SMSF Strategies Trust Deed Guide

Explanatory Memorandum

The SMSF Strategies Trust Deed has been created to take advantage of the taxation and superannuation changes introduced by the government under the term 'Simpler Super' and 'Better Super' on 1 July 2008. This includes amongst other things:

- *No tax on income, or lump sums* taken from a complying superannuation fund post age 60.
- When a person who is 60 or older has all, or a significant majority, of their income producing investments in a superannuation fund, and their taxable income is less than $6,000 per annum, *they do not need to lodge an income tax return* (this may rise to 18,000 where the government introduces the Carbon Tax income tax rates amendments).
- A member of a fund who is age 55 and born before 1 July 1960 can access their super benefits as a low-taxed transition to retirement income stream, *even while working full or part time*. There is a 10% maximum limit on the amount of income the working member can take each year while working. Once they retire there is no limit on the amount of withdrawals.
- No tax penalties or limits on the amount of super benefits that can be withdrawn by members or their dependants and/or legal estate in the event of the member's death.
- Warehousing of super fund investments for the benefit of the next generation with the abolition of the requirement for superannuation benefits to be taken as a lump sum or pension at age 65.
- Relaxation of the assets test thresholds for social security purposes so that a home owning couple may be able to access a part pension while holding a significant parcel of assets.
- A number of superannuation fund members over age pension age will be able to access the health care card, telephone, and electricity allowances regardless of the amount of superannuation benefits they have in their fund.
- Insurance premiums in the fund for death, permanent and temporary disability of fund members are tax deductible.
- Death, terminal illness and permanent disability benefits paid out during the working life of a member are proportionally tax deductible to the fund.
- Taking an accounts based pension or allocated pension (commenced prior to 20 September 2007) from a fund that has upgraded to the Simpler Super Rules means lower income levels while allowing unlimited withdrawals for retirees, those over age 65 or who are permanently incapacitated in addition to the terminally ill.

This Explanatory Memorandum to the SMSF Strategies Trust Deed is for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund. It does not form part of the Rules of the Fund or the Fund's Trust Deed.

Part One – Rules to Establish the Fund

Purpose

The SMSF Strategies Trust Deed and Rules are designed for simplicity of understanding and use by Trustees, Members and advisers to the Trustee. They are unique and have been purpose-built for SMSF's. The Rules describe in a simple format the processes and requirements for both the Trustee and Members of the Fund to establish the Fund, accept Members and Contributions, how to run Trustee meetings, make investments, establish Member Superannuation Interests and pay out Superannuation Benefits. These Rules need to be read in conjunction with the Fund's Product Disclosure Statement. *However the Rules are not simply limited to new SMSF's but can also apply to existing regulated SMSF's seeking to upgrade their Fund Rules.*

❖ **For New SMSF's**

Once the first Trustee is appointed and the SMSF Strategies Trust Deed executed, there are mandatory requirements that the Trustee must perform in order to make the Fund compliant and operative. These include but are not limited to becoming a regulated superannuation fund, establishing the Fund's complying status with the Regulator, accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy. Part One of the Deed qualifies the Rules regarding these essential steps to establishing a Complying SMSF. Additionally, Part One of the Deed is elaborated upon in this Explanatory Memorandum which includes definitive and separate SMSF Strategy Guides to make comprehension of the Rules simple. These Strategy Guides are not part of the Rules but are to simply provide guidance and understanding on the meaning of a Rule to the Trustee and Member of the Fund as well as the Fund's advisers or in the event of litigation or action by the Regulator.

❖ **For Existing SMSF's**

For Trustees of existing SMSF's that intend adopting the SMSF Strategies Trust Deed and Rules, the requirements to establish and maintain a Complying SMSF also apply to the on-going operation of the Fund. These include but are not limited to accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy.

SMSF Strategy Guide – Rule 1 – *Introduction*

To make the Rules of the Fund simple to understand we have written the SMSF Strategies Trust Deed and Rules in uncomplicated terms. Additionally, we also provide a "**SMSF Strategy Guide"** in this Explanatory Memorandum to assist Trustees, Members, superannuation professionals, lawyers and the Courts to interpret the Rules. The SMSF Strategy Guides do not form part of the Rules. They are ancillary to the Rules. They are designed to provide clarity of application of the Rules in all situations and transactions relating to the Fund.

When applying the Rules, singular means plural so the word Trustee can mean Trustees, he can mean she and when referring to a company, trust or other entity it includes all those persons responsible for the entity's actions. The Rules of the Fund are to be governed by the law where the Trustee lives unless there is more than one Trustee and they live in different States or the Trustee lives overseas. In these instances the Trustee is to choose the governing law of the Fund and if there is no choice made by the Trustee, the governing law of the Fund is Victoria.

The Rules of the Fund are for a superannuation fund that has chosen to be a "Self-Managed Superannuation Fund". That term has been abbreviated to "SMSF" for the purposes of these Rules.

If there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are to prevail unless the breach of the Superannuation Laws does not result in a fine, penalty or non- compliance notice for the Fund, Trustee or Member. However these Rules contain several provisions not provided for within the Superannuation Laws. If this be the case the Rules are to be read and applied exclusively.

There is also discretion in accordance with some of the Rules for the Trustee to add to, change, create, add or amend these Rules where appropriate. The addition, change or amendment to any Rule is to be seen as a Rule in itself and may become a Special Rule whereby it automatically applies to any future Rule changes unless the Trustee and the Member agree otherwise.

The Fund is guided by the Sole Purpose Test in section 62 of the SIS Act 1993 which ensures that benefits are only paid from the fund on the occasion of a Member dying, retiring, becoming incapacitated or for such other purpose as allowed under the Superannuation Laws.

SMSF Strategy Guide– Rule 2 -*Trusteeship*

Trusteeship: The Rules of the Fund are designed specifically for a Complying SMSF. This means that firstly the Fund must have a Trustee continuously in place at all times. The Trustee may be a Corporate Trustee and/or Individual Trustees. The Trustee may even be a mix of both Corporate and Individual Trustees. Secondly, to be a Complying SMSF, all of the Members of the Fund must be Trustees of the Fund or directors of the Corporate Trustee. Where the Trustees are individuals, the sole or primary purpose of the Fund is to pay old age pensions. In contrast where the Trustee of the Fund is a Corporate Trustee then the Fund may pay income streams, pensions, lump sums and use the Fund for estate planning purposes.

Disqualified Persons: The Trustee of the Fund must not be a Disqualified Person unless the Regulator otherwise allows. There are serious penalties of up to two years imprisonment for persons acting as Trustees where they are Disqualified Persons under the Superannuation Laws. If the Trustee is an individual they must not be bankrupt or have been charged with an offence of dishonest conduct. If the Trustee is a Corporate Trustee then the Trustee must not be in liquidation or under administration and the Trustee must also ensure that there are no Responsible Officers of the company, including Member directors and company secretary, who are Disqualified Persons. A Disqualified Person may apply to the Regulator for an exemption under the Trustee Rules.

