SMSF STRATEGIES

Product Disclosure Statement

Disclaimer

The Product Disclosure Statement, the SMSF Strategies Deed and the SMSF Strategies Rules (the SMSF Strategies Deed") are based on the Australian Superannuation and Taxation Laws as of 1 July 2011. Neither SMSF Strategies, Glenister & Co Lawyers and their employees nor advisers accept any liability for any loss or damages of any kind whatsoever arising as a result of use of this document. The SMSF Strategies Trust Deed is not personal or general advice for the purposes of the Corporations Act 2001.

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Introduction

1. The Simpler Super Reforms

The Simpler Super reforms which commenced on 1 July 2007 are, by far, the most significant positive advances to the taxation and superannuation system in Australia's *history*. They will be watched closely by many other western countries to see if they meet the underlying objectives of the government's retirement incomes policy – to keep Baby Boomers working longer, encourage Australians to fund their own retirement and reduce reliance on the social welfare system. With proposed changes to the superannuation advisory system and also aged care coupled with falls in the value of superannuation assets – any tax saving is crucial to the long term welfare of a retiree.

So, what are some of the **major superannuation** changes?

- *No tax on income, or lump sums* taken from a complying superannuation fund post age 60.
- When a person who is 60 or older has all, or a significant majority, of their income producing investments in a superannuation find, and their taxable income is less than $6,000 per annum, *they do not need to lodge an personal income tax return*. This may be increased to in excess of $18,000 by 1 July 2012 if the Government introduces the proposed Carbon Tax.
- A member of a fund who is age 55 and born before 1960 can access their super benefits as a low-taxed transition to retirement income stream, *even while working full or part time*. There is a 10% maximum limit on the amount of income the working member can take each year while working. Once they retire there is no limit on the amount of withdrawals.
- No tax penalties or limits on the amount of super benefits that can be withdrawn by members or their dependants and/or legal estate in the event of the member's death.
- Warehousing of super fund investments for the benefit of the next generation with the abolition of the requirement for superannuation benefits to be taken as a lump sum or pension at age 65.
- Relaxation of the assets test thresholds for social security purposes so that a home owning couple may be able to access a part pension while holding a significant parcel of assets.
- A significant number of superannuation fund members over age pension age will be able to access the health care card, telephone, and electricity allowances with superannuation incomes and not assets tested.
- Insurance premiums in the fund for death, permanent and temporary disability of fund members are tax deductible. Proposed changes may see the tax deductibility of part of any insurance premium paid by the trustee of a fund for own occupation insurance taken out on the life of a member.
- Death and permanent disability benefits paid out during the working life of a member are proportionally tax deductible to the fund.
- Taking an accounts based pension from a fund that has upgraded to the SMSF Strategies trust deed means lower income levels while allowing unlimited withdrawals for retirees, those over age 65 or who are permanently incapacitated in addition to the terminally ill.

2. What is a Self Managed Superannuation Fund ("SMSF")?

A SMSF is a regulated superannuation fund with less than five members, who are primary family members or close associates. The sole purpose of the fund is to provide income streams and/or lump sum benefits to members where allowed under the Superannuation Laws.

The fund is an active collaboration of all members with each member, subject to a few exceptions, being required to become a Trustee of the fund or director of the fund's Corporate Trustee. This guarantees the member's involvement in the decision making process of the fund. All members of the fund, upon joining the fund and becoming a Trustee or director of a Corporate Trustee, agree to be bound by the Rules of the fund and the Superannuation Laws and declare that they have read the fund's Product Disclosure Statement. They must also ensure that the fund remains a regulated and a complying SMSF under the Superannuation Laws.

The SMSF Strategies Rules which form part of the Fund's trust deed ensure that it is not the intent of the Trustee or director of the Corporate Trustee to provide benefits to members of the fund or others except where allowed under the Superannuation Laws. This means that where the Trustees of the fund are individuals then only retirement pensions may be paid as benefits from the fund unless the Superannuation Laws allow otherwise. In addition it is not the intent of the SMSF Strategies Rules to allow the Trustee or director of a Corporate Trustee to breach any of the Superannuation Laws.

3. Introducing the SMSF Strategies SMSF Trust Deed Package

SMSFs bring control, flexibility and choice to Trustees and members of a SMSF. With the wide ranging changes brought on by the introduction of the Simpler Super laws in 2007 and subsequent beneficial changes to the laws, SMSFs are a perfect vehicle for a member to minimise their tax and maximise their superannuation and estate planning opportunities.

The SMSF Strategies Trust Deed package is a range of specialist SMSF products tailored to the needs of the Trustee and members of the fund. The key components of the package include:

3.1. The SMSF Strategies Trust Deed, where the Trustees of the fund choose to establish a SMSF. For Trustees with an existing trust deed, upgrading the Fund's rules to the SMSF Strategies Rules enables the Trustee to take advantage of the comprehensive strategies found in the Rules. The SMSF Strategies Trust Deed details the rights, benefits and entitlements of members as well as providing rules on what the Trustee can – and cannot – do. The Rules also include detailed strategy guidance notes to ensure that members and Trustees alike can understand the meaning of specific rules. The Rules are an important learning tool for Trustees and members.

3.2. This Product Disclosure Statement (PDS) that details the important features, risks, disadvantages and advantages, Trustee responsibilities, the taxation of the fund and members, as well as the estate planning opportunities for Trustees and members using the SMSF Strategies Trust Deed. It is a requirement of the Corporations Act 2001 that the Trustee provides a member or prospective member of a superannuation fund with a Product Disclosure Statement. This Product Disclosure Statement ensures the Trustee adheres to its Superannuation Laws obligations.

