

# SMSF TRUST DEED

ESTABLISHMENT OF VAN DEN DURPEL -  
LATIMER SUPER FUND

# Document Index

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# VAN DEN DURPEL - LATIMER SUPER FUND

THIS DEED IS DATED: 20 August 2021

## **PARTIES:**

**1. TRUSTEE:** STIJN ROGER DENISE MAURICE HERMAN VAN DEN DURPEL OF 75 MALIBU ROAD, SAFETY BAY, WA 6169 AND GINA CLAUDINE LATIMER OF 75 MALIBU ROAD, SAFETY BAY, WA 6169 ("**the Trustee**").

**2. INITIAL FUND MEMBERS:** STIJN ROGER DENISE MAURICE HERMAN VAN DEN DURPEL OF 75 MALIBU ROAD, SAFETY BAY, WA 6169 AND GINA CLAUDINE LATIMER OF 75 MALIBU ROAD, SAFETY BAY, WA 6169 ("**the Initial Member**").

## **Recitals:**

1. The Trustee establishes a Trust and Superannuation Fund known as VAN DEN DURPEL - LATIMER SUPER FUND ("**the Fund**") on execution of this Deed, in accordance with this Deed as a Family Self- Managed Superannuation Fund.
2. The Trustee hereby executes this deed and is appointed as the first Trustee.
3. The Trustee intends that the Fund should be a complying Self-Managed Superannuation Fund ("**complying SMSF**") for the purposes of the Superannuation Industry Supervision Act 1993 ("**SIS Act**"), the Income Tax Assessment Act 1997 ("**Tax Act**") and other Superannuation Laws.
4. By execution of this Deed the Trustee signifies its consent to be appointed as the initial Trustee of the Fund as well as the initial members of the Fund. The Trustees acknowledge that they have read the Rules of the Fund, the Product Disclosure Statement and agree to be bound by them.
5. By execution of this Deed the Initial Members are taken to have applied for membership of the Fund through this Deed and hereby signify their consent to be appointed as Members. The Initial Members acknowledge that they have read the Rules of the Fund, the Product Disclosure Statement and agree to be bound by them.
6. The purpose of the Fund is to provide superannuation benefits to Members and in the event of their death, for their Dependants and to act for any other purposes as permitted from time to time under the SIS Act 1993, the SIS Regulations 1994 or otherwise allowed by the Regulator.

## **Provisions:**

1. Establishment of the Fund: The Trustee establishes the Fund as a trust to be administered in accordance with this Deed with the Trustee and Initial Members to be appointed as the first Trustee and first Members.
2. Name of the Fund: The Fund will be known as the VAN DEN DURPEL - LATIMER SUPER FUND. Such name may be changed by the Trustee according to the Rules of the Fund.
3. Initial Trustee: The Trustee confirms that it will act as the initial Trustee of the Fund in accordance with this Deed.
4. Rules of the fund: The Rules of the Fund are the Rules attached to this Deed including any schedules, member sub-funds and may include any further amendments, changes or additions to the Rules made in accordance with the provisions of the Deed and the Rules.
5. Operations of the Fund: The Trustee hereby agrees to accept the initial and any further applications for Membership of the Fund. In addition, the Trustee is to ensure all Members meet the Trustee requirements for membership of a SMSF. The Trustee further agrees to receive Contributions, Rollovers and Transfers on behalf of Members, distributions and any other amounts paid to it and will invest those amounts to provide Superannuation Benefits for past, current and future Members according to the Rules of the Fund.
6. Successor Acts: A reference to an Act includes a reference to any successor Act to that Act.

**EXECUTED AS A DEED BY THE PARTIES:**

**1. TRUSTEE**

i. Signed by: Stijn Roger Denise Maurice Herman Van Den Durpel

.....  
Stijn Roger Denise Maurice Herman Van  
Den Durpel  
Trustee

.....  
Date

Witnessed by:

.....  
Witness Signature

.....  
Date

.....  
Witness Name

ii. Signed by: Gina Claudine Latimer

.....  
Gina Claudine Latimer  
Trustee

.....  
Date

Witnessed by:

.....  
Witness Signature

.....  
Date

.....  
Witness Name

**2. INITIAL MEMBER**

i. Signed by: Stijn Roger Denise Maurice Herman Van Den Durpel

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Stijn Roger Denise Maurice Herman Van  
Den Durpel  
Trustee

.....  
Date

Witnessed by:

.....  
Witness Signature

.....  
Date

.....  
Witness Name

ii. Signed by: Gina Claudine Latimer

.....  
Gina Claudine Latimer  
Trustee

.....  
Date

Witnessed by:

.....  
Witness Signature

.....  
Date

.....  
Witness Name

# THE TRUST DEED AND GOVERNING RULES OF VAN DEN DURPEL - LATIMER SUPER FUND

<b>Rule</b>	<b>Description</b>
Rule 1	Preamble
Rule 2	The Trustee and its Broad Powers
Rule 3	Membership
Rule 4	Operation and Administration of the Fund including Member Accounts
Rule 5	Contributions, Fund Transfers and Acquisitions of Assets
Rule 6	Member Benefits – Accessing and Type
Rule 7	Definitions



## Rule 1. Preamble

When reading, considering or utilising this Trust Deed and Governing Rules it is important to take into account all of the following:

- a) Where a word is Capitalised it may be found in the “Definitions”. The Definitions are core to the understanding of the various Rules in the Trust Deed and Governing Rules. It is crucial when reading a specific Rule to refer to the relevant Definitions noted in the Rule;
- b) Where singular is used in the Rules it is to also mean plural and if a gender is used it is also to mean the opposite gender or binary gender;
- c) A reference to any entity, body, company or person also includes a reference to those persons or entities that have authority to act on behalf of the party including their successors, assigns, agents, representatives, Responsible Officers, a person holding someone’s Power of Attorney, an Enduring Power of Attorney and a Legal Personal Representative;
- d) The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia. At this time the Trustee has decided to apply the laws of Western Australia. If the Trustee resides outside Australia or the Trustees reside in different Australian States, then the governing law is that chosen by the Trustee and if not chosen by the Trustee it is the governing law of the State of Victoria. Where members and Trustees live overseas it is recommended that specialist advice be sought to ensure that tax concessions continue to apply;
- e) Where the term “SMSF” is used it means a “Self-Managed Superannuation Fund” as defined in the Superannuation Laws;
- f) Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or non-compliance certificate or adverse determination by the Regulator for the Trustee, Fund or Member;
- g) With the requirement for the Trustees of the Fund to ensure that the Fund remains a complying SMSF, the Rules are written as being subject to the Superannuation Laws. Where the Trustee or any other person enters into a transaction, undertaking, agreement, understanding or any other arrangement that has the effect of the Trustee breaching the Superannuation Laws or being deemed a non-complying SMSF by the Regulator as a consequence of the Trustee’s or other persons action, *the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered void ab-initio and it is to be unwound*;
- h) Where there is a change in the Superannuation Laws that provides the Trustee with an opportunity to advance the retirement incomes or benefits of the Fund’s

Members or requires the Trustee to do an act or thing and these benefits or acts are not covered in the Fund's Trust Deed or Governing Rules then they are deemed to be incorporated into the Fund's Trust Deed. This Rule is to apply even if inconsistent with another Rule of the Fund.

## **Rule 2. The Trustee and its Broad Powers**

This Rule provides the core powers and functions of the Trustee. The Trustee controls the investments, operations, administration, goings on, payments of benefits, receipt of contributions and any other thing that will ensure the Fund is a complying SMSF.

### **2.1 Type of Trustee**

The Trustee of the Fund may be more than one individual, a company or a mixture of both. For the longevity of the Fund and administrative simplicity a corporate Trustee is preferred as the Fund may only pay old age pensions where individual Trustees are in power. A corporate Trustee is not to be bound or limited in the types of superannuation benefits it pays, either during the life of a member or as a consequence of the member's death.

### **2.2 Individual Trustees require the Fund to pay Old Age Pensions - *not recommended***

If the Trustees are only individuals, then the purpose of the Fund is to pay old age pensions as that term is expressed in the Superannuation Laws and the Commonwealth Constitution. For a multi-generational SMSF this is not recommended. Where there is only one member of a Fund that person may be a Trustee in conjunction with an Additional Trustee. If a Member of a Fund dies the Trustee of the Fund is to automatically appoint their Legal Personal Representative as a Replacement Trustee.

### **2.3 Trustee to Ensure the Fund is a Complying SMSF**

The Trustee of the Fund is to ensure, at all times, the Fund is a complying SMSF and that decisions are made to grow, protect and benefit the Members of the Fund. In the event that there are any compliance issues with the Fund the Trustee is to seek advice and take remedial action wherever necessary.

### **2.4 Trustee Appointment and Removal by Member**

a) Subject to the automatic appointment of a Replacement Trustee, the Members of the Fund at a meeting and by a majority of votes, may appoint and remove the Trustee, including themselves or a company they control. In any meeting to appoint or remove a Trustee each Member will have that number of votes equal to the \$1 amount of their superannuation benefits in the Fund. The appointment, whether individuals or company must comply with the Superannuation Laws and the intent of the Trustee and Members of the Fund to

ensure the Fund is a Complying SMSF. In removing any Trustee, the Trustee must take into account the desire for the Fund to be a Complying SMSF.

- b) The Trustee may be removed by any Regulator with power under the Superannuation Laws to remove the Trustee. In any other circumstance, where a Court or other body seeks to use its power to remove a Trustee, regard must be had to the Regulator to review any such decision in light of the Superannuation Laws. Any new Trustee is to consist of a Member, former Member or any other person who is to become a Member of the Fund.
- c) Where the Fund is a single Member SMSF, the Trustee Member may appoint an Additional Trustee under the Superannuation Laws but for the benefit of the Fund's Governing Rules the Additional Trustee does not have any voting power unless the Trustee Member determines otherwise.

## **2.5 Trustee Responsibilities**

It is the responsibility of the Trustee, at all times, including under any Trustee Law to:

- a) ensure that the Fund remains a Complying SMSF;
- b) ensure that the Fund Trust Deed and Rules remain current;
- 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 financial 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 with or undertaking any transaction or investment on behalf of the Fund;
- h) provide to Members access to all and any information required to be given or viewed by Members under the Superannuation Laws but subject to the Privacy Act 1988;
- i) ensure the efficient administration of the Fund including, but not limited to, the payment of all taxes, excess contributions taxes 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 Law 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 the Fund including any change in Trustee or Member where required. The Trustee is to notify the Regulator of these events within the time period required;
- l) not seek to delegate Trustee powers and responsibilities under the Rules of the Fund or the Superannuation Laws unless otherwise permitted;
- 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) create an Investment and an Insurance Strategy for the Fund; and
- p) be aware of any changes to the Superannuation Laws that requires the Trustee of the Fund to remain a Complying SMSF.

## **2.6 Trustee's Broad Investment Powers**

The Trustees have the general power to invest in, acquire, sell, dispose, transfer or create any Asset situate anywhere in the world, including businesses, property, shares, equities, securities, loans, intellectual property, digital assets, corporeal or incorporeal property. In making any investment the Trustee is to ensure that the investment does not breach the provisions of the Superannuation Laws and is not non-arm's length income. In creating any asset, the Trustee is to ensure that it is created for the benefit of the Members of the Fund and does not breach the provisions of the Superannuation Laws and is not non-arm's length income.