SMSF Trustee Conditions: The Rules of the Fund are for a Complying SMSF and a regulated superannuation fund. Under the Superannuation Laws all members must be a Trustee or director of a Corporate Trustee. However the Superannuation Laws provide that the Trustee of a SMSF is allowed to appoint a non-Member as Trustee of the Fund or director on the board of Trustees ("the Replacement Trustee"), in circumstances where:

1. If the Fund has one Member, the Fund may appoint an Additional Trustee (in addition to the mandatory Member as Trustee) being another person provided that the other Trustee is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.
2. If the Fund has a Corporate Trustee, the Corporate Trustee may appoint as a director (in addition to the mandatory Member as director) another person provided that the

other director is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.

3. If a Member has died, the Legal Personal Representative of the Member is authorised to become a Replacement Trustee of the Fund or director of the Corporate Trustee subject to the Memorandum and Articles of Association of the Trustee company for the period beginning on the day the Member died until the day a Death Benefit becomes payable from the Fund.

4. If a Member of the Fund is under a legal disability, the Legal Personal Representative of the Member may become the Trustee of the Fund or take the Member's place as director of the body Corporate. If the Member is a child under the age of 18, the parent or guardian of the Member may also take the child's place as Trustee or director of the Corporate Trustee where there is no Legal Personal Representative.

5. The Legal Personal Representative of the Member has an Enduring Power of Attorney in force in respect of that Member except where the Member is a Disqualified Person. This includes where a non-resident of Australia is a Member of the Fund.

6. The Regulator has appointed a Replacement Trustee under the Superannuation Laws.

A Trustee or director of a Corporate Trustee must resign or be removed as Trustee if they become a Disqualified Person or relinquish Membership of the Fund. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status where a Member or Trustee becomes legally incompetent a Replacement Trustee may be appointed.

When a Member dies their Legal Personal Representative replaces the deceased Member as a Member of the Fund. They will have exclusive voting rights as to the payment of the deceased Member's Death Benefits. Immediately the deceased Member's Death Benefits commence to be payable they must resign instantly.

As a SMSF, the Trustee is required to notify the ATO of any changes in membership, Trusteeship, name change and other such things within a period of 21 days from the change. The ATO may also require a Trustee or Member to make a declaration to the Commissioner regarding their knowledge of the Superannuation Laws, their agreement to keep up to date with the Superannuation Laws and maintaining a current set of Rules of the Fund. The Trustee or Member is required to complete any such declaration.

On 1 July 2014 a new penalty regime was introduced providing the Regulator with the ability to issue fines for breaches of the SIS Act and Regulations. The penalties are listed below. The governing rules of the fund provide that the may be indemnified from assets of the Fund or accounts of the Fund including Reserve Accounts, Earnings, Insurances or from any other monies in the Fund provided the Trustee of the Fund does not incur further penalties.

Section & Rule	Administrative Penalty
s.35B – failure to prepare Financial Statements	$1,700
s.65 – prohibition on lending or providing financial assistance to members & their relatives	$10,200
s.67 – prohibition on super fund borrowing, except as permitted, eg limited recourse borrowing arrangement	$10,200
s.84 – contravention of In-House Asset rules	$10,200
s.103(1) & (2) – failing to keep trustee minutes for at least 10 years	$1,700
s.103(2A) – failure to maintain a s.71E election, where applicable, in relation to a fund with an investment in a pre 11/8/99 related unit trust	$1,700
s.104 – failing to keep records of change of trustees for at least 10 years	$1,700
s.104A – failing to sign Trustee Declaration within 21 days of appointment and keeping for at least 10 years	$1,700
s.105 - failing to keep member reports for 10 years	$1,700
s.106 – failing to notify ATO of an event that has significant adverse effect on the fund's financial position	$10,200
s.106A – failing to notify ATO of change of status of SMSF, eg fund ceasing to be a SMSF	$3,400
s.124 – where an Investment Manager is appointed, failing to make the appointment in writing	$850
s.160 – failing to comply with ATO Education directive	$850
s.254(1) – Failing to provide the Regulator with information on the approved form within the prescribed time upon establishment of the fund	$850
s.347A(5) – Failing to complete a form with requested information provided by the Regulator as part of the Regulator's Statistical Program	$850

SMSF Strategy Guide– Rule *3 - Membership*

Once formally appointed, the Trustee, in its capacity of Trustee of a complying SMSF, may admit Members to the Fund. As the Fund is to be maintained as a complying SMSF, the Trustee of the Fund must limit the number of Members in the Fund to no more than four Members unless the Superannuation Laws allow or there is a change in the definition of SMSF. Importantly the Simpler Super Rules have been drafted to allow an increase to the number of Members in the Fund should any change in the Superannuation Laws concerning Membership and SMSF's occurs.

When completing an application form for membership of the Fund the potential Member agrees:

1. To be bound by all of the Rules of the Fund.

2. To be a Trustee of the Fund or director of the Corporate Trustee unless there is a Replacement Trustee for the Member who has been validly appointed under the Superannuation Laws.

3. To provide information to the Trustee where required including medical information, Tax File Number and consent for the Trustee to hold that information despite anything to the contrary in the privacy legislation.

4. To have read and understood the Fund's Product Disclosure Statement.

In this Fund, except for any conditions imposed by the Trustee of the Fund, there are no general limitations on who can be a Member of the Fund. This means that a person may become a Member of the Fund at any age or where they do not have a Member Superannuation Interest balance.

Where the Member elects, the Member's Legal Personal Representative is taken to be the Member of the Fund including where the Member may have died. This allows the Executor of a deceased Member's estate to continue receiving a Superannuation Income Stream from the Fund or receiving Earnings on the Member's Superannuation Interests.

There will be occasions during the longevity of the Fund that for some reason a Member may leave the Fund. For example a departing Member may leave the Fund by transferring or rolling over their Superannuation Benefits to another Superannuation Fund. This would then require the Trustee to close the Member's Superannuation Interests. Additionally a Family Law action involving a Fund member may result in the Trustee being subject to discovery proceedings. In this instance the Trustee may decide to cease a Member's membership of the Fund to protect the privacy of the Fund and consequently the interests of the remaining Members.

If a Member decides to withdraw their Superannuation Benefits from the Fund pursuant to the Superannuation Laws, the Trustee is to arrange for the payment of the Member's entitlements as soon as possible. The payment of these entitlements may be in cash or in-specie by way of Assets of the Fund. It is compulsory that the Member's Superannuation Benefits must be transferred to the Member within any period required under the Superannuation Laws. If, subsequent to departing the Fund, the Member fails to advise the Trustee as to where their benefits are to be paid or transferred, the Member's Superannuation Benefits are to be transferred to an Eligible Rollover Fund nominated by the Trustee.

For the purposes of a determination of Australian Superannuation Fund status, a Member or the Trustee may declare the Member to be a non-Active Member of the Fund.

SMSF Strategy Guide– Rule 4 – *Becoming an Operating Regulated SMSF*

Where the Fund is a new Fund the Trustee must first establish the operations of the Fund. In addition to the Trustee's normal responsibilities in the management of the Fund, the Trustee is required to undertake the following to establish the Fund as operational:
Apply for an Australian Business Number and a Tax File Number for the Fund.

1. Establish one or more cash or cheque accounts for the Fund as a clearing account for Authorised Contributions and monies received and Superannuation Benefits and monies paid. Monies need to be deposited into this account as soon as practicable to cater for the running expenses of the Fund. Until monies are in a cash or cheque account the Fund is non- operational.

