




# DEED OF VARIATION

## ASHTON SUPERANNUATION FUND

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## DEED OF VARIATION OF ASHTON SUPERANNUATION FUND

THE COMMENCEMENT DATE OF THIS DEED IS: 24 August 2018

### PARTIES

**TRUSTEE:** ASHTON FAMILY PTY. LTD. ACN 068 919 531 of c/-  
Simmons Livingstone & Associates, Unit 30, 340 Hope  
Island Road Hope Island Queensland 4212 (the **Trustee**)

**MEMBERS:** JOANNE ELLEN ASHTON of 4 River Cove Place  
Helensvale Queensland 4212

ROBERT ALBERT ASHTON of 4 River Cove Place  
Helensvale Queensland 4212

(collectively, the **Members**)

### RECITALS

- A. ASHTON FAMILY PTY. LTD. ACN 068 919 531 is the trustee (the **Trustee**) of ASHTON SUPERANNUATION FUND (the **Fund**).
- B. JOANNE ELLEN ASHTON and ROBERT ALBERT ASHTON are the members of the Fund (the **Members**).
- C. The Fund was established by Deed dated 3 April 1995 and varied by Deed dated 20 June 2013 (**Current Rules of the Fund**).
- D. **Clause 52** of the Current Rules of the Fund allows the Trustee to vary the Governing Rules of the Fund (as the term is defined at Section 10(1) of the *Superannuation Industry Supervision Act 1993 (SISA)*, provided the variation does not reduce a Member's Benefit (as defined in the Current Rules of the Fund).
- E. The purpose of the Fund is to provide Benefits to Members and, in the event of the Member's death, then for the Member's Dependants, and such other purposes as permitted from time to time under the SISA and *Superannuation Industry (Supervision) Regulations 1994 (SISR)*.
- F. The settlement of this Deed, resolved by the Trustee as the new Governing Rules of the Fund (**New Governing Rules**), ensures the purpose of the Fund is consistent with the SISA and SISR.

### **OPERATIVE PARTS:**

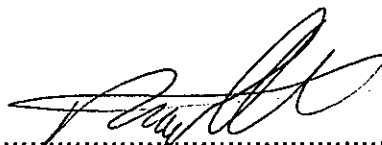
1. **Replacement of Governing Rules:** The Current Rules of the Fund are replaced by the New Governing Rules marked as **Annexure One** to this Deed, pursuant to **clause 52** of the Current Rules of the Fund subject to the following:
  - a. a reference in the New Governing Rules of the Fund to the declaration of trust is to the trust declared in the Deed dated 3 April 1995;
  - b. a reference to the Initial Trustee in the New Governing Rules of the Fund is to the party shown as trustee in the Deed dated 3 April 1995;

- c. a reference to the settlement of the Fund in the New Governing Rules of the Fund is to the settlement of the Fund as constituted and shown in the Deed dated 3 April 1995;
  - d. a reference to Trustee, as other than the Initial Trustee, in the New Governing Rules of the Fund shall be to the Trustee read in this Deed as acting for the Fund at the date of this Deed, and shall as retired, removed, replaced and/or appointed under the terms of the New Governing Rules of the Fund from and following the date of this Deed;
  - e. any Special Rules adopted prior to this Deed in respect to segregated assets and/or segregated Member Superannuation Interests are restated in the New Governing Rules;
  - f. any Special Rules adopted prior to this Deed restricting membership of the Fund and/or the payment of Benefits from the Fund (such as any limitations imposed in respect to Foreign Superannuation Funds and QROPS) are restated in the New Governing Rules;
  - g. any Special Rules adopted prior to this Deed by the Trustee and/or one or more Members of the Fund in respect to membership matters, including, but not limited to Default Superannuation Fund Nominations, Pension Interest Agreements, SMSF Living Wills, SMSF Wills, Binding Death Benefit Nominations, Alternate Decision-Maker Nominations and/or such other Special Rules in respect to the Members' SMSF estate planning are restated in the New Governing Rules;
  - h. any Special Rule adopted prior to this Deed by the Trustee and/or one or more of the Members in respect to any Fund administration matter not otherwise shown in the preceding terms of this Operative Part 1 is restated in the New Governing Rules;
  - i. any amendment which detrimentally affects a Member's Superannuation Interest shall not be incorporated in the New Governing Rules;
  - j. any variation of which would cause the Fund to be subject to resettlement (if determined to be a trust at law) and/or a capital gains tax event shall not be incorporated in the New Governing Rules; and
  - k. if the Fund has a defined benefit pension in existence pre-2004, a loan arrangement pre-1985 or any other Rule that advantages the Members of the Fund, but which would be lost or diminished if a variation were imposed, then the variation which would cause such a loss or diminishment is not to be incorporated in the New Governing Rules.
2. **No Resettlement at Law:** The replacement of the Current Rules of the Fund with the New Governing Rules does not constitute a resettlement of the Fund at law, equity or under any Superannuation Law.
  3. **Consent to Electronic Signatures:** The parties consent to execution of this Deed by electronic signature, and deem the electronic execution (including witness execution by electronic signatures) to be valid, subject to any state or Commonwealth electronic transactions and/or property law statutory provisions restricting such execution by electronic signature.

4. **Defective Execution:** Should a party's execution of the Deed be defective and/or by electronic signature in a state in which electronic signature is not allowed in the circumstances, then the party and witness (whether the same or a different witness) may re-sign the Deed to correct the defect. Notwithstanding any such remediation of the execution, the effective date of the Deed shall be the date upon which the last of the parties executed the Deed, excluding any later remedial execution under the terms of this Clause.
5. **Stamping:** The Trustee shall bear the responsibility of doing all things necessary to cause the stamping of this Deed (if required).
6. **Counter-Parts:** The parties acknowledge and agree that this Deed may be executed in counterparts, and that each taken as a whole constitutes the duly constituted Deed.
7. **Severability:** The parties acknowledge and agree that should any term of this Deed be determined to be invalid, illegal or unlawful for any reason, such term shall be severed and the balance of this Deed shall be restated.
8. **Costs:** The costs of drawing, execution and holding of this Deed are to be met from the assets of the Fund.
9. **Ratification:** The parties ratify and continue the Fund on the terms read in this Deed.

**EXECUTED AS A DEED.**

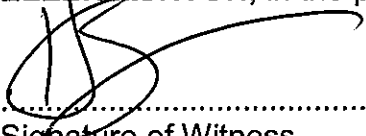
EXECUTED by **ASHTON FAMILY PTY. LTD. ACN 068 919 531** in accordance with Section 127 of the *Corporation Act 2001 (Cth)*:

  
 .....  
**ROBERT ALBERT ASHTON**  
 Director

  
 .....  
**JOANNE ELLEN ASHTON**  
 Director

24/08/2018  
 .....  
 Date

SIGNED and DELIVERED by **JOANNE ELLEN ASHTON**, in the presence of:



Signature of Witness

  
**JOANNE ELLEN ASHTON**

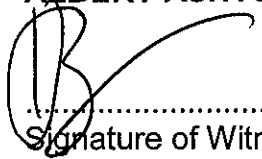
*Katrina Elizabeth Brown*

Name of Witness – please print in full

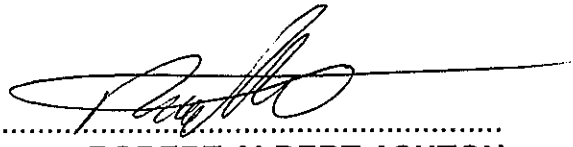
*24/08/2018.*

Date

SIGNED and DELIVERED by **ROBERT ALBERT ASHTON**, in the presence of:



Signature of Witness

  
**ROBERT ALBERT ASHTON**

*Katrina Elizabeth Brown*

Name of Witness – please print in full

*24/08/2018*

Date

**ANNEXURE ONE  
ASHTON SUPERANNUATION FUND  
GOVERNING RULES**

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## PART ONE – THE FUND ESTABLISHMENT

### 1. ESTABLISHMENT AND INTERPRETATION GUIDANCE

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- 1.1 A reference to the Fund is to **ASHTON SUPERANNUATION FUND (Fund)**.
- 1.2 The Trustee and Members settle the Fund as an indefinitely continuing complying Self-Managed Superannuation Fund (**SMSF**).
- 1.3 The Fund is settled as a Self-Managed Superannuation Fund, notwithstanding that the Trustee may resolve to change the nature of the Fund to a small APRA Fund, or such other type of fund permitted under the Superannuation Laws.

#### The Purpose of the Fund

- 1.4 A SMSF, as the term is read for purposes of this Deed, is defined at sections 10(1), 17A and 17B of the SISA as a legal entity, which includes conditions including:
- (a) the Fund must have fewer than 5 (five) Members, and:
    - (i) if the Trustees of the Fund are Natural Person Trustees, then each Trustee of the Fund is a Member, excepting that a Member may nominate an Alternate Decision-Maker to act in his/her place as a Natural Person Trustee;
    - (ii) if the Trustee of the Fund is a Constitutional Corporation (**Corporate Trustee**), then each Member is a director of the Corporate Trustee, excepting that a Member may nominate an Alternate Decision-Maker to act in his/her place as a director of the Corporate Trustee (*see also Rules 4, 5 and 6*);
  - (b) if the Fund has a single Member, then:
    - (i) the single Member is one of two Natural Person Trustees, with the other Trustee being a Relative of the Member (**Relative**), or the Member is a sole director of a Corporate Trustee, or one of two directors and the other director is a Relative of the Member;
  - (c) no Member of the Fund is an employee of another Member, unless the Members concerned are Relatives; and
  - (d) no Trustee (including a Corporate Trustee and/or a director of a Corporate Trustee) of the Fund receives any remuneration from the Fund, or from any Person, for any duties or services performed by the Trustee in relation to management of the Fund.
- 1.5 The covenants read at sections 52B and 52C of the SISA are expressly adopted herein as Governing Rules of the Fund.
- 1.6 The Fund is settled and maintained solely for not less than one of the following core purposes, as read at section 62(1)(a) of the SISA:
- (a) the provision of benefits for each Member on or after whichever of the following is the earlier:
    - (i) the Member's Retirement from any business, trade, profession, vocation, calling, occupation, or employment in which the Member was engaged (**Retirement**); or
    - (ii) the Member's attainment of an age not less than the age prescribed for the purposes of Retirement (*see SISR 6.01(7)*);
  - (b) the provision of benefits in respect of each Member on or after the Member's death, if:
    - (i) the death occurred before the Member's Retirement or the Member attaining **Preservation Age**; and



- (ii) the benefits are provided to an **Eligible Pension Beneficiary** or Eligible Lump Sum Beneficiary and/or one or more of them.
- 1.7 The Fund is also settled and maintained for not less than one of the following ancillary purposes, as read at section 62(1)(b) of the SISA:
- (a) the provision of benefits for each Member on or after the termination of the Member's employment with an employer who had, or any of whose Associates had, at any time, contributed to the Fund in relation to the Member;
  - (b) the provision of benefits for each Member on or after the Member's cessation of work, Retirement, Temporary Incapacity, Permanent Incapacity and/or a Terminal Medical Condition;
  - (c) the provision of benefits in respect of each Member on or after the Member's death if:
    - (i) the death occurred after the Member's Retirement (whether the Member's Retirement occurred before, or occurred after, the Member joined the Fund) or after the Member attained Preservation Age (or such other age prescribed by Superannuation Laws in respect to an ancillary purpose); and
    - (ii) the benefits are provided to the Legal Personal Representative of the Member's Legal Estate, to any or all of the Member's Dependants, or to both; and
  - (d) the provision of such other benefits as the Regulator approves in writing.
- 1.8 The Fund Assets are held on trust, in accordance with the Governing Rules (including any Special Rules in respect thereto).

**Overview of the Governing Rules and Special Rules**

- 1.9 This Deed is to be read as the Governing Rules of the Fund (**Governing Rules**), and the Trustee may from time to time add, vary, amend, modify and/or replace the Governing Rules.
- 1.10 Special Rules of the Fund (each a **Special Rule**) (*for example, a Binding Death Benefit Nomination of a Member*) are unique arrangements resolved by the Trustee and/or Members, which are not capable of being amended or varied except on the terms of the Special Rules. Special Rules are deemed in all later Governing Rules of the Fund to be incorporated, notwithstanding later deeds or amendments of the Governing Rules may refer to a replacement of the Governing Rules in whole. This Rule 1.10 is deemed incorporated in all later deeds or amendments of the Governing Rules.

**Primacy of Superannuation Laws, Special Rules and Governing Rules**

- 1.11 The Governing Rules, Special Rules and the Superannuation Laws are to apply as to primacy as below shown:
- (a) where the Governing Rules or Special Rules prescribe terms which are prohibited (as opposed to allowed) by the Superannuation Laws, then the Superannuation Laws shall take primacy over the Governing Rules or Special Rules. To the extent reasonable in the circumstances, the Trustee may notwithstanding, apply such of the terms of the prohibited Governing Rules or Special Rules as can be applied in an alternate manner which is not prohibited;

*For example, if the Governing Rules allow Members to make Contributions at 80 years of age, but the Superannuation Laws limit the making of Contributions to 75 years of age – then the Superannuation Laws prevail and Members are prohibited from making Contributions beyond 75 years of age.*

- (b) where the Governing Rules or Special Rules prescribe more restrictive terms than those provided in the Superannuation Laws, then the Governing Rules or Special Rules take primacy over the Superannuation Laws;

*For example, the Trustee and Members resolve that membership is limited to the bloodline members of John Smith's family. The Superannuation Laws allow membership in a SMSF to be inclusive, notwithstanding bloodline relationship of Members. In this case, the Governing Rules take primacy over the Superannuation Laws.*

- (c) where the Governing Rules or Special Rules do not prohibit a thing, matter, resolution or allowance which is permitted by the Superannuation Laws, then the Governing Rules and Special Rules shall be read as allowing the thing, matter, resolution or allowance;

*For example, if the Governing Rules or Special Rules do not prohibit the Trustee from buying widgets, and the Superannuation Laws expressly allow the Trustee to buy widgets – then, notwithstanding the Rules do not specifically authorise the Trustee to buy widgets, the Trustee is allowed to do so.*

- (d) the primacy read in this Rule 1.11 applies to any amendments to the Superannuation Laws made after the date of the Governing Rules or Special Rules; and
- (e) for clarity, a reference to Governing Rules includes any resolutions of the Trustee or Members made in accordance with the terms of this Deed, or any variations or amendments of the Governing Rules.

1.12 Nothing in the Governing Rules shall be read as allowing, ratifying or endorsing a transaction, undertaking, agreement or arrangement by the Trustee which has the effect of causing the Fund to be a Non-Complying SMSF, or giving rise to a breach of the Superannuation Laws. To the extent that a term of the Governing Rules may authorise conduct which breaches the Superannuation Laws, the term is to be read as void.

## **2. ESTABLISHMENT**

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2.1 Upon settlement of the Fund and the Initial Trustee accepting to act as Trustee of the Fund, the Trustee shall do all things necessary to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws, including, but not limited to:

- (a) appointing Professionals and SMSF Advisers;
- (b) appointing an Auditor;
- (c) registering with the Regulator as a SMSF;
- (d) applying for a tax file number and an Australian business number;
- (e) completing any mandatory Trustee training or education required by the Superannuation Laws and/or the Regulator;
- (f) opening a bank account, cash management account or similar account to enable the Trustee to receive contributions, dividends, income and other monies on behalf of the Fund and to make payments from the Fund for benefits and Fund expenses;
- (g) accepting and dealing with the Members;
- (h) communicating with the Members with respect to Roll-overs and Member Contributions;
- (i) receiving Member Roll-overs and Member Contributions by any manner allowed under the Superannuation Laws; and
- (j) doing such further and additional things as may be required from time to time to establish and operate validly as a Complying SMSF under the Superannuation Laws.

## **PART TWO – THE TRUSTEE**

### **3. TRUSTEESHIP OF THE FUND**

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- 3.1 There shall be, at all times, a Trustee of the Fund.
- 3.2 **Interpretation as to Trustee:**
- (a) a reference in **Part Two** of this Deed to Trustee is to a trusteeship held by Natural Persons;
  - (b) a reference in **Part Two** of this Deed to a Corporate Trustee is to a trusteeship by a Constitutional Corporation in accordance with the *Corporations Act 2001 (Cth)*;
  - (c) a reference to Trustee in the remainder of the Governing Rules (other than a Rule of **Part Two**) is to the Trustee of the Fund as constituted and includes, but is not limited to, one or more Natural Persons (if less than two Natural Persons, then only in circumstances permitted by the Superannuation Laws), a Corporate Trustee, or such other Person or Persons (including an RSE Licensee) as the Superannuation Laws allow; and
  - (d) if a term of the Governing Rules refers to a decision of the Trustee (other than a Rule of **Part Two**), then the decision-making of the relevant Trustee as constituted, whether being Natural Persons or the Directors of a Corporate Trustee, shall be determined in accordance with the terms of this **Part Two**.
- 3.3 The **Initial Trustee** (as constituted, being Natural Persons, a Corporate Trustee or any other Person or Persons permitted to act in such capacity in accordance with the Superannuation Laws) accepts to act in accordance with these Governing Rules and the Superannuation Laws (including but not limited to section 17A of the SISA).
- 3.4 The Initial Trustee, and each further appointed Trustee(s) of the Fund, shall in the undertaking of its duties in respect to the Fund:
- (a) hold the Fund (including all Earnings, profits, accumulations, and Contributions) on trust for the Members of the Fund in accordance with the Governing Rules;
  - (b) comply with the Superannuation Laws, and ensure the Fund maintains a Complying SMSF status as the term is interpreted in accordance with section 42A of the SISA;
  - (c) do all things necessary to ensure the Fund qualifies for Concessional Tax Treatment, and such other benefits or concessions as shall apply to a Complying SMSF;
  - (d) refrain from undertaking any transaction which would give rise to a penalty or obligation of the Fund which would not otherwise exist, but for a breach of the Superannuation Laws by the Trustee; and
  - (e) adhere to its obligations generally in respect to maintenance of the Fund Assets and Membership of the Fund.
- 3.5 In reading the preceding terms of Rule 3, where a Natural Person acting as Trustee, or as Director of a Corporate Trustee, is referred to, such Natural Person must:
- (a) not be a Disqualified Person;
  - (b) be a Member, or satisfy a criteria of section 17A of the SISA; and
  - (c) comply with the Superannuation Laws in respect to his/her appointment, conduct and retirement, including doing all things necessary to be vested or divested (as the case may be) in the Fund promptly, and having regard to the interests of the Members of the Fund.

#### **4. TRUSTEE AS NATURAL PERSONS**

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- 4.1 This Rule 4 prescribes the terms for the conduct of the Trustee, where the Trustee is constituted by one or more Natural Persons.

4.2 Each Trustee must conduct himself/herself in a respectful manner, and communicate on terms reasonable to conduct the administration of the Fund in accordance with the Superannuation Laws.

#### 4.3 **Members as Trustee**

- (a) If the Trustee consists of Natural Persons, then each Member must be a Trustee of the Fund, except as otherwise prescribed in Rules 4.3(b), 4.3(c) and 4.3(d).
- (b) A Member may appoint an Alternate Decision-Maker to act in his/her place as Trustee as follows:
  - (i) if the Member wishes an Alternate Decision-Maker to act in his/her place for a reason unrelated to Mental Incapacity or death – refer to Rule 6.2; and/or
  - (ii) if the Member wishes an Alternate Decision-Maker to act in his/her place in the event of his/her Mental Incapacity or death – refer to Rule 6.3.
- (c) If the Member does not nominate an Alternate Decision-Maker to act, and the Member becomes Mentally Incapacitated or dies, then the Default Decision-Maker Rules apply – refer to Rule 6.4.
- (d) If a Member becomes a Disqualified Person, then the Member must retire as Trustee immediately. If the Member fails or refuses to retire, then the Trustee (other than the Disqualified Person) can resolve by Trustee Ordinary Resolution (excluding the votes which the Disqualified Person would have been able to cast) to remove the Disqualified Person as Trustee.
- (e) The Trustee (other than the Disqualified Person) has, for the purposes of Rule 4.3(d), Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Disqualified Person of authority in relation to his/her position as Trustee.
- (f) Rules 4.3(d) and 4.3(e) shall be read to apply to an Alternate Decision-Maker acting on behalf of a Member as Trustee.

#### 4.4 **Trustee Meetings and Decision-Making**

- (a) Any Trustee (**Calling Trustee**) may call a Trustee Meeting, by giving written notice to the other Trustees of not less than 5 (five) business days of the proposed Trustee Meeting identifying the date, time and location. The notice shall also contain details of the methods of telephone, video conferencing or such other mechanism for allowing each and every Trustee to hear and participate in the Trustee Meeting (should a Trustee be unable to attend personally). The notice may be by email (including attachments), facsimile, telephone text, personal service, or by posting to the other Natural Person Trustees.
- (b) The Calling Trustee may offer a written resolution (including but not limited to a resolution communicated by electronic means, and executable by an electronic signature of the Trustee(s)) for execution by the Trustees, which may be in addition, or in the alternative, to holding the proposed Trustee Meeting. The written resolution shall be determined on its terms, in accordance with the Decision-Making terms of this Rule 4.
- (c) A quorum of the Trustee Meeting is met when the Trustees representing not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund (excluding Reserve Account Balances) are in attendance (whether in person, by telephone, by video conferencing, or such other mechanism by which the Trustees may participate), and may be a single Trustee (provided that Trustee represents not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund).
- (d) A Trustee Meeting shall be called when any significant event, transaction, acquisition, disposal, or other event directly related to the Fund is proposed. These matters include, but are not limited to, those that relate to an Asset of the Fund, Superannuation Interest,

Investment Strategy, Reserve Account, Superannuation Benefit, Member or where otherwise required under the Superannuation Laws.

- (e) For voting purposes, each Natural Person Trustee (including one or more Persons acting collectively as an Alternate Decision-Maker) holds the number of votes equal to the proportionate value of the Superannuation Interests represented by such Trustee in the Total Superannuation Interests held in the Fund (**Proportionate Voting Rule**).
- (f) Notwithstanding the Proportionate Voting Rule, the Trustee may adopt an alternate method of voting arrangements for some or all of the Trustee Meetings, by a resolution in favour supported by Trustee Special Resolution.
- (g) If there is only one Natural Person Trustee, the resolution of the Trustee shall be made solely by such Natural Person.

*Warning: If there is only one Natural Person acting as Trustee, ensure that section 17A of the SISA is not breached. For example, Bob and Jane are members of a Fund, Bob nominates Jane as his Alternate Decision-Maker. Bob becomes Mentally Incapacitated, in which case Jane would be the sole Natural Person Trustee – and such appointment does not breach section 17A of the SISA. However, if Jane ceased to be a Member, and Bob was the only Member – then Bob could not act as a sole Natural Person Trustee, without violating section 17A of the SISA. In such circumstances, Bob should establish a Corporate Trustee to succeed Bob and Jane as Natural Person Trustees.*

- (h) A resolution at a Trustee Meeting shall be passed where not less than 51% (fifty-one percent) of the votes available at the Trustee Meeting are cast in favour of the resolution. The resolution shall be signed by any one or more of the Trustees and/or the Chairman, to reflect the passing of the resolution, and may include execution by electronic signatures of the party(ies).
- (i) The Trustees are to record and maintain all resolutions of the Trustee for such period as required by the Superannuation Laws.
- (j) For clarity, if an Alternate Decision-Maker (including one or more Persons acting collectively as an Alternate Decision-Maker) is also a Member of a Fund in their individual right, then such Person shall have the right to vote representatively, and individually.

*For example, Jane appointed Sam, Slick and Stu to act as her Alternate Decision-Maker, but Bob (her Spouse), Jim and Sam are also Members of the Fund. Sam holds two positions, one as a Member of the Panel of Persons acting as Jane's Alternate Decision-Maker, and the other as a Natural Person Trustee in his own right. Sam can vote his own Superannuation Interests, notwithstanding he acts for Jane – and he can also vote Jane's Superannuation Interests, collectively with Slick and Stu as Alternate Decision-Maker for Jane.*

## **5. CORPORATE TRUSTEE**

- 5.1 This Rule 5 prescribes the terms for the conduct of the Trustee, where the Trustee is a company (**Corporate Trustee**).

*Note: A company acting as a Corporate Trustee must be a Constitutional Corporation.*

- 5.2 Each Director of the Corporate Trustee must conduct himself/herself in a respectful manner, and communicate on terms reasonable to conduct the administration of the Fund in accordance with the Superannuation Laws.
- 5.3 The Corporate Trustee shall be administered in accordance the terms of its governance documents, subject to the Superannuation Laws and the Governing Rules of the Fund, subject to Rule 5 generally.
- 5.4 **Members as Directors of Corporate Trustee**

- (a) Each Member must be a Director of the Corporate Trustee of the Fund, except as otherwise prescribed in the terms of Rules 5.4(b), 5.4(c) and 5.4(d).
- (b) A Member may appoint an Alternate Decision-Maker to act in his/her place as Director of the Corporate Trustee as follows:
  - (i) if the Member wishes an Alternate Decision-Maker to act in his/her place for a reason unrelated to Mental Incapacity or death – refer to Rule 6.2; and/or
  - (ii) if the Member wishes an Alternate Decision-Maker to act in his/her place in the event of his/her Mental Incapacity or death – refer to Rule 6.3.
- (c) If the Member does not nominate an Alternate Decision-Maker to act, and the Member becomes Mentally Incapacitated or dies, then the Default Decision-Maker Rules apply – refer to Rule 6.4.
- (d) If a Member becomes a Disqualified Person, then the Member must retire as Director immediately. If the Member fails or refuses to retire, then the Directors (other than the Disqualified Person) can resolve by Trustee Ordinary Resolution (excluding the votes which the Disqualified Person would have been able to cast) to remove the Disqualified Person as Director.
- (e) The Directors (other than the Disqualified Person) have, for the purposes of Rule 5.4(d), Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Disqualified Person of authority in relation to his/her position as Director.
- (f) Rules 5.4(d) and 5.4(e) shall be read to apply to an Alternate Decision-Maker acting on behalf of a Member as Director.
- (g) If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

## 6. ALTERNATE DECISION-MAKER FOR MEMBER

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6.1 This Rule 6 prescribes the terms by which a Member appoints an Alternate Decision-Maker to act in his/her shoes as a Trustee (if constituted as Natural Persons), a Director of a Corporate Trustee and/or in relation to such other matters as may be relevant to the Member. This Rule 6 is to be read with Rule 39.

### 6.2 Nomination of Alternate Decision-Maker for Member with Legal Capacity:

*For example, Bob is moving overseas. Jane and Mary are the other Members of the Fund. Bob has legal capacity, but he wants Jane to act as his Alternate Decision-Maker whilst he is overseas. Jane, accordingly, would hold the voting powers for John, as well as herself. Bob can apply this Rule to make an Enduring Power of Attorney (EPOA), appointing Jane to act for him whilst he is overseas, and subject to any terms he may include in the EPOA. He may complement the EPOA by making an **Alternate Decision-Maker Nomination** in the form shown at Annexure A (or as otherwise prescribed as an approved form for an Alternate Decision-Maker Nomination by the Trustee from time to time).*

- (a) A Member may appoint an Alternate Decision-Maker to act in his/her place by EPOA notwithstanding the Member being alive and having Legal Capacity to act, and on such terms as are recorded in such EPOA (including the term of appointment and conditions of appointment). The Alternate Decision-Maker shall act on a continuing basis for such Member upon acceptance by the Alternate Decision-Maker on terms of the EPOA, until the earlier of the following (unless otherwise prescribed in the EPOA):
  - (i) the Member removes the Alternate Decision-Maker in writing (including by way of a revocation of the EPOA);
  - (ii) the Member ceases to be a Member; or

- (iii) the Member's death (unless the Alternate Decision-Maker is the same Person(s) who acts as the Alternate Decision-Maker on and following the Member's death, in which case the Person(s) shall have a continuing appointment).

**6.3 Nomination of Alternate Decision-Maker Nomination for Mentally Incapacitated or Deceased Member**

- (a) A Member may appoint an Alternate Decision-Maker to act in his/her place by written instrument (**Alternate Decision-Maker Nomination**) in the event of a Member's death, or upon and continuing for the period of a Member's Mental Incapacity. The Alternate Decision-Maker Nomination may provide cascading Nominations. A Member may submit his/her EPOA and/or Will for reference to the Trustee, in substitution to making an Alternate Decision-Maker Nomination.
- (b) An approved format **Alternate Decision-Maker Nomination** is provided at **Annexure A**; however, the Trustee may prescribe alternate or additional forms from time to time.
- (c) An Alternate Decision-Maker Nomination may, but is not required to be, accompanied by a copy of a Member's EPOA and/or Last Will. Notwithstanding, the Member may refuse to supply a copy of the EPOA and/or Last Will to the Trustee.
- (d) The Alternate Decision-Maker Nomination must be signed by the Member.
- (e) If there is a conflict between the Person or Persons nominated under the Alternate Decision-Maker Nomination made under this Rule 6.3, and:
  - (i) the Person or Persons appointed by an EPOA of the Member, then the appointment of Person or Persons under the EPOA shall be binding as the Alternate Decision-Maker, unless the EPOA otherwise provides; or
  - (ii) the Person or Persons appointed as Legal Personal Representative of the Member in a Member's Last Will, then the appointment of the Person or Persons nominated in the Last Will shall be binding as the Alternate Decision-Maker, unless the Last Will otherwise provides.
- (f) An Alternate Decision-Maker Nomination is deemed revoked if:
  - (i) withdrawn in writing by the Member, and communicated to the Trustee; or
  - (ii) the Member makes a subsequent Alternate Decision-Maker Nomination, and delivers such instrument to the Trustee.
- (g) If an Alternate Decision-Maker (or any one of them) dies or becomes Mentally Incapacitated, the Nomination of such Alternate Decision-Maker (if more than one Person acting in such capacity, then only as to the deceased or Mentally Incapacitated Alternate Decision-Maker) shall be deemed void, notwithstanding there may be no other Alternate Decision-Maker nominated by the Member in such instances. If all nominated Alternate Decision-Makers are unable or unwilling to act, then the Default Alternate Decision-Maker Rules shown at Rule 6.4 shall apply.
- (h) For clarity, an Alternate Decision-Maker is deemed appointed for the purposes of the Governing Rules upon:
  - (i) the acceptance by the Alternate Decision-Maker on the death or Mental Incapacity of the Member, which acceptance may be communicated orally, in writing or by other reasonable means to the Trustee; and
  - (ii) the Trustee shall be under no obligation to prove an EPOA or Last Will submitted by an Alternate Decision-Maker of the Member if the Alternate Decision-Maker Nomination has matching terms.
- (i) Notwithstanding Rule 6.3(h), the Trustee may take whatever steps the Trustee deems appropriate to prove the Member's EPOA and/or Last Will.

- (j) An Alternate Decision-Maker shall not be liable for any loss or damage caused to the Mentally Incapacitated Member or Member's Legal Estate as a consequence of a delay in appointment or acceptance, excepting where the Alternate Decision-Maker acted fraudulently, or the Court, Regulator, or other Government authority having jurisdiction, determines otherwise.

**6.4 Default Alternate Decision-Maker Rules:**

- (a) In the event a Member does not complete an Alternate Decision-Maker Nomination, the following default terms shall apply in respect to the appointment of a Default Alternate Decision-Maker of a Deceased Member or Mentally Incapacitated Member (**Default Alternate Decision-Maker Appointment**):
  - (i) if the Member has died (**Deceased Member**), the Legal Personal Representative of the Member shall be deemed to act in the place of the Deceased Member as an Alternate Decision-Maker from the Deceased Member's death, until the payment of the Deceased Member's Death Benefits has commenced, after which time the Alternate Decision-Maker must resign;
  - (ii) if the Member is Mentally Incapacitated (**Mentally Incapacitated Member**), then:
    - (1) the Person(s) holding the Mentally Incapacitated Member's EPOA shall be deemed to act in the place of the Mentally Incapacitated Member as an Alternate Decision-Maker from the date upon which the Member is determined to be a Mentally Incapacitated Member, until the date the Member is no longer a Mentally Incapacitated Member, at which time the Alternate Decision-Maker must resign; or
    - (2) the Person(s) appointed to act as administrator(s) for the Mentally Incapacitated Member by the Court, Tribunal or relevant Government authority having jurisdiction in such matters shall be deemed to act in the place of the Mentally Incapacitated Member as an Alternate Decision-Maker from the date of appointment, until the date the administration is ended, at which time the Alternate Decision-Maker must resign;
  - (iii) if the Member is under a Legal Disability due to the age of the Member (**Minor Member**) (being a Natural Person of less than 18 (eighteen) years of age), the Minor Member's parent or guardian shall be deemed to act in the place of the Minor Member as an Alternate Decision-Maker from the date of membership until the Minor Member's 18<sup>th</sup> (eighteenth) birthday, at which time the Alternate Decision-Maker must resign; and/or
  - (iv) if the Regulator suspends all the Trustees of the Fund, then the Constitutional Corporation, RSE Licensee, and/or Natural Persons appointed to act by the Regulator shall act as Trustee in accordance with section 134 of the SISA.
- (b) For clarity, an Alternate Decision-Maker is deemed appointed for the purposes of the Governing Rules upon:
  - (i) the acceptance by the Alternate Decision-Maker, which acceptance may be communicated orally, in writing or by other reasonable means to the Trustee; and
  - (ii) the happening of death or Mental Incapacity (as the case may be) of the Member, or upon membership of a Minor Member.
- (c) An Alternate Decision-Maker shall not be liable for any loss or damage caused to a Mentally Incapacitated Member, Minor Member or Member's Legal Estate as a consequence of a delay in appointment or acceptance, except where the Alternate Decision-Maker acted fraudulently, or a Court, Regulator or other Government authority having jurisdiction determines otherwise.
- (d) A Default Alternate Decision-Maker shall, in the remainder of the Deed, be read as an Alternate Decision-Maker.



