 15.2 You should obtain your own independent advice if you believe it is necessary or appropriate, both in relation to your position as a member and at Trustee level.

- 15.3 You should not participate in the Fund unless it is appropriate for you to join in a private fund:

- (a) owing obligations to all the members;
- (b) where the control is held by you and your fellow Trustees or directors; and
- (c) in circumstances where you are responsible for the operation of the Fund.