2. Appoint an Auditor to the Fund. The Superannuation Laws provide that an Auditor must be appointed to the Fund on a yearly basis to provide an assessment of the Fund's compliance with the Superannuation Laws.

3. Appoint SMSF Professionals where required such as a specialist SMSF adviser, SMSF Auditor, SMSF administrator, SMSF insurance adviser and in certain cases a SMSF investment manager, valuer or actuary.

4. Any other act required by the Trustee of the Fund necessary to enable the Fund to become operational and thus be ratified by the Regulator to be a Fund that is a Complying SMSF.

SMSF Strategy Guide – Rule 5 – *Creating and Transferring Member Superannuation Interests*

Superannuation Interests are a new concept in the Superannuation Laws and were introduced with the Simpler Super laws. As a result, the Trustee, on behalf of any Member, may be called upon to establish one or more Member Superannuation Interests. These may include a Member Lump Sum Superannuation Interest and/or a Member Income Stream Superannuation Interest. A Superannuation Interest does not have to have any funds or Assets set aside for it to be a valid Superannuation Interest. A Member may also have more than one Superannuation Interest including two or more Member Income Stream Superannuation Interests provided the Superannuation Laws allow and it does not result in the Fund being treated as a non-Complying SMSF.

Where a Member Rolls Back part or all of their Member Income Stream Superannuation Interest to a Member Lump Sum Superannuation Interest this will add to the Member's Lump Sum Superannuation Interest and not create a new Superannuation Interest unless authorised by the Superannuation Laws and requested by the Member. Where a Member commences a Superannuation Income Stream with a Member Lump Sum Superannuation Interest amount, this may create a new Member Income Stream Superannuation Interest. If there is an existing Member Income Stream Superannuation Interest, the Member has the choice to add to the current Member Income Stream Superannuation Interest which results in a new Superannuation Income Stream or commence a separate Member Income Stream Superannuation Interest.

At any time the Trustee may create one or more Superannuation Interests on behalf of the Fund including a Reserve.

Members should seek advice from a SMSF Professional before adding to an existing Member Superannuation Income Stream Superannuation Interest as this may have unintended taxation and social security results.

The Trustee can also transfer an Asset between Superannuation Interests in the Fund including different Member Superannuation Interests. Any such transfer should be done at a valuation determined by the Trustee or under the Superannuation Laws if required.

SMSF Strategy Guide – Rule 6 - *Accepting Member Contributions, Rollovers and Transfers*

Upon establishment of the Fund or at any other time while the Fund remains a Complying SMSF, the Trustee of the Fund may accept cash or Assets deposited into the Fund on behalf of specific Members of the Fund. The cash or Assets may come from one or more of the following sources:

1. An Authorised Contribution made to the Fund on behalf of a Member.

2. A Rollover Superannuation Benefit on behalf of a Member and/or

3. The transfer of a Transfer Superannuation Interest being a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest and/or a Reserve Account Superannuation Interest from the Fund, another Superannuation Fund or Foreign Superannuation Fund to the Fund on behalf of the Member or for the benefit of another Member or Members.

   In each of the above cases, the Trustee must ensure that the Contribution, Rollover Superannuation Benefit or the Transfer Superannuation Interest is in accordance with the Superannuation Laws and where Assets are contributed such Contributions, Rollovers or Transfers are in accordance with the Superannuation Laws in relation to the acquisition of Assets by the Trustee of a Complying SMSF.

   An Authorised Contribution is a Contribution made to a Fund on behalf of a Member, including the Member themselves, who:

   - is under age 65.
   - is a spouse of a person and is under age 65.
   - is aged 65 – 69 and is engaged in part-time gainful employment (forty hours of work, business or self-employment over a thirty-day period during an income year).
   - is aged 70 – 75 and is engaged in part-time gainful employment and the Contribution is made by an employer or by the Member.
   - has a Contribution made by a person after the requisite times and the Superannuation Laws allow.

A Contribution is the transfer of cash or Assets for the benefit of a Member and includes an Employer Rollover Superannuation Benefit but no other Rollover Superannuation Benefit. It does not include an allocation to a Member Superannuation Interest from a Reserve Account nor a distribution or gift to the Trustee of the Fund. The Superannuation Laws and/or the Regulator may require the Trustee of the Fund to ascribe a value to any in-specie Contribution made on behalf of a Member or for the benefit of Members of the Fund. The Trustee is to determine a value for any in- specie Contribution taking into account any regulatory requirements.

The Rules of the Fund allow a Member to transfer their interest in a Foreign Superannuation Fund to the Fund. There may need to be specific amendments to the Rules, dependent upon the laws of the Foreign Superannuation Fund, for overseas transfers of Foreign Superannuation entitlements to occur.

Providing the Fund maintains its Complying SMSF status, when cash or Assets are transferred into the Fund the Trustee has a total unfettered discretion to determine which account the cash or Assets are to be credited to, provided the Member's Superannuation Interest is properly credited for the Contribution. In allocating the cash or Assets to a specific Member's Superannuation Interest, a Reserve Account or the Fund account the Trustee must ensure that the allocation to these accounts does not breach the Investment Strategy for that Superannuation Interest, Reserve Account or the Fund.

The Superannuation Laws provide a limit on Trustees of Complying SMSF's accepting Non-Concessional Contributions on behalf of a Member and where a Tax File Number has not been supplied. The Trustee is not allowed to accept a Contribution where no Tax File Number is supplied. Where the Trustee accepts a Contribution not allowed under the Superannuation Laws, the Trustee is deemed to hold that unacceptable Contribution on trust for the benefit of the contributor. The unacceptable Contribution is to be paid back to the contributor as soon as is reasonable.

The Trustee should seek professional SMSF advice in terms of the Contributions limit to ensure that the Fund retains its complying SMSF status.

SMSF Strategy Guide – Rule 7 - *Creating an Investment Strategy for the Fund and Members*

The Superannuation Laws provide that the Trustee of the Fund must formulate and give effect to an investment objective for the Fund and an Investment Strategy to meet that investment objective. The investment objective and Investment Strategy should be in writing and held for inspection at the offices of the Trustee.

Where the Trustee of the Fund runs one Investment Strategy for the whole of the Fund this is called a pooled Investment Strategy and is the default Investment Strategy for the Fund. Alternatively the Trustee of the Fund is authorised under these Rules to provide an Investment Strategy for each Member Superannuation Interest or in respect of a group of Member Superannuation Interests such as Member Lump Sum Superannuation Interests. In addition the Trustee of the Fund may implement an Investment Strategy for all Member Lump Sum Superannuation Interests and separate Investment Strategies for each Member Income Stream Superannuation Interest in the Fund. Where a separate Investment Strategy is used, specific Assets of the Fund must be set aside or segregated to meet the needs of the separate Investment Strategy.

It is compulsory, in accordance with the Superannuation Laws, to implement a Reserve Management Strategy for all Reserve Accounts created by the Trustee of the Fund. The Strategy for any Reserve Account must be prudently managed and the Trustee may apply one Investment Strategy for all of the Fund's Reserve Accounts or separate Investment Strategies for each Reserve Account.

