

"Annexure A"



**PJCA
SUPERANNUATION FUND**

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

Rules of the Fund prepared by:
Robert Richards
Robert Richards & Associates
Revenue and Corporate Law

Product Disclosure Statement
prepared by:
Grant Abbott
SMSF Strategies
Self Managed Superannuation
Specialist

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It may seem strange but the government now includes as financial products various superannuation interests that may be found in a SMSF including, but not limited to:

- ▶ the making of a contribution into a fund;
- ▶ the payment of a SMSF income stream including a transition to retirement income plan;
- ▶ taking a disability benefit;
- ▶ putting in place an investment strategy;
- ▶ paying out benefits in the event of a member's death;
- ▶ making an investment that is a financial product;
- ▶ withdrawal of a lump sum from the fund;
- ▶ creating an insurance plan for the trustee of the fund.

It is important to understand that it is the trustee's responsibility to provide members and prospective members with a PDS. This is the case even though the members of the fund may be trustees or directors of the corporate trustee. This PDS is provided by the trustee whose name and address may be found in the Rules.

3. Superannuation Product Comparisons

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

The following table is an indicative guide that seeks to highlight the main differences between the most common forms of superannuation for a member of a superannuation fund. However before choosing any type of superannuation, a member should seek professional advice. A professional superannuation adviser can provide a detailed understanding of the differences between various types of superannuation fund.

Feature	Self Managed Superannuation Fund	Retail Superannuation Fund	Industry Superannuation Fund
Investment choice	Unlimited*	Limited	Limited
Control of the fund	Yes as trustee or director of a trustee company	No	No
Compliance responsibilities	Full responsibility of the member as trustee or director of a trustee company	None	None
Fees payable: - Establishment - Ongoing	Yes Flexible	Yes % Funds under management	Nil % Funds under management or set fee per month
Pension types available	Wide range *	Restricted	Restricted
Death benefits available: - Lump Sums - Pensions	Yes Yes	Yes Yes - Limited	Yes Yes - Limited
Disability benefits			

2. Providing a supplement to salary while working

The governing rules provide a member of the fund with the ability to access superannuation benefits before retirement as a transition to retirement income stream. Prior to the introduction of these new rules on 1 July 2005, small business owners, trades people, executives and other workers looking to cash in and use their superannuation had to permanently retire from the workforce. The transition to retirement rules provide that once a person reaches age 55 (if they are born before 1960 – a later age applies for those born after 1960) they can *access all or part of their superannuation* as an income stream provided the income stream is not taken as a lump sum. Once they retire, provided the income stream allows, they may be able to take part or all of their superannuation as a lump sum.

3. Provide a secure income in retirement

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

For example if the member commences an allocated pension this pension only lasts as long as the underlying pension capital remains. If the capital reduces to nil, then the pension ceases. On the other hand where the member commences a market linked pension the pension can be payable up until the member's 100th birthday and in some instances the 100th birthday of their spouse. Trustees seeking to pay a member a pension should ensure that they receive advice from a SMSF adviser as the government made a number of important changes to pensions paid from superannuation funds from 1 January 2006 and also in the Simpler Super reforms that will commence from 1 July 2007. If the trustee breaches these rules the fund may be considered a non-complying SMSF and the trustee may be liable to serious financial penalties and possible imprisonment.

4. Offering a financial helping hand if your health deteriorates

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

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

5. Investment choice

One of the major reasons that SMSFs have become so popular is the ability of the trustee to invest the Fund's assets so as to reflect a member's wishes. The governing rules of the *Strategist* SMSF provide the trustee with wide ranging investment powers allowing the trustee to invest in shares, property, trusts, options, bonds, overseas investments as well as property development ventures. However the trustee must ensure, in terms of any investment that:

- ▶ All investments must be made at arm's length;
- ▶ The trustee may not lend to members or related parties;
- ▶ The trustee may not invest more than 5% of the assets of the Fund in related entities such as a unit trust that the member controls or in shares of an employer that contributes to the Fund;

The Simpler Super reforms introduce major taxation changes to SMSFs from 1 July 2007. These changes include:

- ▶ The age based deductible contribution limits are to be abolished including the special rules for individuals making deductible contributions;
- ▶ Taxable contributions, including those paid by an employer and deductible member contributions will be subject to ordinary 15% tax in the fund up to a limit of \$50,000 per member (across all superannuation fund investments). For those aged 50 or more at 1 July 2007 a \$100,000 cap applies until 30 June 2012. Any amounts in excess of the threshold will be subject to tax in the fund at 45%;
- ▶ Pension and lump sum payments to members after the age of 60 will be tax free;
- ▶ The reasonable benefit limit rules which used to cap the amount of concessional tax benefits from a superannuation fund will be abolished.

7. Looks after your family when you die

In many instances a Fund is the most flexible, most targeted and the most tax effective vehicle to provide lump sums or income streams to a member's spouse or children when the member dies. For example a Fund may provide a minor dependant of a deceased member with an income stream until the minor reaches age 35. This pension income is tax free to the minor if the minor has no other assessable income and the amount is less than \$26,000. As with incapacity benefits referred to above, the quantum of the benefits payable to a member's dependants or their legal estate may be enhanced where the trustee has chosen to insure or self-insure against the member's life.

The Simpler Super reforms mean that a member of a SMSF may now leave their benefits in a lump sum account for the remainder of their lives to draw upon at will. Any monies left over in the lump sum account on death may be passed to a deceased member's dependants tax free. If the member also has a pension account, then the account balance can be paid tax free to a dependant or if the member has made the pension reversionary it can continue to be paid to a dependant. If the deceased was over age 60 at the time the pension will be tax free in the dependant's hands. Otherwise it will be included in the dependant's assessable income but will attract a 15% tax rebate.

