



The **Strategist** Group

J & C COOLEY PERSONAL SUPERANNUATION

FUND

Deed of Amendment

The Strategist Group Pty Ltd

This Deed Poll of Amendment is made on the date specified in the Schedule ("the Deed Date") by the Trustee whose details are in the Schedule ("the Trustee").

RECITALS:

- A The Fund was established by the execution of the Trust Deed on the Creation Date.
- B The Trust Deed was varied by the Variation Deeds.
- C The Trustee wishes to amend the Trust Deed pursuant to the powers conferred on the Trustee in accordance with the Amending Rule of the Trust Deed.
- D The Trustee wishes to record the amendment in accordance with the terms of the Trust Deed and have entered into this Deed accordingly.

NOW THIS DEED WITNESSES:

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

Unless a contrary intention is evident or the relevant term is defined in the Deed, the terms and expressions in the Trust Deed have the same meaning as this Deed.

1.2 Definitions

For the purposes of this Deed the following terms shall mean as follows:

"**Amending Rule**" means the clause, rule or provision of the Trust Deed so specified in the Schedule;

"**Creation Date**" means the date so specified in the Schedule;

"**Deed Date**" means the date the Trustee signs this Deed so specified in the Schedule;

"**Rule**" means a reference to a clause, section, rule or provision of the Trust Deed whether or not described as such in the Trust Deed;

"**Trust Deed**" means the deed establishing the Trust Fund signed on the Creation Date together with the Variation Deeds;

"**Trustee**" means the current Trustee of the Trust Fund so specified in the Schedule;

"**Trust Fund**" means the superannuation fund established by execution of the Trust Deed and "**Fund**" shall have the same meaning;

"**Variation Deeds**" means deed(s) signed subsequent to the Creation Date (if any) which vary or amend that Trust Deed particularised in the Schedule.

2. AMENDMENT

2.1 Amendment of Trust Deed

The Trustee, pursuant to the powers conferred upon it by the Amending Rule of the Trust Deed hereby amends the Trust Deed as follows:

Pursuant to the provisions of the Amending Rule and otherwise in accordance with the provisions of the Trust Deed, the Trust Deed is amended by deleting Rules 1 to 35 together with Schedules A to E of the Trust Deed and replacing them with the Rules in Annexure "A" to this Deed.

3. VARIATION OF TRUST DEED

Notwithstanding anything contained in this Deed to the contrary, this Deed does not and shall not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
- (d) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation of any relevant Act or Regulation made after the date of this Deed.

4. NO RE-SETTLEMENT

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 provision is amended by deletion to the extent that:

- (a) 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
- (b) the deletion of part or all of the provision does not result in a re-settlement of the Fund; and
- (c) amendments made by this Deed are deemed to have occurred after the deletion referred to in this clause.

5. SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

This Deed shall not take effect, to the extent that:

- (a) any one or more of the provisions of this Deed are not able, allowed, or required to take effect pursuant to the provision of the *Superannuation Industry (Supervision) Act 1993* or any regulations made for the purposes of that statutory enactment; and
- (b) the provision is not capable of amendment to enable or allow this Deed to take effect.

6. PURPOSE OF THE FUND

Subject to the Rules the purpose of the Fund is to provide individual personal benefits, pensions or retiring allowances upon the death or retirement of a member, provided that:

- (a) the purpose would not cause the Fund not be a complying superannuation fund (as defined for the purposes of the *Income Tax Assessment Act 1936*);
- (b) the purpose is a purpose contained in the Rules;
- (c) if the trustees of the Fund are natural persons the sole or primary purpose of the Fund is to provide old age pensions (as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*).

SCHEDULE

1. **Deed Date** 30-6-04

2. **Name of Super Fund**
J & C Cooley Personal Superannuation Fund

3. **Trustee Details:**
 - (a) Name: J W Cooley & Son Pty Ltd (ACN 000 610 588)
 - (b) Address: 202-204 William Street, Bathurst NSW 2795

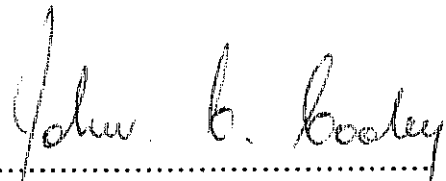
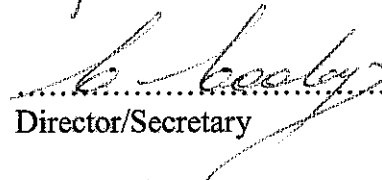
4. **Date of Trust Fund Deed (Creation Date)**
12 June 1998

5. **Variation Deeds**
Deed of Amendment dated 31 March 2000

6. **Amending Rule**
Clause 2

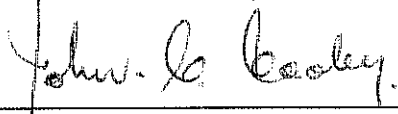
Executed as a Deed.

SIGNED by J W Cooley & Son Pty Ltd
(ACN 000 610 588) as the Trustee pursuant
to Section 127(1) of the *Corporations Act*
2001 (Cth)

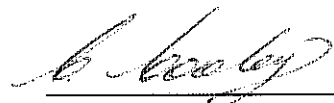
) 
)
) Director
)
) 
)
) Director/Secretary

MEMBER'S CONSENT

The Members hereby consent to the Trustee entering into this Deed.

1. 

(*) Print Full Name:
John Cooley
Date: *10-9-04*

2. 

(*) Print Full Name:
CHRISTINE COOLEY
Date: *10-9-04*

3. _____
(*) Print Full Name:

Date:

4. _____
(*) Print Full Name:

Date:

(*) **NOTE:** Please print full name under your signature and date signed.

PRINCIPAL EMPLOYER'S CONSENT

The Principal Employer hereby consents to the Trustee entering into this Deed.

Signed by a duly authorised representative:
of the Principal Employer (*)

Date:

(*) **NOTE:** Please print name of Principal Employer, name of authorised representative and date.

ANNEXURE "A"



The **Strategist** Group

J & C Cooley Personal Superannuation Fund

Product Disclosure Statement

Including

Rules of the Fund

The Strategist Group Pty Ltd

Rules of the Fund prepared by:
Robert Richards
Robert Richards & Associates
Revenue and Corporate Law
Level 16, 25 Bligh Street
Sydney, New South Wales

General Product Disclosure
Information prepared by:
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Brookvale, New South Wales

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Disclaimer

The Product Disclosure Statement and the Rules are based on the Australian superannuation and taxation law as at 30 November 2003. Neither The Strategist Group Pty Ltd nor the partners accept any liability for any loss or damages of any kind whatsoever arising as a result of use of the Deed and the Rules or as a result of any opinion, advice, recommendation, representation or information expressly or implicitly published in this Product Disclosure Statement, the Deed or the Rules notwithstanding any negligence, default or lack of cause.