When formulating an Investment Strategy for the Fund, the Trustee must have regard to the whole of the circumstances surrounding the Fund including, but not limited to:

1. The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the likely return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;

2. The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;

3. The liquidity of the Fund's investments having regard to its expected cash flow requirements;

4. The ability of the Fund to discharge its existing and future liabilities;

5. Any requirements under the Superannuation Laws or by the Regulator; and

6. Whether the Members of the Fund should be covered by Insurance under Rule 12.

In addition the Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings.

The Trustee may seek professional advice in relation to the establishment of any Fund Investment Strategy or Risk Management Strategy. In seeking Investment or Risk

Management Strategy advice the Trustee should ensure that the adviser is qualified to provide Investment Strategy advice for a Complying SMSF and is currently licensed and skilled to do so.

SMSF Strategy Guide – Rule 8 - *Making Investments for the Fund and Members Benefit*

The Trustee must invest the Assets of the Fund on behalf of Members of the Fund according to the Sole Purpose Test, the acquisition of Assets from Related Parties rule and with regard to the In- House Assets test.

Sole Purpose Test

The Sole Purpose Test provides that the Trustee must maintain the Fund for the sole purpose of providing the following Superannuation Benefits:

- Retirement or age 65 Superannuation Benefits for a Member;
- Permanent and Temporary Incapacity Superannuation Benefits for a Member or their Dependent's;
- Death Benefits on behalf of a Member's Dependent's and Legal Estate;
- A Transition to Retirement Superannuation Income Stream;
- Terminal Illness Benefits; and
- any other Benefit allowed by the Regulator or under the Superannuation Laws.

Although the Trustee has wide discretion in making any investment of the Fund, including investments both domestically and internationally, the Trustee must first have regard to the Fund's Investment Strategy and the Superannuation Laws. The Trustee must also ensure that any investment of the Fund does not provide a benefit of any description to a Member until that member satisfies a Condition of Release of their Superannuation Interest. This may breach the Sole Purpose Test. Such restrictions may limit a Trustee investing in a Business if a Member or Related Party derives a benefit which does not meet the Sole Purpose Test.

Acquisition of Assets from Related Parties rule

The Superannuation Laws prevent the Trustee from acquiring an Asset from a Member, Related Trust or a Related Party of a Member or an Employer Sponsor. There are some exceptions to the Member acquisition laws including, amongst others:

- the acquisition of Business Real Property;
- the acquisition of listed shares, securities and widely-held managed funds;
- the acquisition of certain in-house assets provided the investment does not take the Fund's level of in-house assets to beyond the 5% in-house assets threshold;
- the acquisition of units in a unit trust and shares in a company where the underlying entity meets certain criteria in the Superannuation Laws allowing such investments including no borrowings, no investments in other entities and no lending of assets to related parties;

- the investment meets the criteria for a geared investment under section 67 of the Superannuation Industry Supervision Act 1993.

In-House Assets Test

The Superannuation Laws also limit the amount that a Trustee of a Fund can invest in loans, investments and leases with Members, Employer Sponsors, Related Trusts and Related Parties. The current limit is 5% of the market value of the Assets of the Fund.

In addition, under the Superannuation Laws, all dealings with a Member, Employer Sponsor, Related Party or Related Trust must be at arm's length.

SMSF Strategy Guide – Rule 9 - *Establishing a Reserve Account for the Fund*

The Superannuation Laws authorise the Trustee to establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, a Pensions Reserve, an Income Stream Reserve and a Self Insurance Reserve if the Rules of the Fund allow. A Reserve Account is where the Trustee has set aside surplus Assets or Earnings of the Fund into an account which is not part of a Member's benefits. Providing the Superannuation Laws allow, the Rules of this Fund empower the Trustee at any time to establish one or more Reserve Accounts. These Accounts do not and never shall form part of the Fund's Member Superannuation Interests.

Examples of some Reserve Accounts that may be created under the Simpler Super Rules include:

- a Superannuation Income Stream or Pension Reserve Account – to fund current Superannuation Income Stream liabilities including a guarantee to pay an agreed rate of return on a Simpler Super Income Stream.

- an "Anti-Detriment" Reserve Account - where a bonus or additional payment is made directly under the Simpler Super Rules to a Dependant of a deceased Member or the deceased Member's Legal Estate.

- an Investment Reserve Account where the Trustee can allocate Earnings of the Fund. From this reserve the Trustee can populate other Reserve Accounts, make transfers to other Superannuation Funds or make Member Superannuation Benefit payments.

- an expense Reserve Account where the Trustee can pay General and Specific expenses of the fund.

- an in-house assets Reserve Account where the Trustee can use the funds to lend to Members or related parties, acquire artwork and any other activity that would be classified as an in-house asset.

- a Contributions Reserve Account for short-term warehousing of Contributions for a term no greater than 28 days.

At the time of establishment of any Reserve Account, the Trustee may determine additional Rules for that Reserve Account including, but not limited to the following:

1. The source of surplus cash and Assets to be transferred to a particular Reserve Account including the transfer of cash or Assets from a Member Superannuation Interest to a Reserve Account or the receipt by the Trustee of an Authorised Contribution, Asset or investment which in the opinion of the Trustee is not an entitlement of a Member provided that any transfer or receipt is in accordance with the Superannuation Laws.

This may include a distribution from a family trust or a gift to the Fund.

2. The Investment Strategy for the Reserve Account as required by the Superannuation Laws.

3. How, when and for what purpose amounts held in a particular Reserve Account are to be applied by the Trustee including the payment of any Superannuation Benefits in the event of the Member's Retirement, Temporary or Permanent Incapacity, Terminal Illness or as a Death Benefit.

4. Whether the Reserve is to be used to pay out expenses of the Fund including, but not limited to, administration, General expenses, insurance expenses, any Specific Expenses and the payment of Superannuation Income Streams and/or Lump Sums to Members or other entitled persons such as Dependants.

An allocation from a Reserve Account to a Member Superannuation Interest may result in the allocation being treated as a Concessional or Non-concessional Contribution. The Trustee should seek advice from a SMSF Professional prior to establishing and allocating from Reserve Accounts.

Part Two – Some Important Planning Considerations

Purpose

Long-term planning is a key feature of a well-functioning Complying SMSF. The three important areas of planning often neglected by Trustees but crucial to both Members and the Trustee of the Fund are Disability, Death Benefits and Insurance Planning.

Generally, SMSF's are Superannuation Funds run for the benefit of family Members. Although a SMSF is a Trust it has no perpetuity period like traditional Trusts. Therefore it is essential in the initial stage of a Member's tenure in the Fund to consider:

- What would the Member require in the event of their Temporary and Permanent Incapacity in the Fund?
- What would the Member desire in the event of their death?
- What insurances can the Trustee implement not only to include but also to enhance the Member's Incapacity and Death Benefit plans and additionally provide for some unpredicted contingency?

The SMSF Strategies Trust Deed and Rules introduce several new SMSF planning features including the ability of the Trustee of the Fund to offer Members the ability to create a SMSF Living Will to deal with their Superannuation Interests in the event of their incapacity and a SMSF Will to make provision for their dependants and others in the event of the Member's death.