In addition this Deed provides the Trustee with the following specific powers to invest in, provided it does not result in the Fund being a non-complying SMSF:

- a) Stocks and shares and other equity interests of any entity (including a company), units in a unit trust both private and public with an investment to include preference, convertible preference shares and units or any other type of equity, unit or hybrid equity instrument in an entity;
- b) Property either as a passive investment or for development purposes, sale or rental income purposes directly, indirectly or by way of joint venture,

partnership, unit trust, bare trust, custodial trust, holding trust or trust provided that any property transaction complies with the Superannuation Laws. In instigating any property transaction, the Trustee must ensure that the documentation relating to the transaction, including any indirect, unit trust, joint venture or partnership interest, satisfies the Fund's Auditor if required and the Superannuation Laws. These include, but are not limited to, an appropriate valuation;

- c) Financial products including instalment warrants, SMSF borrowing trusts, options, futures, warrants, endowment warrants, unit trusts, property syndicates, joint ventures, hybrid trusts, pooled superannuation trusts and other instruments that provide the Trustee with a reward on its investment;
- d) Debt instruments including government and corporate bonds, mortgages, chattel leases, fixed term deposits, hybrid debt instruments and any other type of instrument where the investor receives an interest type of return;
- e) Discount investments where the Members of the Fund may obtain a discount on services under an agreement with a third party provided that the return available on the investment is the same as that which would be obtained by an investor not able to participate in the discount unless the Superannuation Laws or Regulator allow and that the investment does not cause the Trustee to breach the Superannuation Laws;
- f) Art, sculpture, wine, vintage cars or any other collectable provided the Superannuation Laws allow and the Trustee complies with any and all requirements in relation to the holding of a collectable under the Superannuation Laws;
- g) A business including an active business including share trading, property development or primary production provided the investment in the business does not breach the Sole Purpose Test, the Fund's Audit Standards or the Superannuation Laws;
- h) Intellectual property including a trade mark, copyright, licence, patent together with the creation of any intellectual property by the Trustee. The holding of the intellectual property may be direct, indirect, as part of a joint venture or as an interest by way of a licence;
- i) An income stream or annuity from a life insurance company, Superannuation Fund, financial institution, trust, body corporate or person;
- j) A life insurance or friendly society bond, policy or other investment including but not limited to an endowment, whole of life or other investment or risk policy issued by any life insurance company wherever situate;

- k) Engage, conduct, create, maintain and operate any business, including a trading, investment, property development or other type of business that is allowed under the Superannuation Laws;
- l) Currency, foreign currency, crypto-currency, digital assets, virtual assets and any other form of currency or asset used for trading between persons or entities;
- m) Any managed fund, managed investment scheme, collective investment vehicle, trust, Bare Trust, custodial trust, holding trust or unit trust including a pooled superannuation trust provided the investment does not breach the Superannuation Laws;
- n) Entering into any joint venture, partnership, association or co-operative provided the Trustee assesses the risk of the venture and in particular the cash flow requirements and legal nature of the venture;
- o) Assets of Member of the Fund, Related Trust or a Related Party of a Member conditional upon the acquisition of the investment not breaching the Superannuation Laws and in particular the Sole Purpose Test and the In House Assets Test. If the Superannuation Laws prevent the acquisition by the Trustee of a Related Party Asset the Trustee must not acquire the prohibited Asset;
- p) Instalment warrant and other SMSF borrowing arrangements including single acquirable assets acquired under a limited recourse lending arrangements pursuant to sections 67A and 67B of the Superannuation Industry Supervision Act 1993;
- q) Any investment that meets the sole purpose Test and sections 66, 67, 84,85 and 109 of the Superannuation Industry Supervision Act 1993;
- r) Any Digital Asset including the management, protection and creation of the Digital Asset. If acquiring any Digital Asset the Trustee must ensure that the Digital Asset is protected, can be transferred if required to a third party, a related party or to a Member as a lump sum or income stream benefits. Further upon the death of any Trustee nominee for the Digital Asset the Trustee must ensure that the Digital Asset can be successfully transferred, assigned or switched to a remaining Trustee or any deceased Member's Legal Personal Representative if necessary;
- s) Any other investment including a prudent investment under Trust Law;

provided that the acquisition, investment and holding of the Asset is in accordance with the Fund's or Superannuation Interest's Investment Strategy whichever is relevant and in addition, the acquisition, investment and holding of the Asset does not breach the Superannuation Laws, including the Sole Purpose Test or the In-House Assets test.

## 2.7 General and Broad Trustee Powers to Act

The Trustee has the power to do, transact, arrange, organise, create, transfer, sell, dispose, assign, lend, borrow (including a limited recourse borrowing arrangement), run a business, conduct an operation or do anything to Fund assets, investments or deal with the property or Assets of the Fund provided that it does not breach the Superannuation Laws and is in accordance with any published Regulator guidelines or State based Trustee laws (unless they conflict with Federal Superannuation Laws which are to take precedence).

In addition this Deed provides the Trustee with the following powers:

- a) *engage SMSF Professionals and other advisers*: to employ or engage agents or 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 of the Fund including engaging a SMSF 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;
- b) *enter into contracts and undertake transactions*: to enter into contracts, undertakings and other transactions for the benefit of the Fund and its Members whatsoever and wheresoever situate;
- c) *acquire Corporate or Trust securities*: with respect to any company or trust in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise all of the powers authorised under the constituent and any other relevant documents concerning the powers of equity, debt and other interest holders of the entity;
- d) *acquire Insurance Policies*: to effect or acquire policies of insurance from entities within or outside Australia of any Asset of the Fund or on the life of any Member or in respect of sickness, incapacity or accident to any Member, to pay premiums, transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- e) *deal with real property*: to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, maintain, insure, improve, renovate, develop for sale or lease, re-lease or vary any right or easement or otherwise deal with any interest in real property;
- f) *enter into lease arrangements*: to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor

vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;

- g) *lease property owned by the Fund*: to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules and the Superannuation Laws upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
- h) *lend money*: subject to the Superannuation Laws and the Fund retaining its Complying SMSF status to lend and advance moneys;
- i) *borrow money*: subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, to borrow or raise any financial accommodation or Assets including under an instalment warrant or other borrowing or limited recourse lending arrangement authorised pursuant to sections 67, 67A and 67B or any other section allowing a Trustee of a SMSF to borrow under the Superannuation Industry Supervision Act 1993 or the Superannuation Laws, and to assign, pledge, mortgage or charge any of the Fund as security for such financial accommodation;
- j) *to create trusts*: to create trusts, companies and other entities for the purpose of investment or any business by the Trustee including any Bare Trust, custodian trust or Holding Trust arrangement;
- k) *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, CFD 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 Derivatives strategy if required under the Superannuation Laws;
- l) *deal with personal property*: to acquire, dispose of, exchange, hire, lease, maintain, improve, mortgage or otherwise deal with any interest in personal property;
- m) *deal with intellectual property*: to apply for, create, purchase 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;



- n) *obtain agencies, franchises and licences*: to 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 provide the said agency, licence or business does not breach the "Sole Purpose Test" or the Superannuation Laws;
- o) *pay management expenses*: to pay out of the Assets, Reserve Accounts or the Earnings of the Fund all costs charges and expenses incidental to the management and operation of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- p) *pay General Expenses*: to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any Assets of the Fund from the Assets, Reserve Accounts or primarily the Earnings of the Fund;
- q) *set aside money in the Fund*: to set aside out of the Earnings of the Fund or Reserves 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;
- r) *deal with itself*: notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee or Fund Custodian provided that any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
- s) *deal with Choses-in-action*: to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- t) *receive gifts or distributions*: to receive property by gift inter-vivos or by 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, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- u) *instigate legal proceedings*: to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;

- v) *lineage and bloodline benefits*: to limit the range of persons, including directly or indirectly that may obtain a Death benefit from the Fund in the event of a Member's death;
- w) *trade in foreign currency*: to undertake, contract, carry out or do anything including acquiring Assets in a foreign currency and dealing in a foreign currency;
- x) *exercise all other powers*: to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee;
- y) *indemnities*: to give indemnities to or on behalf of any person the Trustee thinks fit including the Trustee;
- z) *appoint a custodian*: to appoint any person as Custodian to hold legal title for any Asset acquired or to be acquired by the Trustee under such terms as the Trustee thinks fit;
- aa) *power to appoint an attorney*: The Trustee may in writing 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;
- bb) *bank bills*: the Trustee may raise money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing with any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;
- cc) *Trustee's duties*: any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty;
- dd) *conflict of interest*: generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or the Fund's Governing Rules or otherwise conferred notwithstanding that any person being a Trustee or any person being a Director or Shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;

ee) *bank accounts, cash management trusts and promissory notes*: to open in the name of the Trustee of the Fund bank accounts, cash management trusts, term deposits and any other cash style products including the giving and taking of promissory notes;

ff) *additional powers*:

- i. real property: to purchase, take on, lease or licence, develop, construct, hold, impose, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this rule, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;
- ii. 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;
- iii. no profit: without limitation to the above, to exercise any of its powers, including the power to sell and the powers to deal with real or personal whether at a profit or not;
- iv. invest and sell, vary or transpose investments: to invest in its name or under its control the Fund in any one or more of the investments authorised by this document with power in its absolute discretion either to retain the investment in that form or to see or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price or without interest and with or without security) and power in its absolute discretion from time to time to vary or transpose any investments into others authorised by these rules.

## **2.8 Delegation of Trustee Powers**

The Trustee may delegate its powers, including to a Member, agent, adviser or professional, however the Trustee shall always take responsibility for all actions involving the Fund. The delegation of its powers may include investment powers to Members of the Fund, so the Member can create a Separate Investment Strategy for one or more or all of their superannuation interests and benefits. Any such delegation should be subject to a services agreement if with a third party and appropriately drafted to ensure no breach of the Superannuation Laws.

## **2.9 Trustee to Comply with and Abide by the Superannuation Laws**

The Trustee of the Fund must take into account and abide by the Superannuation Laws at all times. In so doing the Trustee may seek advice from the Fund's auditor, a specialist SMSF lawyer, professional or SMSF Adviser on any action contemplated or to be undertaken by the Trustee or Trustee.

## **2.10 Trustee to Invest Monies of the Fund and maintain Investment Strategies**

- a) The Trustee must invest the monies of the Fund in Assets and other investments and set and maintain an Investment Strategy as per this rule and in accordance

with the Superannuation Laws. The Trustee has the power to invest on behalf of all Members and the Fund generally or enable Members to maintain a Separate Investment Strategy and hold specific investments within those investment strategies for the Member, one of more Member's Superannuation Interests or for the benefit of one of more Member's Superannuation Interests;

- b) In creating an investment strategy for the Fund, the Trustee must be mindful of all and any rules of guidelines published by the Commissioner of Taxation, whether public, for auditors or superannuation professionals;
- c) The investment strategy for the Fund or any Member's Superannuation Interest is to be in writing and to be reviewed each year, preferably at the start of an income year;
- d) At times the Trustee will invest in land, leasehold or other property entitlements which have been acquired from one or more Members whereby Federal or State based laws may require for tax, duty or other impost purposes (including concessions) for those investments to be held in a Separate Investment Strategy of the transferring Members. This is to acknowledge the Trustee's power in that regard.
- e) **Segregation of Western Australian Property contributed by Members:** Where members of the Fund contribute property into the Fund for no consideration (an in-specie transfer) and the Trustees of the Fund seek to claim concessional stamp duty on the transfer, the Trustee of the Fund is to:
  - i. the only members of the Fund can be the transferring property members or if there are other members of the Fund, the Trustee must segregate that asset from all other assets of the Fund and to be held solely for the benefit of the transferring members retirement;
  - ii. If the property is sold, then any proceeds from the sale after expenses and taxes are to be held solely for the benefit of the transferring members retirement;
  - iii. notwithstanding the ability of the Trustee to vary or amend the rules of the Fund under this Deed, this sub-clause is irrevocable.
- f) **Segregation of New South Wales Property contributed by Members:** Where members of the Fund contribute property into the Fund and the Trustees of the Fund seek to claim concessional stamp duty on the transfer, the Trustee of the Fund is to:
  - i. the only members of the Fund can be the transferring property members or if there are other members of the Fund, the Trustee must segregate that asset from all other assets of the Fund and to be held solely for the benefit of the transferring members retirement;

- ii. if the property is sold, then any proceeds from the sale after expenses and taxes are to be held solely for the benefit of the transferring members retirement;
- iii. notwithstanding the ability of the Trustee to vary or amend the rules of the Fund under this Deed, this sub-clause is irrevocable.