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PRODUCT DISCLOSURE STATEMENT

By Grant Abbott, The Strategist Group Pty Ltd

The Corporations Act 2001 provides that where a person is being provided with a financial product they must receive a Product Disclosure Statement, commonly referred to as a PDS, detailing all their rights and entitlements in relation to that financial product. Under the *Corporations Act 2001* becoming a member of a self managed superannuation fund (“a Fund”) is a financial product. Among other things, so is the ability of existing members of the Fund to commence a pension from the Fund or for the trustee of a Fund to pay a benefit to a deceased member’s dependants.

A PDS is a statement that contains information required by the *Corporations Act 2001* to provide consumers with sufficient information to make informed decisions in relation to acquiring a financial product. The PDS must provide information about any significant benefits in a Fund to which any prospective or existing member may become entitled as well as the circumstances, process and timeframe in which those benefits may be provided.

The PDS must also set out the risks for prospective or existing members associated with holding an interest in a Fund as well as the initial and ongoing costs involved with the Fund.

This PDS has three parts:

- This general information statement;
- The rules of the Fund - where all rights and entitlements of members, their dependants and trustees of the Fund are to be found.
- A DVD presentation by Grant Abbott – CEO of The Strategist Group – covering various aspects of the Fund as well as member’s entitlements under the rules of the Fund. The DVD is supplied as part of this PDS.

It is also recommended that the trustee of the Fund and any members read the “Guide to Self Managed Superannuation Funds”, written by Grant Abbott and published by CCH, to make themselves thoroughly aware of their rights, entitlements, duties and responsibilities.

I. Superannuation Products in General

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

The following table is an indicative guide that seeks to highlight the main differences between the most common forms of superannuation.

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

* Subject to compliance with the relevant laws

II. The Purpose of the Fund

The Fund is a family superannuation fund. This means that the members of the Fund would normally only be family members. For example the members of the Fund might be a husband and wife and their children. It may also include brothers, sisters, grandparents and other family members. The trustee of the Fund may accept non-family members into the Fund however as the Fund can only have four members at any time, it may be better to limit membership to immediate family.

The general purpose of a Fund is to provide retirement, death, or incapacity benefits to the members of the Fund and their dependants. Benefits might be provided by way of lump sum or an income stream (that is a pension). The trustee may also provide benefits by way of a combination of a lump sum and pension.

III. Eight Key Benefits of the Fund

The advantages of a properly structured Fund are:

1. The Fund lets you look after your family

For many people their family is the most important thing in their lives. As such, the provision of financial benefits to the family is a major concern and consideration. The Fund provides members with the possibility to create a number of financial benefits not only for themselves but also for other family members including:

- a retirement income stream to ensure a comfortable retirement;
- an income stream in the event that the member becomes temporarily or permanently incapacitated;
- a benefit by way of a lump sum or pension payable to the member's estate or to a member's dependants in the event of the member's death.

2. Providing a secure income in retirement

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

For example if the member commences an allocated pension this pension only lasts as long as the underlying pension capital remains. If the capital reduces to nil, then the pension ceases. On the other hand where the member commences a lifetime pension, the trustee of the Fund, with help from an actuary will create a pension that provides income for the remainder of the member's life. A pension may also continue for the surviving spouse if desired. However, where a lifetime pension is chosen, generally a smaller income is payable as compared to an allocated pension.

3. Offering a financial helping hand if your health deteriorates

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

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

4. Investment choice

One of the major reasons that self managed superannuation funds have become so popular is the ability of the trustee of a Fund to invest the Fund's assets so as to reflect a member's wishes. However:

- All investments must be made at arm's length;
- The trustee may not lend to members or related parties;
- The trustee may not invest more than 5% of the assets of the Fund in related entities such as a unit trust that the member controls or in shares of an employer that contributes to the Fund;
- The trustee cannot borrow;
- The purpose of any investment is to secure benefits for members in the event of their retirement, incapacity or for their legal estate or dependants in the event of a member's death. Any investment seeking to provide a member or related party with a benefit not having one of these purposes is prohibited;
- Generally the trustee cannot acquire an asset from a member or related party unless the asset is a listed share, managed fund, fixed term deposit or commercial real estate.

5. Low taxation fully sanctioned by the government

If properly established and maintained a Fund is an entity which is tax effective provided it is maintained for the purpose of providing members with retirement and disability benefits or benefits to a deceased member's dependants or legal estate.

A Fund can receive superannuation contributions, which may be tax-deductible or non-tax deductible contributions. Tax-deductible contributions received by the Fund will be included in a Fund's assessable income and in certain cases may be subject to the superannuation surcharge. The superannuation surcharge is applied annually on a member's total income where it exceeds a specified threshold, currently \$94,691 during the 2004 income year. Total income for the purposes of the surcharge includes superannuation contributions, excluding contributions made by a member that are non-tax deductible, and any fringe benefits received from an employer.

Any taxable income (not being special income) earned by the trustee of a Fund, being assessable income less any deductions, is subject to a concessional tax rate of 15% provided the Fund is a complying superannuation fund during the income year. A complying superannuation fund is a fund where the trustee does not breach any of the laws found in the *Superannuation Industry (Supervision) Act 1993* and its regulations, which we will call the superannuation laws, during

the income year. Further, the trustee must not breach any of the rules of the Fund, which is why the trustee and members of the Fund should make themselves familiar with the rules.

Where the trustee of a complying Fund realises a capital gain on the disposal of an asset held for more than one year, only two thirds of that gain will be included in the Fund's assessable income.

Where the trustee of a complying Fund sets aside assets of the Fund to pay pensions to members then any assessable income including capital gains made by the Fund on those assets is exempt from tax. Where a pension is payable by a Fund to a member, the member must include the pension in their assessable income.

Benefits payable to members, either as a lump sum, a pension or combination of both may be subject to concessional rates of tax. This will depend upon whether the benefits taken from a Fund are excessive having regard to reasonable benefit limit rules found in the *Income Tax Assessment Act 1936* ("the Tax Act").

6. Looks after your family when you die

In many instances a Fund is the most flexible, most targeted and the most tax effective vehicle to provide lump sums or income streams to a member's spouse or children when the member dies. For example a Fund may provide a minor dependant of a member with a pension payable, until the minor reaches age 35, of \$20,000 per annum indexed to the Consumer Price Index. This pension is tax free to the minor if the minor has no other assessable income. As with incapacity benefits referred to above, the quantum of the benefits payable to a member's dependants or their legal estate may be enhanced where the trustee of a Fund has chosen to insure or self-insure against the member's life.

7. Access to the age pension

Benefits from a Fund are treated favourably for Centrelink purposes. In terms of the assets test, the member's account balance in the Fund is not tested until the member becomes entitled to an age pension – for a male this is at age 65 and for a female it is currently at age 62 but increasing to age 65 by 2014. On becoming entitled to the age pension the member may commence an assets test exempt pension from a Fund. Where an assets test exempt pension is commenced for a member the underlying capital from which the pension is paid is exempt from the assets test and favourably treated for income test purposes. This may enable some members to access the age pension, on top of the private pension that they receive from a Fund, if they choose to transfer the majority of their assets into the Fund (subject to the investment restrictions and excluding the family home).