SMSF Strategy Guide – Rule 10 - *Creating a Member SMSF Living Will*

At some time, whilst a member of the Fund, a Member may become incapacitated. The incapacity may be minor and only amount to a Temporary Incapacity which means the Member is no longer able to carry on their normal occupation or self-employment due to physical or mental ill-health. The Temporary Incapacity may last for only days or until such time as the Member returns to their previous occupation or self-employment, turns age 65, decides to retire, dies or the Temporary Incapacity becomes a Permanent Incapacity.

A Permanent Incapacity is where the Member is unable to undertake their usual occupation or self- employment for which they are qualified. For a Member to qualify as Permanently Incapacitated for taxation purposes it requires two medical practitioners to formally classify the Member to be Permanently Incapacitated. A Child Member of the Fund may be Permanent Incapacitated.

A Member may also suffer a Terminal Illness where two registered medical practitioners, including a specialist practising in the area of the Member's illness or injury, have certified, jointly or separately, that the person suffers from an illness or has incurred an injury that is likely to result in the death of the person within a period (the ***certification period***) that ends not more than 12 months after the date of the certification.

A Member may create a Member SMSF Living Will. In the event of the Member's Temporary, Permanent Incapacity or Terminal Illness the SMSF Living Will may request the Trustee to:

- Pay a specific Income Stream Superannuation Benefit or Lump Sum Superannuation Benefit to the Member, their Dependants or Legal Personal Representative.

- Specify the terms and conditions of any Income Stream Superannuation Benefit.
- Elect the Member's Replacement Trustee if an Enduring Power of Attorney or Legal Personal Representative has been appointed.

The Trustee may accept part or all of a Members SMSF Living Will. The Trustee is not obligated to do so. In making its determination the Trustee must ensure that:

- The various components of the Member SMSF Living Will meet with the Superannuation Laws.
- The Rules of the Fund allow any, some or all of the components of the Member SMSF Living Will.
- The Fund has the resources to fund the Member SMSF Living Will.

At the Trustee's discretion (or if requested by a Member) the Trustee may make the Member's SMSF Living Will a Rule of the Fund. Any Rule established by the Trustee would include the terms and conditions of the Member SMSF Living Will. The Trustee may determine in what circumstances the Member SMSF Living Will Rule may be varied so as to preclude a future Trustee altering the Rule to the detriment of the Incapacitated Member in terms of their Superannuation Benefits.

It is advisable in all circumstances dealing with a Member SMSF Living Will that the Member and the Trustee seek expert advice from a SMSF Specialist adviser, actuary or auditor prior to finalising any Member SMSF Living Will.

SMSF Strategy Guide – Rule 11 - *Creating a Member SMSF Estate Plan and SMSF Will*

The opportunity of legal challenge is dramatically reduced when Death Benefits are not paid or payable to the Legal Estate of a deceased Member by the Trustee of a Complying SMSF but directly to a beneficiary as specified by the deceased Member. The payment of superannuation Death Benefits are not subject to the provisions of the Member's Will. Accordingly, a SMSF Will can be of major strategic value to the Members of a Complying SMSF. The taxation benefits of Death Benefits paid to Dependants and the deceased Member's Legal Estate are outlined in the Product Disclosure Statement to the Simpler Super Rules. This compares with the death of a Member where no nominations or SMSF Will have been made in respect of the Member's SMSF Estate. In these circumstances, under the SMSF Strategies Trust Deed the Executors of the Member's Legal Estate will control how the Member's Superannuation Interests are to be distributed.

A Member SMSF Will is an important legal document on how a Member seeks to distribute their SMSF Estate as Death Benefits to their Dependants or Legal Estate in the event of their death. Under the Superannuation Laws there are several possibilities:

- The provision of a Superannuation Lump Sum – by way of cash or Assets to Dependants and/or
- the deceased Member's Legal Estate.
- The payment of a Superannuation Income Stream to Dependants (as defined for taxation purposes) of a deceased Member.
- The payment of a Reversionary Superannuation Income Stream to a Dependant. This is the continuation of an existing Superannuation Income Stream that was payable to a deceased Member of the Fund.

There are two possible Member Death Benefit distribution methods available when making a Member SMSF Will under these Simpler Super Rules. These can be used in isolation or incorporated together to equate to a strong, secure disposition of a Member's SMSF Estate via a SMSF Will.

Method 1- Non-Binding Death Benefit Nomination - The Member provides the Trustee with a nomination as to how some or all of their Death Benefits may be distributed. Ultimately, the Trustee retains control of the distribution of the Death Benefits. This method may apply where a Member's Death Benefits are to be distributed to a single beneficiary (for example a spouse) who is to remain as the major Trustee of the Fund.

Method 2 – Non-Lapsing Binding Death Benefit Nomination - A Non-lapsing Binding Death Benefit Nomination allows the Member to direct the Trustee as to how their Death Benefits are to be distributed and in what form. Additionally, it can direct the Trustee as to who the deceased Member's Replacement Trustee is to be.

In accordance with the Trustee's discretion, the Trustee can accept all or part of the Member's Non- lapsing Binding Death Benefit Nomination and/or SMSF Will. This is subject to the availability of the Member's Superannuation Interests, the Superannuation Laws and the Rules of the Fund.

Additionally, the Trustee may qualify what terms and conditions of the Member's SMSF Will are to be incorporated into the Rules of the Fund. How SMSF Wills and Non-lapsing Binding Death Benefit Nominations are to be varied may also be noted as part of the terms and conditions of the SMSF Will or Nomination.

The SMSF Will and Non-lapsing Binding Death Benefit Nomination may become, subject to the Trustee's consent a Special Rule of the Fund.

It is highly advisable that both a Member creating and the Trustee accepting a Member SMSF Will or Non-lapsing Binding Death Benefit Nomination seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Member SMSF Will.

SMSF Strategy Guide – Rule 12 - *Creating an Insurance Strategy and Insurances in the Fund*

Insurance plays an important part in the creation and maintenance of a SMSF Estate in the event of a Member's death and/or SMSF Living Will. As such the Trustee may seek to establish an Insurance Strategy for the Fund for the benefit of the Trustee and the Fund's Members. The Insurance Strategy may provide for, but is not limited to, Superannuation Lump Sum or Superannuation Income Stream cover provided by an insurance company, friendly society or any other entity for the Trustee in the event of a Member's death or incapacity. This may be the case even where the Trustee is not required to pay a Death or Incapacity Superannuation Benefit to a Member.

In effecting any Insurance Strategy, the Trustee should take into account the financial requirements of the Fund in the event that a Member dies or becomes incapacitated and the Trustee is required to independently Fund a Death or Incapacity Superannuation Benefit. The Trustee may enter into a Contract for Life Insurance which includes, but is not limited to, policies for whole of life, endowment, salary replacement, trauma, risk, accident, total and permanent disability or any other insurance policy issued by a life insurance company, friendly society or other insurance entity either domestically or internationally.

No Member, their Dependants, Legal Personal Representative or Legal Estate has any entitlement or right to any proceeds from any policy of life insurance entered into by the Trustee whether in the name of the Member, the Fund or not.