8. Access to the age pension

Benefits from a Fund are treated favourably for Centrelink purposes. In terms of the assets test, the member's account balance in the Fund is not tested until the member becomes entitled to an age pension – for a male this is at age 65 and for a female it is currently at age 62 but increasing to age 65 by 2014. On becoming entitled to the age pension and only until 20 September 2007 a member may commence a partially assets test exempt pension from the Fund.

The underlying capital from which such a pension is paid is discounted by 50% for assets test purposes and favourably treated for income test purposes. This may enable some members to access the age pension, on top of the private pension that they receive from a Fund, if they choose to transfer the majority of their assets into the Fund (subject to the investment restrictions and excluding the family home). However partially assets test exempt pensions will be abolished from 20 September 2007 under the proposed Simpler Super reforms. Instead from this date the current assets test taper rate will be reduced to \$1.50 per fortnight for every \$1,000 of assets above the assets test free threshold.

9. Protection from creditors

Protecting assets from creditors is a major concern for many people. One of the key benefits of a superannuation fund is that when a person gets into serious financial difficulty, a member's benefits – up to a generous limit now of about \$1.3 million – may be protected from creditors. However clawback rules apply where a person has sought to escape their creditors by deliberately transferring assets or monies into a SMSF. One downside of bankruptcy is that

Benefits of a Trustee Company v Individual Trustees

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

8. Responsibilities of the Trustee

Being a trustee or director of a trustee company provides the member/trustee with a wide range of investment and other powers not seen in retail, employer and industry based superannuation funds. However, being a trustee is also about legal responsibility. This means at all times, a trustee is required to act honestly, prudently and in the best interests of members in relation to all matters concerning the Fund.

Member and prospective members should be aware that both civil and criminal penalties can be imposed under the superannuation laws for any breach of these and other trustee responsibilities including breaking the Fund's governing rules. Prior to accepting an appointment as trustee, it is important that a person consider the risks associated with such an appointment. The excuse that the trustee was not aware of the superannuation laws or the rules of the Fund is not valid at law. If a person is unwilling to take on the responsibilities as trustee or director of a trustee company then it may be advisable to become a member of a retail or industry based superannuation fund.

Some of the more important responsibilities of a trustee include but are not limited to:

- ▶ Act honestly;
- ▶ Act in the best interests of members and other beneficiaries;
- ▶ Keep the money and assets of the Fund separate from the trustee's personal assets and money or those of another person including other trusts, companies and businesses that the member or trustee may have an interest in;
- ▶ Formulate and implement an investment strategy for the Fund. This strategy must follow the fund's investment objective and should be detailed and in writing;
- ▶ Abide by the rules of the Fund at all times;

30 June 2007 to allow members with plans in place to make undeducted contributions of up to \$1,000,000 provided they meet the relevant work test in the superannuation laws. Averaging rules will apply allowing a member to contribute \$450,000 in one year providing no further contributions are made in the following two income years.

There are two exemptions to these new rules; the first entitles a member to contribute amounts up to a lifetime limit of \$1m (indexed) from the sale of assets qualifying under the small business capital gains tax (CGT) concessions. This exemption will also apply to pre-CGT assets that would otherwise have qualified but for their pre-CGT status or to assets sold as a result of the business owner suffering permanent incapacity.

The second exemption entitles a member to contribute the proceeds of any settlement received for injuries resulting in permanent disablement;

- ▶ *Transfers* - A member may transfer benefits into and out of the Fund;
- ▶ *Investments* - A member may request the trustee to set a separate investment strategy in the Fund for the member;
- ▶ *Retirement Benefits* - The trustee may pay the member a retirement benefit by way of a lump sum or a pension;
- ▶ *Access to benefits while still working* - The trustee may commence a transition to retirement income stream where a member has reached their preservation age;
- ▶ *Incapacity Benefits* - The trustee may pay the member an incapacity benefit in the event the member is temporarily or permanently incapacitated;
- ▶ *Death Benefit Nominations* - The trustee may accept a binding death benefit nomination from a member requiring the trustee to comply with the member's death benefit wishes in the event of the member's death;
- ▶ *Death Benefits* - The trustee may pay death benefits by way of a lump sum or a pension to the deceased member's legal estate or their dependants in such proportions and in such manner as the trustee sees fit unless a binding death benefit nomination is operative.

11. Income Stream Entitlements

A member or a dependant of a member may become entitled to an income stream. In a SMSF the income streams available include the allocated pension, the non-commutable allocated pension, the market linked pension and the proposed flexible pensions under the Simpler Super reforms (once enacted). However each style of pension has a wide range of options including term, range of income options each year and what may happen on the death of a deceased pension member. The rules regarding both allocated and market linked pensions were changed with effect from 1 January 2006 and the *Strategist* SMSF governing rules reflect these changes and the opportunities created therein. The proposed Simpler Super reform flexible pensions are allowed under the *Strategist* rules. More details on the four types of income stream are found below:

1. The allocated pension

In essence an allocated pension is a lump sum draw down account where the member must receive at least a minimum amount from the member's allocated pension account each year and no more than a maximum amount. The factors for determining the minimum and maximum amounts are laid down in the superannuation laws. For allocated pensions that commenced prior to 1 January 2006 the minimum and maximum factors can be found in Schedule 1A of the *SIS Regulations*. For allocated pensions commenced after this time the relevant factors are found in Schedule 1AAB. Importantly the factors in Schedule 1AAB provide lower minimum amounts thereby enabling a member to run the pension longer where only the minimum amount is taken each year.

concessions such as the 15% tax rebate on pension income. However with the abolition of RBLs effective from 1 July 2007, members must be careful of using a market linked pension as it cannot be commuted.

As a further incentive for members to provide for their own retirement by way of a market linked pension, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* provides a 50% exemption for assets backing the market linked pension. For the purposes of these two Acts the assets test provides a means tested threshold that limits the amount of age pension a person can obtain from the government after age pension age. For example if a 66-year-old male member with \$700,000 in superannuation benefits commenced a market linked pension on 1 July 2006, the member would only include 50% of those benefits for assets test purposes. The market-linked pension like the allocated pension is treated favourably under the incomes test. However partially assets test exempt pensions will not be able to be commenced after 20 September 2007 under the Simpler Super reforms.

4. The Simpler Super reform pensions

The Simpler Super reforms propose to make pensions simpler by removing many of the rules. Importantly if a pension is put in place prior to 1 July 2007 this may continue and would be deemed to be a suitable pension. The pensions proposed under the reforms will generally be commutable, have a band for minimum draw downs (see below) but cannot be built with a residual capital value unlike current allocated pensions. In addition for transition to retirement pensions, a maximum 10% draw down is available in any one income year.

Ages	% of account balance to be taken
55-64	4
65-74	5
75-84	6
85-94	10
95+	14

Before commencing any pension, a member should seek SMSF advice to ensure that their current income, tax concession, RBL and social security entitlements are maximised and built into the pension commenced.

12. Estate Planning

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

A dependant under the *SIS Act* includes a person who is a financial dependant and includes a person who, although is not financially dependant, is the spouse or child of the deceased person. It also includes a person who is in an interdependent relationship with the deceased member such as a sister living with a member or possibly the same sex partner of a member who lives under the same roof. A member may also direct some or all of their superannuation benefits into their legal estate on death and allow those benefits to be distributed according to the deceased's will. This includes a pension that may have been payable to a member at the time of their death.

Any such direction is made in writing and known as a death benefit nomination. There are two types of nomination – a binding death benefit nomination ("BDBN") and a non-binding death benefit nomination ("NBDBN"). A BDBN is one where a member requests that the trustee pay all or part of their benefits – either by way of pension or lump sum – to a nominated dependant

13. Taxation of the Fund and Members

One of the major benefits of commencing a SMSF is that the Fund may be concessional tax on its income and members may be concessional tax on benefits received from the Fund. Importantly these taxation concessions only apply where a Fund is a complying superannuation fund during the income year. A non-complying SMSF is taxed at a rate of 45% on its income and capital gains. This once again emphasises the need for trustees to be vigilant in monitoring the compliance of the Fund and ensuring that they abide by the governing rules of the Fund and also the relevant superannuation and taxation laws.

Taxation of the Fund

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

- ▶ any taxable income of a complying superannuation fund is taxed at a 15% rate excluding income that is special income, such as private company dividends and non-arms length income received by the Fund. Special income is taxed at a 45% rate;
- ▶ any capital gains earned by the trustee upon the disposal of an asset that has been held for more than one year is entitled to a 33 1/3% discount;
- ▶ the trustee is to include in its assessable income any contributions (taxable contributions) it receives excluding contributions from a member on their own behalf for which they have not claimed a tax deduction and contributions made on behalf of a spouse or child under the age of 18;
- ▶ any income or capital gains earned on assets that are being used by the trustee to provide pensions is exempt from taxation provided that the trustee has segregated those assets from the accumulation assets of the Fund. Upon segregating, the Fund will have two parts – the accumulation side and the pension side, each with different taxation consequences. If the trustee does not segregate the assets of the fund when a pension commences then a portion of the income and capital gains of the fund will be tax exempt according to an actuarial report that the trustee is required to obtain;
- ▶ the trustee may obtain a tax deduction for premiums paid for life insurance, permanent disability and temporary incapacity (where the term of the contract is no longer than 2 years). The trustee may also receive a tax deduction for self-insurance provided an actuary determines the arms length amount of the premium that could have been claimed. The *Strategist* SMSF governing rules allow the trustee to self insure;
- ▶ where a member dies or becomes permanently incapacitated prior to age 65 and while they are working the trustee may obtain a significant tax deduction based on a proportional amount of benefit paid to the member or the member's dependants or legal estate;
- ▶ where a member dies and the trustee has included some of the contributions on behalf of the member in its assessable income in prior years, then the trustee may be able to claim a tax deduction for any bonus payment made to the deceased member's dependants or legal estate to compensate them for tax paid on these contributions. However this bonus payment must be established by the trustee as being for the specific purpose of making such anti-detriment payments.
- ▶ The Simpler Super reforms propose that the first \$50,000 of taxable contributions per member (across all superannuation funds) are to be taxed at the normal superannuation fund tax rate of 15%. For members over age 50 at 1 July 2007, a \$100,000 limit applies until 30 June 2012. Any amounts over these limits are to be taxed in the trustee's hands at a rate of 45%.

14. Appointment of Specialists

The superannuation and taxation laws, particularly as they apply to SMSFs are complicated. Serious breaches may render a fund to be a non-complying superannuation fund, which is taxed on its income at a rate of 45%, and the trustee may be subject to financial and criminal penalties.

The rules allow a trustee to appoint managers, advisers, and to engage other specialists to assist the trustee in the management of the Fund. It is highly recommended that the trustee appoint an experienced SMSF auditor and SMSF adviser to look after the Fund.

15. Costs and Expenses of the Fund

SMSFs can be costly to run depending on the size of the Fund as most of the costs are fixed. For example the costs of administering a fund with assets of \$100,000 may be the same as a fund with \$2M in assets.

However administration costs, although important are not the only costs for a trustee to manage and operate a complying SMSF. Some other costs include but are not limited to:

- ▶ The acquisition of the deed and the rules and establishment of the Fund as a regulated self managed superannuation fund;
- ▶ The potential acquisition of a trustee company – see above on why a special purpose trustee company is recommended;
- ▶ The provision of specialist advice to the trustee or members in relation to the establishment of the Fund, restructuring of assets into the Fund, plans for member retirement incomes, incapacity benefits or benefits payable in the event of the member's death;
- ▶ The provision of investment advice concerning the development and implementation of the Fund's investment strategy;
- ▶ The acquisition by the trustee of insurances for the Fund for the benefit of members including life, total and permanent disablement as well as temporary incapacity insurances;
- ▶ Administration, accounting and audit fees in relation to the provision of audited accounts and complying certificate as required by the superannuation laws;
- ▶ The provision of actuarial advice should the Fund self-insure or the trustee pay a pension to any member or their dependant in the event of the member's death.