3.3. The Trustee Guide to SMSFs video presentation by Grant Abbott describing the strategies available under the SMSF Strategies Trust Deed, member's benefits as well as the responsibilities of the Trustee of the fund. The presentation may be found at www.smsfstrategies.com

3.4. The SMSF Strategies special purpose SMSF Corporate Trustee where the Trustees of the und have decided to establish a special purpose Corporate Trustee to act in concert with the SMSF Strategies Trust Deed and Rules. Given that SMSFs operate beyond one generation it is imperative for a Corporate Trustee to be established to ensure longevity of the Fund as well as minimising any administrative or taxation problems when a member of the fund dies. In addition where the Trustee of the fund, as well as fund members are seeking to receive lump sums, transition to retirement income streams or pay benefits in the event of incapacity then a corporate trustee must be used as individual trustees may only pay retirement pensions.

3.5.A SMSF Will. Superannuation benefits cannot be dealt with in a person's Will. However they can in a SMSF Will – a key feature of the SMSF Strategies Trust Deed package. The SMSF Will allows a member to make a non-lapsing binding death benefit directions to the Trustee of the Fund in respect of their superannuation benefits in the event of the member's death. There is a wide range of options including the streaming of tax free/taxable components to various dependants and non-dependants, protection of specific assets in the fund as well as nominating a Replacement Trustee for the deceased member. There are numerous strategies that apply to the SMSF Will. With the Simpler Super reforms a SMSF Will is a crucial, if not compulsory option for all members of a SMSF.

3.6.A SMSF Strategies trustee minutes package where the trustee utilises special purpose minutes to facilitate a wide range of transactions that may be undertaken by the Trustee and members of the fund including commencing an income stream, taking a lump sum, making a contribution and other important Trustee and member dealings.

3.7.Key SMSF Borrowing documentation. The SMSF Strategies Trust Deed package provides the necessary rules and requirements to enable the Trustees of a SMSF to borrow in accordance with the provisions of the SIS Act 1993. Borrowings can be either from a traditional third party lender or from a related party. The purpose of the borrowing can be for the Trustee of the Fund to acquire residential and commercial property and in some cases, listed shares, managed funds and any other asset acquisition permitted by the SIS Act 1993. The acquisition of property must conform to the Superannuation Laws. The government has changed the borrowing rules to make it more difficult to acquire shares by way of borrowing.

3.8.SMSF Pensions. There are a wide variety of SMSF pensions available to members of the SMSF when they meet a condition of release of their superannuation benefits. These include the tax advantaged Transition to Retirement Income Stream. This can commence when a member of the Fund reaches preservation age (age 55 for those born prior to 1960) *even though they may still be working.* A SMSF pension may include reversionary beneficiaries that allow the transfer of the pension on the death of a member or the occurrence of some other event. The SMSF Strategies Rules offer a wide range of pensions and documentation facilitating pension roll backs, commutations and segregation of assets.

3.9.A SMSF Life Will. A member of a SMSF may become legally incapacitated and incapable of managing their own financial affairs including their superannuation benefits. A SMSF Life Will allows the member to plan for such an event with a binding non-lapsing direction to the Trustee of the Fund in respect of what is to occur to their superannuation benefits in the event of the member's incapacity. The SMSF Strategies Trust Deed package provides the tools and mechanisms for a member, with the agreement of the Trustee of the Fund to create a SMSF Life Will.

The SMSF Strategies Trust Deed Package is Australia's only comprehensive package of integrated SMSF documentation purpose built with the Simpler Super and other important strategic SMSF reforms in mind. It does not carry the legacy of the past. Additionally it is the only package in Australia of SMSF products and documentation that provides for both a SMSF Will and SMSF Life Will.

Product Disclosure Statement

1. Introduction

Self-managed Superannuation Funds, or SMSFs, were first established in 1994. At 31 March 2011 APRA statistics show that there were more than 447,000 SMSFs holding $4320 billion in assets. These included cash, shares, managed funds, property trusts, commercial and residential property. The average size of a SMSF is $960,000 and is increasing year by year. According to an Australian Stock Exchange Survey in 2003, there are several reasons why people choose a SMSF over retail or industry based superannuation funds:

- Control and active involvement
- Choice of fund investments
- Perceived superior performance compared to traditional superannuation fund managers
- Cost effective administration, and reporting
- Flexibility
- Estate planning
- Taxation and accessing low taxed benefits

Note: *Grant Abbott, Principal of SMSF Strategies and Australia's leading SMSF adviser, presenter and trainer has produced a 20 minute video on the "Ten reasons for SMSFs over Retail and Industry based superannuation funds." The video can be found at www.smsfstrategies.com*

Importantly the ASX survey also showed that SMSFs aren't for everyone. Becoming a member of a SMSF means that "you need to know what you are doing under the superannuation and taxation laws as well as in terms of investing."

One of the most significant requirements to being a member of a SMSF is that, generally a member must act as Trustee of the fund. However if a company is the Trustee of the fund, the member must become a director of the Trustee - being Trustee or director of the Corporate Trustee means taking responsibility for decisions regarding all the transactions of the fund. In addition 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. This is one of numerous reasons why a Corporate Trustee is generally favoured over individual Trustees for a SMSF.

Transactions the Trustee must preside over include investment decisions, creating an income stream for members, accepting contributions, appointing professional advisors if and when required, understanding the Superannuation Laws, ensuring that the Trust Deed is current and completing a wide range of reporting requirements for the Fund. Many superannuation fund members may not want this responsibility. They may find an industry or retail superannuation fund better suited to their needs. A good publication issued by the ATO detailing the legal responsibilities of being a SMSF Trustee is entitled "DIY Super. It's your money – but not yet." This can be found at www.ato.gov.au. The Commissioners publication for Trustees on "Setting up a SMSF" has also been included at Appendix A and forms part of this PDS to ensure that members or potential members of the Fund are aware of their responsibilities as a Trustee to the Fund.

The document you are reading now is the Product Disclosure Statement (PDS), for the SMSF Strategies Trust Deed and is written by Grant Abbott BEc LLM in conjunction with Ian Glenister LLB – Australia's leading licensed SMSF Specialist Lawyer and Amreeta Abbott SSA – Specialist SMSF Adviser. The PDS is required under the Corporations Act 2001 and is specifically designed to provide future and current members of the SMSF with information that enables them to make an informed decision regarding their superannuation interests and the interests of the fund. Such interests include, but are not limited to making a contribution to the fund, commencing an income stream, taking a lump sum, creating a "SMSF Will" and setting in place a SMSF disability plan or "SMSF Life Will".