The Insurance Strategy may also require the Trustee to Self Insure the Fund against any Member risk event that will necessitate a death or disability payment to a Member, their dependants or Legal Personal Representative. In the event that the Trustee seeks to Self Insure the Trustee should:

1. Engage the services of a SMSF actuary with skills in the provision of Self

Insurance in a SMSF.

2. Determine the scope of the Fund's Self Insurance requirements. These include the risk events to which the self-insurance will apply, which Members are to receive any Superannuation Benefits from the Self Insurance Reserve Account, the amount of the Superannuation Benefits to be paid and how they are to be paid to a Member, their Dependant or Legal Personal Representative.

3. Establish a Self Insurance Reserve Account to meet the contingencies of a Member payment event.

4. Provide a separate Investment Strategy for the Self Insurance Reserve.

It is advisable that both a Member creating and the Trustee accepting an Insurance Strategy seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Fund Insurance Strategy.

Part Three - Rules to Maintain and Operate the Fund

Purpose

The routine operation of the Fund is to be undertaken by the Trustee. The compulsory requirements for the operation of the Fund include, but are not limited to, the preparation of Accounts, undertaking and realising investments, assessing Investment Strategies, making Superannuation Benefit payments, assessing the Fund's insurance needs, attending to any Member queries and all administrative requirements of the Fund. Many of these duties may be delegated to a third party provided the Trustee is of the opinion that the third party is qualified to accept any delegation of the Trustee's powers and is skilled to do so.

Delegation of any duties to be performed by the Trustee of the Fund does not relinquish the Trustee from the Trustee's various responsibilities under the Superannuation Laws and State Trustee laws. The Trustee, when applying its powers of delegation, must also ensure that they provide limitations as to who is to use these powers and the manner and time limits for when delegated duties are reported to the Trustee. Any such delegation of powers should be included in an executed service contract with the party delegated Trustee duties and retained at the Offices of the Trustee.

SMSF Strategy Guide – Rule 13 - *Fund Assets, Contracts and Transactions to be in T rust ee's n ame*

In addition to the Superannuation Laws the Rules of the Fund require all Assets, contracts, transactions or agreements of whatever nature entered into by the Trustee to be in the Trustee's name. Where there has been a change in Trustee it is incumbent upon the Trustee to ensure that all Assets of the Fund are correctly recorded in the new Trustee's name.

Only under limited circumstances may the Trustee enter into any contract, transaction or agreement with a Member, employer Sponsor of the Fund or a Related Party of a Member or Employer. The Superannuation Laws provide some exceptions to the prohibition on dealing with Members and these are qualified in Rule 8 on Investments as well as in the Product Disclosure Statement for these Rules.

Where the Trustee enters into a transaction, arrangement, declaration or agreement, whether in writing or orally and the transaction, arrangement, declaration or agreement would result, in the opinion of the Fund's auditor more than likely to result in the Fund being treated as a Non- Complying SMSF, the Trustee and other party to the transaction, arrangement, declaration or agreement as void ab-initio. The Trustee is to ensure that both parties are to be put in, as best as possible, the same financial condition as arose prior to the entering into of the relevant transaction, arrangement, declaration or agreement.

SMSF Strategy Guide – Rule 14 - *Trustee Responsibilities*

In addition to being a Superannuation Fund the Fund is primarily a trust. It is the Trustee's duty and responsibility to act as a Trustee on behalf of the Members of the Fund who are beneficiaries of the trust. It is also the Trustee's duty to ensure that the Fund remains at all times both a SMSF and a Complying SMSF and does not breach the Superannuation Laws.

For the Trustee to discharge its duties it should appoint SMSF Professionals, maintain current knowledge of Trustee requirements in the Superannuation Laws and have detailed knowledge of the Rules of the Fund. Additionally, the Trustee must ensure that the Fund's compliance requirements and responsibilities are met in accordance with both the Superannuation Laws and the Regulator. At times the Superannuation Laws or the

Regulator may require the Trustee to undertake training or education on the Trustee's compliance responsibilities. It is the Trustee's task to fulfil any such requirements.

The Trustee is required to notify the Regulator of any significant events including, but not limited to, where there is a change in Membership of the Fund, a change to the Fund's Trustee, a change to the name of the Fund and a change of the Trustee's address. It is compulsory to notify the Regulator of these events within 21 days of the changes.

The Fund is a Complying SMSF and is therefore prevented by the provisions of the Superannuation Laws to pay or remunerate the Trustee in any manner whatsoever for undertaking the role of Trustee of the Fund. However, in the event that the Trustee provides professional services as part of their day-to-day business activities and the Fund engages that Trustee to provide similar professional services to the Fund, the Trustee may charge a fee commensurate with ordinary professional practice for the work performed.

Where required by the Superannuation Laws it is the responsibility of the Trustee to put in place an appropriate complaints procedure.

SMSF Strategy Guide – Rule 15 - *Trustee Powers*

For the Fund to be and remain as a Complying SMSF whilst simultaneously maximising the returns on the Assets of the Fund for the benefit of Members, the Trustee must have broad powers. These powers including, but not limited to, dealing both domestically and internationally with Assets, entering into various contracts and undertakings, dealing with various persons directly, investing widely and otherwise acting in the Members' best interests. Any such power exercised is subject to the Superannuation Laws and the Fund retaining its Complying SMSF status. The Trustee is not authorised to conduct any transaction, investment, business or action that would make the Fund a non-Complying SMSF. If the Trustee does conduct any transaction, investment, business or action that makes the Fund a non-Complying SMSF, then the offending transaction, contract or action is void.

The Trustee may enter into a SMSF Borrowing arrangement under sections 67, 67A and 67B of the SIS Act 1993 which may require it to establish a Bare Trust, Holding Trust or Custodian arrangement. The Trustee is authorised to do all things required by the Superannuation Laws, Regulator or any lender to enter into a SMSF Borrowing arrangement.

Any individual Trustee or director of the Corporate Trustee is to be indemnified in any action taken against the Trustee where they were acting in their role as Trustee of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status. The Trustee may also provide indemnities to other parties to a transaction.

The Trustee may create, at any time, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Cloned SMSF that has the same Rules, Members and Trustees as the Fund.

SMSF Strategy Guide – Rule 16 – *Trustee Meetings and Decision Making*

The Trustee is required to hold a Trustee Meeting in order to make decisions about significant events to transpire in relation to the Fund. Significant events are those events that impact upon the status of the Fund and its Members.
The Superannuation Laws provide that matters determined at every valid Trustee meeting must be recorded in the minutes of the Trustee. These minutes and all records of the Fund must be held for a period of no less than 10 years.

At a Trustee meeting, each Trustee is given one vote per dollar balance in the Superannuation Interests of the voting Members that the Trustee represents. However, the Trustees may determine at a valid Trustee Meeting an alternative voting method of the Trustee for the purpose of that specific Trustee Meeting, a matter to be decided at that Meeting or for future Meetings. A specific resolution is necessary for alternative voting for Trustee Meetings at any one given time.