8. Protection from creditors

Protecting assets from creditors is a major concern for many people. One of the key benefits of a superannuation fund is that when a person gets into serious financial difficulty, a member's benefits in a Fund – up to a generous limit now in excess of \$1 million – may be protected from creditors. One downside of bankruptcy is that a person cannot remain as a member of a self managed superannuation fund if they are bankrupt as this will jeopardise the Fund's self managed superannuation fund complying status. Should this arise the trustee of a Fund should consider various actions including transferring the member's benefits to a commercial superannuation fund where they may also be protected. Another alternative is to remove the existing trustees and appoint a professional trustee, also known as an approved trustee.

IV. Trustee of the Fund

A Fund is a form of trust. This means that the trustee of a Fund controls the Fund, makes the investment decisions, determines the benefits to be paid and administers the Fund. As a member of the Fund is required to be a trustee or director of a trustee company, a member has significant influence in the control of a Fund.

There are limited exceptions to the rule that members must be trustees of a Fund. Where a member of a Fund is a minor the law does not allow them to be a trustee. This means that their legal personal representative, parent or guardian must be appointed as trustee on their behalf until they reach age 18. Likewise where a person becomes mentally incapacitated and is unable to make sound decisions, a legal personal representative may be appointed to take the incapacitated member's place as trustee.

Quite apart from the requirement for members to be trustees there is an additional requirement that all trustees be members of the Fund. There are also limited exceptions to this rule. In the event of the death of a member the deceased member's legal personal representative – normally the executor of their legal estate - may be appointed as trustee of the Fund from the time of the member's death until the time when any death benefits commence to become payable. Also from a legal perspective, where there is only one member of the Fund, there is a need to have more than one trustee since a person cannot be a trustee for themselves. Therefore in a single member Fund, another person may be appointed as trustee even though they are not a member unless they are incapable of being a trustee or are an employee of the member.

As a final point – it is often the case that a trustee company is appointed as trustee of the Fund rather than individual trustees. In this case each member of the Fund must be a director of the trustee company unless they meet one of the exceptions above. Likewise all directors must be members of the Fund unless they fall into one of the exceptions above. Although there are costs to establish and administer a trustee company:

- A trustee company of a Fund is able to pay members a lump sum as well as a pension. Under the superannuation laws, it is a requirement that where the trustee or trustees of the Fund are individuals then a pension and not a lump sum needs to be taken by the members of the Fund. This may also include any death benefits payable to dependants or the legal estate of a deceased member.
- There is debate as to where a pension is paid to a member of a Fund, whether the member is able to claim a 15% tax rebate if the member is also an independent trustee of the same Fund. However if a company is the trustee of the Fund then the tax rebate applies provided the member is over age 55 or it arises from the permanent disability or death of a former member.
- Where a trustee of a Fund dies, retires or is removed then any assets of the Fund in the name of the departed trustee must be switched into the names of the remaining trustees. This can be time consuming and expensive.

V. Responsibilities of the Trustee of the Fund

As previously mentioned trusteeship in a Fund is about control and choice. It is also about legal responsibility. Broadly, a trustee is required to act honestly, prudently and in the best interests of members in relation to all matters concerning the Fund. Both civil and criminal penalties can be imposed under the superannuation laws for breach of trustee responsibilities. Prior to accepting an appointment as trustee of a Fund, it is important that a person consider the risks associated with such an appointment. The excuse that the trustee was not aware of the superannuation laws or the rules of the Fund is not valid.

A trustee of a Fund must:

- Act honestly;
- Act in the best interests of members and other beneficiaries;
- Keep the money and assets of the Fund separate from the trustee's personal assets and money or those of another person;
- Formulate and implement an investment strategy for the Fund;
- Abide by the rules of the Fund at all times;
- Ensure that the trustee does not breach any of the superannuation laws;
- Ensure proper accounting including the maintenance of member accounts;
- Appoint an auditor and other specialists to the Fund;
- Meet all regulatory obligations.

Failure to properly meet any of these responsibilities may render the trustee liable to a substantial fine and if the breach has been wilful, may result in a term of imprisonment. It is important therefore that the trustee seeks the help of an experienced adviser where appropriate.

Additionally the Regulator of self managed superannuation funds – the Commissioner of Taxation - may also determine the Fund to be a non-complying fund. This would result in the Fund being subject to tax at a penalty rate of 47% on all income and capital gains of the Fund as well as the market value of the Fund's assets.

VI. Approved Trustee

As mentioned earlier there may be circumstances where it is appropriate or necessary to appoint an approved trustee in place of the members of the Fund being appointed as trustee under the mechanism described above. For example if a member is prohibited by the superannuation laws from acting as a trustee or simply does not wish to assume the role and responsibility associated with being a trustee then an approved trustee may be appointed. The effect of the appointment is that the Fund is converted from a self managed superannuation fund to a "small APRA fund" as they are commonly known.

These funds are regulated by the Australian Prudential Regulatory Authority (APRA) rather than the Australian Taxation Office (ATO). While the rules of the Fund may permit the appointment of an approved trustee it is usually the case that the newly appointed approved trustee will amend the deed and rules of a Fund at that time to reflect the change in the type of superannuation fund. A small APRA fund is a public offer superannuation fund and is therefore subject to more

stringent regulation in the superannuation laws. The rules of the Fund attached to this PDS are designed entirely to reflect the intention for a Fund to be a self managed superannuation fund.

VII. Member Rights and Entitlements

Under the attached rules of the Fund members have a number of rights and entitlements. It is incumbent upon members and trustees to make themselves aware of these entitlements and more importantly when and how they may be claimed. A thorough reading of the rules of the Fund is required prior to any person being accepted as member of the Fund.

Some of the more important rights and entitlements, subject to the superannuation laws include:

- Any person is able to become a member of the Fund provided the person completes an application form stating that they have read the rules of the Fund, agree to abide by the rules and will also accept appointment as trustee of the Fund or become a director of any trustee company and the trustee of the Fund accepts the person as a member;
- As a member of the Fund the member has the right to become a trustee of the Fund or appoint a person to become a trustee of the Fund in their place if allowed;
- A member or any other person may contribute on behalf of the member or their dependants in the event of the member's death. These contributions may be in cash or in kind;
- A member of the Fund may transfer benefits into and out of the Fund;
- A member may request the trustee to set a separate investment strategy in the Fund for the member;
- The trustee may pay the member a retirement benefit by way of a lump sum or a pension;
- The trustee may pay the member an incapacity benefit in the event the member is temporarily or permanently incapacitated;
- The trustee may accept a binding death benefit nomination from a member of the Fund requiring the trustee to comply with the member's death benefit wishes in the event of the member's death;
- The trustee may pay death benefits by way of a lump sum or a pension to the deceased member's legal estate or their dependants in such proportions and in such manner as the trustee sees fit unless a binding death benefit nomination is operative.