However, the better educated a member, Trustee or director of a Corporate Trustee is about SMSFs the better advantaged they are. Within excess of 3,000 pages of Superannuation Laws and Commissioner of Taxation Rulings, it is potentially perilous for a member Trustee to remain uninformed. The hazard of making a mistake, small or otherwise is that the Trustee of the fund may not only be liable to a substantial financial penalty (up to $220,000) and possible imprisonment, but the SMSF may be rendered a non-complying superannuation fund. This means that the market value of the assets of the fund are included in the fund's taxable income and taxed at 45% - a heavy penalty or duty by anyone's standards. Ignorance is neither an excuse nor a defence – being informed is the only way to avoid this.

In addition to the PDS and the SMSF Strategies Trust Deed, which are educational in their own right, other SMSF resources that may prove useful as educational tools for Trustees and members include:

1. www.smsfstrategies.com – provides a wonderful range of SMSF strategies and compliance videos for Trustees of an SMSF.

2. The Commissioner of Taxation continues to produce a number of important resources for SMSF Trustees – and professionals alike. The website address for ATO superannuation resources is www.ato.gov.au.

3. The SMSF Strategies Trust Deed video – this video highlights the rights and entitlements of members and Trustees of a SMSF that use the *SMSF Strategies Trust Deed*. This video is available from www.smsfstrategies.com

2. The SMSF Strategies Trust Deed

As already noted, being a Trustee or director of a Corporate Trustee of a SMSF requires various responsibilities. Of paramount consideration is to ensure that the Rules remain up to date (now required by the Commissioner), are known and understood by the Trustees and members, and that the Trustee abides by all of the Rules of the fund. However, the Rules of each superannuation fund vary. In many cases, this variance can be quite considerable. If the Rules pre-date 1 July 2007, then they are seriously out of date and will limit the Trustee and members from accessing the wide range of tax, social security and other benefits under the Simpler Super reforms applicable from 1 July 2007. If they pre-date 1 June 2010 they may not be able to undertake SMSF Borrowing in its latest form.

The SMSF Strategies Trust Deed is Australia's first and only SMSF Trust Deed drafted specifically to cater for the Simpler Super reforms enacted in 2007, also known as "Better Super". They have been designed and written by Australia's leading SMSF experts - Grant Abbott and Ian Glenister.

Importantly, the SMSF Strategies Trust Deed has been written in "plain English" terms. This allows members of the fund, the Trustees or directors of a Corporate Trustee to clearly understand how the fund is to operate, without having to learn an entire dictionary of technical legal terms or have a legal degree. In addition they qualify the member's rights and entitlements under the SMSF Strategies Trust Deed. They also establish the obligations and responsibilities of both a member and Trustee or director of a Corporate Trustee of the fund.

Notwithstanding, the Rules of the fund the Trustees are subject to other laws including, the Superannuation Industry Supervision Act 1993, the Income Tax Assessment Act 1997, the Corporations Act 2001, the Social Security Act 1991, the Family Law Act 1975 and the various state based Trustee Acts. For the purpose of the SMSF Strategies Trust Deed and the PDS these are referred to collectively as the Superannuation Laws.

To optimise the advantages of the Simpler Super reforms, an upgrade of a pre-existing SMSF's Trust Deed to the *SMSF Strategies Trust Deed* is a simple and inexpensive exercise. This enables the Trustee or director of a Corporate Trustee of a SMSF with an older Trust Deed to enjoy the benefits of the "Simpler Super" regime.

3. Why the SMSF Strategies Corporate Trustee

One of the primary issues to be confronted when creating a SMSF is who is going to be the Trustee or Trustees of the fund. There are two options – the members themselves individually can be the Trustees or a Corporate Trustee may be established. The Cooper Review has noted that a Corporate Trustee is the preferred option as Trustee of a SMSF.

Although there is a small initial expense to create a company to act as Trustee there are significant taxation, practical and financial benefits in choosing to do so. These include:

a) Access to the low taxation rates for both the SMSF Trustee on fund income as well as where benefits are paid to members as a lump sum or pension. The Superannuation Laws allow a member of a superannuation fund to retain their superannuation benefits, in part or whole, in their lump sum account beyond retirement and even up until they die. As noted earlier where the Trustees are individuals the sole or primary purpose of the fund is to pay old age pensions. To retain superannuation benefits in a Member's lump sum account until death where the fund has individual trustees may see the fund lose all of its tax concessions

b) Ease of administration where members move in and out of the fund. Over time members of the fund come and go whether as a result of marriage, divorce, death, disability or bankruptcy. A requirement under the Superannuation Laws is that the SMSF Trustee must hold all of its assets in the names of the Trustee. With each change of Trustee all share and unit holder registries, land title offices and the like must be notified of the change in Trustee holding. With a Corporate Trustee the Trustee remains constant even though the underlying directors may change on occasion.

c) Trustees are potentially confronted with being sued should an event occur to an asset of the fund. For example the Trustee of a fund may own a residential property. As a result of an accident or for some other reason a tenant or visitor may sue under owner's liability. The tenant may sue any individual Trustee personally while directors of a Corporate Trustee may seek the shelter of the corporate veil.

   As with SMSF Trust Deeds not all companies are suitable to act as a SMSF Corporate Trustee. The SMSF Strategies Corporate Trustee, like the SMSF Strategies Trust Deed has been purpose built specifically for the Simpler Super reforms. Additionally, the company is to act exclusively as a Trustee of a SMSF not to be the Trustee of a family trust or to run a business. For members with an existing dormant or unwanted company, an upgrade to the company constitution to convert the company to a Simpler Super Corporate Trustee is a simple and inexpensive exercise.