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

THE RULES OF THE FUND

Note – terms capitalised are defined in the Definitions.

Part One: Establishment of the Fund

Purpose of the Fund

Rule 1. The Fund must satisfy the sole purpose test

Explanation

The Fund must be established and must be maintained solely for the provision of Core Purposes or for the provision of Core Purposes and Ancillary Purposes.

The SIS Act defines Core Purposes to include the provision of Benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.

The SIS Act also provides that the Trustee may maintain the Fund for both Core Purposes and for Ancillary Purposes. An Ancillary Purpose may include the provision of Temporary or Permanent Incapacity Benefits to a Member where the Member terminates employment as a consequence of ill health.

An Ancillary Purpose also includes the provision of such Benefits as the Regulator has approved in writing.

Rule

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

Appointing the Trustee

Rule 2. Who may and may not be a Trustee

Explanation

The Fund must have a Trustee.

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

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

except that a Legal Personal Representative may also be a Trustee.

On the Death of a Member the Legal Person Representative of that Member should be appointed as a Trustee or as director of a company that is a Trustee – see Rule 51.

Who may not be a Trustee

2.9. A person cannot be a Trustee if:

- (a) at any time
 - (i) the person was convicted of an offence against or arising out of a law of the Commonwealth of Australia, a State or a Territory of Australia or a foreign country, being an offence in respect of dishonest conduct; or
 - (ii) a Civil Penalty Order was made in respect of the person; or
- (b) the person is an insolvent under administration; or
- (c) a Regulator has disqualified the person (for the purposes of section 120A of the SIS Act) and the Regulator has not waived that person's status as a disqualified person.

2.10. A company cannot be a Trustee if:

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

2.11. Notwithstanding Rules 2.9 and 2.10 above a person or company can be appointed as a Trustee if that appointment as a Trustee is authorised by the Regulator.

- 3.4.** Upon retirement of a Trustee and at the direction of that Trustee one of the following is appointed as Trustee in place of the Trustee who has retired:
- (a) if that Trustee is a person - another person who is a Member or a Legal Personal Representative of a Member or a company of which the Member or the Legal Personal Representative of the Member is a director; or
 - (b) if that Trustee is a company - a company all the directors of which are Members or are Legal Personal Representatives of Members
- provided that person or company is not already a Trustee.

Becoming a Regulated Superannuation Fund

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

Explanation

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

Rule

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

Trustee Operations and Obligations

Rule 5. Removal and Retirement of a Trustee

Explanation

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

Rule

- 5.1.** A Member may retire as a Trustee provided:
- (a) a company of which the Member is a director is appointed as Trustee; or
 - (b) a Legal Personal Representative of that Member is appointed as a Trustee.
- 5.2.** If the Fund has only one Member, a person who is not a member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.
- 5.3.** A company may retire as a Trustee provided:
- (i) all the directors of that company are appointed as Trustees; or
 - (ii) another company is appointed as a Trustee, provided the directors of that company are also directors of the company retiring as Trustee.
- 5.4.** Notwithstanding any Rule a Trustee may retire as Trustee of the Fund if an Approved Trustee is or has first been appointed as the Trustee of the Fund;

Rule 7. Meetings of the Trustees

Explanation

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

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

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

Where the Trustee is a company decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case meetings of the company must be held in accordance with the constitution of that company. It is important that the constitution of any company that is a Trustee be compatible with the Rules.

These Rules are designed to ensure that Members would normally vote according to their interests in the Fund. The constitution of the Strategist special purpose company contains rules that are designed to only allow directors of any such company to vote at directors' meetings of that company according to the directors' interests in the Fund (or the interests of those Members who those directors represent).

Rule

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

Rule 9. Trustee's covenants

Explanation

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

Rule

A person by accepting appointment as a Trustee agrees:

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

Rule 12. Application Form

Explanation

A person wishing to become a Member must provide the Trustee with an Application Form.

The Application Form may (amongst other things) require such a person to:

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

Rule

- 12.1.** A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has completed an Application Form in the form required by the Trustee and has confirmed in writing that he or she has read the Product Disclosure Statement, Deed and Rules of the Fund and has agreed to be bound by the Rules of the Fund.
- 12.2.** Where a person may be entitled to be paid a Pension following the death of a Member and that person does not wish to become a Member or the Trustee decides that the person should not become a Member then the Trustee is to transfer that amount as is in or would have been added to a Member's Pension Account to fund the payment of the Pension to that person to another Complying Superannuation Fund or Eligible Rollover Fund. Any such transfer is to be made in accordance with Rule 26 and must occur within three months of the time that the person became entitled to be paid a Pension.

Rule 13. Receipt of an Application Form

Rule

- 13.1.** On receipt of an Application Form from a person and after that person produces such documents and evidence, and submits to such medical examination and checks, as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.
- 13.2.** Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for membership whether or not that person has been accepted for admission as a Member and whether or not any conditions will be attached to that person's membership of the Fund.
- 13.3.** If the Trustee has agreed to accept a person as a Member but subject to conditions as to that person's membership that person can within 6 weeks of notification by the Trustee pursuant to Rule 13.2 either accept or reject that offer of membership.
- 13.4.** If after six weeks a person neither accepts or rejects an offer of membership of the Fund that person shall be deemed to have rejected that offer of membership.

Rule 15. Binding Death Benefit Nomination

Explanation

The SIS Act states that if the Rules of a Fund permit it a Member of the Fund may require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member. The Member does this by making what is commonly referred to as a "Binding Death Benefit Nomination"

These Rules allow the Trustee to accept a Binding Death Benefit Nomination. However the Trustee must first provide a Member with sufficient information for the purpose of submitting a Binding Death Benefit Nomination.