VIII. Pension Entitlements

There are a variety of pensions that a member or a dependant of a member may become entitled to. These pensions include lifetime, fixed term, allocated and other pensions treated favourably by Centrelink and the Department of Veteran's Affairs. Due to the wide variety of pension possibilities a prospective member should make themselves aware of all the types of pensions outlined in the rules. These rules explain the different types of pensions and when they may be available.

There are five broad categories of pension – each with its own unique advantages and disadvantages - including:

1. The allocated pension

In essence an allocated pension is not a pension at all – it is a lump sum draw down account with the member required to receive at least a minimum amount from the account each year and no more than a maximum amount as laid down in the superannuation laws. The advantage of an allocated pension for a member is that they can withdraw a lump sum from their allocated pension account – known as a commutation - at any time. If this is done obviously any future minimum and maximum payment calculations will be adjusted accordingly. Importantly, where a member dies their estate or dependants should receive any remaining account balance. The major disadvantage of an allocated pension is that when the capital is gone so too is the pension. That is, there is no security of income. There can be no residual capital value or lump sum payable at the end. The possibility of running out of money may cause great concern for allocated pension members of superannuation funds, particularly when investment markets are performing poorly.

2. The fixed term commutable pension

The fixed term commutable pension operates for a set period of time and is essentially guaranteed by the trustee of a Fund. Very few trustees, other than trustees of self managed superannuation funds offer fixed term commutable pensions because they are difficult to structure and fund.

However for the trustee of a Fund, provided an actuary is used, fixed term commutable pensions are a valuable tool, particularly given that the pension might continue to be payable after the death of a member. There is a wide degree of flexibility as to the term – it could be for two years or it could extend to more than 50 years. Importantly, the pension can also include a residual capital value, which is simply a lump sum payment at the end of the pension term. Like an allocated pension a member may commute the pension although there are limits as to how much may be commuted.

3. The lifetime commutable pension

A lifetime commutable pension is a pension that is guaranteed for a member's life and if there is a continuation of the pension, that person's life as well. The pension is generally based on the younger person's life expectancy if the pension is reversionary. A member may commute the pension into a lump sum subject to some limits on the size of the commutation payment.

For the trustee of a Fund, an actuary must be engaged each year to ensure that the Fund can make its pension commitments now and into the future. The trustee might achieve this by placing 5% - 20% of the original purchase price of the pension aside in a reserve (which will be drawn upon in years when investment returns are poor). One of the key factors driving current interest in lifetime pensions is that if a member dies early, anything left in the Fund is allocated to a reserve, which can be used by the trustee for other members of the Fund when they take a pension. It is not lost but left to the family for retirement income purposes.

While lifetime commutable pensions are offered by some retail superannuation funds, some or all of the purchase price is forfeited on the death of the last surviving reversionary beneficiary.

4. The complying pension

A complying pension is a lifetime or alternatively, a fixed term pension where the person is over pension age and the term of the pension is at least equal to their life expectancy. More importantly the pension must not be commutable and also can have no residual capital value. The key attraction for the complying pension is that if 50% or more of a member's benefits are allocated to a complying pension then the higher pension reasonable benefit limit ("RBL") may be used – see Taxation further on. In contrast any allocated pension, fixed term or lifetime pension that is commutable must be counted toward a member's lump sum RBL. The member must still have in place a complying pension with more than 50% of the member's benefits to access the higher pension RBL. As a lifetime commutable pension, if the member dies early any capital left over is directed by the trustee to a reserve account to be used to look after other family members of the Fund.

5. The assets test exempt pension – Sections 9A or 9B of the Social Security Act 1991 and Section 5JA or 5JB of the Veterans Entitlements Act 1986

As a further incentive for members of a Fund to provide for their own retirement by way of a lifetime income stream, the government has introduced measures into the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* that excludes certain pensions from the assets test. These pensions are very similar to the complying pensions mentioned above, with limited commutability allowed and no residual capital value. For the purposes of these two Acts the assets test provides a means tested threshold that limits the amount of age pension a person can obtain from the government after age pension age. For example if a 66 year old male member of a Fund with \$500,000 in superannuation benefits commenced a lifetime assets test pension from a Fund, the member would not include those benefits for assets test purposes.

IX. Estate Planning

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

A dependant is a person who is a financial dependant and includes a person who, although is not financially dependant, is the spouse or child of the deceased person. A member may also direct some or all of their superannuation benefits into their legal estate on death and allow those benefits to be distributed according to the deceased's will.

A binding nomination is one where a member requests that the trustee pay all or part of their benefits - either by way of pension or lump sum - to a nominated dependant or dependants. If the trustee accepts the request, then on the member's death the trustee is bound to pay those benefits in accordance with the member's nomination.

On the other hand a non-binding nomination is where the member requests the trustee to make certain payments to specified beneficiaries. However as the nomination is non-binding the trustee is not obliged to carry out the request. If the member dies and no nomination has been made then the trustee has full discretion to choose the manner in which to allocate the deceased member's superannuation benefits.

As the member was a trustee or director of the trustee company at the time of death, then the rules of the Fund require that the deceased member's executor be appointed as trustee of the

Fund or director of the corporate trustee. The purpose of this is to ensure that the member's death benefit nominations are carried out according to their wishes. However the appointment can only be in force until the first death benefits are paid out. At that time the executor must resign as trustee otherwise the fund may lose its complying self managed superannuation fund status.

There are significant taxation advantages of paying a death benefit directly from a Fund to a dependant rather than through the deceased's legal estate. Broadly the following rules apply in relation to death benefits:

- any lump sum payment to a spouse or child under age 18 - provided it is under the member's higher pension reasonable benefit limit at the time of payment - is tax free;
- if the child is over age 18 then the lump sum tax is generally 15% provided that the payment is within the deceased member's pension reasonable benefit limit;
- any lump sum payment in excess of a member's pension reasonable benefit limit is subject to tax at a rate of 47% - excluding Medicare levy;
- any pension income, again provided it falls within the member's pension reasonable benefit limit, is assessable to the dependant at the dependant's normal tax rates less a 15% tax rebate.

Finally the deceased member's will should have no impact on the superannuation benefits distributed directly from the fund. Whilst the trustee may take the member's will into account in fulfilling any non-binding nominations there is no requirement to do so.

X. Taxation of the Fund and Members

One of the key benefits of using a Fund is that the Fund may be concessionally taxed on its income and members may be concessionally taxed on benefits received from the Fund. Importantly these taxation concessions only apply where a Fund is a complying superannuation fund during the income year.

