

# **AFREEFORM SUPERANNUATION FUND**

**Deed of Variation, Governing Rules  
and Product Disclosure Statement**

Prepared under license from:  
Glenister & Co  
4/26-28 Aberdeen Street, Macleod VIC 3085

**The SMSF Academy Pty Ltd**  
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**DEED OF VARIATION**  
**OF**  
**AFREEFORM SUPERANNUATION FUND**

THIS DEED IS DATED the                      day of                      20

**PARTIES:**

**AFREEFORM PTY LTD (ACN 104 897 458) of 15 Seine PI, Miranda NSW 2228** (“the Trustee”)

**Barry Smith of 15 Seine PI, Miranda NSW 2228, Joy Phyllis Smith of 15 Seine PI, Miranda NSW 2228, Sharon Joy Knight of 15 Seine PI, Miranda NSW 2228 and Rodney Raymond Smith of 36 Holt Rd, Sylvania NSW 2224** (“the Members”)

**RECITALS:**

- a) **AFREEFORM PTY LTD** acts as Trustee of AFREEFORM SUPERANNUATION FUND (“the Fund”).
- b) **Barry Smith, Joy Phyllis Smith, Sharon Joy Knight and Rodney Raymond Smith** are the Members of the Fund (“the Member/s”).
- c) The Fund was established by deed dated 03/06/2003 (“the Original Deed”) and subsequently varied on  

20/03/2014
- d) The Trustee, at the request of the Members, wishes to amend the Deed by substituting in place of the existing Rules those Rules (“the New Rules”) in the form annexed and marked as “Annexure A” to this Deed.
- e) Rule 6.14 of the Fund’s existing Deed allows the Trustee to vary the Deed so long as no amendment will reduce a Member’s Benefit (as defined in those Rules). The purpose of the amendment is to enable the Trustee and the Members to comply with the new superannuation measures by adopting the governing rules as the governing rules of the Fund.
- f) Notwithstanding anything contained in this Deed to the contrary, this Deed does not and shall not:
  - (i) alter the objects of the Fund;
  - (ii) reduce the benefits and entitlements payable to Members;
  - (iii) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
  - (iv) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendments or variation of any relevant Act or Regulation made after

the date of this Deed.

- g) To the extent that any one or more of the provisions of this Deed are not able, allowed or required to take effect pursuant to a provision of the Superannuation Industry Supervision Act 1993 as amended or regulation made for the purposes of that statutory enactment, the provisions are amended by deletion to the extent that:
  - (v) it is necessary to remove that or those restrictions beyond the validity of the amendments, or any part of them made pursuant to this Deed; and;
  - (vi) the deletion of part or all of the provisions does not result in a resettlement of the Fund; and
  - (vii) amendments made by this Deed are deemed to have occurred after the deletion referred to in this clause.
- h) This Deed shall not take effect, to the extent that any one or more of the provisions of this Deed are not able, allowed, or required to take effect pursuant to the provisions of any regulation made for the purpose of that statutory enactment; and the provision is not capable of amendment to enable or allow this Deed to take effect.

**PROVISIONS:**

**1. Replacement of Rules:**

The existing Rules of the Fund are replaced in their entirety with the New Rules as marked "Annexure A" to this Deed, pursuant to Rule 6.14 of the Fund's governing rules.

**2. No Resettlement at Law:**

Any amendment to the Rules of the Fund affected by this Deed does not result in a resettlement of the Fund at law, equity or under any Superannuation Law.

**EXECUTED AS A DEED BY:**

Executed for and on behalf of AFREEFORM PTY LTD (ACN: 104 897 458), in its capacity as Trustee of the Fund in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*.

.....  
**Signature of Director/Sole Director**

.....  
**Signature of Director/Secretary**

.....  
**Name of Director/Sole Director**

.....  
**Name of Director/Secretary**

**Executed by** Barry Smith in the presence of: )  
 )  
 )

.....

.....  
Witness

.....  
Witness Full Name

**Executed by** Joy Phyllis Smith in the )  
presence of: )  
 )

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Witness

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Witness Full Name

**Executed by** Sharon Joy Knight in the )  
presence of: )  
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Witness Full Name

**Executed by** Rodney Raymond Smith in the )  
presence of: )  
 )

.....

.....  
Witness

.....  
Witness Full Name

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**Annexure A**

# **AFREEFORM SUPERANNUATION FUND**

**SMSF Trust Deed**

Prepared under license from:  
Glenister & Co  
4/26-28 Aberdeen Street, Macleod VIC 3085

**The SMSF Academy Pty Ltd**  
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## PART ONE – RULES TO ESTABLISH THE FUND

### **Guide – Rule 1**

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

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

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

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

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

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

### **1. Rule 1 – Things to know about these Rules and the Fund**

- 1.1 The “Guide” in the Explanatory Memorandum to the Rules of the Fund is designed for information purposes only and is not to be construed as forming part of the Rules of the Fund. If in any dispute, misunderstanding or action regarding the Rules, the Trustee, Court, the Regulator or any other person may have regard to the “Guide” or any part of the Explanatory Memorandum to determine the Rules ordinary meaning.
- 1.2 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.
- 1.3 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, representatives, Responsible Officers, a person holding someone's Power of Attorney, Enduring Power of Attorney and a Legal Personal Representative.

- 1.4 Where a word is Capitalised it may be found in the "Definitions" Rule in Part Six of the Governing Rules.
- 1.5 The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia or chooses elsewhere. 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.
- 1.6 Where the term "SMSF" is used, it means a "Self-Managed Superannuation Fund" as defined in the Superannuation Laws.
- 1.7 Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless, at the discretion of the Trustee a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or noncompliance certificate or adverse determination delivered to the Regulator for the Trustee, Fund or Member.
- 1.8 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the Rules may allow the Trustee to add to, vary, change or otherwise amend a Rule of the Fund. Any such addition, variation, change or amendment, provided it meets the relevant Rule variation requirements, is to be considered part of the original Rule. The Trustee may also create an additional Rule for the Fund where authorised under the Rules of the Fund including the creation of a Reserve, SMSF Living Will, SMSF Will or Member Pension. Any additional Rule may become a Special Rule of the Fund if declared by the Trustee as such and may not be varied by any variation of these Rules unless with the specific consent of the Trustee and any Member affected by the Special Rule.
- 1.9 In accordance with Rule 1.7 and 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 person's action, the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered to the extent it has breached the Superannuation Laws void ab-initio subject to and conditional upon the Superannuation Laws allowing.
- 1.10 The Sole Purpose Test, including the core and ancillary purposes of the Fund are specified in Section 62 of the SIS Act 1993. These are to provide retirement, incapacity,

sickness, death and any other benefits allowed by the Superannuation Laws to Members of the Fund or to Members, former Members or for any other purpose, determined by the Fund Trustee, upon the winding up of the Fund. This shall be the case except where the Trustees of the Fund are individuals then the primary purpose of the Fund shall be to provide old age pensions.

Where the Trustee of the Fund and the Member have agreed, or put in place arrangements including but not limited to Auto-Reversionary Income Stream ("ARIS"), SMSF Wills, Death Benefit Nominations, under previous Governing Rules that are of the same effect as a Special Rule then these Rules are to be retained in their original form as a Special Rule of this Fund.

### **Guide – Rule 2**

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

*Disqualified Persons: The Trustee of the Fund must not be a Disqualified Person unless the Regulator otherwise allows. There are serious penalties of up to two years' imprisonment for persons acting as Trustees where they are Disqualified Persons under the Superannuation Laws. If the Trustee is an individual, they must not be bankrupt or have been charged with an offence of dishonest conduct.*

*If the Trustee is a Corporate Trustee, then the Trustee must not be in liquidation or under administration and the Trustee must also ensure that there are no Responsible Officers of the company, including Member directors and company secretary, who are Disqualified Persons. A Disqualified Person may apply to the Regulator for an exemption under the Trustee Rules.*

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

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

3. *If a Member has died, the Legal Personal Representative of the Member is authorised to become a Replacement Trustee of the Fund or director of the Corporate Trustee subject to the Constitution of the Trustee company for the period beginning on the day the Member died until the day a Death Benefit becomes payable from the Fund.*
4. *If a Member of the Fund is under a legal disability, the Legal Personal Representative of the Member may become the Trustee of the Fund or take the Member's place as director of the Corporate Trustee. If the Member is a child under the age of 18, the parent or guardian of the*
5. *Member may also take the child's place as Trustee or director of the Corporate Trustee where there is no Legal Personal Representative.*
6. *The Legal Personal Representative of the Member has an Enduring Power of Attorney in force in respect of that Member except where the Member is a Disqualified Person. This includes where a non-resident of Australia is a Member of the Fund.*
7. *The Regulator has appointed a Replacement Trustee under the Superannuation Laws.*

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

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

*As a SMSF, the Trustee is required to notify the ATO of any changes in Membership, Trusteeship, Fund name change and other such things within a period of 28 days from the change. The ATO may also require a Trustee or Member to make a declaration to the Commissioner regarding their knowledge of the Superannuation Laws, their agreement to keep up-to-date with the Superannuation Laws and maintaining a current set of Rules of the Fund. The Trustee or Member is required to complete any such declaration.*

## **2. Rule 2 – Trusteeship of the Fund**

2.1 At all times, there must be a Trustee of the Fund commencing from the appointment of the Initial Trustee of the Fund. The Trustee may be one or more individuals and/or a company or companies acting as Trustee or Trustees of the Fund. Where the Trustees are individuals, the primary purpose of the Fund is to pay Income Streams or Pensions inclusive of old age pensions to Members of the Fund unless otherwise authorised by the Superannuation Laws or the Regulator.

2.2 If the Trustee is a company, then any director of the Trustee Company must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws. If the Trustee is an individual, they must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws.



2.3 The Trustee must ensure that, while these Rules are in force, the Fund is maintained as a Complying SMSF and a regulated superannuation fund including but not limited to meeting the Membership and trustee standards as they apply at the time for a SMSF under the Superannuation Laws.

2.4 The Trustee or Members of the Fund may by Deed appoint a new Trustee provided the Fund remains a Complying SMSF and the new Trustee or Trustees appointed may include a Replacement Trustee or an Additional Trustee. The new Trustee, Replacement Trustee or Additional Trustee must consent to their appointment, not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws and agree to abide by the Rules of the Fund, the Superannuation Laws and with best endeavours ensure the Fund remains a complying SMSF.

When a Replacement Trustee or further Trustee is appointed in accordance with this Rule 2.4 then the Fund assets vest mutually with the other Trustee or Trustees without the requirement for any declaration, transfer, conveyance, registration or other declaration in order for the appointment to be valid.

2.5 Any Trustee is to be removed as Trustee under one or more of the following conditions:

- a) The Members of the Fund in a Members' Meeting remove the Trustee of the Fund;
- b) the Trustee retires or resigns and a new Trustee has been appointed by Deed by the resigning Trustee;
- c) where the Trustee is of the opinion that the continued appointment of the Trustee will result in the Fund becoming a non-complying SMSF or the Fund becoming impractical;
- d) if the Trustee is prohibited from being a Trustee under the Superannuation Laws or where the Regulator otherwise determines including where the Trustee is a Disqualified Person;
- e) where the Member that the Trustee, Replacement Trustee or Additional Trustee acts for is no longer a Member of the Fund including the Trustee/Member or Director/Member themselves; or
- f) The Member dies.

2.6 The Trustee agrees to be bound by the Rules of the Fund, the Superannuation Laws and any direction the Regulator may provide if reasonable.

2.7 The Trustee or Member may be required at relevant times under the Superannuation Laws to notify or make a declaration to the Regulator or some other person of events, things, happenings or changes to the Fund. The Trustee or Member will ensure that it seeks to meet any such notification or declaration requirement in the specified time required. The Trustee is not required to register any change in Trustee under any Superannuation or State Law.

- 2.8 Where the Fund is determined by the Regulator to no longer be a SMSF or the Trustee decides not to retain the Fund's SMSF status, the Trustee is to immediately resign and a RSE Licensee is to be appointed or all Members' Superannuation Interests are to be rolled over to another regulated Superannuation Fund.
- 2.9 Where a Member of the Fund dies, within a period of six months from the date of the Member's death:
- a) either the deceased Member's Legal Personal Representative or the party nominated by the Member in their SMSF Will or Death Benefit Nomination made pursuant to Rule 11 to act as the Replacement Trustee shall be eligible, upon such party's consent to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;
  - b) the event that a Member nominates a Replacement Trustee in their SMSF Will or Death Benefit Nomination made pursuant to Rule 11 the appointment of such person as the Member's Replacement Trustee shall, for the purposes of this clause, prevail over any other potential appointment;
  - c) at the commencement of the payment of the Member's Death Benefits to the deceased Member's Dependants or their Estate the Replacement Trustee appointed on behalf the deceased Member must resign;
  - d) if the Fund's Corporate Trustee has appointed the deceased Member's Legal Personal Representative as a director they are to be removed once Death Benefits commence to become payable to the deceased Member's Dependants or their Estate. If the Corporate Trustee does not remove the deceased Member's Legal Personal Representative as a director upon the payment of the deceased Member's Death Benefits, then the Corporate Trustee is to be replaced as Trustee.
- 2.10 Where a Member becomes incompetent and as a result loses legal capacity and is no longer able to function as a Trustee of the Fund:
- a) the incompetent Member's Legal Personal Representative, subject to their consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee; and
  - b) the Replacement Trustee is to have the same voting powers in place of the incompetent Member as the incompetent Member would have if acting as Trustee of a Regulated Self-Managed Superannuation Fund.
- 2.11 Where the Superannuation Laws are amended in terms of Trustee and Member requirements for a SMSF the Trustee is to ensure that the Trustee meets the required changes for a SMSF within the time frame specified under the Superannuation Laws.
- 2.12 Any removal or appointment of a Trustee shall be effected by deed or written resolution by the Trustees or Members of the Fund as required in this Rule 2. Any deed or resolution for this purpose does not need to be registered unless the Superannuation Laws otherwise require.

### **Guide – Rule 3**

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

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

- 1. to be bound by all of the Rules of the Fund.*
- 2. to be a Trustee of the Fund or director of the Corporate Trustee unless there is a Replacement Trustee for the Member who has been validly appointed under the Superannuation Laws.*
- 3. to provide information to the Trustee where required including medical information, Tax File Number and consent for the Trustee to hold that information despite anything to the contrary in the privacy legislation.*
- 4. to have read and understood the Fund's Product Disclosure Statement.*

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

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

*There will be occasions during the longevity of the Fund that for some reason a Member may leave the Fund. For example, a departing Member may leave the Fund by transferring or rolling over their Superannuation Benefits to another Superannuation Fund. This would then require the Trustee to close the Member's Superannuation Interests. Additionally, a Family Law action involving a Fund Member may result in the Trustee being subject to discovery proceedings.*

*In this instance the Trustee may decide to cease a Member's Membership of the Fund to protect the privacy of the Fund and consequently the interests of the remaining Members.*

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

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

### **3. Rule 3 – Membership of the Fund**

- 3.1 Any person or entity with the consent of the Trustee and including a deceased Member's Legal Personal Representative without Trustee consent may become a Member of the Fund provided the Superannuation Laws allow and the Fund retains its status as a Complying SMSF. The Trustee must not accept a Member to the Fund if the person's Membership would result in the Fund no longer being a SMSF unless the Trustee otherwise decides.
- 3.2 The Trustee may:
- a) impose terms and conditions for Members joining the Fund including but not limited to future Members;
  - b) establish different classes of Membership if so desired. Prior to establishing a new class of Membership, existing Members must be notified of the new class of Membership and the associated rights, entitlements and benefits attached thereto. The Trustee may classify, in writing that recipients of Income Stream benefits are a separate class if so desired;
  - c) limit the persons who may become or be Members of the Fund with any such amendment to be by way of a variation to the Rules of this Fund.
- 3.3 On becoming a Member of the Fund the Member must agree to abide by the Rules of the Fund. This includes but is not limited to acting as Trustee or director of the Corporate Trustee where required; providing a Member's Tax File Number and any other information the Trustee may require including relevant insurance details. The Member must adhere to any other requirements that may be necessary of Members joining a Complying SMSF.
- 3.4 The Legal Personal Representative of a Member including a deceased 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 Member. For the sake of clarity, a deceased Member's Legal Personal Representative continues the deceased Member's Membership under the Rules of the Fund provided the Superannuation Laws allow.
- 3.5 The Member, on joining the Fund agrees to have read and understood the Fund's Product Disclosure Statement.
- 3.6 A Member ceases to be a Member of the Fund, subject to the Trustee's discretion and the Superannuation Laws upon the earliest of any of the following to occur:
- a) The Member Rolls Over or transfers all of their Superannuation Interests to another complying Superannuation Fund unless the Trustee otherwise allows the Member to remain as a Member;
  - b) The Member dies and the Trustee has paid out all the deceased Member's Death Benefits to the Member's Legal Personal Representative or Dependents or any

other person, trust or entity. In these circumstances the deceased Member's Legal Personal Representative will cease to be a Member or be the continuation of the deceased Member of the Fund at the time Death Benefits are fully paid;

- c) More than six months has elapsed since the Member was capable of being a Trustee of the Fund or a director of the Corporate Trustee unless the Member has appointed a Replacement Trustee;
- d) In the opinion of the Trustee the Member is a Disqualified Person and the Member's continuing Membership may result in the Fund no longer being a Complying SMSF unless the Regulator provides otherwise;
- e) The Trustee declares that a Member should cease being a Member where the Member's continued Membership may cause the Fund to lose its Complying SMSF status or for any other reason including the effective operation of the Fund or to ensure the Fund remains a SMSF;
- f) The Member is a party to proceedings or any agreement pursuant to the Family Law Act 1975 or equivalent legislation for de facto relationships under Commonwealth, State, Territory or a foreign law and the Trustee is of the opinion that the Member should cease being a Member of the Fund;
- g) When the Member no longer has any Superannuation Interest in the Fund and the Trustee determines that the Member should no longer be a Member of the Fund;
- h) If the Superannuation Laws, the Regulator or a Court requires the Member to cease their Membership of the Fund;
- i) Where the Trustee is of the opinion that for the benefit of the Fund the Member should cease their Membership of the Fund, at the same time the Trustee is to remove the Member as Trustee or request the Corporate Trustee to remove the Member as director of the Corporate Trustee.

3.7 Where a Member ceases Membership of the Fund, the Trustee must resolve to pay the Member their Superannuation Interest as a Superannuation Benefit and/or Transfer Superannuation Interest within a reasonable time or as otherwise required under the Superannuation Laws.

3.8 If, upon cessation of Membership of the Fund, a Member is required to Rollover or transfer their Superannuation Benefits the Trustee must request from the transferring Member notification of the complying status of the transferee Superannuation Fund. The request must include a demand for a response in relation to the proposed transferee Superannuation Fund from the departing Member within a reasonable period of time or such other time as is required under the Superannuation Laws. If the departing Member does not respond to the Trustee's request within a reasonable time, or such other time as the Superannuation Laws require, the Trustee may transfer the transferring Member's Superannuation Benefits to an Eligible Rollover Fund.

- 3.9 Any Transfer, Rollover or Superannuation Benefit payment must be made by the Trustee within any time required under the Superannuation Laws or alternatively within a reasonable period of time. This includes where a payment is necessary via any relevant government requisite payment system inclusive of SuperStream.

**Guide– Rule 4**

*Where the Fund is a new Fund the Trustee must first establish the operations of the Fund. In addition to the Trustee’s normal responsibilities in the management of the Fund, the Trustee is required to undertake the following to establish the Fund as operational:*

1. *Apply for an Australian Business Number and a Tax File Number for the Fund.*
2. *Establish one or more cash or cheque accounts for the Fund as a clearing account for Authorised Contributions and monies received and Superannuation Benefits and monies paid. Monies need to be deposited into this account as soon as practicable to cater for the running expenses of the Fund. Until monies are in a cash or cheque account the Fund is generally non-operational.*
3. *Appoint an Auditor to the Fund. The Superannuation Laws provide that an Auditor must be appointed to the Fund on a yearly basis to provide an assessment of the Fund’s compliance with the Superannuation Laws.*
4. *Appoint SMSF Professionals where required such as a Specialist SMSF Advisor, SMSF Auditor, SMSF Administrator, SMSF Insurance Adviser and in certain cases a SMSF Investment Manager, Valuer or Actuary.*
5. *Any other act required by the Trustee of the Fund necessary to enable the Fund to become operational and thus be ratified by the Regulator to be a Fund that is a Complying SMSF.*

**4. Rule 4 – Becoming an Operating Regulated SMSF**

- 4.1 Upon establishment of the Fund and the initial appointment of the Trustee, the Trustee is to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws.
- 4.2 As soon as practicable the Trustee must take such actions, appoint such SMSF Professionals as required including an Auditor, a SMSF Adviser, deal with the Regulator and do all things necessary to make the Fund operational as a Complying SMSF including obtaining a Tax File Number and Australian Business Number.
- 4.3 The costs associated with the establishment of the Fund including any establishment of a Corporate Trustee of the Fund shall be a legitimate expense of the Fund and any Member who has incurred such cost shall be reimbursed by the Fund for such cost incurred by that Member.

### **Guide – Rule 5**

*The concept of Superannuation Interests was introduced into the Superannuation Laws from 1 July 2007. As a result, the Trustee, on behalf of any Member, may be called upon to establish one or more Member Superannuation Interests. These may include a Member Accumulation Interest and/or a Member Superannuation Income Stream Interest. A Superannuation Interest does not have to have any funds or Assets set aside for it to be a valid Superannuation Interest.*

*A Member may also have more than one Member Superannuation Interest including two or more Member Superannuation Income Stream Interests provided the Superannuation Laws allow and it does not result in the Fund being treated as a non-Complying SMSF. A Member will only ever have one Member Accumulation Interest within a SMSF.*

*Where a Member Rolls Back part or all of their Member Superannuation Income Stream Interest to a Member Accumulation Interest this will add to the Member's Accumulation Interest and not create a new Superannuation Interest unless authorised by the Superannuation Laws and requested by the Member. Where a Member commences a Superannuation Income Stream with a Member Accumulation Interest amount, this will create a new Member Superannuation Income Stream Interest, as the Superannuation Laws do not allow you to add to an existing Member Superannuation Income Stream Interest.*

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

*The Trustee can also transfer an Asset between Superannuation Interests in the Fund including different Member Superannuation Interests. Any such transfer should be done at a current market value as determined by the Trustee or by a person eligible to undertake such a valuation as required by the Superannuation Laws.*

## **5. Rule 5 – Creating and Transferring Member Superannuation Interests**

- 5.1 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 the Member or any other account allowed under the Superannuation Laws. The Trustee may hold one or more Superannuation Interests on behalf of a Member or their Estate.
- 5.2 Any Superannuation Interest created by the Trustee for the Member may include a Member Accumulation Interest, a Member Superannuation Income Stream Interest, a Reserve or any other Superannuation Interest or Member's account allowed under the Superannuation Laws.
- 5.3 A Member Superannuation Interest does not have to commence or be maintained with any Assets or Contributions.
- 5.4 A Member may request the Trustee to transfer a Member Superannuation Income Stream Interest Roll Back amount to a Member Accumulation Interest. Unless

otherwise allowed under the Superannuation Laws and requested by the Member this will not create a new Superannuation Interest.

- 5.5 Where the Member requests the transfer of a Member Accumulation Interest to commence a new Member Superannuation Income Stream Interest, notwithstanding that the Member may have an existing Member Superannuation Income Stream Interest, this will create a new Superannuation Interest where the Trustee decides a new Superannuation Interest is to be created and that the Superannuation Laws allow.
- 5.6 Where the Trustee transfers an amount between Superannuation Interests the Trustee may satisfy the transfer amount by allocating Assets between the Member's Superannuation Interests equal in value to the transfer amount.
- 5.7 The Trustee may transfer a Member Superannuation Interest to another Complying SMSF or superannuation fund where the Trustee of the transferee fund accepts the terms and conditions of any transfer.

#### **Guide – Rule 6**

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

1. *An Authorised Contribution made to the Fund on behalf of a Member;*
2. *A Rollover Superannuation Benefit on behalf of a Member; and/or*
3. *The transfer of a Transfer Superannuation Interest being a Member Accumulation Interest, a Member Superannuation Income Stream Interest and/or a Reserve Account Superannuation Interest from the Fund, another Superannuation Fund or Foreign Superannuation Fund to the Fund on behalf of the Member or for the benefit of another Member or Members.*

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

*An Authorised Contribution is a Contribution made to a Fund:*

- *By the Member, or on behalf of the Member (or their spouse) who is under 65 years of age;*
- *By the Member, or on behalf of the Member (or their spouse) who is aged 65 or over but under age 70 and is gainfully employed on at least a part-time basis, which is defined as at least 40 hours in a period of 30 consecutive days in each financial year in which an Authorised Contribution is made;*
- *By the Member, or on behalf of the Member who is aged 70 or over but under age 75 and is gainfully employed on at least a part-time basis; and*



- *By a Member, or on behalf of the Member who has a Contribution made by a person after the requisite times and the Superannuation Laws allow.*

*A Contribution is the transfer of cash or Assets for the benefit of a Member. Subject to the Superannuation Laws, it may include an allocation to a Member Superannuation Interest from a Reserve Account. The Superannuation Laws and/or the Regulator may require the Trustee of the Fund to ascribe a value to any in-specie Contribution made on behalf of a Member or for the benefit of Members of the Fund. The Trustee is to determine a market value for any in-specie Contribution taking into account any regulatory requirements.*

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

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

*The Superannuation Laws from 1 July 2017 introduce an eligibility requirement on Members to make Non-Concessional Contributions based upon the value of the Superannuation Interest(s) being less than the General Transfer Balance Cap. The Trustees of Complying SMSFs can accept Non-Concessional Contributions on behalf of a Member at any time, unless the Member's Tax File Number has not been supplied. Where the Trustee accepts a Contribution not allowed under the Superannuation Laws, the Trustee is deemed to hold that unacceptable Contribution on trust for the benefit of the contributor. All or part of the unacceptable Contribution is to be paid back to the contributor as soon as is reasonable as required under the Superannuation Laws.*

*The Rules of the Fund have been developed in accordance with the Superannuation Laws to allow for, but not limited to, the following:*

- *Ability to receive Concessional Contributions by an employer and/or Member, whether in cash or by Asset in Kind, including where a Contribution is held in a Contributions Reserve in accordance with the Superannuation Laws;*
- *Ability to receive Non-Concessional Contributions subject to the value of the Member's Total Superannuation Balance in the preceding financial year being less than the General Transfer Balance Cap;*
- *Contributions received that qualify for the Small Business CGT concessions or are received as a result of personal injury;*
- *Contributions that are received from the Government including co-contributions and low income superannuation contribution (LISC) or low income superannuation tax offset (LISTO) amounts.*

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

## **6. Rule 6 – Accepting Member Contributions, Rollovers and Transfers**

- 6.1 The Trustee may accept an Authorised Contribution, a Rollover Superannuation Benefit or a Transfer Superannuation Interest on behalf of a Member or for the Fund from a Trustee of a Superannuation Fund, a Foreign Superannuation Fund, an employer, a Spouse, a Relative or any other person or entity.
- 6.2 The Authorised Contribution, Rollover Superannuation Benefit or any Transfer Superannuation Interest may be by way of Cash, Assets or a Contribution In-Kind. Where an Authorised Contribution is made by way of one or more Assets or a Contribution In-Kind the Trustee is to determine a value for the Contribution under the Superannuation Laws or as required by the Regulator.
- 6.3 The Superannuation Laws may provide a maximum Contribution limit and/or qualification for Non-Concessional Contributions (including those amounts elected to apply against the Member's CGT cap or for personal injury), Concessional Contributions and No TFN-quoted Contributions made on behalf of a Member during an income year or a period. Where such limits or qualifications are prescribed, the Trustee is to take into account the limit and/or qualification, along with any consequences when accepting any Contribution including, whether or not to accept any Contribution in excess of the relevant limits described under the Superannuation Laws for that specific type of Contribution.
- 6.4 Where the Trustee receives a Contribution that is either in excess of any caps or limits under the Superannuation Laws, or is not an Authorised Contribution the Trustee must refund all or part of the Contribution to the contributor or any other person and within the time required under the Superannuation Laws or where the Regulator otherwise allows. The Trustee is to also refund or pay back any Contribution as required by the Regulator pursuant to an assessment, amended assessment or any other direction.

The payment where necessary can be processed via any relevant government requisite payment system inclusive of SuperStream.

### **Guide – Rule 7**

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

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

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

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

- 1. The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the likely return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;*
- 2. The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;*
- 3. The liquidity of the Fund's investments having regard to its expected cash flow requirements;*
- 4. The ability of the Fund to discharge its existing and future liabilities;*
- 5. Any requirements under the Superannuation Laws or by the Regulator; and*
- 6. Whether the Members of the Fund should be covered by Insurance under Rule 12.*

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

*The Trustee may seek professional advice in relation to the establishment of any Fund Investment Strategy or Derivative Risk Statement. In seeking Investment Strategy or Derivative Risk Statement advice the Trustee should ensure that the adviser is qualified to provide Investment Strategy advice for a Complying SMSF and is currently licensed and skilled to do so.*

## **7. Rule 7 – Creating an Investment Strategy for the Fund and Members**

- 7.1 The Trustee of the Fund must formulate and give effect to an Investment Strategy for the Fund that meets the Superannuation Law and Regulators requirements for a complying SMSF. The Investment Strategy which includes the Fund's Insurance Strategy pursuant to Rule 12 must be regularly reviewed by the Trustee of the Fund in accordance the Superannuation Laws.
- 7.2 The Trustee may at any time create a separate Investment Strategy on behalf of one or more Member Superannuation Interests or Fund Accounts including a Reserve Account.
- 7.3 The Trustee may at the request of a Member, but subject to the Trustee's discretion, establish a separate Investment Strategy for a Member Superannuation Interest. The Trustee may acquire a specific Asset on behalf of a Member Superannuation Interest provided the Member Superannuation Interest has sufficient resources to do so and the Superannuation Laws allow.
- 7.4 The Trustee may transfer Assets between Investment Strategies and also between Superannuation Interests in the Fund. Any such transfer will be at a value to be determined by the Trustee or as required by the Superannuation Laws or the Regulator.
- 7.5 Where the Trustee has established a Reserve Account in the Fund the Trustee must formulate and give effect to a Reserve Management Strategy for the Reserve Account where required by the Superannuation Laws. If there is more than one Reserve Account established for the Fund the Trustee where required by the Superannuation Laws may maintain a separate Reserve Management Strategy for each Reserve Account, for one or more Reserve Accounts or for all Reserve Accounts in the Fund. The Trustee of the Fund does not have to hold separate Assets aside for Reserve Account purposes unless the Superannuation Laws require and the Trustee determines to do so.
- 7.6 The Trustee may alter an Investment Strategy for the Fund, an Account of the Fund, a Superannuation Interest or Reserve Account at any time.
- 7.7 Where the Trustee has received an Authorised Contribution or the payout of an Insurance Policy that results in the breach of any Investment Strategy of the Fund, the Investment Strategy subject to receipt of the Authorised Contribution or Insurance Policy proceeds is deemed to be amended to encompass the Contribution or Insurance Policy proceeds until such time as the Trustee decides otherwise.
- 7.8 The Trustee may be required under the Superannuation Laws to complete a Derivative Risk Statement or such other Statement where the Trustee invests in derivatives, options, installment warrants or other products with underlying borrowings or leverage.

The Trustee is to comply with any such requirements to ensure the Fund remains a Complying SMSF.

- 7.9 Where the last surviving Member of the Fund dies, the Member's Legal Personal Representative if appointed as Trustee or Director of the Fund's Corporate Trustee must, prior to making any Death Benefit payments on behalf of the deceased Member distribute any surplus, Assets or monies in Fund Reserve Accounts. Such distribution may include finance for an anti-detriment payment in accordance with relevant Tax Laws, a payment to any past Member or the deceased Member's Accumulation Interest, Member Superannuation Income Stream Interest, their Dependants, Estate or charity.

**Guide – Rule 8**

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

***Sole Purpose Test***

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

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

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

### **Acquisition of Assets from Related Parties rule**

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

- *The acquisition of Business Real Property;*
- *The acquisition of listed shares, securities and widely-held managed funds;*
- *The acquisition of certain in-house assets provided the investment does not take the Fund's level of in-house assets to beyond the 5% in-house assets threshold;*
- *the acquisition of units in a unit trust and shares in a company where the underlying entity meets certain criteria in the Superannuation Laws allowing such investments including no borrowings, no investments in other entities and no lending of assets to related parties;*
- *the investment meets the criteria for a geared investment under section 67 of the Superannuation Industry Supervision Act 1993.*

### **In-House Assets Test**

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

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

## **8. Rule 8 – Making Investments for the Fund and Members Benefit**

- 8.1 The Trustee must invest the Cash and Assets of the Fund in accordance with an Investment Strategy. Any investment is to meet the Superannuation Laws, any relevant Trustee Law and ensure that the Fund retains its Complying SMSF status thereby ensuring that the Trustee does not breach the relevant laws relating to related party investments or loans including the In-House Assets Test, the Sole Purpose Test or the holding of any specific Asset class or type.
- 8.2 Provided the Superannuation Laws allow, the Trustee may acquire and invest in any Asset or Cash wherever situated in or outside Australia including, but not limited to the following:
- 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 the property is not

encumbered and the Trustee does not provide a guarantee in respect of any direct or indirect loan agreement incidental to the property unless the Superannuation Laws allow. In instigating any property transaction, the Trustee must ensure that the documentation relating to the transaction, including any indirect, 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 installment 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;
- 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, or patent. 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) A Superannuation Income Stream, Pension 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) 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;
- l) 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;
- m) Any other investment including a prudent investment under Trustee Law;

- n) Assets of a 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;
- o) Instalment warrant and other SMSF borrowing arrangements including single acquirable assets acquired under a limited recourse borrowing arrangement pursuant to sections 67A and 67B of the SIS Act 1993;
- p) Any investment that meets the Sole Purpose Test and sections 66, 67, 84, 85 and 109 of the SIS Act 1993;

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.

- 8.3 The Trustee may acquire, hold and invest in any currency including maintaining a non-AUD\$ cash account.
- 8.4 Subject to any requirements under the Superannuation Laws or by the Regulator the Trustee may at any time determine the value of an Asset of the Fund but is otherwise not compelled to do so. However, if the Superannuation Laws require a valuation at a specific time in respect of a Fund Asset, the Trustee is to abide by the requirements of any valuation laws, Regulator guidelines or rules.
- 8.5 At any time, the Trustee of the Fund may create an Asset for the Fund which is to be dealt with wholly and exclusively by the Trustee of the Fund as an Asset of the Fund.

#### **Guide – Rule 9**

*The Superannuation Laws authorise the Trustee to establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve\*, a Contributions Reserve, a Pensions Reserve, and an Income Stream Reserve, if the Rules of the Fund allow.*

*A Reserve Account is where the Trustee has set aside surplus Assets or Earnings of the Fund into an account which is not part of a Member's benefits. Providing the Superannuation Laws allow, the Rules of this Fund empower the Trustee at any time to establish one or more Reserve Accounts. These Accounts do not and never shall form part of the Fund's Member Superannuation Interests.*

*Examples of some common Reserve Accounts that may be created under the Rules of the Fund include:*

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



- an “Anti-Detriment” Reserve Account - where a augmented payment is made directly under the Superannuation Laws to a Dependant of a deceased Member or the deceased Member’s Estate. Note, that the Superannuation Laws for the payment of an anti-detriment amount cease from 1 July 2017;
- an Investment Reserve Account where the Trustee can allocate Earnings of the Fund to assist with the smoothing of investment fluctuation.
- a Contributions Reserve Account for short-term warehousing of Contributions for a term no greater than 28 days after the end of the month in which the contribution was made.

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

1. The source of surplus cash and Assets to be transferred to a particular Reserve Account including the transfer of cash or Assets from a Member Superannuation Interest to a Reserve Account or the receipt by the Trustee of an Authorised Contribution, Asset or investment which in the opinion of the Trustee is not an entitlement of a Member provided that any transfer or receipt is in accordance with the Superannuation Laws. This may include a distribution from a family trust or a gift to the Fund;
2. The Investment Strategy for the Reserve Account as required by the Superannuation Laws;
3. How, when and for what purpose amounts held in a particular Reserve Account are to be applied by the Trustee including the payment of any Superannuation Benefits in the event of the Member’s Retirement, Temporary or Permanent Incapacity, Terminal Illness or as a Death Benefit;
4. Whether the Reserve is to be used to pay out expenses of the Fund including, but not limited to, administration, General expenses, insurance expenses, any Specific Expenses and the payment of Superannuation Income Streams and/or Lump Sums to Members or other entitled persons such as Dependents;

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

## **9. Rule 9 – Establishing a Reserve Account for the Fund**

- 9.1 The Trustee may establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, and a Pensions Reserve. Any Reserve Account may be for the benefit of current, past and future Members, their Dependents, Estate or the Trustee.
- 9.2 With the exception of a Contributions Reserve, the Trustee must formulate a Reserve Management Strategy for any Reserve Account in accordance with Rule 7. The Reserve Management Strategy may be for one or more Reserves. Where the fund creates a Contributions Reserve to hold any unallocated contributions, no Reserve

Management Strategy is required due to the short-term warehousing of these contributions in accordance with the Superannuation laws.

- 9.3 The Trustee may make additional Rules regarding the use, purpose and payment of Superannuation Benefits, General or Specific Expenses or for any other thing from any Reserve Account. In making any Rule the Trustee is to take into account any guidelines or rulings issued by the Regulator or the Australian Prudential Regulatory Authority. Any Rule the Trustee makes regarding a particular Reserve Account may be declared by the Trustee to be a Special Rule.
- 9.4 Subject to the Superannuation Laws and the Fund remaining a Complying SMSF, the Trustee may add by way of Cash or Assets to a Reserve Account from any Member Superannuation Interest, any other account of the Fund, any other Reserve Account, from Earnings or from any other source including another Superannuation Fund, trust or entity.
- 9.5 The Trustee may deduct and allocate from any Reserve Account of the Fund any amount or Asset. Such amount or Asset may be applied in whole or part to be added to Earnings or for the benefit of any Superannuation Interest, to pay any General or Specific Expense of the Trustee or the Fund, to be added to another Reserve Account in the Fund or any other Superannuation Fund, to be added to any other account or Superannuation Interest, to be added to Fund or Superannuation Interest Earnings, make a Transfer Superannuation Interest to another Superannuation Fund or the Fund itself, to fund directly from the Reserve Account a Member Accumulation Interest or Member Superannuation Income Stream Interest, pay a Death Benefit or for any other purpose.
- 9.6 Subject to the Superannuation Laws, Regulator's guidelines and the Fund retaining its Complying SMSF status, any trust distributions, insurance policy proceeds, other distributions, windfall gains, winnings or gifts that the Trustee does not declare as Earnings or Authorised Contributions of any Account or Member Accumulation Interest may be allocated to a Reserve Account. The Trustee has sole discretion as to which Reserve Account these amounts are to be added to.
- 9.7 No Member, Dependant of a Member, deceased Member, the Member's Legal Personal Representative or a deceased Member's Estate has any right or entitlement to a Reserve Account unless so authorised under the Rules of the Fund.
- 9.8 If the allocation of amounts from a Fund Reserve creates a tax liability for the Trustee of the Fund or a Member of the Fund, the Trustee may seek professional advice prior to entering into any allocation to determine its taxation consequences.
- 9.9 In the event at the time of the death of the last surviving member of this Fund there are Reserve accounts of whatever nature with credit account balances then such balances must be paid out by the party or parties acting as the Legal Personal Representative of

the last surviving member of this Fund either as an individual Trustee(s) or Director(s) of a Corporate Trustee in accordance with any direction in respect to the payment of the subject Reserve Accounts as provided by the last surviving member of this Fund in accordance with the provisions of their SMSF Will.

## PART TWO – SOME IMPORTANT PLANNING CONSIDERATIONS

### Guide – Rule 10

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

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

*A Member may also suffer a Terminal Illness where two registered medical practitioners, including a specialist practising in the area of the Member's illness or injury, have certified, jointly or separately, that the person suffers from an illness or has incurred an injury that is likely to result in the death of the person within a period (the **certification period**) that ends not more than 2 years after the date of the certification.*

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

- *pay a specific Income Stream Superannuation Benefit or Lump Sum Superannuation Benefit to the Member, their Dependants or Legal Personal Representative;*
- *specify the terms and conditions of any Income Stream Superannuation Benefit;*
- *elect the Member's Replacement Trustee if an Enduring Power of Attorney or Legal Personal Representative has been appointed.*

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

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

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

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

## 10. Rule 10 – Creating a Member SMSF Living Will

- 10.1 A Member and only a Member of the Fund may provide a Trustee with a Member SMSF Living Will detailing any Superannuation Benefits requested to be paid in the event of the Member's Temporary or Permanent Incapacity, Terminal Illness or other incapacity event including mental incapacity whereupon a Member may be paid benefits, Superannuation Benefits or Reserve benefits from the Fund without breaching the Superannuation Laws or the Sole Purpose Test.
- 10.2 The Trustee may accept some or all of the Member's request under the Member SMSF Living Will including the category of Incapacity or other Superannuation Benefits to be paid, the amount to be paid, whether Reserve Benefits may be paid, to whom the Incapacity Superannuation Benefits are to be paid and the Member's Replacement Trustee, however, the Trustee is not compelled to do so.
- 10.3 If the Trustee formally accepts some or all of a Member's SMSF Living Will, then at the discretion of the Trustee, the terms and conditions of the Member SMSF Living Will so accepted may become a Special Rule of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status. A Member's SMSF Living Will, shall, unless expressed to the contrary be a Paramount Document.
- 10.4 The Trustee may determine whether the Member SMSF Living Will Rule can be varied and in what circumstances and by whom.
- 10.5 The Trustee and Member may seek to appoint a SMSF Professional prior to making any formal request or acceptance of a Member's SMSF Living Will.

### **Guide – Rule 11**

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

*The SMSF Will of a Member is an important legal document on how a Member directs the distribution of their Superannuation Death Benefits to their Dependents or their Estate via their Legal Personal Representative in the event of their death. Under the Superannuation Laws there are several possibilities:*

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

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

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

**Method 2** – *Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination - A Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination allows the Member to direct the Trustee as to how their Death Benefits are to be distributed and in what form.*

*Additionally, it can direct the Trustee as to who the deceased Member's Replacement Trustee is to be. A Binding Death Benefit nomination will include a timeframe for expiration as provided by the Member, whereas a Non-Lapsing Binding Death Benefit Nomination will not lapse, unless revoked.*

*Where the Trustee receives a Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination from a Member as provided for in Schedule 2 of the Trust Deed, the Trustees are to be bound by the provisions of that notice, unless it is deemed to be invalid, and must pay the Member's Superannuation Death Benefits strictly in accordance with the provisions of the Member's Binding Death Benefit Nomination or Binding Non-Lapsing Death Benefit Nomination, subject to the availability of the Member's Superannuation Interests, the Superannuation Laws and the Rules of the Fund.*

*Where the Trustee receives a Non-Lapsing Binding Death Benefit Nomination as part of a SMSF Will from the Member, this document once drafted and signed by the Member must be accepted by the Trustee before the Trustee is bound to pay the Member's Superannuation Death Benefits strictly in accordance with the provisions of the SMSF Will. It will also be subject to the availability of the Member's Superannuation Interests, the Superannuation Laws and the Rules of the Fund.*

*In addition, the Trustee may qualify what terms and conditions of the Member's SMSF Will are to be incorporated into the Rules of the Fund. The SMSF Will and Non-Lapsing Binding Death Benefit Nomination may become, subject to the Trustee's consent a Special Rule of the Fund.*

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

## 11. Rule 11 – Creating a Member SMSF Estate Plan and SMSF Will

### SMSF Will and Non-Lapsing Binding Nomination

- 11.1 A Member and only a member of the Fund may provide the Trustee with a written direction to accept any of the following:
- a) A Non-Binding Death Benefit Nomination in the format as provided for in Schedule 1 of this document;
  - b) A Binding Death Benefit Nomination in the format as provided for in Schedule 2 of this document;
  - c) A Non-Lapsing Binding Death Benefit Nomination in the format as provided for in Schedule 2 of this document;
  - d) A SMSF Will which is recognised in these governing rules as a non-lapsing binding death benefit nomination and non-lapsing directions once drafted and executed by the Member of the Fund and delivered to and accepted by the Trustee of the Fund.
- 11.2 A Member's Legal Personal Representative or duly appointed Guardian cannot and shall not make any request as specified in the preceding Rule.
- 11.3 The provision of Rule 11.2 shall apply the entire provisions of Rule 11.
- 11.4 Any of the documents referred to in Clause 11.1 above may provide written direction to the Trustee specifying:
- a) the manner and form in which Death Benefits will be paid in the event of the Member's death to one or more beneficiaries including as a lump sum, pension or combination of both;
  - b) the Beneficiaries the Death Benefits are to be paid to including the Dependants of the Member, the Member's Estate or such person as are otherwise allowed to receive a Member's Death Benefits under the Superannuation Laws;
  - c) the amount or proportions of the Death Benefit to be paid to one or more beneficiaries in the event of a Member's death including the transfer of part or the whole of any Fund Asset in satisfaction of the payment of an amount of Death Benefit;
  - d) the terms and conditions upon which a recipient is to receive a Death Benefit from the Member's Estate via their Legal Personal Representative including whether the Death Benefit is to revert to another person;
  - e) the terms and conditions regarding the payment of any Reserve Benefit to the deceased Member's Dependants or Legal Personal Representative;
  - f) the terms and conditions regarding the payment of any insurance proceeds payable on the life of the Member including a payment to an Anti-Detriment Reserve, the deceased Member's Dependants or Legal Personal Representative.

- 11.5 Subject to Rule 11.7, the Trustee of the Fund once receiving the Member's Binding Death Benefit Nomination or Binding Non-Lapsing Death Benefit Nomination shall be bound by the provisions of the Member's Binding Death Benefit Nomination or Binding Non-Lapsing Death Benefit Nomination and must pay the Member's Superannuation Death Benefits strictly in accordance with the provisions of the Member's Binding Death Benefit Nomination or Binding Non-Lapsing Death Benefit Nomination.
- 11.6 The Trustee and Member may first obtain expert advice from a SMSF Specialist or Legal Advisor prior to making any formal request or acceptance of a Member's Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination.
- 11.7 The Trustee shall not be obliged to accept any SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination in circumstances where:
- a) The SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination makes provision for a Beneficiary who is not a Dependant of the Member under the Superannuation Laws provided however that the Trustee shall be obliged and bound to accept that part of the SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination that makes provision for a valid Dependents under the Superannuation Laws.
  - b) The Trustee shall pay that part which is not accepted of the Member's SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination to the Member's Legal Personal Representative under the Superannuation Laws.

**Guide – Rule 12**

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

*In effecting any Insurance Strategy, the Trustee should take into account the financial requirements of the Fund in the event that a Member dies or becomes incapacitated and the Trustee is required to independently Fund a Death or Incapacity Superannuation Benefit.*

*From 1 July 2014, the Trustee can only enter into a Contract for Life Insurance which is consistent with the definition within the Superannuation Laws for death, terminal medical condition, permanent incapacity or temporary incapacity of a Member. Any insurance policies issued by a life insurance company in existence prior to 1 July 2014 can continue to operate even though they may not meet the new laws (e.g. trauma insurance).*



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

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

## **12. Rule 12 – Creating an Insurance Strategy and Insurances in the Fund**

- 12.1 The Trustee of the Fund may create an Insurance Strategy for the Fund, a Member of the Fund or any Superannuation Interest in the Fund and must create an Insurance Strategy if the Superannuation Laws require. The Insurance Strategy shall form part of the Fund's Investment Strategy.
- 12.2 As from 1 July 2014, the Trustee of the Fund shall not provide an insured benefit to a Member of Fund unless the insured event is consistent with the death, "terminal medical condition", "permanent incapacity" or "temporary incapacity" of a Member as defined in the Superannuation Laws. The Trustee of the Fund can continue to provide insurance cover to Members who joined the Fund before 1 July 2014 under policies existing prior to that date, though such a policy cannot be changed to provide a type of cover that was not provided prior to 1 July 2014.
- 12.3 The Trustee of the Fund may enter into any Contract of Life Insurance both within and outside Australia issued by any life insurance company, friendly society or other entity that provides insurance to Trustees or Members of a SMSF. Any premiums paid by the Trustee of the Fund may be deducted from Earnings of the Fund but may alternatively be deducted from one or all Member Superannuation Interests or Reserve Accounts.
- 12.4 In the event that insurance premiums have been deducted from a Member's account balance then any insurance payout relevant to such policy can be made to that Members account. However, premium payments made from General Expenses of the Fund may not be deductible to the Fund.
- 12.5 Subject to the Superannuation Laws at the time, the Trustee may distribute, transfer or otherwise deal with any proceeds or distribution payable from or pursuant to a Contract of Life Insurance in accordance with any Insurance Strategy.
- 12.6 Subject to the Superannuation Laws at any time the Trustee may include in the calculation of a Member's benefit the receipt by the Trustee of the proceeds of insurance payment received by the Trustee as a result of the death of another Member of the Fund.
- 12.7 Subject to the Superannuation Laws at the time, the Trustee may distribute, transfer or otherwise deal with any proceeds or distribution payable from or pursuant to a Contract of Life Insurance in accordance with any Insurance Strategy.

- 12.8 The Trustee of the Fund will not distribute, transfer or otherwise deal with any proceeds or distribution payable from or pursuant to a Contract of Life Insurance without first seeking the approval of the Legal Personal Representative of the deceased Member to which the insurance payment relates and also obtaining the advice of a Professional.
- 12.9 No Member, Dependant of a Member, Legal Personal Representative of a Member or any other person has any interest in the proceeds or distribution from a Contract of Life Insurance.

## PART THREE - RULES TO MAINTAIN AND OPERATE THE FUND

### **Guide – Rule 13**

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

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

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

### **13. Rule 13 – Fund Assets, Contracts and Transactions to be in Trustee's Name**

- 13.1 The Trustee is to hold all Assets of the Fund in the name of the Trustee however a Custodian may hold an Asset on behalf of the Trustee provided the Superannuation Laws allow. Where there is a change in name of the Trustee or a change in Trustee, the Trustee, as soon as practicable, must register all of the Fund's assets to reflect the change of name of the Trustee.
- 13.2 Any contract, transaction or agreement of whatever nature undertaken by the Fund must be in the name of the Trustee unless the Trustee has appointed a Custodian or other person to act on behalf of, or as agent for, the Trustee.
- 13.3 No Member, Dependant of a Member or deceased Member, the Member's Legal Personal Representative, a deceased Member's Estate, an Employer Sponsor or Related Party of the same has any right, entitlement to any Asset of the Fund or may enter into any contract, transaction or agreement of whatever nature with the Fund unless the Superannuation Laws allow and the Fund continues to retain its Complying SMSF status.
- 13.4 Where the Trustee enters into a transaction, arrangement, declaration or agreement, whether in writing or orally and the transaction, arrangement, declaration or agreement would result, in the opinion of the Fund's Auditor, that the Fund may be treated as a non-Complying SMSF, the Trustee and other party to the transaction, arrangement, declaration or agreement are to treat the actions as void ab-initio. The Trustee is to ensure that both parties are to be put in, as best as possible, the same financial

condition as arose prior to the entering into of the relevant transaction, arrangement, declaration or agreement.

#### **Guide – Rule 14**

*In addition to being a Superannuation Fund, the Fund is primarily a trust. It is the Trustee's duty and responsibility to act as a Trustee on behalf of the Members of the Fund who are beneficiaries of the trust. It is also the Trustee's duty to ensure that the Fund remains at all times both a SMSF and a Complying SMSF.*

*For the Trustee to discharge its duties it should appoint SMSF Professionals, maintain current knowledge of Trustee requirements in the Superannuation Laws and have detailed knowledge of the Rules of the Fund. Additionally, the Trustee must ensure that the Fund's compliance requirements and responsibilities are met in accordance with both the Superannuation Laws and the Regulator. At times the Superannuation Laws or the Regulator may require the Trustee to undertake training or education on the Trustee's compliance responsibilities. It is the Trustee's task to fulfil any such requirements.*

*The Trustee is required to notify the Regulator of any significant events including, but not limited to, where there is a change in Membership of the Fund, a change to the Fund's Trustee, a change to the name of the Fund and a change of the Trustee's address. It is compulsory to notify the Regulator of these events within 28 days of the changes.*

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

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

#### **14. Rule 14 – Trustee Responsibilities**

14.1 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 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 the Fund, or any transaction or investment undertaken 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 lodgment 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 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 Insurance Strategy for the Fund; and
- p) regularly review and if necessary, upgrade the Trust Deed to maintain the Fund as a complying Superannuation Fund and be up-to-date with any regulatory changes in relation to the Superannuation Laws.

14.2 The Trustee must not be paid or otherwise receive any remuneration for acting or carrying out its responsibilities as Trustee of the Fund unless otherwise permitted under the Superannuation Laws and/or any determination by the Regulator.

14.3 Where required by the Superannuation Laws the Trustee may hear any complaint by a Member or their Legal Personal Representative regarding the Member's Superannuation Interest or Superannuation Benefit. The Trustee must attend to the complaint in a timely manner and respond to the complainant in an appropriate method.

### **Guide – Rule 15**

*For the Fund to be and remain as a Complying SMSF whilst simultaneously maximising the returns on the Assets of the Fund for the benefit of Members, the Trustee must have broad powers. These powers including, but not limited to, dealing both domestically and internationally with Assets, entering into various contracts and undertakings, dealing with various persons directly, investing widely and otherwise acting in the Members' best interests. Any such power exercised is subject to the Superannuation Laws and the Fund retaining its Complying SMSF status.*

*The Trustee is not authorised to conduct any transaction, investment, business or action that would make the Fund a non-Complying SMSF. If the Trustee does conduct any transaction, investment, business or action that makes the Fund a non-Complying SMSF, then the offending transaction, contract or action is void.*

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

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

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

### **15. Rule 15 – Trustee Powers**

- 15.1 The Trustee has unlimited powers as to the administration and control of the Assets of the Fund. The administration and control of the Assets of the Fund by the Trustee are identical to those as if the Trustee were the legal and beneficial owner of those Assets. These include the right to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or Asset comprising the whole or part of the Fund including a Member's Superannuation Interest or a Reserve Account.
- 15.2 The Trustee has all the powers that a Trustee has at law and all the powers specifically conferred on the Trustee by these Rules including, but not limited to, the power to:
- 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 where so ever 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 of kind on the life of any Member or in respect of sickness, incapacity, trauma 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, 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, 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 installment 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 SIS 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 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 risk management 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, 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 and to manage such Assets and effect improvements and repairs as the Trustee may consider necessary or advisable;
- 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) **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) **grant or take options:** to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
  - 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;
- gg) **QROPS Arrangements**
- To make application, act and qualify as a recognised Overseas Pension Scheme in accordance with Section 169 of the UK Act and to assist with the provision of such necessary information and execute such agreements that the Trustee deems

necessary to enable the Fund to receive the transfer of pension schemes and arrangements in accordance with the UK Act and QROPS arrangements;

**hh) Separate Investment for a Specific Member**

At the request of or with the approval of a Member, the Trustee may invest all or any part of the amount standing to the credit of the Member's Accumulation Account by acquiring or entering into any investment separately and on behalf of the Member, provided the investment satisfies the Investment Strategy of the Fund.

- 15.3 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee is to be indemnified from the Assets of the Fund for any loss, damages or award against the Trustee arising from their role as Trustee of the Fund.

**Guide – Rule 16**

*The Trustee is required to hold a Trustee Meeting in order to make decisions about significant events to transpire in relation to the Fund. Significant events are those events that impact upon the status of the Fund and its Members.*

*The Superannuation Laws provide that matters determined at every valid Trustee Meeting must be recorded in the minutes of the Trustee. These minutes and all records of the Fund must be held for a period of no less than 10 years.*

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

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

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

## **16. Rule 16 – Trustee Meetings and Decision Making**

- 16.1 The Trustee is to hold a Trustee Meeting where any significant event, transaction, acquisition or disposal or other event directly related to the Fund is proposed. These matters include, but are not limited to, those that relate to an Asset of the Fund, Superannuation Interest, Investment Strategy, Reserve Account, Superannuation Benefit, Member of the Fund or where otherwise required under the Superannuation Laws.
- 16.2 There is no requirement for formal notice of a Trustee Meeting. However, every Trustee or a Director of the Company that is Trustee must be afforded the opportunity of participating in the Trustee Meeting where possible.
- 16.3 A quorum for a meeting is where at least 50% of all available Trustees attend the Trustee Meeting and may include one Trustee.
- 16.4 Unless the Initial Trustee decides otherwise, for each decision by the Trustee or Replacement Trustee at a Trustee Meeting the Trustee or Replacement Trustee is to hold that number of votes equal to \$1 per vote in respect of the total Member Superannuation Interest Entitlements they represent as last recorded by the Trustee. Any Additional Trustee is to be provided with the number of votes as prescribed by the sole Member Trustee. The Trustees may at any Trustee Meeting, in accordance with the proportional voting rule, decide upon the appropriate voting arrangements to apply for that Trustee Meeting, any matter to be determined in the Trustee Meeting or in respect of any future Trustee Meetings or matters to be decided upon in those meetings. Any Reserve Account balances are not to be used for voting purposes.
- 16.5 A Trustee Meeting shall be valid where attendance by a Trustee is by telephone, by the internet, by way of circulating minute, facsimile or any other form where all Trustees are provided with the opportunity of attending, discussing and determining the items of the Trustee Meeting agenda and where a vote is cast.
- 16.6 A resolution shall be passed where more than 50% of the votes available at the Trustee Meeting vote in favour of the resolution.
- 16.7 Subject to the Superannuation Laws and despite Rule 16.4, at any Trustee Meeting dealing with a deceased Member's Death Benefits or a Member's Incapacity Superannuation Benefits only the Member's Legal Personal Representative or the Member whilst alive and legally capable and competent may vote on any resolution dealing with the deceased or incapacitated Member's Superannuation Interest, Death Benefits or Superannuation Benefits.
- 16.8 The Trustee of the Fund, subject to any binding Member Auto-Reversionary Income Stream or SMSF Will, may limit the persons or entities that may claim or can benefit from the payment of any Death Benefits, either directly or indirectly following upon the

death of a Member of the Fund. In order to limit the persons or entities the Trustee must resolve in a Trustee Meeting those persons or entities that may benefit from any Death Benefit payment upon the death of one, more or all Members of the Fund. The Trustee may also make any such limitation a Special Rule of the Fund.

- 16.9 The Trustee of the Fund is to record and maintain all decisions of the Trustee for a reasonable period of time unless otherwise required under the Superannuation Laws.

#### **Guide – Rule 17**

*It is a requirement of the Superannuation Laws that the Trustee must keep records of the following for a minimum of five years:*

- *accurate accounting records that explain the transactions and financial position of the Fund;*
- *annual operating statement and an annual statement of your SMSF's financial position;*
- *copies of all SMSF annual returns lodged;*
- *copies of any other statements that the Fund is required to lodge with the Regulator or provide to other superannuation funds.*

*Furthermore, Superannuation Laws require that the Trustee must keep records of the following for a minimum of ten years:*

- *minutes of any Trustee Meeting and decisions by the Trustees;*
- *records of all changes of Trustees;*
- *Trustee declarations recognising the obligations and responsibilities for any Trustee, or Director of a corporate trustee, appointed after 30 June 2007*
- *Members' written consent to be appointed as a Director or Trustee;*
- *Copies of all reports given to Members; and*
- *Documented decisions about storage of collectable or personal use assets*

*The Trustee is required to determine the Value of the Fund's Assets at their market value for the purpose of financial reporting, along with demonstrating compliance with the Superannuation Laws. The Trustee may also be required to determine the Value of the Fund's Assets at different times throughout a financial year, for example with the commencement of a Superannuation Income Stream.*

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

#### **17. Rule 17 – Trustee to keep Accounts**

- 17.1 At the Trustee's discretion, the Trustee of the Fund is authorised to create various Accounts for the Fund including but not limited to operating statement, statement of financial position, SMSF Annual Return, and details of Member Superannuation

Interests (statements). The Trustee, however, must keep those Accounts as required under the Superannuation Laws.

- 17.2 The Trustee is to maintain accounts for the Fund, the Fund's Superannuation Interests, any Fund Reserve Account and for any other Account created by the Trustee and make additions and deductions from such Accounts according to the Rules of the Fund or the Superannuation Laws as required.
- 17.3 For accounting purposes the Trustee may determine the Value of the Assets of the Fund or a Member's Superannuation Interest at any time as required by the Superannuation Laws. Where the Superannuation and Tax Laws require Assets to be valued at their market value, the accounts and statements must be prepared using specific valuation methodology for such Assets including property, shares, collectables and other Fund investments. The Trustee is to abide by those Rules as if they were Rules of this Fund
- 17.4 The Trustee is to determine, where required by the Superannuation Laws or the Regulator, a Member's Superannuation Interest Entitlement. The Trustee may also keep records regarding the preservation status, the Tax-Free and the Taxable Components of a Member Superannuation Interest, Tax-Free and Taxable Proportions of a Member's Superannuation Income Stream Interest.
- 17.5 The Trustee must appoint an Approved SMSF Auditor that is registered with the Regulator each income year and ensure that the Fund's Accounts are audited in accordance with any Audit or Accounting Standards and according to the requirements of the Superannuation Laws.
- 17.6 The Trustee of the Fund must keep records and accounts of the Fund for the minimum prescribed period of time in accordance with the Superannuation Laws or as the Regulator requires.

**Guide – Rule 18**

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

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

**Method 2 – Trust Method:** *net income is determined as the term “net income” is defined under the taxation of trust provisions of the Superannuation Laws;*

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

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

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

## **18. Rule 18 – Fund Earnings**

18.1 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, at any time the Trustee may determine and declare the Earnings for one or more of the following Accounts:

- a) the Fund;
- b) a Member’s Superannuation Interest;
- c) a group of Members’ Superannuation Interests;
- d) a Reserve Account; or,
- e) any other Account or group of Accounts in the Fund.

18.2 The Trustee has sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where to allocate any Earnings of an Account including to a Member Superannuation Interest, a Reserve Account or any other Account of the Fund. If the Fund does not hold any Reserve Accounts any allocation of Earnings must be fair and reasonable amongst Member Superannuation Interests.

18.3 Where the Trustee maintains separate Investment Strategies for one or more Member Superannuation Interests then only those Superannuation Interests are to receive Earnings attributable to Assets held by the Trustee for the benefit of the separate Investment Strategy.

### **Guide – Rule 19 and Rule 20**

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

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

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

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

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

- a) preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;*
- b) the taxable (taxed and untaxed elements) or tax free components as required by the Superannuation Laws; and*
- c) the tax-free and taxable proportion of a Member's Superannuation Income Stream Interest.*

### **19. Rule 19 – Accounting for a Member Accumulation Interest**

19.1 The Trustee of the Fund may establish an Account for a Member Accumulation Interest created on behalf of a Member under Rule 5.2.

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

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



- b) the Taxable Component including the element untaxed in any Member Superannuation Interest and in addition the Tax-Free component as required by the Superannuation Laws.

19.3 Subject to the Superannuation Laws, the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee may add to the Member Accumulation Interest the following amounts:

- a) Authorised Contributions made on behalf of the Member to the Fund;
- b) an allocation of Earnings according to Rule 18.2 and 18.3;
- c) allocations made by the Trustee from any of the Fund Reserve Accounts according to Rule 9.5;
- d) a Transfer Superannuation Interest made to the Fund or within the Fund on behalf of a Member;
- e) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Accumulation Interest;
- f) any amounts allocated to the Member Accumulation Interest by the Trustee from insurance policy proceeds under Rule 12.5;
- g) a Member Superannuation Income Stream Interest Roll Back amount;
- h) a refund of Excess Contributions Tax;
- i) a Low-Income Superannuation Contribution or Low Income Superannuation Tax Offset amount;
- j) an amount subject to a Default Commutation Authority issued by the Regulator in respect to a breach of a Member Superannuation Income Stream with the Member Transfer Balance Cap;
- k) an amount subject to a Superannuation Contributions Splitting Application from a Spouse;
- l) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- m) such other amounts that, at the Trustee's discretion, should be added to the Member Accumulation Interest.

19.4 Subject to the Superannuation Laws the Trustee may deduct from the Member Accumulation Interest any of the following amounts:

- a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees or proportion thereof incurred by the Trustee that in the Trustee's opinion should be specifically deducted from the Member Accumulation Interest and not Reserve Accounts of the Fund;
- b) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be specifically deducted against the Member's Accumulation Interest;

- c) any Taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Accumulation Interest;
- d) the manner of payment and from what source these payments have been deducted for all insurance premium requirements for a Member including life, disability, accident, salary continuance or trauma insurances (where policy was in place prior to 1 July 2014) shall be in accordance with the total unfettered discretion of the Trustee.
- e) any Superannuation Lump Sum payment made by the Trustee on the death, Permanent Incapacity, Temporary Illness, Retirement, termination of employment, turning age 65 or for any other purpose for the benefit of the Member themselves, their Dependants, Legal Personal Representative or Estate in the event of either the Member's death or Incapacity;
- f) any amount transferred to a Member Superannuation Income Stream Interest for the purpose of commencing a Member Superannuation Income Stream Interest;
- g) any Excess Contributions Tax or payment required under a properly issued Release Authority;
- h) a Contributions Splitting Amount to a Spouse;
- i) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- j) any other amounts the Trustee determines should be deducted from the Member's Accumulation Interest.

**20. Rule 20 – Accounting for a Member Superannuation Income Stream Superannuation Interest**

- 20.1 The Trustee of the Fund may at the request of a Member establish an Account for a Member Superannuation Income Stream Interest created on behalf of a Member under Rule 5.2.
- 20.2 The Trustee may determine at any time in relation to a Member Superannuation Income Stream Interest the amount of the Income Stream that is the Taxable Proportion and the Tax-Free Proportion.
- 20.3 Provided the Superannuation Laws allow and the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee may add to the Member Superannuation Income Stream Interests:
  - a) any allocation of Earnings according to Rule 18.2 and 18.3;
  - b) a Trustee allocation from any of the Fund Reserve Accounts under Rule 9.5;
  - c) a Transfer Superannuation Income Stream Interest or Death Benefit Superannuation Income Stream Interest made to the Fund on behalf of a Member;
  - d) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Superannuation Income Stream Interest;
  - e) any amounts allocated to the Member Superannuation Income Stream Interest by the Trustee from insurance policy proceeds under Rule 12.5;

- f) an amount from a Member Accumulation Interest to commence a new Member Superannuation Income Stream;
- g) any Excess Contributions Tax refund;
- h) such other amounts, at the Trustee's discretion, that should be added to the Member Superannuation Income Stream Interest.

20.4 Provided the Superannuation Laws allow the Trustee may deduct from the Member Superannuation Income Stream Interest either by reduction of any income stream paid or commutation of any income stream any of the following amounts:

- a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees incurred or proportion thereof by the Trustee that, in the Trustee's opinion, should be deducted from the Member Superannuation Income Stream Interest;
- b) a proportion of the General Expenses of the Fund or any Specific Expenses including any Superannuation Income Stream payments made by the Trustee of the Fund for the benefit of the Member;
- c) any Taxes or Tax Adjustment Payments that the Trustee determines should be deducted from the Member Superannuation Income Stream Interest;
- d) insurance premiums for the payment of insurance requirements for the Member or any of their Dependant Members including life, disability, accident, salary continuance or trauma insurances (where policy was in place prior to 1 July 2014) that, in the opinion of the Trustee, should be deducted from the Member's Income Stream Superannuation Interest where the Member does not hold an Accumulation Interest;
- e) any Superannuation Lump Sum payment made by the Trustee representing the commutation of a Member Income Stream as a consequence of a Member's request to commute the Income Stream or on the Member's death, Incapacity or as otherwise allowed under the Superannuation Laws;
- f) any Member Superannuation Income Stream Interest Roll Back amount;
- g) an amount subject to a Default Commutation Authority issued by the Regulator in respect to a breach of a Member Superannuation Income Stream or Death Benefit Superannuation Income Stream with the Member Transfer Balance Cap;
- h) any Excess Transfer Balance Tax assessed by the Regulator
- i) any Excess Contributions Tax or payment required under a properly issued Release Authority;
- j) a Superannuation Contributions Splitting Application amount allotted to a Spouse;
- k) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- l) any amount allocated from the Member Superannuation Income Stream Interest to a Reserve Account provided the allocation is in accordance with the Superannuation Laws;

- m) any other amounts the Trustee determines should be deducted from the Member's Income Stream Superannuation Interest.

**Guide – Rule 21**

*There are numerous Federal and State taxes and levies imposed upon the Trustee and Members of the Fund. These include, but are not limited to, income tax, capital gains tax, stamp duty, Contributions Tax, Division 293 tax and land tax.*

*The Product Disclosure Statement notes that where the Trustee of the Fund retains Assets specifically to pay a Superannuation Income Stream that is in Retirement Phase and the conditions of the Superannuation Income Stream are met, fund earnings, including capital gains realised from a Superannuation Income Stream's Assets, are tax exempt when applying either the segregated or proportionate method for calculating exempt current pension income (ECPI) in accordance with the Tax Laws.*

*The Trustee is also required to adhere to any Member's Excess Contributions Release Authority issued as a result of Excess Contributions. This is where the Member has been assessed by the Regulator to have excess Concessional Contributions, which from 1 July 2013 are automatically refunded and included within the individual's income tax return or excess Non-Concessional Contributions, which from 1 July 2013 can be refunded or alternatively are subject to Excess Contributions Tax.*

*The Trustee is also required to adhere to any Default Commutation Authority issued as a result of an amount in excess of the Member Transfer Balance Cap. This is where a Member Superannuation Income Stream Interest has been determined by the Regulator to be in excess of the Member Transfer Balance Cap. From 1 July 2017, the amount included on a Default Commutation Authority must be either commuted by the Trustee back to the Member Accumulation Interest, or alternatively withdrawn from the Fund.*

*Excess Contributions Tax and Excess Transfer Balance Tax are not an impost on the Trustee but one that the Trustee must give effect to under the Superannuation Laws.*

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

**21. Rule 21 - What happens to Taxes, Excess Contributions Tax and Excess Transfer Balance Tax?**

- 21.1 The Trustee must pay all Taxes, duties, charges, fees and Taxes relating to the Fund's Assets, Earnings, and Contributions or on any other taxable consequence in accordance with the Superannuation Laws.
- 21.2 The Trustee is not personally liable for any taxation liability assessed to the Fund nor is any Member.

- 21.3 The Trustee must have regard to the Superannuation Laws as to which account, Earnings, Reserve Account or Superannuation Interest any tax is to be deducted in whole or part.
- 21.4 Where the Trustee receives an Excess Contributions Release Authority or Default Commutation Authority on behalf of a Member, the Trustee is to give effect to the conditions, requirements and terms of the Excess Contributions Release Authority or Default Commutation Authority. This must be in the time specified and simultaneously ensure that any other Trustee compliance or other requirements for a Complying SMSF in respect of the Excess Contributions Release Authority or Default Commutation Authority are met in accordance with the Superannuation Laws.
- 21.5 Subject to the Superannuation Laws the Trustee may receive tax refunds and has the sole discretion as to which Superannuation Interest or Reserve Account to add any tax refund irrespective of the source of the tax refund.
- 21.6 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may make a Tax Adjustment deduction to a Superannuation Interest where the Trustee is of the opinion that a Superannuation Interest has benefited from the use of a tax benefit sourced from another Superannuation Interest. However, it is not mandatory for the Trustee to do so.

**Guide – Rule 22**

*The Superannuation Laws allow a Member of a Fund to split their Concessional Contribution with their Spouse, who may or may not be a Member of the same Superannuation Fund. The splitting is carried out by the Member providing the Trustee with a Superannuation Contributions Splitting Application. Once received the Trustee will Allot, Transfer or Rollover the amount subject to the Contributions Spilt to the Spouse's Member Accumulation Interest.*

**22. Rule 22 – Contributions Splitting**

- 22.1 At any time, provided the Superannuation Laws allow, the Trustee may receive a Superannuation Contributions Splitting Application by a Member in relation to an Authorised Contribution made on behalf of the Member to the Fund.
- 22.2 The Superannuation Contributions Splitting Application must be in accordance with the Superannuation Laws or as prescribed by the Regulator. Any notice must only deal with those Authorised Contributions allowed to be split to a Spouse under the Superannuation Laws.
- 22.3 The Superannuation Contributions Splitting Application may detail the amount to be Allotted, Rolled Over or Transferred as a Transfer Superannuation Interest to a Member's Spouse. Subject to the Superannuation Laws, the Trustee may make the

relevant contributions split by allocating, rollover or transferring Assets of the Fund in satisfaction of the contributions split.

- 22.4 The Trustee is to action the Superannuation Contributions Splitting Application within a reasonable period of time and no later than the time prescribed by the Superannuation Laws or the Regulator.

**Guide - Rule 23**

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

**23. Rule 23 – Family Law**

- 23.1 The Trustee may receive a Family Law Payment Splitting Notice from the Courts in relation to a Member's Superannuation Interests.
- 23.2 The Trustee is to make such accommodation to the Member whose Superannuation Interests are being split under the Family Law Payment Splitting Notice in terms of:
- 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.
- 23.3 The Trustee is to action the Family Law Payment Splitting Notice within a reasonable period of time and no later than the time prescribed by the Courts, Superannuation Laws or the Regulator.

### **Guide – Rule 24**

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

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

## **24. Rule 24 – Member Meetings and Decision Making**

- 24.1 The Members may hold a Member Meeting where the Trustee of the Fund is to be removed or appointed pursuant to Rule 2 of the Fund's Rules or in such other circumstances as a Members Meeting is warranted, authorised or required by the Regulator or under the Superannuation Laws.
- 24.2 There is no requirement for formal notice of a Members Meeting. However, every Member must be afforded the opportunity of participating in the Members Meeting where possible.
- 24.3 A quorum for a meeting is where at least 50% of all available Members attend the Members Meeting and may include one Member.
- 24.4 For each decision by a Member at a Members Meeting the Member is to hold that number of votes equal to \$1 per vote in respect of the total Member Superannuation Interest Entitlements of the Member.
- 24.5 A Member Meeting shall be valid where attendance by any Member is by telephone, by the internet, by way of circulating minute, facsimile or any other form where all Members are provided with the opportunity of attending, discussing and determining the items of the Member Meeting agenda and where a vote is cast.
- 24.6 A resolution shall be passed where more than 50% of the votes available at the Member Meeting's vote in favour of the resolution.
- 24.7 The Trustee of the Fund is to record and maintain all decisions of the Members for a reasonable period of time unless otherwise required under the Superannuation Laws.

## PART FOUR – PAYING SUPERANNUATION BENEFITS FROM A SUPERANNUATION INTEREST

### **Guide Rule 25**

*At any time, upon satisfying a condition of release under the Superannuation Laws, a Member may seek to be paid a Superannuation Benefit from one or more of the Superannuation Interests held by the Trustee of the Fund on their behalf.*

*There are several circumstances where a Member of the Fund can officially access their Superannuation Benefits, including:*

- *Retirement or at reaching age 65;*
- *Temporary Incapacity and Permanent Incapacity;*
- *Terminal Illness;*
- *Under Severe Financial Hardship or on Compassionate Grounds;*
- *When a Member reaches Preservation Age and can commence a Transition to Retirement Income Stream (TRIS);*

*Where a Member has met a condition of release with no cashing restrictions, they can access their Superannuation Benefits as a Lump Sum and/or Superannuation Income Stream subject to the Superannuation Laws. Where a Member has met a condition of release, but still has cashing restrictions (e.g. TRIS), they can access their Superannuation Benefits as a Superannuation Income Stream only, subject to the Superannuation Laws.*

*From 1 July 2017, a Member Superannuation Income Stream will need to be reported to the Regulator as a credit to the Member Transfer Balance Account at the time of the event to be assessed against the Member Transfer Balance Cap. The exception to this is a Transition to Retirement Income Stream, where a member has not satisfied a condition of release, with a nil cashing restriction (e.g. has not yet retired, or attained age 65).*

*On the death of a Member of the Fund, the Trustee shall pay due regard to any Member SMSF Will or Death Benefit Nomination in making any Death Benefit payments. Benefits that may be paid at the time of the death of a Member include, but are not limited to:*

- *a Superannuation Lump Sum may be paid on the death of a Member to a Dependant or the deceased Member's Estate; and/or*
- *Superannuation Income Stream which may automatically be paid to a reversionary beneficiary or as a Death Benefit Superannuation Income Stream to a Dependant for taxation purposes. A tax Dependant includes all those persons who are Dependents but in the case of a Child, only a Child who is less than 18 years of age, except where they were financially dependent upon the deceased Member. Where an Income Stream is paid to a Child in accordance with the Superannuation Laws, it must be commuted no later than the 25th birthday of the Child.*



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

*From 1 July 2017, where a new Death Benefit Superannuation Income Stream is commenced for a Tax Dependant beneficiary, the Trustee will be required to credit the value of the new Superannuation Income Stream to the beneficiary's Transfer Balance Account to be assessed against the Member Transfer Balance Cap. Any decision by the Member to cease the Death Benefit Superannuation Income Stream cannot be rolled back to their Accumulation Interest, it must be paid as a Lump Sum and cashed out of the Fund.*

*From 1 July 2017, where the Superannuation Income Stream is to automatically revert to a reversionary beneficiary, the Trustee will be required 12 months following the date of the Member's death to apply a credit to the reversionary beneficiary's Transfer Balance Account to be assessed against their Member Transfer Balance Cap. The value of the credit is based on the value of the Member Superannuation Income Stream at the time of death.*

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

## **25. Rule 25 – Accessing Member Superannuation Benefits**

- 25 The Trustee is authorised to pay out 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 authorised to be paid by the Trustee to the Member or any other person allowed pursuant to the Superannuation Laws.

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

- 25.1 Subject to the Superannuation Laws and without limiting the powers of the Trustee under Rule 25.1 of the Fund, the following Superannuation Benefits or other benefits may be paid by the Trustee at the Member's Request, the Trustee's discretion and if authorised under Rule 25.1 as a Special Rule of the Fund:
- a) Where the Member has met a condition of release with a nil cashing restriction, they may take a Superannuation Lump Sum or commence one or more Superannuation Income Streams at any time;

- b) where the Member has met a condition of release, but still has a cashing restriction, they may commence one or more Transition to Retirement Income Streams at any time;
- c) Subject to the Fund maintaining its complying status, Where the member has commenced a Transition to Retirement Income Stream and subsequently meets a nil cashing restriction, they may request the Trustee to convert such income stream to an Account Based Pension as a replacement superannuation income stream and upon the Trustee so agreeing there shall be a deemed commutation and rollback of the Transition to Retirement Income Stream to a new and separate replacement superannuation income stream as an ordinary Account Based Pension in Retirement Phase made in compliance with the Superannuation laws.
- d) 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;
- e) 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;
- f) 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;
- g) 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, such Income Stream Superannuation Interest may be commuted to a Lump Sum in whole or in part at any time;
- h) any other Superannuation Lump Sum, Superannuation Income Stream or other payment authorised under the Superannuation Laws or by the Regulator.

## 25.2 Special Rules for Income Streams

- a) Where the Trustee commences a Superannuation Income Stream for a Member, Dependant of a Member, the Member's Legal Personal Representative or a deceased Member's Estate, the terms and conditions of the Member's Income Stream, including whether it is Auto-reversionary and to whom shall automatically be determined as a Special Rule of the Fund.
- b) The Special Rules for Income Streams includes the ability of a Member whilst in receipt of a Superannuation Income Stream to request the Trustee to vary the terms and conditions of the Superannuation Income Stream at any time after the commencement to add or remove a reversionary beneficiary to the subject Member Income Stream.
- c) If a Member exercises their rights in accordance with the preceding Rule 25.2(b), the Trustee shall prepare and require the Member to execute the necessary

documents to reflect the addition or removal of a reversionary beneficiary to the Member's Superannuation Income Stream accordingly.

#### 25.3 Release Authorities and Payment Notices issued by the Regulator

The Trustee, if required under a Release Authority or Payment Notice issued in respect of the Fund or a Member's Superannuation Interest in the Fund, must pay to a Member or the Regulator the prescribed amounts, within the time prescribed by the Superannuation Laws.

#### 25.4 Rollovers and Transfers

- a) Subject to the Superannuation Laws, the Trustee may Rollover a Superannuation Lump Sum, a Superannuation Income Stream, including a Death Benefit Superannuation Income Stream or make a transfer of a Transfer Superannuation Interest for the benefit of a Member to an Eligible Rollover Fund.
- b) Subject to the Superannuation Laws, the Trustee accept the Rollover of a Superannuation Income Stream, including Death Benefit Superannuation Income Stream from another Eligible Rollover Fund.

#### 25.5 Income Stream and Pension Roll Backs

- a) At any time, a Member in receipt of an Superannuation Income Stream Interest may Rollback part or all of their Superannuation Income Stream Interest to an Accumulation Interest in the Fund established for their benefit in accordance with the Superannuation Laws.
- b) A member in receipt of a Death Benefit Superannuation Income Stream cannot rollback or convert to an Accumulation Interest in the Fund for their benefit in accordance with the Superannuation Laws.

#### 25.6 Income Stream and Pension Transfers

At any time, a Member in receipt of an Superannuation Income Stream Interest may transfer part or all of their Superannuation Income Stream Interest to an Accumulation Interest or Superannuation Income Stream Interest to another complying Superannuation Fund. The Transfer amount may be satisfied by the transfer of Assets between the Member's Superannuation Income Stream Interest and the Member's Accumulation Interest or the Member's Superannuation Income Stream Interest in the transferee Fund.

#### 25.7 Compulsory Payments

It is not compulsory for the Trustee, except where the Superannuation Laws require, to pay a Superannuation Benefit to a Member unless the Trustee is requested to do so by the Member and the payment is permitted in accordance with the Conditions of Release in the Superannuation Laws.

## 25.8 Death Benefits

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 provided the conditions at Rule 16.7 are met:

- a) where a person who is a Member of the Fund dies and there is a SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination in force for the Member, the Trustee must pay the Member's Superannuation Benefits in accordance with the SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination. 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 any other person or entity authorised under the Superannuation Laws.
- b) where a person who is a Member of the Fund dies and there is no binding SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination in force for the Member the Trustee has sole discretion, subject to the Superannuation Laws 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 any other person or entity authorised under the Superannuation Laws. If the Member has provided the Trustee with a Non-Binding Death Benefit Nomination 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.
- c) where a Member dies ("the deceased Member") and has an Auto-Reversionary Income Stream or a Pension with an auto-reversion ("ARIS") which is transferrable to a Dependant of the deceased Member (the "beneficiary"), and created pursuant to the provisions of the original Superannuation Income Stream documentation or, alternatively by the Member's SMSF Will, Binding Death Benefit Nomination or Binding Non-Lapsing Death Benefit Nomination, then subject to the Superannuation Laws and the terms and conditions of the Superannuation 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, unless there is a Paramount Document dealing with the whole or part of the Superannuation Income Stream Interest in a different manner. Upon this auto-reversionary event, amounts standing the credit of the deceased Member's Auto-Reversionary Income Stream are to be transferred as Member Superannuation Benefits of the Auto-Reversionary Beneficiary and reported in accordance with the Superannuation Laws.

- d) a Member may establish a Conditional Reversionary Pension on the signing of a Conditional Pension Deed. The terms and conditions of the Conditional Pension, as set out in a “Conditional Pension Deed” shall be acknowledged and agreed to by the proposed recipient of the Conditional Pension by them executing a separate or the same Conditional Pension Deed with the terms and conditions of the payment of the Conditional Pension. The Member creating the Conditional Pension shall also be a party to the Conditional Pension Deed. The executed Conditional Pension Deed shall then, subject to the Superannuation Laws and at the direction of the Member become a Special Rule of the Fund and shall be a Paramount Document unless expressed to the contrary.
- e) in the event of the creation of a Conditional Pension Deed as provided in Rule 25.8 d) above the Trustee must, subject to the Superannuation Laws, upon application by the Member, accept the Conditional Pension Deed as a Special Rule of the Fund and shall sign all documents and undertake all requirements for the establishment and provision of the Special Rule accordingly.
- f) the Trustee may limit to whom or what Death Benefit Dependants the Member’s Superannuation Benefits may be paid to except where there is a Binding SMSF Will, Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination, Conditional Pension Deed, or Ancillary Deed. This includes any Superannuation Benefits to be paid to a deceased Member’s Estate. To limit the Death Benefits Dependants that the Member’s Superannuation Benefits may be paid to the Trustee must first hold a Trustee Meeting and notify all Members of any Trustee resolution on the matter.
- g) the Trustee must only pay a pension to a child dependent of a deceased Member of the Fund where either the child recipient of the pension is under 18 years of age or between 18 years of age and 25 years of age or be financially dependent upon the deceased superannuant at the time of the Member’s death upon such terms and conditions that the Trustee shall determine as a Special Rule of the Fund.
- h) The Trustee must comply with the Superannuation Laws regarding any reporting to the Regular for the commencement of a Superannuation Income Stream, Death Benefit Superannuation Income Stream, Auto-Reversionary Income Stream or other reporting event towards a Member Transfer Balance Cap as required.

### **SMSF Living Will Superannuation Benefits**

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 Dependants or the Member’s Legal Personal Representative.

## 25.9 Special Rules to achieve QROPS status

- a) The trustee may by Resolution make Rules to alter the fund to ensure that it meets the requirements of a Qualifying Recognised Overseas Pension Scheme (QROPS) for the purposes of being permitted to receive a UK pension Transfer in accordance with the laws of the United Kingdom.
- b) The resolutions made pursuant to this rule shall operate to amend or alter Rule 3 and Rule 25 above to ensure that the fund achieves QROPS Status.
- c) A resolution under this rule shall be determined as a Special Rule of the Fund.

### **Guide – Rule 26**

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

## **26. Rule 26 – Guardians for Fund Members**

### 26.1 Appointment of Guardians for Fund Members

A Member of the Fund may appoint an individual as a Member's Fund Guardian for the purposes of the payment of that specific Member's benefits and the management of that Member's Superannuation Interests held in the Fund in accordance with the provisions of the Deed. This appointment must be in writing ("the Deed of Appointment") and must be executed by both the Member nominating and the Fund Member's Guardian appointed and must also be witnessed by two independent witnesses. A Fund Guardian may be appointed by a Conditional Pension Deed pursuant to Rule 25.8 d).

### 26.2 Consent required by the Fund Member's Guardian

Subject to the provisions of the Deed of Appointment or Conditional Pension Deed, in the event of a Member of the Fund appointing a Member's Fund Guardian in accordance with Rule 26.1 hereof the Trustee cannot exercise any of the powers as conferred upon the Trustee in accordance with the provisions of this Deed relating exclusively to the specific Member who appointed the Fund Member's Guardian without the Guardian's prior written consent.

### 26.3 Appointment of Fund Member's Guardian as a Fund Member

Subject to the provisions of the Governing Rules of the Fund and Conditional Pension Deed a Guardian may be or become a Member of the Fund. In the event of a Guardian applying to

become a Member of the Fund the Trustee must admit such Guardian as a Fund Member provided the Fund remains a SMSF.

#### 26.4 Revocation of Fund Member's Guardian

The Member of the Fund who appointed the Fund Member's Guardian may revoke this appointment at any time by delivering to the party appointed as the Fund Member's Guardian a written notice of revocation of the role of Guardian. Such notice must be in writing and be signed and dated by the applicable Member. In the event that a Guardian becomes a Member of the Fund and receives notice under this sub-clause, the Guardian's Membership is terminated within seven days if the Guardian does not resign as a Member.

## PART FIVE – OTHER SPECIAL EVENTS

### **Guide – Rule 27**

The Courts are usually the forum to resolve disputes in Self-Managed Superannuation. The Court process is both expensive and time consuming. The Governing Rules of the Fund in Rule 27 provide an alternative to disputing parties to the Court process.

Rule 27 is designed to be time and cost effective to resolve disputes of whatever nature between disputing parties of the Fund in an attempt to mitigate the litigation process.

Should a dispute arise in respect of any matter generally with regard to the Fund the parties to the dispute can instigate the procedure and process of this Rule to attempt to resolve the dispute.

Mediation applies to the disputing parties in accordance with this Rule. If the disputing parties cannot decide on the appointment of an independent Mediator application can be made to the Technical Director or comparable Officer of the SMSF Association to appoint a Mediator.

In the event that the dispute cannot be resolved, in accordance with Rule 27 the remaining option to resolve such dispute is to apply to the Court of competent jurisdiction.

The parties to a dispute can be represented during the dispute resolution process as provided for in Rule 27.

### **27. Rule 27 - Dispute Resolution**

27.1 In the event of a dispute either or both of the Disputing Parties must notify in writing the Trustee(s) and the other Disputing Party details of the dispute (in this paragraph called “the dispute”) and upon that written notice being served the following provisions apply:

- a) the Disputing Parties must as soon as practicable and in any event not later than fourteen (14) days after the service of the notice meet to discuss all aspects of the dispute and for the purposes of attempting to explore a resolution of the dispute or alternatively to agree precisely on the issues which are outstanding in respect of the dispute and are not agreed upon;
- b) If the dispute is not resolved within 14 days, the Disputing Parties will appoint a mediator nominated by the Technical Director or comparable Officer of the SMSF Association;
- c) The Disputing Parties must observe the instructions of the mediator about the conduct of the mediation;
- d) If the dispute is not resolved within ten (10) days after mediation the mediation process ceases;
- e) Each party must pay an equal share of the costs of the mediation to the mediator and each party agrees to indemnify the mediator against liability in respect of the mediation of the dispute;



- f) If the dispute is resolved each party must observe the terms of the resolution and the terms are binding on the parties and override the terms of the governing rules of the Fund to the extent that there is any conflict;
- g) The mediation process is confidential and any written statements prepared for the mediator or the Disputing Parties and any discussion between the Disputing Parties and between the Disputing Parties and the mediator before or during the mediation process cannot be used in any legal proceedings.

27.2 A Disputing Party is entitled to appoint a representative by notice in writing to the other Disputing Party to act in the place of or to represent that Disputing Party at the meeting or mediation and that representative will have the same powers under the Fund's Deed as the Disputing Party by whom they have been appointed.

27.3 It is a requirement that a Disputing Party must, before instituting any legal proceedings in respect of a dispute with any other party concerning their interests held in the fund, undertake and complete the dispute resolution provisions and processes as described in this Rule 27.

#### **Guide – Rule 28**

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

1. *On the death of the last remaining Member of the Fund any replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;*
2. *The Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders the Fund is to be wound up;*
3. *The Superannuation Laws are amended such that the Fund can no longer remain a Complying SMSF and the Members agree to wind up the Fund;*
4. *The Trustee simply resolves that the Fund is to be wound up.*

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

- *Members and former Members of the Fund;*
- *Relatives of any Member or former Member;*
- *to any Estate of a Member or former Member; or*

*to any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee sees fit.*

## 28. Rule 28 – Winding up the Fund

- 28.1 The Trustee is to wind up the Fund in the following circumstances:
- a) On the death of the last remaining Member of the Fund and any Replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;
  - b) The Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders that the Fund is to be wound up;
  - c) The Superannuation Laws are amended such that the Fund can no longer remain a Complying SMSF and the Members agree to wind up the Fund;
  - d) The Trustee resolves that the Fund is to be wound up.
- 28.2 The Trustee in winding up the Fund is to pay any Taxes, General Expenses, Specific Expenses, Superannuation Benefits and any other amounts or disbursements to ensure that the Fund has no outstanding liabilities prior to paying out any distribution
- 28.3 Following the payment of all amounts under Rule 28.2, if the Trustee has any Assets, Cash and Reserves the Trustee may distribute these Assets and Cash, subject to the Superannuation Laws to:
- a) Members and former Members of the Fund;
  - b) Relatives of any Member or former Member;
  - c) any Estate of a Member or former Member; or,
  - d) any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee determines.

### **Guide – Rule 29**

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

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

*The Trustee may change the name of the Fund at any time provided the Regulator is informed of the change in name within the period required under the Superannuation Laws – currently 28 days.*

**29. Rule 29 – Changing the Fund’s Rules or Name**

- 29.1 The Trustee may at any time by simple resolution or Deed vary, change, delete from, add to or otherwise amend any or all of the Rules of the Fund provided the following conditions are adhered to:
- a) Any variation, change, deletion, addition or amendment to the Rules shall strictly adhere to the Superannuation Laws and the Fund retaining its Complying SMSF status;
  - b) Where the Trustee has resolved that a Special Rule for the benefit of a Member shall take effect, the Special Rule shall form part of the provisions of any amended Rules of the Fund unless otherwise determined by the Member and/or the Trustee;
  - c) Any variation, change, deletion, addition or amendment to the Rules shall not detrimentally affect a Member’s Superannuation Interests in the Fund;
  - d) Any variation, change, deletion or amendment to the Rules shall not result in a resettlement of the superannuation trust nor a capital gains tax event unless the Superannuation Laws require;
  - e) Where the Trustee of a Fund is adopting the Rules and has a defined benefit pension in existence, a loan arrangement pre-1985 or any other Rule that advantages the Members of the Fund but which would be lost or diminished if the Rules were applied in-toto, any variation of the Rules is not to vary the Rules that advantage a Member and they are deemed to be incorporated into the Rules of the Fund.
- 29.2 The Trustee may at any time change the Fund’s name provided the Regulator is informed if required under the Superannuation Laws. Any change in Fund name may be made by the Trustee by way of a simple resolution.

## PART SIX –TRUST DEED

### 30. Rule 30 – Definitions

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

**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 Account Based Pensions in the Superannuation Laws.

**Active Member** is a Member of the Fund that meets the criteria for active Membership under the Superannuation Laws including the making of continuous contributions on behalf of the Member to the Fund.

**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.

**Anti-detriment Reserve** includes a Reserve established by the Trustee under the Rules of the Fund and for the purpose of ensuring that the Dependants or Estate of the deceased Member are put in a better financial position than they expect from the deceased Member's Legal Estate through the allocation of an amount from the Anti-detriment Reserve to one of more of the deceased Member's Superannuation Interests or to the deceased Member's Dependants or Estate.

**ARIS** means an Auto-Reversionary Income Stream or Pension with an auto-reversion in accordance with Rule 25.8 c).

**Assets** include, but are not limited to real, personal or intellectual property, shares, futures, collectables, businesses or business interests, any assets or property transferred or contributed to the Fund plus income, earnings and profits arising from those assets or property interests as well as any other asset that a 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 Estate of a Member or deceased Member but excludes Cash.

**Assets Test Exempt Superannuation Income Stream** is a Superannuation Income Stream that is exempt, either wholly or partially from the Assets Test under the Social Security Act 1991.

**Associate** has the same meaning as found in the in-house asset Rules found in Part 8 of the SIS Act 1993.

**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, the forgiveness of a debt, the

shifting of value to an asset owned by the Fund or any other transaction that is regarded by the Regulator as a Contribution), made to the Fund by a person, entity, government, Regulator, Employer Sponsor where the Trustee is satisfied that the Contribution has met the requirements to accept the superannuation Contribution under the Superannuation Laws.

**Auto-Reversionary Income Stream or Pension** means any one or more Superannuation Income Streams or Pensions where a person including a Dependant (“the auto-reversionary beneficiary”) is included in the Superannuation Income Stream or Pension documentation as the recipient (“if alive”) who is automatically entitled to the Member’s Income Stream or Pension upon the Member’s death. Where the Superannuation Laws do not allow an auto-reversionary beneficiary to continue, the auto-reversionary beneficiary’s share of the Income Stream or Pension is to be commuted to a Lump Sum.

**Bare/Holding Trust** is a Trust and includes a Holding Trust established by the Trustee or some other party which holds one of 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. The value of any Superannuation Benefit in Kind is to be determined by the Trustee of the Fund who may engage the services of a valuer or apply market-valuation principles to Fund Assets as prescribed by the Regulator.

**Binding Death Benefit Nomination** is any document executed by a Member of the Fund that is designed to “bind” a Trustee of a superannuation fund to distribute the superannuation death benefits of a deceased Member to the recipient (or recipients) as stated in the nomination and includes a Member SMSF Will or alternatively in the format provided in Schedule 2 of this Deed. A Binding Death Benefit Nomination may, if so expressed, be made a Paramount Document.

**Business Real Property** means and includes property as defined as such in Section 66 of *Superannuation Industry (Supervision) Act 1993*

**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.

**Cashing Restriction** is any restriction in the Superannuation Laws that may apply where a Member satisfies a Condition of Release in respect of one of more of their Superannuation Interests.

**CGT cap** means a contribution that is made in accordance with Division 152 of the Income Tax Assessment Act 1997.

**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.

**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.

**Conditional Pensions** are income streams to be paid in accordance with Rule 0.

**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 as defined under the Superannuation Laws and in addition a policy for the Temporary Incapacity, Permanent Incapacity, Death, or any other event dependent upon the life of a Member of the Fund.

**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 and may also include an allocation from a Reserve Account on behalf of a Member.

**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** includes a Reserve of the Fund where unvested Contributions are made on behalf of a Member or a specific group of Members.

**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.

**Crystallised Reduction Amount** means such amount as defined within Subdivision 294F of the Income Tax Assessment Act 1997.

**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 Estate of the deceased Member of the Fund or any other person however, and, unless there is a Paramount Document, excludes any on-going pension or income stream payment to a Beneficiary under an Auto-Reversionary Income Stream.

**Death Benefit Superannuation Income Stream** means and includes a Superannuation Income Stream that arises as a result of the death of a Member in accordance with the provisions of the Deed.

**Death Benefit Nominations** means and includes a written direction to the Trustee of the Fund by a Member of the Fund providing definitive directions as to the manner of payment to and the recipients of the Member's superannuation benefits at the time of their death

**Deed** means and includes this Trust Deed containing the governing and operating rules of this Fund and any subsequent Trust Deed varying the Deed.

**Default Commutation Authority** means a notice issued by the Regulator for an Excess Transfer Balance amount (known as the Crystallised Reduction Amount) to be removed from a Superannuation Income Stream in Retirement Phase.

**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. However the Trustee may limit those persons who may claim or receive a Death Benefit upon the death of a Member including any Dependant.

**Disputing Parties** means any legal or natural person who has a dispute with any other party in respect of the operation of the fund, the interpretation of the governing rules of the fund or any document pertaining to the fund or any matter relating to the fund.

**Disqualified person** is an individual under section 126A of the *Superannuation Industry (Supervision) Act 1993* convicted of an offence involving dishonesty, or subject to a civil penalty order, or an undischarged bankrupt or person disqualified by the ATO Commissioner and thereby prohibit them from acting as a Trustee of a Self-Managed Superannuation Fund

**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. In that regard the Trustee has the sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, of applying one of the following methods for determining Earnings of the Fund, the Member's Superannuation Interest or group of Members' Superannuation Interests or Reserve Account or any other account of the Fund, whatever the case may be:

- i. **Accounts Method:** income according to established accounting principles for Superannuation Funds which may include a revaluation of any Assets of the Fund to their market value less any Fund expenses which include Fund taxes;
- ii. **Trust Method:** net income as the term "net income" is defined under the taxation of trust provisions in the Superannuation Laws;
- iii. **Income Method:** any amounts received as income plus any unrealised or realised capital gains and at the Trustee's discretion, any allocations from a Reserve Account less any disbursements the Trustee is of the view should be deducted from income including any general or specific expenses;  
or
- iv. **Flexible Method:** any combination of the above or method that the Trustee is of the opinion properly reflects Earnings including any transfer from a Reserve Account to the Earnings of the Fund in the

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

**Eligible Entity**, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, includes any Superannuation Fund, Life Insurance Company or other entity that may accept a Rollover of a Superannuation Benefit or transfer of a Transfer Superannuation Interest from a SMSF including a Foreign Superannuation Fund where the Superannuation Laws allow.

**Eligible Rollover Fund** is a Superannuation Fund that is an Eligible Rollover Fund as defined under the Superannuation Laws.

**Employer Sponsor** is an employer who has agreed to make Authorised Contributions to the Fund on behalf of an employee of the Employer Sponsor or their associate.

**Enduring Power of Attorney** is a legal agreement that enables a person to appoint another individual or individuals to make financial and property decisions on their behalf.

**Estate** means and includes all the property of which a deceased had power to dispose by Will otherwise than by virtue of a special power of appointment, less the amount of the deceased's funeral, testamentary and administration expenses and debts and liabilities that are payable out of the deceased's estate on his or her death and includes the assets held by the deceased Member's Legal Personal Representative as Trustee of the deceased Member's Estate or any other beneficiary.

**Excess Contributions Tax** includes an amount assessed by the Regulator for a period as being excessive in terms of Non-Concessional Contributions and/or Concessional Contributions (prior to 1 July 2013) in relation to a Member of the Fund under the Superannuation Laws.

**Excess Contributions Tax Release Authority** is an authority issued by the Regulator under the Superannuation Laws for the payment of Excess Concessional Contributions Tax (prior to 1 July 2013) and/or Excess Non-Concessional Contributions Tax.

**Excess Transfer Balance Tax** is the amount of tax determined by the Regulator for any excess capital of a Member's Income Stream above the Member Transfer Balance Cap and attributable earnings for the period in which the Member first exceeded the cap to the date of rectification.

**Explanatory Memorandum** is a document attached to the Rules of the Fund for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund.

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

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

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

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



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

**General Transfer Balance Cap** is an amount of \$1.6 million for the 2017-18 financial year and is indexed to with the Consumer Price Index (CPI) in \$100,000 increments.

**Governing Rules means** the Trust Deed containing the governing and operating rules of the applicable Fund.

**Government** includes the Australian Federal Government, the various State and Territory Governments of the States and Territories of Australia, Local Councils and any other legally-convened Government around the world.

**Incapacity** includes Temporary and Permanent Incapacity and Terminal Illness as well as those conditions under the Superannuation Laws that amount to incapacity.

**Incapacity Superannuation Benefits** include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, their Dependants, Estate or other person in the event of a Member's Incapacity or for some other reason.

**Income Stream** includes any Pension, Income Stream or Member's benefit that is not an Accumulation Superannuation Interest.

**Income Stream Benefit** includes any Pension, Income Stream or Member's benefit that is not an Accumulation Superannuation Interest.

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

**Incompetent** means being unable or legally unqualified or incapable to perform the role of the Trustee of a Regulated Self-Managed Superannuation Fund

**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 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 includes,

- 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;
- d) The ability of the Fund to discharge its existing and future liabilities; and
- e) Whether or not the fund should provide insurance to the Members, and if so, the form it should take.

**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 Dependants, the Legal Estate or any other beneficiary.

**Legal Personal Representative** means:

- a) 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 or such other person nominated by a Member pursuant to their SMSF Will or SMSF Living Will. It also includes the Trustee of any Trust established by the Will of the deceased member, or their Estate.
- b) In respect of a person under a legal incapacity 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.