## 6.5 Suspension:

- (a) In applying the terms of Rule 6, the Trustee of the Fund shall be prohibited from dealing with a Deceased Member's, Mentally Incapacitated Member's, or Minor Member's Superannuation Interest (**Suspended Interest**) until the Alternate Decision-Maker accepts to act; however:
- (i) if a Pension or other payment (or series of payments) of the Suspended Interest is arranged or subject to prior arrangement, then this Rule 6.5 shall not limit the continuation of that Pension or other payment (or series of payments);

*For example, Ben, Bailie and Bingo are Members of the Fund, and before he died – Ben settled an Auto-Reversionary Pension Interest Agreement, with Bingo (his dependent brother) the Reversionary Beneficiary. Ben, Bailie and Bingo did not make Alternate Decision-Maker Nominations, and Ben did not leave a Will. Therefore, Ben's family is going to seek an application of the Court for the appointment of his Legal Personal Representative. Notwithstanding, the Auto-Reversionary Pension Interest shall be payable on the terms of settlement to Bingo from Ben's date of death. When Ben's Legal Personal Representative is later appointed by the Court, then such Legal Personal Representative will act as Ben's Alternate Decision-Maker in respect to his remaining Superannuation Interests.*

- (ii) if the Regulator or Court makes a direction in respect to the Suspended Interest, then this Rule 6.5 shall not limit the Trustee from attending on such request;
- (iii) the Suspended Interest has a continuing right to receive Earnings and Reserves, and the Trustee is obligated to deal with the Suspended Interest and all allocations whatsoever in the Fund on a fair and reasonable basis notwithstanding this Rule 6.5; and
- (iv) if the Suspended Interest has the benefit or burden of segregation, the benefit or burden is continuing until the Alternate Decision-Maker accepts to act.

## 6.6 Court Directions:

- (a) The Trustee may apply to a Court of competent jurisdiction for guidance in respect to the acceptance and/or terms of appointment of an Alternate Decision-Maker of a Deceased Member, Mentally Incapacitated Member and/or Minor Member.
- (b) Unless the Court or Superannuation Laws otherwise prohibit, the costs of seeking such guidance shall be borne from the Deceased Member, Mentally Incapacitated Member and/or Minor Member's Superannuation Interest(s).
- (c) This Rule is read as beneficial to all Members, given the importance of proper trusteeship of the Fund.

## 6.7 Voting Powers and Retirement of Alternate Decision-Maker:

- (a) For the purposes of the Voting Rules of either a Trustee constituted by Natural Persons or the Directors of a Corporate Trustee, an Alternate Decision-Maker shall have the same voting power as the Member represented thereby, and where there is more than one Alternate Decision-Maker for one Member, then the Alternate Decision-Maker shall hold the voting power jointly and severally.
- (b) An Alternate Decision-Maker must resign on the payment of the Member's Death Benefits, restoration of the Member's Mental Capacity and/or the Member becoming 18 (eighteen) years of age, provided that the Alternate Decision-Maker does not individually hold a Superannuation Interest in the Fund (in which case he/she shall continue to act representing his/her individual Superannuation Interests).
- (c) If the Alternate Decision-Maker fails or refuses to resign following the Member's restoration of Capacity, termination of the Member's appointment by the Member or a

Court (such as where a Member appoints a Person to act for the Member whilst the Member travels overseas, and withdraws the appointment upon the Member's return), following payment of a Deceased Member's Death Benefits, Minor Member becoming 18 (eighteen) years of age or otherwise upon the happening of an event upon which the Alternate Decision-Maker has no lawful right to remain an Alternate Decision-Maker, then the other Natural Person Trustees or Directors of the Corporate Trustee have, for the purposes of such Rule, Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Alternate Decision-Maker of authority in respect to the Fund.

*For example, Jane, Bob and Jim are members of the Fund. Jane's sons, Sam, Slick and Stu, were appointed to act as the Legal Representative of Jane's Estate upon her death (which was also shown in the Alternate Decision-Maker Nomination of Jane). Slick is not happy with Jane's gifts to Bob in Jane's Will. Sam and Stu cannot force Slick to complete any paperwork. Notwithstanding Jane's Death Benefits have already been paid, Slick wishes to remain in control of the Fund to infuriate Bob and Jim. In applying this Rule, Bob and Jim can execute such relevant documentation necessary to remove Slick's authority from the Fund Accounts, holdings and other matters.*

- (d) Rule 6.7(c) does not apply to the extent that an Alternate Decision-Maker is also a Member in the Fund, and acts in his/her individual capacity (and not as an Alternate Decision-Maker).

- 6.8 For clarity, the Bankruptcy Trustee of a Member does not qualify as the Member's Alternate Decision-Maker under the terms of Rule 6.
- 6.9 If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

## **7. RSE LICENSEE**

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- 7.1 A RSE Licensee is not bound by the terms of either Rule 4 or 5.

## **8. CHANGE OF TRUSTEE**

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- 8.1 Notwithstanding any other Rule, the Members may by Member Special Resolution resolve to convert the Fund to a small APRA Fund.
- 8.2 The Members shall be at liberty to appoint, remove, and replace the Trustee of the Fund as the Members determine from time to time, provided:
- (a) a Disqualified Person shall be prohibited from acting as a Natural Person Trustee (and be dealt with in accordance with Rule 4), or a Director of the Corporate Trustee (and be dealt with in accordance with Rule 5);
  - (b) each Member (or the Member's Alternate Decision-Maker in accordance with Rule 6) is a Natural Person Trustee or a Director of the Corporate Trustee;
  - (c) the Members have the authority, by Member Ordinary Resolution, to change the trusteeship of the Fund from a trusteeship of Natural Persons, to a trusteeship of a Corporate Trustee, or vice versa, with the trusteeship decisions, as constituted, determined in accordance with the applicable terms of Governing Rules 4 or 5 (including but not limited to the appointment of Alternate Decision-Makers acting in the place of a Member as a Natural Person Trustee or a Director of the Corporate Trustee); and
  - (d) if there is a delay between a Member's Mental Incapacity, Member's Death or Minor Member's membership commencement, and the acceptance of the Member's Alternate Decision-Maker, the other Member(s) of the Fund shall do all things necessary to comply with section 17A of the SISA and Governing Rules 4, 5 and 6 (as applicable).

8.3 Without varying a preceding term of Rule 8, a Person acting as a Natural Person Trustee or a Director of the Corporate Trustee, shall be deemed to be removed immediately upon the following:

- (a) the Natural Person becoming a Disqualified Person; or
- (b) the Natural Person committing an act of fraud, dishonesty or gross negligence in the conduct of the Fund matters;

and the other Trustees (if Natural Persons) or Directors of the Corporate Trustee, shall have Limited Power of Attorney to execute any and all legal documents, transfers, and other instruments necessary to divest the Natural Person of the powers and rights of such position (on the terms read at Governing Rules 4, 5 and 6).

8.4 The Trustee shall ensure disclosure is made of any change of trusteeship to the Regulator, and that all records, Accounts and Assets are updated accordingly.

8.5 Any change to the trusteeship of the Fund shall be effected by written instrument, and may be in the form of a:

- (a) deed executed by the retiring Trustee and new Trustee, and may include execution by the Members; or
- (b) written agreement executed by the retiring Trustee and new Trustee, and may include execution by the Members; or
- (c) deed or agreement executed by the new Trustee and the Members; or
- (d) written resolution of the retiring Trustee, provided that if the new Trustee is not shown to accept in the written resolution of the retiring Trustee, then the new Trustee (whether Natural Person Trustee(s) or a Corporate Trustee) must give notice in writing; and

this Rule is to be read with Rule 6, in respect to a Member's Alternate Decision-Makers.

8.6 If the change of trusteeship is orally resolved on a date earlier than the written instrument, and provided the parties consent and the Superannuation Laws allow, then the effective date of the change of trusteeship shall be the date of the oral resolution, notwithstanding the resolution is recorded by later-dated written instrument.

8.7 The written instrument made in accordance with Rule 8.5 shall be evidence of the changes to the trusteeship of the Fund, without need for registration or stamping of the written instrument. Notwithstanding, where the written instrument is required to be registered or stamped by State Law or the Superannuation Laws, the Trustee shall do all things necessary to cause the registration and stamping of the written instrument as soon as reasonably possible, and not later than otherwise permitted by the relevant State Laws and Superannuation Laws. A reference to a written instrument includes an electronic instrument effected by execution by electronic signatures of the relevant parties.

8.8 The Natural Person Trustees and Directors of a Corporate Trustee may resort to any remedy available in respect to the Trustee Laws, to determine matters in respect to the Trustee appointment, retirement, removal and/or substitution, where not otherwise expressly provided in the terms of the Governing Rules or the Superannuation Laws.

8.9 The appointment, removal and/or retirement of a Natural Person Trustee or Corporate Trustee shall, to the extent permitted by the Trust Laws and the Superannuation Laws, apply retrospectively or prospectively.

8.10 Each Natural Person Trustee, Corporate Trustee and Director of any Corporate Trustee (including An Alternate Decision-Maker acting as a Natural Person Trustee or Director of any Corporate Trustee) shall be entitled to be indemnified for reasonable costs and expenditures in acting in such capacity as prescribed in Rule 10.

## **9. TRUSTEE REMUNERATION**

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- 9.1 A Natural Person shall not be permitted to be remunerated for acting as a Trustee of the Fund, unless the Superannuation Laws allow.
- 9.2 A Director of a Corporate Trustee shall not be permitted to be remunerated for acting as a Director of the Corporate Trustee, unless the Superannuation Laws allow.
- 9.3 Notwithstanding Rules 9.1 and 9.2, if a Natural Person acting as Trustee or a Director of a Corporate Trustee is engaged in a profession, business, occupation or trade, for which the Natural Person is usually paid for work done by them for the Fund (for example, as a bookkeeper, accountant, lawyer, builder, engineer, etc.) (**SMSF Contractor**), then the SMSF Contractor may be remunerated for the work done (other than acting as a Trustee or Director of a Corporate Trustee), provided the remuneration is paid at Market Value and on arm's length terms.
- 9.4 An RSE Licensee, acting as Trustee of the Fund, is permitted to charge its standard fees, to the extent authorised by the Superannuation Laws.

## **10. TRUSTEE INDEMNITIES**

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- 10.1 Each Natural Person acting as a Trustee or a Director of the Corporate Trustee and the Corporate Trustee, is indemnified by the Fund, and vested with a lien over the Fund Assets, in respect to:
- (a) any and all General Expenses or Specific Expenses (including, but not limited to taxes and SMSF Adviser fees) incurred in the conduct of the Fund;
  - (b) losses suffered as a consequence of reliance on the advice and/or recommendations of the Fund's SMSF Advisers, provided the Natural Person and/or Corporate Trustee (as the case may be) acted in good faith;
  - (c) losses suffered as a consequence of the delegation of the Trustee's powers, provided the Trustee (including Corporate Trustee) acted in good faith;
  - (d) losses suffered as a consequence of the Fund having insufficient or inadequate insurances in respect to the Members and/or the Assets of the Fund, and/or as a consequence of a failure or refusal of the Fund's insurer to pay an insured benefit on circumstances favourable to the Fund and/or Member; and
  - (e) losses suffered as a consequence of a good faith mistake or negligence of the Trustee (including Corporate Trustee) in the conduct of the Fund.
- 10.2 Notwithstanding Rule 10.1, the indemnity and lien read therein shall not apply in respect to:
- (a) conduct by a Person (including a Natural Person and/or Corporate Trustee) which is grossly negligent, fraudulent and/or a wanton disregard for the Person's obligations and responsibilities under the Superannuation Laws and/or Governing Rules (including Special Rules) of the Fund;
  - (b) administrative and civil penalties imposed on a Person in accordance with Parts 20 and 21 of the SISA;
  - (c) circumstances prohibited by the Superannuation Laws, including but not limited to SISR 13.13 (charges over a Member's benefits) and SISR 13.14 (charges over Fund Assets); and
  - (d) such other determinations by the Court, Regulator, or other Government authority having jurisdiction, providing the Person has no right to indemnity and/or a lien over Fund Assets.
- 10.3 Unless the Superannuation Laws, Regulator, or other Government authority having jurisdiction determines otherwise the Members (in their capacity as Members) shall not be required to indemnify any party in respect to any matter pertaining to the Fund.

*For example, ABC Pty Ltd is the trustee of the Fund. Bob and Jane are the members. ABC borrows \$10,000 from Wow Bank to acquire a Unit in Hobart. The arrangement is compliant with section 67A of the SISA, and consistent with the Trustee's Borrowing Powers. Wow Bank does not require personal guarantees from Bob or Jane. An earthquake strikes Tasmania, and consumes Hobart – taking with it the Unit. ABC forgot to insure the Unit, and ABC cannot pay Wow Bank. Furthermore, as Hobart has ceased to exist, there is no value in even the land upon which the Unit sat. Wow Bank has limited recourse against the Unit, which has no value. Wow Bank cannot pursue Jane and Bob as Members of the Fund, nor as directors of ABC.*

## **11. TRUSTEE RESPONSIBILITIES**

11.1 It is the responsibility of the Trustee to:

- (a) ensure that the Fund remains a Complying SMSF, although the Trustee may resolve to change the structure of the Fund to a small APRA Fund, or another type of fund permitted under the Superannuation Laws;
- (b) ensure that the Governing Rules are current and available to the Members;
- (c) act honestly in all matters concerning the Fund;
- (d) exercise, in all matters affecting the Fund and its Members, the same degree of care, skill and diligence as any normal prudent Trustee;
- (e) ensure that the Trustee's duties and powers are performed and exercised in the best interests of Members of the Fund;
- (f) not enter into any contract, transaction or agreement, or do anything that would prevent or hinder the Trustee in suitably performing or exercising the Trustee's functions and powers;
- (g) disclose any conflict of interest in any dealing, undertaking, transaction or investment on behalf of the Fund;
- (h) provide Members access to all and any information required to be given to or viewed by Members, under the Superannuation Laws, subject to the *Privacy Act 1988 (Cth)*;
- (i) ensure the efficient administration of the Fund including, but not limited to, the payment of all taxes, Excess Contributions and other imposts that must be paid by the Fund, and the lodgement of all compulsory documentation to the Regulator in respect of the Fund, and ensure that the Fund meets its Superannuation Laws compliance responsibilities;
- (j) keep all records, documents, and minutes of valid Trustee Meetings to enable the efficient administration and audit of the Fund by the Auditor and the Regulator so as to comply with all Superannuation Laws in respect of the keeping of records, documents, and minutes for the Fund;
- (k) notify the Regulator, in accordance with the provisions of the Superannuation Laws, of significant events and other events that occur in respect of the Fund, including any change in Trustee, where required within the requisite time period;
- (l) refrain from delegating the Trustee's powers and responsibilities, unless otherwise permitted by the Governing Rules and the Superannuation Laws;
- (m) keep informed of the Superannuation Laws, and, if required by the Superannuation Laws or the Regulator, undertake any education or other mandatory or voluntary knowledge requirements;
- (n) deal with the Regulator and any other regulatory authority, as required under the Superannuation Laws;

- (o) conduct the management of and dealings with the Fund and its Members in accordance with the Operating Standards of Part 4, Division 4.2 of the SISR, including but not limited to:
  - (i) settle and maintain an Insurance Strategy, in accordance with SISR 4.07D and 4.07E;
  - (ii) settle and maintain an Investment Strategy, in accordance with SISR 4.09; and
  - (iii) hold all Assets of the Fund separately from those of the Trustee (if Natural Person(s)) and/or Directors of a Corporate Trustee, in accordance with SISR 4.09D;
- (p) ensure the investment, maintenance and dealing with any reserves of the Fund are consistent with the Investment Strategy;
- (q) consider the Fund's obligations to meet its liabilities as and when they fall due, and do all things necessary to ensure the Fund is solvent and capable of meeting its liabilities;
- (r) comply with the Payment Standards of Part 6 of the SISR;
- (s) pay on time any charges, costs, and/or fines levied by the Regulator or a Court against the Fund; and
- (t) engage in such further conduct as required by the Superannuation Laws and the Regulator.

## **12. TRUSTEE POWERS**

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- 12.1 Subject to the Superannuation Laws, the Trustee has unlimited powers.
- 12.2 The Trustee's powers over the Assets of the Fund are identical to those as if the Trustee were the legal and absolute beneficial owner of such Assets, including the right to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any Asset or part of any Asset comprising the whole or part of the Fund, including a Member's Superannuation Interest or a Reserve Account.
- 12.3 The express terms of Rules 12.4, 12.5, 12.6, 12.7 and 12.8 are not to be read as limiting the Trustee's powers.
- 12.4 **The Trustee Investment Powers:** The Trustee has the following express Investment Powers to:
- (a) **avoid diversification:** invest all, or a substantial part, of the Fund's Assets in one thing, or a collection of similar things, without regard to diversification;
  - (b) **acquire an interest in an Eligible Entity:** acquire in the name of the Trustee or a Member, an interest in an Eligible Entity to meet the Fund's liability to pay all or any part of a Pension Interest Benefit to the Member;
  - (c) **enter into contracts and undertake transactions:** enter into contracts, undertakings and other transactions for the benefit of the Fund and its Members whatsoever and wheresoever situate including both within Australia and outside Australia;
  - (d) **acquire and dispose of corporate, trust securities, equity or hybrid equity interest of any other entity:** acquire or dispose of any Company (including an eligible start up investment Company), trust, partnership or other entity in which the Trustee holds an equity or equity-like interest including shares, stocks, debentures, options, convertible notes, hybrid securities or is otherwise interested or concerned (securities) and to exercise all of the powers authorised under the Constitution and any other relevant documents concerning the powers of equity, debt and other interest holders of the entity, including but not limited to putting calls on securities, accepting transfers of securities, consenting to a reorganisation of a security (including, but not limited to a capital raising or reduction);

- (e) **deal with real property:** acquire, dispose of, develop, turn into fractional or part interests, exchange, strata title, subdivide, partition within the Fund for a Member or specific Member's benefit, mortgage, sub-mortgage, lease, sub-lease, grant, maintain, insure, improve, renovate, re-lease or vary any right or easement or otherwise deal with any interest in real property, whether residential, commercial, off-the-plan, or of another nature;
- (f) **deal with personal property:** acquire, dispose of, exchange, hire, lease, maintain, improve, mortgage or otherwise deal with any interest in personal property;
- (g) **deal with intellectual property:** apply for, purchase, create or otherwise acquire, and to sell patents, patent rights, copyrights, trademarks, designs, formulae, licences, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use, of any other intellectual property rights and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property rights or information so acquired;
- (h) **grant or take options:** grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
- (i) **enter into lease arrangements:** rent real property from any Person, acquire the interest of any lessee in any lease, purchase or undertake hire arrangements, grant leases, sub-leases, tenancies or rights of any nature to any interest in real or personal property, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other property of any description, including but not limited to ground leases and leases of terms in excess of 99 (ninety-nine) years;
- (j) **lend money:** lend Assets of the Fund, including money and securities, and/or advance monies to parties, including to a Related Party, subject to the Superannuation Laws;
- (k) **invest in bank bills:** raise money in any manner allowed by the Superannuation Laws, including drawing, endorsing, accepting or otherwise dealing with any bill of exchange, promissory note or other negotiable instrument, on such terms deemed reasonable by the Trustee;
- (l) **open and conduct bank accounts, cash management trusts and promissory notes:** open bank accounts, cash management trusts, term deposits and any other Cash-style products including the giving and taking of promissory notes and Bills of Exchange;
- (m) **trade in foreign and digital currency:** undertake, contract, carry out or do anything including acquiring Assets in a foreign or digital currency, and dealing in a foreign or digital currency (including BitCoin);
- (n) **enter into futures contracts and options:** both within and outside Australia to buy, sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option, contracts for differences or rights, to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange no matter where situate provided the Trustee maintains a Risk Management Strategy if required under the Superannuation Laws;
- (o) **create, conduct and run a business:** establish, create, carry on, conduct, maintain, sell or dispose of a business whether in conjunction with or to a Related Party (including a Member, Trustee of the Fund or a Related Party of either), either directly or indirectly through a Company, trust, partnership, joint venture or other legal entity, on terms deemed reasonable by the Trustee, subject to the Superannuation Laws;
- (p) **enter into Partnership or Joint Venture:** establish, create, carry on, conduct, maintain, sell or dispose of a partnership or joint venture whether in conjunction with or to a Related Party (including a Member, Trustee or Director);

- (q) **obtain agencies, franchises and licences:** apply for, purchase and hold any permit, agency, franchise or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same provided the said agency, licence or business does not breach the Sole Purpose Test or the Superannuation Laws;
- (r) **deal with itself and engage in conflicts of interest:** engage in conflicts of interest, whether by the Trustee, Member, Related Party of a Member or Custodian, including but not limited to acquiring as an Asset of the Fund, real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee, Member, Related Party of a Member, or Custodian, provided that any property so acquired is acquired for a consideration being not less or greater than the Market Value, except as permitted by the Superannuation Laws;
- (s) **deal with choses-in-action:** acquire choses-in-action, including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (t) **receive gifts, distributions and contributions:** receive property by gift inter-vivos, distribution under a will, SMSF Will or under the provisions of any other trust or otherwise from any Person, as an addition to the Fund, and such property may be segregated to any one or more Members, may be held unsegregated as an Asset of the Fund and/or may be allocated to the Reserve Accounts;
- (u) **acquire and deal with insurance policies:** acquire such insurance policies as the Trustee deems appropriate for the circumstances, provided the Superannuation Laws permit the Trustee, including but not limited to insurance in respect to general risk, property damage, audit, sickness, incapacity, trauma, accident and/or death, including where such policies are taken for one or more Members, and include, but are not limited to, investments bonds and or such other life or group policy products which the Trustee deems appropriate. The Trustee is further authorised to deal with, assign, dispose, and terminate such policy(ies), without providing notice to any party;
- (v) **instigate, defend and settle legal proceedings:** institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same, or to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (w) **acquire and/or hold investments with others:** invest in Assets of the Fund with other Person(s) (including Members and/or a Member's Relatives and Related Parties), including but not limited to as joint tenants, tenants in common in equal shares, tenants in common in other than equal shares, partners, joint venturers and/or such other means of ownership which does not otherwise breach the Superannuation Laws;
- (x) **invest in, sell, vary or transpose investments of any other type:** invest Assets of the Fund in any investment of any other type not otherwise expressly listed in these Governing Rules, retain such investment(s), dispose of such investment(s), change the nature of the investment(s), convert the investment(s) into money or such other benefit as may be determined reasonable by the Trustee, in its absolute discretion;
- (y) **engage SMSF Professionals and other advisers:** employ or engage agents, administrators, accountants, financial planners, lawyers or other Professionals in the execution of transactions, undertakings, acquisitions, disposal, and other powers of the Trustee, and to transact any business or to do any act required to be done in connection with the administration, maintenance or on-going operation of the Fund including engaging a registered Auditor, and to act upon the opinion or advice of any such Person without being responsible for any loss or damage occasioned by acting in accordance therewith;



- (z) **offer vendor finance and instalment payment terms:** dispose of Assets on such vendor finance and instalment finance terms determined appropriate in the circumstances by the Trustee;
- (aa) **acquire and receive Business Real Property from Members:** acquire at Market Value or receive as a Contribution (and received and recorded at Market Value), Business Real Property from Members of the Fund;
- (bb) **acquire pensions, annuities, Retirement products and/or insurance policies:** acquire pensions, annuities, Retirement products and/or insurance policies to assist with any liquidity and/or obligation of the Fund, including known and/or contingent risks to the Trustee, Members and/or Members' Dependants;
- (cc) **acquire and receive other Assets from Members:** acquire at Market Value or receive as a Contribution (and received and recorded at Market Value) such other Assets from Members as are not prohibited by the Superannuation Laws, including, but not limited to section 66 of the SISA;
- (dd) **invest without regard to profit:** without limitation to the above, exercise any of its powers, including the power to sell and the powers to deal with real or personal property whether at a profit or not, including but not limited to holding an investment which generates little to no Earnings; and
- (ee) **exercise all other powers:** do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee.

12.5 **The Trustee Borrowing Powers:** The Trustee has the following express Borrowing Powers to:

- (a) **pay benefits:** provided the payment of the benefit and borrowing are on terms permitted by the Superannuation Laws;
- (b) **settle the acquisition of a Security:** settle the acquisition of a security/securities, provided the acquisition and borrowing are on terms permitted by the Superannuation Laws;
- (c) **borrow to acquire a Single Acquirable Asset or Replacement Asset:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, in respect of the acquisition of a Single Acquirable Asset or Replacement Asset, and such other borrowing arrangements allowed by the Superannuation Laws, including a Limited Recourse Borrowing Arrangement (LRBA) made in accordance with sections 67, 67A and 67B of the SISA. The Trustee may enter into multiple LRBAs, in respect to the purchase of multiple Single Acquirable Assets;
- (d) **refinance a LRBA:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, in respect of the refinance of an existing LRBA made in accordance with sections 67, 67A and 67B of the SISA. The Trustee may refinance multiple LRBAs;
- (e) **maintain a Single Acquirable Asset:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, to repair and maintain a Single Acquirable Asset of the Fund. The Trustee may enter separate LRBAs to fund the repairs and maintenance of each separate Single Acquirable Asset of the Fund;
- (f) **grant a charge, guarantee, security interest or mortgage:** grant a charge, guarantee, security interest or mortgage over any one or more of the Fund's Assets to the Fund's lenders (whether an unrelated party to the Fund, or related to the Fund (for example, a Member, Member's Relatives or Related Parties)), on terms permitted by the Superannuation Laws;

*Note: see sections 67A and 67B of the SISA, PCG 2016/5 and TD 2016/16.*

- (g) **negotiate and execute loan instruments:** negotiate and execute terms of borrowing, including loan instruments, on terms compliant with the Superannuation Laws;
- (h) **benefit from and give indemnities:** receive the benefit of the indemnification rights benefitting the Trustee (whether Natural Persons or a Corporate Trustee) and give indemnification to a Custodian acting on behalf of the Trustee;
- (i) **accept a forgiveness of the LRBA as a Contribution:** accept a forgiveness of the LRBA, in whole or in part, whether the Lender is a Member or otherwise, and treat the forgiveness as a Contribution-in-Kind of a Member or any other form of Contribution of a Member permitted by the Superannuation Laws; and
- (j) **appoint a Custodian:** appoint any Person or Persons to act as Custodian to hold legal title for one or more Single Acquirable Assets, subject to one or more LRBA's, and to settle the terms of such Bare Trust arrangements as are deemed reasonable in the absolute discretion of the Trustee.

12.6 **The Trustee Administrative Powers:** The Trustee has the following express Administrative Powers to:

- (a) **determine and deal with Member Contributions Caps, Transfer Balance Caps, and Excess Transfers:** take advice, obtain disclosure of Member Superannuation Interests from the Regulator, Contributors, Members, and such other parties as may be relevant for purposes of determining and dealing with Member Contributions Caps, including but not limited to determining and dealing with Transfer Balance Accounts, Personal Transfer Balance Caps, crediting and debiting Transfer Balance Accounts, commutation and payment of amounts in excess of Contributions Caps, paying Excess Transfer Balance Tax, attending to Excess Transfer Balance Determinations, attending to Default Commutation Notices and Valid Elections, and such other dealings, determinations and attendances as shall be required in respect to a Member's Contributions and Excess Contributions to the Fund;
- (b) **determine value:** determine the Value of the Assets of the Fund in accordance with the Superannuation Laws, including but not limited to investigation of market comparisons, engagement of property valuers and agents, and such other means of determining value and at such intervals determined reasonable by the Trustee, subject to the Superannuation Laws;
- (c) **maintain records:** arrange records of the Fund to be held in any manner determined reasonable by the Trustee, provided the records are held in a manner allowed by the Superannuation Laws and for not less than the period of time required by the Superannuation Laws;
- (d) **settle trusts and establish legal entities:** settle trusts and establish other legal entities (including, but not limited to, companies, partnerships, joint ventures, SMSFs, and Bare Trusts) for the purpose of investment, carrying on a business or doing any other thing by the Trustee;
- (e) **change status:** resolve to change the status of the Fund to or from a SMSF, small APRA Fund or such other type of fund permitted by the Superannuation Laws;
- (f) **make arrangements for collectables and personal use Assets:** determine the manner of storing the collectables and personal use Assets of the Fund, as the terms are read at section 62A of the SISA and the Superannuation Laws generally;
- (g) **appoint a Custodian:** appoint any Person or Persons to act as Custodian to hold legal title over any Asset(s) of the Fund, and settle on such terms as deemed reasonable by the Trustee;
- (h) **power to appoint an attorney:** delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee, and execute any powers of attorney or other instruments necessary to effectuate such purpose;

- (i) **change nature of Fund:** change the Fund from a Complying SMSF to a small APRA Fund, or other type of fund allowed by the Superannuation Laws;
- (j) **engage in a conflict of interest:** engage in transactions in which a conflict of interest exists between the Trustee (including any one or more of them, or any one or more of the Directors of the Corporate Trustee) and the Fund and/or the Member(s), whether the conflict of interest is direct or indirect, provided the Trustee or Director(s) of the Corporate Trustee disclose the conflict of interest to the Members, the Members approve the transaction or arrangement subject to the conflict of interest, and provided the Superannuation Laws allow the transaction or arrangement;
- (k) **withhold amounts:** withhold an amount from any Pension Interest, Lump Sum Payment, Contributions, Reserves, Earnings, accretions and/or accumulations of any kind to settle a tax liability or other financial liabilities of the Fund, subject to the Superannuation Laws;
- (l) **take advice:** appoint and take advice from any Person in respect to any aspect of the Fund;
- (m) **determine timing:** determine, in its absolute discretion, the manner, timing and happening of any act, deed or matter shown in this Deed, subject only to the Superannuation Laws prescribing otherwise;
- (n) **limit the range of Persons eligible to be considered as a beneficiary of a Member's Death Benefits:** impose restrictions on the range of Persons (each an **Excluded Person**) who may be considered by a Deceased Member's Alternate Decision-Maker as a Deceased Member's Beneficiary, excepting that a Member may nonetheless appoint one or more **Excluded Persons** to take from his/her Superannuation Interests by way of a Binding Death Benefit Nomination, SMSF Will, and/or Pension Interest Agreement.
- (o) **refuse to deal with an Excluded Person:** refuse to disclose any Fund matter to an Excluded Person and refuse to accept an Excluded Person as a Member;
- (p) **refuse to give reasons and advice:** refuse to prescribe the reasons for any matter or decision of the Trustee and/or copy to any party any research or advice taken in respect to thereto; and

*Warning: The Regulator and/or Court may require the giving of reasons.*

- (q) **attend to membership matters:** receive, consider, effect, negotiate, and in any other way deal with membership matters, including but not limited to acceptance, termination, determination of incapacity matters (having regard to such evidence necessary for the purpose), pay benefits, establish and restructure various forms of Superannuation Interests, report to the Regulator, deal with employers and Contributors, deal with Member's Spouses and Alternate Decision-Makers, determine the payment of Auto-Reversionary Pension Interests, Conditional Pension Interests and Death Benefits (subject to the relevant restrictions imposed in the Governing Rules in respect thereto) and all other things relevant to attending to membership matters.

**12.7 The Trustee Disbursement Powers:** The Trustee has the following express Disbursement Powers to:

- (a) **engage SMSF Professionals and other advisers:** employ or engage agents, administrators, accountants, financial planners, lawyers or other Professionals in the execution of transactions, undertakings, acquisitions, disposals and other powers of the Trustee;
- (b) **acquire insurance policies:** acquire such insurance policies as the Trustee deems appropriate for the circumstances, including but not limited to doing all things necessary to cause the insurance and/or underwriting of the Assets of the Fund, insure the risks, costs, audits, contingencies and penalties which may arise in the administration of the Fund, insure on the happening of a Temporary Incapacity, Total and Permanent Incapacity or death of the Fund's Members to provide benefits to the Member and/or the Member's Dependants;

- (c) **deal with insurance policies:** split, transfer, cancel or vary any insurance policies howsoever structured and whosoever benefitting (provided that where an insurance policy is taken out by a Member, any dealing must be first approved by the Member, unless the Member's Superannuation Interest is insufficient to settle the costs associated therewith in which case the Trustee may be authorised to deal with such insurance policy without prior notice to the Member);
- (d) **pay General Expenses and Specific Expenses:** pay all General Expenses and Specific Expenses of the Fund, including but not limited to insurance premiums, rates, taxes, rents, outgoings and maintenance expenses in connection with any Assets of the Fund, from one or more Accounts, from income associated with an Asset to which the expense was paid, from the Earnings of the Fund, and such other manner permitted by the Superannuation Laws;
- (e) **purchase pensions, annuities, retiring products, and/or insurance policies:** arrange, deal with and purchase pensions, annuities, retiring products and/or insurance policies;
- (f) **pay reimbursement to Members:** reimburse Members for disbursements made on behalf of the Fund;
- (g) **settle financial obligations:** pay the Fund's suppliers and service providers for costs associated with the Fund's acquisitions, holdings, administration and disbursements generally, including but not limited to costs associated with audits, tax compliance, investment, payment of benefits, travel, education and any and all allowed financial outlays under the Superannuation Laws;
- (h) **set aside money in the Fund:** set aside out of the Earnings or Reserve Account from time to time, such money as may, in the opinion of the Trustee, be sufficient to meet any debt, tax or obligation due or accruing;
- (i) **give indemnities:** give indemnities to or on behalf of any party as the Trustee deems fit, to the extent permitted by the Superannuation Laws;
- (j) **be indemnified:** be indemnified from the Assets of the Fund for the costs, losses, damages, fines or awards against the Trustee arising from their role as Trustee of the Fund, subject to the Governing Rules and the Superannuation Laws;
- (k) **effect transfers, commutations and payments required by the Regulator:** pay, apply, set side, deal with and otherwise disburse Member's Superannuation Interests and/or Fund Assets in respect to any financial obligation imposed by the Regulator, or other Government body having jurisdiction, including but not limited to attending to Default Commutation Notices, Excess Transfer Balance Determinations, Excess Transfer Balance Tax, and credits and debits in respect to Transfer Balance Accounts;
- (l) **effect transfers, commutations and payments requested by Members:** pay, apply, set side, deal with and otherwise disburse Member's Superannuation Interests and/or Fund Assets in respect to any Member requests, including but not limited to attending to credits and debits in respect to Transfer Balance Accounts;
- (m) **effect the payment of Superannuation Interests in accordance with the Payment Standards:** pay, apply, set aside, deal with and otherwise disburse the Members' Superannuation Interests in accordance with the Payment Standards of Part 6 of the SISR;
- (n) **allocate expenses for advice:** where the Trustee takes advice in respect to a Member specific matter, allocate, in whole or in part, the expenses associated therewith against the Member's Superannuation Interests; and
- (o) **manage and deal with the Fund:** manage and otherwise deal with the Fund in accordance with Part 4 of the SISR, and the Superannuation Laws generally.