4. The Ten Benefits of a SMSF Strategies Trust Deed

Not all SMSF Trust Deeds are the same! There are a number of crucial strategic benefits offered by the SMSF Strategies Trust Deed:

Benefit One: This is a "Brand New" SMSF Strategies Trust Deed not just old SMSF rules with a band aid

The internet has transformed universal contact. It has created a revolution in business, investment, education, entertainment, communication and all manner of lifestyle. How did we ever survive without the Internet? Those not prepared to embrace technological advancement are being left behind. The Simpler Super and following reforms are to superannuation what the internet is to communications and the availability of information. They change almost every superannuation fundamental by introducing revolutionary superannuation, borrowing, retirement funding and tax reform. The SMSF Strategies Trust Deed is unique and designed to work exclusively with the Simpler Super reforms. They are not an upgrade or redraft of a set of SMSF rules that pre-date the Simpler Super reforms. This means they do not have residual issues or problems that can arise by attempting to incorporate new ideas and strategies to rules that had their birth many years ago.

Benefit Two: Created by genuine SMSF Experts

Grant Abbott BEc LLM has authored three editions of the CCH "Guide to SMSFs" and a second publication the CCH "SMSF Strategy Guide"- all of which have sold out. CCH is and has been the world market leader in professional publications for the accounting, financial planning and tax professions for over a century. Only the leader in their chosen field of specialisation is asked to write a book on a subject for other professionals. Grant is Australia's leading authority on SMSFs. Since the advent of SMSFs in 1994 Grant has delivered more than 1,000 presentations and training courses to SMSF professionals and Trustees.

Ian Glenister B.Juris LLB has been involved with SMSFs for more than a decade. His firm, Glenister & Co provides specialised SMSF documents to professionals and SMSF Trustees across Australia as well as SMSF estate planning advice. He is in demand as a speaker and brings strong SMSF legal understanding and strategic drafting skills to the SMSF Strategies Trust Deed Package.

Amreeta Abbott SSA brings a wealth of client SMSF advising skills to the SMSF Strategies Trust Deed package and has designed the ancillary documents to fit with the SMSF Strategies Trust Deed and Corporate Trustee. These documents ensure that a Trustee meets not only strict compliance requirements but builds a strong documentation trail for generations to come.

Benefit Three: Access to ongoing SMSF Education

The SMSF Strategies Trust Deed is not just another SMSF Trust Deed. They are flexible, easy to read and designed for the future. As new strategies are discovered or the meanings of various SMSF laws are clarified by the ATO, Trustees need to stay informed. Trustees, as users of the SMSF Strategies Trust Deed have access to the wide range of complimentary SMSF strategy programs at www.smsfstrategies.com on specific SMSF topics including SMSF Estate Planning, SMSF Insurances and SMSF Income Streams. Importantly the various SMSF strategies taught by Grant Abbott, Ian Glenister, Amreeta Abbott and other SMSF specialists can only be used with the SMSF Strategies Trust Deed.

Benefit Four: Built for many Generations

Once established, the SMSF Strategies Trust Deed is purpose built to provide current and future generations of a family with tax free lump sums and income to be used when family members reach age 60. Children will follow their parents and grandchildren will follow their grandparents into the fund. Although there is a current limit on four members per SMSF, the SMSF Strategies Trust Deed can accommodate more than four family members in the event the government changes the Superannuation Laws to allow a SMSF to have five or more family members. SMSF Strategies Trust Deed also allows a family to establish linked multi-SMSFs at any time including upon death or incapacity.

Benefit Five: Placing SMSF control in the right hands

In the past there have been occasions where the wishes or requirements of a Fund member, for whatever reason, have not been adhered to by the fund's Trustee. This may occur with a members' divorce, death or legal incapacity. How can this occur? Many SMSF trust deeds provide a single vote per Trustee at a Trustee meeting. In a case of separation or divorce with two Trustees at odds this can herald disaster. The Trustees of the fund may become deadlocked and the assets of the fund put at serious risk. Similarly there are many SMSF trust deeds where, without undisputed agreement by the Trustees, there is no ability to appoint a replacement Trustee such as the deceased member's executors to oversee a deceased or incapacitated member's wishes.

The SMSF Strategies Trust Deed provides, as a default, each Trustee with voting rights based on the dollar value of the member's superannuation account balances to ensure that control of the fund remains in the key member's hands. Additionally, in the event of member's death or incapacity the SMSF Strategies Trust Deed provides automatic Trustee replacement by the deceased member's executors to represent the deceased or incapacitated member. The replacement Trustee, in accordance with the SMSF Strategies Trust Deed, is provided with exclusive voting rights applicable to the deceased or incapacitated member's superannuation benefits.

Benefit Six: Contribute Investments, other Assets, deemed Contributions as well as Cash

The "life cycle" of many members revolves around education, employment or business involvement, superannuation guarantee contributions, marriage or lifetime partnership, the purchase of a residence with a mortgage, children and their education, investing, funding children's tertiary studies, making contributions to super, accessing superannuation benefits as an income stream or lump sum at retirement, incapacity and death.

The rate at which the "life cycle" occurs differs from member to member. Eventually, as a member reaches preservation age and can access their superannuation benefits, there is a tendency by the member to make larger and more frequent superannuation contributions. It is at this time the SMSF Strategies Trust Deed comes to the aid of fund members by allowing them to transfer investments, even business real property, to their SMSF provided the Superannuation Laws are not breached. Stamp duty and capital gains tax considerations must always be considered in these circumstances.

Benefit Seven: Wide range of Trustee investments allowed

The choice of investments and control of the fund are some of the major motivating factors for members to establish a SMSF. Unlike the customary array of investments offered by a Trustee of a retail or industry based superannuation fund the SMSF Strategies Trust Deed expands the Trustees ability to invest in a wide and varied range of investments. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status a SMSF Strategies Trust Deed fund has the ability to invest in commercial assets, farms, options, futures contracts, property development and other joint ventures, property syndicates, franchises, mining leases and many other tax effective investments. Significantly, the SMSF Strategies Trust Deed enables worldwide investment. The Deed also enables the Trustee to engage in SMSF Borrowing to acquire a "single acquirable asset" under section 67A of the SIS Act 1993.