Any decision is to be passed at a Trustee Meeting by a simple majority of votes. It must be evidenced by dated minutes and signed by the chairperson of the specific meeting. Any decisions made at a valid Trustee meeting that may impact upon Member benefits, either directly or indirectly, must be notified to the Members within a reasonable period of time if they did not attend the meeting as Trustee or director of a Corporate Trustee. Where the Trustee is a Corporation, the constitution will qualify the voting and decision-making process for the Trustee.

Where the Trustee of the Fund is making any determination in respect of any Death Benefit payments, Incapacity Superannuation Benefits or other resolution with respect to a deceased or incapacitated Member's Superannuation Interests, the standard majority voting rule is not to apply at a Trustee meeting. In this event only the deceased or disabled Member's Legal Personal Representative is able to vote on matters dealing with the deceased or disabled Member's Superannuation Interests or Superannuation Benefits. In this respect however the deceased or disabled Member's Legal Personal Representative must be a Trustee. These provisos secure and protect the interests and wishes of the deceased or incapacitated Member.

SMSF Strategy Guide – Rule 17- *Trustee to keep Accounts*

It is a requirement of the Superannuation Laws that the Trustee must keep accurate accounts for the Fund on an Income Year basis and for a period of at least five years. These include, but are not limited to the Fund's set of accounts, accounts for any Member Superannuation Interests, Reserve Accounts and any other Accounts that the Trustee may create.

The Trustee may determine the Value of the Assets of the Fund under a variety of principles including historical cost, market value or according to some other standard at a time the Trustee so determines or as the Superannuation Laws or Regulator require. The Trustee may also determine the value of the Assets of the Fund at different times.

The Trustee must appoint an Auditor each income year and ensure that the Fund's Accounts are audited in accordance with any Audit Standards and the Superannuation Laws.

SMSF Strategy Guide – Rule 18 - *Fund Earnings*

The Trustee is to determine the method of calculating the Earnings of an Account relating to the Fund, a Member's Superannuation Interests or group of Members' Superannuation Interests or Reserve Account. For the purpose of the Rules of the Fund there are four methods that the Trustee may apply for determining Earnings for any particular Account:

Method 1 - Accounts Method: a determination of income according to established accounting principles for SMSF's or Superannuation Funds which may or may not include a revaluation of any Assets of the Fund to their market value less any Fund expenses;

Method 2 -Trust Method: net income is determined as the term "net income" is defined under the taxation of trust provisions of the Superannuation Laws;

Method 3 - Income Method: any amounts received as income plus any realised capital gains and at the Trustee's discretion any allocations from a Reserve Account less any disbursements the Trustee determines that should be deducted from income including any General or Specific Expenses; or

Method 4 - Flexible Method: any combination of the above or an alternative method that the Trustee is of the opinion suitably reflects Earnings of the Fund or an Account of the Fund. However, in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use **Method 3 – the Income Method** as its default option.

Where Earnings are determined and declared by a Trustee on any Account, the Trustee, at its discretion and subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, may allocate the Earnings to any Account whatsoever including a Reserve Account and the Account where the Earnings were derived.

SMSF Strategy Guide – Rule 19 – *Accounting for a Member Lump Sum Superannuation Interest and Rule 20 – Accounting for a Member Income Stream Superannuation Interest*

The Superannuation Laws and these Rules allow the Trustee to create a Superannuation Interest on behalf of a Member either at the Member's request or at the Trustee's discretion. The two types of Superannuation Interest that can be created in a Complying SMSF are a Member Lump Sum Superannuation Interest and a Member Income Stream Superannuation Interest.

Where a Superannuation Interest is created the Trustee is to establish an Account for each Superannuation Interest. Following the establishment of the Account, until terminated, the Trustee has the power under Rules 19 and 20 to add and/or deduct a variety of amounts from these accounts. Additions to these accounts are varied and include, but are not limited to, Contributions Splitting amounts, Family Law Splitting Payments and allocations from Reserve Accounts.

There is a broad measure of discretion in the Rules as to whether an amount is to be added to a Superannuation Interest and what category of Superannuation Interest. Once an amount is added to a Superannuation Interest it is vested and shall only benefit the Member, the Dependants of the deceased Member, the Member's Legal Personal Representative or deceased Member's Legal Estate. It is fixed in the Member's Superannuation Interest Account under Part 5 of the SIS Regulations 1994.

For each Superannuation Interest various expenses may be deducted on a proportional basis. Other Specific Expenses can be allocated to a particular Superannuation Interest Account as determined by the Trustee. Superannuation Income Stream and Superannuation Lump Sum payments are examples of Specific Expenses. Amounts such as an Excess Contributions Tax Release Authority may be deducted proportionally from all Member Superannuation Interests. Alternatively, amounts such as Excess Contributions Tax may be deducted from an Account for a specific Member's Superannuation Interest.

The Trustee is also required to determine the components of a Member's Superannuation Interest which may include:

a) preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;

b) the untaxed taxable, taxable or tax free components as required by the Superannuation Laws.

SMSF Strategy Guide – Rule 21 - *What happens to Taxes and Excess Contributions Tax?*

There are numerous Federal and State taxes and levies imposed upon the Trustee and Members of the Fund. These include, but are not limited to, income tax, capital gains tax, stamp duty, Contributions Tax and land tax.

The Product Disclosure Statement for the Simpler Super Rules notes that where the Trustee of the Fund retains Assets specifically to pay a current Superannuation Income Stream, any income or capital gains realised from a current Superannuation Income Stream's Assets are tax exempt.

The Trustee is also required to adhere to any Member's Excess Contributions Tax Release Authority. This is where the Member has been assessed by the Regulator to pay excess Concessional or excess Non-Concessional Contributions tax. This is not an impost on the Trustee but one that the Trustee must give effect to under the Superannuation Laws.

Where the Trustee receives a tax refund as a result of the payment of imputation credits from the Fund's investment in Australian listed company or managed funds the Trustee has discretion where to credit the amount of the tax refund. Where tax benefits attributable to a specific Superannuation Interest are utilised by an alternative Superannuation Interest the Trustee has the discretion to make a Tax Adjustment payment. This is not a mandatory requirement of the Trustee.

SMSF Strategies Guide - Rule 22 – *Contributions Splitting*

The Superannuation Laws allow a Member of a Fund to split their concessional contribution with their Spouse, who may or may not be a Member of the same Superannuation Fund. The splitting is carried out by the Member providing the Trustee with a Contributions Splitting Notice. Once received the Trustee will Allot, transfer or Rollover the amount subject to the Contributions Spilt to the Spouse Member's Lump Sum Superannuation Interest.

SMSF Strategies Guide - Rule 23 – *Family Law*

The Superannuation Laws allow a Member of a Fund or the Family Court to adjudicate or come to an agreement in relation to the split of superannuation matrimonial property. The Family Law Court or agreement may specify a percentage or $split of a Member's Superannuation Interest. The Trustee must abide by this decision. However the Trustee should also take into account the provisions of Part 7A of the SIS Regulations 1994 which allow the Trustee to consider which Superannuation Interest the Family Law split should be taken from.

SMSF Strategy Guide – Rule 24 - Member Meetings

There are times when the Members of a Fund may conduct a meeting such as to appoint a new Trustee pursuant to Rule 2.5 a). At any meeting of members a quorum is achieved where at least 50% of all available Members attend the Member's Meeting and may include one Member.