**12.8 Trustee's Segregation Powers:** The Trustee has all the following express Segregation Powers:

- (a) **segregation generally:** accept, acquire, deal with and/or dispose of any one or more Assets of the Fund, in whole or in part, as a segregated Asset(s) of the Fund to the benefit of one or more Member Superannuation Interests, Reserve Account or other Fund Accounts, and to the exclusion of one or more Members of the Fund, on such terms deemed reasonable by the Trustee and in accordance with the Superannuation Laws. Without limitation, the Trustee may:
  - (i) receive one or more Asset(s), in whole or in part, as a Contribution-in-Specie from one, or more than one, Member or Contributor on behalf of one or more Members of the Fund (each a **Contributing Member**), and segregate the Asset(s) from the other Assets of the Fund, which Assets and net Earnings therefrom may then be applied to the benefit of a Contributing Member's Superannuation Interest or a Non-Contributing Member's Superannuation Interest (and equally, any losses in respect to such Assets may be applied as burdening the Contributing Member's Superannuation Interest or a Non-Contributing Member's Superannuation Interest);
  - (ii) acquire one or more Assets, in whole or in part, and hold such Asset(s) (or part(s) thereof) and the net Earnings therefrom on segregated account for any one or more Members of the Fund; and
  - (iii) a segregated account created as a consequence of this Rule 12.8, may be held as a Member Accumulation Interest, Member Pension Interest, Reserve Account or any other Superannuation Interest or Account allowed under the Superannuation Laws; and
- (b) **reverse segregation:** the Trustee may reverse the segregation of one or more Asset(s) (or part(s) thereof), and cause such Asset(s) (or part(s) thereof) to be held in any unsegregated manner allowed by the Superannuation Laws and any relevant State Duties Law under which the segregation was effected.

**12.9 Trustee's Family Law Powers:** The Trustee has all the following express Family Law Powers:

- (a) **effect Payment Splits:** pay, apply, set aside, deal with and otherwise disburse the Members' Superannuation Interests in accordance with the Payment Split Standards (including but not limited to superannuation agreements, payment flags, flag lifting agreements and such other requirements imposed under Part VIII B of the *Family Law Act 1975 (Cth)*) of Part 7A of the SISR; and
- (b) **effect Roll-overs:** either at the request of the Member, Non-Member Spouse (provided the Non-Member Spouse has lawful authority to make such request) or at the direction of a Court, effect a Roll-over of the Member's Superannuation Interests;
- (c) **create new Superannuation Interests:** create new Superannuation Interests in the Fund for a Non-Member Spouse, provided the matter is agreed by Trustee Special Resolution;
- (d) **apportion amounts:** determine the apportionment of the minimum benefits, including Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved Components and, provided allowed by the Superannuation Laws, apportion Transfer Balance Caps, for any payments made in respect to a Payment Split;
- (e) **give information:** provide a Non-Member Spouse with information in respect to a Member's Superannuation Interests;
- (f) **seek advice:** seek advice and assistance in respect to dealing with a Member's Family Law matter;
- (g) **apply costs to the Member's Superannuation Interests and/or Non-Member Spouse's Superannuation Interest:** apply the costs of seeking advice and/or attending

to a Member, Non-Member Spouse or other Family Law request to a Member's Superannuation Interest, Non-Member Spouse's Superannuation Interest (if any, but included in this term is an interest in a Member's Superannuation Interest) or other Account of the Fund; and

- (h) **take any other action in respect to a Member's Family Law matter:** do any other thing the Trustee deems appropriate in respect to a Member's Family Law matters, having regard to the Superannuation Laws and the *Family Law Act 1975 (Cth)*.

#### 12.10 Trustee Restrictions:

- (a) Notwithstanding the terms of Rule 12, the Trustee is prohibited from:
  - (i) **lending money** to Members and the Members' Relatives, except where otherwise permitted by the Superannuation Laws;
  - (ii) **charging or mortgaging** the Fund's Assets, except as permitted by the Superannuation Laws;
  - (iii) **acquiring Assets** from Members and the Members' Relatives and Related Parties, except as permitted by the Superannuation Laws;
  - (iv) causing the Fund to be a Non-Complying Superannuation Fund and/or breaching the Superannuation Laws.
- (b) Where a term of Rule 12 would be prohibited as a consequence of Rule 12.10(a), such term shall be read down to a term which otherwise complies with the Superannuation Laws.

#### 12.11 Special Voting Matters: Notwithstanding any other term of **Part Two**, at a Trustee Meeting dealing with the payment of a Deceased Member's Death Benefits or a Member's Incapacity Superannuation Benefits:

- (a) the Member's Alternate Decision-Maker has the authority to determine the Person(s) to benefit from the payment of a Member's Death Benefits, subject to the terms of any SMSF Will, Binding Death Benefit Nomination, Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement in accordance with Rules 6, 30, 38, and 39 (and any other Rule relevant to the matter);
- (b) the Member's Alternate Decision-Maker has the authority to determine the Person(s) to benefit from the payment of the Member's Incapacity Superannuation Benefits subject to the terms of any SMSF Living Will, Conditional Pension Interest Agreement and/or Pension Interest Agreement in accordance with Rules 6, 30, and 38;
- (c) the payment and facilitation of payment of the Member's Death Benefits and Member's Incapacity Superannuation Benefits must be made in accordance with the Payment Standards and the Superannuation Laws generally;
- (d) Rule 12.11 is acknowledged as beneficial to the membership of the Fund. Each Member acknowledges his/her right to transfer his/her Superannuation Interest from the Fund during his/her lifetime and accepts the terms of this Rule as reasonable;
- (e) Rule 12.11 is a Special Rule of the Fund and may be amended or struck only by express reference to the "Special Voting Matters Special Rule", by unanimous consent of the membership and recorded in writing; and
- (f) If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

### PART THREE – THE MEMBERS

#### 13. MEMBERSHIP OF THE FUND

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- 13.1 Any Person, with the consent of the Trustee, may become a Member provided the Superannuation Laws allow.
- 13.2 A Person wishing to become a Member following establishment of the Fund shall, as a condition of consideration, complete all documentation required by the Trustee. An approved form for **Application for Membership** is shown at **Annexure B**, although the Trustee may vary and/or alter the Application for Membership by notice in writing to the Members.
- 13.3 The Trustee may prescribe any reasonable means for applying for membership in the Fund, including but not limited to verbal confirmation, written application, and/or electronic submission.
- 13.4 A Member may, but is not required to, nominate a **Default Superannuation Fund** for the transfer of the Member's Superannuation Interests on the happening of a Mandatory Transfer Event in respect to a Member by written instrument signed by the Member.

*Example: Bob and Jane are Members of the Fund. Bob files for bankruptcy. Jane determines the Superannuation Laws require Bob's membership interest must be rolled out of the Fund. Jane refers to Bob's Default Superannuation Fund Nomination. Bob nominated ABC Commercial Super, accordingly, Jane works with the Trustee for ABC Commercial Super to transfer Bob's Superannuation Interests following Bob's bankruptcy.*

- 13.5 The Trustee may, without limiting any other term of Rule 13, refuse to admit a Member's Spouse as a Member, may refuse to create a separate Superannuation Interest in favour of a Member's Spouse and/or refuse to establish any other rights in the Fund in favour of a Member's Spouse, subject to the Superannuation Laws.
- 13.6 A Person is deemed to be admitted as a Member when the Trustee approves the Person as a Member, which approval may be given retrospectively or prospectively by conduct, communicated in writing or electronically, or confirmed in such other manner deemed reasonable in the opinion of the Trustee.
- 13.7 **Special Member Disclosure:** The Trustee may impose the following obligations upon the Members, which obligations are intended to limit the controversy and legal actions to which the Trustee may become party as a consequence of a Member's membership:
- (a) the Trustee may require the Member to provide the Trustee with an **Alternate Decision-Maker Nomination**, in the form shown at **Annexure A**, or such other approved format adopted by the Trustee;
  - (b) the Trustee may require the Member to make an **Application for Membership** in the form shown at **Annexure B**, or such other approved format adopted by the Trustee;
  - (c) the Trustee may require the Member to make a **Death Benefit Nomination**, in the form shown at **Annexure C**, or such other approved format adopted by the Trustee;
  - (d) the Trustee may require the Member to make an **ATO Trustee Declaration**; and/or
  - (e) such other instruments and directions as the Trustee determines are reasonable for communicating a Member's requests, decisions, and determinations in respect the Member's Superannuation Interests and/or authorities in the Fund.
- 13.8 **Special Membership Conditions:** The Trustee may impose conditions on membership including:
- (a) limiting membership for a specific period of time;
  - (b) limiting membership until the happening of an event (including events which are not in the control of the Member and/or Trustee);
  - (c) limiting membership to Persons participating in specific programs or training;
  - (d) limiting membership to Persons belonging to a family bloodline pool;

*For example, imposing a condition upon the Member that the Member's Spouse is not eligible as a Member in the event of a family breakdown, and refusing the creation of a Superannuation Interest for a Member's Spouse as a consequence of a Contributions Splitting Notice.*

- (e) limiting membership to bloodline ancestors and/or bloodline descendants of a Person or Persons (which Person may not be a Member); and/or
- (f) limiting membership on such other terms permitted by the Superannuation Laws.

**13.9 Special Membership Classifications:** The Trustee may classify membership, and prescribe as a condition of membership, that the Member receives the benefit and/or burden of variable classifications. In the absence of a resolution to settle variable membership classifications, the membership of the Fund shall constitute a single membership class with the rights and obligations shown in these Governing Rules.

**13.10 Membership Warranties:** As a condition of membership, each Member:

- (a) accepts the conditions and classifications imposed upon the Member's membership, as communicated by the Trustee upon admission as a Member (including any changes in conditions and/or classification as may be resolved by the Trustee from time to time);
- (b) promises to deal in good faith with the Trustee and other Members of the Fund;
- (c) warrants that the Member has had the opportunity to consider and read the Governing Rules and consider the Superannuation Laws;
- (d) warrants the Member has provided the Trustee with the Member's correct Tax File Number, current address and contact details and all other relevant personal information required to be held by the Trustee in respect to the Fund's Members;
- (e) warrants the Member has been given the opportunity to seek independent legal, financial and accounting advice in respect to the risks and benefits of membership in the Fund, and is satisfied in respect thereof that membership in the Fund is appropriate to the Member circumstances;
- (f) undertakes to abide by the Governing Rules and the Superannuation Laws, as amended from time to time;
- (g) promises to continually update and advise the Trustee of any matters which impact on the right to hold or continue membership in the Fund;
- (h) agrees to participate in any programs, medical examinations or other disclosures requested by the Trustee in respect to the assessment and/or qualification verification undertaken for the payment of a Superannuation Benefit, acceptance of a Contribution, enrolment in any insurance policies and/or as otherwise may be determined appropriate for a matter relevant to the Member's membership;
- (i) promises to rectify any breach or non-compliance in respect to any aspect of the Fund as soon as reasonably possible, upon notice; and
- (j) grants the Trustee Limited Power of Attorney to undertake only those transactions and/or completed instruments which the Member is obligated to complete under the Superannuation Laws, provided that the Member may, by notice in writing delivered to the Trustee, revoke, limit, or expand the power given to the Trustee by this Rule 13.10(j). For clarity, the Limited Power of Attorney does not extend to the making, on behalf of a Member, of any decision in respect to:
  - (i) the payment of a Member's Superannuation Interest,
  - (ii) the making of a Member's Binding Death Benefit Nomination, Member's SMSF Will, Member's Alternate Decision-Maker Nomination; and/or



- (iii) any other matter which the Member is not legally obligated to complete under the Superannuation Laws.

13.11 A Member may be accepted, and may continue, as a Member, with a nil or negative Superannuation Interest in the Fund, subject to the Trustee's consent to the membership and/or continuing membership.

13.12 The Trustee benefits from a presumption that the Members have each read and consented to the terms of the Governing Rules. It is the Member's obligation to take advice in respect to the Governing Rules (including Special Rules).

*Warning: Members should be familiar with the terms of the Governing Rules. As the Fund may be administered on terms very different to retail Superannuation Funds, it is imperative that Members read and take advice in respect to their obligations and rights.*

#### **14. MEMBER MEETINGS AND DECISION MAKING**

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14.1 Any Member (**Calling Member**) may call a Member Meeting, by giving written notice to the other Members of not less than 5 (five) business days of the proposed Member Meeting, identifying the date, time and location. The notice shall also contain details of the methods of telephone, video conferencing or such other mechanism for allowing each and every Member to hear and participate in the Member Meeting (should a Member be unable to attend personally). The notice may be sent by email (including attachments), facsimile, telephone text, personal service, or by posting to the Members.

14.2 The Calling Member may offer a written resolution (including but not limited to a resolution communicated by electronic means, and executable by an electronic signature of the Member(s)) for execution by the Members, which may be in addition, or in the alternative, to the proposed Member Meeting. The written resolution shall be determined on its terms, in accordance with the terms of this Rule 14.

14.3 A quorum of the Member Meeting is met when the Members representing not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund (excluding Reserve Account Balances) are in attendance (whether in person, by telephone, by video conferencing or by such other mechanism by which the Members may participate), and may be a single Member (provided that Member represents not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund).

14.4 A Member's Alternate Decision-Maker stands in the shoes of a Member on the terms of the EPOA, Appointment Order, Last Will and/or Alternate Decision-Maker Nomination for purposes of this Rule 14.

14.5 For voting purposes, each Member (including one or more Persons acting collectively as an Alternate Decision-Maker for a Member) holds the number of votes equal to the proportionate Value of the Member's Superannuation Interests in the Total Superannuation Interests held in the Fund (**Proportionate Voting Rule**).

14.6 Notwithstanding the Proportionate Voting Rule, the Members may resolve to adopt an alternate method of voting arrangements for some or all of the Members Meetings, by a resolution in favour supported by Member Special Resolution.

14.7 If there is only one Member, the resolution of the Member shall be made solely by such sole Member.

14.8 A resolution at a Member Meeting shall be passed where not less than 51% (fifty-one percent) of the votes available at the Member Meeting are cast in favour of the resolution (**Member Ordinary Resolution**), unless the Governing Rules prescribe a resolution is required to be made by a Member Special Resolution.

14.9 Written resolutions of the matters determined in Member Meetings must be kept, and signed by one or more Members and/or the Chairman. (*For clarity, electronic execution is authorised.*)

14.10 There shall be no obligation on the Members to hold Member Meetings.

## 15. MEMBERSHIP TERMINATION

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15.1 A Member ceases to be a Member upon the earliest of any of the following to occur:

- (a) the Member holds no Superannuation Interest in the Fund, and the Trustee determines the Member should no longer be a Member;
- (b) the Member dies and the Trustee has paid out the whole of the Deceased Member's Death Benefits to the Member's Legal Personal Representative, Dependants or such other Persons nominated by SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination or by Trustee determination (as the case may be) in accordance with the Governing Rules;
- (c) the Trustee determines the Member to be a Disqualified Person;
- (d) the Trustee determines the Member's membership compromises the Fund being a Complying SMSF;
- (e) the Trustee determines the Member has committed a material breach of the Governing Rules or Superannuation Laws;
- (f) the Member is a party to proceedings or any agreement pursuant to the *Family Law Act 1975 (Cth)*, and the Trustee determines that the Member should cease being a Member to preserve the Superannuation Interests of the other Members of the Fund;
- (g) the Member is determined to be ineligible to be a Member by the Regulator, Court or other Government authority vested with jurisdiction in such matters;
- (h) upon the happening of a condition of membership imposed on the Member by the Trustee (see *Rules 13.8 and 13.9*); or
- (i) where the Trustee is of the opinion that, for the benefit of the Fund, the Member should cease his/her membership of the Fund.

15.2 **Termination Protocol:** When a Member ceases membership of the Fund (**Terminating Member**):

- (a) the Trustee must resolve to pay the Terminating Member's Superannuation Interests as a **Superannuation Benefit** and/or a **Roll-over Superannuation Interest** in accordance with this Rule 15.2, and in doing so the Trustee may:
  - (i) withhold from paying the Superannuation Benefit and/or Roll-over Superannuation Interest until sufficient liquidity is available in the Fund to do so; and/or
  - (ii) in lieu of transferring Cash, the Trustee may settle a payment of a Superannuation Benefit and/or Roll-over Superannuation Interest by any of a Benefit-In-Kind and/or Benefit-in-Specie, where such benefit has an equal Market Value to the Member's Superannuation Benefit and/or Roll-over Superannuation Interest;

provided that the Trustee complies with the Payment Standards of Part 6 of the SISR, and the Superannuation Laws;

- (b) the Trustee must communicate to the Terminating Member that he/she is no longer a Member in the Fund by writing (including but not limited to electronic communications) as soon as reasonably practicable (**Termination Notice**), and may request the Member provide a **Notice of Payment Direction** and/or such other directions as may be appropriate for providing notice to the Member of the options available in respect to the payment of his/her Superannuation Benefit and/or Roll-over Superannuation Interest;
- (c) if the Terminating Member fails or refuses to provide a **Notice of Payment Direction**, or otherwise fails to provide payment directions to the Trustee within 28 (twenty-eight) days of the Termination Notice, then subject to the Superannuation Laws:

- (i) the Trustee shall first have regard to any **Nomination of Default Superannuation Fund** by the Member, and seek the consent of the Default Superannuation Fund to receive the Roll-over Superannuation Interest. If the Default Superannuation Fund accepts the Roll-over Superannuation Interest, then the Trustee may, but is not required to, effect the transfer of the Member's Roll-over Superannuation Interest to such Default Superannuation Fund (provided the Superannuation Laws allow), or may delay the transfer in circumstances in which doing so gives rise to a threat to the Fund's solvency and/or Complying SMSF status). If the Trustee does not effect the transfer to the Default Superannuation Fund, the Trustee is prohibited from transferring the Roll-over Superannuation Interest to any other Eligible Roll-over Fund without the prior consent of the Member;
- (ii) if the Member has not completed a Nomination of Default Superannuation Fund, or the Default Superannuation Fund refuses to accept the Roll-over Superannuation Interest and/or the Nomination of Default Superannuation Fund is otherwise not capable of taking effect (*for example, the Default Superannuation Fund ceases to exist*), then the Trustee may select any other Eligible Roll-over Fund (without obligation to obtain the Member's consent) and complete the documentation necessary to cause the payment of the Member's Roll-over Superannuation Interest to the selected Eligible Roll-over Fund; and
- (iii) the Trustee shall not be liable to the Member for any loss or damage suffered as a consequence of a delay in payment of a Roll-over Superannuation Interest, if the Member fails to complete a Notice of Payment Direction, the Member fails to provide directions to the Trustee, and/or the Member otherwise gives incomplete or inaccurate directions to the Trustee in respect to any term of Rule 15.2. Further the Trustee shall not be liable to the Member for any loss or damage suffered as a consequence of a delay in payment of the Roll-over Superannuation Interest for the reasons shown in Rules 15.2(a)(i) and 15.2(a)(ii);
- (d) the Trustee may use any Government-authorized payment system, including but not limited to SuperStream;
- (e) the Trustee may deduct any costs associated with taking advice and effecting the Roll-over Superannuation Interest from the Member's Superannuation Interest;
- (f) the Trustee may, but is not obligated to, seek the undertaking of the Default Nominated Fund or Eligible Roll-over Fund to receive and hold the Roll-over Superannuation Interest on the same terms and conditions as such Roll-over Superannuation Interest was held by the Fund, including but not limited to any reversionary terms, Preservation Status and/or such other terms as may be relevant in respect to the Roll-over Superannuation Interest, Member, Member's Dependants and/or Member's Legal Estate;
- (g) the Trustee may allocate Earnings, General Expenses and/or Specific Expenses of the Fund to the Terminating Member's Superannuation Interest (including a Roll-over Superannuation Interest), provided the Trustee acts reasonably;
- (h) the receipt of the Roll-over Superannuation Interest by the Default Nominated Fund or Eligible Roll-over Fund shall constitute a discharge of the Trustee in respect to the Roll-over Superannuation Interest, and the rights of the Member in respect to the Fund shall be deemed terminated; and
- (i) the Trustee shall do such other things as the Trustee determines reasonable to cause the termination of the Member's membership, subject to the restraints imposed by the Superannuation Laws on the Trustee's exercise of power.

15.3 **Mandatory Transfer Event:** If a Member becomes a Disqualified Person (constituting a **Mandatory Transfer Event**), then the Trustee must refer to Rule 15.2 and take all reasonable steps to Roll-over a Disqualified Person's Superannuation Interests promptly, provided that the Trustee shall be under no obligation to take a step which would compromise the Fund's solvency or Complying SMSF status.

- 15.4 **Priority as to compliance with the Superannuation Laws:** Notwithstanding any other term of this Rule 15, the Trustee shall only be required to undertake steps which are compliant with the Superannuation Laws and do not result in the Fund becoming a Non-Complying SMSF. The Trustee shall not be liable for any loss or damage occasioned to any one or more Members in abiding by its obligations under the Superannuation Laws, notwithstanding a contrary term of this Rule.

#### **PART FOUR – CONTRIBUTIONS AND MEMBER SUPERANNUATION INTERESTS**

##### **16. ACCEPTING MEMBER CONTRIBUTIONS, ROLL-OVERS AND TRANSFERS**

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- 16.1 The Trustee may accept a Contribution, a Roll-over Superannuation Interest, and/or Transfer Superannuation Interest from a Member or other Contributor on behalf of a Member by:

- (a) payment of money, including Australian currency, foreign currency, BitCoin or other digital currency (provided such money is permitted by the Superannuation Laws) whether paid in Cash, transferred electronically, paid by cheque, a money order or such other manner of transfer of money allowed by the Superannuation Laws;
- (b) Contribution-in-Kind;
- (c) Contribution-in-Specie;
- (d) such accretions, transfers or payments permitted to be acquired by the Trustee by the Superannuation Laws for such purpose; and

may require the Member to complete a **Notice of Intent to Claim or Vary a Deduction and/or Contribution Declaration**. The Trustee may amend, vary or require alternate documentation for the purposes of receiving Contributions.

- 16.2 If the Contribution is other than a Roll-over Superannuation Interest or Transfer Superannuation Interest, the Trustee must:

- (a) ensure the Contributions received on behalf of a Member are compliant with the Superannuation Laws, including but not limited to SISR 7.04; and
- (b) if the Trustee cannot allocate the Contribution to a Member's Superannuation Interest within 28 (twenty-eight) days of the end of the month in which the Contribution is received, then the Trustee must allocate the Contribution by or before such time as the Regulator allows in the circumstances.

- 16.3 The Trustee shall not accept Contributions made by a Member, or on behalf of a Member, if the Member has failed to provide his/her Tax File Number within 30 (thirty) days of the Contributions being received by the Trustee. *See also SISR 7.04(2) and 7.04(3).*

- 16.4 The Trustee shall not accept Contributions other than Authorised Contributions made by a Member or on behalf of a Member, unless the Superannuation Laws allow.

- 16.5 If the Trustee is of the opinion a Contribution (or part thereof) is in excess of a Member's Contributions Cap (whether in respect to one or more of the following: Concessional Cap, Non-Concessional Cap, Non-Concessional Lifetime Cap, CGT Contributions Cap, Transfer Balance Account and/or such other capping criteria as shall be relevant) in respect to such Member, and/or is not an Authorised Contribution, then the Trustee may:

- (a) reject the Contribution (if the Trustee can do so prior to the amount being received by the Trustee);
- (b) allocate the Contribution to any Reserve Account;

*Warning: The Trustee should take advice from a SMSF Adviser prior to allocating Contributions to other than the Member to which the Contribution is communicated to be paid by, or for the benefit thereof. If the allocation is to a Reserve Account or other Account, the Trustee may be under strict time restrictions in respect to any allocations.*

- (c) refund the Contribution to the Contributor;
- (d) hold the amount on Bare Trust for the Contributor or Member;
- (e) refund the Contribution to the Member if the Trustee receives a Member Release Authority;
- (f) refund the Contribution to the Regulator if the Trustee receives a Regulator Release Authority; and/or
- (g) take such other action as may be required, or permissible in accordance with the Superannuation Laws.

16.6 In effecting Rule 16.5, the Trustee may:

- (a) deduct charges in respect to insurance premiums paid directly or indirectly in respect to the Contributions,
- (b) deduct taxes paid or payable in respect to the Contributions (including but not limited to Excess Transfer Balance Tax);
- (c) deduct reasonable administration charges and other amounts allowed by the Superannuation Laws; and/or
- (d) credit or debit (as the case may be) the Member's Transfer Balance Cap (if required by the Superannuation Laws, or otherwise requested by the Member).

16.7 The Trustee shall do all things necessary to facilitate and assist the processing of Contributions by any authorised payment system prescribed by the Superannuation Laws, including but not limited to SuperStream.

16.8 The Members may request the Trustee to provide a written **Employer Contribution Notification** for the purpose of communicating the details of the Fund to a Contributor.

## **17. CREATING AND TRANSFERRING MEMBER SUPERANNUATION INTERESTS**

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17.1 The Trustee may, in its absolute discretion or at the request of a Member or the Member's Alternate Decision-Maker, establish one or more Accounts (including Sub-Accounts) on behalf of a Member and/or the Fund (including a Reserve Account and/or Pension Reserve).

17.2 The Trustee may hold one or more Superannuation Interests on behalf of a Member or the Member's Legal Estate.

17.3 Any Member's Superannuation Interest may be established as a Member Accumulation Interest, a Member Pension Interest, a Reserve Account or any other Superannuation Interest or Member's Account allowed under the Superannuation Laws.

17.4 A Member's Superannuation Interest can be settled and continued without a transfer of any Asset or Cash, provided the Trustee agrees to such arrangement and the Superannuation Laws allow.

17.5 The Trustee may, with the consent of a Member, transfer, in whole or in part, a Member Accumulation Interest to a Member Pension Interest, and vice versa, and excepting where the Superannuation Laws require, such transfer shall not constitute the creation of a new Member Superannuation Interest (whether of a Member Accumulation Interest or Member Pension Interest).

17.6 The Trustee may allocate Asset(s) of the Fund (whether held at such time, acquired for the purposes of, or otherwise received by the Trustee by any other means), in whole or in part, in lieu of Cash, to accommodate the transfer and settlement of new Superannuation Interests equivalent to the relevant transfer amount(s).

17.7 This Rule 17 shall be read with Rule 15, and:

- (a) the Trustee may with the consent of a Member, transfer, in whole or in part, a Member Superannuation Interest to any Eligible Roll-over Fund nominated by the Member in the Member's **Notice of Payment Direction**;
- (b) the Trustee may with or without the consent of a Member, transfer, in whole or in part, a Member Superannuation Interest to an Eligible Roll-over Fund nominated by a Member in the Member's **Default Superannuation Fund Nomination** on the happening of a Mandatory Transfer Event to the Member, and if the Member has not made a nomination or the nomination is not capable of being given effect, then the Trustee may transfer, in whole or in part, a Member Superannuation Interest to any other Eligible Roll-over Fund in such circumstances;
- (c) the Trustee may, with or without the consent of a Member, accept Roll-over Superannuation Interest from any Eligible Roll-over Fund, accept the accounting and benefit description of the Roll-over Superannuation Interest as conclusive without further query, and accept the Roll-over Superannuation Interest to be held on the same terms upon which the Eligible Roll-over Fund held the Roll-over Superannuation Interest; and
- (d) the Trustee may do such other things as the Trustee deems reasonable having regard to the objective of ensuring the Fund is a Complying SMSF.

## **PART FIVE – INVESTMENTS AND INVESTMENT STRATEGIES**

### **18. CREATING AN INVESTMENT STRATEGY FOR THE FUND AND MEMBERS**

- 18.1 The Trustee of the Fund must formulate and give effect to an Investment Strategy which meets the Superannuation Laws and Regulator's requirements for a Complying SMSF. The Investment Strategy includes the Fund's Insurance Strategy and must be regularly reviewed by the Trustee of the Fund.

*Note: See SISR 4.09(2), which requires the Trustee to conduct a review of the Fund's Investment Strategy on a regular basis to consider the changing circumstance of the Fund and its Members.*

- 18.2 The Trustee may create a separate Investment Strategy in respect to one or more Member Superannuation Interests and/or Fund Accounts (including a Reserve Account). This Rule is not to be read as requiring multiple Investment Strategies where a Fund has more than one Member and/or a Member has one or more Superannuation Interests in the Fund.

*For example: Ameer, aged 46, has recently sold her business, a bathroom air freshener manufacturing Company, and contributed the proceeds to the Fund. Not to be a settled soul, Ameer is using her skills to develop a new business, which designs automatic flushing systems for airplane toilets. Her personal earnings potential is high, and she swears she will die working.*

*Victor, aged 55, is also a Member of the Fund, and he recently sold his outsourcing business, and he also contributed the proceeds to the Fund. Victor meets with his financial planner, and decides that he can start a Pension Interest. He has no desire to work again, and so he is concerned about investment risk. Lachie, aged 21, has recently been admitted to the Fund, and has a small membership interest.*

*Ameer is ultra-aggressive, and believes the world's energy needs can be addressed through the conversion of mould to energy. She meets with Victor and Lachie (each of them are Directors of the Corporate Trustee), and they decide to establish three (3) separate Investment Strategies in respect to each of the Member's objectives.*

*Ameer's Superannuation Interests are segregated from the balance of the Fund Accounts, to allow her to acquire risky investments in mould research companies, whereas, Victor and Lachie favour a blended portfolio of property, shares and units.*

*Astonishingly, Ameer's investment in the mould research companies returns astronomical Earnings, all of which benefit her Membership Interests. Victor and Lachie look on with admiration.*

- 18.3 If the Trustee implements more than one Investment Strategy, whether in respect to the Fund or any one or more Members, then the Trustee may:
- (a) settle Sub-Accounts for each Investment Strategy;
  - (b) apply Earnings in respect to each Investment Strategy to its corresponding Sub-Account;
  - (c) deduct expenses incurred in respect to each Investment Strategy to its corresponding Sub-Account; and/or
  - (d) apply Earnings and/or expenses (whether in accordance with a Fund Earning Rate, or as otherwise deemed reasonable by the Trustee) associated with each Investment Strategy to a separate Account, Sub-Account of the Fund (including any one or more Member's Accumulation Interests, Member Pension Interests, and/or Reserve Account).
- 18.4 The Trustee may amend any one or more Investment Strategies for the Fund Accounts and/or Member Superannuation Interest(s) at any time, by oral resolution, except where the Superannuation Laws require such amendment to be shown in writing.
- 18.5 If the Trustee receives Contributions and/or Insurance Proceeds which are not otherwise contemplated in an Investment Strategy, then, notwithstanding, the Investment Strategy shall be deemed to encompass such Contributions and/or Insurance Proceeds. In such deeming, this Rule 18.5 shall take precedence over any Investment Strategy.
- 18.6 The Trustee shall complete a risk management statement, or such other instrument as may be required by the Superannuation Laws, in respect to investments in derivatives, options, instalment warrants or other products with underlying borrowings or leverage. If the Superannuation Laws do not require a risk management statement or other instrument in the circumstances, then there shall be no obligation on the Trustee to do so as a consequence of the Governing Rules.

## **19. SPECIAL RULES REGARDING STATE-BASED TAX AND DUTY EXEMPTIONS AND CONCESSIONS**

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- 19.1 Despite any contrary term of the Governing Rules, if a Member transfers property, or an interest in property, to the Fund on the condition that the property, or interest in property, is to be held specifically for the Member to enable the Member to obtain a tax or duty exemption or concession under State taxes, then:
- (a) the property, or interest in the property, can only be held in the Fund specifically for the transferring Member, so the property or interest in the property cannot be pooled with the contributions or other Assets of another Member and no other Member can obtain an interest in the property;
  - (b) if necessary, the Trustee may create a sub-fund for the purposes of holding the property, or interest in the property; and
  - (c) the property, or interest in property, or the proceeds of sale of the property, or interest in the property, if sold, can only be held in the Fund to be provided to the transferring Member as a Retirement Benefit.

*Note: Special attention needs to be had to ongoing Government announcements in respect to the restrictions on segregation.*

## **PART SIX – RESERVE ACCOUNTS**

### **20. ESTABLISHING A RESERVE ACCOUNT FOR THE FUND**

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- 20.1 The Trustee may establish one or more Reserve Account for the Fund which may include amongst others an Investment Reserve, a Contributions Reserve, a Pensions Reserve and a Pension Interest Reserve, provided the Superannuation Laws allow. Any Reserve Account may be for the benefit of current, past and future Members, Members' Dependants, a Member's Legal Estate, Members' Beneficiaries and/or the Trustee.

- 20.2 The Trustee may adopt Special Rules regarding the use, purpose and payment of Superannuation Benefits, General Expenses, Specific Expenses, or for the payment of any other liability of the Fund from any Reserve Account, subject to the Superannuation Laws.
- 20.3 The Trustee may transfer Assets and Earnings (including, but not limited to, insurance proceeds) of the Fund to any Reserve Account (including a Pension Reserve Account) and/or allocate Member Contributions to any Reserve Account (including a Pension Reserve Account), provided the Superannuation Laws allow.
- 20.4 The Trustee may pay, apply or set aside the Assets and Earnings of any Reserve Account of the Fund to:
- (a) settle any General Expense or Specific Expense of the Fund;
  - (b) add to another Reserve Account in the Fund or any other Superannuation Fund;
  - (c) add to any or all Superannuation Interests of the Fund (provided such application does not result in a Member exceeding his/her relevant Contributions Cap(s) as a result, unless the Member and Trustee consent and the Superannuation Laws allow);
  - (d) facilitate a Roll-over Superannuation Interest from the Fund to another Superannuation Fund;
  - (e) pay a Member Accumulation Interest or Member Pension Interest (in whole or in part);
  - (f) pay a Member's Temporary Incapacity Pension Interest (in whole or in part);
  - (g) pay a Member's Death Benefit (in whole or in part); and/or
  - (h) pay, credit, and/or apply the Assets and/or Earnings of any Reserve Account for any other purpose allowed by the Superannuation Laws.
- 20.5 Any trust distributions, insurance proceeds, windfall gains, winnings, receipts and/or accretions and accumulations of any other kind of the Fund which are other than a Contribution or Earnings of the Fund (including Earnings in respect to Assets held segregated for one or more Accounts of the Fund), may be allocated by the Trustee to any Reserve Account of the Fund, in such amounts and manner deemed reasonable by the Trustee, provided such allocation is permitted by the Superannuation Laws.
- 20.6 No Member, Member's Dependant, Member's Legal Estate, Member's Beneficiary and/or other party has any right or entitlement to a Reserve Account, unless the Trustee resolves to allocate part or whole of the Reserve Account to such a Person.
- 20.7 If the Trustee's proposed allocation from a Reserve Account gives rise to a tax liability to the Fund or a Member, then the Trustee may defer allocation until Professional advice is taken in respect to the taxation consequences.
- 20.8 The Trustee has the power to determine a formulae by which Earnings, expenses and/or losses are allocated between Reserves, Member Accumulation Interests and/or Member Pension Interests, provided the Trustee acts reasonably.