The Member may amend a Binding Death Benefit Nomination at any time provided the Trustee is notified in writing of that amendment.

A Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member.

A Binding Death Benefit Nomination is quite limited and accordingly a Member who wishes to have certainty when providing for a Dependant should consider making use of one of the other options available as detailed in Rules 16 and 17.

Rule

- 15.1.** The Trustee must when required to do so by the Act provide a Member with that information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 15.2.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 15.3.** The Trustee may accept or reject a Binding Death Benefit Nomination. If the Trustee accepts a Binding Death Benefit Nomination the Trustee shall be bound to act in accordance with that Binding Death Benefit Nomination. If the Trustee does not accept a Binding Death Benefit Nomination within six months of receiving it it is deemed to have been rejected. If the Trustee rejects the Binding Death Benefit Nomination the Member or the Legal Personal Representative of a Member may submit another Binding Death Benefit Nomination.
- 15.4.** A Binding Death Benefit Nomination:
 - (a) must be in writing;
 - (b) must require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
 - (c) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
 - (i) each of whom has turned 18; and
 - (ii) neither of whom is a person mentioned in the notice; and
 - (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member or the Legal Personal Representative of a Member in his or her presence.

Rule 17. Terms and conditions of a Pension deemed to be a Rule

Explanation

Rule 47.2 states that the Trustee must document the terms and conditions set down for the payment of a Pension and notify the Member of these terms and conditions. This Rule deems that those terms and conditions to be part of the Rules.

This ensures that where for example the terms and conditions of a Pension provide for a reversion of the Pension on death of the Member to their Spouse, Dependant or Legal Personal Representative the Trustee is bound to act in accordance with those terms and conditions.

Rule

A Member or the Legal Personal Representative of the Member may in writing notify the Trustee of his or her acceptance of the terms and conditions of a Pension payable according to Rule 47 as a Rule. Upon that acceptance by the Member or the Legal Personal Representative of the Member those terms and conditions will be deemed to be a Rule.

Part Two: Operation and Administration of the Fund

Termination of Membership

Rule 18. Expulsion of a Member

Explanation

The object of this Rule is to allow the Trustee to expel a Member for any reason the Trustee considers necessary. The Trustee might do this if the Trustee felt that a Member's continued membership of the Fund was not in the interests of the Fund. An example might be where there is a family break down and inter personal relationships threaten the viability of the Fund.

Rule

- 18.1.** The Trustee may expel a Member as a Member of the Fund for any reason that the Trustee determines. At the same time the person must retire as Trustee of the Fund.
- 18.2.** If a Member is expelled from the Fund pursuant to Rule 18.1 the balance of the Member's Accounts is to be transferred to such other Superannuation Entity as requested by the Member and if the Trustee of the Fund has not received a transfer notification from a Member or former Member within a period of sixty days from the time the Trustee notified the Member of their expulsion, the Trustee may transfer the Member's Accounts to an Eligible Rollover Fund.

Rule 21. Additions to a Member's Account

Explanation

Additions to a Member's Account will normally represent Contributions, roll-overs or Earnings. Additions may also include an allocation made by the Trustee from a Reserve into a Member's Account.

Contributions may include Splittable Contributions that have been transferred from a Member's Spouse in accordance with the spouse contributions splitting rules in the Act - see Rule 26.

Rule

On the last day of each month or such other time as the Trustee might determine or on any earlier date as required by the Act the Trustee shall add to a Member's Account:

- (a) the amount of Contributions received by the Trustee for the benefit of the Member; and
- (b) at the discretion of the Trustee such part of the Earnings as the Trustee believes should be added to that Member's Account; and
- (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account; and
- (d) any amount to which a Member is entitled because of a Payment Split; and
- (e) such other amounts including allocations of Reserves as the Trustee might determine;

provided that any such addition to the Member's Account does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 22. Deductions from a Member's Account

Explanation

Deductions from a Member's Account will normally represent expenses directly attributable to the Member or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include any losses which the Trustee believes should be attributed to that Member and any transfers such as transfers of Splittable Contributions taken by the Trustee from a Member's Account and transferred to another account.

Rule

On the last day of each month or such other time as the Trustee might determine or on any earlier date as required by the Act the Trustee shall deduct from a Member's Account:

- (a) that part of the expenses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (b) that part of any losses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (c) the amount of any payments of Benefits made to the Member or any other person from that Member's Account; and
- (d) the amount of any Taxes payable by the Trustee that the Trustee believes should be deducted from that Member's Account; and
- (e) the amount of any Splittable Contributions that the Trustee has agreed to deduct from that Member's Account; and

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

Rule

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

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

Rule 25. The Trustee may accept a transfer from another Superannuation Entity

Explanation

A Member may request the Trustee to accept a transfer of an amount from another Superannuation Entity.

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

Rule

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

Rule 26. Allotments, Transfers and Rollovers of Benefits

Explanation

A Member may request the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account. The Trustee may also at its discretion so allot, transfer or rollover all or part of a Member's Account.

Examples of where such transfers might be appropriate are:

- *upon receipt of a request from a Member to transfer an amount of Splittable Contributions from their Member's Account to their Spouse's Member's Account;*
- *where a Payment Split is required to be made for the purposes of Part VIIIIB of the Family Law Act 1975; and*
- *where one Member separates from his or her Spouse who is also a Member.*

Rule

26.1. If a Member or the Legal Personal Representative of the Member:

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

or if the Trustee is required by law or agreement made for the purposes of the *Family Law Act 1975* the Trustee shall within such period as required by the Act or other law,

- 27.3.** The investment strategy may consist of one strategy for the whole of the Fund or separate investment strategies for the various parts of the Fund.
- 27.4.** The Trustee may amend an investment strategy from time to time. If the Trustee amends an investment strategy all Members affected by any such amendment shall be advised in writing of all details of the amendment.
- 27.5.** A Member may at any reasonable time request the Trustee to produce the investment strategy for inspection and the Trustee shall comply with this request by the Member.
- 27.6.** The Trustee must also set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the Reserve or such other requirements as laid down in the Act.
- 27.7.** In setting the investment strategy the Trustee may act on the advice of an investment adviser provided the Trustee reasonably believes that the adviser is qualified and has the necessary skills to provide such advice.

Rule 28. The Trustee must invest the assets of the Fund

Explanation

The Trustee must invest the assets of the Fund.

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

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

Rule

The Trustee must invest the assets of the Fund in accordance with the Fund's investment strategy.

Rule 29. A Member can request the Trustee to invest their account separately or jointly

Explanation

The Trustee may adopt a "pooled investment strategy" or a "separate investment strategy" for the Fund. A Member may request the Trustee to adopt a separate investment strategy for that Member.

Rule

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

Rule 30. Authorised investments

Explanation

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

Rule 31. Trustee Powers

Explanation

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

Rule

- 31.1.** In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall have the following powers:
- (a) *To deal with assets:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
 - (b) *Real property:* to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
 - (c) *Personal property:* to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
 - (d) *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
 - (e) *To let:* to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
 - (f) *Engage specialists:* to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in the Deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
 - (g) *To lend:* subject to these Rules and the Act to lend and advance moneys;
 - (h) *Bank accounts:* to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
 - (i) *Management expenses:* to pay out of the assets, Reserves or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
 - (j) *Pay general expenses:* to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;

open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange provided the Trustee maintains a risk management strategy;

- (r) *Trustee's power to deal with itself:* notwithstanding any rule or law or equity to the contrary:
- (i) to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
 - (ii) to dispose of any beneficial interest in property of the Fund to itself;
 - (iii) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee;
 - (iv) to lease any property of the Fund to itself.
- (s) *Policies:* to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member, to pay premiums transfer, surrender, change the situs of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- (t) *Agency and licences:* to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (u) *Choses-in-action:* to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (v) *Receive gifts or distributions:* to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- (w) *Legal proceedings:* to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (x) *Intellectual property:* to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive

Rule 33. Trustee may receive gifts or distributions

Explanation

The Trustee of the Fund may receive gifts or distributions (additional to investment income derived from any investments made by the Fund) from:

- (ix) any company;*
- (x) any trust including a family trust, testamentary trust or the legal estate of a deceased person;*
- (xi) any partnership;*
- (xii) any government or statutory body;*
- (xiii) any business, commercial or investment enterprise.*

so long as the acceptance of any such gift or distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Gifts or distributions received by the Fund can be in cash or property.

Distributions would normally be from a trust - note that there can be adverse tax consequences if the Fund receives a distribution from a private trust.

Rule

- 33.1.** The Trustee can accept a distribution or a gift made to the Fund provided the Fund will not by reason of acceptance of that distribution or gift become a Non-Complying Self Managed Superannuation Fund or the Trustee otherwise resolves that the Trustee should not accept that distribution or gift.
- 33.2.** The Trustee may allocate any such distribution or gift at its discretion to the Earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines including the payment of a pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

Rule 34. The Trustee must not borrow

Explanation

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

Rule

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

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

Determination of and allocation of the Earnings

Rule 35. The Trustee must determine and allocate the Earnings of the Fund

Explanation

The Trustee must determine the Earnings of the Fund each Financial Year.

Taxation

Rule 37. Payment of Tax and allocation to Members' Accounts

Explanation

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

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

Tax is levied at a rate of 15% on the net income of a Complying Superannuation Fund (although "special income" is taxed at a rate of 47%). The allowance of any imputation credits received on franked dividends derived by the Fund will reduce the effective rate of Tax payable by the Fund.

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

The Fund might also be subject to a Superannuation Contributions Surcharge imposed on the gross amount of Contributions received by the Fund (although this tax is only levied on contributions made before 1 July 2005).

Tax payable by the Fund need not be deducted from the Member's Account of any particular Member-it might be paid from a Reserve or deducted from Earnings.

Rule

- 37.1.** The Trustee must pay all Tax properly assessed to the Trustee.
- 37.2.** The Trustee may in its discretion deduct from a Member's Account Tax paid or payable by the Trustee:
 - (a) as a consequence of the receipt by the Trustee of a Contribution for the benefit of a Member,
 - (b) payable on any income added to a Member's Account, and
 - (c) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.
- 37.3.** The Trustee may in its discretion deduct from any account, including a Reserve, Tax paid or payable by the Trustee provided any such deduction will not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 37.4.** If the Trustee receives a refund of Tax the Trustee may add that refund to such Members' Accounts or to such Reserve as it determines provided that addition will not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Annual Accounts

Rule 41. The Trustee must prepare annual accounts

Rule

- 41.1.** The Trustee must keep such accounting records as are required by the Act.
- 41.2.** Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited.
- 41.3.** The Trustee must as soon as practical after the end of each Financial Year:
- (a) prepare a balance sheet recording the assets and liabilities of the Fund as at the end of that preceding Financial Year;
 - (b) prepare a profit and loss account recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year);
 - (c) arrange for the Fund's balance sheet, profit and loss account and accounting records to be audited by an Approved Auditor;
 - (d) arrange for all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required; and
 - (e) prepare any Member and other statements and reports as required by the Act.
- 41.4.** The Trustee must retain the accounts and statements prepared in accordance with Rule 41.3 for a period of 5 years after the end of the Financial Year to which they relate.

Fund Compliance

Rule 42. The Trustee must maintain the Fund's complying status

Explanation

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

In certain cases the Trustee may become aware that it has taken an action that may result in the Fund losing its status as a Non-Complying Self Managed Superannuation Fund. In these circumstances the Trustee must prepare a Compliance Plan that results in the Fund returning to or ensuring its Complying Self Managed Superannuation Fund status.

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

Rule

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

- (a) liaise with the Auditor, adviser or Regulator to determine a Compliance Plan to ensure the Fund's status as a Complying Self Managed Superannuation Fund is maintained;
- (b) notify Members of any action required under the Compliance Plan; and

Part Three: Payment of Benefits by the Trustee

Benefits Payable to a Member

Rule 44. Benefits payable to a Member

Explanation

Members can elect whether to receive a Lump Sum Benefit or a Pension Benefit (or both a Lump Sum Benefit and a Pension Benefit). A Pension Benefit may be able to be paid to a Member once that Member is aged 55 or more even if that Member is still working.

Rule

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

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

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

Rule 45. When must Benefits be paid to a Member

Explanation

This Self Managed Superannuation Fund has been established to provide Benefits to the Members or to their Dependants. This Rule ensures that Benefits are paid in accordance with the Core and Ancillary Purposes of the Fund.

Rule

Subject to any other provision of these Rules, a Benefit must be paid to a Member or a Dependant of a Member or the Legal Personal Representative of a Member once:

- (a) the Member dies; or
- (b) the Member or the Legal Personal Representative of the Member requests payment of a Benefit and the Trustee is of the opinion that a payment may be made to the Member or the Legal Personal Representative of the Member and that the making of the payment will not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund; or
- (c) the Act requires the Benefit to be paid,

unless the Act allows otherwise.

aside by the Trustee to fund payment of the Pension including any amount that should be credited to a Reserve.

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

Incapacity

Rule 48. Member to advise Trustee of incapacity

Rule

- 48.1.** As soon as practical after becoming incapacitated a Member or the Member's Legal Personal Representative shall advise the Trustee of that Member's incapacity. The Member shall submit to whatever medical examination might reasonably be required by the Trustee.
- 48.2.** On receipt of that advice and after receipt of any medical opinion that the Trustee might require the Trustee shall determine whether or not the Member has been Temporarily Incapacitated or Permanently Incapacitated.

Rule 49. Benefits payable for Temporary Incapacity

Explanation

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

Rule

- 49.1.** Where the Trustee is of the opinion that the Member is Temporarily Incapacitated the Trustee may pay a Temporary Incapacity Benefit to the Member provided such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before becoming Temporarily Incapacitated,
 - (b) that date on which the Trustee forms an opinion that the Member has become Permanently Incapacitated,
 - (c) the date of the death of the Member; or
 - (d) such other time as is allowed under the Act.
- 49.2.** Subject to the Act the amount of that Temporary Incapacity Benefit shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.
- 49.3.** The Trustee may draw upon any Reserve to pay a Temporary Incapacity Benefit or, if there are no Reserves, deduct an amount from the Member's Account or any other account the Trustee so determines.

Rule

On death of a Member:

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

Rule 52. Payment of a Death Benefit

Explanation

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

After the death of a Member the Trustee should determine whether it holds a Non-Binding Death Benefit Nomination for the Member, a Binding Death Benefit Nomination for the Member, or has established a Death Benefit Rule at the request of the Member to pay Benefits to particular people in a particular manner and disperse Benefits as authorised by this Rule.

Rule

- 52.1.** On the death of a Member the Trustee shall distribute the balance of the Member's Accounts as a Benefit in accordance with this Rule to one or more of the Member's Dependants, the Member's Legal Personal Representative or any other Account in the Fund including another Member's Account or a Reserve provided any such distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 52.2.** If the Trustee holds a Non-Binding Death Benefit Nomination for the deceased Member the Trustee may but is not obliged to pay such Benefits to such persons as are nominated in that Non-Binding Death Benefit Nomination of the deceased Member.
- 52.3.** If the Trustee holds a Binding Death Benefit Nomination for the deceased Member the Trustee must pay such Benefits in the manner and form as are nominated in that Binding Death Benefit Nomination of the deceased Member. However the Trustee is not required to make a payment under a Binding Death Benefit Nomination if that payment may result in the Fund becoming insolvent.
- 52.4.** If at the request of the deceased Member the Trustee has established a Death Benefit Rule the Trustee must pay any Benefits payable as a consequence of the death of that Member in accordance with that Death Benefit Rule. However the Trustee is not required to make a payment under a Death Benefit Rule if that payment may result in the Fund becoming insolvent.

Part Four: Changes to the Fund

Rule 55. Becoming a Small APRA Fund

Explanation

This Deed is not a suitable deed for a fund that is not a Self Managed Superannuation Fund. A fund will not be a Self Managed Superannuation Fund if it has more than four members.

If the Fund ceases to be Self Managed Superannuation Fund it will be in breach of the SIS Act unless its trustee is an Approved Trustee. An Approved Trustee is some entity – such as a publicly listed trustee company- that APRA has declared may be appointed as the trustee of a fund that is not a Self Managed Superannuation Fund.

Where a fund ceases being a Self Managed Superannuation Fund it must within 21 days of that change provide the Taxation Office with details of that change.

In some instances the members of a fund might believe that even though the fund has less than four members that rather than the members being the Trustees an Approved Trustee should be the Trustee. The Members may not wish to undertake the responsibilities attached to the role of Trustee or may have particular family reasons for wanting an Approved Trustee to be the Trustee. This Rule allows an Approved Trustee to be appointed as the Trustee at any time. These Rules are not suitable to Funds where an Approved Trustee is the Trustee.

Rule

- 55.1.** Notwithstanding any other provision of these Rules at any time the then Trustee may retire as the Trustee and appoint an Approved Trustee as the Trustee.
- 55.2.** If an Approved Trustee is appointed as the Trustee the Members shall forthwith meet and agree to a replacement to these Rules.

Rule 56. The Trustee may amend the Deed or the Rules

Explanation

Given that constant changes are made to the Act it is important the Rules of the Fund can be amended so as to ensure continued compliance with the Act. The rules of most funds are amended or replaced from time to time.