Taxation of the Fund

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

- any taxable income of a complying superannuation fund is taxed at a 15% rate excluding income that is special income, such as private company dividends and non-arms length income received by the Fund. Special income is taxed at a 47% rate;
- any capital gains earned by the trustee upon the disposal of an asset that has been held for more than one year is subject to a 33 1/3% discount;
- the trustee is to include as assessable income any contributions it receives excluding contributions from a member on their own behalf for which they have not claimed a tax deduction;
- any income or capital gains earned on assets that are being used by the trustee of the Fund for current pension purposes is exempt from taxation;
- the trustee may obtain a tax deduction for premiums paid for life insurance, permanent disability and temporary incapacity provided the term of the contract is no longer than 2 years. The trustee may also receive a tax deduction for self insurance provided an actuary determines the amount to be claimed;

- where a member of the Fund dies or becomes permanently incapacitated the trustee may obtain a tax deduction based on a proportional amount of benefit paid to the member or the member's dependants or legal estate.

Taxation of Benefits to a Member

Benefits paid to a member will be taxed dependent upon what type of benefit they are:

1. Excessive Benefits

Under the Tax Act a member of a Fund is only allowed to access a certain amount of concessional tax superannuation benefits. For the 2004 year the base amount is \$588,056 where the member takes a lump sum benefit or pension benefit that is not a complying pension. The lump sum amount is to be reduced by 2.5% by every year that a person is under age 55.

Where at least 50% of a member's benefits are taken as a complying pension then the member may access the higher pension benefit limit of \$1,176,106. Any lump sum amount that is excessive as determined by the Commissioner of Taxation is taxed at 47%. If the member is in receipt of a pension benefit then the member will have their rebate entitlements reduced to the extent that the pension is excessive.

2. Lump Sum

Where a member is entitled to and takes a lump sum benefit then if the member is under age 55 the maximum tax rate on the benefit is 20% excluding the Medicare levy. Where the member is over age 55 the first \$117,576 (being the threshold for the 2004 income year) of lump sum benefits taken by the member is tax-free. Any amount over this – except an excessive benefit - is taxed at a maximum rate of 15% excluding the Medicare levy.

3. Pension

Where a member is in receipt of a pension benefit all or part of the pension payment is included in the member's assessable income. Any amount of undeducted contributions used by the member to acquire the pension are excluded from assessable income. The tax free amount for each year of the life of the pension – called the deductible amount - is the amount of undeducted contributions divided by the term of the pension. If the pension is an allocated pension or a lifetime pension then the term will be the member's life expectancy at the time of commencing the pension. Otherwise it is simply the maximum duration of the pension including any reversionary benefit.

In addition, a member may access a 15% tax rebate on assessable pension income where the member is over age 55 and the pension is a pension payable on the retirement, death or permanent incapacity of a member. As noted above to the extent the pension is excessive, the rebate may be reduced by the Commissioner of Taxation.

If the member commutes the pension then lump sum tax rates will be payable as determined above.

XI. Appointment of Specialists

The superannuation and taxation laws (particularly as they apply to self managed superannuation funds) are complicated. Serious breaches may render a fund to be a non-complying

superannuation fund (which would mean that it would not be concessional tax) and the trustee of the Fund may be subject to financial and criminal penalties.

The rules allow a trustee to appoint managers, advisers, and to engage other specialists to assist the trustee in the management of the Fund. It is highly recommended that the trustee of a Fund appoint an experienced specialist self managed superannuation fund auditor and adviser.

XII. Costs and Expenses of the Fund

There are a number of costs involved in establishing and operating a Fund including expenses relating to:

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

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

XIII. Understanding the Rules of the Fund

The Fund will have a lifecycle. It has to be formed, a trustee appointed and members admitted. It will receive contributions and may receive transfers of benefits from other superannuation funds and will invest those monies or assets. The trustee must comply with the superannuation laws. In particular this means that the Fund must be audited. Benefits will be paid to members. Finally the Fund may be terminated.

To reflect the lifecycle of the Fund the rules are contained in the following Parts:

Part One	Establishment of the Fund
Part Two	Operation and Administration of the Fund
Part Three	Payment of Benefits by the Trustee
Part Four	Changing or Winding up the Fund

For a more detailed look at what each part contains refer to the index at the start of the rules.

Great care has been taken to ensure that the rules remain as flexible as possible yet still ensure that they meet current standards of the superannuation laws as well as other laws that may impact on the trustee and members of the Fund. These other laws include taxation, bankruptcy, family, social security and trustee laws.

Most rules have been divided into two parts. The first part provides a broad explanation of the rule. This explanation is designed to assist the reader to understand the purpose of the rule. Importantly the explanation does not form part of the rules; rather it is ancillary to them. The second part of each rule is the rule itself.

At the end of the rules are interpretative provisions. When reading the rules if a particular term or word is capitalised then a definition may be found in the interpretative provisions.

THE RULES OF THE FUND

Part One: Establishment of the Fund

Purpose of the Fund

Rule 1. The Fund must satisfy the sole purpose test

Explanation

The Fund must be established and must be maintained solely for those Core Purposes or Ancillary Purposes as defined in the SIS Act. The SIS Act defines Core Purposes to include the provision of benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.

The SIS Act also provides that the Trustee may maintain the Fund for other Ancillary Purposes on the condition that one of the Core Purposes is satisfied. The Ancillary Purposes may include the provision of temporary or permanent incapacity benefits to a Member where the Member terminates employment as a consequence of ill-health.

Rule

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

Appointing the Trustee

Rule 2. Who may and may not be a Trustee

Explanation

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

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

There are limited exceptions for Legal Personal Representatives (which are defined to include persons holding enduring powers of attorney).

If a company is appointed Trustee the constitution of that company should be comparable with the Rules.

Any person accepting appointment as a Trustee or director of a Trustee Company needs to read and agree to the Rules.

Rule

Who may be a Trustee

- 2.1.** Subject to this Rule and Rule 49 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.

- 2.2. Subject to this Rule and Rule 49 below (which applies on the death of a Member) a company may only be a Trustee if all the directors of the company are Members.
- 2.3. Notwithstanding Rule 2.1 and Rule 2.2 if there is only one person who is a Member then:
- (a) if that Member is also the Trustee, one other person must be appointed as a Trustee provided that person is not an employer of the Member, or
 - (b) if a Trustee Company is the Trustee, then the Member must be the sole director of the Trustee Company or one other person may be appointed as a director of that company provided that person is not an employer of the Member.
- 2.4. If the Member is under a legal disability then the Legal Personal Representative of the Member may be appointed as a Trustee or director of a Trustee Company in lieu of that Member.
- 2.5. If the Regulator appoints a person or company as a Trustee that person or company may be a Trustee.
- 2.6. Notwithstanding any other provisions of these Rules a person or company shall not be appointed as a Trustee unless they have provided the Trustee with a written consent to that appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.7. Notwithstanding any other provision of these Rules a Member or Legal Personal Representative of a Member may appoint an Approved Trustee as a Trustee in lieu of that Member.