## **PART SEVEN - INSURANCES**

### **21. INSURANCES, ANNUITIES AND INSURANCE STRATEGY (INCLUSIVE OR EXCLUSIVE OF ANNUITIES)**

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- 21.1 The Trustee may create an Insurance Strategy for the Members of the Fund and/or one or more individual Insurance Strategies for each Member. The Insurance Strategy(ies) shall form part of the Fund's Investment Strategy.
- 21.2 The Trustee may enter into any policy of insurance with an Australian or foreign provider, in respect to one or more Members, for any one or more contingencies permitted by the Superannuation Laws, including, but not limited to, a Member's death, a Member's Temporary Incapacity and/or a Member's Total and Permanent Incapacity.



- 21.3 The Trustee may enter into any annuity or deferred annuity contracts upon the life of one or more Members or Members' Dependants, on terms permitted by the Superannuation Laws.
- 21.4 The Trustee may cross-insure and split insurances between one or more Members of the Fund, Fund Accounts and/or other parties, and on such terms and agreements as the parties may agree, provided the Superannuation Laws allow.

*Warning: Refer to ATO ID 2015/10, SMSFR 2008/1, and SMSFR 2008/2.*

- 21.5 The Trustee may enter into any contract of insurance to establish a Self-Insurance Reserve Account in respect to risks associated with liquidity and/or cash flow which may be compromised as a consequence of a call on the payment of a Member's Superannuation Interests on the death, Temporary Incapacity, and/or Total and Permanent Incapacity of any one or more Members of the Fund, provided the Self Insurance Reserve Account is compliant with the Superannuation Laws.

*See SISR also 4.07E.*

- 21.6 The Trustee has absolute discretion to deal with the policies and/or contracts for any matter referred to in the preceding terms of Rule 21, including but not limited to termination, variation, assignment, sale, surrender, enforcement and/or renewal thereof.

*Insurance premiums may be deducted from Earnings of the Fund, or any one or more Member Superannuation Interests and/or Reserve Accounts, provided any Insurance Proceeds received in respect to the policies to which the premiums apply are dealt with in accordance with the Superannuation Laws. (See also SISR 4.07D and 4.07E.)*

- 21.7 The Trustee may pay, apply or set aside the Insurance Proceeds received in respect to an insurance policy held directly or indirectly for a Member, net of costs (including taxes) associated with the receipt, handling and distribution of such policy.
- 21.8 No Member, Dependant of a Member, Binding Death Benefit Beneficiary, Member's Legal Estate, Member's Alternate Decision-Maker, or any other Person has any interest in any contract of insurance, proceeds or distributions of the proceeds of a contract of insurance and/or a Self-Insurance Reserve Account, including but not limited to where such contract or Account is held in the name of a Member or for the benefit of a Member, unless the Trustee (or where applicable, the relevant Member's Alternate Decision-Maker – *see Rule 6*) determines to make a relevant Person absolutely entitled to such contract and/or Account, or the Superannuation Laws require a relevant Person(s) to be entitled thereto.
- 21.9 The Trustee may pay, apply, set aside, transfer or otherwise deal with any Insurance Proceeds received in respect to an insurance policy and/or annuity contract in accordance with an Insurance Strategy of the Fund, subject to the Superannuation Laws.

**PART EIGHT – ACCOUNTING, EARNINGS, ALLOCATIONS AND ADMINISTRATION**

**22. TRUSTEE TO KEEP ACCOUNTS**

- 22.1 The Trustee may create, maintain and deal with various Accounts for the Fund, including, but not limited to cash flow statements, operating statements, Balance Sheets, Earnings Accounts, Reserve Accounts, and Member Superannuation Interests.
- 22.2 The Trustee shall have discretion to determine the Members' Superannuation Interest Entitlements, provided that the determination records the Preservation Status, Tax Free Component, Taxable Component (Taxed and Untaxed), and such other criteria as may be required in respect to any other classification system required of the Regulator of the Member's Superannuation Interest(s), including but not limited to recording the credits and debits to a Transfer Balance Cap (if required).
- 22.3 The Trustee shall have discretion to determine the manner and systems in which the Accounts of the Fund are held.
- 22.4 The Trustee shall ensure the Accounts of the Fund:

- (a) comply with the standards provided in Part 4 of the SISA, and the Superannuation Laws generally;
- (b) are maintained and stored for such period as required by the Superannuation Laws;
- (c) record with the relevant Account(s) any declarations, elections, additions, deductions, payments, allowances, transfers, duties and any other information relevant in respect to such Account(s), in a transparent and readily accessible method available for inspection by Members, the Fund's Auditor and the Regulator; and
- (d) are audited annually by the Fund's Auditor, or on such other periodic term required by the Superannuation Laws and/or the Regulator.

22.5 The Trustee must determine the Market Value of any Asset(s) allocated in respect to any one or more Accounts (and/or Superannuation Interest(s)), in accordance with the audit standards, Regulator's requirements and/or as otherwise required by the Superannuation Laws.

*Note: SISR 8.02B requires the Trustee to account for the Market Value of the Fund Assets. See also section 35B(2) of the SISA.*

### **23. FUND EARNINGS**

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23.1 The Trustee may pay, apply, set aside, and/or allocate (in whole or in part) the Earnings of an Account of the Fund to one or more of the following Accounts, provided the Superannuation Laws allow:

- (a) the Fund;
- (b) any Member Superannuation Interest;
- (c) a group of Members' Superannuation Interests;
- (d) any Reserve Account (including, but not limited to a Pension Reserve, Contribution Reserve, Investment Reserve, Self-Insurance Reserve, such other Reserve Accounts settled by the Trustee); and/or
- (e) any other Account or group of Accounts in the Fund.

23.2 The Trustee may pay, apply, set aside, and/or allocate (in whole or in part) the Earnings of an Account of the Fund to one or more of the following charges:

- (a) any Expenses of the Fund; and/or
- (b) penalties charged to the Fund, provided that the Trustee is not otherwise prohibited from doing so by the Superannuation Laws, the Regulator and/or a determination by a Court or tribunal having jurisdiction in the matter.

23.3 The Trustee may pay, apply, set aside, and/or allocate (in whole or in part) any Earnings, expenses and/or losses of the Fund which are not allocated to any one or more of the Reserve Accounts, in accordance with any formulae determined by the Trustee to be appropriate, provided the Trustee acts reasonably.

23.4 Notwithstanding Rules 23.1 and 23.2, the Trustee must, unless the Superannuation Laws prescribe otherwise, ensure that all expenses and Earnings (including capital losses and gains) in respect to the segregated Cash and/or Asset(s) are applied to the benefit or burden of the corresponding Account. *See also example at Rule 18.2.*

23.5 Further to Rules 23.1, 23.2, and 23.3, the Trustee may, in circumstances in which a Member Superannuation Interest or group of Members' Superannuation Interests maintain a separate Investment Strategy, apply the Earnings in respect to the separate Investment Strategy exclusively between only the Superannuation Interests partaking in the separate Investment Strategy.

23.6 The Trustee has the discretion to apply one or more of the following methods to determine the Earnings of the Fund, the Earnings of a Member's Superannuation Interest or group of Members' Superannuation Interests, the Earnings of a Reserve Account, and/or the Earnings of any other Account of the Fund:

- (a) **Accounts Method:** income according to established accounting principles for Superannuation Funds which may include a revaluation of any Assets of the Fund to their Market Value less any Fund expenses (which include Fund taxes);
- (b) **Trust Method:** net income as the term net income is defined under the taxation of trust provisions in the Superannuation Laws;
- (c) **Income Method:** any amounts received as income plus any unrealised or realised capital gains and, at the Trustee's discretion, any allocations from a Reserve Account less any disbursements the Trustee is of the view should be deducted from the income (including any General Expenses and/or Specific Expenses); and/or
- (d) **Flexible Method:** any combination of the above or method that the Trustee is of the opinion properly reflects Earnings, including any transfer from a Reserve Account to the Earnings of the Fund;

and in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use the Income Method as the default option.

#### **24. ACCOUNTING FOR A MEMBER ACCUMULATION INTEREST**

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24.1 The Trustee of the Fund may establish a Member Accumulation Interest in the Fund for each Member.

24.2 The Trustee may determine at any time in relation to a Member Accumulation Interest, the amount that is the:

- (a) Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved, or such other type of classification as the Superannuation Laws allow or prescribe;
- (b) Taxable Component;
  - (i) Untaxed Element;
  - (ii) Taxed Element;
- (c) Tax-Free Component; and/or
- (d) Transfer Balance Cap (including credits or debits), with the Member's consent;

subject to the requirements of the Superannuation Laws.

24.3 The Trustee may pay, set aside, and/or allocate to a Member Accumulation Interest the following amounts, subject to the Superannuation Laws:

- (a) Contributions made by the Member, or by a Contributor on behalf of the Member, to the Fund (including, but not limited to a Contribution-in-Specie and/or Contribution-in-Kind);
- (b) Earnings (including, but not limited to the net Earnings associated with any Investment Strategy and/or Assets (including Cash) segregated for the benefit of the Member's Accumulation Interest);
- (c) Assets and/or Earnings from any of the Fund Reserve Accounts;
- (d) Transfer Superannuation Interests and Roll-over Superannuation Interests transferred to the Fund, or within the Fund, on behalf of a Member;
- (e) tax refunds;

- (f) any amounts allocated to the Member Accumulation Interest by the Trustee from insurance policy proceeds;
- (g) Member Pension Interest Roll-back amount (including but not limited to Roll-backs from a Member Pension Interest of the Excess Transfer Balance Cap);
- (h) amounts subject to a Contributions Splitting Notice from a Member's Spouse;
- (i) payment pursuant to the *Family Law Act 1975 (Cth)*, including a payment as a result of separation or divorce from a Member's Spouse and a payment under a Family Law Payment Splitting Notice; and
- (j) such other amounts that the Trustee determines should be added to the Member Accumulation Interest;

provided the Trustee complies with the Superannuation Laws in such allocation(s).

24.4 The Trustee may deduct from a Member Accumulation Interest any of the following, subject to the Superannuation Laws:

- (a) amounts paid for administration, audit, actuarial, legal, valuation, SMSF Adviser fees, or proportion thereof, which the Trustee determines should be specifically deducted from the Member Accumulation Interest;
- (b) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be specifically deducted from the Member Accumulation Interest;
- (c) an amount paid in respect to the Trustee's indemnities, as determined by the Trustee in a fair and reasonable manner. *See also Rule 10;*
- (d) any losses allocated to the Member Accumulation Interest by the Trustee;
- (e) any losses associated with an Investment Strategy and/or Assets (including Cash) segregated for the Member Accumulation Interest;
- (f) any taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Accumulation Interest;
- (g) Excess Contributions Tax, refunds of Contributions and/or payments required under a properly issued release authority (including, but not limited to a Member Release Authority, Regulator Release Authority and Excess Contributions Tax Release Authority). *See also Rule 16.5;*
- (h) amounts paid for insurance premiums and/or annuity contracts for a Member including life, disability, accident, salary continuance, and/or trustee insurance. *See Rule 21;*

*Note: The Regulator requires the Trustee to allocate the proceeds of any insurance policy to the Member's Superannuation Interest(s), from which the premiums have been deducted. See also, SISR 4.07D and 4.07E.*

- (i) amounts allocated or paid for a Member's Lump Sum Payment made by the Trustee on the Member's death, Temporary Incapacity, Total and Permanent Incapacity, Retirement, termination of employment, reaching Preservation Age or for any other purpose benefitting the Member (including the Member's Dependents, and Member's Legal Estate);
- (j) amounts allocated or paid to a Member Pension Interest;
- (k) Contributions Splitting Amounts paid to or behalf of a Member's Spouse;
- (l) payments made pursuant to the *Family Law Act 1975 (Cth)* (including a payment as a result of separation or divorce from a Member's Spouse, and a payment under a Family Law Payment Splitting Notice); and/or

(m) any other amounts the Trustee determines should be deducted from the Member Accumulation Interest.

24.5 The Trustee has the power to determine a formula by which Earnings, expenses and/or losses are allocated between Member Accumulation Interests (and/or Member Pension Interests and/or Reserve Accounts), provided the Trustee acts reasonably.

## **25. ACCOUNTING FOR A MEMBER PENSION INTEREST**

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25.1 The Trustee may establish one or more Member Pension Interests, provided the Superannuation Laws allow.

25.2 The Trustee may determine at any time in relation to a Member Pension Interest, the amount that is the:

- (a) Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved, or such other type of classification as the Superannuation Laws allow or prescribe;
- (b) Taxable Component, including the Element Untaxed in any Member's Superannuation Interest;
- (c) Tax-Free Component; and
- (d) Transfer Balance Cap (including credits or debits), with the Member's consent;

subject to the requirements of the Superannuation Laws.

25.3 The Trustee may pay, set aside and/or allocate to a Member Pension Interest the following amounts, subject to the Superannuation Laws:

- (a) Earnings from the Member Pension Interest;
- (b) Assets and/or Earnings from any of the Fund Reserve Accounts;
- (c) tax refunds;
- (d) any amounts allocated to the Member Pension Interest by the Trustee from insurance policy proceeds;
- (e) any amount transferred from another Member Pension Interest or Reserve Account for the purpose of commencing a new Pension Interest; and
- (f) such other amounts that the Trustee determines should be added to the Member Pension Interest;

provided the Trustee complies with the Superannuation Laws in such allocation(s).

25.4 The Trustee may deduct from a Member Pension Interest any of the following, subject to the Superannuation Laws:

- (a) Pension Interest payments made to a Member, Member's Dependants or Member's Legal Estate from the Member Pension Interest;
- (b) amounts paid for administration, audit, actuarial, legal, valuation, SMSF Adviser fees, or proportion thereof, incurred which the Trustee determines should be specifically deducted from the Member Pension Interest;
- (c) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be specifically deducted from the Member Pension Interest;
- (d) an amount paid in respect to the Trustee's indemnities, as determined by the Trustee in a fair and reasonable manner. *See also Rule 10*;
- (e) any losses allocated to the Member Pension Interest by the Trustee;

- (f) any losses associated with an Investment Strategy and/or Assets (including Cash) segregated for the Member Pension Interest;
- (g) any taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Pension Interest;
- (h) Excess Contributions tax, refunds of Contributions and/or payments required under a properly issued release authority (including, but not limited to a Member Release Authority, Regulator Release Authority and E Excess Contributions Tax Release Authority Excess Contributions Tax. *See also Rule 16.5;*
- (i) amounts paid for insurance premiums and/or annuity contracts for a Member including life, disability, accident, salary continuance, and/or trustee insurance. *See also Rule 21;*

*Note: The Regulator requires the Trustee to allocate the proceeds of any insurance policy to the Member's Superannuation Interest(s), from which the premiums have been deducted. See also, SISR 4.07D and 4.07E.*

- (j) amounts transferred to a Member Accumulation Interest (including but not limited to transfers from a Member Pension Interest, in excess of the Transfer Balance Cap);
- (k) Contributions Splitting Amounts paid to or behalf of a Member's Spouse;
- (l) payments made pursuant to the *Family Law Act 1975 (Cth)* (including a payment as a result of separation or divorce from a Spouse, and a payment under a Family Law Payment Splitting Notice); and
- (m) any other amounts the Trustee determines should be deducted from the Member Pension Interest;

provided the Trustee complies with the Superannuation Laws in such allocation(s).

25.5 The Trustee has the power to determine a formula by which Earnings, expenses and/or losses are allocated between Member Pension Interests (and/or Member Accumulation Interests and/or Reserve Accounts), provided the Trustee acts reasonably.

## **26. CONTRIBUTIONS SPLITTING**

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- 26.1 At any time, provided the Superannuation Laws allow, the Trustee may receive a Contributions Splitting Notice from a Member in relation to an Authorised Contribution made on behalf of a Member to the Fund.
- 26.2 The Contributions Splitting Notice must deal only with such Contributions allowed to be split to a Spouse under the Superannuation Laws.
- 26.3 The Contributions Splitting Notice may detail the amount to be allotted, Rolled-over or transferred as a Transfer Superannuation Interest to a Member's Spouse.
- 26.4 Subject to the Superannuation Laws, the Trustee may make the relevant Contributions split by allocating, Rolling-over or transferring Assets of the Fund in satisfaction of the Contributions split.
- 26.5 The Trustee is to action the Contributions Splitting Notice within a reasonable period of time, and no later than the time prescribed by the Superannuation Laws or the Regulator.

## **27. FAMILY LAW**

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- 27.1 The Trustee may receive a Family Law Payment Splitting Notice from a Court, Member or Member's Dependant in relation to a Member's Superannuation Interests.
- 27.2 The Trustee is to make accommodation for the Member, the subject of the Family Law Payment Splitting Notice, by determining:

- (a) which of the Member's Superannuation Interests (if more than one) the Family Law Payment Splitting Notice is best applied to meet the requirements thereof;
  - (b) whether the amount to be split to the Member's Spouse is Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved or such other type of Classification as the Superannuation Laws allow or prescribe including the extent to which the accommodation and/or payment consists of Tax Free and Taxable (Untaxed and Taxed) Components;
  - (c) if the Superannuation Laws allows, then, with the Member's consent, determinations in respect to debits and credits of the Member's Transfer Balance Cap, in the attendances on the Family Law Payment Splitting Notice; and
  - (d) which Assets (including Cash) of the Fund will be utilised to meet the terms of the Family Law Payment Splitting Notice.
- 27.3 The Trustee is to action the Family Law Payment Splitting Notice within a reasonable period of time, but not later than the time prescribed by the Superannuation Laws or as directed by a Court.

27.4 This Rule 27 shall be read with Rule 12.9.

## **28. FUND ASSETS, CONTRACTS AND TRANSACTIONS**

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- 28.1 The Trustee is to hold all Assets of the Fund in the name of the Trustee; however, a Custodian may hold an Asset on behalf of the Trustee provided the Superannuation Laws allow.
- 28.2 If there is a change of Trustee (including the retirement and/or removal of any one or more Persons and/or the appointment of any one or more Persons), the Trustee, as soon as practicable, must cause the transfer of the Fund's Assets to the Trustee(s) then acting.

*Note: Where the Trustee of the Fund is a Corporate Trustee, any change in Membership of the Fund requires a change of directorship of the Corporate Trustee, but the change to a Corporate Trustee's directorship does not require a change in the legal ownership of the Assets. Therefore, a Corporate Trustee gives rise to lesser complication in the event of the cessation of membership of a Member and/or the Mental Incapacity or death of a Member.*

- 28.3 Any contract, transaction or agreement of whatsoever nature undertaken on behalf of the Fund, must be in the name of the Trustee, unless the Trustee has appointed a Custodian to act on behalf of the Fund.
- 28.4 No Member, Member's Dependant, Member's Legal Estate, Member's Beneficiary, and/or other party has any right or entitlement to any Asset (including Cash) of the Fund, unless the Trustee resolves to allocate part or whole of the Asset (including Cash) to such a Person (*such as in the payment of a Member's Death Benefit from the Fund*).
- 28.5 A Member, Member's Dependant, Member's Beneficiary, Member's Legal Estate and/or Member's Alternate Decision-Maker may enter a contract, transaction or agreement of whatsoever nature with the Trustee, provided the Superannuation Laws allow.
- 28.6 If 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, in the Fund be treated as a Non-Complying SMSF or be subject to a penalty, the transaction, arrangement, declaration or agreement shall be void ab-initio, provided that the Trustee and Person(s) give consent, and the Trustee and Person(s) are capable of being restored to the same or substantially similar financial condition as existed prior thereto and the Superannuation Laws (and such other Laws as may be relevant) allow.

## **PART NINE – PAYMENT OF MEMBER SUPERANNUATION INTERESTS**

### **29. ACCESSING MEMBER SUPERANNUATION INTERESTS**

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- 29.1 **Member Payment Direction Protocol:**

- (a) If a Member meets a **Condition of Release of Benefits**, the Member may access his/her Superannuation Interests by way of:
  - (i) one or more Lump Sum Payments. Notwithstanding any other term of the Governing Rules, the minimum and maximum payments of a Lump Sum Payment shall be determined having regard to the Payment Standards, and if the Member becomes a bankrupt person, the Trustee (except where the bankrupt Member is absolutely entitled) may refuse to pay the Lump Sum Payment and instead retain the Lump Sum Payment, and process the Roll-over of the bankrupt Member's Superannuation Interest in accordance with the terms of Rule 15;
  - (ii) one or more Pension Interests. Notwithstanding any other term of the Governing Rules, the minimum and maximum payments from a Pension Interest shall be determined having regard to the Payment Standards, and where the Member in receipt of a Pension Interest becomes a bankrupt person, the maximum payment in respect to the Pension Interest shall be based on the minimum payment prescribed by the Payment Standards; and/or
  - (iii) such other Superannuation Benefits permitted by the Superannuation Laws.
- (b) The Member may, in making an application pursuant to this Rule, submit to the Trustee a **Notice of Payment Direction (Payment Direction)**.

*Note: The Trustee and Members may agree to application by any other mechanism or process. This Rule provides a default process, in the absence of other agreement.*

- (c) A Notice of Payment Direction is not required from a Member for each and every payment from the Fund.
- (d) A Member's Payment Direction cannot be a claim for an amount or amounts which exceeds the Member's Superannuation Interests in the Fund, although the Member may request an allocation from any Account (including a Reserve Account of the Fund) (which request is not binding on the Trustee).
- (e) The Member's Alternate Decision-Maker shall be read as the Member for the purpose of this Rule 29.1, if the Member is Mentally Incapacitated, a Minor Member, Deceased Member, or the Member has appointed the Alternate Decision-Maker to act at the relevant time for any other reason.

**29.2 Conditions of Release of Benefits:** The Trustee shall have regard to this Rule 29.2 and Part 1A and Schedule 1 of the SISR, when assessing a Member's eligibility for the payment of a Lump Sum Payment and/or Pension Interest:

- (a) a Member is eligible to receive a **Lump Sum Payment** upon the happening of any of the following events:
  - (i) being a Temporary Resident, the Member meets the conditions of SISR 6.01B;
  - (ii) Retirement (*Note: See also SISR 6.01(2) and (7)*);
  - (iii) death;
  - (iv) Terminal Medical Condition;
  - (v) Severe Financial Hardship;
  - (vi) attaining 65 (sixty-five) years of age;
  - (vii) a Compassionate Ground;
  - (viii) attaining Preservation Age (subject to commutation restrictions);
  - (ix) receiving an Excess Contributions Tax Release Authority;



- (x) having less than \$200 (two hundred dollars) in the Fund;
  - (xi) becoming subject to Permanent Incapacity (*Note: See also SISR 1.03C*); and
  - (xii) such other terms as prescribed by the Superannuation Laws from time to time for such purpose;
- (b) a Member is eligible to receive a **Pension Interest** upon the happening of any of the following events:
- (i) Retirement (*Note: See also SISR 6.01(2) and (7)*);
  - (ii) death;
  - (iii) Terminal Medical Condition;
  - (iv) attaining 65 (sixty-five) years of age;
  - (v) attaining Preservation Age;
  - (vi) becoming subject to a Temporary Incapacity;
  - (vii) becoming subject to Permanent Incapacity (*Note: See also SISR 1.03C*); and
  - (viii) such other terms as prescribed by the Superannuation Laws from time to time for such purpose;
- (c) a Member, Member's Dependants and/or Member's Legal Estate shall be read to meet a Condition of Release of Benefits for a Lump Sum Payment and Pension Interest on the death of the Member, subject to the limitation that only an Eligible Pension Beneficiary may receive a Pension Interest and only an Eligible Lump Sum Beneficiary may receive a Lump Sum Payment.

*For example, Brin and Cat are members of the Fund, and are married. Brin has an Auto-Reversionary Pension Interest Agreement, which nominates Cat as the Reversionary Beneficiary. Brin dies, and Cat survives. The Superannuation Laws allow Cat to receive either a Pension Interest or Lump Sum Payment, because she is Brin's Spouse. If Brin wanted to leave his Superannuation Interest to Tom, his adult non-dependent son as a Pension Interest, the Trustee would refuse such direction because Tom is not eligible to receive a Pension Interest from Brin's Superannuation Interest.*

**29.3 Trustee Payment Direction Protocol:** Upon receipt of a Member's Payment Direction:

- (a) the Trustee shall have regard to the Payment Direction and determine what, if any, additional documentation is needed to determine the Member's Payment Direction, including but not limited to assessing whether the Member has satisfied a Condition of Release of Benefits (*see Rule 29.2*). If any additional documentation is needed, the Trustee shall, as soon as reasonably possible, detail the request for additional documentation to the Member;

*For example, Amy, John and Bart are Members of the Fund. Amy (a brain surgeon) had a hard year, and she decided to run off to Thailand. Amy, whilst smart, has no common sense and decides to spook an elephant, which tramples over her. As a result, she is left blind, deaf and loses her hands. She is nonetheless able to communicate through facilitated communication, and does not require an Alternate Decision-Maker.*

*Amy makes an application to the Trustee of the Fund (who is Amy, John and Bart) for access to her Superannuation Interests as a consequence of her Total and Permanent Incapacity. John and Bart ask Katie, the Fund's lawyer, if they can pay Amy on the Payment Direction. Katie advises John and Bart that Amy needs to provide certification from two independent doctors that her disability is permanent. John and Bart have Katie*

*write Amy a letter to take with her to her doctors to ensure that the Trustee has adequate evidence before paying the Payment Direction.*

- (b) the Trustee, upon receipt of all documentation required for the assessment of a Payment Direction, shall consider the Member's Superannuation Interest. The Trustee may, but is not required to, provide advice to the Member in respect to his/her Tax Free Component, Taxable (Taxed and Untaxed) Component, and Preservation Status, and the calculation of the Member's Transfer Balance Caps (including, but not limited to any contemplated credits and/or debits);
- (c) the Trustee may commence a Pension Interest as an Account-Based Pension (including a Transition to Retirement Income Stream), Temporary Incapacity Pension Interest, Child Pension Interest, or any other Pension Interest allowed by the Superannuation Laws, whether or not the Pension Interest is conditional and/or auto-reversionary;
- (d) the Trustee may continue to pay an Allocated Pension and/or a Defined Benefit Income Stream (which includes, but is not limited to life expectancy pensions and annuities, lifetime pensions and annuities and market linked pensions); however, may not commence a new Allocated Pension or Defined Benefit Income Stream, unless the Superannuation Laws allow;
- (e) the Trustee may, at any stage of the Protocol obtain advice and/or assign its obligations to any SMSF Adviser, provided that the Trustee cannot discharge its obligations in the handling of the Payment Direction to the Member. The costs of such advice and administration may be charged by the Trustee to the Member's Superannuation Interest;
- (f) the Trustee shall then consider the Fund's Assets, Reserve Accounts, segregation and financial obligations of the Fund, and determine the manner in which the Payment Direction will be processed, including but not limited to the commencement date, timing, frequency of payments and the Accounts against which the Payment Directions will be applied. This review can occur on a rolling basis, annual basis or such other basis as the Trustee deems reasonable, having regard to the Trustee's obligations under the Superannuation Laws;
- (g) if the Member requests a Pension Interest, but the Trustee determines the Member's Superannuation Interest can only accommodate a Lump Sum Payment, then the Trustee shall communicate the determination to the Member and work with the Member to accommodate the Member's Payment Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;
- (h) if the Member requests a Lump Sum Payment, but the Trustee determines the Member Superannuation Interest can only accommodate a Pension Interest and/or an amount less than the Lump Sum Payment required at such time, then the Trustee shall communicate the determination to the Member and work with the Member to accommodate the Member's Payment Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;
- (i) once the Trustee and Member have agreed on the Payment Direction (whether as originally submitted, or as amended as a consequence of a preceding terms of Rule 29.3), then the Trustee shall calculate the Tax Free Component, Taxable (Taxed and Untaxed) Component and Preservation Status with respect to the payment (whether as a Lump Sum Payment or Pension Interest) (excepting in circumstances in which the Superannuation Laws require a different manner of calculation or timing);
- (j) the proportioning of the components referred to in Rule 29.3(i) shall be binding on each and every payment from the Pension Interest and/or Lump Sum Payment settled as a consequence of the Payment Direction, unless or until the Superannuation Laws provide otherwise;
- (k) the Payment Direction, as effected in accordance with the preceding terms of Rule 29.3, shall be reviewed, amended and/or terminated at the request of the Member (**Further Payment Direction**), subject to the Trustee's discretion to action such Further Payment

Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;

- (l) where the Trustee resolves a payment of either one or more instalments of a Pension Interest, or one or more Lump Sum Payments, the Member shall be absolutely entitled to the amount determined by such resolution on the date and conditions shown in the resolution. A resolution may be oral, provided that the resolution is reduced to writing within a reasonable time and communicated to the Member;
- (m) if an instalment of a Pension Interest, or a Lump Sum Payment is not paid on a date prescribed in a Trustee resolution, the Trustee shall hold such amount on trust for the Member;
- (n) unless the Pension Interest Agreement prescribes otherwise, a Pension Interest may be changed in form to an Auto-Reversionary Pension Interest and/or Conditional Pension Interest, without commutation or Roll-back, and vice versa; and
- (o) a reference to a Member in this Rule 29.3, includes where applicable the Member's Dependant, Member's Beneficiary and/or a Member's Legal Estate.

29.4 In giving effect to Rules 29.1, 29.2 and 29.3, the Trustee has a duty to act reasonably and in good faith. To this end, the Trustee shall make timely and proper disclosure to the Member and/or the Member's Alternate Decision-Maker, as the case may be. Notwithstanding, the Trustee shall be under no obligation to make any disclosure which compromises the interests of the other Members in the Fund, the Complying SMSF status of the Fund and/or solvency of the Fund.

29.5 Subject to the Superannuation Laws and without limiting the powers of the Trustee under the terms of Rule 29 (except as restricted in accordance with Rules 29.6 and 29.6(a)), the following Superannuation Benefits may be paid by the Trustee, at the request of a Member or the Member's Alternate Decision-Maker (if acting as a consequence of Rule 6):

- (a) if the Member has reached Preservation Age and Retired, the Member may take a Lump Sum Payment and/or commence a Pension Interest;
- (b) if a Member has died, and the Member has left a Binding Death Benefit Nomination and/or SMSF Will which is capable of taking effect at the Member's death, then the Trustee must pay the Deceased Member's Superannuation Interest in accordance with the terms of the Binding Death Benefit Nomination and/or SMSF Will, subject to Rules 31, 32 and 39; and
- (c) if the Member, as determined by the Trustee based on documented medical opinion, is Temporarily Incapacitated, the Member may commence and continue a Temporary Incapacity Pension Interest until such time as the Member is no longer Temporarily Incapacitated;
- (d) if the Member, as determined by the Trustee based on documented medical opinion, has a Terminal Medical Condition, the Member may take a Lump Sum Payment and/or commence a Pension Interest;
- (e) if the Member meets the conditions of Severe Financial Hardship, the Member may receive a Lump Sum Payment (but only as allowed by the Superannuation Laws);
- (f) if the Member is aged 65 (sixty-five) years or older, the Member may take a Lump Sum Payment and/or commence a Pension Interest (whether Retired or not);
- (g) if the Member has reached Preservation Age (whether Retired or not), the Member may commence a Pension Interest (including a Transition to Retirement Income Stream);
- (h) if the Regulator or any other Government authority responsible for deciding the payment of a Superannuation Benefit, on the basis of a Compassionate Ground, determines a payment may be made to a Member, a Member may receive a Lump Sum Payment on a

Compassionate Ground in the amount and/or method prescribed by such Regulator or Government authority;

- (i) if a Member has commenced a Pension Interest then, subject to the terms and conditions of the Pension Interest and Superannuation Laws, a Member may receive a Lump Sum Payment from the Pension Interest, including, but not limited to a Lump Sum Payment made upon the death of the Member, subject to Rule 30;
- (j) if the Member, as determined by the Trustee based on documented medical opinion, is Totally and Permanently Incapacitated, the Member may take a Lump Sum Payment and/or commence a Pension Interest; and/or
- (k) any other Lump Sum payment, Pension Interest or other payment authorised under the Governing Rules, Superannuation Laws or by the Regulator, to be payable to a Member, Member's Dependants, Member's Legal Estate, and/or such other Person(s) permitted to receive a Superannuation Benefit from the Member's Superannuation Interest (including any allocations thereto from any Reserve Account of the Fund).

29.6 The following express provisions do not limit the Trustee's powers:

- (a) **Overseas Pension and Retirement Payments:** If Superannuation Benefits are referable to an Overseas Pension or Retirement Scheme, then the Trustee must abide by any release of benefits requirements made pursuant to the laws in respect to the Overseas Pension or Retirement Scheme.
- (b) **Excess Contributions Tax Release Payments:** The Trustee, if required under an Excess Contributions Tax Release Authority issued in respect of a Member, must pay to a Member or the Regulator, within the time prescribed by the Superannuation Laws, the amount prescribed under the Excess Contributions Tax Release Authority. This includes any excess Concessional Contributions or Non-Concessional Contributions required to be paid to the Regulator or under an Excess Contributions Tax Release Authority.
- (c) **Roll-overs and Transfers:** The Trustee may Roll-over a Lump Sum Payment, a Pension Interest or may make a transfer of a Roll-over Superannuation Interest for the benefit of a Member to an Eligible Entity. *See also Rules 15 and 17.*
- (d) **Pension Interest and Pension Roll-backs:** A Member in receipt of a Pension Interest may Roll-back part or all of their Member Pension Interest to a Member Lump Sum Payment. The Roll-back amount may be satisfied by the transfer of Assets and Cash between the Member Pension Interest and the Member Accumulation Interest.
- (e) **Pension Interest and Pension Transfers:** A Member in receipt of a Pension Interest may direct the Trustee to transfer part or all of his/her Member Pension Interest to an Accumulation Interest or to another Eligible Entity to hold for the Member. The Trustee shall have sole discretion to determine which Assets of the Fund are to be applied for such purpose and the Market Value of the Assets of the Fund at such time.
- (f) **Pension Interest Changes:** The Trustee, at the request of a Member, has the power to convert a Pension Interest to an Auto-Reversionary Pension Interest and/or Conditional Pension Interest. Similarly, the Trustee, at the request of the Member, has the power to convert an Auto-Reversionary Pension Interest and/or Conditional Pension Interest to a Pension Interest. Changes may be made in any manner agreed by the Trustee and Member, including but not limited to oral resolution, written resolution, agreement or deed. The changes will not, unless the Superannuation Laws prescribe, constitute a commutation of any Pension Interest. This Rule is to be read with Rules 12.11, 24, 25 and 29, where applicable.
- (g) **Compulsory Payments:** It is not compulsory for the Trustee to pay a Superannuation Benefit to a Member, Member's Dependants, or a Member's Legal Estate, unless the payment is required by the Superannuation Laws to be made. Notwithstanding, the Trustee must act reasonably and in good faith in assessing Payment Directions.