**Low Income Superannuation Contribution** means a government superannuation payment of up to \$500 for qualifying low income workers. This payment is made for eligible Members until 30 June 2017.

**Low Income Superannuation Tax Offset** means a government superannuation payment of up to \$500 for qualifying low income workers. This payment is made for eligible Members from 1 July 2017.

**Member** is a person who 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 Accumulation 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 Superannuation Interest** includes, either a Member Accumulation Interest (which can have no dollar balance) and/or Member Superannuation Income Stream Interest

**Member Superannuation Income Stream 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 Superannuation Income Stream Interest remains in force provided that there is an account balance greater than zero dollars.

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

**Member Transfer Balance Cap** is the maximum amount of capital that Member can transfer to an Income Stream that is in Retirement Phase which is indexed proportionally to the General Transfer Balance Cap.

**Member Meeting** is a meeting of the Members as required by the Rules of the Fund and the Superannuation Laws or where matters regarding the Fund are discussed.

**Member SMSF Living Will** includes a formal or informal set of directions in writing made by the Member under these Rules to benefit a Member, their Dependents or Legal Personal Representative where the Member suffers Temporary Incapacity, Permanent Incapacity, mental infirmity, loss of mental capacity, incompetence or terminal illness.

**Member SMSF Will** includes a 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 and may be either binding or non-binding on the Fund Trustee as determined by the provisions of the SMSF Will.

**Non-Binding Death Benefit Nomination** is a written nomination in any format, or alternatively in the format provided in Schedule 2 of this Deed, established by a Member of the Fund in relation to the distribution of their Superannuation Death Benefits in the event of their death which is not a Binding Death Benefit Nomination.

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

**Non-Lapsing Binding Death Benefit Nomination** includes, subject to the Superannuation Laws, a nomination in writing that is received by the Trustee that states:

- a) the persons Estate or other authorized entity specified in the notice that may receive the Member's Death Benefits;
- b) the terms and conditions of the Superannuation Benefit that will be paid or transferred to that person or to each of those persons;
- c) how and the amount of the benefit to be paid to that person or to each of those persons;
- d) the notice is in effect; and
- e) must be signed and dated by the Member and accepted by the Trustee of the Fund.

The notice is effective until such time as the Member revokes a notice unless the Superannuation Laws otherwise allow. A Non-Lapsing Binding Death Benefit Nomination may, if so expressed, be made a Paramount Document.

**Non-Lapsing Binding Death Benefit Nomination** means and includes, subject to the Superannuation Laws, a nomination in writing in any format, inclusive of a Member's SMSF Will, which when accepted by the Fund Trustee binds the Trustee as to the manner and the form of the payment of the Member's Superannuation Death Benefits at the time of their death.

**No TFN-quoted Contributions** are those Contributions where the Member has not supplied the Trustee with a valid Tax File Number or as defined as a No TFN-quoted Contribution in the Superannuation Laws.

**Paramount Document** means a document or Agreement that is made a Special Rule of the Fund that shall take precedence and priority in whole or in part over any other document, agreement or resolution made by the trustee of the Fund that purports to deal with a member's superannuation interests in the Fund in a different manner.

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

**Payment Notice** is a notice issued by the Regulator to the Fund or Member of the Fund for the payment of any tax, interest or charge.

**Pension** includes a Superannuation Income Stream Benefit under these Rules or a Pension under the Superannuation Laws.

**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 Superannuation Income Stream 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.

**Professional** includes a person authorised and if required licensed under the Superannuation Laws to provide advice, audit services, administration services or any other services to the Trustee of a SMSF including a Lawyer, Accountant, Financial Planner or a SMSF Professional.

**QROPS Arrangement** means the receipt or transfer of pension schemes and arrangements in accordance with Section 169 of the UK Act.

**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, Australian Prudential Regulation Authority, the Australian Securities Investment Commission or any other governmental body that has jurisdiction for regulating the Superannuation Laws as it applies to circumstances of the Fund.

**Related Party** 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 any request by the Regulator issued to the Fund that requires payment from the Fund which may be allocated against one or more Superannuation Interests of a Member.

**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 or from Earnings of the Fund and specifically includes amongst others: an Anti-Detriment Reserve, a Pensions 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 Estate, a Deceased Member's Dependant or any other person or entity allowed under the Superannuation Laws.

**Responsible Officer**, in relation to a body Corporate means:

- a) a Director of the company;
- b) a Secretary of the company; or
- c) an Executive Officer of the company.

**Retirement and Retired** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a Member of the Fund who has reached preservation age and no longer intends to work again. It also includes:

- a) where a Member of the Fund is over their preservation age and the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;
- b) the Member has reached age 60 and an arrangement under which the Member is gainfully employed has come to an end on or after that age or the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;
- c) at any other time according to the Superannuation Laws.

**Retirement Phase** is the period during which a Member's Superannuation Income Stream is currently payable. A Transition to Retirement Income Stream is never a Superannuation Income Stream that is in the Retirement Phase.

**Risk Management Strategy** is a written statement in accordance with Regulation 13.15A of the *Superannuation Industry (Supervision) Act 1993*

**Roll Back** includes the transfer of part or all of a Member's Superannuation Income Stream Interest to an Accumulation 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.

**Rollover Superannuation Benefit** includes the payment of a Superannuation Lump Sum, a Superannuation Income Stream, Death Benefit 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 requirements as well as a Special 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.

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

**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* (Cth).

**SIS Regulations 1994** are the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

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

**SMSF Will** includes any document in any format whatsoever as accepted by the Trustee of the Fund dealing with the payment of a deceased Member's Superannuation Death Benefits, including any Reserve Benefits in the event of a Member's death and may be either binding or non-binding on the Fund Trustee as determined by the provisions, terms and conditions of the SMSF Will. Any SMSF Will shall be made a Special Rule of the Fund and shall, unless expressed to the contrary be a Paramount Document.

**Sole Purpose Test** means a test that ensures a Superannuation Fund is maintained for the purpose of providing benefits to its Members upon their Retirement (or attainment of a certain age), or for beneficiaries if a Member dies as defined in Section 62 of *Superannuation Industry (Supervision) Act 1993*.

**Special Rule** is a Rule created by a Trustee Meeting that forms part of the Rules of the Fund and is declared by the Trustee as a Special Rule of the Fund. Pursuant to Rule 1.8 a Special Rule cannot be varied except with the specific consent of the Trustee and where applicable the Member concerned. A Special Rule may be incorporated as a Schedule to the Rules of this Fund.

**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 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 or other person or 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 removing any doubt, the Fund.

**Superannuation Contributions Splitting Application** 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.

**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 to a lump sum, 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 be 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;
- b) A Lifetime Complying Pension [SIS Regulation 1.06(2)];
- c) An Account Based Pension [SIS Regulation 1.06(9A)];
- d) An Allocated Pension [SIS Regulation 1.06(4)];
- e) A Market-Linked Pension [SIS Regulation 1.06(8)];
- f) A Fixed-Term Complying Pension [SIS Regulation 1.06(7)];
- g) A Non-commutable Life Pension [SIS Regulations Schedule 1 – Item 108];
- h) A Non-commutable Allocated Pension [SIS Regulation 6.01(2)];
- i) A Transition to Retirement Income Stream [SIS Regulation 6.01(2)];
- j) A Non-commutable Pension [SIS Regulation 6.01(2)];
- k) A Temporary Incapacity Superannuation Income Stream – non-commutable income stream [SIS Regulation 6.01(2)];
- l) 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; and
- m) Any other Pension or Superannuation Income Stream under the Superannuation Laws.

**Superannuation Income Stream Reserve Account** includes a Pension Reserve created by the Trustee, with or without the advice of an Actuary to ensure that there are sufficient Assets held by the Trustee to enable the Trustee to meet its current and future Superannuation Income Stream liabilities as and when they fall due.

**Superannuation Interest** is any interest in a Superannuation Fund created under the Superannuation Laws and the Rules of the Fund including but not limited to a Member Accumulation Interest, a Member Superannuation Income Stream 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** means 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 Treasury Laws Amendment (Fair and Sustainable)*



*Act 2016, the Superannuation (Excess Transfer Balance Tax) Imposition Act 2016, 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.

**Tax-Free Proportion** is that part of a Superannuation Benefit that is Tax-Free Component as determined under the Superannuation Laws used to commence a Member Superannuation Income Stream Interest.

**Taxable Proportion** is that part of a Superannuation Benefit that is Taxable Component as determined under the Superannuation Laws used to commence a Member Superannuation Income Stream Interest.

**Tax Laws** means *the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and the Income Tax Regulations*

**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 any 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.

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

**Transfer Balance Account** is the net amount of capital for one or more Income Streams that a Member has transferred to Retirement Phase that is assessed against the Member Transfer Balance Cap.

**Transfer Superannuation Income Stream Interest:** means the transfer of a Superannuation Income Stream Interest of a Member from one Regulated Superannuation to the Fund.

**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 a Superannuation Income Stream 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.

**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, which may include circular resolutions.

**UK Act** means the *Finance Act 2004 of the United Kingdom of Great Britain and Northern Ireland*

**Value of a Member's Superannuation Interest** is the value the Trustee determines in respect of a Member Accumulation Interest or Member Superannuation Income Stream 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.

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**SCHEDULE 1**

**[NAME OF FUND] SUPERANNUATION FUND**

DIRECTION TO TRUSTEE

**NON-BINDING DEATH BENEFIT NOMINATION**

To: The Trustees (NAMES OF TRUSTEES) of the [NAME OF FUND] ("Fund")

1. I revoke all previous binding death benefit nominations.
2. Pursuant to the provisions of Rule 11 of the Trust Deed of the Fund, I **[NAME OF MEMBER]** of **[ADDRESS]** in the State of Victoria being a Member of the Fund, **herby direct** the Trustee for the time being of the Fund to pay my death benefits and Legal Estate on or after my death to the following person(s) and in the following manner and proportions indicated below:

| Name of Nominated Beneficiary | Relationship to me | Type of benefit  | Amount (\$) or Proportion (%) of benefit |
|-------------------------------|--------------------|--|--|
| (a) [NAME]                    |                    | (a) Lump sum<br><i>(delete if not applicable)</i>  | %  |
| (a)                           |                    | (b) Account based income stream<br><i>(delete if not applicable)</i>   | %  |
|                               |                    | (c) A combination of lump sum and account based Pension as determined by the Nominated Beneficiary.<br><i>(delete if not applicable)</i> |  |

3. In the event that any of the Nominated Beneficiaries referred to above shall fail to survive me for a period of thirty (30) days I direct the trustee to pay or transfer that predeceased Beneficiaries share of my death benefits and Legal Estate as follows: -

- (a) To be divided equally among those of my dependants listed above that survive me [delete if not applicable]; **or**
- (b) to the Legal Personal Representative of my estate to be dealt with in accordance with my last Will [delete if not applicable]; **or**
- (c) to the following dependants [delete if not applicable]

| Name of Nominated Beneficiary | Relationship to me | Type of benefit   | Amount (\$) or Proportion (%) of benefit       |
|-------------------------------|--------------------|---|--|
| (b) [NAME]                    |                    | (d) Lump sum<br><i>(delete if not applicable)</i><br><br>(e) Account based income stream<br><i>(delete if not applicable)</i><br><br>(f) A combination of lump sum and account based Pension as determined by the Nominated Beneficiary.<br><i>(delete if not applicable)</i> | %<br><br><br><br><br><br><br><br><br><br><br>% |

4. I acknowledge that this Non-Binding Death Benefit Nomination is made in accordance with Rule 11 of the Governing Rules of the [NAME OF FUND] and that the Trustee is not bound by the directions made in this nomination.

Dated ..... day of ..... 20

SIGNED by [NAME OF MEMBER] .....  
 Signature

.....  
 Signature of Witness

.....  
 Name of Witness

**SCHEDULE 2**

**[NAME OF FUND] SUPERANNUATION FUND**

**DIRECTION TO TRUSTEE**

**BINDING DEATH BENEFIT NOMINATION**

To: The Trustees (NAMES OF TRUSTEES) of the [NAME OF FUND] (“Fund”)

1. I revoke all previous binding death benefit nominations.
2. Pursuant to the provisions of Rule 11 of the Trust Deed of the Fund, I **[NAME OF MEMBER]** of [ADDRESS] in the State of Victoria being a Member of the Fund, **hereby direct** the Trustee for the time being of the Fund to pay my death benefits and Legal Estate on or after my death to the following person(s) and in the following manner and proportions indicated below:

| Name of Nominated Beneficiary | Relationship to me | Type of benefit   | Amount (\$) or Proportion (%) of benefit |
|-------------------------------|--------------------|---|--|
| (c) [NAME]                    |                    | (g) Lump sum<br>(delete if not applicable)  | %  |
|                               |                    | (h) Account based income stream<br>(delete if not applicable)   | %  |
|                               |                    | (i) A combination of lump sum and account based Pension as determined by the Nominated Beneficiary.<br>(delete if not applicable) |  |

**Notes:**

- (i) This Notice must be signed and dated by [NAME OF MEMBER] in the presence of 2 witnesses, being persons:
  - (a) each of whom has turned 18; and
  - (b) neither of whom is a Nominated Beneficiary.

(ii) Unless revoked by [NAME OF MEMBER], this Notice:-

- (a) Is NON-lapsing and shall not cease *[delete if not applicable]*; OR
- (b) Is lapsing and shall cease after the period of \_\_\_\_\_ years *[delete if not applicable]*

3. In the event that any of the Nominated Beneficiaries referred to above shall fail to survive me for a period of thirty (30) days I direct the trustee to pay or transfer that predeceased Beneficiaries share of my death benefits and Legal Estate as follows:-

- (a) To be divided equally among those of my dependants listed above that survive me *[delete if not applicable]*; **or**
- (b) to the Legal Personal Representative of my estate to be dealt with in accordance with my last Will *[delete if not applicable]*; **or**
- (c) to the following dependants *[delete if not applicable]*

| Name of Nominated Beneficiary | Relationship to me | Type of benefit  | Amount (\$) or Proportion (%) of benefit |
|-------------------------------|--------------------|--|--|
| (d) [NAME]                    |                    | (j) Lump sum<br><i>(delete if not applicable)</i>  | %  |
|                               |                    | (k) Account based income stream<br><i>(delete if not applicable)</i>   | %  |
|                               |                    | (l) A combination of lump sum and account based Pension as determined by the Nominated Beneficiary.<br><i>(delete if not applicable)</i> |  |

4. I acknowledge that this Binding Death Benefit Nomination is made in accordance with rule 11 of the Governing Rules of the [NAME OF FUND] and that if this nomination is not made and completed correctly the trustee shall treat this nomination as a Non-Binding Death Benefit Nomination.

Dated: \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_



SIGNED by **[NAME OF MEMBER]** in the presence of the )  
following witnesses who each declare that this document )  
was signed by him/her in their presence: )

) .....

Signature

.....

Signature of Witness

.....

Signature of Witness

.....

Name of Witness

.....

Name of Witness

SAMPLE