Benefit Eight: Flexible Superannuation Accounts

Once a Member reaches preservation age it is now common practice for them to maintain both a lump sum and one or more superannuation income stream accounts. Additionally Trustee maintenance of one or more Reserve Accounts may occur. Each of these accounts is described as a Superannuation Interest, a new term that has emerged under the Simpler Super reforms. Subject to the Superannuation Laws, the SMSF Strategies Trust Deed provides the members of the fund with the opportunity of moving between their various superannuation interests as well as giving the Trustee the power to change assets between various fund interest accounts. This tactic enables the member to maximise their strategic superannuation opportunities.

Benefit Nine: Flexible Superannuation Benefits

The SMSF Strategies Trust Deed takes full advantage of the changes to the laws ushered in by the Simpler Super and post 2007 reforms. Members can access a wide range of superannuation benefits available for the first time including a transition to retirement income stream, an accounts based pension, accessing a lump sum at any time following a member's retirement, terminal illness or permanent incapacity or the member can just leave their superannuation benefits in the lump sum account to compound indefinitely.

Benefit Ten: Flexible SMSF Estate Planning

One of the most significant changes to the Australian superannuation landscape introduced in the Simpler Super reforms is a member's ability to transfer their superannuation wealth via their SMSF to future generations. The SMSF Strategies Trust Deed is drafted to enable a deceased member's superannuation death benefits to be transferred to a spouse, lifetime partner, children plus any other dependants and non-dependants of the deceased member. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the payment of a member's superannuation death benefit may be way of lump sum or an accounts based pension. The benefits can also be paid via the estate of a deceased member or in accordance with a Testamentary Trust established in the deceased's member's Will. In terms of income streams there are limits in the payment of income streams to dependant child beneficiaries post aged 25 and in that regard it is important for all SMSF members to discuss their SMSF estate planning with their adviser.

The SMSF Strategies Trust Deed has also introduced Australia's first "SMSF Will" where a member may provide a set of specific instructions to the Trustee of the fund to be followed at the time of the member's death. The Trustee, if they accept the SMSF Will, is bound by those instructions. They may include the provision for the payment of death benefits in a manner and form described under the SMSF Will, who is to be the replacement Trustee, which specific superannuation interest a death benefit is to be paid from or whether it is to be made by way of a distribution of a specific asset of the Fund.

SMSF Strategies Trust Deed - Key Features

The following key features are by no means exhaustive. To understand all that is required of being a Trustee, the benefits and entitlements of a member and the various strategic opportunities with the SMSF Strategies Trust Deed, members and prospective members should also read the SMSF Strategies Trust Deed. The SMSF Strategies Trust Deed has been written in *plain English* and includes an Explanatory Memorandum to elaborate on what the Deed means and how they may apply to a particular member set of circumstances.

1. Benefits for Members at Preservation Age, Retirement, Death or Incapacity

Subject to the Superannuation Laws and the fund retaining its Complying SMSF status, the sole purpose of the fund is to provide the members of the fund with the following benefits should they choose:

- An opportunity to commence a tax effective transition to retirement income stream once they reach preservation age. This is the case even though they may continue to work part time or full time and an employer or the member personally makes contributions into the fund.

- Lump sum or income stream benefits in the event of a member's retirement with benefits after age 60 tax free.

- Lump sum or income stream benefits at age 65.

- The ability to retain superannuation benefits in the member's lump sum account after retirement without any requirement to draw down upon their superannuation benefits. This account is known as a retirement accumulation account.

- The opportunity of leaving any superannuation benefits in the fund on the member's death directly to dependants, non-dependants or legal estate in the event of the member's death.

- Access to superannuation benefits where the member becomes temporarily or permanently incapacitated.

- Any other benefit allowed under the Superannuation Laws.

The Trustee is precluded from providing a superannuation benefit to a member except in the above circumstances. For example the Trustee cannot acquire residential property and then allow a child of a member live in the property even with paying a market value lease fee.

Importantly, where the Trustees are individual persons, as opposed to a Corporate Trustee, some of the above benefits, such as lump sums and non-retirement income streams may not be permitted under the Superannuation Laws.

SMSF Strategy Guide:
A member is not required to take any of their superannuation benefits during their life and may use their SMSF as a legal tax effective estate planning vehicle should they choose. This is where a SMSF Will is an important tool to guarantee the distribution of superannuation benefits in the appropriate form and manner required by the member on their death.

2. Members to be a Trustee

All members of the fund, subject to some limited exceptions under the Superannuation Laws are required to become a Trustee of the fund or in circumstances where the Trustee of the fund is a Corporate Trustee, a director of the Corporate Trustee. The SMSF Strategies Trust Deed provides the following important exceptions to the member/Trustee rule thereby allowing a Replacement Trustee to be appointed in the place of the member:

- On the member's death, the Replacement Trustee or replacement director of the Corporate Trustee (if using the SMSF Strategies Corporate Trustee) is the executor of the member's legal estate.

- Where the Replacement Trustee or replacement director of a Corporate Trustee holds the member's enduring power of attorney. As the member's legal personal representative ("LPR") they can be appointed as Trustee or director of the Corporate Trustee on the member's behalf provided the member resigns from their trustee position.

- Where the member is a minor and not able to act as a Trustee or director of a Corporate Trustee, a Replacement Trustee or replacement director of a Corporate Trustee may be used including the minor's LPR or where there is no LPR, a parent or guardian of the minor.

- If the member of the fund no longer resides in Australia, they may put in place a Replacement Trustee or replacement director of a Corporate Trustee if their Replacement Trustee holds the member's enduring power of attorney and acts as their LPR. This is to ensure that the fund remains an Australian superannuation fund and retains the taxation concessions available to this type of superannuation fund. However whilst a non-resident member a contribution cannot be made into the fund unless certain circumstances arise.

3. Trustee Responsibilities and appointing SMSF Experts

The Trustee is bound by **ALL** of the SMSF Strategies Trust Deed as well as the Superannuation Laws as they apply to SMSFs. The Superannuation Laws provide serious penalties for the Trustee including fines, penalties and in some circumstances imprisonment where the Trustee breaches the Rules and the Superannuation Laws. The Trustee has a range of important responsibilities, including amongst others:

- To be aware of, understand and act in accordance with the SMSF Strategies Trust Deed.

- To ensure that the Trust Deed of the fund is continuously upgraded to meet any changes and requirements of the Superannuation Laws.

- To abide by the Superannuation Laws.

- To document the fund's Investment Strategy and make investments for the fund according to the fund's Investment Strategy.

- To ensure that at all times the fund remains a Complying SMSF.

- To appoint SMSF experts to assist the Trustee in meeting its responsibilities. This includes an approved auditor, an accountant, a fund administrator, an investment strategist, a SMSF insurance adviser and a SMSF estate planning lawyer.

A trustee or director of a Corporate Trustee is required to affirm in writing as to the above within 21 days of being appointed as trustee or director of a SMSF Corporate Trustee. The affirmation is found in the ATO "Declaration for New Trustees of a SMSF".

4. Trustee Investments and Investment Strategy

The Trustee of the fund has broad investment powers under the SMSF Strategies Trust Deed and is able to invest in private or public company shares; cash and fixed interest; commercial, rural and residential property; unit trusts and pooled superannuation trusts and is able to engage in property development and other pursuits provided the investment is in accordance with the Superannuation Laws.

The Trustee of the fund may also borrow to acquire an asset provided the acquisition of the asset is permitted by the Superannuation Laws – *see below*. The structure for any borrowing must be by way of a holding trust to ensure the borrowing is non-recourse. The borrowing may be from a bank, building society, non-bank or a related party. The Commissioner of Taxation has issued extensive guidelines in relation to SMSF borrowing.

The Fund's Trustee can create separate investment strategies for each member of the fund. Alternatively a Trustee may establish separate investment strategies for differing member accounts including member's lump sum or income stream accounts. However this is not a mandatory requirement. The Trustee can use their power to create a pooled investment strategy for all members of the fund and all accounts provided the investment strategy meets the necessary requirements of the Superannuation Laws.

However any investment made by the Trustee must meet with the fund's written investment strategy. The Superannuation Laws establish requirement guidelines as to what must be contained in an investment strategy including:

- The risk involved in making, holding and realising, and the likely return from, the entity's investments having regard to its objectives and its expected cash flow requirements.

- The composition of the entity'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.

- The liquidity of the entity's investments having regard to its expected cash flow requirements.

- The ability of the entity to discharge its existing and prospective liabilities.

Once one or more income streams are commenced the Trustee of the fund may run separate investment strategies for members where they have a lump sum and an income stream account. This will require the Trustee creating and authoring separate investment strategies and appropriate confirming documentation. There may be significant taxation and estate planning advantages in creating separate investment strategies for lump sum and income stream superannuation interests.

The Superannuation Laws provide further rules restricting certain investments made by the Trustee of a Complying SMSF:

- The Trustee cannot acquire an asset from a member or related party to the fund whether by way of purchase or as a contribution on behalf of a member. A related party includes a member or any other entity such as a family trust or family company where a member of the fund or Trustee has the ability to control the entity. There are exceptions to the rule which includes listed shares, managed funds, term deposits and business real property.

- The Trustee of the fund may not invest more than 5% of its assets as in-house assets. An in-house asset is defined in the Superannuation Laws to be an investment in, a loan to or a lease of fund property to a member or related party. This would include property and instances such as a holiday home or residential property where the member's children live. Excluded from in-house assets is business real property which may be leased back to a member of the fund or a related party entity.

- Any dealings the Trustee of the fund has with any related party or any other person must be at arm's length and meet the sole purpose test.

- Any acquisition of art work or collectibles is subject to strict rules included being housed in a public gallery, insured and not used by a related party.

5. Making Contributions to a Complying SMSF

The Superannuation Laws allow the Trustee to accept contributions on behalf of a member under the following conditions:

Table One – ***Contributions under the Superannuation Laws***

Age of Member	Contribution condition
Under age 65	No conditions.
Age 65 – 69	The contributions are made under an industrial agreement, are part of an employer's superannuation guarantee liability or the member is engaged in part time gainful employment being 40 hours of gainful employment or self employment over a 30 day period during the contribution income year.
Age 70-74	The contributions are made under an industrial agreement, are part of an employer's certified industrial agreement or the member is engaged in part time gainful employment being 40 hours of gainful employment or self employment over a 30 day period during the contribution income year and the contributions are made by a member or their employer.
After those times	Contributions may be accepted by the Trustee after these times if in the Trustee's opinion they relate back to an earlier contribution time in the Trustee's opinion or the contributions are made under an industrial agreement.
Spouse	The spouse must be under age 65.
Co-contribution	A contribution that meets the co-contribution guidelines has been made by the member to a complying superannuation fund.

No TFN	The Trustee may not accept a contribution where the member has not provided the trustee with their Tax File Number.
Contributions above the excess non-concessional contribution limit	The Trustee may not accept contributions in excess of the member's non-concessional contribution threshold. This limit is dependent upon the member's age at the time of making the non-concessional contribution.

The SMSF Strategies Trust Deed allows the Trustee of a fund to accept any contribution on behalf of a member, including both cash and assets provided the fund retains its status as a Complying SMSF. By writing the Trust Deed in this manner it ensures the Deed copes with future Contribution Law changes. In addition the Commissioner of Taxation has released an extensive ruling – TR 2010/1 providing that the following payments made on behalf of a Trustee of a fund are to be deemed to be contributions for the purposes of the Superannuation Laws:

- paying an amount to a third party for the benefit of the superannuation provider;
- forgiving a debt owed by the superannuation provider; or
- shifting value to an asset owned by the superannuation provider.

The SMSF Strategies trust deed allows for the receipt by the Trustee of the fund of a deemed contribution.

In terms of superannuation contributions splitting the Trustee of a Complying SMSF may accept a split of up to 85% of any concessional contribution made to the fund on behalf of a member in a prior income year. The member has the following income year in which to notify the Trustee of the desire to split. A concessional contribution is one that is assessable income of the Trustee of the fund. For more with respect to the "Taxation of a SMSF" see below. A non-concessional contribution may not be split with a spouse.

6. Superannuation Benefits - Lump Sums and Income Streams

Under the Superannuation Laws when a member of the fund meets a condition of release of their superannuation benefits they may take either a lump sum or an income stream. The conditions of release include amongst others:

- Temporary Incapacity and Permanent Incapacity – although only an income stream may be taken where a member suffers temporary incapacity and only to the extent that it compensates them for the loss of wages, salary or business profits;

- Retirement or at age 65;

- Under Severe Financial Hardship or on Compassionate Grounds;

- Where the Member has been diagnosed with a terminal illness that in the opinion of two qualified medical specialists may result in their death within the following 12 months;

- When a Member reaches Preservation Age and commences a Transition to Retirement Income Stream – no lump sum is available.

- On the death of a Member of the Fund, numerous Superannuation Laws apply to the payment of Death Benefit Superannuation Lump Sums and Death Benefit Superannuation Income Streams. The Trustee shall pay due regard to any Member SMSF Will 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 non-Dependant and the deceased Member's Legal Estate; and

- a Superannuation Income Stream may be paid to a Dependant for taxation purposes which includes all those persons who are Dependants but in the case of a Child, only a Child who is aged less than 18 unless they are a financial dependent where the maximum age is 25. 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.

The SMSF Strategies Trust Deed allows the payment of an account based income stream which requires a member to withdraw a certain percentage of their account each year based on the value of their account at the start of the year. The percentage that must be withdrawn depends upon the age of the person and is indicated as follows:

Age of Member	**% of account for income***
Under 65	4
65 - 74	5
75-79	6
80-85	7
85-89	9
90-94	11
95 or more	14

**for the year ended 30 June 2012 the requisite minimum figure is 75% of the above figures based on the member's age during that pension year.*

7. Taxation of the SMSF and Members

SMSF Strategy Guide:
The taxation benefits described in this section are available with the use of the SMSF Strategies Trust Deed and Package and cannot be guaranteed where other SMSF trust deeds are used, particularly those that pre-date 1 July 2010.

As noted previously the Simpler Super reforms have ushered in significant changes to the taxation of superannuation funds and their members. Detailed below are some of the important new superannuation tax laws that apply to the Trustee of a SMSF and its members.

a) Taxation in the Fund

Where the Trustee of a SMSF complies with the Rules of the fund and the Superannuation Laws it should be treated by the Commissioner of Taxation as a Complying SMSF. This means that the Trustee of the fund is entitled to concessional taxation treatment. Broadly the tax treatment for the Trustee of a Complying SMSF is:

- Where the assets of a Complying SMSF are set aside to fund lump sum benefits for the members of the fund the Trustee is to include as assessable income - interest, dividends, rents and other items that would ordinarily be assessable to a taxpayer. In addition the Trustee is to include as assessable income those contributions made on behalf of a member of the fund by another person excluding spouse contributions, child contributions, government co-contributions and a rollover of superannuation benefits from another complying superannuation fund.

- The Trustee is entitled to claim a tax deduction for expenses in running the fund.

- If the Trustee pays life or disability insurance premiums they will be entitled to claim a tax deduction for the insurance premium.

- The Trustee is entitled to a 33 1/3% discount on any capital gains realised on lump sum assets.

- Where the Trustee of the fund engages in SMSF Borrowing then any interest expense is tax deductible to the fund where the loan is being used for the purposes of deriving assessable income.

- The taxation rate on the taxable income of a Complying SMSF is 15% less any tax offsets such as imputation credits or foreign tax offsets.

- Where the assets of Complying SMSF are held aside for use by the Trustee to pay current income streams then any income or capital gains realised on those investments is tax free. However imputation credits can still be used by the Trustee of the fund even though any dividend income is tax free.

- Imputation credits that remain unused will be refunded to the Trustee.

- If a member of the fund dies or becomes disabled during their working life and the Trustee pays out a lump sum benefit or an income stream, the Trustee may be entitled to a partial deduction for the payment.

- The SMSF Strategies Trust Deed provides the Trustee with the ability to create an anti-detriment reserve thereby enabling the Trustee to pay an anti-detriment benefit to a deceased member's dependants or legal estate. Any such payment will see the Trustee receiving a tax deduction equal to the amount of the payment divided by 0.15 – a $100,000 anti-detriment benefit payment would result in the trustee of the fund receiving a $666,667 deduction. However the Commissioner has ruled that an anti-detriment payment may be treated as a concessional contribution to the estate of the deceased member where the payment plus any other concessional contributions made on behalf of the deceased member exceeds their concessional contributions cap.

b) Contributions to the SMSF for a member

Where a contribution is made to the fund on behalf of a member, if it is made by an employer it is tax deductible. However, a contribution made on behalf of a spouse is not tax deductible but may entitle the contributing spouse to a tax offset. Where a member makes an employer salary sacrifice contribution to a Complying SMSF on their behalf this is not included in the member's assessable income or reportable fringe benefits.

Where the member makes a contribution on their own account, it is deductible to the extent that 10% or less of their assessable income, reportable fringe benefits and superannuation comes from employment, being a director or where another person is required to make Superannuation Guarantee Contributions on the member's behalf.

Due to the generous taxation advantages attached to superannuation the government has introduced thresholds on both deductible (concessional) and non-deductible (non-concessional) contributions. The table below highlights the thresholds and the tax penalties where the thresholds are exceeded.

Table Two – *Excess Contributions Tax*

Type of contribution	Threshold – per annum	Excess Contributions Tax	Transitional Rules
Concessional	$25,000*	31.5%	$50,000 for over 50's to 2012 and continuing past this date where the over 50 has less than $500,000 in superannuation benefits
Non-concessional	$150,000#	45%	To age 65 there is a three year bring forward rule which may apply.

** the concessional contribution threshold is to be indexed to CPI but in $5,000 increments.*
 # the non-concessional contribution threshold is six times the concessional contribution threshold.

c) Benefits paid to a Member

All of the benefits held on behalf of a member in the member's lump sum account are classified as a superannuation interest under the Superannuation Laws. If an income stream is commenced this is generally a separate superannuation interest where a separate amount is set aside by the Trustee of the fund. Any benefit paid from a superannuation interest may have a different tax free/taxable component proportion and thus different taxation consequences to the member or a deceased member's dependants, non-dependants or their legal estate.

d) The proportioning rule

Superannuation benefits whether taken as a lump sum or income stream are to be divided by the Trustee of the fund into a tax free and a taxable component. The proportion used is the same as the superannuation interest that holds the superannuation benefit.

For example, a 57 year old member of a Complying SMSF taking a transition to retirement income stream may have a tax free/taxable component proportion equal to 40/60. Any income stream benefit taken from that superannuation interest will be 40% tax free and 60% taxable component. This will include any commutation of the income stream at a later time once the member retires and the pension becomes an accounts based pension. At the same time as holding an income stream the member may also be making salary sacrifice contributions to the fund with all the contributions being taxable component. The proportion for the lump sum account is 100% taxable component. Any superannuation interest taken from the lump sum account will always be 100% taxable component.

The tax free component also includes any government co-contribution. The taxable component of the superannuation interest is the value of the superannuation interest less the tax free component. The taxable component also includes any "splittable" contribution payment as well as any superannuation guarantee payment received by the Trustee.

e) The taxation of benefits to a member

Where a superannuation benefit is paid to a member, as a lump sum or income stream it will be taxed as follows:

- **Tax Free Component** - Any tax free component payable to a member or to dependants, non-dependants or the legal estate on the death of a member is always tax free in their hands. This includes both lump sums and income streams.

- **Taxable Component** - The following table highlights the taxation treatment of benefits payable to a member. It should be noted that the preservation age for a person born prior to 1960 is aged 55.

Table Three – *Taxation of the Taxable Component*

Type of Benefit	Under preservation age	Between preservation age and age 60	Age 60 and over
Lump sum	20%	First $165,000 is tax free with any remainder taxed at 16.5%	Tax free
Income stream	Assessable income	Assessable income + 15% tax offset	Tax free
Permanent disability income stream	Assessable income + 15% tax offset	Assessable income + 15% tax offset	Tax free
Temporary disability benefit	Assessable income	Assessable income	Assessable income

8. SMSF Estate Planning with a SMSF Will

One of the most important benefits of using the SMSF Strategies Trust Deed is that it allows the member to provide death benefits directly to non-dependants, dependants and the legal estate of a deceased member.

The SMSF Strategies Trust Deed also introduces Australia's first "SMSF Will" where a member of a Fund can provide specific written instructions for the Trustee of the fund that must be followed in the event of the member's death. In effect the SMSF Will is a non-lapsing binding death benefit nomination made on behalf of the member with the addition of directions and other wishes of the member. The Trustee, if they accept the SMSF Will, is bound by those instructions. They may include the provision of death benefits in a manner and form described under the SMSF Will, who shall be the replacement Trustee in the event of the death of the Member, which superannuation interest a specific death benefit is to be paid from and whether such benefit is to be made by way of a distribution of a specific fund asset. A SMSF Will can only be created in accordance with the provisions of the SMSF Strategies Trust Deed.

The SMSF Strategies Trust Deed and the taxation consequences for member death benefits are:

- An SMSF Will allows the Trustee of the fund to make lump sum payments by way of assets – called an "in-specie" death benefit payment. Due to a quirk in the laws these should be payable in cash and then acquired for market value from the Trustee of the fund.

- For taxation purposes, a lump sum can be paid to a dependant or the Trustee of the legal estate who may pass them on directly to a dependant of the deceased member. Alternatively the Trustee of the legal estate may create a testamentary trust to hold only the superannuation death benefits for dependants only. In these circumstances any lump sum death benefits payment is tax free.

- Lump sum payments made direct to non-dependants are taxed at 16.5% on the taxable component (including Medicare levy) with no tax on the tax free component.

- A SMSF Will allows the Trustee of the fund to provide an income stream to a tax dependant of a member. This income stream is known as a reversionary income stream. If the deceased member was over age 60 at the time of death or the dependant was over age 60 at the time of commencement of the income stream then the income payments are tax free to the dependant However if the dependant is a child of the member then a pension can only be paid if the child is less than age 25 at the time of the death of a member and is also financially dependant on the member.

- If the reversionary pension member (deceased member's dependant) is less than aged 60, as was the deceased member, then the taxable component of the income stream is assessable with a 15% tax offset.

Strategy Guidance Note:
A SMSF Will and any corresponding death benefit payments from a SMSF fall outside any external Will the member may have put in place. Importantly, the Trustee is not legally bound by any direction the member may have made in the Will regarding their superannuation benefits.

The Superannuation Laws define a dependant to include: a spouse, child, a financial dependant or a person who has a close interpersonal relationship with the member. However for taxation purposes a "dependant" includes a spouse, a child under the age 18, a person who the member has a close interpersonal relationship with as well as any person who is a financial dependent. Thus a child over age 18 would be considered a non-dependant for taxation purposes unless they were a financial dependent.

9. Costs of running a SMSF

There are a range of costs associated with establishing, operating and maintaining a SMSF. The level of costs incurred will also depend on the extent that the Trustee has sought expertise in ensuring the fund remains complying and also has the best possible strategic set up for the Trustee and members. These costs should be compared carefully to the costs associated with being a member of an industry based or retail superannuation fund.

Saving on not getting the best possible advice or for that matter, acquiring the most strategic and up to date SMSF Trust Deed and Rules is a false saving as it limits far larger taxation savings as well as opening up the Trustee to potential fines, imprisonment and having the fund's assets subject to tax as a non-Complying SMSF. The extent of the costs will depend on the specific service provider and Trustees should discuss all costs with their SMSF professionals.