Who may not be a Trustee

- 2.8. An individual cannot be a Trustee if:
- (a) at any time
 - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
 - (ii) a Civil Penalty Order was made in respect of the person; or
 - (b) the person is an insolvent under administration; or
 - (c) a Regulator has disqualified the person (for the purposes of section 120A of the *SIS Act*) and the Regulator has not waived that person's status as a disqualified person.
- 2.9. A company cannot be a Trustee of the Fund if:
- (a) (i) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the *SIS Act*); and

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

Rule 3. Appointment of a Trustee

Explanation

This Rule provides the mechanism for appointing those persons eligible to be appointed as Trustees. This Rule also allows an individual to be replaced as a Trustee by a Trustee Company and for a Trustee Company to be replaced as Trustee by an individual.

Rule

- 3.1. Upon establishment of the Fund, those persons who have agreed to be Trustee by reason of execution of the Deed shall be appointed Trustees.
- 3.2. Subject to the provisions of these Rules where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee unless that person or a Legal Personal Representative of that person becomes a director of a company which is the Trustee.
- 3.3. Upon retirement of a Trustee and at the direction of that Trustee one of the following is appointed as Trustee in place of the Trustee who has retired:
 - (a) a person who is a Member; or
 - (b) a company all the directors of which are Members; or
 - (c) an Approved Trustee,
 if that person, company or Approved Trustee is not already a Trustee.

Becoming a Regulated Superannuation Fund

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

Explanation

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

Rule

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

Trustee Operations and Obligations

Rule 5. Removal and Retirement of a Trustee

Explanation

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

Rule

5.1. A Member may retire as a Trustee provided:

- (a) a company of which the Member is a director is appointed as Trustee; or
- (b) a Legal Personal Representative of that Member is appointed as a Trustee.

5.2. A company may retire as a Trustee provided all directors of that company or Legal Personal Representatives of those directors who are Members are appointed as Trustees.

5.3. Subject to these Rules and the Act a person or company is removed as a Trustee:

- (c) if the Trustee is a person – upon that person ceasing to be a Member;
- (d) if the Trustee is a company – on that date four months from the time one or all of the directors of the company cease to be Members;
- (e) if the Trustee is prohibited from being a Trustee by reason of Rule 2.8 or Rule 2.9 – on that date a Trustee is so prohibited from being a Trustee;
- (f) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-complying Self Managed Superannuation Fund – on that date the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-complying Self Managed Superannuation Fund.

Rule 6. Remuneration and Indemnification of a Trustee

Explanation

A Fund will not be a Self Managed Superannuation Fund if the Trustee receives any remuneration for acting as Trustee unless the Trustee is an Approved Trustee.

Rule

- 6.1. A Trustee shall not be entitled to be remunerated for acting as a Trustee unless the Trustee is an Approved Trustee.
- 6.2. A Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee for expenses incurred by itself or a former Trustee in managing or administering the Fund provided:
- (a) the Trustee or the former Trustee acted honestly in the matter in respect of which the indemnification is sought;
 - (b) the Trustee or the former Trustee did not intentionally or recklessly fail to exercise, in relation to the matter in respect of which indemnification is sought, the degree of care and diligence that the Trustee or the former Trustee was required to exercise.

Rule 7. Trustees' meetings

Explanation

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

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

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

Where the Trustee is a company decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case meetings of the company must be held in accordance with the constitution of that company. This is another reason why it is important that the constitution of a Trustee Company is comparable with the Rules.

Rule

- 7.1. If there is more than one Trustee the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision pursuant to these Rules.
- 7.2. The Manager or Members must give reasonable notice of any such meeting to each of the Trustees (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by each Trustee) unless the Trustees unanimously agree that the meeting may be held on some earlier date. Such written notice must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (b) state the general nature of the business of the meeting.
- 7.3. At any meeting of the Trustees a quorum is equal to that number of Members, or the Legal Personal Representatives of those Members, the balance of whose Members' Accounts, is equal to more than one half of the balance of all Members' Accounts;
- 7.4. At any meeting of the Trustees, unless the Trustees unanimously agree otherwise, a Trustee shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that Trustee;
- 7.5. A resolution shall not be passed at any meeting of the Trustees unless it is passed by the casting of a majority of the votes entitled to be cast by Trustees who are present at that meeting.
- 7.6. A Trustee may appoint a person to act as that Trustee's proxy at any meeting of the Trustees.

Rule 8. Trustee's records

Explanation

A written record must be kept of all decisions made by the Trustee in relation to the Fund. Those records should be held for ten years.

Rule

- 8.1. If there is only one Trustee that Trustee must make a written record of all decisions made by the Trustee as Trustee;
- 8.2. If there is more than one Trustee the Trustees must keep minutes of every meeting held by those Trustees;
- 8.3. If the Trustee is a company the minutes of the meetings of the directors of that company shall be deemed for the purposes of this Rule to be records of the Trustee;
- 8.4. Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

Rule 9. Trustee's covenants

Explanation

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

Rule

A Trustee by accepting appointment as a Trustee agrees:

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

Admittance of Members

Rule 10. Who may become a Member

Explanation

There are generally no restrictions on who can be a Member of the Fund provided the Member or their Legal Personal Representative is eligible to be appointed a Trustee. For example a child or a person that is not employed may become a Member of the Fund.

This Rule would also allow the Trustee to admit a non-member spouse as a Member to facilitate a payment splitting arrangement established under Part VIIIB of the Family Law Act 1975.

Rule

10.1. The Trustee may in its absolute discretion admit a person as a Member provided:

- (a) that person has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
- (b) admission of that person as a Member would not result in the Fund losing its Complying Self Managed Superannuation Fund status; and
- (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee.

10.2 Subject to these Rules and the Act the Trustee must admit a person as a Member where that person is in receipt of a Pension from the Fund.

Rule 11. Members have read and are bound by the Rules

Explanation

The Corporations Act 2001 requires any new Member of the Fund to be made aware of all matters, events, rights and circumstances that may arise where they acquire an interest in a Self Managed Superannuation Fund.

Rule

By applying for membership of the Fund a Member acknowledges having read the Product Disclosure Statement and agrees to be bound by the terms of the Deed and the Rules.

Rule 12. Application Form

Explanation

Prospective Members will be required to provide the Trustee with an Application Form.

The Application Form may (amongst other things) require a prospective Member to:

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

Rule

A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has completed an Application Form in the form required by the Trustee.

Rule 13. Receipt of an Application Form

Rule

- 13.1. On receipt of an Application Form from a person and after that person produces such documents and evidence, and submits to such medical examination and checks, as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.
- 13.2. Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for membership whether or not that person has been accepted for admission as a Member and whether or not any conditions will be attached to that person's membership.
- 13.3. If the Trustee has agreed to accept a person as a Member but subject to conditions as to that person's membership that person can within 6 weeks of notification by the Trustee pursuant to Rule 13.2 either accept or reject that offer of membership.
- 13.4. Where a person may be entitled to be paid a Pension following the death of a Member and that person does not wish to become a Member or the Trustee decides that the person is not to become a Member, then the Trustee is to transfer that amount as is equal to the balance of the Pension payable to that person to another complying superannuation fund or eligible rollover fund. Any such transfer is to be made in accordance with Rule 24 and must occur within three months of the time that the person became entitled to be paid a Pension.