- (h) **Anti-Detriment Payment:** In the payment of a benefit from the Fund, the Trustee may include an amount equal to the Anti-Detriment Payment to an Eligible Person.

*Warning: Changes to the Superannuation Laws may prohibit Anti-Detriment Payments. Seek specialist advice before making such a provision.*

- (i) **Special Rules for Pension Interests:** The terms of an Auto-Reversionary Pension Interest and/or Conditional Pension Interest are Special Rules of the Fund. Accordingly, the terms thereof survive any variation to the Governing Rules, excepting where the terms of the relevant interest are referred to specifically and the parties to the Special Rules prescribe the variation and/or termination by further written instrument.

### **30. SPECIAL RULES FOR THE PAYMENT OF A MEMBER'S SUPERANNUATION INTERESTS**

- 30.1 **Outline:** Rule 30 outlines the Special Rules which may be settled by the Trustee and Members in respect to the payment of a Member's Superannuation Interests both during the lifetime of a Member and on their death. Rule 30 is to be read with the other Governing Rules of the Fund, but in particular with Rules 6, 19, 29, 38, and 39.
- 30.2 **SMSF Death Benefits:** When a Member dies the following Death Benefits (in respect to such of the Member's Superannuation Interests which are not subject to a valid Auto-Reversionary Pension Interest Agreement (*see Rule 35*), Conditional Pension Interest Agreement (*see Rule 36*)) or other Pension Interest Agreement which prescribes a reversionary term (*see Rule 37*)) are payable:
- (a) if the Deceased Member died leaving a SMSF Will, then see Rule 31;
  - (b) if the Deceased Member died leaving a Binding Death Benefit Nomination which has not lapsed, then see Rule 32;
  - (c) if the Deceased Member died leaving a Non-Binding Death Benefit Nomination and/or a Binding Death Benefit Nomination which has lapsed, then see Rule 33;
  - (d) if the Deceased Member died and did not leave a SMSF Will, a Binding Death Benefit Nomination, or a Non-Binding Death Benefit Nomination, then see Rule 34.
- 30.3 **SMSF Death Benefit Special Rules:** Notwithstanding any other term of the Governing Rules, a SMSF Will and a Binding Death Benefit Nomination are known as a "SMSF Estate Planning Special Rule", and are not subject to amendment, variation or striking except where the SMSF Will and/or the Binding Death Benefit Nomination is amended, varied or struck under the respective terms of Rules 31 and/or 32. For clarity, a change to the Governing Rules of the Fund by future instrument, resolution or determination otherwise, is deemed to incorporate the SMSF Estate Planning Special Rules. This Rule 30.3 is a further SMSF Estate Planning Special Rule, notwithstanding it is to the benefit and burden of all Members. This Rule may only be amended, varied or struck by specific reference hereto, and ratified in writing by the Trustee and Members of the Fund at such future time.
- 30.4 **Treatment of Auto-Reversionary Pension Interest Agreements, Conditional Pension Interest Agreements or other Pension Interests (including other Pension Interest Agreements):** When a Member dies the following terms shall apply in respect to the Auto-Reversionary Pension Interest Agreement, Conditional Pension Interests Agreements and/or any other Pension Interest Agreements incorporating a reversionary term settled by the Member during his/her lifetime:
- (a) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to an Auto-Reversionary Pension Interest Agreement, then see Rule 35;
  - (b) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to a Conditional Pension Interest Agreement, then see Rule 36;

- (c) if the Deceased Member died part or whole of the Deceased Member's Superannuation Interest was subject to a Pension Interest Agreement incorporating a reversionary term (other than a Pension Interest shown in the preceding terms of Rule 30.4), then see Rule 37; and
  - (d) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to a Pension Interest Agreement without incorporating a reversionary term, then the Pension Interest Agreement shall be dealt with in accordance with the terms of Rule 30.2.
- 30.5 **Auto-Reversionary Pension Interest Agreement and Conditional Pension Interest Agreement Special Rules:** Notwithstanding any other term of the Rules, an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and Pension Interest Agreements with a reversionary term are known as SMSF Estate Planning Special Rules, and are not subject to amendment, variation or striking except where the Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or Pension Interest Agreement with a reversionary term is amended, varied or struck under the respective terms of Rules 35 and/or 36. For clarity, a change to the Governing Rules of the Fund by future instrument, resolution or determination otherwise, is deemed to incorporate the SMSF Estate Planning Special Rules. This Rule 30.5 is a further SMSF Estate Planning Special Rule, notwithstanding it is to the benefit and burden of all Members. This Rule may only be amended, varied or struck by specific reference hereto, and ratified in writing by the Trustee and Members of the Fund at such future time.
- 30.6 **Member's Alternate Decision-Maker:** The arrangements and terms referred to in this Rule 30 are to be read with the Governing Rules generally, including, in particular, Rules 6 and 12.11. If a Member becomes Mentally Incapacitated or dies, then Rule 6 shall apply in respect to the Member's Superannuation Interests.
- 30.7 **Recording of Determinations:** The Trustee and Member's Alternate Decision-Maker may, but shall be under no obligation to, record the reasoning for their determinations.
- 30.8 **Substantial Compliance:** Notwithstanding a defect in the execution or making of a SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination and/or Pension Interest Agreement, the Member's Alternate Decision-Maker may waive strict compliance and require the Trustee to recognise such Nomination notwithstanding the defective execution or form.
- 30.9 **Other SMSF Estate Planning Special Rules:** If a Member and Trustee agree in writing to the form of a Nomination as to Death Benefits or a Pension Interest Agreement in any format or arrangement which is other than a prescribed term shown in Rule 30 and/or the Governing Rules, then such other Nomination shall be read as a SMSF Estate Planning Special Rule in respect to such Member on the terms shown therein.

## 31. **PROTOCOL FOR SETTLING AND ADMINISTERING SMSF WILLS**

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### 31.1 **The SMSF Will**

- (a) A SMSF Will is a written direction of the Member, which prescribes the binding terms of payment in respect to his/her Member Superannuation Interests following the Member's death. A SMSF is non-lapsing.

*Note: A SMSF Will should be, but is not required to be, written by a team consisting of the Member's SMSF specialist lawyer, Member's SMSF accountant and/or financial adviser given the potential legal and planning complications.*

*For example, Milo, Lori and Shamy are Members of the Fund. They are business partners, and each of their Spouses Morti, Lex and Bob have a love/hate relationship with the other. Milo, Lori and Shamy decide that the best way to ensure that, going forward, no-one is compromised by a spouse or spouse fight, is for each of them to leave detailed non-lapsing binding directions in respect to the payment of their Superannuation*

*Interests on death. Each of them nominates their spouse as their Alternate Decision-Maker in the Alternate Decision-Maker Nomination and Last Will.*

*Milo, Lori and Shamy are flying to see clients in Canada, and tragedy strikes. Their plane is hit by a solar flare, and burns up in flight. There is nothing left of any of them.*

*Fortunately, Milo, Lori and Shamy saw their estate planning lawyer, Natalie, before leaving to go out of town and each of them made a detailed SMSF Will which worked through how the Fund's Assets, Reserves and Earnings would be dealt with in the event of the death of one or more of them.*

*They each agreed on and detailed the protocols and, in effect, their SMSF Wills also worked similarly to a shareholder agreement – because their rights were detailed and signed off, with each benefitting and being burdened by the agreed protocols.*

*Grief could not stop the in-fighting, however Morti, Lex and Bob had no choice but to give effect to the terms of the SMSF Wills. As it turned out, Morti, Lex and Bob became great friends and opted to continue the Fund in honour of Milo, Lori and Shamy.*

- (b) A SMSF Will may include any one or more of the directions read at Rule 39.3.
- (c) A SMSF Will shall be administered in accordance with the Alternate Decision-Maker and Trustee voting rights read at Rule 12.11.
- (d) A SMSF Will may only make direction in respect to such of the Member's Superannuation Interests which are not subject to a valid and binding Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement with a reversionary term.

*For example, Bob has an Accumulation Interest and a Pension Interest. The Pension Interest is subject to an Auto-Reversionary Pension Interest Agreement, which nominates Brenda, his wife as the Reversionary Beneficiary if he predeceases her. Bob also nominates Brenda to be his Alternate Decision-Maker. Bob also leaves a SMSF Will to deal with Death Benefits (which, in the circumstances, is such of his Superannuation Interests which are not subject to the Auto-Reversionary Pension Interest Agreement). He does not have to specify that only his Death Benefits exclude his Pension Interest in his SMSF Will, because the Governing Rules prescribe that the Auto-Reversionary Pension Interest Agreement takes precedence over the SMSF Will. Bob dies. When Bob's Superannuation Interests are dealt with Brenda is his Alternate Decision-Maker, and she effects the reversion to herself of the Auto-Reversionary Pension Interest and she also distributes Bob's Accumulation Interest in accordance with Bob's SMSF Will.*

*Now, let's change those facts...let's say that Bob nominated Bingle, his dog as the Reversionary Beneficiary of the Auto-Reversionary Pension Interest Agreement. Bingle does not qualify as an Eligible Pension Beneficiary or an Eligible Lump Sum Beneficiary, therefore, Bob's reversionary term would fail. In that case, Brenda would distribute Bob's Pension Interest and Accumulation Interest in accordance with Bob's SMSF Will.*

- (e) The Deceased Member's Alternate Decision-Maker shall have discretion as to the allocation of such of the Cash and/or Assets to the Member's Beneficiaries nominated in the SMSF Will, excepting that the Trustee (including the Deceased Member's Alternate Decision-Maker) has the power to decide which Cash and/or Assets of the Fund will be made available to the Deceased Member's Alternate Decision-Maker for such purposes.
- (f) Notwithstanding Rule 31.1(e), if Cash and/or Assets have been segregated to a Deceased Member's Superannuation Interests, then the segregated Cash and/or Assets shall be applied in whole or in part (as the case may) in satisfaction of the Deceased Member's Superannuation Interests for allocation by the Deceased Member's Alternate Decision-Maker in accordance with the terms of the SMSF Will.

- (g) The SMSF Will may prescribe for the segregation and/or acquisition of certain Fund Assets to quarantine to the benefit and burden of one or more beneficiaries nominated in a SMSF Will, excepting that this term is limited in so much as the Trustee may resolve to allocate different Fund Assets (excepting in circumstances shown in Rule 31.1(f)).
- (h) A Deceased Member's Alternate Decision-Maker does not have the authority, unless the SMSF Will prescribes, to change the Payment Directions in respect to the Member's Beneficiaries, excepting where the nominated Member's Beneficiary is not eligible under the Superannuation Laws to receive such payment (**Ineligible Pension Beneficiary** or **Ineligible Lump Sum Beneficiary**) or the Member's Beneficiary has predeceased the Deceased Member and no alternate Payment Direction is incorporated in the SMSF Will for such circumstance.
- (i) A SMSF Will must be signed and dated by the Member, and witnessed and signed by not less than one Natural Person who is not a Member, Member's Relative and/or a Beneficiary in the SMSF Will.

*Note: It is recommended that SMSF Will be signed by TWO Natural Persons who are not Members and/or Beneficiaries named in the SMSF Will. Per SMSFD 2008/3, section 59A of the SISA and SISR 6.17A do not apply to a SMSF – thus, a SMSF Will and/or any Nomination in respect to a Member's directions as to the payment of Death Benefits are not required to be witnessed by the Superannuation Laws by TWO Natural Persons. However, given the litigation risk of validating a Member's wishes, it is a best practice to have witness execution by TWO witnesses. Notwithstanding, the Governing Rule above shown only requires a single witness.*

- (j) The Trustee may require the SMSF Will (and/or any variations thereof) to be deposited with the Trustee prior to the death of the Member; however, the Member may deliver the SMSF Will in a sealed envelope and require the Trustee to deposit the sealed envelope with a third party for safe custody until the Member's death.
- (k) If the Member fails to deliver the SMSF Will to the Trustee prior to the death of the Member, the SMSF Will shall not be invalid.
- (l) The Trustee may, but is not required to, provide written notice acknowledging the receipt of a SMSF Will.
- (m) The SMSF Will shall be deemed as received by the Trustee on one or more of the following:
  - (i) written acknowledgment by the Trustee:
    - (1) if the Trustee is constituted by two (2) or more Natural Person Trustees, then the written acknowledgment of not less than two Natural Person Trustees acting in such capacity shall be sufficient;
    - (2) if the Trustee is constituted as a Corporate Trustee, and there are two (2) or more directors, then the written acknowledgement of not less than two directors acting in such capacity shall be sufficient;
    - (3) if the Trustee is constituted as a single Natural Person (such as in the case of the single Natural Person being the Alternate Decision-Maker of a Member), then the acknowledgement of the single Natural Person shall be sufficient;
    - (4) if the Trustee is constituted as a Corporate Trustee, and there is only one (1) director, then the written acknowledgement of the one director acting in such capacity shall be sufficient;
    - (5) a "written acknowledgement" may be by way of confirmation written on a copy of the SMSF Will, or by email, by letter, by facsimile or such other instrument capable of the consent of the Natural Persons above acting in the matter;



- (ii) return receipt by the Australian Postal Service confirming acceptance of an envelope containing the SMSF Will addressed to the Trustee at the address registered for the Trustee with the ATO; and/or
  - (iii) the SMSF Will is recorded and/or stored in the books and records of the SMSF (including where reference to the storage of the SMSF Will is made in circumstances in which a Member requires the SMSF Will to be held in confidence by a third party until the Member's death or recall by the Member.
- (n) The Trustee may, but is not required to, offer advice (including by way of a SMSF Adviser) in respect to the making of a SMSF Will, including the risk and benefits thereof.

*It is recommended that the Member incorporates his/her estate planning team, consisting of an accountant, financial planner and lawyer, each time a SMSF Will, Death Benefit Nomination, Last Will and/or EPOA is reviewed.*

- (o) A SMSF Will takes primacy over a Binding Death Benefit Nomination and Non-Binding Death Benefit Nomination.
- (p) A Member shall revoke a SMSF Will by:
- (i) making a later SMSF Will;
  - (ii) making a later Binding Death Benefit Nomination; and/or
  - (iii) delivering to the Trustee a written notice signed and dated by the Member and witnessed and signed by one Natural Person who is not a Member, Member's Relative and/or a Beneficiary nominated in the SMSF Will.

*Note: A Member should complete either a SMSF Will or a Binding Death Benefit Nomination, but not both. The two instruments are essentially the same, except that the Fund prescribes the form of a Binding Death Benefit Nomination for Member convenience.*

**31.2 Interpretation and advice on SMSF Will:** The Trustee may incur costs and engage an SMSF Adviser to provide advice on the drafting, execution, interpretation and/or administration of a Member's SMSF Will, and may debit such costs against the Member's Superannuation Interest (including a Deceased Member's Superannuation Interest), provided the Superannuation Laws and/or a Court does not otherwise determine the costs to be payable by an alternate party and/or the Fund.

**31.3 Administration of the SMSF Will:**

- (a) This Rule 31.3 shall be read with Rule 29.
- (b) The Trustee and Deceased Member's Alternate Decision-Maker may settle the payment of one or more amounts distributable under a SMSF Will by way of Cash, settlement of Pension Interest, continuation of a Pension Interest (if not otherwise subject to mandatory alternate terms), transfer of Benefits-in-Specie, in whole or in part, to the value of the amount (based on Market Value of the Asset) and/or such other benefit or payment as may be permitted by the Superannuation Laws for such purpose.
- (c) The Trustee and Deceased Member's Alternate Decision-Maker must take all reasonable steps as may be required to ensure the Payment Directions prescribed by the SMSF Will are settled within the timing requirements read in the Superannuation Laws, including but not limited to SISR 6.17A. However, in doing so, the Trustee shall not be obligated to do anything which would cause the Fund to lose Complying SMSF status or become insolvent. (See also section 59(1A) of the SISA.)
- (d) The Trustee may require a Member's Beneficiary, who is also an Eligible Pension Beneficiary, to become a Member in the Fund.

*For example, Dan and Darla are Members of the Fund. Dan and Darla are married and have Tom, an adult Child with special needs who is on a disability pension. Tom lives with Dan and Darla. Dan and Darla leave SMSF Wills which prescribe, amongst other directions, a requirement that Tom receive a Pension Interest from their respective Superannuation Interests on the death of the first of Dan or Darla. Darla takes up sky-diving and, as fate would have it, she dies in her first dive when she runs head first into a bat. Whilst grief stricken, Dan meets with Tom, and agrees to admit Tom as a Member of the Fund. Dan establishes, amongst other things, a Pension Interest for Tom, and the Fund continues with Dan and Tom as Members.*

- (e) The Trustee may refuse to accept a Member's Beneficiary, regardless of whether the Person is otherwise an Eligible Pension Beneficiary, as a Member of the Fund, and request the Member's Beneficiary to provide a **Notice of Payment Direction**.

*For example, Bob, Mary and Sue are Members of the Fund. They are business partners and have signed an agreement that only the original Members may be continuing Members in the event that one of them dies. Bob dies, leaving Julie. Bob, Mary and Sue adopt a special membership rule, whereby the membership of the Fund is limited to Bob, Mary and Sue.*

*Bob has directed in his SMSF Will that Julie is to receive his Superannuation Interest in part by way of a Lump Sum, and in part as a Pension Interest. He forgot that Julie would not be eligible to be a member under the special membership rule.*

*Mary and Sue advise Julie that Julie does not qualify as a Member of the Fund. They provide Julie with a Notice of Payment Direction, and ask her to advise the manner in which her rights in Bob's Superannuation Interests are to be dealt with.*

*Julie includes in the Notice of Payment Direction that she wishes the Pension Interest to be transferred to the Julie SMSF, of which Julie and Tim (Julie's best friend) are Trustees.*

*Mary and Sue then effect the distribution of Bob's Superannuation Interests in accordance with Julie's Notice of Payment Direction.*

- (f) If a Payment Direction prescribed in the SMSF Will gives rise to a breach or potential breach of a Member's Beneficiary's Transfer Cap Balance (and/or such other capping criteria as may be prescribed by the Superannuation Laws) (and the Member's Beneficiary is an Eligible Pension Beneficiary), then the Trustee, Deceased Member's Alternate Decision-Maker and Member's Beneficiary shall work together expeditiously to arrange the affairs of the Member's Beneficiary and the Deceased's Member Superannuation Interests so as to limit or prevent a breach of the Member's Beneficiary's Transfer Cap Balance, and:

- (i) where the Payment Direction cannot be effected without exceeding the Member's Beneficiary's Transfer Cap Balance, then the Payment Direction shall be amended *if requested by the Member's Beneficiary* to allow the Superannuation Interest (or such as is passing in accordance with the Payment Direction) to pass as a:

- (I) Lump Sum to the Member's Beneficiary;
- (II) Lump Sum or Pension Interest to one or more Eligible Pension Beneficiaries or Eligible Lump Sum Beneficiaries nominated by the Member's Beneficiary; or
- (III) Lump Sum Payment to the Member's Legal Estate; and

- (ii) any liability in respect to an Excess Transfer Balance Tax or other Excess Contribution Tax in respect to a payment to a Member's Beneficiary shall be the liability of the Member's Beneficiary.

- (g) If a Payment Direction prescribed in the SMSF Will cannot be effected because the Member's Beneficiary is an Ineligible Lump Sum Beneficiary and no alternate Payment Direction is made in the SMSF Will to deal with the circumstances, then such Payment Direction shall be void (**Quarantined Part**) and the Quarantined Part shall be dealt with as a Death Benefit for which no nomination is made in accordance with Rule 34.
- (h) The Deceased Member's Alternate Decision-Maker and the Trustee shall be under no obligation to record the reasoning for the payment of the Deceased Member's Superannuation Interests in accordance with this Rule 31.
- (i) The Trustee (including the Deceased Member's Alternate Decision-Maker) shall do all things reasonable in the administration of the SMSF Will and has the power, notwithstanding Rule 12.11 and the preceding terms of Rule 31, to determine:
  - (i) the timing as to when a payment is made;
  - (ii) the withholding of any tax on payments from a Deceased Member's Superannuation Interest;
  - (iii) the review and approval of any Conditions of Release of Benefits in respect to a Member's Beneficiary (for example, review and determination of a Person as an Eligible Pension Beneficiary and/or an Eligible Lump Sum Beneficiary (whether or not such Person is determined to be a beneficiary by the Member's Alternate Decision-Maker)); and
  - (iv) such other decisions which may otherwise result in the Fund losing its Complying SMSF status or becoming insolvent.

31.4 For clarity, Rule 31 is to be read with Rules 12.11 and 39.

31.5 Notwithstanding the terms of Rule 31, the Trustee and Members are at liberty to settle any other protocol or term by instrument in writing in respect to the establishment and/or making of a SMSF Will, including where such protocol or term is isolated to a single Member of the Fund.

## **32. PROTOCOL FOR SETTLING AND ADMINISTERING A BINDING DEATH BENEFIT NOMINATION**

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### **32.1 The Binding Death Benefit Nomination**

- (a) A Binding Death Benefit Nomination is a written direction of the Member, which prescribes the binding terms of payment in respect to his/her Member Superannuation Interests. A Binding Death Benefit Nomination may be non-lapsing, terminable on the happening of an event, or terminable on the expiry of a term of years.
- (b) If the Member wishes to prescribe complex terms of successions, quarantining provisions, cascading arrangements and other complicated succession modelling, then a SMSF Will is intended to be a format that is drafted uniquely to suit. A Binding Death Benefit Nomination is intended to be simpler in its nature, although it too can incorporate the robust terms of a SMSF Will.
- (c) An approved format of a **Death Benefit Nomination** is shown at **Annexure C**; however, the Trustee may prescribe and/or consent to alternate forms of a Binding Death Benefit Nomination.
- (d) A Binding Death Benefit Nomination may include any one or directions read at Rule 39.3.
- (e) A Binding Death Benefit Nomination shall be administered in accordance with the Alternate Decision-Maker and Trustee voting rights read at Rule 12.11.
- (f) A Binding Death Benefit Nomination may only make direction in respect to such of the Member's Superannuation Interests which are not subject to a valid and binding Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement with a reversionary term. (*See example read at Rule 31.1(d).*)

*It is recommended that the Member incorporates his/her estate planning team, consisting of an accountant, financial planner and lawyer, each time a SMSF Will, Death Benefit Nomination, Last Will and/or EPOA is reviewed.*

- (g) A Binding Death Benefit Nomination takes primacy over a Non-Binding Death Benefit Nomination, but is subordinate to a Member's SMSF Will made simultaneously or after the making of a Binding Death Benefit Nomination.

*Note: A Member should complete either a SMSF Will or a Binding Death Benefit Nomination, but not both. The two instruments are essentially the same, except that the Fund prescribes the form of a Binding Death Benefit Nomination for Member convenience.*

- (h) A Member shall revoke a Binding Death Benefit Nomination by:
- (i) making a later SMSF Will;
  - (ii) making a later Binding Death Benefit Nomination; and/or
  - (iii) delivering to the Trustee a written notice signed and dated by the Member and witnessed and signed by one Natural Person who is not a Member and/or a Beneficiary nominated in the Binding Death Benefit Nomination; and
- (i) The Deceased Member's Alternate Decision-Maker and the Trustee shall be under no obligation to record the reasoning for the payment of the Deceased Member's Superannuation Interests in accordance with this Rule 32.

32.2 The terms of Rule 31 (excluding Rule 31.1(a), 31.1(o), 31.1(p)) are read and adopted in Rule 32, subject to the reference to "SMSF Will" being read as "Binding Death Benefit Nomination".

### **33. PROTOCOL FOR SETTLING AND ADMINISTERING A NON-BINDING DEATH BENEFIT NOMINATION AND LAPSED BINDING DEATH BENEFIT NOMINATION**

#### **33.1 The Non-Binding Death Benefit Nomination**

- (a) A Non-Binding Death Benefit Nomination is a written direction of the Member, whether witnessed or not, which prescribes the Member's non-binding wishes in respect to the payment of his/her Member Superannuation Interests following the Member's death.
- (b) A Binding Death Benefit Nomination which has lapsed shall be treated as Non-Binding Death Benefit Nomination.
- (c) An approved format of a **Death Benefit Nomination** is shown at **Annexure C**; however, the Trustee may prescribe and/or consent to alternate forms of a Non-Binding Death Benefit Nomination.
- (d) A Non-Binding Death Benefit Nomination may only make direction in respect to such of the Member's Superannuation Interests which are not subject to a valid and binding Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement with a reversionary term.
- (e) A Non-Binding Death Benefit Nomination is secondary to a SMSF Will and/or Binding Death Benefit Nomination, whether or not the Non-Binding Death Benefit Nomination is made before or after a SMSF Will and/or Binding Death Benefit Nomination.
- (f) A Non-Binding Death Benefit Nomination does not revoke an earlier SMSF Will or earlier Binding Death Benefit Nomination, unless the Non-Binding Death Benefit Nomination specifically directs as such – in which case the Non-Binding Death Benefit Nomination must be witnessed and signed by one Natural Person who is not a Member, Member's Relative and/or a Beneficiary nominated in either the SMSF Will or the Binding Death Benefit Nomination.

- (g) The Trustee may require the Non-Binding Death Benefit Nomination (and/or any variations thereof) be deposited with the Trustee prior to the death of the Member; however, the Member may deliver the Non-Binding Death Benefit Nomination in a sealed envelope and require the Trustee to deposit the sealed envelope with a third party for safe custody until the Member's death.
- (h) The Trustee may, but is not required to, provide written notice acknowledging the receipt of a Non-Binding Death Benefit Nomination.
- (i) The Trustee may, but is not required to, offer advice (including by way of a SMSF Adviser) in respect to the making of a Non-Binding Death Benefit Nomination, including the risk and benefits thereof.
- (j) The Deceased Member's Alternate Decision-Maker may select one or more Persons to receive one or more Lump Sum Payments and/or Pension Interests. Such Persons are read as the Member's Beneficiary(ies) for purposes of Rule 33.3.
- (k) The Deceased Member's Alternate Decision-Maker may have regard to the Non-Binding Death Benefit Nomination, but has absolute discretion to select the Member's Beneficiaries, the percentage of the Deceased Member's Superannuation Interest payable to each of the Member's Beneficiaries and which Assets (including Cash) are to be paid to each of the Member's Beneficiaries in satisfaction thereof.
- (l) Notwithstanding Rule 33.1(k):
  - (i) the Trustee (including the Deceased Member's Alternate Decision-Maker) has the power to decide which Cash and/or Assets of the Fund will be made available to the Deceased Member's Alternate Decision-Maker for such purposes; and
  - (ii) if Cash and/or Assets have been segregated to a Deceased Member's Superannuation Interests, then the segregated Cash and/or Assets shall be applied in whole or in part (as the case may) in satisfaction of the Deceased Member's Superannuation Interests for allocation by the Deceased Member's Alternate Decision-Maker.

*Note: Such power is premised on the Trustee having reserved authority to select the Assets and Cash to be made available to Deceased Member's Alternate Decision-Maker.*

- (m) The Deceased Member's Alternate Decision-Maker and the Trustee shall be under no obligation to record the reasoning for the payment of the Deceased Member's Superannuation Interests in accordance with this Rule 33.
- (n) A Member shall revoke a Non-Binding Death Benefit Nomination by:
  - (i) making a later SMSF Will;
  - (ii) making a later Binding Death Benefit Nomination; and/or
  - (iii) delivering to the Trustee a written notice signed and dated by the Member.

**33.2 Interpretation and advice on Non-Binding Death Benefit Nomination:** The Trustee may incur costs and engage an SMSF Adviser to provide advice on the drafting, execution, interpretation and/or administration of a Member's Non-Binding Death Benefit Nomination, and may debit such costs against the Member's Superannuation Interest (including a Deceased Member's Superannuation Interest), provided the Superannuation Laws and/or a Court does not otherwise determine the costs to be payable by an alternate party and/or Fund.

**33.3 Administration of the Non-Binding Death Benefit Nomination**

- (a) This Rule 33 shall be read with Rule 29.
- (b) The Trustee may settle the payment of one or more amounts distributable at the direction of the Member's Alternate Decision-Maker by way of Cash, settlement of a Pension Interest, continuation of a Pension Interest (if not otherwise subject to mandatory

alternate terms), transfer of Benefits-in-Specie and/or such other benefits as may be payable for the purposes.

- (c) The Trustee must take all reasonable steps as may be required to ensure the Member's Alternate Decision-Maker's Payment Directions are settled within the timing requirements read in the Superannuation Laws, including but not limited to SISR 6.17A. However, in doing so, the Trustee shall not be obligated to do anything which would cause the Fund to lose Complying SMSF status or become insolvent. (See also section 59(1A) of the SISA.)
- (d) The Trustee may require a Member's Beneficiary who is an Eligible Pension Beneficiary to become a Member in the Fund. (See example at Rule 31.3(d)).
- (e) The Trustee may refuse to accept a Member's Beneficiary as a Member of the Fund, and request the Member's Beneficiary to provide a **Notice of Payment Direction**. (See example at Rule 31.3(e)).
- (f) If a Payment Direction prescribed by a resolution of the Member's Alternate Decision-Maker gives rise to a breach or potential breach of a Member's Beneficiary's Transfer Cap Balance (and/or such other capping criteria as may be prescribed by the Superannuation Laws), then the Trustee, Deceased Member's Alternate Decision-Maker and Member's Beneficiary shall work together expeditiously to arrange the affairs of the Member's Beneficiary and the Deceased's Member Superannuation Interests so as to limit or prevent a breach of the Member's Beneficiary's Transfer Cap Balance, and:
  - (i) where the Payment Direction cannot be effected without exceeding the Member's Beneficiary's Transfer Cap Balance, then the Payment Direction shall be amended **if requested by the Member's Beneficiary** to allow the Superannuation Interest (or such as is passing in accordance with the Payment Direction) to pass as a:
    - (I) Lump Sum to the Member's Beneficiary;
    - (II) Lump Sum or Pension Interest to one or more Eligible Pension Beneficiaries or Eligible Lump Sum Beneficiaries nominated by the Member's Beneficiary; or
    - (III) Lump Sum Payment to the Member's Legal Estate; and
  - (ii) any liability in respect to an Excess Transfer Balance Tax or other Excess Contribution Tax in respect to a payment to a Member's Beneficiary shall be the liability of the Member's Beneficiary.
- (g) If a Payment Direction resolved by the Member's Alternate Decision-Maker cannot be effected, such as where the Payment Direction is to a Person who does not qualify to receive the Payment (**Ineligible Income Beneficiary** and/or **Ineligible Lump Sum Beneficiary**), then such Payment Direction shall be void (**Quarantined Part**). The Quarantined Part shall be subject to the further resolution of the Member's Alternate Decision-Maker.
- (h) The Trustee (including the Deceased Member's Alternate Decision-Maker) shall do all things reasonable in the distribution of the Member's Superannuation Interests in accordance with Rule 33, and has the power, notwithstanding Rule 12.11, to determine:
  - (i) the timing as to when a payment is made;
  - (ii) the withholding of any tax on payments from a Deceased Member's Superannuation Interest;
  - (iii) the review and approval of any Conditions of Release of Benefits in respect to a Member's Beneficiary (for example, review and determination of a Person as an Eligible Pension Beneficiary and/or an Eligible Lump Sum Beneficiary (whether or not such Person is determined to be a beneficiary by the Member's Alternate Decision-Maker)); and

- (iv) such other decisions which may otherwise result in the Fund losing its Complying SMSF status or becoming insolvent.

33.4 Rule 33 is to be read with Rules 12.11 and 39.

**34. PROTOCOL FOR DISCRETIONARY POWERS OF THE DECEASED MEMBER'S ALTERNATE DECISION-MAKER AND TRUSTEE ON DEATH OF MEMBER**

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34.1 In the event a Deceased Member fails or refuses to leave a SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination, or one or more Payment Directions made by a Deceased Member in respect to his/her Member Superannuation Interest is invalid or ineffective, then the Deceased Member's Alternate Decision-Maker and the Trustee shall deal with the Deceased Member's Superannuation Interests in accordance with Rule 33.

**35. PROTOCOL FOR SETTLING AND ADMINISTERING AN AUTO-REVERSIONARY PENSION INTEREST**

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35.1 An Auto-Reversionary Pension Interest is a type of Pension Interest shown in the terms of an Auto-Reversionary Pension Interest Agreement which prescribes that upon the happening of an event shown in the Auto-Reversionary Pension Interest Agreement (**Auto-Reversionary Event**), the Pension Interest reverts automatically as a Pension Interest of a Person or Persons (including the Member's Legal Estate) nominated therein as Reversionary Beneficiaries and/or Successor Reversionary Beneficiaries.

35.2 A Member (**Originating Member**) may apply for an Auto-Reversionary Pension Interest in a **Notice of Payment Direction**, or any other written instrument agreed to by the Originating Member and the Trustee.

*Warning: The Governing Rules allow an Originating Member to nominate an Auto-Reversionary Event which may not be limited to a Member's death. It is strongly recommended that SMSF specialist legal advice be taken if the Member contemplates settling an Auto-Reversionary Event on an event other than his/her death, as the Superannuation Laws may not allow such a term.*

*Further, whilst the Governing Rules allow the Member to impose conditions shown in Rule 35.3, the Superannuation Laws may prohibit one or more of the terms therein shown. Again, it is strongly recommended that SMSF specialist financial, accounting and legal advice be taken in the drawing of any succession planning instrument, including, but not limited to an Auto-Reversionary Pension Interest Agreement.*

35.3 The terms of an Auto-Reversionary Pension Interest Agreement may include:

- (a) special commutation and/or payment terms in respect to the portability and/or treatment of the Auto-Reversionary Pension Interest on and after the death of the Originating Member;
- (b) special terms allowing for the Reversionary term to be varied or struck in circumstances prescribed therein, or at other times by the Member (even if not incorporated in the terms);
- (c) cascading provisions from a Reversionary Beneficiary, to a successor Reversionary Beneficiary (**Successor Reversionary Beneficiary**), if the Reversionary Beneficiary does not survive the Originating Member, to take on and following the death of a Reversionary Beneficiary, to take in substitution for the Reversionary Beneficiary if the Reversionary Beneficiary does not satisfy a condition contained therein, and such other terms as may be agreed between the Originating Member and Trustee;
- (d) allowance for the Auto-Reversionary Pension Interest to be a non-reversionary Pension Interest, without commuting or rolling back the Pension Interest, and such other changes in respect to the Pension Interest as the Originating Member and Trustee agree;

- (e) minimum and maximum payment rates during the lifetime of the Originating Member and/or during the lifetime of a Reversionary Beneficiary and/or Successor Reversionary Beneficiary;
- (f) allowance for multiple Reversionary Beneficiaries and/or Successor Reversionary Beneficiaries, with separate and unique terms in respect to the payment and eligibility criteria of each;
- (g) incorporation of appointment of a Guardian, to which the Trustee, Reversionary Beneficiaries and/or Successor Reversionary Beneficiaries are obligated or directed to consult on the terms shown therein;
- (h) prescription for the segregation and/or acquisition of certain Fund Assets to quarantine to the benefit and burden of one or more parts of the Auto-Reversionary Pension Interest of one or more Reversionary Beneficiary and/or Successor Reversionary Beneficiary; and/or
- (i) such other terms as agreed between the Member and Trustee, provided that:
  - (i) the Trustee (including any Trustee acting at a future point of time) shall be at liberty to apply the discretions and processes prescribed in the Governing Rules in respect to the determination of Earnings, allocation of Earnings, dealings with Reserve Accounts and other Fund Accounts, and otherwise reserving the right of the Trustee to Roll-over an Originating Member's, Reversionary Beneficiary's and/or Successor Reversionary Beneficiary's Superannuation Interests in the Fund to any other Eligible Roll-over Fund on the terms of the Governing Rules; and
  - (ii) the Trustee's costs in taking advice and dealing with the Auto-Reversionary Pension Interest Agreement may, at the Trustee's discretion, be charged to the Auto-Reversionary Pension Interest (including any part thereof where there is more than one Reversionary Beneficiary and/or Successor Reversionary Beneficiary, including but not limited to the expenses associated with delegation of the administrative, recordkeeping, communication and management responsibilities associated therewith).

35.4 A Trustee shall not be obligated to accept a Payment Direction or accept to be bound to an Auto-Reversionary Pension Interest Agreement, on terms which:

- (a) breach, or if given effect would breach, the Superannuation Laws;
- (b) threaten the Fund's Complying SMSF status or solvency;
- (c) vary the Governing Rules and/or Special Rules (excepting Special Rules adopted by the Originating Member and/or the Originating Member and the Trustee (and/or any other party in respect to the Originating Member's Superannuation Interests));
- (d) prescribe rights and/or entitlements which are greater than the rights and/or entitlements of the Member in the Fund (*for example: requires a payment of an amount which is greater than a Member's Superannuation Interests or requires a segregation of a Fund's Asset which is not segregated to the Member's Superannuation Interest at the commencement of the Auto-Reversionary Pension Interest Agreement*);
- (e) prescribe rights and/or entitlements which are greater than the rights and/or entitlements of the Member in the Fund to the benefit of a Reversionary Beneficiary;
- (f) prescribe terms which are ambiguous, uncertain or likely to result in the Fund being subject to legal proceedings – although the Trustee shall have the power to interpret and effect such terms nonetheless; and/or
- (g) are unreasonable and/or unduly burdensome on the Trustee and the other Members of the Fund to effect.



- 35.5 The Auto-Reversionary Pension Interest Agreement shall be, once agreed, established in accordance with the protocols shown in Rule 29 and recorded in a written instrument signed by the Trustee and the Member, and the Member's signature must be witnessed by at least one Natural Person who is not a Trustee (being either a Natural Person Trustee or a Director of a Corporate Trustee), Reversionary Beneficiary, Member's Relative or other Member of the Fund.
- 35.6 An Auto-Reversionary Pension Interest Agreement is a Special Rule of the Fund which may only be amended, varied or struck with the written consent of the Trustee and Member (if alive) and/or Reversionary Beneficiary (subject to the terms of the Auto-Reversionary Pension Interest Agreement).
- 35.7 Upon the happening of the Auto-Reversionary Event (being the event upon which the Pension Interest is prescribed by the Originating Member to revert to the Reversionary Beneficiary) then:
- (a) the Trustee will give notice to the Reversionary Beneficiary (and each of them if more than one) of the Nomination of the Person as a Reversionary Beneficiary, and provide a **Notice of Payment Direction** for completion;
  - (b) the Reversionary Beneficiary(ies) must complete the Notice of Payment Direction and/or comply with the requests of the Trustee (including but not limited to the provision of evidence supporting the eligibility of the Reversionary Beneficiary(ies) as an Eligible Pension Beneficiary);
  - (c) the Trustee shall determine in its absolute discretion, on the disclosure provided by the Reversionary Beneficiary and having regard to the Superannuation Laws, whether the Reversionary Beneficiary is an Eligible Pension Beneficiary, and communicate its decision to the Reversionary Beneficiary;
  - (d) provided the Reversionary Beneficiary qualifies as an Eligible Pension Beneficiary, the Trustee shall comply with the terms of the Auto-Reversionary Pension Interest Agreement and the Notice of Payment Direction of the Reversionary Beneficiary, subject to the rights, discretions and obligations of the Trustee as otherwise shown in the Governing Rules;
  - (e) if the Reversionary Beneficiary does not qualify as an Eligible Pension Beneficiary for the Auto-Reversionary Pension Interest on the happening of the Auto-Reversionary Event, then the Auto-Reversionary Pension Interest, or so much of it as was directed to be allocated on behalf of the Reversionary Beneficiary shall be paid as one or more Lump Sum Payments to the Reversionary Beneficiary provided the Reversionary Beneficiary qualifies as an Eligible Lump Sum Beneficiary, unless the Auto-Reversionary Pension Interest Agreement prescribes otherwise;
  - (f) if a Reversionary Beneficiary refuses to take the Auto-Reversionary Pension Interest (whether as a Pension Interest or Lump Sum Payment, as the case may be) or the Reversionary Beneficiary is an Ineligible Lump Sum Beneficiary, and there is no alternate direction prescribed in the Auto-Reversionary Pension Interest Agreement then, in such circumstances, the Auto-Reversionary Pension Interest (or so much of it as has not been dealt with – the **Quarantined Part**), shall be dealt with as a Death Benefit in accordance with Rule 30.2; and
  - (g) a reference to a Reversionary Beneficiary is also to a Successor Reversionary Beneficiary, where the term would otherwise apply in the circumstances.

*For Example: Roxie is a Member of the Fund. She is a trapeze artist, who received a substantial inheritance when her benefactor, Destiny, died in an accident. Roxie contributed her inheritance over the years to the Fund.*

*Roxie, following on from Destiny, has become a benefactor of Candy. Roxie pays Candy's room and board, and provides her with an allowance to assist her with professional development. Roxie is not Candy's employer, but Candy is financially dependent on the love and compassion which is Roxie's continual financial support.*

*Roxie, being now 60, decides to commence a Pension Interest to supplement her fleeting earnings, as she has started to work due to her age.*

*Roxie meets with Drago and Vlad, the other Members of the Fund and establishes an Auto-Reversionary Pension Interest, which prescribes that, should she die, Candy will become the Reversionary Beneficiary automatically.*

*Roxie then dies.*

*When Drago and Vlad receive word, they meet with Candy and establish that Candy is eligible to receive Roxie's Pension Interest, and accordingly admit Candy to the Fund and commence payments to Candy.*

### **36. PROTOCOL FOR SETTLING AND ADMINISTERING A CONDITIONAL PENSION INTEREST**

- 36.1 A Conditional Pension Interest is a type of Pension Interest shown on the terms of a Conditional Pension Interest Agreement, which prescribes that upon the happening of an event (**Conditional Pension Triggering Event**), the Conditional Pension Interest is settled to the benefit of one or more Person or Persons nominated therein as Conditional Pension Interest Beneficiaries and/or Successor Conditional Pension Interest Beneficiaries.
- 36.2 A Conditional Pension Interest Agreement may be established as a consequence of a SMSF Will and/or Binding Death Benefit Nomination of a Member. (See Rule 37.)
- 36.3 The difference between an Auto-Reversionary Pension Interest and a Conditional Pension Interest is that the Conditional Pension Interest may be settled at a future date, whereas an Auto-Reversionary Pension Interest is settled at the date of the Auto-Reversionary Pension Interest Agreement, or as soon as reasonably possible thereafter.

*For example: Deb, Brian and Shane are Members of the Fund. Shane is 50, and has a degenerative disease which he anticipates will leave him with no mental capacity within the next 3-5 years. He is an Olympic swimmer, and runs the local square dancing hall. He wants to push his earning capacity until he can't work any longer, but he also wants to establish the terms of a Pension Interest when he loses Mental Capacity.*

*He meets with Colin, his SMSF specialist estate planning lawyer who advises Shane that he may wish to settle a Conditional Pension Interest Agreement with the Trustee of the Fund, which prescribes that, when he is determined to be Mentally Incapacitated, a Conditional Pension Interest will be settled on the terms shown therein. Shane also wants to nominate that, on his death, his wife, Lisa, is the Reversionary Beneficiary.*

*Colin and Shane consult with Mandy, a SMSF specialist accountant and financial planner, who provides a formula to include in respect to dividing Shane's Superannuation Interest between the Conditional Pension Interest and Accumulation Interest. The terms are reduced to writing, and agreed to by Brian and Deb (the other Directors of the Corporate Trustee).*

*Shane also makes an Alternate Decision-Maker Nomination and Binding Death Benefit Nomination, and provides a copy of both to Brian and Deb. Shane, Brian and Deb as Directors of the Corporate Trustee formally accept and record the Conditional Pension Interest Agreement as a Special Rule of the Fund.*

- 36.4 The terms of Rule 35 are adopted in Rule 36, excepting that a reference to:
- (a) Auto-Reversionary Event shall be read as the Conditional Pension Triggering Event;
  - (b) Auto-Reversionary Pension Interest shall be read as Conditional Pension Interest;
  - (c) Auto-Reversionary Pension Interest Agreement shall be read as Conditional Pension Interest Agreement; and
  - (d) Reversionary Beneficiary shall be read as Conditional Pension Interest Beneficiary.

**37. PROTOCOL FOR SETTLING AND ADMINISTERING A PENSION INTEREST (OTHER THAN AN AUTO-REVERSIONARY PENSION INTEREST OR A CONDITIONAL PENSION INTEREST)**

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37.1 If a Pension Interest is other than an Auto-Reversionary Pension Interest or Conditional Pension Interest, the terms of any Pension Interest Agreement agreed to and shown in writing by the Trustee and Member shall be effected subject to the reservations and obligations of the parties shown in the Governing Rules, including the requirement that the Pension Interest Agreement is recorded in a written instrument signed by the Trustee and the Member, and the Member's signature is witnessed by at least one Natural Person who is not a Trustee (being either a Natural Person Trustee or a Director of a Corporate Trustee), Reversionary Beneficiary (if any), Member's Relative or other Member of the Fund.

37.2 A Pension Interest may be created in the terms of a Member's SMSF Will and/or Binding Death Benefit Nomination, provided:

- (a) If the Nomination is in respect to a continuation of an existing Pension Interest Agreement of the Member (whether or not the Pension Interest reference has an existing reversionary term), then no Trustee consent is required before the Member's death to be binding on the Fund;
- (b) If the Nomination is to create a new Pension Interest on the Member's death from whole or part of the Member's Superannuation Interests, and the Member's Beneficiary(ies) are to have no conditions or restrictions imposed on cashing or commutation of the Pension Interest on the terms of the Nomination, then no Trustee consent is required before the Member's death to be binding on the Fund;
- (c) If the Nomination is to create new Pension Interest on the Member's death from whole or part of the Member's Superannuation Interests, and the Member wishes to impose conditions on cashing or commutation of the Pension Interest (*such as where the Member intends to settle an Auto-Reversionary Pension Interest Agreement and/or Conditional Pension Interest Agreement within the Member's SMSF Will or Binding Death Benefit Nomination*), then the Member must have the Trustee written consent before the Member's death to be binding on the Fund. If Trustee consent is not given in respect to such a Nomination on the happening of the Member's death, then the Trustee may:
  - (i) accept in whole the terms shown in the SMSF Will and/or Binding Death Nomination; or
  - (ii) Roll-over the part of the Member's Superannuation Interest prescribed by the SMSF Will and/or Binding Death Benefit Nomination to an Eligibility Fund selected by the Nominated Beneficiary; or
  - (iii) establish a Pension Interest for the Nominated Beneficiary with no conditions and/or such of the conditions as the Trustee determines in its absolute discretion; or
  - (iv) pay the part of the Member's Superannuation Interest prescribed by the SMSF Will and/or Binding Death Benefit Nomination as a Lump Sum Payment to the Nominated Beneficiary.

*This Rule recognises that a Member has liberty to impose conditions on the Trustee on the Member's death in respect to a Pension Interest settled as a consequence of the Member's SMSF Will and/or Binding Death Benefit Nomination. However, in fairness to the membership of the Fund, it is incumbent upon the Member who wishes to impose this burden, to seek the Trustee consent (which is in effect the consent of the membership) to such terms).*

37.3 If a Pension Interest is established in accordance with Clause 37.2(c), the Member may include the terms prescribed in Rule 35.3. Notwithstanding, the terms shall only be binding on the Fund with the Trustee's written consent prior to the Member's death, which may be shown by

any means reasonable in the circumstances. If the Member obtains Trustee consent, then the Member and Trustee will be deemed to have entered into a Conditional Pension Interest Agreement and the terms of Rule 36 shall apply.

- 37.4 If the Pension Interest Agreement (as settled between the Member and Trustee at settlement) nominates a Beneficiary (**Nominated Beneficiary**) on the death of the Member, then the Trustee shall have regard to such terms, and adopt the terms shown at Rule 35, excepting that a reference to:
- (a) Auto-Reversionary Event shall be read as the Member's death;
  - (b) Auto-Reversionary Pension Interest shall be read as Pension Interest;
  - (c) Auto-Reversionary Pension Interest Agreement shall be read as Pension Interest Agreement; and
  - (d) Reversionary Beneficiary shall be read as Nominated Beneficiary.

## **PART TEN – ALTERNATE DECISION-MAKING AND ESTATE PLANNING**

### **38. LIFETIME PLANNING – THE MEMBER SMSF LIVING WILL**

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38.1 A Member may make a SMSF Living Will to:

- (a) provide directions in respect to payments for:
  - (i) the Member's aged care expenses;
  - (ii) the Member's carers and other medical expenses;
  - (iii) the Member's Dependants;
  - (iv) the Member's ongoing financial liabilities (such as mortgages and other outgoings associated with the Member's personal Assets which do not form part of his/her Superannuation Interests); and
  - (v) any other amounts which the Member considers necessary to specifically require payment from the Member's Superannuation Interests (including allocations from any Reserve Accounts of the Fund).
- (b) provide the Member's wishes in respect to the application of the Reserve Accounts of the Fund (if any); and

*Note: Such a wish would not have binding effect on Trustee.*

- (c) address any other special terms which the Member wishes to address in respect to his/her Superannuation Interests, the rights and obligations of a Corporate Trustee to act upon the Member becoming Mentally Incapacitated, and continuing until the Member is no longer Mentally Incapacitated.

38.2 A SMSF Living Will must be signed by the Member, and witnessed and signed by at least one Natural Persons who is not a Member, or a Member's Relative.

38.3 The Member must provide the SMSF Living Will to the Trustee as soon as reasonably possible after making the SMSF Living Will.

38.4 If the SMSF Living Will is not received by the Trustee by the happening of the Member becoming Mentally Incapacitated, the SMSF Living Will is not invalidated.

38.5 The Trustee must instruct the Member as to any term of the Member's SMSF Living Will which is incapable of taking effect, unlawful or otherwise determined by the Trustee to be impracticable and rejected, as soon as reasonable, but not later than 28 (twenty eight) days from receipt of the Member's SMSF Living Will by the Trustee. Any term which is not otherwise rejected shall be deemed a Special Rule of the Fund, and shall apply to the extent the

application of terms does not compromise the solvency of the Fund or the interests of the Members as a whole, or otherwise breach the Superannuation Laws.

- 38.6 A Member's Alternate Decision-Maker may set aside or release the Trustee from its obligations under the SMSF Living Will, provided such authority to do so is given by the Member in the instrument appointing the Alternate Decision-Maker, or a Court of competent jurisdiction gives direction to this effect.

### **39. SMSF ESTATE PLAN AND SMSF WILL**

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- 39.1 A Member may provide directions, binding or non-binding, to the Trustee in respect to his/her SMSF Estate Plan in accordance with the terms of this Rule 39.

- 39.2 A Member may request the Trustee to accept one or more of the following in the making of the Member's SMSF Estate Plan:

- (a) SMSF Will – subject to Rule 31;
- (b) Non-Lapsing Binding Death Benefit Nomination – subject to Rule 32;
- (c) Lapsing Binding Death Benefit Nomination – subject to Rule 32; and/or
- (d) Non-Binding Death Benefit Nomination – subject to Rule 33.

- 39.3 Any of the documents referred to in Rule 39.2 may provide written direction to the Trustee as to:

- (a) the manner and form in which Death Benefits will be paid in the event of the Member's death to one or more Beneficiaries including as a Lump Sum, Pension Interest, or combination thereof, from the Member's Superannuation Interests;
- (b) the Beneficiaries the Death Benefits are to be paid to, including the Member's Dependants, the Member's Legal Estate and/or such other Persons as are otherwise allowed to receive a Member's Death Benefits under the Superannuation Laws;
- (c) the amount or amounts of the Death Benefit to be paid to one or more Beneficiaries in the event of a Member's death including the transfer of part or the whole of any Fund Asset in satisfaction of the payment of an amount of Death Benefit, provided that a Benefit In Specie shall only be binding to the extent the Fund Asset is segregated to the Member's Superannuation Interest;
- (d) the terms and conditions upon which a Person (Primary Beneficiary) is to receive a Death Benefit from the Member's Superannuation Interests in the form of a Lump Sum Payment, including but not limited to whether the Death Benefit (or part thereof) shall revert to another Person (Secondary Beneficiary) or the Legal Personal Representative of the Member's Estate in the event of the Primary Beneficiary's death, incapacity or the happening of a particular event or condition;
- (e) the terms and conditions upon which a Person (Primary Beneficiary) is to receive a Death Benefit from the Member's Superannuation Interests in the form of a Pension Interest, including but not limited to whether the Death Benefit (or part thereof) shall revert to another Person (Secondary Beneficiary) or the Legal Personal Representative of the Member's Estate in the event of the Primary Beneficiary's death, incapacity or the happening of a particular event or condition (*although for a Conditional Pension Interest to be binding in respect to the conditions aspect, the Trustee's written consent must be obtained before the death of the Member*);

*Warning: Conditions imposed on reversionary benefits and/or attempts to cascade the payment of Death Benefits from one beneficiary to another should only be settled with the advice of a SMSF Specialist Lawyer. Such conditional and cascading provisions are untested in the Superannuation Laws, and may not be binding.*

- (f) the terms and conditions regarding the payment of any Reserve Benefit to the Member's Dependants, Legal Personal Representative of the Member's Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws;

*Warning: Any such term or condition may only be expressed as a wish, insomuch as the intent is to bind the Trustee to allocate Reserves to a Member's Death Benefits upon his/her death.*

- (g) the terms and conditions regarding the payment of any insurance proceeds payable on the life of the Member including a payment to an Anti-Detriment Reserve, the Deceased Member's Dependants, Legal Personal Representative of the Member's Legal Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws;

*Warning: The Superannuation Laws prohibit Anti-Detriment Payments from 1 July 2017.*

- (h) the terms and conditions of appointment of an Alternate Decision-Maker(s) to act in the place of the Member in the event of the Member's death or Mental Incapacity;

*Note: The Member is also directed to consider Section 17(A) of the SISA, and Governing Rules 4 and 5.*

- (i) such further matters determined relevant in the provision of a SMSF Estate Plan for the Member's Superannuation Interests, obligations and rights in the Fund; and  
(j) for clarity, where a reference is to a singular Person in this Rule, the reference may be read to Persons, and the terms may include multiple cascades and alternatives.

39.4 Rule 39 is to be read with Rule 30.

39.5 The Trustee must accept a Member's SMSF Will and/or Binding Death Benefit Nomination, and:

- (a) the Trustee shall be under no obligation to interpret or determine if a Member's SMSF Will and/or Binding Death Benefit Nomination nominates one or more Persons ineligible to receive Death Benefits under the Superannuation Laws, or imposes terms of payment which contravene the Superannuation Laws, until the Member's death;

*Note: The Superannuation Laws allow a Member to nominate the Member's Spouse, Member's de facto Spouse, Member's Child (any age), Persons in an Interdependency Relationship with the Member, or a Person who is financially dependent on the Member to receive the Member's Death Benefits. If the Member nominates their best friend, who does not qualify under one of these categories, the Nomination to the best friend is invalid under the Superannuation Laws and the Trustee cannot give effect to the Nomination.*

- (b) if the Trustee seeks advice and/or the Trustee determines that one or more of the Persons nominated as Beneficiaries are ineligible to receive a Death Benefit (whether as an Income Beneficiary or Lump Sum Beneficiary), then the Trustee must accept the relevant Nomination, and may (but is not required to) advise the Member in writing of the Trustee's determination; and

*Note: The category of Persons qualifying as being in an Interdependency Relationship with the Member can change with time, accordingly a Person may be ineligible at one point in time, but later qualify because of changes in circumstances in the Member's life.*

- (c) the Member's SMSF Will and/or Binding Death Benefit Nomination (as the case may be) shall become a Special Rule of the Fund in respect to the payment of the Member's Death Benefits, and shall be amended, varied and/or revoked only with the written consent of the Member (except to the extent the Trustee and/or Alternate Decision-Maker cannot give effect to the SMSF Will and/or Binding Death Benefit Nomination

following the death of the Member for a reason shown in the Governing Rules and/or Superannuation Laws).

- 39.6 The Trustee may, but is not required to, give notice to the Member in writing of its acceptance and receipt of the relevant Nomination. A failure of the Trustee to give a notice in writing does not invalidate the relevant Nomination.
- 39.7 The Trustee may at the request of the Member create any further Special Rules, in respect to the Member's SMSF Wills and/or Binding Death Benefit Nominations.
- 39.8 The Trustee may accept a Non-Binding Death Benefit Nomination from a Member; however, the Trustee (and the nominating Member's Alternate Decision-Maker) is not bound by the terms of a Non-Binding Death Benefit Nomination of a Member.
- 39.9 For clarity, the Trustee and Member's Alternate Decision-Maker are not bound by the terms of the following:
- (a) Member's Binding Death Benefit Nomination, if the Nomination lapsed at or before the Member's death); or
  - (b) Member's Non-Binding Death Benefit Nomination.

## **PART ELEVEN – TAXES**

### **40. TAXES AND EXCESS CONTRIBUTIONS TAX**

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- 40.1 The Trustee must pay all duties, charges, fees and Taxes relating to the Fund's Assets, Earnings, Contributions, or on any other Taxable consequence in accordance with the Superannuation Laws.
- 40.2 The Trustee is not personally liable for any taxation liability assessed to the Fund, nor is any Member, unless the Superannuation Laws require.
- 40.3 The Trustee must have regard to the Superannuation Laws as to which Account, Earnings, Reserve Account or Superannuation Interest, tax is deducted from, whether in whole or part.
- 40.4 Where the Trustee receives an Excess Contributions Tax Release Authority on behalf of a Member, the Trustee is to give effect to the conditions, requirements and terms of the Excess Contributions Tax Release Authority. This must be in the time specified and simultaneously ensure that any other Trustee compliance or other requirements for a Complying SMSF in respect of the Excess Contributions Tax Release Authority are met in accordance with the Superannuation Laws.
- 40.5 Subject to the Superannuation Laws, the Trustee may receive tax refunds and has the sole discretion as to which Superannuation Interest or Reserve Account to add any tax refund irrespective of the source of the tax refund.
- 40.6 Subject to the Superannuation Laws, the Trustee may make a Tax Adjustment Payment deduction to a Superannuation Interest where the Trustee is of the opinion that a Superannuation Interest has benefited from the use of a tax benefit sourced from another Superannuation Interest; however, it is not mandatory for the Trustee to do so.

## **PART TWELVE – WINDING UP**

### **41. WINDING UP THE FUND**

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- 41.1 The Trustee shall wind up the Fund in the following circumstances:
- (a) on the death of the last remaining Member, and the Alternate Decision-Maker or the Corporate Trustee determines that the Fund is to be wound up;
  - (b) the Regulator or any other Person or body authorised to wind up the Fund, orders that the Fund is to be wound up;

- (c) 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;
  - (d) the Trustee resolves the Fund is to be wound up by Trustee Special Resolution; and/or
  - (e) the Members resolve that the Fund is to be wound up by Member Special Resolution.
- 41.2 Where the last surviving Member dies, the Member's Alternate Decision-Maker must, prior to making any Death Benefit payments on behalf of the Deceased Member, distribute any surplus Assets or monies in Fund Reserve Accounts.
- 41.3 The Trustee in winding up the Fund shall pay any Taxes, General Expenses, Specific Expenses, Superannuation Benefits and any other amounts or disbursements to ensure that the Fund has no outstanding liabilities prior to paying out any distribution under Rule 41.4.
- 41.4 Following the payment of all amounts under Rule 41.3, to the extent of any remaining Assets, Cash and/or Reserve Accounts, the Trustee may distribute such Assets, Cash and/or Reserve Accounts, subject to the Superannuation Laws, to:
- (a) Members and former Members of the Fund;
  - (b) Relatives of any Member or former Member;
  - (c) Legal Personal Representative of the Estate of a Deceased Member or a deceased former Member; and/or
  - (d) any other entity or any trust of a Charitable Institution of a public benevolent, sporting, animal or political nature as the Trustee determines.

## Part THIRTEEN – AMENDMENTS AND CHANGE OF NAME

### 42. CHANGING THE FUND'S GOVERNING RULES

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- 42.1 The Trustee may at any time by Trustee Ordinary Resolution, reduced to writing, vary, change, delete from, add to or otherwise amend any or all of the Governing Rules (excepting any Governing Rules which are irrevocable) which shall be deemed adopted and incorporated in any variation of the Governing Rules, provided the following conditions are satisfied:
- (a) any variation, change, deletion, addition or amendment to the Governing Rules shall strictly adhere to the Superannuation Laws;
  - (b) if the Trustee has resolved a Special Rule of the Fund, the Special Rule shall be deemed adopted and incorporated in any amended Governing Rules, unless the Special Rule has been revoked previously by the Trustee;
  - (c) if a Special Rule of the Fund has been determined by way of a SMSF Living Will, SMSF Will, Binding Death Benefit Nomination (whether lapsing or non-lapsing) and/or Pension Interest Agreement, then the Special Rule shall be deemed adopted and incorporated in any amended Governing Rules, unless otherwise specifically recorded in writing by the Trustee and Member (being the Member which made the Special Rule);
  - (d) if a Special Rule of the Fund is not otherwise referred to in the preceding terms of Rule 42.1, then the Special Rule shall be deemed adopted and incorporated in any amended Governing Rules, unless otherwise specifically recorded by the Trustee and other parties to the Special Rule.

*For example, if a property has been segregated to the Member Superannuation Interests of Bob and May, then a modification of the Special Rule must be made by the Trustee, Bob and May specifically to cause a variation of the Special Rule. Otherwise, the Special Rule is deemed incorporated.*

- (e) any variation, change, deletion, addition or amendment to the Governing Rules shall not detrimentally affect a Member's Superannuation Interests;



- (f) any variation, change, deletion or amendment to the Governing Rules shall not result in a resettlement of the Fund (if determined to be a trust at law) nor a capital gains tax event unless the Superannuation Laws require; and
- (g) if the Fund has a defined benefit pension in existence pre-2004, a loan arrangement pre-1985, or any other Rule that advantages the Members of the Fund, but which would be lost or diminished if the new Governing Rules were applied, then any variation of the Governing Rules is not to vary such Governing Rules that advantage a Member and shall be deemed to be adopted and incorporated in the amended Governing Rules.

42.2 Subject to Rule 42.1, the Trustee may adopt a protocol allowing for the automatic annual upgrades of the Governing Rules (with the resolution applicable for a fixed number of years, or indefinitely for the term of the Fund), by Trustee Ordinary Resolution, which upgrades may address changes to the Superannuation Laws and any other matters considered appropriate by the relevant SMSF Advisers assisting the Trustee from time to time (if any), in accordance with the following:

- (a) **Annual upgrade with Signature:** The Trustee may receive, from a subscription service offered by the relevant SMSF Advisers to the Trustee, an instrument having the effect of a variation of the Fund's Governing Rules, which instrument the Trustee may execute by analogue or electronic signature, and copy to the Members at such reasonable time thereafter, the effect of which is that the Governing Rules are thereafter varied on the date of execution by the Trustee;
- (b) **Auto-upgrade:** The Trustee may apply for a subscription service through a relevant SMSF Adviser, which publishes varied Governing Rules in any reasonable manner considered by the Trustee, provided that the Trustee ensures the Members have access to the Governing Rules; and/or
- (c) **Upgrade by alternative means:** The Trustee may undertake with its SMSF Adviser such other reasonable mechanism for complying with its legal obligations to maintain the Governing Rules at a standard required by the Superannuation Laws, provided such mechanism is resolved by the Members (with the resolution applicable for a fixed number of years, or indefinitely for the term of the Fund).

42.3 Notwithstanding Rule 42.2, and the adoption of any auto-upgrade or variation protocol, the terms and conditions shown at Rule 42.1 are imposed as an irrevocable burden on such protocol.

#### **43. CHANGING THE FUND'S NAME**

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43.1 The Trustee may at any time change the Fund's name provided the Regulator is informed, if required, under the Superannuation Laws.

43.2 Any change in Fund name may be made by the Trustee by way Trustee Ordinary Resolution.

### **PART FOURTEEN – DELIVERY, ELECTRONIC TRANSACTIONS AUTHORITY, EFFECTIVE DATE AND EXECUTION**

#### **44. NOTICE**

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44.1 Any notice of communication to or by a party:

- (a) may be given by personal service, post, facsimile or email;
- (b) must be in writing (including in a manner shown in the ETA), legible and in English addressed to the parties;
- (c) in the case of a corporation, must be signed by an officer or under the common seal of the corporation;
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the address;

- (ii) if posted, 2 (two) business days (or 6 (six) business days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not;
- (iii) if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this Rule; or
- (iv) if sent by email, on receipt of a reply email from the addressee confirming that the email has been delivered.

#### **45. ELECTRONIC TRANSACTIONS AUTHORITY**

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- 45.1 A SMSF's Governing Rules are often, but are not required to be, settled and/or varied by a deed. Section 10(1) of the SISA defines a deed as an instrument having the effect of a deed.
- 45.2 The Trustee and Members ratify the execution of this Deed by electronic signature, and adopt expressly the terms of the *Electronic Transactions Act 1999 (Cth) (ETA)*, notwithstanding any contrary legal precedent or term of any State-based legislation dealing with electronic transactions.

*Warning: State-based legislation may prohibit the Trustee and Members from contracting out of execution standards requiring deeds to be wet signed (as opposed to executed by electronic signature). Whilst execution of deeds by wet signature is strongly recommended, execution in States which prohibit execution of deeds by wet signature should not be conducted by electronic transaction.*

- 45.3 The Trustee and Members confirm that the Governing Rules shall be deemed as settled on the date shown as the effective date of this Deed, notwithstanding any validation called upon by a non-party to this Deed (*for example, a bank, Government authority, etc.*).
- 45.4 The Trustee and Members consent to the exchange of any and all information and documents (including, but not limited to, minutes, resolutions, Nominations, variation of the Governing Rules and/or such other instruments produced or producible in respect to the operation, administration and conduct of the Fund) in respect to the Fund by electronic means, and the execution of any and all documents (including deeds) by electronic signature of the relevant parties (subject to limitations imposed by State-based legislation), excepting where expressly provided otherwise in the terms of the Governing Rules.
- 45.5 Except where parties are not at liberty to contract or consent to a matter being conducted in accordance with the ETA, or any applicable State electronic transactions legislation, the Trustee, Members, advisers and other parties may rely on the terms of the ETA and any applicable State electronic transactions legislation in the conduct of communications by the relevant parties in respect to the administration and conduct of the Fund.

#### **46. EFFECTIVE DATE**

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- 46.1 If there is a discrepancy between the dates of execution of the parties and a date shown as the Commencement Date, the Governing Rules shall be deemed to be effective from the date upon which the last of the parties to the Deed executes.

#### **47. EXECUTION AND GENERAL**

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- 47.1 The Deed may be executed in counter-parts, which counter-parts taken together shall constitute the Deed.
- 47.2 A defective execution by one or more party does not invalidate the settlement of the Fund on the Effective Date. In the event of a defective execution, the party executing defectively can either over-sign their original signature (and where a witness is referred to, the same or different witness can over-sign the witness signature), the parties can enter into a deed of ratification, or any other instrument which shows the party's consent to be bound.

- 47.3 If one or more Governing Rules or terms shown in the Deed are deemed unlawful, then the relevant Governing Rules or terms shall be deemed to be severed, with the balance of the Deed continued on its terms.
- 47.4 If a capitalised term is not specifically defined in the Definitions section of the Deed, then the capitalised term has the meaning given in the Superannuation Laws.
- 47.5 If a term shown in the Deed is not capitalised, the term is to be interpreted in accordance with its ordinary meaning, and where relevant, by the meaning given in the Superannuation Laws.

## **PART FIFTEEN – DEFINITIONS AND INTERPRETATION**

### **48. DEFINITIONS**

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- 48.1 If a word is capitalised in the Governing Rules but not shown in Rule 48, the word shall be read in accordance with the definition prescribed under the Superannuation Laws.
- 48.2 Words shown in italics (other than legislative references) are not to be deemed as Rules. Words shown in italics, including boxed content, are for commentary or illustrative purposes only.
- 48.3 The following Definitions shall apply in the interpretation of the terms of the Deed:

**Accounts** means those Accounts, including trust Accounts established by the Trustee for the Fund, a Member's Superannuation Interest or Interests, a group of Members' Superannuation Interests, a Reserve Account and any other account of the Fund.

**Accounts Based Pension** means a Pension Interest which is subject to SISR 1.03(1), 1.06(1), 1.06(9A) and 1.06(9B), and which cannot be transferred to any other Person except a Reversionary Beneficiary, the capital and income are not available for borrowing purposes (including offered as collateral for a borrowing arrangement, hedging or other finance term), the capital cannot be increased by way of Roll-over or Contributions (following commencement), and minimum payments (in terms of amount and frequency) must be made annually in accordance with the Superannuation Laws.

**Accumulation Interest** means is that part of a Member's Superannuation Interest which is not a Pension Interest, or supporting a Pension Interest.

**Actuary** has the meaning given in the Superannuation Laws, and includes a practising member of the Institute of Actuaries of Australia.

**Administrative Powers** has the meaning read at Rule 12.6.

**Allocated Pension** has the meaning given in the Superannuation Laws.

**Alternate Decision-Maker** means a Person or Persons nominated to act as the Legal Personal Representative of a Member in accordance with Rule 6.

**Alternate Decision-Maker Nomination** has the meaning given in Rule 6, and includes the approved form shown at **Annexure A**.

**Anti-Detriment Payments** are payments made by the Trustee, whether from Reserve, Earnings of the Fund or life insurance proceeds for the purpose of ensuring that the Dependants or Legal Estate of the Deceased Member are put in the same financial position in terms of Death Benefits that they would have been if no taxes had been levied on the contributions of the Deceased Member. In determining the Anti-Detriment amount, the Trustee may have regard to any formula used by the Regulator to calculate the amount, and/or an audit or accounting method based on actual Accounts of the Fund.

*Warning: Anti-Detriment Payments are not permitted from and following 1 July 2017 as a consequence of changes to the Superannuation Laws.*

**Anti-Detriment Reserve** includes a Reserve established by the Trustee under the Governing Rules for the purpose of making Anti-Detriment Payments in respect of Deceased Members of

the Fund. Such amounts may be accrued in the Anti-Detriment Reserve to make Anti-Detriment Payments to the Deceased Member's Dependants or Legal Estate, and may be determined by an Actuary.

*Warning: Anti-Detriment Payments are not permitted from and following 1 July 2017 as a consequence of changes to the Superannuation Laws.*

**Asset** includes, but is not limited to real, personal or intellectual property, shares, futures, collectables, businesses or business interests, any Assets or property transferred or contributed to the Fund plus income, earnings and profits arising from those Assets or property interests as well as any other Asset that a Complying SMSF may lawfully hold, but excludes Cash. Asset includes part of an Asset or a fractional interest in an Asset.

**Associate** has the meaning read at section 12 of the SISA.

**Auditor** is an Auditor authorised under the Superannuation Laws or by the Regulator to be an Auditor of a SMSF.

**Australian Superannuation Fund** a Superannuation Fund as contemplated in the SISA, including but not limited to section 42 of the SISA, and is settled, situated and/or subject to management and control in Australia.

**Authorised Contribution** includes a contribution of Cash, Contribution-in-Specie, Contribution-in-Kind (including a Fund expense payment or the forgiveness of a debt), made to the Fund by any Person (including, a Member, Member's family, Member's Employer and/or any other Person authorised by the Superannuation Laws to make a Contribution on behalf of another) where the Trustee is satisfied that the Contribution has met the requirements for making a Contribution under the Superannuation Laws and that the acceptance of the Contribution by the Trustee of the Fund will not result in the Trustee breaching the Superannuation Laws. An Authorised Contribution does not include an allocation from a Reserve Account for the benefit of a Member.

**Authority to Release Information** is a written direction from a party authorising the release of information about a Member's Superannuation Interests to another party.

**ARPIA** means the Auto-Reversionary Pension Interest Agreement, SMSF Will and/or Binding Death Benefit Nomination in which a Member settles an arrangement which prescribes the reversion of the Member's Pension Interest upon his/her death to one or more Reversionary Beneficiaries.

**Auto-Reversionary Event** means the event upon which a Pension Interest reverts to an Reversionary Beneficiary.

**Auto-Reversionary Pension Interest** includes a Pension Interest or Pension where a Person or Persons (the **Reversionary Beneficiary**) is nominated in an Auto-Reversionary Pension Interest Agreement, SMSF Will or Binding Death Benefit Nomination (collectively, the **ARPIA**) as the recipient of the Member's Pension Interest (**Original Beneficiary**), upon the death of the Original Beneficiary. The Auto-Reversionary Interest is subject to the Conditions of Release of Benefits and Payment Standards of the Superannuation Laws.

**Auto-Reversionary Pension Interest Agreement** has the same meaning as ARPIA.

**Bare Trust** means a trust established by the Trustee or some other party which holds an Asset on Bare Trust for the Trustee of the Fund. The trustee of the Bare Trust is to hold any Asset of the Fund for the absolute entitlement of the Trustee of the Fund. A Bare Trust are most often used, but are not limited to, limited recourse lending arrangements made pursuant to sections 67, 67A and 67B of SISA. A Bare Trust is also known as a Holding Trust.

**Benefit** means an amount of Cash, Benefit-in-Kind, and Benefit-in-Specie made in satisfaction of a Payment Direction, Trustee resolution or as a consequence of a Payment Direction or determination of the Trustee, in respect to a Member's Superannuation Interests

**Benefit-in-Kind** means a deemed benefit (other than a Benefit-in-Specie and/or payment of Cash) provided to or on behalf of a Member, Member's Dependant(s), or Member's Legal Estate.

**Benefit-in-Specie** means a transfer, in whole or in part, of an Asset of the Fund (other than a Benefit-in-Kind and/or payment of Cash) paid to a Member, Member's Dependant(s), Member's Legal Estate or otherwise as a consequence of a Payment Direction or determination of the Trustee, in respect to a Member's Superannuation Interests.

**Binding Death Benefit Nomination** means a set of instructions made by a Member in respect to the payment of the Member's Superannuation Interests upon the Member's death which are intended to bind the Trustee and Member's Alternate Decision-Maker in the payment of the Member's Superannuation Interests on death. The Nomination may be lapsing or non-lapsing. The Nomination must be signed by at least ONE Natural Person who is not a Member, Member's Relative, Trustee (including a Director of a Corporate Trustee) or a Beneficiary nominated in the Binding Death Benefit Nomination. Refer also to Rules 32.1 and 39.

**Calling Member** is as defined at Clause 14.1.

**Calling Trustee** is as defined at Clause 4.4(a).

**Cash** includes any currency, cheque, promissory note and any amount held by the Trustee in a bank account, cash management trust, deposit account or similar account where Cash may be held on deposit for the Trustee, and includes foreign currency and digital currency (for example, BitCoin).

**CGT Contributions Cap** is the limit prescribed by the Superannuation Laws which a Member of a Superannuation Fund may contribute as a CGT relief transfer amount.

**Child** in relation to a Person, includes an adopted Child, a step-Child or an ex-nuptial Child of the Person or any other Person as defined under the Superannuation Laws, except that a Member may, by way of his/her SMSF Will, Binding Death Benefit Nomination or Pension Interest Agreements, vary the definition in respect to the payment of his/her Superannuation Interests.

**Child Pension Interest** has the meaning given in the Superannuation Laws.

**Company** includes any entity incorporated pursuant to *Corporations Act 2001 (Cth)* or the Superannuation Laws (as applicable).

**Compassionate Grounds** includes those grounds listed under the Superannuation Laws authorising the Trustee, subject to direction by the Regulator, to pay a Lump Sum Payment to Members based on Compassionate Grounds.

**Complying SMSF** means a Superannuation Fund which meets both the definition of a SMSF and the conditions of a complying Superannuation Fund under the Superannuation Laws or as otherwise determined by the Regulator.

**Concessional Contributions** are those Contributions and allocations defined as Concessional Contributions in the Superannuation Laws.

**Concessional Contributions Cap** has the meaning given in the Superannuation Laws.

**Conditional Pension Interest** means a Pension Interest which is settled by a Member by way of a Conditional Pension Interest Agreement, or within the Member's SMSF Will or Binding Death Benefit Nomination (collectively, **CPIA**) and prescribes conditions upon which the Pension Interest reverts and is paid. A Conditional Pension Interest is subject to the Conditions of Release of Benefits and Payment Standards of the Superannuation Laws.

**Condition Pension Triggering Event** is as defined at Rule 36.1.

**Conditions of Release of Benefits** includes those Conditions of Release of Superannuation Benefits in the Superannuation Laws and in particular Schedule 1 of the SISR.

**Contributing Member** is a Member of the Fund who contributes to the Fund on behalf of himself or herself, the Member's Spouse or another Member of the Fund.

**Contribution** includes a payment, Contribution-in-Kind, Contribution-in-Specie, and/or receipt of any other money or Asset permitted by the Superannuation Laws to be received as Contribution of a Member, but does not include an allocation from a Reserve Account on behalf of a Member. *See also SISR 7.04.*

**Contribution Declaration** means a written confirmation of a Member as to the Member's qualification to make a Contribution to the Fund.

**Contribution-in-Kind** includes a deemed Contribution of a Member, or on behalf of a Member for purposes of SISR 7.04. The value of the Contribution shall be based on the Market Value of the deemed Contribution.

*For example, Bob lends money to the SMSF and forgives the loan by way of an assignment to Jane, then the value of the discharged loan would be a Contribution-in-Kind of Jane to the Fund. Careful consideration needs to be had as to whether a Contribution-in-Kind is permitted by the Superannuation Laws.*

**Contribution-in-Specie** includes a transfer, in whole or in part, of an Asset as a Contribution of a Member, whether made by the Member or a Contributor on behalf of a member, transfer and/or Asset acquired is permitted by the Superannuation Laws. The value of the Contribution shall be based on the Market Value of the deemed Contribution.

**Contributions Cap** has the meaning given in Superannuation Laws.

**Contributions Reserve** includes a Reserve Account in which invested Contributions are made on behalf of a Member or a specific group of Members. Any allocation to a Contributions Reserve is required to be allocated to a Member within 28 (twenty-eight) days after the month in which the contribution is placed into the Contributions Reserve.

**Contributions Splitting Notice** is a Notice provided to the Trustee by a Member requesting an amount to be allocated, Rolled-over and/or transferred as a Transfer Superannuation Interest to a Member's Spouse from the Member's Superannuation Interests.

**Contributor** includes a Member, Member's Associates, Member's Employer and/or any other Person who makes a Contribution for or on behalf of a Member, Member's Spouse and/or Member's Dependants to the Fund, provided the terms are compliant with the Superannuation Laws.

**Corporate Trustee** is any Trustee of the Fund which is a constitutional corporation, including a Company constituted for the purposes of acting as a Trustee of a SMSF under the Superannuation Laws.

**Court** includes any properly constituted Court, tribunal or jurisdictional forum situated in Australia whether at a Federal or State level including both criminal and civil Courts, tribunals and administrative forums vested with authority to decide a matter.

**CPIA** means the Conditional Pension Interest Agreement, SMSF Will and/or Binding Death Benefit Nomination in which a Member settles an arrangement which prescribes the reversion of the Member's Pension Interest upon an event described by the Member to one or more Reversionary Beneficiaries on conditions and terms prescribed therein.

**Custodian** includes a Person or Persons which holds an Asset or Cash on behalf of the Trustee as Bare Trustee (*see also Bare Trust*).

**Death Benefit** includes a payment, including a Benefit-in-Specie, Benefit-in-Kind and/or distribution of Cash of a Member's Superannuation Interest, and may be as a consequence of a term of a SMSF Will, Binding Death Benefit Nomination, Deceased Member's Alternate Decision-Maker discretion, Pension Interest Agreement and/or or any other mechanism permitted by the Superannuation Laws. A valid reversion in respect to a Pension Interest Agreement is not a Death Benefit.

**Death Benefit Rule** is a Special Rule of the Fund settled by a Member in respect to the payment of the Member's Superannuation Interest as a Death Benefit on terms contained in a Binding Death Benefit Nomination and/or SMSF Will. The Death Benefit Rule may only be revoked on terms contained therein and shall not be invalidated or revoked by an updating of the Governing Rules by auto-upgrade or subsequent instrument updating the Governing Rules except if separately resolved and recorded in writing by Trustee and relevant Member.

**Default Nominated Fund** has the meaning given at Rule 15.2(c)(ii), and includes any Eligible Entity which a Member may nominate for the purposes shown in such Rule.

**Delivery or delivered** includes any reasonable means of providing communication by parties on a matter, and includes, but is not limited to the provision of email (including attachments) direction, hand delivery, delivery to an address of a party, and dispatch as authorised under Division 3 of the *Electronic Transactions Act 1999 (Cth) (ETA)*.

**Dependant** includes a Member's Spouse, Member's Child, Person in an Interdependency Relationship with a Member, Person who is financially dependent on the Member, and any other Person the Superannuation Laws define as a Dependant of a Member.

**Disbursement Powers** has the meaning given in Rule 12.7.

**Disqualified Person** means a Member who is a Disqualified Person for purposes of section 120 of the SISA and includes a Member who:

- (a) has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory, or a foreign country, being an offence in respect to dishonest conduct;
- (b) is subject to a civil penalty order made in relation to the Disqualified Person, in accordance with Parts 20 or 21 of the SISA;
- (c) is insolvent or an undischarged bankrupt;
- (d) is disqualified based on a reason read at section 120(c) of the SISA; or
- (e) such other basis of disqualification imposed from time to time by the Superannuation Laws.

**Earnings** is the amount determined by the Trustee as Earnings of the Fund, Earnings of a specific Member Superannuation Interest or group of Members' Superannuation Interests, a Reserve Account or any other account, whatever the case may be for a period of time, and may include negative Earnings.

**Effective Date** means the date upon which this Deed is deemed to have taken effect, and is taken for this purpose to be the date upon which the last of the parties executes the Deed and does not include a date upon which a party later remedies a defective execution.

**Eligible Entity** includes any Superannuation Fund, including but not limited to a Complying SMSF, retail Superannuation Fund, wholesale Superannuation Fund, industry Superannuation Fund, Small APRA Fund, Eligible Roll-over Fund, Retirement savings account, Foreign Superannuation Fund and any and all other funds and/or arrangements which are permitted to accept a Member's Superannuation Interests in accordance with the Superannuation Laws.

**Eligible Lump Sum Beneficiary** means a Person who qualifies as a Dependant of a Member as the term is read in the SISA.

**Eligible Pension Beneficiary** means a Person who qualifies as a Death Benefits Dependant of a Member as the term is defined in the *Income Tax Assessment Act 1997 (Cth)*.

**Eligible Roll-over Fund** see Eligible Entity.

**Employer Contribution Notification** is a written notification from the Trustee as to the Complying SMSF status and contact details of the Trustee.

**Employer Roll-over Superannuation Interest** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Roll-over of a Lump Sum Payment to the Fund for benefit of the Member as a consequence of the Member

terminating employment with an employer.

**EPOA** means an Enduring Power of Attorney made in accordance with the laws of the State of residence of the Member at the date of making.

**Estate** includes Legal Estate.

**ETA** means *Electronic Transactions Act 1999 (Cth)*, and such of the following as may be applicable for the purposes: *Electronic Transactions Act 2000 (NSW)*, *Electronic Transactions (Victoria) Act 2000 (VIC)*, *Electronic Transactions (Queensland) Act 2001 (QLD)*, *Electronic Transactions Act 2000 (SA)*, *Electronic Transactions Act 2011 (WA)*, *Electronic Transactions Act 2000 (TAS)*, *Electronic Transactions Act 2001 (ACT)* and *Electronic Transactions (Northern Territory) Act (NT)*.

**Excess Contribution** has the meaning given in the Superannuation Laws.

**Excess Contributions Tax** includes an amount assessed by the Regulator for a period as being excessive in terms of Non-Concessional Contributions and/or Concessional Contributions in relation to a Member under the Superannuation Laws.

**Excess Contributions Tax Release Authority** is an authority issued by the Regulator under the Superannuation Laws for the payment of Excess Concessional Contributions Tax and/or Excess Non-Concessional Contributions Tax.

**Excess Transfer Balance Tax** has the meaning given in the Superannuation Laws.

**Excluded Person** means a Person, Persons or classification of Persons excluded from being considered to receive a Member's Superannuation Benefits, as determined in accordance with the Governing Rules.

**Family Law Payment Splitting Notice** is a notice issued to the Trustee of the Fund under the Superannuation Laws requiring the Trustee to split a Member's Superannuation Interest with the Member's Spouse or ex-Spouse.

**Foreign Superannuation Fund** means a Superannuation Fund that is not an Australian Superannuation Fund.

**Fund** means this Fund established and maintained as a Complying SMSF, which Fund may be settled by deed or other instrument having the effect of a deed, and includes a trust, fund, scheme or such other arrangement as allowed under the Superannuation Laws. Notwithstanding, the Trustee may resolve to change the Fund to a Small APRA Fund, in accordance with the Governing Rules.

**Fund Assets** means all money and Assets, Contributions (including Contributions-In-Kind and Contributions-In-Specie), net Earnings and such other accumulations and accretions as the Superannuation Laws allow to be held by a Complying Superannuation Fund.

**Further Payment Direction** is as defined at Rule 29.3(k).

**Gainfully Employed** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**General Expenses** include expenses incurred by the Trustee of the Fund in relation to the day-to-day operations of the Fund, as well as those expenses the Trustee declares are General Expenses.

**Governing Rules** include the Governing Rules herein and include any addition, variation, change or amendment provided the addition, variation, change or amendment meets the relevant Rule requirements, and includes a Special Rule. Governing Rules also include any written or unwritten rules applied by the Trustee of the Fund in relation to the operation and management of the Fund.

**Government** includes the Australian Federal Government, the various State and Territory Governments of the States and Territories of Australia, Local Councils and any other legally convened Government, including, but not limited to a foreign Government.

**Holding Trust** means Bare Trust.

**Incapacity** includes Temporary Incapacity, Permanent Incapacity and Terminal Medical



Condition, and such other terms of legal incapacity as the terms are read in the Superannuation Laws for the relevant purposes.

**Incapacity Superannuation Benefits** include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, Member's Dependants, Member's Legal Estate or other Person in the event of a Member's Incapacity.

**Income Stream** see definition for **Pension Interest**.

**Income Year** is any year commencing 1 July and ending 30 June unless otherwise allowed by the Regulator.

**Ineligible Lump Sum Beneficiary** means a Person who is not an Eligible Lump Sum Beneficiary.

**Ineligible Pension Beneficiary** means a Person who is not an Eligible Pension Beneficiary.

**Initial Trustee** is the first trustee or later trustees of the Fund.

**Insurance Strategy** includes a plan established by the Trustee of the Fund to provide insurance cover for the Trustee in the event of any Member's death, Temporary Incapacity, Permanent Incapacity or for any other reason. An Insurance Strategy forms part of the Fund's Investment Strategy.

**Interdependency Relationship** has the meaning given in the SISA.

**Investment Powers** has the meaning read at Rule 12.4.

**Investment Reserve** includes a Reserve which may be established by the Trustee for the purposes of smoothing investment returns amongst Member Superannuation Interests, allocating investment returns to specific Member Superannuation Interests and allocating to other Reserves of the Fund where the Superannuation Laws allow.

**Investment Strategy** includes a written document formulating the investment objectives, plans of investment for one or more Accounts, Reserves and/or Member Superannuation Interests. The document may include an Insurance Strategy. The Investment Strategy also should have regard to all relevant circumstances associated with the Fund including, but not limited to:

- (a) the risk involved in making, retaining and realising Fund investments. Such decisions are determined by the prospective 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;
- (b) 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;
- (c) the liquidity of the Fund's investments considering its expected cash flow requirements; and
- (d) the ability of the Fund to discharge its existing and future liabilities.

**Legal Estate** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a trust established or created under a trust deed, Last Will, Bare Trust, Settlement Instruments, EPOA, by way of Court order or in any other way for the purpose of holding a Member's Assets, in the event that a Member lacks legal capacity or dies. Where reference is to a Member's Legal Estate, then the reference is to the Legal Personal Representative of the Member's Legal Estate howsoever constituted.

**Legal Personal Representative** means:

- (a) the Person, Persons, or any combination thereof, appointed as Executor of a Member's Legal Estate;
- (b) the Person, Persons, or any combination thereof, appointed as Administrator of a Member's Legal Estate;

- (c) the Person, Persons, or any combination thereof, appointed as Attorney (under a duly executed General Power of Attorney, made in accordance with the laws of the State of residence of the Member at the date of making) for a mentally competent Member;
- (d) the Person, Persons, or any combination thereof, appointed as Attorney (under a duly executed EPOA, made in accordance with the laws of the State of residence of the Member at the date of making) for a Mentally Incapacitated Member;
- (e) the Person, Persons, or any combination thereof, appointed as administrator of a Member by a Court having jurisdiction over the matter, for a Mentally Incapacitated Member;
- (f) the Person, Persons, or any combination thereof, appointed as Legal Personal Representative by or for a Member, whether as a consequence of a Nomination in a testamentary instrument or by order of a Court having jurisdiction over the matter for a Deceased Member; and
- (g) such Person, Persons, or any combination thereof, the Superannuation Laws prescribe to be a Member's Alternate Decision-Maker and includes, for purposes of Governing Rules 4, 5 and 6, the Person or Persons nominated in an Alternate Decision-Maker Nomination.

*Note: An Alternate Decision-Maker Nomination does not invalidate an EPOA, order of a Court or appointment in a Last Will of a Legal Personal Representative. An Alternate Decision-Maker Nomination is an instrument which can be used by the Fund to ensure transparency and limit legal disputes over the appointment of Person or Persons acting in substitution for a Member. In effect, the Alternate Decision-Maker Nomination is a system which allows the Members to record their Nominations of Legal Personal Representative in the Fund records.*

**Legal Personal Representative of the Member's Estate** see Legal Personal Representative.

**Limited Power of Attorney** means the powers read in the Governing Rules for one or more Persons to act for another Person, and does not have the scope of a General Power of Attorney or EPOA.

**LRBA** means a limited recourse borrowing arrangement as defined in the Superannuation Laws.

**Lump Sum Payment** means a payment made in Cash, Benefit-In-Kind and/or Benefit-in-Specie, whether or not paid to a Member, Member's Legal Estate or otherwise from a Member's Superannuation Interests, including but not limited to a payment following the commutation of a Pension Interest.

**Mandatory Transfer Event** means any one or more of the following:

- (a) a Member becoming a bankrupt person;
- (b) a Member committing fraud in his/her capacity as Trustee or Director of a corporate Trustee;
- (c) a Member being convicted of a crime, subject to imprisonment;
- (d) a member being convicted of a crime of dishonesty;
- (e) a Member acting with wanton disregard or gross negligence in any aspect of the Fund, including but not limited to refusing to comply with Special Member Conditions, Special Member Disclosure and/or otherwise compromising the Fund's Complying SMSF status, solvency or the interest of the other Members in the Fund; and
- (f) such other term as the Superannuation Laws prescribe as a condition upon which a Member must cease being a Member of a Complying SMSF;

however, the Trustee is not obligated to transfer a Member's Superannuation Interests upon

the happening of a Mandatory Transfer Event, unless the Superannuation Laws otherwise require.

**Market Value** has the meaning read in the Superannuation Laws.

**Member** is a Person who has been accepted as a Member of the Fund and has accepted to act as Trustee (if constituted by Natural Persons) or Director of a Corporate Trustee, and has complied and continues to comply with its obligations under the Governing Rules. A Member does not have to have a balance in the Member's Accumulation Account. A reference to Member includes a Member's Alternate Decision-Maker acting for a Mentally Incapacitated Member.

**Member Accumulation Interest** includes a Member's Superannuation Interest which is not a Member's Pension Interest.

**Member Meeting** is a meeting of the Members as required by the Governing Rules and the Superannuation Laws, conducted by any reasonable method (including but not limited to in person, by internet (including, but not limited to, Skype, Zoom or such other conferencing platforms available on the internet) and/or telephone) in which matters regarding the Fund are discussed.

**Member Ordinary Resolution** means a vote cast in favour by not less than 51% (fifty one percent) of the Member votes available to be cast in a Member Meeting.

**Member Pension Interest** includes a Member Superannuation Interest established by the Trustee under the Governing Rules for the purpose of paying a Pension Interest, whether the payment is commenced immediately or upon the happening of a condition at a later date. A Member Pension Interest remains in force, provided that there is an Account balance of \$1 or more. See also definition for **Pension Interest**.

**Member Pension Interest Roll-back** means the commutation in whole or part of a Member Pension Interest in the Fund and the subsequent transfer to a Member Accumulation Interest in the Fund.

**Member Release Authority** is a request howsoever given by a Member to the Trustee in respect to the release of Contributions and/or Earnings in excess of the Member's Contributions Cap, or for any other reason prescribed by the Superannuation Laws.

**Member SMSF Living Will** includes a formal or informal set of directions made by a Member to benefit a Member, the Member's Dependants and/or Member's Legal Estate from and/or following a Member being Mentally Incapacitated.

**Member SMSF Will** includes a formal set of directions made by a Member dealing with the Member's Superannuation Interests on and following the Member's death. The SMSF Will must be signed and dated by the Member and witnessed by at least ONE Natural Person who is not a Member, Member's Relative, Trustee (including Director of a Corporate Trustee) or Beneficiary nominated in the SMSF Will.

**Member Special Resolution** means a vote cast in favour by not less than 75% (seventy five percent) of the Member votes available to be cast in a Member Meeting.

**Member's Beneficiary** includes a Person nominated in a Member's SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination, Pension Interest Agreements, Member's Dependants and Member's Legal Estate. A Member's Beneficiary must also qualify as an Eligible Income Beneficiary and/or Eligible Lump Sum Beneficiary to receive the benefit of a nomination of the Member's Superannuation Interest, notwithstanding being named as a Member's Beneficiary.

**Member's Dependant** means an Eligible Income Beneficiary and/or Eligible Lump Sum Beneficiary (as applicable).

**Membership Warranties** has the meaning read at Rule 13.10.

**Mentally Incapacitated** means a state of mental health whereby a Member lacks sufficient mental capacity to understand the nature and effect of the Member's decisions in respect to a matter.

**Mentally Incapacitated Member** means a Member who is suffering a legal incapacity by virtue of age, a state of mental health whereby a Member lacks sufficient mental capacity to

understand the nature and effect of the Member's decisions in respect to a matter or bankruptcy.

**Minor Member** means a Member who is a Natural Person of less than 18 (eighteen) years of age.

**Natural Person** means a human being.

**Nominated Beneficiary** is as defined at Rule 37.4.

**Nomination** includes Nomination made under a Binding Death Benefit Nomination, SMSF Will, Pension Interest Agreement, or otherwise in respect to the payment of a Member's Superannuation Interests.

**Nomination of Default Superannuation Fund** is a written nomination by a Member of an Eligible Entity to which the Member's Superannuation Interests may be transferred by the Trustee on the happening of a Mandatory Transfer Event happening in respect to Member.

**Non-Binding Death Benefit Nomination** is a Nomination made by a Member in relation to the distribution of the Member's Superannuation Interests in the event of Member's death, other than a Nomination made in a Binding Death Benefit Nomination or SMSF Will.

**Non-Concessional Contributions** are those Contributions defined as Non-Concessional Contributions in the Superannuation Laws.

**Non-Contributing Member** is a Member of the Fund who is other than a Contributing Member.

**Non-Lapsing Binding Death Benefit Nomination** is a Binding Death Benefit Nomination which does not have a lapsing event, and continues until revoked by the Member and is subject to the Conditions of Release of Benefits and Payment Standards of the Superannuation Laws.

**Notice of Payment Direction** is a written direction made by a party in respect to the payment of a Member's Superannuation Interest, whether during the lifetime of the Member or after the death of the Member.

**Notice of Intent to Claim or Vary a Deduction** is a written direction by a party in respect to a Contribution to the Fund.

**Originating Member** is as defined at Rule 35.2.

**Overseas Pension or Revenue Authority** includes any non-Australian tax, revenue, pension, superannuation, Retirement or other Government or semi-Government authority that has powers, either directly, indirectly or by delegation in setting, maintaining or establishing rules, terms or conditions in relation to the transfer and payment of any pension, Retirement or superannuation or their equivalent benefits to this Fund including QROPS benefits.

**Pay** includes credit, distribute, set-off, Benefit-in-Kind, Benefit-in-Specie, or otherwise where a thing or benefit is transferred from one Person to another Person.

**Payment Direction** is as defined at Rule 29.1(b).

**Payment Standards** has the meaning given under Part 6 of the SISR.

**Pension** see **Pension Interest**.

**Pension Interest** includes a series of periodical payments made by the Trustee for the benefit of a Member and/or Member's Dependents, which may or may not be on commutable terms, may or may not have reversionary terms, may or may not have a residual capital value, and includes, but is not limited to the following:

- (a) any Pension Interest upon terms and conditions which comply with SISR 1.06(1) including the requirement that the Pension Interest cannot be added to by way of capital;
- (b) a lifetime complying pension (SISR 1.06(2));
- (c) an Accounts Based Pension;
- (d) an Allocated Pension (SISR 1.06(4));

- (e) a market-linked pension (SISR 1.06(8));
- (f) a fixed-term complying pension (SISR 1.06(7));
- (g) a non-commutable life pension (SISR Schedule 1 – Item 108);
- (h) a non-commutable Allocated Pension (SISR 6.01(2));
- (i) a Transition to Retirement Income Stream (SISR 6.01(2));
- (j) a non-commutable pension (SISR 6.01(2));
- (k) a Temporary Incapacity Pension Interest– non-commutable Income Stream (SISR 6.01(2));
- (l) an Assets Test Exempt Pension within the meaning of that term under the *Social Security Act 1991 (Cth)* including, but not limited to sections 9A, 9B and 9BA;
- (m) a Child Pension Interest;
- (n) an annuity benefit (SISR 1.05) (For clarity, annuity benefit may be read where reference to Pension Interest is given in the Governing Rules); and
- (o) any other pension or Superannuation Income Stream under the Superannuation Laws (see generally SISR 1.06).

**Pension Reserve** includes a Reserve established by the Trustee for the following purposes:

- (a) to pay any Pension Interest or Pension liability of the Trustee of the Fund whether by way of a payment of an amount or Asset to a Member Pension Interest or directly to a Member with a Pension Interest, such payment in satisfaction in whole or part of the Trustee's Pension Interest liabilities in respect of that Member Pension Interest;
- (b) to be used to commence a new Pension Interest where a Pension Interest Superannuation Member has commuted a Pension Interest;
- (c) to pay a Death Benefit where a Member holding a Pension Interest has died; and/or
- (d) such other payments as the Superannuation Laws allow in respect of Pension Interests.

**Permanent Incapacity** is any condition that the Trustee determines amounts to Permanent Incapacity including in relation to a Member, ill-health (whether physical or mental) which the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Person** means any Natural Person, body corporate, Government entity or other legal structure or entity of any kind.

**Personal Transfer Balance Cap** has the meaning given in the Superannuation Laws.

**Preservation Age** has the meaning given in the Superannuation Laws.

**Preservation Status** has the meaning given in the Superannuation Laws in respect to a Member Superannuation Interest, or part thereof.

**Professional** includes a Person authorised and if required licensed under the Superannuation Laws to provide advice, audit services, administration services or any other services to the Trustee of a SMSF, including a lawyer, accountant, financial planner or a SMSF Professional.

**Proportionate Voting Rule** is the voting mechanism whereby each Member, for purposes of Members Meetings, or Natural Person Trustees or Directors of a Corporate Trustee conduct voting based on the proportionate value of the Superannuation Interests represented by the Member (whether acting at Meetings, Natural Person Trustee or Director of a Corporate

Trustee – and includes an Alternate Decision-Maker standing in the shoes of the Member) in the Total Superannuation Interests of the Fund. Reserve Account balances are not counted for the Proportionate Voting Rule.

*For example, applying the Proportionate Voting Rule, if Member A's Superannuation Interest is equal to \$700,000, and Member B's Superannuation Interest is equal to \$300,000, and Member C's Superannuation Interest is equal to \$100,000 – then - Member A on membership matters, carries 70% of the vote, Member B carries 30% of the vote and Member C carries 10% of the vote. Similarly, on Trustee matters and/or Directorship matters in respect to the Corporate Trustee, Member A carries 70% of the vote, Member B carries 30% of the vote and Member C carries 10% of the vote.*

**Quarantined Part** means that part of a Member's Superannuation Interest which cannot be paid in a direction given in a Member's SMSF Will, Binding Death Benefit Nomination, Pension Interest Agreement and/or which has no binding payment direction by the Member in respect thereof.

**Regular Release Authority** is a notice howsoever given by the Regulator requiring a payment of a Member Superannuation Interest, or part thereof, including but not limited to an **Excess Contributions Tax Release Authority**.

**Regulated Superannuation Fund** is a Superannuation Fund, including a SMSF which has elected to become a Regulated Superannuation Fund under the Superannuation Laws.

**Regulator** is the Commissioner of Taxation, APRA, the Australian Securities Investment Commission or any other Governmental body that has jurisdiction for regulating the Superannuation Laws as it applies to circumstances of the Fund.

**Related Party** or **Related Parties** means a Person defined as a Related Party under the Superannuation Laws.

**Relative** includes, in relation to an individual, the following:

- (a) A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted Child of that individual or of his/her Spouse; and
- (b) Spouse of an individual or of any other individual specified in the preceding subpart;

except where Relative is given a specific meaning under Rule 19.

**Replacement Asset** has the meaning read in the Superannuation Laws.

**Reserve Account** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an account created by the Trustee of the Fund with surplus Assets or from Earnings of the Fund. A Reserve Account may include an Anti-Detriment Reserve (*Warning: Anti-Detriment Reserve may be invalid from and following 1 July 2017*), a Contributions Reserve, a Pensions Reserve, a Self-Insurance Reserve and/or an Investment Reserve. The Reserve Account may be established for any purpose permitted by the Superannuation Laws, including but not limited to the funding of a Pension (including a current or future Pension), to fund a Death Benefit, to fund a Lump Sum payment, to accumulate amounts from Earnings to cushion market fluctuations and assist in liquidity, and to fund Specific or General Expenses.

**Reserve Benefit** means benefits including Superannuation Benefits paid or payable directly by the Trustee of the Fund from a Reserve Account to a Member, former Member, their Legal Estate, a Deceased Member's Dependant or any other Person allowed under the Superannuation Laws.

**Retirement** and **Retired** includes where a Member who has reached Preservation Age and no longer intends to work again, and includes further:

- (a) where a Member is over Preservation Age and the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;

- (b) where a Member is over age 60 years of age and an arrangement under which the Member is Gainfully Employed has come to an end on or after that age or the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment; and
- (c) such other occasion allowed under the Superannuation Laws.

**Reversionary Beneficiary** is a Person nominated as beneficiary of a Pension Interest on the happening of an event nominated in a Conditional Pension Interest Agreement, Auto-Reversionary Pension Interest Agreement or otherwise in respect to a Pension Interest, on the death of the Member to which the Pension Interest is payable.

**Roll-back** includes the transfer of part or all of a Member Pension Interest to an Accumulation Interest in the Fund established for the Roll-back Member's benefit.

**Roll-over** means paid as a Lump Sum Payment (other than by way of being transferred) between Superannuation Funds within the superannuation system including an Employer Roll-over Superannuation Interest where the Superannuation Laws allow.

**Roll-over Superannuation Interest** includes the payment of a Lump Sum Payment, a Pension Interest or any other Superannuation Benefits or Superannuation Interests between Superannuation Fund allowed under the Superannuation Laws.

**RSE Licensee** is a Trustee or other party that has been issued a license by the Regulator of non-SMSFs under the Superannuation Laws.

**Segregation Powers** has the meaning read at Rule 12.8.

**Self-Insurance Reserve Account** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Reserve Account established by the Trustee under the Governing Rules to provide Superannuation Benefits for Members in the event of their Temporary Incapacity, Permanent Incapacity or for any other reason as well as the payment of Superannuation Benefits to a Member's Dependants or the Member's Legal Estate.

*Note: If the Fund did not have self-insurance implanted at 20 July 2014, the Fund cannot offer self-insurance unless the Superannuation Laws allow.*

**Self-Managed Superannuation Fund and SMSF** is a Superannuation Fund which meets all of the terms and conditions of a Self-Managed Superannuation Fund as the term is defined under the Superannuation Laws.

**Settlement Instruments** means the contract, agreement, deed and/or minutes which settle an arrangement, obligation or show the commitment of parties to a thing, matter or act.

**Severe Financial Hardship** is financial hardship that the Trustee is of the opinion is severe and includes conditions as described under the Superannuation Laws for Severe Financial Hardship.

**Signed or Signature** means the giving of a person's intention in respect to information communicated by any reasonable means, including a mark, wet mark or by electronic communication (including digital signature) as described in section 10 of the ETA.

**Single Acquirable Asset** has the meaning given in the Superannuation Laws.

**SISA** is the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

**SISR** is the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

**SMSF Adviser** is a Person who is recognised by a Professional association, educational institution or the Regulator as a specialist in providing advice to Trustees or other Professionals on the Superannuation Laws as they apply to a SMSF.

**SMSF Contractor** may be, but does not necessarily have to be, a Member of the Fund, and includes a Person who performs services for the Fund which are other than services in respect to acting as a Trustee or Director of a Corporate Trustee, and on arm's length and commercial terms.

**SMSF Living Will** see **Member SMSF Living Will**.

**SMSF Will** see **Member SMSF Will**.

**Special Member Disclosure** has the meaning shown at Rule 13.7.

**Special Membership Conditions** has the meaning shown at Rule 13.8.

**Special Rule** means:

- (a) a term or circumstance referred to in the Governing Rules (included in this Deed or in any further amendments or variations to the Governing Rules from time to time) as a Special Rule, which term or circumstance is deemed irrevocable, unless a written declaration striking or amending the term is made by the Trustee;
- (b) a term of administration or dealing in respect to any aspect of the Fund determined by the Trustee to be irrevocable, unless a written declaration striking or amending the term is made by the Trustee;
- (c) a Binding Death Benefit Nomination, SMSF Will, Alternate Decision-Maker Nomination settled by a Member in accordance with the Governing Rules, which is irrevocable except on the terms thereof, unless a written declaration striking or amending the Nomination is made by the Member;
- (d) a limitation of membership, segregation of an Asset, or other specific term under which the Trustee undertook or seeks to undertake a dealing resulting in concessional treatment under any State Duties Act which term is deemed irrevocable, unless a written declaration striking or amending the term is made by the Trustee and any relevant Members to which the benefit of the concessional treatment may apply (if any); and
- (e) such other term, Nomination or limitation deemed by the Trustee or Member as a Special Rule howsoever recorded.

*For clarity, a Special Rule is not modified by an update, auto-upgrade or variation of the Governing Rules, unless the Specific Rule is specifically referred with particularity in such update, auto-upgrade or variation.*

**Specific Expenses** means expenses incurred by the Trustee of the Fund that the Trustee is of the view relate directly to a Member Superannuation Interest, as well as those expenses the Trustee declares to be a Specific Expense.

**Spouse** has the meaning read at section 90MD of the *Family Law Act 1975 (Cth)*.

**Successor Reversionary Beneficiary** is as defined at Rule 35.3(c).

**Superannuation Benefit** includes a payment, the transfer of an Asset or a Payment-in-Kind, whether by way of a Lump Sum Payment or a Pension Interest from the Fund to a Member, Member's Dependant, Member's Beneficiary, Member's Legal Estate and/or other Person(s) authorised under the Superannuation Laws allow.

**Superannuation Fund** includes a provident, Retirement, welfare or benefit fund both within and outside Australia and for the sake of removing any doubt - the Fund.

**Superannuation Interest** is any interest in a Superannuation Fund created under the Superannuation Laws and the Governing Rules including but not limited to a Member Accumulation Interest, a Member Pension Interest and a Reserve Account.

**Superannuation Interest Entitlement** is the amount determined by the Trustee, at any particular time that is the amount, which if paid in either Cash or Assets of the Fund, would discharge the Trustee's liability in relation to the particular Superannuation Interest.

**Superannuation Laws** mean the *Commonwealth of Australia Constitution Act 1900*, *Superannuation Industry (Supervision) Act 1993 (Cth)*, *Income Tax Assessment Act 1936 (Cth)*, *Income Tax Assessment Act 1997 (Cth)*, *Corporations Act 2001 (Cth)*, *Social Security Act 1991 (Cth)*, *Veterans' Entitlements Act 1986 (Cth)*, *Family Law Act 1975 (Cth)*, *Bankruptcy Act 1966 (Cth)*, *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007 (Cth)*, *Superannuation (Excess Non-Concessional Contributions Tax) Act 2007 (Cth)* any applicable Trustee Law, and any other regulation, law or direction



prescribed by the Regulator, Commonwealth or State Governments dealing with rights and obligations in respect to the operation of a complying Superannuation Fund and the holding of a Superannuation Interest in a complying Superannuation Fund.

**Suspended Interest** is as defined at Rule 6.5(a).

**Tax Adjustment Payment** is where the Trustee declares that, as a consequence of the use by the Fund or a Superannuation Interest (**User**) of a tax benefit including, but not limited to a franking credit, foreign tax credit, capital loss, income tax loss (as those terms are commonly known) or any other tax benefit sourced from a particular Superannuation Interest (**Supplier**), the Trustee is of the opinion that the User of the tax benefit should make a Tax Adjustment Payment to the Supplier of the tax benefit for the period of the benefit.

**Tax-Free Component** is that part of a Superannuation Benefit that is a tax-free component as determined under the Superannuation Laws.

**Taxable Component** is that part of a Superannuation Benefit that is not a Tax-Free Component, and includes elements Taxed and untaxed.

**Taxes** include any impost assessed by a Government to the Trustee of the Fund.

**Temporary Incapacity** is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any condition that the Trustee determines to be Temporary Incapacity for the purpose of these Governing Rules and includes where a Member has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed) due to ill-health (whether physical or mental) which causes the Member to cease to be Gainfully Employed but does not extend to Permanent Incapacity.

**Temporary Incapacity Pension Interest** is a Pension Interest payable by the Trustee of the Fund under the Superannuation Laws for a Member that is Temporarily Incapacitated and includes a Pension Interest that:

- (a) cannot be commuted or turned into a Lump Sum Payment;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or may be indexed provided that the indexation component, during any 12 month period, does not exceed the greater of 5% (five percent) per annum or the Consumer Price Index for the previous 12 months.

**Terminal Medical Condition** includes where:

- (a) two registered medical practitioners 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 Member within a period (the certification period) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person; and
- (c) for each of the certificates, the certification period has not ended.

**Termination Notice** is as defined at Rule 15.2(b).

**Terminating Member** is as defined at Rule 15.2.

**Total Superannuation Interest** means the total value of the Superannuation Interests of all Members in the Fund, but does not include Reserve Account Balances.

**Transfer Balance Accounts** has the meaning given in the Superannuation Laws.

**Transfer Balance Cap** has the meaning given in the Superannuation Laws.

**Transfer Superannuation Interest** includes the transfer of part or all of one or more of a

Member's Superannuation Interests from a Superannuation Fund (including a Foreign Superannuation Fund and the Fund itself) to a Superannuation Interest of a Member, the Member's Spouse, other Member of the Fund, or another Eligible Entity.

**Transition to Retirement Income Stream** means a Pension Interest that meets the terms and conditions of a Transition to Retirement Income Stream, non-commutable Allocated Pension or non-commutable pension, as the terms are interpreted in the Superannuation Laws.

**Trustee** is the Trustee of the Fund howsoever constituted.

**Trustee Law** means whichever of the *Trustee Act 1925 (NSW)*, *Trustee Act 1958 (Vic)*, *Trustee Act 1936 (SA)*, *Trustees Act 1962 (WA)*, *Trusts Act 1973 (QLD)*, *Trustee Act 1898 (Tas)*, *Trustee Act 1925 (ACT)* and the *Trustee Act 1907 (NT)* applies, and any other Commonwealth, State or Territory legislation that relates to the duties, role and Investment Powers of a Trustee of a trust including a trust that is a SMSF or Superannuation Fund.

**Trustee Ordinary Resolution** means a vote cast in favour by not less than 51% (fifty one percent) of the votes available to be cast in a Trustee Meeting. *(Note: If the corporate trustee is not a special purpose company and/or a standard company which has resolved its constitution on the terms of Rule 5, then this this definition shall not apply to such corporate trustee.)*

**Trustee Meeting** is a meeting of the Trustee(s) (if there be more than one) as required by the Governing Rules and the Superannuation Laws, conducted by any reasonable method (including but not limited to in person, by internet (including, but not limited to, Skype, Zoom or such other conferencing platforms available on the internet) and/or telephone) in which matters regarding the Fund are discussed. *(Note: If the corporate trustee is not a special purpose company and/or a standard company which has resolved its constitution on the terms of Rule 5, then this this definition shall not apply to such corporate trustee.)*

**Trustee Special Resolution** means a vote cast in favour by not less than 75% (seventy five percent) of the votes available to be cast in a Trustee Meeting. *(Note: If the corporate trustee is not a special purpose company and/or a standard company which has resolved its constitution on the terms of Rule 5, then this this definition shall not apply to such corporate trustee.)*

**Value of the Assets of the Fund** is the Value of the Assets of the Fund as determined by the Trustee of the Fund, subject to the Superannuation Laws, Audit Standards and any direction by the Regulator, which may include the Asset's historical cost, the replacement cost of the Asset, the Market Value of the Asset as at last accounting balance date or the current Market Value of the Asset. The Trustee may change valuation principles applicable to different Assets of the Fund unless the Superannuation Laws provide otherwise.

**Value of the Member's Superannuation Interest** is the value the Trustee determines in respect of a Member Superannuation Accumulation Interest and/or Member Pension Interest Superannuation Interest. If there is no value ascribed, then the Value of the Member's Superannuation Interest at the time of the last audit of the Fund, plus any additions made to the Superannuation Interest, less any deductions to the Superannuation Interest up to the time of the determined Value of the Member's Superannuation Interest. However, where the Superannuation Laws require a specified valuation or provide a formula the Trustee is to apply that valuation or formula to the calculation of the value of a Member's Superannuation Interest.

**Written or Writing** includes a delivery of information by any reasonable means, and expressly includes a writing as defined under section 9 of the ETA, which expression is adopted as authority for the Member, Trustee, SMSF Advisers and parties dealing with the Fund to conduct matters by any reasonable means, including but not limited to electronic transactions and the storage of such records by any means available for electronic communications.

<b>TABLE OF ANNEXURES</b>	
<b>Annexure</b>	<b>Form Name</b>
<b>A</b>	<b>ALTERNATE DECISION-MAKER NOMINATION FORM</b>
<p>The ALTERNATE DECISION-MAKER NOMINATION FORM is referred to at Rule 6 of the Governing Rules. This Form may be used by Members to register their preferred person to act for a period of time, if they lack Mental Capacity, or if they die.</p> <p><i>Note: This Nomination should be made in conjunction with the Member's Estate Planning.</i></p>	
<b>B</b>	<b>APPLICATION FOR MEMBERSHIP FORM</b>
<p>The APPLICATION FOR MEMBERSHIP FORM is referred to in Part Three of the Governing Rules. This Application may be required by the Trustee to be completed for any new Members of the Fund.</p>	
<b>C</b>	<b>DEATH BENEFIT NOMINATION FORM</b>
<p>A DEATH BENEFIT NOMINATION FORM is referred to at Parts 9 and 10 of the Governing Rules.</p> <p><i>Note: A Pension Interest Agreement and SMSF Will take precedence to a Binding Death Benefit Nomination. A Binding Death Benefit Nomination takes precedence over a Non-Binding Death Benefit Nomination.</i></p>	

**ALTERNATE DECISION-MAKER NOMINATION FORM  
ASHTON SUPERANNUATION FUND**

**INSTRUCTIONS**

In **Section Two**, you may nominate one or more persons to act as your Alternate Decision-Maker **during your lifetime**. Please read **Parts 2, 9 and 10** of the Governing Rules before completing this Section Two. The nominations in Section One should match your Enduring Power of Attorney. Whilst it is best to attach a copy of your Enduring Power of Attorney, this Form does not require you to do so.

You may nominate one or more persons to act together; however, please identify whether two or more persons act jointly (meaning all must agree) or by majority resolution (meaning the group of persons act jointly and resolve matters by a decision of the majority).

You may also wish to nominate one person or group of persons to act on a certain condition, but if the condition fails – then you nominate alternate persons. Please complete Table 1(A), 1(B) and (C).

In **Section Three**, you may nominate an Alternate Decision-Maker to act for you **upon your death**. This is a powerful position. This nomination should match any nomination you have made in your Will. As with Section Two, you can nominate one or more persons to act as your Alternate Decision-Maker upon your death.

Once completed, please return to the Trustee.

**SECTION ONE: ABOUT THE MEMBER**

Member Name:	
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In making this Alternate Decision-Maker Nomination, I, the above-named Member, confirm that I have read and considered the Instructions and have had the opportunity to obtain legal, financial and accounting advice before executing the Nomination.

**SECTION TWO: NOMINATION OF ALTERNATE DECISION-MAKER DURING THE MEMBER'S LIFETIME**

I make the following Nomination of Alternate Decision-Maker to act as my Legal Personal Representative, in accordance with Section 17A of the *Superannuation Industry (Supervision) Act 1993 (SISA)* and Parts 2, 9 and 10 of the Governing Rules of the Fund during my lifetime on the terms shown:

- I appoint the person(s) shown in Column 1 of Table 1(A) to act in accordance with the decision-making requirements shown in Column 3 of Table 1(A).
- If the Event shown at Table 1(B) occurs, then I appoint the person(s) shown in Column 1 of Table 1(C) to act in accordance with the decision-making requirements shown in Column 3 of Table 1(C).
- If I strike through Table 1(B) and 1(C), I intend only to appoint the person(s) shown in Table 1(A).

**TABLE 1(A)  
PRIMARY NOMINATION**

Column 1 Alternate Decision-Maker/Director	Column 2 Address of Alternate Decision-Maker/Director	Column 3 Decision-Making Requirements
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other

**TABLE 1(B)  
TERMINATION EVENT**

(Please explain under what circumstances the Nomination at Table 1(A) would fail.)

**TABLE 1(C)  
ALTERNATE NOMINATION**

Column 1 Alternate Decision-Maker/Director	Column 2 Address of Alternate Decision-Maker/Director	Column 3 Decision-Making Requirements
		Solely/Jointly/By Majority Resolution/Other

		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other

I direct that the Nominations made at this Section Two will apply:

- during my lifetime while I have Mental Capacity, for the following period of time: \_\_\_\_\_
- during my lifetime while I am a Mentally Incapacitated Person, but not if I have Mental Capacity
- irrespective of my Mental Capacity (i.e. the Alternate Decision-Maker/s will act both if I have Mental Capacity and if I am a Mentally Incapacitated Person)

I acknowledge that the above Nomination shown in Tables 1(A) and 1(C) grants to the Person(s) shown in the Tables the power to make decisions during my lifetime in respect to the administration of the Fund, including the payment, investment, distribution and/or such other matters relevant to such of my Superannuation Interests held in the Fund.

I confirm that I have also made an Enduring Power of Attorney with the above Nomination, and that the Trustee may request a copy of the Enduring Power of Attorney to hold with this Nomination (although I may black through any parts which are not relevant to my Superannuation Interests or the appointment terms made in this Nomination and/or deliver the Enduring Power of Attorney in a sealed envelope to a third party to hold in safe custody on terms allowing the Trustee to obtain access to the Enduring Power of Attorney on the determination by a medical practitioner that I am a Mentally Incapacitated Person).

I understand that if I change my Enduring Power of Attorney I must advise the Trustee, to ensure that my membership files are kept current.

I understand that the Alternate Decision-Maker has the powers given to them in my Enduring Power of Attorney, and as shown above.

**SECTION THREE: NOMINATION OF ALTERNATE DECISION-MAKER ON DEATH OF MEMBER**

I make the following Nomination of Alternate Decision-Maker to act as my Legal Personal Representative, in accordance with Section 17A of the SISA and Parts 2, 9 and 10 of the Governing Rules of the Fund, on and from my death:

- I appoint the person(s) shown in Column 1 of Table 2(A) to act in accordance with the decision-making requirements shown in Column 3 of Table 2(A).
- If the Event shown at Table 2(B) occurs, then I appoint the person(s) shown in Column 1 of Table 2(C) to act in accordance with the decision-making requirements shown in Column 3 of Table 2(C).
- If I strike through Table 2(B) and 2(C), I intend only to appoint the person(s) shown in Table 1(A).

TABLE 2(A) PRIMARY NOMINATION		
Column 1 Alternate Decision-Maker/Director	Column 2 Address of Alternate Decision-Maker/Director	Column 3 Decision-Making Requirements
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other

**TABLE 2(B)  
TERMINATION EVENT**

(Please explain under what circumstances the Nomination at Table 2(A) would fail.)

TABLE 2(C) ALTERNATE NOMINATION		
Column 1 Alternate Decision-Maker/Director	Column 2 Address of Alternate Decision-Maker/Director	Column 3 Decision-Making Requirements
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other

I acknowledge that the above Nomination shown in Tables 2(A) and 2(C) grants to the Person(s) shown in the Tables, the power to make decisions in respect to the administration of the Fund, including the payment, investment, distribution and/or such other matters relevant to such of my Superannuation Interests held in the Fund if I die.

I confirm that I have also made a Last Will with the above Nominations as Executors of my deceased estate, and that the Trustee may request a copy of the Last Will to hold with this Nomination (although I may black through any parts which are not relevant to my Superannuation Interests or the appointment terms made in this Nomination and/or deliver the Last Will in a sealed envelope to a third party to hold in safe custody on terms allowing the Trustee to obtain access to the Last Will on my death).

I understand that if I change my Last Will, I must advise the Trustee, to ensure that my membership files are kept current.

I understand that the Alternate Decision-Maker has the powers given to them in my Last Will, and as shown above.

Member Signature:	
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<b>SECTION FOUR: WITNESS CONFIRMATION</b>
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I confirm, by the execution of this Alternate Decision-Maker Nomination, that the Member shown in Section One read and executed Sections Two and Three of the Nomination and that I have independently verified the identity of the Member by way of inspection.

Witness Signature:	
Witness Full Name:	
Address:	
Telephone Number:	
Date:	

**APPLICATION FOR MEMBERSHIP FORM  
ASHTON SUPERANNUATION FUND**

Member Name:			
Tax File Number:		Date of birth:	
Address:			

1. I apply for membership in the Fund.
2. I am not bankrupt, and I agree to act as a natural person trustee, or as a director of a corporate trustee, and in this capacity to act in accordance with the terms of the Governing Rules of the Fund, Special Rules of the Fund and the Superannuation Laws.
3. I have had the opportunity to read and consider the Governing Rules.
4. I have also had the opportunity to meet with legal, financial and accounting advisors, and am satisfied that membership in the Fund is appropriate to my circumstances and needs.
5. I understand that if I am accepted as a member, my membership may be subject to restrictions and/or classifications.
6. I understand that I may only contribute to the Fund if I am eligible under the Superannuation Laws to do so, and this includes any contributions made by other parties on my behalf.
7. I understand that membership in a SMSF carries with it risks, including but not limited to risks associated with disagreement with other members, liquidity and investment risk, and such other risks which follow the nature of a SMSF arrangement.
8. I acknowledge the Trustee is not and will not be liable for any loss suffered as a result of transactions being delayed or frozen.
9. I agree that, unless I provide notice to the Trustee in writing, I do not require any insurance to be held within the Fund in respect of me.
10. I undertake to provide any relevant information or documentary evidence to the Trustee and agree to submit to health and medical tests as and when requested by the Trustee.
11. I acknowledge the Trustee may collect my personal identification documents (as shown in Section Two) and Tax File Number (TFN), which will be treated as confidential in accordance with the Privacy Act 1988 (Cth) (Privacy Legislation) and will only be used for legal purposes (such as identifying and locating my Superannuation Interests, and calculating tax on any eligible termination payment I may be entitled to receive).
12. I agree to provide the Trustee with my TFN. I authorise the Trustee to provide my TFN to any other Superannuation Fund in which my Superannuation Interest may be transferred to and/or to the ATO.
13. I authorise the Trustee to retain and store information on my behalf despite any provision to the contrary in any Privacy Legislation.
14. I understand that if I become a bankrupt person or subject to a Mandatory Transfer Event, the Trustee may, but is not required unless the Superannuation Laws prescribed, Roll-over my Superannuation Interests to any other Eligible Entity. If I have made a Default Superannuation Fund Nomination, then the Trustee will have regard to such nominations. I also understand that the Trustee may not seek my consent in rolling over my Superannuation Interests in the event I am bankrupt or subject to a Mandatory Transfer Event.
15. I understand if I can make a Binding Death Benefit Nomination and/or SMSF Will, the nomination may not be effected if I have nominated a person who is not eligible to receive the benefit under the Superannuation Laws, if I have made direction in respect to an Asset of the Fund which is not quarantined to my Superannuation Interest and/or I make a direction which threatens the solvency and/or Complying SMSF status of the Fund.
16. I understand that it is best practice to disclose my Binding Death Benefit Nomination and/or SMSF Will to the Trustee and for the Trustee to obtain legal, financial and/or accounting advice to ascertain if the nomination is lawful. I understand that the Trustee has no obligation to obtain advice before receiving my Binding Death Benefit Nomination and/or SMSF Will, and it is therefore important that I obtain independent advice and consult with the Trustee.
17. I declare that the information I provide to the Trustee is true and correct. I acknowledge it is my responsibility to inform the Trustee of any error or changes regarding these matters.

Member Signature:			
Date:			

**DEATH BENEFIT NOMINATION FORM  
ASHTON SUPERANNUATION FUND**

**INSTRUCTIONS**

- In **Section One**, please complete your details.
- In **Section Two**, select the appropriate options at each of items (a) and (b). Please note that, if either or both of the items marked with an \* are selected, your execution of the Form is required to be witnessed at least ONE independent adult witnesses who is other than a Member of the Fund or a beneficiary nominated in this Form.
- In **Section Three**, please identify how you require your benefits to be paid in the event of your death. Eligible Primary Beneficiaries include the Legal Personal Representative of your deceased estate and/or your Dependants (e.g. Spouse, Children and/or a person who is financially dependent on you or in an Interdependency Relationship with you).
- In **Section Four**, please identify how you require your benefits to be paid in the event of your death. Eligible Secondary Beneficiaries include the Legal Personal Representative of your deceased estate and/or your Dependants (e.g. Spouse, Children and/or a person who is financially dependent on you or in an Interdependency Relationship with you).
- In **Section Five**, please read the statements contained and, if satisfied, complete your name, signature and the date. In the event you have selected at Section Two that the Nomination is either non-lapsing or binding (or both), please sign this document in the presence of at least ONE (1) independent adult witnesses who is other than a Member of the Fund, a Member's Relative, a Trustee of the Fund (including directors of a corporate trustee) and/or a beneficiary nominated in this Form.
- Your witnesses will also need to complete **Section Six**.
- Once completed, forward the Form to the Trustee of the Fund.

*It is highly recommended that the Member submit to the Trustee an Alternate Decision-Maker Nomination at the same time as completing the Death Benefit Nomination Form.*

**SECTION ONE: ABOUT THE MEMBER**

Member Name: \_\_\_\_\_

**SECTION TWO: NOMINATION OPTIONS**

- (a) The Nomination made in this Form is:
- \*binding on the Trustee of the Fund; or
  - \*\*non-binding.

*\*\*In the event that you have selected non-binding at Section Two(a), this Nomination is not binding on your Alternate Decision-Maker when deciding how your Superannuation Interests should be paid. If you make a non-binding direction, your Alternate Decision-Maker will be vested with authority to select your nominated beneficiaries subject to the Governing Rules (see Parts 2, 9 and 10 of the Governing Rules).*

- (b) The Nomination made in this Form is also:
- \*non-lapsing; or
  - \*\*\*lapsing, and expires after:
    - a period of 3 (three) years
    - other: \_\_\_\_\_

*\*\*\*In the event that you have selected lapsing at Section Two(b), this Nomination will expire after the period indicated by you. Following expiration of the period indicated, you must make a new Nomination (failing which, no Nomination is recorded for consideration by the Trustee).*

**SECTION THREE: NOMINATION OF PRIMARY BENEFICIARY(IES) OF SUPERANNUATION INTERESTS**

In the event of my death, I nominate the following (each being either my Legal Personal Representative and/or a Dependant of me) to be paid my Superannuation Interests in the Fund (excepting any part which is dealt with in accordance with a valid reversionary term of one or more Pension Interest Agreements):

**OPTION ONE (if you wish 100% of your Superannuation Interests to pass to your Estate):**

- Please pay my Superannuation Interests held in the Fund to the Legal Personal Representative of my Estate.

**OPTION TWO (if you wish less than 100% (or no part) of your Superannuation Interests to pass to your Estate):**

- Please pay my Superannuation Interests held in the Fund (excepting any part of my Superannuation Interests which are subject to a valid Auto-Reversionary Pension Interest Agreement or Conditional Pension Interest Agreement) as shown in Table 1. Complete Table 1 by:

- Entering the full name and address of the Primary Beneficiary at Table 1 Column A.



- Entering the relationship of the Primary Beneficiary to you at Table 1 Column B.
- If there is only one Primary Beneficiary, enter 100% in the corresponding Table 1 Column C. If there is more than one Primary Beneficiary, then the total of the percentages at Table 1 Column C must add up to 100%.
- Enter how you approve the benefit to be paid to the Primary Beneficiary in Column D. If you wish the benefit to be paid as a Pension, mark (P). If you wish the benefit to be paid as a Lump Sum, mark (LS). If you allow the Primary Beneficiary to nominate his/her own preference, then mark (PBP).
- If you wish to nominate additional Primary Beneficiaries, please note that you are expanding this Section Three, and use a separate sheet of paper attached to the Binding Death Benefit Nomination for such purpose. Each of your witnesses and you will need to sign the additional sheet of paper, to ensure its authenticity.
- *Note: if you wish to pay any part of the benefit to the Legal Personal Representative of your Estate, then please insert "Legal Personal Representative of my Estate" at Table 1 Column A, enter nothing under Table 1 Column B, and record the percentage at Table 1 Column C.*

Table 1			
Column A	Column B	Column C	Column D
<small>Primary Beneficiary Name and Address:</small>	<small>Relationship:</small>	<small>% of Benefit:</small>	<small>Pension (P) / Lump Sum Payment (LSP) / Primary Beneficiary discretion (PBD)?</small>
Total of Column C (must equal 100%, or the Nomination is invalid)		%	

**SECTION FOUR: NOMINATION OF SECONDARY BENEFICIARY(IES) OF SUPERANNUATION INTERESTS**

If you wish to nominate an alternate Person/s (**Secondary Beneficiary** or **Secondary Beneficiaries**) to take if a person nominated at Table 1 (**Primary Beneficiary**) fails to survive you, then please do so by:

- Entering the full name of the Primary Beneficiary at Table 2 Column A.
- Entering the full name, address and relationship to you of the Secondary Beneficiary or Secondary Beneficiaries at Table 2 Column B.
- If there is only one Secondary Beneficiary for a Primary Beneficiary, then enter 100% in the corresponding Column C. If there are more than one Secondary Beneficiaries for a Primary Beneficiary, then ensure the total of the Secondary Beneficiaries provisions add to 100% if Tenants in Common. (*Note: The interest divided here is only the interest which the Primary Beneficiary was entitled to as a consequence of the provision at Section Three.*) If there is more than one Secondary Beneficiary and the interest is to make the benefit a joint Asset of them, then no percentage needs to be detailed.
- If there is more than one Secondary Beneficiary for a Primary Beneficiary, then enter whether the Secondary Beneficiaries take the interest of the Primary Beneficiary as joint tenants or tenants in common. Joint tenants means that the interest of the Primary Beneficiary is held equally and undivided by the Secondary Beneficiaries as joint co-owners. Tenants in common means that the interest of the Primary Beneficiary passes to the Secondary Beneficiaries in equal or unequal percentage proportions (as specified) to be held by the Secondary Beneficiaries as individual ownership interests.
- The below table allows three Secondary Beneficiaries entries beside each Primary Beneficiary. If there are more Secondary Beneficiaries nominated to any Primary Beneficiary, please note that you are expanding this Section Four, and use a separate sheet of paper attached to the Binding Death Benefit Nomination for such purpose. Each of your witnesses and you will need to sign the additional sheet of paper, to ensure its authenticity.

- Enter how you approve the benefit to be paid to the Secondary Beneficiary in Column D. If you wish the benefit to be paid as a Pension, mark (P). If you wish the benefit to be paid as a Lump Sum, mark (LS). If you allow the Secondary Beneficiary to nominate his/her own preference, then mark (SBP).

Table 2			
Column A	Column B	Column C	Column D
Full name of Primary Beneficiary	Full name and addresses of Secondary Beneficiaries, and relationship to you	Joint Tenants (individual percentage not required), or Tenants in Common (include percentages of each individual Secondary Beneficiary).	Pension (P) / Lump Sum (LS) / or Secondary Beneficiary discretion (SBD)?
1			
2			

**SECTION FOUR: MEMBER DECLARATION**

I confirm:

1. In the event I have not answered Section Two(b), this Nomination is deemed to be a **lapsing nomination**, and expires after a period of 3 (three) years or as otherwise shown.
2. In the event I have not answered Section Two(a), this Nomination is deemed to be a **non-binding nomination**.
3. If this is a **non-binding nomination**, I understand that my Alternate Decision-Maker will determine in its discretion who receives my Superannuation Interests (excepting that part which is supporting a valid Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or other Pension Interest Agreement with a reversionary term.)
4. If this is a lapsing nomination, I acknowledge that this nomination is valid until the event indicated in Section Two(b) and acknowledge that it is my responsibility to provide the Trustee with a new Death Benefit Nomination Form prior to expiry of the existing nomination.
5. I acknowledge that, in the event this Death Benefit Nomination Form lapses, is revoked or ceases to be valid at the date of my death, and a new Nomination has not been made by me and accepted by the Trustee, then the payment of my Superannuation Interests will be made at my Alternate Decision-Maker's discretion.
6. I understand that if I my Superannuation Interests are in part or in whole supporting an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or other Pension Interest Agreement with a reversionary term, then provided the reversionary terms are valid and effective on my death, then that part of my Superannuation Interests will not be dealt with under this Section Three.
7. I understand that if my Superannuation Interests are in part or in whole supporting an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or other Pension Interest Agreement with a reversionary term, and the reversionary terms are not valid and effective on my death, then that part of my Superannuation Interests will be included in the distribution made under this Binding Death Benefit Nomination.
8. I understand that, if I make this a **binding nomination**, any existing Binding Death Benefit Nomination Form or SMSF Will will be revoked and replaced.
9. I confirm that the beneficiaries nominated are a Dependant of me in accordance with the *Superannuation Industry (Supervision) Act 1993 (Cth)*, or my Legal Personal Representative.
10. I understand I should review my Death Benefit Nomination Form regularly, especially when my circumstances change (e.g. marriage, having children or any other life changing event), to ensure my nomination is always up to date.
11. I have had the opportunity to read Parts 9, 10 and 11 of the Governing Rules, and have had the opportunity to seek legal, financial and accounting advice before making this nomination.
12. I declare that the information I have provided to the Trustee is true and correct. I acknowledge it is my responsibility to inform the Trustee of any error or changes regarding these matters.

I request that the Trustee accept my nomination listed above.

Member Signature:	
Date:	

**SECTION FIVE: WITNESS DECLARATION**  
(NOTE: only ONE witness is required, but TWO witnesses are recommended.)

I declare:	I declare:
• I am over 18 (eighteen) years of age;	• I am over 18 (eighteen) years of age;

<ul style="list-style-type: none"> <li>I am not a nominated beneficiary of the Member, Trustee or Member's Relative; and</li> <li>This Form was signed and dated by the Member in my presence.</li> </ul>	<ul style="list-style-type: none"> <li>I am not a nominated beneficiary of the Member, Trustee or Member's Relative; and</li> <li>This Form was signed and dated by the Member in my presence.</li> </ul>
Witness 1 Full Name:	Witness 2 Full Name:
Witness 1 Signature:	Witness 2 Signature:
Witness 1 Address:	Witness 2 Address:
Date:	Date:

### DEFINITIONS

**Binding** means that, provided that no event has occurred that would invalidate the Nomination (such as the death of the Beneficiaries nominated, or the Beneficiaries nominated no longer being the Member's Legal Personal Representative or Dependant), the Trustee and Member's Alternate Decision-Maker are bound to pay the Member's Superannuation Interests (other than any interests supporting an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or other Pension Interest Agreement with a valid reversionary term) to the Beneficiaries nominated in the proportions nominated.

**Dependant** includes the Member's legal or de facto Spouse, Member's Children (including step Children and adult Children), a Person in an Interdependency Relationship with a Member, a Person who is wholly or partially financially dependent on the Member, and any other Person the Superannuation Laws define as a Dependant of a Member. Note, only a Dependant as the term is defined in the *Income Tax Assessment Act 1997 (ITAA97)* is eligible to receive a Pension Interest from a Deceased Member.

**Interdependency Relationship** means the Person and the Member live together and have a close personal relationship and one or both of the parties provide the other with financial support and domestic support and personal care.

**Lapsing** means that the Nomination contained in the Death Benefit Nomination Form applies only for a set period of time, which shall expire upon the event/s indicated at Section Two(b) occurring.

**Member** means the person named at Section One.

**Non-binding** means that the Trustee and Alternate Decision-Maker may consider the Nomination made in the Death Benefit Nomination Form, but is not bound to pay the Member's Superannuation Interests in accordance with the Nomination made by the Member.

**Non-lapsing** means that the Nomination contained in the Death Benefit Nomination Form applies in perpetuity unless revoked by the Member by notice in writing to the Trustee, or until the Nomination is revoked by a new Death Benefit Nomination Form being submitted to and accepted by the Trustee.

**Legal Personal Representative** means the Person or Persons appointed on or following the Member's death as the Executor or Administrator of the Member's Estate.