Rule

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

- (a) if there is more than one Member the change is authorised by the Trustees or if the Trustee is a company at a meeting of the directors of the Trustee Company;
- (b) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the Act;
- (c) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the Legal Personal Representative of the Member has in writing consented to any such amendment;
- (d) the amendment does not amend the term of a Pension which has been incorporated as a Rule or a Death Benefit Rule unless the Member or the Legal Personal Representative of the Member who accepted the term of the Pension or who requested the Death Benefit Rule to be incorporated has in writing consented to any such amendment;

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

57.3. After the Trustee has made all such payments as the Trustee is required or has resolved to pay pursuant to Rule 57.2 the Trustee may distribute the remaining assets of the Fund to such charities or public benevolent institutions as it might determine provided any such payment does not breach the sole purpose test or otherwise render the Fund a Non-Complying Self Managed Superannuation Fund.

Part Six: Interpretation

Governing Law

Explanation

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

Rule 58. The governing law is to be nominated by the Trustee.

Rule

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

Status of the Act

Rule 59. The Act is paramount

Explanation

The Rules define the Act to include the SIS Act, the Income Tax Assessment Acts 1936 and 1997 and the regulations made pursuant to those acts.

If the Fund fails to comply with a provision of an Act the Fund might become a Non-Complying Self Managed Superannuation Fund (with the result that it would not be concessionally taxed).

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

Rule

The Rules are subject to the Act. If there is any inconsistency between the provisions of the Act and the Rules the provisions of the Act shall prevail.

Definitions

Rule 61. Definitions

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

Act	The <i>SIS Act</i> , the <i>Income Tax Assessment Act 1936</i> , the <i>Income Tax Assessment Act 1997</i> , the <i>Corporations Act 2001</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
Ancillary Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
Application Form	An application form as referred to at Rule 12.
Auditor	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act or otherwise determined by the Regulator.
Approved Trustee	A trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
APRA	The Australian Prudential Regulatory Authority or any successor authority to that authority.
Associate	A person who is an associate as defined by section 12 of the <i>SIS Act</i> .
Benefit	A benefit or entitlement payable by the Fund in cash or property.
Binding Death Benefit Nomination	A death benefit nomination made by a Member in accordance with Rule 15 that must be followed by the Trustee in the event of the Member's death.
Civil Penalty Order	An order or declaration made by a court under section 196 of the <i>SIS Act</i> .
Child	Any person as defined for the purposes of the Act.
Commencement Date	In relation to a Pension has the meaning given by the <i>SIS Regulations</i> .
Compliance Plan	A plan established for the purpose of Rule 42.
Complying Self Managed Superannuation Fund	A Fund which is a complying self managed superannuation fund for the purposes of section 42A of the <i>SIS Act</i> .

Market Value	The amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale; (b) the sale occurred after proper marketing of the asset; (c) the buyer and seller acted knowledgeably and prudently in relation to the sale.
Member	Any person who is accepted by the Trustee as a member of the Fund.
Member's Account	An account established by the Trustee on behalf of a Member.
Member's Accumulation Account	A Member's Account established by the Trustee, the balance of which is the amount that can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit and / or a Pension Benefit.
Member's Benefit	The amount of a Benefit payable to a Member, their Dependant or Legal Personal Representative in the event of the Member's death as determined by the Trustee.
Member's Pension Account	A Member's Account established by the Trustee from which the payment of a Pension will be debited.
Minimum Benefits	An amount determined by the Trustee of the Fund as a minimum benefit for a Member pursuant to Part 5 of the <i>SIS Regulations</i> .
Non-Binding Death Benefit Nomination	A death benefit nomination as referred to in Rule 14 that is not binding upon the Trustee.
Non-Complying Self Managed Superannuation Fund	A superannuation fund that is not a Complying Self Managed Superannuation Fund.
Payment Split	A "payment split" as defined by section 90MD of the <i>Family Law Act 1975</i> .
Pension Benefit	A Benefit which is a pension as defined by Rule 62.
Permanent Incapacity Benefit	A Benefit payable pursuant to Rule 50.

Specified Work Test	Those conditions found in Part 6 of the <i>SIS Regulations</i> determining the time at which a person must be paid a Benefit from the Fund.
Splittable Contribution	An amount that has the meaning for the purposes of Part 6 of the <i>SIS Regulations</i> .
Solvency Plan	A plan established for the purposes of Rule 43.
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 the husband or wife of the person or such other person as the Act may allow or determine.
Standard-Employer-Sponsor	A person who is a standard-employer-sponsor as defined in section 16(2) of the <i>SIS Act</i> .
Superannuation Entity	<ul style="list-style-type: none"> (a) a superannuation fund, or (b) an approved deposit fund, or (d) a pooled superannuation trust; or (e) a life insurance company or similar entity, <p>whether such an entity is a resident or non – resident of Australia.</p>
Tax	Any tax levied by any taxation law including any surcharge levied pursuant to the <i>Superannuation Contributions Tax Imposition Act 1997</i> (or any successor legislation).
Temporarily Incapacitated	In relation to a Member means a Member who has ceased to be gainfully employed, including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed, because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.
Temporary Incapacity Benefit	A non-commutable income stream payable pursuant to Rule 49.
Termination Date	The date on which the Fund terminates.
Total Member Entitlements	That amount equal to the total value of all Members' Accounts.
Trustee	A person or company appointed a trustee of the Fund under Rule 3.
Trustee Meeting	A meeting as referred to at Rule 7.1.

- (h) a fixed term partially assets test exempt pension payable pursuant to Section 9B of the Social Security Act 1991;
- (i) a lifetime partially assets test exempt pension payable pursuant to Section 5JA of the Veterans' Entitlements Act 1986; or
- (j) a fixed term partially assets test exempt pension payable pursuant to Section 5JB of the Veterans' Entitlements Act 1986

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