#### **2.11 Trustee may maintain Reserves**

The Trustee may maintain Reserves of the Fund in accordance with the Superannuation Laws and has complete discretion in the use of those Reserves, allocations to, allocations between and allocations from a Reserve including transferring Reserves to another SMSF if allowed. Where a Reserve is maintained the Trustee is to ensure that it maintains a strategy for the prudential management of any Reserve as is required under the Superannuation Laws.

#### **2.12 Trustee may pay Superannuation and non-Superannuation Benefits**

The Trustee may pay any or all Superannuation Benefits including a Lump Sum, Pension, Income Stream, commutation payment, benefit on compassionate grounds and financial hardship and any other superannuation or non-superannuation benefits (such as a temporary incapacity income stream) allowed as per the Superannuation Laws provided the Member is so entitled under those laws. Subject to the Superannuation Laws these benefits may be paid singly, jointly, contiguously, continue in the name of a dependant or other beneficiary, be paid to a Trust or estate on behalf of the Member or any person related to the Member. Where a benefit is paid to a Trust at the direction of the Member or their EPOA it is to be treated as the payment of a Superannuation Benefit directly to the Member as required under the Superannuation Laws and may be completed by way of cash, cheque or Promissory Note.

#### **2.13 Trustee to Appoint Professionals**

The Trustee is to appoint any professionals, including specialist SMSF advisers or lawyers as required under the Superannuation Laws and for such duration as the Trustee determines. In so doing the Trustee is to ensure that the professional has appropriate professional indemnity and other insurances, is qualified to complete any advice or work done and does not have a conflict of interest with the Fund's operations.

#### **2.14 Trustee may Insure Members**

As part of the Superannuation Laws the Trustee is to create and prepare an Insurance Strategy for the Fund. In that regard the Trustee may insure any or all of its Members and for any purpose, including self-insure, provided such purposes are allowed under the Superannuation Laws. The payment of any premiums is to be

taken from the account of the Member for whom the insurance relates unless the Trustee chooses otherwise, including the payment of a premium from the Earnings of the Fund. No Member or beneficiary has any specific entitlement to the insurance benefits of the Fund.

#### **2.15 Trustee to hold Fund Assets for the Benefit of Members and in its own name**

The Trustee holds all monies and Assets on behalf of and for the benefit of current, past and future Members of the Fund and in such proportion as this Deed or the Superannuation Laws require. No Member has any entitlement to any monies or assets of the Fund, nor any insurances even where the Member directs a Trustee to undertake a specific investment strategy on their behalf. The Trustee must ensure, even when using a Custodian or Bare Trust, that all Fund Assets and monies are held in the name of the Trustee or for the absolute entitlement of the Fund, the Trustee and its Members.

#### **2.16 Trustee to act as SMSF Trustee**

The Trustee is to act as the Trustee of the Fund and not in its own right, conduct any other non-Fund business or act as a Trustee of any other Trust but may act as the Trustee of another related SMSF.

#### **2.17 Trustee can act with itself and between Members**

The Trustee has the power to act with itself and complete transactions, transfers, assignments and any other action as between Members, Member Superannuation Interests, Member Separate Investment Strategies including loans, investment or asset transfers, assignment of income streams or any other matter that can be completed under the Superannuation Laws. Any such act must be at arm's length unless the Regulator provides otherwise.

#### **2.18 Variation of the Rules of the Fund**

Once established the Trustee may vary any or all of the Rules of the Fund. Any variation:

- a) Must be signed by the Trustee unless the variation is an auto-variation in sub-rule (d) below;
- b) Any variation will impact the Rules encapsulated in the Deed only and not any pensions, transition to retirement income streams, investment strategies or other documents or contracts that form part of the Governing Rules of the Fund as that term is defined under the Superannuation Laws unless the Fund becomes a Leading Member SMSF whereby the Leading Member may have the option of altering any undertakings;

- c) Where the Fund is being varied to incorporate Leading Member SMSF rules, the Trustee of the Fund is to determine whether there will be any changes to current undertakings, both Member payments or transactions and if no such determination they are to remain;
- d) May be for change in name of the Fund only;
- e) May be agreed upon by the Trustee of the Fund to be automatic upon a new set of Rules released under the LightYear Docs, automated trust deed upgrade offering at [www.abbottmourly.com.au/annualdeedupgrade](http://www.abbottmourly.com.au/annualdeedupgrade). In this case the Trustee and Members are deemed to have consented to use the latest set of SMSF Rules as shown on the site. In addition, any automatic upgrade will not alter prior or existing Pensions, Income Streams, SMSF Wills, Binding Directions on the Trustee or Members unless otherwise agree to between the Member effected and the Trustee.

## **2.19 Wind up of the Fund**

The Trustee with the consent of the Members may wind up the Fund at any time provided:

- a) A specified date for the wind up is chosen and all members are duly notified of the terms and conditions of the wind up;
- b) The Accounts of the Fund are duly prepared detailing Member account balances including any Member Superannuation Interests, Reserve accounts and all Earnings are allocated to the time of the wind up less any expenses, professional fees and taxes;
- c) The Fund receives a tax clearance by the Fund's tax agent or auditor that no taxes are owing;
- d) If there is no Member left in the Fund, the last Member's legal personal representative is to be appointed as Trustee and Trustee for the sole purpose of winding up the Fund.

## **2.20 Trustee Meetings**

The Trustee may hold meetings to discuss and resolve important issues, transactions and undertakings to be proposed and resolved by the Trustee as follows:

- a) The Trustee, if individuals must have at least two Trustees attending any meeting for there to be a quorum;
- b) A meeting can be electronically, by way of teleconference, zoom or any other internet meeting, by circular email, in person or by phone;

- c) If the meeting is not contentious then only one hour's notice is required. If the meeting is raising an important or contentious issue, then three or more business days' notice is required;
- d) Each Member is to have a single vote and in any dispute the Chairperson is to have the casting vote. The Chairperson is that member with the largest account balance in the Fund.
- e) If the Trustee enables a Member or Members of the Fund to maintain a sub-fund with a Separate Investment Strategy, either individually or jointly, whereby they may choose the investments in the Fund, subject to any investment strategy restrictions, the Trustee is to ensure that the investments and any insurances are acquired by the Fund for the exclusive benefit of the Member. In that regard any meeting to be held on the acquisition or disposal of sub-fund investments or insurances can only be voted upon by those persons representing the sub-fund Members as trustee (including the Members themselves). In the event of any tied vote in relation to a sub-fund the Member with the highest sub-fund balance is to have the final say;
- f) If a Member of the Fund dies the Member's Legal Personal Representative is to be automatically appointed as a Replacement Trustee if there is no Corporate Trustee. At any meeting where the disposition of a deceased Member's superannuation benefits distribution is to be discussed and resolved *only that person* appointed as the deceased Member's Replacement Trustee may vote on any resolution;
- g) If a Member of the Fund becomes incapacitated the Member's Legal Personal Representative is to be automatically appointed as a Replacement Trustee if there is no Corporate Trustee. At any meeting where the incapacitated Member's superannuation benefits are to be discussed and resolved only that person appointed as the incapacitated Member's may vote on any resolution.

## **2.21 Covid19 Rules**

Despite anything in these Rules or under the Superannuation Laws, where the Regulator provides compliance relief to the Trustee of the Fund or any Member in relation to any act, contract, undertaking or other matter involving the Fund, the Trustee may take advantage of that relief, even where it may breach the Superannuation Laws or the Rules of the Fund. It is recommended that the Trustee of the Fund seek specialist advice in that regard.

## **Rule 3. Membership**

This rule sets out terms and conditions of membership of the Fund and the key role the Trustee has in appointing and removing Members of the Fund.

### **3.1 Appointment of Members**



There are no age or residency restrictions for Membership unless the Trustee so details. In appointing a person to the Fund as a Member the Trustee must ensure that they have the person's consent to become a Member, abide by the Rules of the Fund and have read the Fund's product disclosure statement. The Trustee is not required or forced to make a person a Member. Initial Members become Members as party to the Fund's deed while later Members must complete a relevant Membership Application.

### **3.2 Number of Fund Members**

The number of Members of the Fund is at the Trustee's discretion but should be no more than that number which is provided by the Superannuation Laws to ensure the Fund is a SMSF. However, if the Trustee decides that the Fund should appoint more Members which would result in the Fund no longer being a SMSF, the Trustee is to notify all other Members and offering them the ability to transfer out of the Fund with their superannuation benefits.

### **3.3 Termination of Membership**

The Trustee may terminate the Membership of any Member at any time and for whatever cause including the Member being subject to a legal action, including a Family Law action, a relationship separation or bankruptcy. All superannuation benefits of the terminated Member are to be determined and signed off by the Fund's auditor and paid within such reasonable time as the Superannuation Laws require.

### **3.4 Continuation of Membership to the Legal Personal Representative**

The Legal Personal Representative of a Member including a deceased or incapacitated Member is deemed to be the Member for the purposes of the Rules and therefore holds all rights and entitlements of the Member or a deceased or incapacitated Member. For the sake of clarity, a deceased or incapacitated Member's Legal Personal Representative continues the deceased or incapacitated Member's membership under the Rules of the Fund until such time as the Superannuation Laws allow or the Trustee determines.

### **3.5 Member's Individual Sub-Funds**

If the Trustee creates sub-Funds for Members under these Rules and the Superannuation Laws, Fund Members have all rights and entitlements as contained in the Member's sub-Fund. These may include, but are not limited to:

- a) The accumulation of superannuation benefits directed and dedicated to that specific member;
- b) The payment of a superannuation or other benefit to the Member;

- c) Who the Member appoints as a replacement Trustee or director of the Corporate Trustee in the event of death or legal disability;
- d) The investment strategy and the investments that may be held specifically for the Member or one or more of the Member's superannuation interests or other benefits;
- e) The Member's Enduring Power of Attorney as it applies to their Trusteeship or acting as a Director of the Fund's corporate Trustee;
- f) The Members directions as to the disposal or use of their Superannuation Benefits in the event of their death (a SMSF Will) or mental or physical incapacity (SMSF Living Will) provided any such direction has been signed by the Member and witnessed by two non-related and non-beneficiaries;
- g) The Member's Will;
- h) Any Member advanced health care directive;
- i) Any other right or entitlement that the Trustee agrees to in relation to the Member sub-fund.

### **3.6 Member Meetings**

The Members may hold meetings to discuss and resolve important issues, transactions and undertakings that are appropriately the preserve of Members and not the Trustee including appointing (not the original Trustee) and removing a Trustee. In relation to the meeting:

- a) The Members, if more than one must have at least two attending any meeting for there to be a quorum;
- b) A meeting can be electronically, by way of teleconference, zoom or any other internet meeting, by circular email, in person or by phone;
- c) If the meeting is not contentious then only one hour's notice is required. If the meeting is raising an important or contentious issue, then three or more business days' notice is required;
- d) Any voting is to be proportional where each Member has that number of votes based on 1 vote for \$1 of members account balance for members they represent and based on the Fund's audited member accounts at last balance date.

### **Rule 4. Operation and Administration of the Fund including Member Accounts**

The Fund is a continuously complying SMSF and is to be maintained by the Trustee, the

Trustee, Fund professionals and any other person for the benefit of Members of the Fund.

#### **4.1 Becoming an Operating SMSF**

At inception, the Trustee of the Fund is to ensure the following actions are to be completed within a reasonable period of time:

- a) The Trustee is to elect and ensure that the Fund is to become a regulated superannuation fund as that term is defined under the Superannuation Laws;
- b) Obtain an Australian Business Number, a Tax File Number and register for GST (where required);
- c) Appoint an auditor to comply with any audit requirements laid down under the Superannuation Laws;
- d) Establish a bank or clearing account for the monies of the Fund that is separate and independent of any monies of any Member, the Trustees of the Fund personally or in terms of their business interests or any other non-Fund party;
- e) Establish Super Stream operations to the extent provided by the Superannuation Laws or the Regulator;
- f) Appoint an accountant, administrator or other professional to the Fund to ensure the Fund meets its compliance and financial return requirements under the Superannuation Laws. This may also include self-administration by the Trustee or the use of software or any other service offered by third parties including the Regulator;
- g) Ensure the Fund is a Complying SMSF and lodge any information, forms or other requirements to ensure as such;
- h) If required appoint an actuary to assess the liabilities of any pension, income stream or temporary incapacity pension the Trustee may pay or be required to pay.