Death Benefit Nominations

Rule 14. Binding Death Benefit Nomination

Explanation

If the Trustee decides to accept Binding Death Benefit Nominations from Members then the Trustee must put in place a binding death benefit nomination policy, details of which are to be sent to all members.

Before accepting a Member's request for a Binding Death Benefit Nomination, the Trustee should assess the cash flow requirements that may be faced by the Fund in the event of the Member's death and any death benefit becoming payable.

The Trustee might seek professional advice from an actuary. If the Trustee is of the view that the Trustee may be unable to comply with the Member's request the Trustee may, after discussion with the Member, request that the Member resubmit the Binding Death Benefit Nomination. Alternatively, the Trustee may reassess the Fund's insurance plan and increase any life insurance cover.

Any Binding Death Benefit Nomination may be amended by the Member at any time provided the Trustee is notified in writing of that amendment.

A Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member. However the Rules provide for the Trustee to exercise discretion to extend the Member's Binding Death Benefit Nomination where the Member's circumstances remain unchanged except that the Member may have become mentally incapacitated.

Rule

- 14.1. The Trustee must provide Members with information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 14.2. A Member may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 14.3. The Trustee may accept, amend or reject a Binding Death Benefit Nomination. If the Trustee does not accept a Binding Death Benefit Nomination within six months of its submission it is deemed to have been rejected. If the Trustee amends or rejects the Binding Death Benefit Nomination the Member may submit another Binding Death Benefit Nomination.
- 14.4. A Binding Death Benefit Nomination:
 - (a) must be in writing;
 - (b) must require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
 - (c) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
 - (i) each of whom has turned 18; and

- (ii) neither of whom is a person capable of benefiting under the notice; and
- (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member in his or her presence.
- (e) will cease to have effect after three years from the date of acceptance by the Trustee unless the Trustee, in its absolute discretion considers that a Member's Binding Death Benefit Nomination should continue to have effect.

Rule 15. Non-binding Death Benefit Nomination

Explanation

A Member might request the Trustee to pay their Death Benefits in a particular way and to particular persons. Such requests or directions are at the discretion of and non-binding upon the Trustee.

Rule

- 15.1.** A Member may provide the Trustee with a Non-binding Death Benefit Nomination. This Nomination may request the Trustee, at its discretion, to provide benefits on death of the Member to persons named by the Member in that nomination.
- 15.2.** The Trustee may accept, amend or reject a Non-binding Death Benefit Nomination. If the Trustee amends or rejects the Non-binding Death Benefit Nomination the Member may submit another Non-binding Death Benefit Nomination.
- 15.3.** A Non-binding Death Benefit Nomination is not binding upon the Trustee.

Part Two: Operation and Administration of the Fund

Termination of Membership

Rule 16. Expulsion of a Member

Explanation

The object of this Rule is to allow the Trustee to expel a Member. As such, where a person becomes bankrupt or does anything else to jeopardise the status of the Fund as a Complying Self Managed Superannuation Fund they must be removed as Trustee. In these circumstances they are no longer eligible to remain as a Member unless the Trustee appoints an Approved Trustee as Trustee.

Rule

16.1. The Trustee may expel a Member as a Member of the Fund if:

- (a) the Member becomes bankrupt and the Trustee does not appoint an Approved Trustee, or
- (b) the Fund will cease to be a Complying Self Managed Superannuation Fund if the Member continues as a Member of the Fund.

16.2. If a Member is expelled from the Fund pursuant to Rule 16.1 the Member's Entitlements are to be transferred to such other Superannuation Entity as requested by the Member.

Rule 17. Ceasing to be a Member

Explanation

Normally a Member will only cease being a Member:

- *if the Member dies; or*
- *the Member ceases to be eligible to be a Trustee (or ceases to be eligible to be a director of a company which is a Trustee);*
- *The Trustee also has the power to determine that a Member should no longer be a member (for example this may follow the separation of spouse members).*

Rule

Unless prohibited by the Act a Member shall be deemed to have ceased to be a Member on the first to occur of the following:

- (a) upon the Member no longer being entitled to Benefits from the Fund;
- (b) upon the Trustee determining that the Member should no longer be a Member;
- (c) the death of the Member or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member remains as Trustee or director of the Trustee Company;

- (d) the date being no later than the earliest of either:
- (i) three months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee (unless the Member has appointed a replacement Trustee that meets any conditions laid down in Rule 2); or
 - (ii) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee (unless the Member has appointed a replacement Trustee that meets any conditions laid down in Rule 2).

Members' Accounts

Rule 18. The Trustee must keep Members' Accounts

Explanation

The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one account may be kept for each Member.

Rule

- 18.1. The Trustee must keep accounts for each Member, which record Contributions received, income earned, amounts allocated to or from Reserves, Benefits paid and all other amounts added to or deducted from the Member's Account.
- 18.2. The balance of a Member's Account must be positive.
- 18.3. More than one Member's Account can be kept for a Member.
- 18.4. A Member's Account can be an Accumulation Account or a Pension Account.

Rule 19. Additions to a Member's Account

Explanation

Additions to a Member's Account will normally represent Contributions, roll-overs or earnings. They may also include an allocation made by the Trustee from a Reserve into a Member's Account. The amount of earnings added to a Member's Account is to be determined by the Trustee (see Rule 33) and may depend on the investment strategy adopted by the Trustee.

Rule

On the last day of each month or such other time as the Trustee might determine the Trustee shall add to a Member's Account:

- (a) the amount of Contributions received by the Trustee for the benefit of the Member;
- (b) at the discretion of the Trustee the amount of such earnings of the Fund as the Trustee believes should be added to that Member's Account; and
- (c) such other amounts including allocations of Reserves and transfers from another Member's Account as the Trustee might determine,

provided that any such additions do not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 20. Deductions from a Member's Account

Explanation

Deductions from a Member's Account will normally represent expenses directly attributable to the Member or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include any losses or a transfer made by the Trustee from a Member's Account to a Reserve Account or another Member's Account.

Rule

On the last day of each month or such other time as the Trustee might determine the Trustee shall deduct from a Member's Account:

- (a) the amount of such expenses that the Trustee believes should be deducted from that Member's Account;
- (b) the amount of any losses that the Trustee believes should be deducted from that Member's Account;
- (c) the amount of any payments of Benefits made to the Member or any other person from that Member's Account;
- (d) the amount of any Taxes payable by the Trustee that the Trustee believes should be deducted from that Member's Account; and
- (e) any other amount which the Trustee believes should be deducted from that Member's Account including any amount to be transferred to a Reserve account or to another Member's Account provided that the amount so allocated is not less than the Member's Minimum Benefits; and

provided that any such deduction does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Appointment of Auditor and Specialists

Rule 21. The Trustee must appoint an Approved Auditor and may appoint a Specialist.

Explanation

The Trustee is bound by the laws contained in the Act to appoint an Auditor each year to audit the Fund. One of the requirements of these laws is for the Trustee to appoint an Auditor to audit the Fund both financially and also from a compliance perspective each and every year. The Auditor should produce an annual report to be considered at a meeting of the Trustees.