Importantly for each decision by a Member at a Member's Meeting the Member is to hold that number of votes equal to $1 per vote in respect of the total Member Superannuation Interest Entitlements of the Member. Member's meetings do not have to be in person but can be by way of phone, internet or such other form allowing Members to get to together to make valid binding decisions for the Fund.

Part Four – Paying Superannuation Benefits from a Member Superannuation Interest

Purpose

Where permitted under the Rules and in accordance with the Superannuation Laws, a Member may withdraw a Superannuation Lump Sum or commence a Superannuation Income Stream. However, it is not compulsory for a Member to immediately withdraw a Superannuation Lump Sum or commence a Superannuation Income Stream when they qualify to do so. In accordance with the Superannuation Laws the Member may retain their superannuation benefits in a Member Lump Sum Superannuation Interest until their death. At this time the deceased Member's Superannuation Interest would be paid by the Trustee of the Fund as a Death Benefit according to the deceased Member's SMSF Will, if any.

In accordance with the Superannuation Laws, circumstances that allow a Member to access Superannuation Benefits from their Superannuation Interests include:

- Temporary Incapacity - only as a Temporary Incapacity Superannuation Income Stream.
- Permanent Incapacity – as a Superannuation Lump Sum or a Superannuation Income Stream.
- While working and at preservation age – as a Transition to Retirement Superannuation Income Stream.
- Retirement – a Superannuation Lump Sum or a Superannuation Income Stream.
- Age 65 – a Superannuation Lump Sum or a Superannuation Income Stream.
- Terminal Illness - as a Superannuation Lump Sum or a Superannuation Income Stream.
- Death - Superannuation Lump Sums or a Superannuation Income Stream, subject to the Superannuation Laws.

SMSF Strategy Guide – Rule 25 – *Accessing Member Superannuation Benefits*

At any time, upon satisfying a condition of release under the Superannuation Laws, a Member may seek to be paid a Superannuation Benefit from one or more of the Superannuation Interests held by the Trustee of the Fund on their behalf. However, it is not a compulsory requirement of the Fund for a Member, upon satisfaction of a condition of release, to automatically commence their Superannuation Benefit. A Member is entitled to maintain their Superannuation Interests for the benefit of their Dependants or Legal Estate in their event of their death. A member of the Fund can also Rollover or transfer their Transfer Superannuation Interest to an Eligible Entity. This Eligible Entity may include, but is not limited to, a complying Superannuation Fund or another Complying SMSF.

There are several circumstances where a Member of the Fund can officially access their Superannuation Benefits from their Superannuation Interests. These circumstances include, but are not limited to the following:

- Temporary Incapacity and Permanent Incapacity

- Terminal Illness;
- Retirement or at aged 65;
- Under Severe Financial Hardship or on Compassionate Grounds;
- When Member reaches Preservation Age and can commence a Transition to
- Retirement Income Stream.
- On the death of a Member of the Fund, numerous Superannuation Laws apply to the payment of Death Benefit Superannuation Lump Sums and Death Benefit Superannuation Income Streams. The Trustee shall pay due regard to any Member SMSF Will in making any Death Benefit payments. Benefits that may be paid at the time of the death of a Member include, but are not limited to:

  - *a Superannuation Lump Sum may be paid on the death of a Member to a Dependant, the deceased Member's Legal Estate, charity or public benevolent institution; and*

  - *Superannuation Income Stream may be paid to a Dependant for taxation purposes which includes all those persons who are Dependants but in the case of a Child, only a Child who is aged less than 18 unless they were financially dependent upon the deceased Member. Where an Income Stream is paid to a Child in accordance with the Superannuation Laws, it must be commuted no later than the 25th birthday of the Child.*

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Dependant includes a Child of the Member, a person in an Inter-Dependant Relationship with the Member, any financial dependant of the Member irrespective of age and anyone who in the opinion of the Trustee is a Dependant of the Member.

The Member may request the Trustee to Allot, Rollover or transfer a Transfer Superannuation Interest for the benefit of a Spouse as part of the Contributions Splitting laws. Similarly, a Member can request the Trustee to Allot, Rollover or transfer a Transfer Superannuation Interest for the benefit of an ex-Spouse or Spouse pursuant to a Family Law Payment Splitting Notice. With respect to any Family Law Payment Splitting Notice, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, it shall be at the Trustee's total unfettered discretion as to how any Superannuation Interest or Superannuation Benefits are to be paid and to which Eligible Entity payment will be made.

SMSF Strategy Guide – Rule 26 – Use of a Guardian

A member may appoint a Guardian by Deed so that upon the death of the member the Guardian will police the payment of the member's death benefits to their intended recipients and will have the casting vote in relation to those payments and any matters pertaining to their payment. This is very beneficial for blended families (multiple marriages families), or families in which there are special needs recipients (recipients requiring special overseeing of their affairs due to eg. financial irresponsibility or substance abuse), to ensure that the death benefits are paid to the surviving spouse/partner and then on in favour of the bloodline.

Part Five – Other Special Events

SMSF Strategy Guide – Rule 27 – Winding up the Fund

In accordance with the provisions of the Superannuation Laws the Fund will continue in perpetuity or until the Fund is wound up. The Fund may be wound up under the following circumstances:

1. On the death of the last remaining Member of the Fund any replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;

2. The Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders the Fund is to be wound up;

3. The Superannuation Laws are amended such that the Fund can no longer remain a Complying SMSF and the Members agree to wind up the Fund;

4. The Trustee simply resolves that the Fund is to be wound up.

In the event of the Fund being wound up the Trustee is to disburse any remaining proceeds, Cash or Assets of the Fund. Any remaining proceeds, Cash or Assets of the Fund may be distributed by the Trustee, subject to the Superannuation Laws, to any of the following parties:

- Members and former Members of the Fund;
- Relatives of any Member or former Member;
- to any Legal Estate of a Member or former Member; or
- to any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee sees fit.

SMSF Strategy Guide – Rule 28 – Changing the Funds Name or Rules

The Superannuation Laws regularly change. Trustees must maintain the Rules so they can implement and take advantage of any and all strategic possibilities the changing Superannuation Laws may allow. The Simpler Super Rules allow the Trustee to vary, change, delete from, add to or otherwise amend or upgrade the Rules with simply a special resolution. This simple ability to vary, change, delete from, add to or otherwise amend or upgrade the Rules of the Fund is conditional upon such variation, change, addition to, deletion from or amendment not detrimentally affecting a Member's Superannuation Interest in the Fund.

There may also be Special Rules of the Fund that have been put in place regarding Assets Test Exempt Pensions, other Income Streams, a SMSF Will, a SMSF Life Will as well as things that the Trustee or Member was allowed to do but may no longer be allowed under the existing Superannuation Laws. Any variation to the Rules of the Fund must take into account the Special Rule.

The Trustee may change the name of the Fund at any time provided the Regulator is informed of the change in name within the period required under the Superannuation Laws – currently 21 days.

Part Six – Rules Definitions

Purpose

Throughout the SMSF Strategies Trust Deed and Rules certain terms are mentioned on more than one occasion. These terms are important to the functioning and understanding of the Rules of the Fund. Such terms are defined in Part 6 of the Rules.