#### **4.2 Accounting for the Fund**

The Trustee is to ensure that all monies, investments, Contributions, Reserves, payments, transfers, distributions and any other thing that relates to the accurate determination of the financial position of the Fund is completed effectively and in accordance with the Superannuation Laws. This includes, but is not limited to the following:

- a) The valuation of the assets and investments of the Fund as required under the Superannuation Laws and with any guidance from the Fund's auditor if required;

- b) The allocation of a specific investment to any Investment Strategy maintained by the Fund or to any Separate Investment Strategy of a Member or a Member's Superannuation Interest, with or without the direction or consent of a Member;
- c) The transfer between Separate Investment Strategies or Superannuation Interests of any asset or investment provided the Trustee properly values the asset or investment to be transferred and ensures that any consideration is determined according to that value;
- d) The determination of the Fund's Earnings or the Earnings of any separate investment strategy the Trustee may hold for one or more Members and in addition a separate investment strategy for a specific Member superannuation interest;
- e) The payment of any expenses properly incurred by the Trustee of the Fund including administration fees, professional fees, interest

### **4.3 Creating Member Superannuation Interests and other Accounts**

The Trustee may, at the request of a Member, the Member's Legal Personal Representative or at the Trustee's discretion, create one or more Superannuation Interests on behalf of a Member or for the benefit of the Fund including a Reserve for the benefit of Members (such as a Contributions Suspense Account) or any other account allowed under the Superannuation Laws and in addition:

- a) The Trustee may hold one or more Superannuation Interests on behalf of a Member or their Legal Estate;
- b) A Member Superannuation Interest may include a Lump Sum Superannuation Interest, a Pension Superannuation Interest, a Temporary Incapacity Superannuation Income Stream, a Transition to Retirement Income Stream or any other such Superannuation Interest or other account which may be created by the Trustee to benefit a Member under the Superannuation Laws;
- c) Any Lump Sum Superannuation Interest may be created with or without any amount standing to the Member's Superannuation Interest nor any Contributions being made on behalf of a Member;
- d) Where a Pension is created from a Member Lump Sum Superannuation Interest, the Trustee may transfer any Separate Investment Strategy held for that Superannuation Interest to the Pension Superannuation Interest.

### **4.4 Maintaining Member Accounts and Superannuation Interests**

The Trustee is to maintain and regularly determine the value of a Member's account and all Member Superannuation Interests. Any such determination is to include:

- a) The market value of all contributions made to the Fund on behalf of the Member for the benefit of the Member's accumulation superannuation interest including government co-contributions, spouse contributions, grandparent or parent contributions and related party employment contributions. The valuation and exact timing of any contribution is to be made as required under the Superannuation Laws or by the Regulator;
- b) Any Earnings to be credited by the Trustee to one or more Member superannuation interests and where a Separate Investment Strategy has been operating for a one or more Member superannuation interests, the Earnings of that superannuation interest. In determining the method allocation, except where a Separate Investment Strategy is used for a Member the Trustee is to allocate according to the Superannuation Laws and may do so unevenly if those laws allow;
- c) Any allocations by the Trustee from any Reserve account of the Fund or Reserve account from another fund;
- d) The transfer of any superannuation monies from another Fund including a Rollover, a Family Law Splitting payment from another Fund or the same Fund;
- e) The payment of any expenses to be charged against Member Superannuation Interests as well as expenses specific to the Member or a Member Superannuation Interest including insurances, interest, property or other asset expenses;
- f) The payment of any superannuation benefits including Lump Sums, Pensions, Income Streams, Temporary Incapacity benefits or any amount to be deducted from the Member's superannuation interests and payable to the Member, a related party of the Member, the Member's legal estate or any person or entity as allowed under the Superannuation Laws;
- g) The payment to a Member, Regulator or any other person or entity as a consequence of any Release Authority;
- h) The receipt by the Trustee of the Fund and subsequent payment of any insurance proceeds for the benefit of the Member.

#### **4.5 Payment of Taxes and Excess Contributions**

The Trustee is to pay all taxes, duties, imposts or other monies levied by the Regulator, Federal or State authority or any other legally authorised body as determined in relation to:

- a) The taxable position of the Fund as a whole or in part including any BAS, GST or other taxable imposts;

- b) Stamp duties, land taxes and any other amounts in relation to the purchase, sale or keeping of any asset of the Fund;
- c) Excess contributions taxes levied on contributions made on behalf of a Member with any such taxes to be deducted from the Members account unless the Trustee determines otherwise;
- d) The withdrawal as a Lump Sum from a Member's account such amount as the Member or the Regulator determines or is allowable as a Release Authority under the excess contribution rules or in any other manner allowed under the Superannuation Laws.

## **Rule 5. Contributions, Fund Transfers and Acquisitions of Assets**

### **5.1 Trustee to have power to accept monies, assets and gifts or in-kind benefits**

The Trustee may accept any money, property or Asset by way of a trust distribution, gift, Authorised Contribution, Rollover and transfer Superannuation Benefit on behalf of one or more past, current or future Members of the Fund. Such acceptance may be by way of cash, cash equivalent, Promissory Note or one or more assets or property, in-kind or deemed or in such other manner or form as the Superannuation Laws and the Regulator allows.

### **5.2 Sub-Funds for Non-Allowed Receipts**

The Superannuation Laws may prevent or penalise the Trustee of the Fund from accepting the transfer of money or Assets or receiving a Contribution or Rollover on behalf of a Member. In this case, the Trustee may hold the money or assets in a sub-trust that does not form part of the Assets of the Fund. Earnings on any sub-trusts are to be kept separate from all other Fund Assets and the Trustee is to ensure the sub-trust is properly accounted for and returned according to the Superannuation Laws as soon as practicable.

### **5.3 Suspense Accounts**

The Trustee may accept an Asset, monies, payments, in-kind benefit, distribution or such other amount for the benefit of one or more Members of the Fund, including future Members and at its discretion (unless otherwise required under the Superannuation Laws) may hold these amounts in a suspense account before being credited to an account or Member Superannuation Interest. There is no limit, unless the Superannuation Laws otherwise provide, as to the time any specific amount is held in the Suspense Account. Any Suspense Account, and the Trustee may create as many as they choose, may have its own Investment Strategy if the Trustee so chooses.

### **5.4 Valuations of In-Specie and In-Kind Contributions and Transfers**

Pursuant to Rule 5.1 the Trustee may accept an Asset, monies, payments, in-kind benefit, distribution or such other transfers on behalf of past, current or future Members. In so doing the Trustee is to determine the value of any non-cash transfer into the Fund and in the manner and form so required under the Superannuation Laws or by the Regulator.

## **5.5 Valuations of In-Specie and In-Kind Contributions and Transfers Contributions Splitting**

At any time, provided the Superannuation Laws allow, the Trustee may receive a Contributions Splitting Notice by a Member in relation to an Authorised Contribution made on behalf of the Member to the Fund.

## **5.6 Family Law Splitting**

The Trustee may receive and act upon a Family Law Splitting notice. The Trustee is to ensure that the Superannuation Laws as they apply to a Family Law Splitting Notice are to be complied with including:

- a) which of the Member's Superannuation Interest the Family Law Payment Splitting Notice is best utilised to meet the requirements of the notice;
- b) whether the amount to be split to the Member's Spouse is preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow including the extent to which it consists of tax free, taxable and taxable untaxed components;
- c) which Assets of the Fund may be utilised to meet the terms of the Family Law Payment Splitting Notice;
- d) In relation to any splitting of a Member's superannuation benefits it is up to the Trustee to determine whether to admit or retain a Member or person who is a splitting payment member.

## **Rule 6. Member Benefits – Accessing, Payment and Type**

### **6.1 Accessing Member Superannuation Benefits**

The Trustee is authorised to pay or make a Superannuation Lump Sum or Superannuation Income Stream from a Member Superannuation Interest where the Member meets a Condition of Release in accordance with the Superannuation Laws. However, only Superannuation Benefits permitted in conjunction with the relevant Cashing Restriction for that Condition of Release are, or unless the Regulator otherwise determines, authorised to be paid by the Trustee to the Member or any other person allowed pursuant to the Superannuation Laws. The range of

Superannuation Income Streams and other benefits are detailed below and identified in the Definitions.

## **6.2 Specific Benefits Payable by the Trustee of the Fund**

Subject to the Superannuation Laws and without limiting the powers of the Trustee, the following Superannuation Benefits or other benefits may be made by the Trustee at the Member's Request, the Trustee's discretion and if authorised under Rule 6.1:

- a. where the Member, in the Trustee's opinion, is Temporarily Incapacitated, they may commence a Temporary Incapacity Superannuation Income Stream until such time as the Member is no longer Temporarily Incapacitated which may include a return to gainful employment as that term is described under the Superannuation Laws, death or Permanent Incapacity;
- b. where the Member, in the Trustee's opinion, is Permanently Incapacitated, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- c. where the Member is Terminally Ill, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- d. where the Member is Retired, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- e. where the Member is aged 65, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- f. where a person who is a Member of the Fund dies, the Trustee of the Fund may pay a Dependant of the Member or the deceased Member's legal personal representative, subject to any Binding Death Benefit Directions or SMSF Will, a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- g. where the Member leaves the employment of an employer, or any of whose associates have at any time contributed into the Fund on behalf of the Member, they may take an Income Stream as prescribed by the Superannuation Laws and with the type of Superannuation Benefits allowed;
- h. where the Member has reached preservation age and commences a Superannuation Income Stream including a Transition to Retirement Income Stream;



- i. where the Member meets the conditions of Severe Financial Hardship the Trustee may pay a Superannuation Lump Sum to the Member as authorised under the Superannuation Laws and pursuant to any notice by the Regulator;
- j. where, as authorised by the Regulator or any other government entity responsible for deciding the payment of Superannuation Benefits on the basis of Compassionate Ground, the Trustee may pay a Superannuation Lump Sum to a Member on Compassionate Grounds including as a result of the Government's Covid19 package;
- k. where the Member has commenced an Income Stream Superannuation Interest, subject to the terms and conditions of the Income Stream Superannuation Interest, any Rule of the Fund or the Superannuation Laws, a Lump sum may be taken from the Income Stream Superannuation Interest at any time as a commutation payment, including upon the death of the Member. This may include any pension payment over and above the Member's minimum pension payment;
- l. the commencement and payment of a Income Stream which meets the conditions of an income stream payment, is allowed pursuant to Rule 6.1 and is for the future benefit of dependants of the Income Stream member;
- m. where any other Superannuation Lump Sum, Superannuation Income Stream or other payment authorised under the Superannuation Laws or by the Regulator.

### **6.3 How Benefits are to be Made and/or Paid**

Subject to the Superannuation Laws the Trustee of the Fund may satisfy the allocation of benefits to a Member as per Rule 6.1 by way of:

- a) a cash or cheque, the issue of a Promissory Note or any other form of cash equivalent;
- b) the transfer of an Asset of the Fund equal to the value of the Member's withdrawal benefit provided any such transfer does not detrimentally impact the Trustee or the Member, by way of superannuation compliance or taxation. Specialist advice should be taken by the Trustee in this regard;
- c) the issue of a Promissory Note for the purposes of acquiring an Asset of the Fund;

at all times the Trustee is to ensure that where the Superannuation Laws require a payment to be made, rather than an in-specie Asset transfer that the Trustee consider the use of 6.3 c) above.

### **6.4 SMSF Death Benefits and Binding Death Benefit Directions**

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a Member of the Fund dies the following Death Benefits may become payable by the Trustee of the Fund:

- a) A Member of a Fund may make a SMSF Will or Binding Death Benefit Nomination, in the form or manner as prescribed under the Definitions of those terms, which if accepted by the Trustee, will legally bind current and future Trustees on how a deceased Member's superannuation benefits are to be paid. This may include:
  - i. the payment of a lump sum to a dependant or to the Member's legal personal representative;
  - ii. the payment of an income stream of dependants of the Member, whether singly, jointly or as a group;
  - iii. limiting any payments to a deceased Member's bloodline or lineage, whether directly or indirectly through the deceased Member's legal estate;
  - iv. whether an existing auto-reversionary pension, if the reversionary beneficiary is alive, takes precedence over any SMSF Will or Binding Death Benefit Nomination;
  - v. the appointment of a superannuation professional to advise upon, help manage and administer the deceased Member's SMSF estate; and
  - vi. any other thing or matter agreed between the Trustee and the Member to form part of the Member's binding SMSF Will or Binding Death Benefit Nomination.
- b) Where a Member of the Fund dies and there is a SMSF Will, a Binding Death Benefit Nomination or a non-binding set of instructions in force for the Member, the Trustee is to make and pay the Member's Superannuation Benefits in accordance with the relevant death benefit document but is not bound by non-binding wishes. This includes subject to the Superannuation Laws, the payment of Superannuation Lump Sums and Superannuation Income Streams to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws including a charity and any person or entity that the recipient death benefit beneficiary nominates;
- c) Where a person who is a Member of the Fund dies and there is no SMSF Will or Binding Death Benefit Nomination in force for the Member the Trustee has sole discretion to pay, subject to the Superannuation Laws, the Member's Superannuation Benefits as one or more Superannuation Lump Sums or Superannuation Income Streams or combination of both to the deceased Member's Dependants, the Member's Legal Personal Representative or the

deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws. If the Member has provided the Trustee with a non-binding set of instructions the Trustee may take into account, the wishes of the Member in distributing the deceased Member's Superannuation Benefits but is not required to do so. In so doing the Trustee of the Fund is to consider the potential beneficiaries of the deceased member however, provided the Trustee has taken advice from a SMSF estate planning specialist, the Trustee retains the power to distribute in accordance with any such advice;

- d) Where a Member has an Auto Reversionary Income Stream or Pension with an auto reversion transferrable to a Dependant of the Member, created pursuant to the rules of the Pension Income Stream or, alternatively, by a SMSF Will, a Binding Death Benefit Nomination or a non-binding set of instructions, then subject to the Superannuation Laws and the terms and conditions of the Income Stream, the Trustee shall transfer the deceased Member's Income Stream or Pension to the Auto-Reversionary Beneficiary as soon as practicable after the Member's death. Upon this auto-reversionary event, amounts standing the credit of the deceased Member's Auto-Reversionary Pension are not to be considered as Member Superannuation Benefits but the Superannuation Benefits of the Auto-Reversionary Beneficiary. Subject to the terms and conditions of an Auto-Reversionary Income Stream or Pension and the Superannuation Laws at that time, the Auto-Reversionary Pension may be transferred to another Auto-Reversionary Beneficiary upon the death of the first or latter Auto-Reversionary Beneficiary. Such a transfer may be jointly or severally amongst nominated Auto-Reversionary Beneficiaries or class of Auto-Reversionary Beneficiaries. The transfer process may continue on until there are no more pension benefits to be paid;
- e) The Trustee or the Trustee may limit to whom or what the Death Benefit Dependents that the Member's Superannuation Benefits may be paid to, except where there is an effective SMSF Will or Binding Death Benefit Nomination in place. This includes any Superannuation Benefits to be paid to a deceased Member's Legal Estate or only to bloodline or lineage of the Member.

## **6.5 SMSF Living Will**

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a person who is a Member suffers Temporary, Permanent or any other Incapacity or Terminal Illness the Trustee is required to, subject to available Fund resources, have regard to any Member SMSF Living Will. This includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the payment of Superannuation Lump Sums and Superannuation Income Streams to the Member, their Dependents, the Member's Legal Personal Representative or any of their assigns.

## **6.6 Income Stream and Pension Roll Backs plus Transition to Retirement Income Stream Fold Backs**

- a) At any time, a Member in receipt of an Income Stream Superannuation Interest may Rollback part or all of their Income Stream Superannuation Interest to a Lump Sum Superannuation Interest in the Fund established for their benefit. The Roll Back amount may be satisfied by the transfer of assets between the Member's Income Stream Superannuation Interest and the Member's Lump Sum Superannuation Interest. Subject to the Superannuation Laws the Trustee may choose the value of any Asset subject to a Roll Back.
- b) A Member in receipt of a Transition to Retirement Income Stream may Fold Back their income stream to the Member's Lump Sum Accumulation Account. The Fold Back amount may be satisfied by the transfer of assets between the Member's Transition to Retirement Income Stream Superannuation Interest and the Member's Lump Sum Superannuation Interest.

## 6.7 Pension Variations not a new Pension

Where a Pension does not have a reversionary pension member, the Member may, with the agreement of the Trustee add one or more reversionary pension beneficiaries (including relevant terms and conditions) to the existing Pension without it becoming a new Pension but a variation of the current Pension.

## Rule 7. Definitions

**Accounts** means those accounts, including trust and suspense accounts established by the Trustee for the Fund, for the purposes of establishing and maintaining the Fund as a Complying SMSF and may include separate accounts for Member interests, Reserves, investments, investment strategies or for any purpose as the Trustee so determines.

**Account Based Pension** includes a Pension where capital cannot be added to the Pension except to create a new Pension and that the standards in SIS Reg 1.03(1), 1.06(1), 1.06(9A) and 1.06(9B) apply or such other standards as prescribed for Accounts Based Pensions in the Superannuation Laws.

**Actuary** is any professional actuary authorised under the Superannuation Laws to carry out the role of actuary to a Complying SMSF and which may include an actuary who is a practising Member of the Institute of Actuaries of Australia.

**Additional Trustee** is a person who is a non-Member of the Fund who is appointed as a Trustee of the Fund as a consequence of the Fund having only one Member. This Trustee is appointed for Complying SMSF purposes only and must defer on all matters to the existing Member Trustee of the Fund.

**Assets** include, but are not limited to real, personal or intellectual property, shares, futures, collectables, businesses or business interests, any Assets or property transferred, created, gifted 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 Superannuation Fund may lawfully hold on behalf of a Member, Fund Superannuation Interest, Member Superannuation Benefit, for Insurance purposes as well as for the Dependants and the Legal Personal Representative of a Member or deceased Member but excludes Cash.

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

**Australian Superannuation Fund** means a Superannuation Fund that meets the conditions of an Australian Superannuation Fund under the Superannuation Laws or is otherwise held to be an Australian Superannuation Fund by the Regulator.

**Authorised Contribution** made on behalf of a Member or Members of the Fund means a Contribution, whether by way of Cash, Asset or in-kind (including a Fund expense payment or the forgiveness of a debt), made to the Fund by any person, entity, government, Regulator, Employer Sponsor where the Trustee is satisfied that the Contribution has met the requirements for making a superannuation Contribution under the Superannuation Laws and that the acceptance of the Contribution by the Trustee of the Fund will not result in the Trustee of the Fund breaching the Superannuation Laws but does not include an allocation from a Reserve Account of the Fund. This includes downsizer contributions, authorised overseas pension transfers, contributions to a contributions suspense account and any other regulated or future regulated contribution to a superannuation fund as allowed under the Superannuation Laws.

**Auto-Reversionary Income Stream or Pension** means an Income Stream or Pension where a person including a Dependant (“the auto-reversionary beneficiary”) is included in the Income Stream or Pension documentation as the recipient (“if alive”) of the Member’s Income Stream or Pension upon the death of the Income Stream or Pension Member or beneficiary. The Pension or Income Stream may revert jointly to two or more qualified persons or dependants in such proportions as the Pension or Income Streams allow and may continue to revert on the death of any auto-reversionary beneficiary. Where the Superannuation Laws do not allow an auto-reversionary beneficiary to continue the Pension or Income Stream, the auto-reversionary beneficiary’s share of the Income Stream or Pension is to be commuted to a Lump Sum which may be used to capitalise a Discretionary, Fixed or Family Trust.

**Bare/Holding Trust** is a Trust and includes a Holding Trust established by the Trustee or some other party which holds one or more Assets on bare trust for the Trustee of the Fund. The trustee of the Bare Trust or Holding Trust is to hold any Asset of the Fund for the absolute entitlement of the Trustee of the Fund. A Bare Trust may be used for the purposes of the Trustee entering into any borrowing arrangement under the Superannuation Laws or a traditional instalment warrant arrangement or limited recourse lending arrangement pursuant to sections 67, 67A and 67B of the

SIS Act 1993 or such other Superannuation Laws that allow the Trustee of a SMSF to borrow.

**Benefits in Kind** are Superannuation Benefits allowed to be paid under the Superannuation Laws that are neither Cash nor an Asset of the Fund and includes a set-off.

**Binding Death Benefit Nomination** includes any document accepted by the Trustee of the Fund dealing with the transfer of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's death. A Binding Death Benefit Nomination is binding as upon the Trustee, both past, present and future. It must be signed by one or more witnesses unless the Trustee agrees otherwise.

**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. It also includes digital money and coins if this is considered to be cash by the Regulator.

**Cashing Restriction** is any restriction in the Superannuation Laws that may apply where a Member satisfies a Condition of Release in respect of one or more of their Superannuation Interests. For example, this may limit the recipient of a Sickness or Accident Income Stream to a monthly payment no greater than the salary, wages or profits they were receiving before the sickness or accident and for as long as that condition continues.

**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.

**Company** includes any entity incorporated pursuant to Corporations Act 2001 or the Superannuation Laws.

**Compassionate Grounds** includes those grounds listed under the Superannuation Laws authorising the Trustee, subject to direction by the Regulator, to pay a Superannuation Lump Sum to Members based on Compassionate Grounds and includes any payment allowed under the Government's Covid19 Package

**Complying SMSF** means a superannuation fund that meets both the definition of a SMSF and the conditions of a complying SMSF 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.

**Condition of Release** includes those conditions of release of Superannuation Benefits in the Superannuation Laws and in particular Schedule 1 of the SIS Regulations 1994.

**Contract of Life Insurance** includes any policy or contract as defined under the Superannuation Laws and in addition a policy for the Temporary Incapacity, Sickness and Accident, Permanent Incapacity, Death, Trauma or any other event dependent upon the life of a Member of the Fund and contracted by the Trustee with a qualified entity, insurance company or organisation that is the business of insurance, whether in Australia or overseas.

**Contribution** includes a payment, distribution or transfer of Cash or an Asset to the Fund or payment in kind on behalf of a Member of the Fund or the Trustee of the Fund that the Trustee or Regulator is of the opinion is a Contribution but does not include an allocation from a Reserve Account on behalf of a Member. The value of a Contribution is to be determined by the Trustee as the time the Contribution is made and may have regard to any Regulatory guidelines.

**Contribution in Kind** includes a deemed Contribution as declared or notified by the Trustee or the Regulator and would include a person meeting an expense or other legal obligation of the Trustee of the Fund including the forgiveness of a loan.

**Contributions Reserve or Suspense Account** includes a Reserve or account of the Fund where unvested Contributions are made on behalf of a Member or a specific group of Members. Those contributions may be required to be allocated to one or more Members within a certain period of time as required under the Superannuation Laws.

**Contributions Splitting Notice** is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Notice provided to the Trustee by a Member requesting an amount to be Allotted, Rolled Over or transferred as a Transfer Superannuation Interest to a Member's Spouse from benefits in the Fund where a Member has applied to the Trustee and the Trustee has accepted to Allot, Rollover or transfer the amount as requested.

**Court** includes any properly constituted Court situate in Australia whether at a Federal or State level including both criminal and civil Courts.

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

**Custodian** includes a person who holds an Asset or cash on behalf of the Trustee as bare trustee.

**Death Benefit** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a payment, including by way of in-specie asset transfer, of a Superannuation Lump Sum or Superannuation Income Stream to a Dependant, the Legal Estate of the deceased Member of the Fund or any other person however excludes any on-going pension or income stream payment to a Reversionary Pension Beneficiary under an Auto-Reversionary Pension.

**Dependant** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Spouse of or a Child of a Member of the Fund or a person in an Inter-Dependent Relationship with a Member of the Fund or any financial dependant of a Member of the Fund irrespective of age and any other person the Trustee is of the opinion is a Dependant of the Member of the Fund at the relevant time.

**Digital Assets** includes any form of currency, software, cloud access program which has its own inherent value or may lead to the payment of a thing, money, currency or other asset which is digital in nature.

**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.

**Excess Contributions Release Authority** is an authority issued by the Regulator, the Member, or the Trustee where allowed under the Superannuation Laws in respect of the payment of Excess Concessional Contributions and/or Excess Non-Concessional Contributions.

**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.

**Fold Back** is the process of terminating in part or whole a Member Transition to Retirement Income Stream and involves a transfer of the fold back amount to the Member's Lump Sum Superannuation Interest.

**Foreign Superannuation Fund** means a Superannuation Fund that is not an Australian Superannuation Fund for the purposes of the Superannuation Laws.

**Fund** means this Fund established and maintained as a Complying SMSF under the Fund's Rules.

**Funeral Reserve** is an account maintained by the Trustee of the Fund out of Fund surplus assets and Earnings for the express purpose of paying any funeral or other expenses, including immediate legal and administrative expenses in relation to the death of one or more Members of the Fund.

**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.



**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 around the world.

**Government Covid19 Package** is that sum of measures, incentives, concessions, superannuation releases, tax and charges relief announced and introduced by any Federal or State government as a result of the Covid19 pandemic.

**initial Member** is that person who was the first Member of the Fund at the time of establishment.

**Incapacity** includes Temporary and Permanent Incapacity and Terminal Illness as well as those conditions under the Superannuation Laws that amount to incapacity including sickness and accident where the Member is not gainfully employed in a position that they held prior to the sickness or accident.

**Incapacity Superannuation Benefits** include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, their Dependants, Legal Personal Representative or other person in the event of a Member's Incapacity, including Temporary or Permanent Incapacity, sickness and accident (where a Cashing Restriction is met) or for some other reason.

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

**In-House Assets Test** is the requirement under the Superannuation Laws that limits the percentage of Assets a Trustee of a Fund may hold in Related Party and Related Trust investments and loans by the Trustee of the Fund.

**Initial Trustee** is the first Trustee or Trustees of the Fund.

**Inter-Dependant Relationship** is any relationship that meets the conditions of an inter-dependant relationship under the Superannuation Laws.

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

**Investment Reserve** includes a Reserve that 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, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a written document formulating the investment objectives of the Fund and its Members and includes the Insurance Strategy and a

plan for investing the monies and Assets of the Fund or Superannuation Interest as required which has regard to all of the circumstances surrounding 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, will, Bare trust, Enduring Power of Attorney, 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 in respect of a deceased Member's Assets in the event of their death for distribution to Dependents, the Legal Estate or any other beneficiary.

**Legal Personal Representative** means upon the death of a Member the executor of a will or person who will be formally appointed as executor upon probate or administrator of the estate of a deceased person. It also includes the Trustee of the estate of a person under a legal incapacity or a person who holds an Enduring Power of Attorney granted by a Member of the Fund and includes any other person the Superannuation Laws allow as a Member's Legal Personal Representative.

**Member** is a person who is an Initial Member has applied for Membership or been automatically appointed as a Member under the Rules of the Fund and has been accepted by the Trustee of the Fund as a Member and has become a Trustee or director of a Corporate Trustee unless the Member is able to appoint a Replacement Trustee or Additional Trustee under the Rules of the Fund and the Superannuation Laws. There is no requirement for the Member of the Fund to have a balance in their Member Accumulation Account. For the sake of clarity, a Member also incorporates a person's Legal Personal Representative in their position as Legal Personal Representative of the person even where the person has died.

**Member Income Stream Superannuation Interest** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the Trustee under the Fund Rules for the purpose of paying a Superannuation Income Stream or Pension, including a Superannuation Income Stream that is currently payable or one that is to commence

at some time in the future. A Member Income Stream Superannuation Interest remains in force provided that there is an account balance including \$1 or more.

**Member Income Stream Superannuation Interest Roll Back** means the commutation in whole or part of a Member Income Stream Superannuation Interest in the Fund and the subsequent transfer to a Member Lump Sum Superannuation Interest in the Fund.

**Member Lump Sum Superannuation Interest** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the Trustee under the Rules for the purposes of paying a Lump Sum to a Member or some other person.

**Member SMSF Living Will** includes a formal or informal set of binding directions made by the Member or the Trustee under these Rules to benefit a Member, their Dependents or Legal Estate where the Member suffers Temporary Incapacity, Permanent Incapacity, mental infirmity, loss of mental capacity or terminal illness. It may include an Enduring Power of Attorney for a Member, health and living directions and provide for certain payments or arrangements to be made on behalf of the Member who has executed the SMSF Living Will with the Fund.

**Member SMSF Will** includes a formal or informal set of binding directions made under these Rules by a Member and agreed to by the Trustee and dealing with their SMSF Legal Estate to benefit a Member's Dependents or Legal Estate in the event of their death by way of the payment of Death Benefits.

**Non-Binding Death Benefit Nomination** is a nomination made by a Member in relation to the distribution of their Superannuation Benefits in the event of their death which is not a Member SMSF Will or a Binding Death Benefit Nomination.

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

**No Tax File Number Contributions** are those Contributions where the Member has not supplied the Trustee with a valid Tax File Number or as defined as a No Tax File Number Contribution in the Superannuation Laws. These Contributions are to be held in a Suspense Account.

**Pay** includes credit, distribute, set-off or where a person receives an Asset or benefit in kind.

**Pension** includes an Income Stream Benefit under these Rules and any set of payments, income stream or annuity considered as a Pension under the Superannuation Laws. Further, pursuant to these rules, where a Pension does not have a reversionary pension member, the Member may, with the agreement of the Trustee add one or more reversionary pension beneficiaries to the existing Pension without it becoming a new Pension but a variation of the current Pension.

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

- a) to pay any Income Stream or Pension liability of the Trustee of the Fund whether by way of a payment of an amount or asset to a Member's Income Stream Superannuation Interest or directly to a Member with an Income Stream Superannuation Interest, such payment in satisfaction in whole or part of the Trustee's Income Stream liabilities in respect of that Member Income Stream Superannuation Interest;
- b) to be used to commence a new Income Stream where an Income Stream Superannuation Member has commuted an Income Stream;
- c) to pay a Death Benefit where a Member holding an Income Stream Superannuation Interest has died;

or such other payments as the Superannuation Laws allow in respect of Superannuation Income Streams.

**Permanent Incapacity** is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any condition that the Trustee determines amounts to Permanent Incapacity including in relation to a Member, means ill-health (whether physical or mental), where 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.

**Preservation Age** is the age specified under the Superannuation Laws according to when the Member is born. The preservation age for a Member is:

- a) for a person born before 1 July 1960 – 55 years;
- b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;
- f) for a person born after 30 June 1964 – 60 years.

**Product Disclosure Statement** includes, subject to the Superannuation Laws, any statement by the Trustee or provided by another person for the benefit of the Trustee, that provides Members, prospective Members or any other person, material to enable them to understand the operations of the Fund, the Superannuation Interests available to Members, what Superannuation Benefits are

payable by the Trustee and any other information required under the Superannuation Laws.

**Promissory Note** is a document evidencing a promise to pay an amount at some future date and for the Fund must be limited to the Superannuation Laws.

**Related Party** means a person defined as a related party under the Superannuation Laws. Related Trust means a trust defined as a related trust 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 or her spouse;
- b) the spouse of that individual or of any other individual specified in paragraph (a).

**Release Authority** is the receipt by the Trustee of the Fund of a release document from the Regulator requiring the Trustee to transfer an amount, as detailed in the document, to the Member, the Regulator or any other person or entity.

**Regulated Superannuation Fund** is a superannuation fund, including a SMSF that 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.

**Replacement Trustee** is a person who has been appointed as Trustee of the Fund on behalf of a Member or deceased Member according to the Rules of the Fund or pursuant to the Superannuation Laws including the Legal Personal Representative of a deceased Member of the Fund, the Legal Personal Representative of a Member where the Member is under a legal disability because of age, mental incapacity or for some other reason, the Legal Personal Representative of a Member who holds the Member's Enduring Power of Attorney or any other person who may act as a Replacement Trustee under 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, Suspense Contributions, insurance payments or from Earnings of the Fund and specifically includes amongst others: a Contributions Reserve, a Pensions Reserve, a Funeral Reserve and an Investment Reserve.

**Reserve Benefits** are 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 or entity allowed under the Superannuation Laws.

**Roll Back** includes the transfer of part or all of a Member's Income Stream Superannuation Interest to a Lump Sum Superannuation Interest in the Fund established for the Rollback Member's benefit.

**Rollover** means paid as a Superannuation Lump Sum (other than by way of being transferred) between Superannuation Funds within the superannuation system whether manually or electronically through a Super Stream system.

**Rollover Superannuation Benefit** includes the payment of a Superannuation Lump Sum, a Superannuation Income Stream or any other Superannuation Benefits or Superannuation Interests between Superannuation Funds 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.

**Rules of the Fund** include the Rules herein and include any addition, variation, change or amendment provided it meets the relevant Rule. Rules of the Fund also include any written or unwritten rules applied by the Trustee of the Fund in relation to the operation and management of the Fund such as the Fund's Investment Strategy, Member Pension or Member SMSF Will

**Separate Investment Strategy** is where the Trustee of the Fund, at the request of the Member, undertakes to complete an investment strategy for the Member's accounts or specific Superannuation Interests. This may include where the Member has or is seeking to transfer property into the Fund which requires under state stamp duty laws to be held for the exclusive benefit of transferring Members of the Fund.

**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.

**SIS Act 1993** is the Superannuation Industry Supervision Act 1993.

**SIS Regulations 1994** are the Superannuation Industry Supervision Regulations 1994.

**SMSF Adviser** is a person who is recognised under the Superannuation Laws as a specialist in providing advice to Trustees or other professionals on the Superannuation Laws as they apply to a SMSF.

**SMSF Legal Estate** means the whole of the Superannuation Interests of the Member at a time determined by the Trustee including any allocation from a Reserve of the Fund to a Member Superannuation Interest before that time.

**SMSF Living Will** includes any document accepted by the Trustee of the Fund dealing with the payment, distribution and dispersment of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's incapacity. A

SMSF Living Will is binding as upon the Trustee, both past, present and future. It may include non-binding instructions or binding directions for the Member's welfare including accommodation, income payments, living and health care expenses, food and clothing.

**SMSF Will** includes any document accepted by the Trustee of the Fund dealing with the transfer of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's death. A SMSF Will is binding as upon the Trustee, both past, present and future. It is more than a Binding Death Benefit Nomination as it may include a set of binding directions and procedures for the Trustee of the Fund to follow. It must be signed by one or more witnesses unless the Trustee agrees otherwise.

**Specific Expenses** include expenses incurred by the Trustee of the Fund that the Trustee is of the view relate directly to a Member Superannuation Interest or sub-fund as well as those expenses the Trustee declares to be a Specific Expense.

**Spouse** in relation to a person includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as a couple and also includes, where the Superannuation Laws allow, members of the same sex or any other relationship between two persons.

**Superannuation Benefit** includes a payment, the transfer of an Asset or a payment in kind, whether by way of a Superannuation Lump Sum or a Superannuation Income Stream from the Fund to a Member, a related trust, other person or Legal Estate on behalf of a Member or deceased Member, provided the Superannuation Laws allow.

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

**Superannuation Income Stream** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a series of periodical payments created by the Trustee for the benefit of a Fund Member or any other person and shall include conditions relating to the term of the Income Stream or pension, the quantum of payments, any indexation or other factors to be applied to the periodical payments and when or whether the Income Stream is commutable, has an automatic reversion or is capable of being transferred upon the death of the Member including a Conditional Reversionary Pension or a pension that has a residual capital value. A Superannuation Income Stream also includes, amongst other periodical payments, the following (subject to the terms and conditions of a Trustee of a SMSF offering the following Income Streams under the Superannuation Laws) which may or may not have an auto-reversionary:

- a) Any pension or income stream whose terms and conditions comply with SIS Regulation 1.06(1) including the requirement that the pension or income stream cannot be added to by way of capital and must pay a minimum pension amount to a Member;

- b) A lifetime complying pension [SIS Regulation 1.06(2)];
- c) An Accounts Based Pension [SIS Regulation 1.06(9)];
- d) An allocated pension [SIS Regulation 1.06(4)];
- e) A Flexi-pension [SIS Regulation 1.06(6)];
- f) A market-linked pension [SIS Regulation 1.06(8)];
- g) A fixed-term complying pension [SIS Regulation 1.06(7)];
- h) A non-commutable life pension [SIS Regulations Schedule 1 – Item 108];
- i) A non-commutable allocated pension [SIS Regulation 6.01(2)];
- j) A Transition to Retirement Income Stream [SIS Regulation 6.01(2)];
- k) A non-commutable pension [SIS Regulation 6.01(2)];
- l) A Temporary Incapacity Superannuation Income Stream – non-commutable income stream [SIS Regulation 6.01(2)];
- m) An Assets Test Exempt Pension within the meaning of that term under the Social Security Act 1991 including, but not limited to sections 9A, 9B and 9BA;
- n) An income stream or pension under the Superannuation Laws which is a Family Income Stream; and
- o) Any other pension or Superannuation Income Stream under the Superannuation Laws.

**Superannuation Interest** is any interest in a Superannuation Fund created by the Trustee or the Regulator under the Superannuation Laws and the Rules of the Fund including but not limited to a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest and a Reserve Account.

**Superannuation Interest Entitlement** is the amount determined by the Trustee, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, 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, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income



Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001, the Corporations Regulations, the Social Security Act 1991 (C'th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C'th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

**Superannuation Lump Sum** is a Superannuation Benefit that is not a Superannuation Income Stream and includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an amount paid out, an Asset transferred from the Fund or a payment in kind according to the Rules of the Fund to a person entitled to be paid a Superannuation Lump Sum or the payment of a Lump Sum upon the commutation of a Member Superannuation Income Stream.

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

**Tax Adjustment Payment** is where the Trustee declares that, as a consequence of the use by the Fund or a Superannuation Interest ("the 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 ("the 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.

**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 Rules and includes where a Member has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive and gain or reward under a continuing arrangement for the Member to be Gainfully Employed) due to ill health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not extend to Permanent Incapacity. This may include sickness of a limited duration where the Member is not working.

**Temporary Incapacity Superannuation Income Stream** is a Superannuation Income Stream payable by the Trustee of the Fund under the Superannuation Laws for a

Member that is Temporarily Incapacitated and includes a Superannuation Income Stream that:

- a) cannot be commuted or turned into a Superannuation Lump Sum;
- 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% per annum of the Consumer Price Index for the previous 12 months.

**Terminal Illness** 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 person within a period (the certification period) that ends not more than 12 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;
- c) for each of the certificates, the certification period has not ended.

**Transfer Superannuation Interest** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, 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, their Spouse or any other person in the Fund or another Superannuation Fund.

**Transition to Retirement Income Stream** means an Income Stream Superannuation Interest that meets the terms and conditions of a Transition to Retirement Income Stream and a Non-commutable Allocated Pension or non-commutable pension under the Superannuation Laws and includes an income stream that has a fixed term.

**Trustee is the Trustee of the Fund** and includes a Replacement Trustee appointed for a Member or an Additional Trustee where the Member is the only Member and Trustee of the Fund.

**Trustee Law** means whichever of the Trustee Act (NSW) 1925, the Trustee Act (Vic) 1958, the Trustee Act (SA) 1936, the Trustees Act (WA) 1962, the Trusts Act (Qld) 1973, the Trustee Act (Tas) 1898, the Trustee Act (ACT) 1957 and the Trustee Act (NT) 1907 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 Meeting** is a meeting of the Trustee as required by the Rules of the Fund and the Superannuation Laws or where matters regarding the Fund are discussed.

**Value of Assets of the Fund** is the value of any asset of the Fund as determined by the Trustee of the Fund, subject to the Superannuation Laws, Audit and Accounting 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 a Member's Superannuation Interest** is the value the Trustee determines in respect of a Member Superannuation Lump Sum Superannuation Interest or Member Superannuation Income Stream Superannuation Interest and if there is no such determination by the Trustee it is the value of the Member's particular 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.

# PRODUCT DISCLOSURE STATEMENT FOR A SELF-MANAGED SUPERANNUATION FUND

This Product Disclosure Statement (“PDS”) provides you with details of the risks and benefits of a Self-Managed Superannuation Fund (“SMSF”) and the different types of SMSF’s.

## 1. INTRODUCTION - WHY A SMSF?

A SMSF is a popular choice for many Australians as it puts them in control of their investments. It does this by requiring members of the SMSF to act as trustees of the Fund or if the Fund has a company acting as a trustee, then each member must act as a director of the trustee company. As key decision makers the Trustee can decide on what the SMSF should invest in, including shares, property and even whether to borrow to acquire property in the Fund. More than 1.2M Australians have chosen to be a part of a SMSF by themselves, with their spouse or more members of the family. At this time only four members can be members of a SMSF and it is generally best if they are from the same family.

## 2. ARE THERE RISKS WITH A SMSF?

SMSFs are not set and forget and do require work. If you don’t want to put in the work then it is best to take a back seat and use a retail or industry based super fund. You must own them, work them and be fully responsible for them.

There are risks in running a SMSF:

- a) **You are trustee of the Fund** – this means you take responsibility for all the Fund’s ups, downs and compliance requirements. You may get an accountant or adviser to help you but at the end of the day, you are legally responsible. As such it is important for you and any other trustee to ensure that you are aware of the laws and guidelines that apply to SMSFs. We suggest that once you have read this guide (PDS), you might want to go the ATO website and see the video on *“Thinking about a self-managed super.”* As the ATO video says – you are the person in control and, if you make a mistake there can be serious penalties. Don’t jump in without considering the risks and we believe you should seek out a good accountant, financial planner or SMSF specialist to help you.
- b) **Time Involved** – like anything, this is not a fly by night decision – once you are in, you are potentially in for life so make sure that you have the time to spend on choosing your investments, liaising with your accountant to get your income and compliance returns done on time.. Time is usually one of the reasons that ASIC, the regulator for financial planners and SMSF auditors has suggested that if you don’t have the time, keep your super in an Industry or Retail super fund.

**Costs** – For some, running a SMSF can be done on a shoestring – the so called DIY funds, but for many, outsourcing the important areas you are not good at to an

accountant or professional SMSF administrator saves time, prevents mistakes, ensures compliance, but of course it all costs money.

- c) **Investments** – You cannot use the investments in the fund for your own use – the only exception is property used in your own business. A SMSF is not a play thing and people have been imprisoned for not abiding by the laws. So, when you invest you should stick to property, shares, cash, fixed interest and other investments to make your retirement more comfortable.
- d) **The Demented Trustee:** Once one of the trustees has dementia they have to bow out of the running of the fund and the person with their Enduring Power of Attorney may take their place as trustee of the fund – even though they may not be a member of the fund. Many don't have an Enduring Power of Attorney which can create management problems in the Fund. It is important to seek advice and arrange to get enduring powers of attorney for all SMSF trustees.
- e) **Constant Legal Changes:** Because SMSFs are the largest sector of the superannuation industry and have the largest balances SMSF members get the most out of any taxation benefits. After all a member in a \$3M SMSF who is living on tax free retirement income is in a pretty good tax position in comparison to someone with \$100,000 in a retail super fund or a person not in super with sizable wealth and income.

### 3. HOW MUCH DO YOU NEED TO SET UP A SMSF?

The Australian and Securities Investment Commission (“ASIC”) has released guidelines for financial planners and other licensed persons – *Information Statement 206 Advice on Self-Managed Superannuation Funds: Disclosure of Costs (“INFO206”)* that states:

*“On average, SMSFs with balances below \$500,000 have lower returns after expenses and tax, and will often be uncompetitive, compared to APRA-regulated funds. Therefore, in many cases, a recommendation for a retail client to set up an SMSF with a balance of \$500,000 or below may not be in their best interests as they may not be in a better position when compared to using an APRA-regulated superannuation fund..”*

A lot will depend also on how much your accountant charges you and this is often dependent upon the number and types of assets that go into the fund. Take the time to sit down and work out the costs having regard to the ASIC Information Statement.

### 4. THE TEN BENEFITS OF A SMSF

#### **Benefit One: A SMSF lets you look after your family**

For the majority of people, their family is the most important thing in their lives. The SMSF provides members with an opportunity to lay down the foundations to provide a retirement income stream for their immediate family and possibly generations to come. Currently only four family members can become members of a SMSF although the government is sitting on

legislation that takes that number up to six. Ask your SMSF professional on the state of play of membership if you have more than four members.

### **Benefit Two: Providing a secure income in retirement**

The major reason for establishing a SMSF is to ensure that, when an individual stops earning income, he or she will have a stable, secure alternative to keep the lifestyle that he or she is accustomed to. The SMSF has a range of income options that can be tailored to a member's and their family's lifestyle in retirement. This includes a pension which can be created for a member that automatically passes to the member's spouse on death – which is a great estate planning tool that is not impacted by the member's Will. However, there is a Transfer Balance Limit when commencing the pension or pensions in the SMSF of a maximum of \$1.6M meaning only that amount can be transferred for pension purposes. any amount above this limit can remain in the Fund in the member's accumulation or lump sum account where income is taxed at a rate of 15% compared to tax exempt pension income.

### **Benefit Three: Offering a financial helping hand if your health deteriorates**

Health is one of those things that can never be taken for granted. So, if a member's health declines, they need to have access to a safe, secure income that takes the financial worry out of becoming seriously ill or even incapacitated. A SMSF allows members access to a range of benefit options in times of sickness and ill-health. This is the case even though the sickness is of a temporary nature. Permanent disability is a time of great change and superannuation benefits are able to be accessed during these times of trouble.

### **Benefit Four: Investment choice**

The large majority of people or families who find their way into SMSFs want to have some say as to how they invest their money – including their superannuation. As trustee of a SMSF, the power of choosing investments for the fund resides with the trustee; however, great care needs to be taken to ensure that the trustee meets the relevant superannuation laws in terms of investment choice. These laws include the need to draft and successfully implement an investment strategy as well as ensure that, within confined limits, no asset of the fund is used by a member of the fund, their relatives or any entity related or closely associated with them or their family. But things are pretty wide open – the trustee can't invest in art, related party investments except for business property but shares, residential property, commercial property, options, overseas investments, start-ups, Early Stage Investment companies, syndicates are all legal investment options.

### **Benefit Five: Low taxation fully sanctioned by the government**

Taxation in Australia is significant, but the government has chosen to save on future welfare payments by providing tax incentives for Australians to become self-funded retirees. And with 9.5% of an employee's salary directed to superannuation – self funded retirement is a good chance for most long term employees. One of the biggest tax concessions is the tax free nature of pension and lump sum payments for a member of a superannuation fund post age 60.

### **Benefit Six: Looking after your family when you die**

The SMSF is a great vehicle to provide lump sums or income streams to a member's spouse, children or grandchildren when the member dies (subject to dependency and ages when it comes to pensions) — and it lets the trustee of the SMSF control the process with limited fear of legal challenge compared to a Will. Importantly where a member puts in place a strategic SMSF estate planning strategy, it resides outside the member's will. This is not known to many SMSF members and trustees who forget to put in place their personal SMSF estate plan, thus missing out on highly valued taxation concessions and also opening the deceased member's benefits to the lawyers and in some case the Public Trustee.

### **Benefit Seven: Access to the Age Pension**

The Aged Pension is available for persons over age pension age – currently age 65. However, it is subject to an Income and Assets test. A member's benefits in a SMSF once a member reaches age pension age is included for Assets test purposes as is income withdrawn from the fund. Under the Assets test a couple with a family home and less than \$869,500 in super and other assets may be entitled to an age pension. The lower the assets the greater the pension with a full pension available where a home owning couple has \$605,000 in assets including superannuation. Until age 65 superannuation is not included for Assets test purposes.

### **Benefit Eight: Protection from creditors**

This is a sleeper and, for most people, is not used as part of an asset protection strategy at all. However, where a person gets into serious financial difficulty, the government has provided rules in the bankruptcy laws that broadly protect a member's benefits in the fund from creditors with the exception of any pension income. This can be a relief when unfortunate financial events occur.

### **Benefit Nine: Transition to Retirement Income (“TRIS”)**

Members of a SMSF born before 1 July 1964 – once they reach preservation age have the unique ability to access their superannuation benefits as an income stream whilst working. If under age 60, the pension will form part of the member's assessable income - however it will attract a 15% tax offset. From age 60 any TRIS income will be tax free. So, while working, a post age 58 employee, small business owner, professional or other person with a SMSF may access TRIS income - much like salary - that is extremely tax effective.

### **Benefit Ten: Superannuation Contributions Splitting**

Under the laws it is possible for a member of a superannuation fund to split their benefits with their spouse. Spouse includes a de facto spouse under the superannuation laws. The advantages of this, is where both spouse members of the fund are between the ages of 58-60 and using the transition to retirement strategy, then the benefits of the 15% tax rebate is maximised. Further where one member is older than the other and will thus reach the tax-

free pension and/or lump sum status before the other, then it makes strategic sense to split any contributions for the younger spouse to the older spouse. However, it is only employer or deductible superannuation contributions that can be split and then to a maximum of 85%.

## **5. INTRODUCING THE FAMILY SUPER FUND – THE SMSF WITH SMARTS**

There are more than 650,000 SMSFs in Australia controlling more than \$750 Billion – so on average each fund holds more than \$1.2M. The majority of these funds have been established for one reason only and that is to enable members of the fund to control the investment of their superannuation monies. Although this is a powerful driver, this single focus often limits that strategic possibilities of the fund and misses the whole point of these powerful vehicles.

### **What type of SMSF do you have or want?**

There is a wide range of SMSF clients - those that want to do everything themselves (the DIY'ers), the SMSF'ers and those that are happy to build their fund into a strong, family superannuation fund:

#### ***I. The DIY superfund***

This is a super fund where there is a strong hands on focus by the trustees of the fund - *the true Bunnings DIY style of fund*. The trustee generally does the accounts of the fund using an accounting program such as MYOB or spread sheets. All bank reconciliations, income receipts and expenses are accounted for and the management of the investments are undertaken by the trustee. Due to the complexity of the superannuation and taxation laws, the trustee will need an accountant to compile the tax return and must have an independent audit under the SIS Act 1993. As can be imagined, unless the trustee is only investing in one or two simple property investments, there is a lot of work that must be done by the trustee – for a trustee trading shares it can be a full-time job. This has been identified by ASIC which states it may take up to 500 hours per annum to run a SMSF by yourself.

However not knowing basic or more advanced SMSF strategies may cost the Trustee and the members in the long run. The same can be said with estate planning where it is likely that a distribution by a DIY super fund may result in a family provisions challenge.

#### ***II. Self-Managed Super Fund***

This is the next level above the DIY superannuation fund and one that the majority of SMSFs run. Again, the focus is on investments but the trustees of a SMSF generally have the advantage of tax and superannuation advice from their accountants and financial planners. SMSF strategy in a SMSF may be around pensions, estate planning, insurance and taxation strategies. The strategic input will depend on the



SMSF skills of the advising professional and the willingness of the trustee to learn and enquire what is possible within their fund.

### **III. *The Family SMSF***

The Family SMSF is the same tax structure as a DIY super fund and a SMSF but the key focus is on the family. Surprisingly, of all the SMSFs in Australia that have the opportunity of bringing up to currently four members of a family into the fund, only 10% have chosen to do so. Surprisingly 20% of SMSFs have only one member with 70% having only two members. This is a great loss of opportunity – can anyone imagine what it would be like to establish a family trust with only one or two beneficiaries. No accountant in their right mind would recommend this course of action. In addition legislation has been drafted to increase the number of members in a SMSF to six, although it has yet to be enacted.

To see the difference between the Family Super Fund and the DIY or SMSF fund, consider some of the following Family Super Fund strategies:

- An adult child member in the fund has an accident and spends six months off work. The trustees of the Family Super Fund can begin to pay out salary continuance benefits to the incapacitated member to ensure that their salary and wages are kept to a level they were, before the accident. It is a requirement under the superannuation laws that SMSF trustees consider insurance on all their members including, in this case sickness and accident, total and permanent disability and life insurance;
- Mum is the sole remaining parent member of the fund and has been diagnosed with dementia. The adult child members are in the fund guiding her superannuation benefits towards the best in health and psychological care for their mother;
- The retiree pension members of the fund invest in Australian shares with imputation credits. These credits are used by the trustee of the fund to reduce any of the fund's tax liabilities including any contributions tax liability of the younger members of the fund that salary sacrifice;
- Younger adult members choose to use their superannuation to acquire a property by way of a limited recourse borrowing arrangement. This can be completed by holding the property solely for the benefit of the child in a separate accumulation account with its own investment strategy. The older members of the Fund can share assets for pension and accumulation purposes;
- The SMSF has a Leading Member of the Fund who, essentially controls the fund and acts as a protector ensuring benefits only go to members of the fund and the lineage or bloodline of the Leading Member.

In short, Family SMSFs have a very special place in Australia, and for that matter the world. If designed and used properly - they allow the aggregation and investment of a family's

superannuation benefits, as well as providing a pool of monies and assets to look after family members including children and grandchildren at the time of an accident, sickness, permanent disability, death, pre-retirement and retirement. To make the most of your SMSF, turn it into a Family SMSF or even a Leading Member Family SMSF.

*This is the end of the Product Disclosure Statement for a Self-Managed Superannuation Fund.*

# Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.

- ! We strongly recommend you undertake a free trustee education course before reading and signing this declaration. For more information visit [ato.gov.au/smsf](https://ato.gov.au/smsf) and search 'approved education courses'.

## Who should complete this declaration?

You must complete this declaration if you become a trustee or director of a corporate trustee (trustee) of:

- a new self-managed super fund (SMSF)
- an existing SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you:

- have undertaken a course of education in compliance with an education direction
- are a legal personal representative who has been appointed as trustee on behalf of a:
  - member who is under a legal disability (usually a member under 18 years old)
  - member for whom you hold an enduring power of attorney — deceased member.

## Understanding your obligations

We have a range of services available to help you understand your obligations and keep up to date with the latest news for SMSF trustees.

To subscribe to our news and alerts service visit [ato.gov.au/smsf](http://ato.gov.au/smsf) and search 'news and alerts'.

For more information on free approved trustee education courses visit [ato.gov.au/smsf](http://ato.gov.au/smsf) and search 'approved education courses'.

## Before completing this declaration

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

- If you have any difficulties completing this declaration or you do not fully understand the information it contains:
  - speak to a professional adviser
  - visit [ato.gov.au/smsf](http://ato.gov.au/smsf)
  - phone us on 13 10 20.

## When completing this declaration

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

## What should you do with the declaration?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

- ⚠ Do not send your completed declaration to us unless we request this from you.

## I understand that as an individual trustee or director of the corporate trustee of

Fund name

Van Den Durpel - Latimer Super Fund

I am responsible for ensuring that the fund is operated in accordance with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing trustees' compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### Sole purpose

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

### Trustee duties

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best financial interests of all the members of the fund
- keep records of decisions made about the running of the fund, including the appointment of professional advisers and the retirement of members and payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

### Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- giving financial assistance using the resources of the fund to a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers, allowed by special determinations or acquisitions from the trustee or investment manager of another regulated super fund as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund

- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- acquiring an in-house asset if the fund's in-house assets exceed 5% of the market value of the fund's total assets, or the in-house assets will exceed 5% of the market value of the fund's total assets by acquiring the asset (in-house assets are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

**Administration**

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees, the retirement of members and payment of benefits)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
  - documented decisions about storage of collectables and personal use assets
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund including asset market valuation
  - copies of Transfer balance account reports lodged
  - copies of any other statements you are required to lodge with us or provide to other super funds
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- review the independent audit report received from the approved SMSF auditor and take action as required
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 21 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**

*By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:*

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *Administrative penalties can be imposed on me for not complying with the legislation*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

Stijn Roger Denise Maurice Herman Van Den Durpel

Trustee's or director's signature

[Signature box]

Date

Day: [ ][ ] / Month: [ ][ ] / Year: [ ][ ][ ][ ]

Witness' name (witness must be 18 years old or over)

[Witness name box]

Witness' signature

[Witness signature box]

Date

Day: [ ][ ] / Month: [ ][ ] / Year: [ ][ ][ ][ ]

# Trustee declaration

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A separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you:

- have undertaken a course of education in compliance with an education direction
- are a legal personal representative who has been appointed as trustee on behalf of a:
  - member who is under a legal disability (usually a member under 18 years old)
  - member for whom you hold an enduring power of attorney — deceased member.

## Understanding your obligations

We have a range of services available to help you understand your obligations and keep up to date with the latest news for SMSF trustees.

To subscribe to our news and alerts service visit [ato.gov.au/smsf](http://ato.gov.au/smsf) and search 'news and alerts'.

For more information on free approved trustee education courses visit [ato.gov.au/smsf](http://ato.gov.au/smsf) and search 'approved education courses'.

## Before completing this declaration

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

- If you have any difficulties completing this declaration or you do not fully understand the information it contains:
  - speak to a professional adviser
  - visit [ato.gov.au/smsf](http://ato.gov.au/smsf)
  - phone us on 13 10 20.

## When completing this declaration

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

## What should you do with the declaration?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

- ! Do not send your completed declaration to us unless we request this from you.



## I understand that as an individual trustee or director of the corporate trustee of

Fund name

Van Den Durpel - Latimer Super Fund

I am responsible for ensuring that the fund is operated in accordance with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing trustees' compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### Sole purpose

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

### Trustee duties

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best financial interests of all the members of the fund
- keep records of decisions made about the running of the fund, including the appointment of professional advisers and the retirement of members and payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
  - the financial situation of the fund
  - the investments of the fund
  - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

### Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- giving financial assistance using the resources of the fund to a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers, allowed by special determinations or acquisitions from the trustee or investment manager of another regulated super fund as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund

- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- acquiring an in-house asset if the fund's in-house assets exceed 5% of the market value of the fund's total assets, or the in-house assets will exceed 5% of the market value of the fund's total assets by acquiring the asset (in-house assets are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

**Administration**

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees, the retirement of members and payment of benefits)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
  - documented decisions about storage of collectables and personal use assets
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund including asset market valuation
  - copies of Transfer balance account reports lodged
  - copies of any other statements you are required to lodge with us or provide to other super funds
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- review the independent audit report received from the approved SMSF auditor and take action as required
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 21 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**

*By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:*

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *Administrative penalties can be imposed on me for not complying with the legislation*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

Gina Claudine Latimer

Trustee's or director's signature

[Signature box]

Date

Day: [ ] [ ] / Month: [ ] [ ] / Year: [ ] [ ] [ ] [ ]

Witness' name (witness must be 18 years old or over)

[Witness name box]

Witness' signature

[Witness signature box]

Date

Day: [ ] [ ] / Month: [ ] [ ] / Year: [ ] [ ] [ ] [ ]