Rule

- 21.1. On establishment of the Fund and for every subsequent year of income the Trustee must appoint an Auditor for the Fund who must give to the Trustee a report in the form required by the Act in respect of the operation of the Fund for that year. The Trustee must consider the report and implement any action recommended by the Auditor.
- 21.2. On establishment of the Fund and thereafter as the Trustee shall determine the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in ensuring that the Fund remains a Complying Self Managed Superannuation Fund as well to assist the Trustee in the management and administration of the Fund.

Contributions, Roll-Overs and Transfers

Rule 22. Who can make Contributions

Explanation

The Trustee may accept Contributions from:

- (i) a Member;
- (ii) a Member's employer;
- (iii) a Member's Spouse;
- (iv) a relative of a Member;
- (v) an employer of the Spouse or relative of the Member;
- (vi) the Regulator;
- (vii) the Government, or
- (viii) any other person or entity,

so long as the acceptance of any such Contribution does not jeopardise the Fund's status as a Complying Self Managed Superannuation Fund. Contributions may be made in cash or kind.

If a Contribution is made on behalf of a Child the Contributions made in any three year period must not exceed \$3,000 in total from all sources excluding Contributions made by the Child themselves or their employer.

Rule

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

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

Rule 23. The Trustee may accept a transfer from another Superannuation Entity

Explanation

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

The Trustee has absolute discretion as to whether to accept any transfer of assets from another fund. The Trustee can make any such acceptance subject to conditions. Where the Trustee resolves to accept a transfer that is an asset, the Trustee must ensure that the transfer of the asset to the Fund does not breach the Act or the Rules of the Fund.

Rule

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

Rule 24. The Trustee may transfer a Member's Entitlement

Explanation

A Member may request the Trustee to transfer all or part of their Member's Entitlement to another Superannuation Entity or to another Member's Account. The Trustee also has this discretion.

This may be required where a Member of the Fund is separated from their Spouse or where a Member terminates membership of the Fund due to the operation of another Rule.

Rule

24.1. If a Member:

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

then the Trustee shall, within a reasonable period of time of receiving that request, transfer the whole or that part of the Member's Entitlement to that other Superannuation Entity or to the other Member's Account.

24.2. The Trustee, at its sole discretion may transfer a Member's Entitlement to another Complying Superannuation Fund or to another Member's Account provided that in so doing the Fund does not become a Non-Complying Self Managed Superannuation Fund.

24.3. The Trustee may effect the transfer in the manner and form of its choice including whether the transfer is by way of cash or assets or has conditions attached.

Investments

Rule 25. The Trustee must formulate an investment strategy

Explanation

The Trustee must prepare and implement a written investment strategy. This is a requirement of the Act. The investment strategy:

- *must reflect the purpose and circumstances of the Fund and have particular regard to the membership profile, Benefit structure, tax position and liquidity requirements of the Fund;*
- *should set out the investment objectives of the Fund and detail how the Trustee will achieve those objectives.*

Breaches of the investment strategy requirement may result in the Trustee being fined or sued for loss or damages. In addition, the Fund could become a Non-Complying Superannuation Fund.

At certain times the Trustee may receive cash from Contributions for a Member or in respect of the disposal of an asset. In such cases the investment strategy is to be automatically adjusted for any such changes provided the change is for a period no longer than two months. If the adjustment is for a longer period the Trustee is required to adjust the investment strategy.

Rule

- 25.1.** The Trustee must formulate and implement an investment strategy that considers the whole of the circumstances of the Fund including, but not limited to, the following:
- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
 - (b) the composition of the Fund's (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the entity in 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 prospective liabilities;
- 25.2.** The investment strategy must be documented in writing.
- 25.3.** The investment strategy may consist of one strategy for the whole of the Fund or separate investment strategies for the various parts of the Fund including for particular Members or specific Benefits payable to a Member.
- 25.4.** The Trustee may amend an investment strategy from time to time. If the Trustee amends an investment strategy all Members affected by any such amendment shall be advised in writing of all details of the amendment.
- 25.5.** A Member may at any reasonable time request the Trustee to produce the investment strategy for inspection and the Trustee shall comply with this request by the Member.

- 25.6. The Trustee must also set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the Reserve or such other requirements as laid down in the Act.
- 25.7. In setting the investment strategy the Trustee may act on the advice of an investment adviser provided the Trustee reasonably believes that the adviser is qualified and has the necessary skills to provide such advice.
- 25.8. At certain times the Trustee may receive cash from Contributions for a Member or in respect of the disposal of an asset. In such cases the investment strategy is to be automatically adjusted for any such changes provided the change is for a period no longer than two months.

Rule 26. The Trustee must invest the assets of the Fund

Explanation

The Trustee must invest the assets of the Fund.

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

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

Rule

The Trustee must, as allowed by these Rules, invest all Contributions, Reserves and earnings of the Fund in accordance with the Fund's investment strategy.

Rule 27. A Member can request the Trustee to invest their account separately or jointly

Explanation

The Trustee may adopt a "pooled investment strategy" or a "separate investment strategy" for the Fund. The Rules provide that a member may request that the trustee operate an investment strategy for each of their member accounts in the Fund or in respect of a group of member accounts. Where a separate investment strategy is used, specific assets should be set aside or segregated to meet the needs of the separate investment strategy.

Rule

A Member can request the Trustee to invest Contributions and transfers made to the Fund for the benefit of that Member and income on those Contributions and transfers separately from any other investment of the Fund. The Trustee may or may not accept that request.

Rule 28. Authorised investments

Explanation

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

Rule

- 28.1.** Subject to the Act and these Rules the Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets. In investing the assets of the Fund the Trustee shall exercise that diligence and prudence as an ordinary prudent person would exercise in conducting their own affairs.
- 28.2.** Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any moneys requiring to be invested under these Rules either alone or in partnership or co-ownership with any person or persons:
- (a) *Authorised investments:* in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
 - (b) *Real and personal property:* in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
 - (c) *Property development:* in developing and turning to account any real or personal property or any interest therein, or any property right or interest which is or may be subject to these trusts and without limiting such generality by constructing, reconstructing, maintaining or improving any buildings or by laying out and preparing land for subdivision, conversion to strata or similar title and for buildings;

- (d) *Shares:* in the acquisition of fully or partly paid shares including; redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- (e) *Option and rights:* in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
- (f) *Deposit:* on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (g) *Insurance:* in the acquisition of any policy of assurance or insurance of any kind whatsoever;
- (h) *Loans:* in making loans to any person or company except to Members of the Fund;
- (i) *Precious objects:* in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (j) *Commodity contracts:* in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (k) *Permanent building society:* in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- (l) *Deferred property:* in the acquisition of any reversionary or deferred property or rights of any description.

Rule 29. Trustee Powers

Explanation

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

Rule

29.1. In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall have the following powers. These powers shall be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules or by law. These powers shall not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law: