

- (d) any Reserve Account (including, but not limited to a Pension Reserve, Contribution Reserve, Investment Reserve, Self-Insurance Reserve, such other Reserve Accounts settled by the Trustee); and/or
 - (e) any other Account or group of Accounts in the Fund.
- 23.2 The Trustee may pay, apply, set aside, and/or allocate (in whole or in part) the Earnings of an Account of the Fund to one or more of the following charges:
- (a) any Expenses of the Fund; and/or
 - (b) penalties charged to the Fund, provided that the Trustee is not otherwise prohibited from doing so by the Superannuation Laws, the Regulator and/or a determination by a Court or tribunal having jurisdiction in the matter.
- 23.3 The Trustee may pay, apply, set aside, and/or allocate (in whole or in part) any Earnings, expenses and/or losses of the Fund which are not allocated to any one or more of the Reserve Accounts, in accordance with any formulae determined by the Trustee to be appropriate, provided the Trustee acts reasonably.
- 23.4 Notwithstanding Rules 23.1 and 23.2, the Trustee must, unless the Superannuation Laws prescribe otherwise, ensure that all expenses and Earnings (including capital losses and gains) in respect to the segregated Cash and/or Asset(s) are applied to the benefit or burden of the corresponding Account.
- 23.5 Further to Rules 23.1, 23.2, and 23.3, the Trustee may, in circumstances in which a Member Superannuation Interest or group of Members' Superannuation Interests maintain a separate Investment Strategy, apply the Earnings in respect to the separate Investment Strategy exclusively between only the Superannuation Interests partaking in the separate Investment Strategy.
- 23.6 The Trustee has the discretion to apply one or more of the following methods to determine the Earnings of the Fund, the Earnings of a Member's Superannuation Interest or group of Members' Superannuation Interests, the Earnings of a Reserve Account, and/or the Earnings of any other Account of the Fund:
- (a) **Accounts Method:** income according to established accounting principles for Superannuation Funds which may include a revaluation of any Assets of the Fund to their Market Value less any Fund expenses (which include Fund taxes);
 - (b) **Trust Method:** net income as the term net income is defined under the taxation of trust provisions in the Superannuation Laws;
 - (c) **Income Method:** any amounts received as income plus any unrealised or realised capital gains and, at the Trustee's discretion, any allocations from a Reserve Account less any disbursements the Trustee is of the view should be deducted from the income (including any General Expenses and/or Specific Expenses); and/or
 - (d) **Flexible Method:** any combination of the above or method that the Trustee is of the opinion properly reflects Earnings, including any transfer from a Reserve Account to the Earnings of the Fund;
- and in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use the Income Method as the default option.

24. Accounting for a Member Accumulation Interest

- (a) amounts paid for administration, audit, actuarial, legal, valuation, SMSF Adviser fees, or proportion thereof, which the Trustee determines should be specifically deducted from the Member Accumulation Interest;
- (b) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be specifically deducted from the Member Accumulation Interest;
- (c) an amount paid in respect to the Trustee's indemnities, as determined by the Trustee in a fair and reasonable manner. *See also Rule 10;*
- (d) any losses allocated to the Member Accumulation Interest by the Trustee;
- (e) any losses associated with an Investment Strategy and/or Assets (including Cash) segregated for the Member Accumulation Interest;
- (f) any taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Accumulation Interest;
- (g) Excess Contributions Tax, refunds of Contributions and/or payments required under a properly issued release authority (including, but not limited to a Member Release Authority, Regulator Release Authority and Excess Contributions Tax Release Authority). *See also Rule 16.5;*
- (h) amounts paid for insurance premiums and/or annuity contracts for a Member including life, disability, accident, salary continuance, and/or trustee insurance (see Rule 21);

Note: The Regulator requires the Trustee to allocate the proceeds of any insurance policy to the Member's Superannuation Interest(s), from which the premiums have been deducted. See also, SISR 4.07D and 4.07E.

- (i) amounts allocated or paid for a Member's Lump Sum Payment made by the Trustee on the Member's death, Temporary Incapacity, Total and Permanent Incapacity, Retirement, termination of employment, reaching Preservation Age or for any other purpose benefitting the Member (including the Member's Dependants, and Member's Legal Estate);
- (j) amounts allocated or paid to a Member Pension Interest;
- (k) Contributions Splitting Amounts paid to or behalf of a Member's Spouse;
- (l) payments made pursuant to the *Family Law Act 1975 (Cth)* (including a payment as a result of separation or divorce from a Member's Spouse, and a payment under a Family Law Payment Splitting Notice); and/or
- (m) any other amounts the Trustee determines should be deducted from the Member Accumulation Interest.

24.5 The Trustee has the power to determine a formula by which Earnings, expenses and/or losses are allocated between Member Accumulation Interests (and/or Member Pension Interests and/or Reserve Accounts), provided the Trustee acts reasonably.

25. Accounting for a Member Pension Interest

- 25.1 The Trustee may establish one or more Member Pension Interests, provided the Superannuation Laws allow.
- 25.2 The Trustee may determine at any time in relation to a Member Pension Interest, the amount that is the:

Excess Contributions Tax Release Authority Excess Contributions Tax. See also Rule 16.5;

- (i) amounts paid for insurance premiums and/or annuity contracts for a Member including life, disability, accident, salary continuance, and/or trustee insurance (see Rule 21);

Note: The Regulator requires the Trustee to allocate the proceeds of any insurance policy to the Member's Superannuation Interest(s), from which the premiums have been deducted. See also, SISR 4.07D and 4.07E.

- (j) amounts transferred to a Member Accumulation Interest (including but not limited to transfers from a Member Pension Interest, in excess of the Transfer Balance Cap);
- (k) Contributions Splitting Amounts paid to or behalf of a Member's Spouse;
- (l) payments made pursuant to the *Family Law Act 1975 (Cth)* (including a payment as a result of separation or divorce from a Spouse, and a payment under a Family Law Payment Splitting Notice); and
- (m) any other amounts the Trustee determines should be deducted from the Member Pension Interest;

provided the Trustee complies with the Superannuation Laws in such allocation(s).

- 25.5 The Trustee has the power to determine a formula by which Earnings, expenses and/or losses are allocated between Member Pension Interests (and/or Member Accumulation Interests and/or Reserve Accounts), provided the Trustee acts reasonably.

26. Contributions Splitting

- 26.1 At any time, provided the Superannuation Laws allow, the Trustee may receive a Contributions Splitting Notice from a Member in relation to an Authorised Contribution made on behalf of a Member to the Fund.
- 26.2 The Contributions Splitting Notice must deal only with such Contributions allowed to be split to a Spouse under the Superannuation Laws.
- 26.3 The Contributions Splitting Notice may detail the amount to be allotted, Rolled-over or transferred as a Transfer Superannuation Interest to a Member's Spouse.
- 26.4 Subject to the Superannuation Laws, the Trustee may make the relevant Contributions split by allocating, Rolling-over or transferring Assets of the Fund in satisfaction of the Contributions split.
- 26.5 The Trustee is to action the Contributions Splitting Notice within a reasonable period of time, and no later than the time prescribed by the Superannuation Laws or the Regulator.

27. Family Law

- 27.1 The Trustee may receive a Family Law Payment Splitting Notice from a Court, Member or Member's Dependant in relation to a Member's Superannuation Interests.
- 27.2 The Trustee is to make accommodation for the Member, the subject of the Family Law Payment Splitting Notice, by determining:

Trustee and Person(s) give consent, and the Trustee and Person(s) are capable of being restored to the same or substantially similar financial condition as existed prior thereto and the Superannuation Laws (and such other Laws as may be relevant) allow.

Part Nine – Payment of Member Superannuation Interests

29. Accessing Member Superannuation Interests

29.1 Member Payment Direction Protocol:

- (a) If a Member meets a **Condition of Release of Benefits**, the Member may access his/her Superannuation Interests by way of:
- (i) one or more Lump Sum Payments. Notwithstanding any other term of the Governing Rules, the minimum and maximum payments of a Lump Sum Payment shall be determined having regard to the Payment Standards, and if the Member becomes a bankrupt person, the Trustee (except where the bankrupt Member is absolutely entitled) may refuse to pay the Lump Sum Payment and instead retain the Lump Sum Payment, and process the Roll-over of the bankrupt Member's Superannuation Interest in accordance with the terms of Rule 15;
 - (ii) one or more Pension Interests. Notwithstanding any other term of the Governing Rules, the minimum and maximum payments from a Pension Interest shall be determined having regard to the Payment Standards, and where the Member in receipt of a Pension Interest becomes a bankrupt person, the maximum payment in respect to the Pension Interest shall be based on the minimum payment prescribed by the Payment Standards; and/or
 - (iii) such other Superannuation Benefits permitted by the Superannuation Laws.
- (b) The Member may, in making an application pursuant to this Rule, submit to the Trustee a **Notice of Payment Direction (Payment Direction)**.

Note: The Trustee and Members may agree to application by any other mechanism or process. This Rule provides a default process, in the absence of other agreement.

- (c) A Notice of Payment Direction is not required from a Member for each and every payment from the Fund.
- (d) A Member's Payment Direction cannot be a claim for an amount or amounts which exceeds the Member's Superannuation Interests in the Fund, although the Member may request an allocation from any Account (including a Reserve Account of the Fund) (which request is not binding on the Trustee).
- (e) The Member's Alternate Decision-Maker shall be read as the Member for the purpose of this Rule 29.1, if the Member is Mentally Incapacitated, a Minor Member, Deceased Member, or the Member has appointed the Alternate Decision-Maker to act at the relevant time for any other reason.

29.2 Conditions of Release of Benefits: The Trustee shall have regard to this Rule 29.2 and Part 1A and Schedule 1 of the SISR, when assessing a Member's eligibility for the payment of a Lump Sum Payment and/or Pension Interest:

- (a) a Member is eligible to receive a **Lump Sum Payment** upon the happening of any of the following events:

29.3 **Trustee Payment Direction Protocol:** Upon receipt of a Member's Payment Direction:

- (a) the Trustee shall have regard to the Payment Direction and determine what, if any, additional documentation is needed to determine the Member's Payment Direction, including but not limited to assessing whether the Member has satisfied a Condition of Release of Benefits (see *Rule 29.2*). If any additional documentation is needed, the Trustee shall, as soon as reasonably possible, detail the request for additional documentation to the Member;
- (b) the Trustee, upon receipt of all documentation required for the assessment of a Payment Direction, shall consider the Member's Superannuation Interest. The Trustee may, but is not required to, provide advice to the Member in respect to his/her Tax Free Component, Taxable (Taxed and Untaxed) Component, and Preservation Status, and the calculation of the Member's Transfer Balance Caps (including, but not limited to any contemplated credits and/or debits);
- (c) the Trustee may commence a Pension Interest as an Account-Based Pension (including a Transition to Retirement Income Stream), Temporary Incapacity Pension Interest, Child Pension Interest, or any other Pension Interest allowed by the Superannuation Laws, whether or not the Pension Interest is conditional and/or auto-reversionary;
- (d) the Trustee may continue to pay an Allocated Pension and/or a Defined Benefit Income Stream (which includes, but is not limited to life expectancy pensions and annuities, lifetime pensions and annuities and market linked pensions); however, may not commence a new Allocated Pension or Defined Benefit Income Stream, unless the Superannuation Laws allow;
- (e) the Trustee may, at any stage of the Protocol obtain advice and/or assign its obligations to any SMSF Adviser, provided that the Trustee cannot discharge its obligations in the handling of the Payment Direction to the Member. The costs of such advice and administration may be charged by the Trustee to the Member's Superannuation Interest;
- (f) the Trustee shall then consider the Fund's Assets, Reserve Accounts, segregation and financial obligations of the Fund, and determine the manner in which the Payment Direction will be processed, including but not limited to the commencement date, timing, frequency of payments and the Accounts against which the Payment Directions will be applied. This review can occur on a rolling basis, annual basis or such other basis as the Trustee deems reasonable, having regard to the Trustee's obligations under the Superannuation Laws;
- (g) if the Member requests a Pension Interest, but the Trustee determines the Member's Superannuation Interest can only accommodate a Lump Sum Payment, then the Trustee shall communicate the determination to the Member and work with the Member to accommodate the Member's Payment Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;
- (h) if the Member requests a Lump Sum Payment, but the Trustee determines the Member Superannuation Interest can only accommodate a Pension Interest and/or an amount less than the Lump Sum Payment required at such time, then the Trustee shall communicate the determination to the Member and work with the Member to accommodate the Member's

- (b) if a Member has died, and the Member has left a Binding Death Benefit Nomination and/or SMSF Will which is capable of taking effect at the Member's death, then the Trustee must pay the Deceased Member's Superannuation Interest in accordance with the terms of the Binding Death Benefit Nomination and/or SMSF Will, subject to Rules 31, 32 and 39; and
- (c) if the Member, as determined by the Trustee based on documented medical opinion, is Temporarily Incapacitated, the Member may commence and continue a Temporary Incapacity Pension Interest until such time as the Member is no longer Temporarily Incapacitated;
- (d) if the Member, as determined by the Trustee based on documented medical opinion, has a Terminal Medical Condition, the Member may take a Lump Sum Payment and/or commence a Pension Interest;
- (e) if the Member meets the conditions of Severe Financial Hardship, the Member may receive a Lump Sum Payment (but only as allowed by the Superannuation Laws);
- (f) if the Member is aged 65 (sixty-five) years or older, the Member may take a Lump Sum Payment and/or commence a Pension Interest (whether Retired or not);
- (g) if the Member has reached Preservation Age (whether Retired or not), the Member may commence a Pension Interest (including a Transition to Retirement Income Stream);
- (h) if the Regulator or any other Government authority responsible for deciding the payment of a Superannuation Benefit, on the basis of a Compassionate Ground, determines a payment may be made to a Member, a Member may receive a Lump Sum Payment on a Compassionate Ground in the amount and/or method prescribed by such Regulator or Government authority;
- (i) if a Member has commenced a Pension Interest then, subject to the terms and conditions of the Pension Interest and Superannuation Laws, a Member may receive a Lump Sum Payment from the Pension Interest, including, but not limited to a Lump Sum Payment made upon the death of the Member, subject to Rule 30;
- (j) if the Member, as determined by the Trustee based on documented medical opinion, is Totally and Permanently Incapacitated, the Member may take a Lump Sum Payment and/or commence a Pension Interest; and/or
- (k) any other Lump Sum payment, Pension Interest or other payment authorised under the Governing Rules, Superannuation Laws or by the Regulator, to be payable to a Member, Member's Dependents, Member's Legal Estate, and/or such other Person(s) permitted to receive a Superannuation Benefit from the Member's Superannuation Interest (including any allocations thereto from any Reserve Account of the Fund).

29.6 The following express provisions do not limit the Trustee's powers:

- (a) **QROPS Superannuation Interests:** Where a Member's Superannuation Interests are referable to United Kingdom Qualifying Retirement Overseas Pension Schemes, then the Trustee must abide by any release of benefits requirements made pursuant to laws and regulations regulating QROPS benefits, including but not limited to any age related and/or ill-health conditions. This includes the requirements that QROPS benefits cannot be

- (h) **Compulsory Payments:** It is not compulsory for the Trustee to pay a Superannuation Benefit to a Member, Member's Dependents, or a Member's Legal Estate, unless the payment is required by the Superannuation Laws to be made. Notwithstanding, the Trustee must act reasonably and in good faith in assessing Payment Directions.
- (i) **Anti-Detriment Payment:** In the payment of a benefit from the Fund, the Trustee may include an amount equal to the Anti-Detriment Payment to an Eligible Person.

Warning: Changes to the Superannuation Laws may prohibit Anti-Detriment Payments. Seek specialist advice before making such a provision.

- (j) **Special Rules for Pension Interests:** The terms of an Auto-Reversionary Pension Interest and/or Conditional Pension Interest are Special Rules of the Fund. Accordingly, the terms thereof survive any variation to the Governing Rules, excepting where the terms of the relevant interest are referred to specifically and the parties to the Special Rules prescribe the variation and/or termination by further written instrument.

30. Special Rules for the payment of a Member's Superannuation Interests

- 30.1 **Outline:** Rule 30 outlines the Special Rules which may be settled by the Trustee and Members in respect to the payment of a Member's Superannuation Interests both during the lifetime of a Member and on their death. Rule 30 is to be read with the other Governing Rules of the Fund, but in particular with Rules 6, 19, 29, 38, and 39.
- 30.2 **SMSF Death Benefits:** When a Member dies the following Death Benefits (in respect to such of the Member's Superannuation Interests which are not subject to a valid Auto-Reversionary Pension Interest Agreement (*see Rule 35*), Conditional Pension Interest Agreement (*see Rule 36*)) or other Pension Interest Agreement which prescribes a reversionary term (*see Rule 37*)) are payable:
 - (a) if the Deceased Member died leaving a SMSF Will, then see Rule 31;
 - (b) if the Deceased Member died leaving a Binding Death Benefit Nomination which has not lapsed, then see Rule 32;
 - (c) if the Deceased Member died leaving a Non-Binding Death Benefit Nomination and/or a Binding Death Benefit Nomination which has lapsed, then see Rule 33;
 - (d) if the Deceased Member died and did not leave a SMSF Will, a Binding Death Benefit Nomination, or a Non-Binding Death Benefit Nomination, then see Rule 34.
- 30.3 **SMSF Death Benefit Special Rules:** Notwithstanding any other term of the Governing Rules, a SMSF Will and a Binding Death Benefit Nomination are known as a "SMSF Estate Planning Special Rule", and are not subject to amendment, variation or striking except where the SMSF Will and/or the Binding Death Benefit Nomination is amended, varied or struck under the respective terms of Rules 31 and/or 32. For clarity, a change to the Governing Rules of the Fund by future instrument, resolution or determination otherwise, is deemed to incorporate the SMSF Estate Planning Special Rules. This Rule 30.3 is a further SMSF Estate Planning Special Rule, notwithstanding it is to the benefit and burden of all Members. This Rule may only be amended, varied or struck by specific reference hereto, and ratified in writing by the Trustee and Members of the Fund at such future time.

- 30.9 **Other SMSF Estate Planning Special Rules:** If a Member and Trustee agree in writing to the form of a Nomination as to Death Benefits or a Pension Interest Agreement in any format or arrangement which is other than a prescribed term shown in Rule 30 and/or the Governing Rules, then such other Nomination shall be read as a SMSF Estate Planning Special Rule in respect to such Member on the terms shown therein.

31. Protocol for settling and administering SMSF Wills

31.1 The SMSF Will

- (a) A SMSF Will is a written direction of the Member, which prescribes the binding terms of payment in respect to his/her Member Superannuation Interests following the Member's death. A SMSF Will is non-lapsing.

Note: A SMSF Will should be, but is not required to be, written by a team consisting of the Member's SMSF specialist lawyer, Member's SMSF accountant and/or financial adviser given the potential legal and planning complications.

- (b) A SMSF Will may include any one or more of the directions read at Rule 39.3.
- (c) A SMSF Will shall be administered in accordance with the Alternate Decision-Maker and Trustee voting rights read at Rule 12.11.
- (d) A SMSF Will may only make direction in respect to such of the Member's Superannuation Interests which are not subject to a valid and binding Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement with a reversionary term.
- (e) The Deceased Member's Alternate Decision-Maker shall have discretion as to the allocation of such of the Cash and/or Assets to the Member's Beneficiaries nominated in the SMSF Will, excepting that the Trustee (including the Deceased Member's Alternate Decision-Maker) has the power to decide which Cash and/or Assets of the Fund will be made available to the Deceased Member's Alternate Decision-Maker for such purposes.
- (f) Notwithstanding Rule 31.1(e), if Cash and/or Assets have been segregated to a Deceased Member's Superannuation Interests, then the segregated Cash and/or Assets shall be applied in whole or in part (as the case may) in satisfaction of the Deceased Member's Superannuation Interests for allocation by the Deceased Member's Alternate Decision-Maker in accordance with the terms of the SMSF Will.
- (g) The SMSF Will may prescribe for the segregation and/or acquisition of certain Fund Assets to quarantine to the benefit and burden of one or more beneficiaries nominated in a SMSF Will, excepting that this term is limited in so much as the Trustee may resolve to allocate different Fund Assets (excepting in circumstances shown in Rule 31.1(f)).
- (h) A Deceased Member's Alternate Decision-Maker does not have the authority, unless the SMSF Will prescribes, to change the Payment Directions in respect to the Member's Beneficiaries, excepting where the nominated Member's Beneficiary is not eligible under the Superannuation Laws to receive such payment (**Ineligible Pension Beneficiary** or **Ineligible Lump Sum Beneficiary**) or the Member's Beneficiary has predeceased the Deceased Member and no alternate Payment Direction is incorporated in the SMSF Will for such circumstance.

to be held in confidence by a third party until the Member's death or recall by the Member.

- (n) The Trustee may, but is not required to, offer advice (including by way of a SMSF Adviser) in respect to the making of a SMSF Will, including the risk and benefits thereof.

It is recommended that the Member incorporates his/her estate planning team, consisting of an accountant, financial planner and lawyer, each time a SMSF Will, Death Benefit Nomination, Last Will and/or EPOA is reviewed.

- (o) A SMSF Will takes primacy over a Binding Death Benefit Nomination and Non-Binding Death Benefit Nomination.

- (p) A Member shall revoke a SMSF Will by:

- (i) making a later SMSF Will;
- (ii) making a later Binding Death Benefit Nomination; and/or
- (iii) delivering to the Trustee a written notice signed and dated by the Member and witnessed and signed by one Natural Person who is not a Member, Member's Relative and/or a Beneficiary nominated in the SMSF Will.

Note: A Member should complete either a SMSF Will or a Binding Death Benefit Nomination, but not both. The two instruments are essentially the same, except that the Fund prescribes the form of a Binding Death Benefit Nomination for Member convenience.

31.2 Interpretation and advice on SMSF Will: The Trustee may incur costs and engage an SMSF Adviser to provide advice on the drafting, execution, interpretation and/or administration of a Member's SMSF Will, and may debit such costs against the Member's Superannuation Interest (including a Deceased Member's Superannuation Interest), provided the Superannuation Laws and/or a Court does not otherwise determine the costs to be payable by an alternate party and/or the Fund.

31.3 Administration of the SMSF Will:

- (a) This Rule 31.3 shall be read with Rule 29.
- (b) The Trustee and Deceased Member's Alternate Decision-Maker may settle the payment of one or more amounts distributable under a SMSF Will by way of Cash, settlement of Pension Interest, continuation of a Pension Interest (if not otherwise subject to mandatory alternate terms), transfer of Benefits-in-Specie, in whole or in part, to the value of the amount (based on Market Value of the Asset) and/or such other benefit or payment as may be permitted by the Superannuation Laws for such purpose.
- (c) The Trustee and Deceased Member's Alternate Decision-Maker must take all reasonable steps as may be required to ensure the Payment Directions prescribed by the SMSF Will are settled within the timing requirements read in the Superannuation Laws, including but not limited to SISR 6.17A. However, in doing so, the Trustee shall not be obligated to do anything which would cause the Fund to lose Complying SMSF status or become insolvent. (See also section 59(1A) of the SISA.)
- (d) The Trustee may require a Member's Beneficiary, who is also an Eligible Pension Beneficiary, to become a Member in the Fund.

determined to be a beneficiary by the Member's Alternate Decision-Maker)); and

- (iv) such other decisions which may otherwise result in the Fund losing its Complying SMSF status or becoming insolvent.

31.4 For clarity, Rule 31 is to be read with Rules 12.11 and 39.

31.5 Notwithstanding the terms of Rule 31, the Trustee and Members are at liberty to settle any other protocol or term by instrument in writing in respect to the establishment and/or making of a SMSF Will, including where such protocol or term is isolated to a single Member of the Fund.

32. Protocol for settling and administering a Binding Death Benefit Nomination

32.1 The Binding Death Benefit Nomination

- (a) A Binding Death Benefit Nomination is a written direction of the Member, which prescribes the binding terms of payment in respect to his/her Member Superannuation Interests. A Binding Death Benefit Nomination may be non-lapsing, terminable on the happening of an event, or terminable on the expiry of a term of years.
- (b) If the Member wishes to prescribe complex terms of successions, quarantining provisions, cascading arrangements and other complicated succession modelling, then a SMSF Will is intended to be a format that is drafted uniquely to suit. A Binding Death Benefit Nomination is intended to be simpler in its nature, although it too can incorporate the robust terms of a SMSF Will.
- (c) An approved format of a **Death Benefit Nomination** is shown at **Annexure C**; however, the member may use an alternate form of a Binding Death Benefit Nomination.
- (d) A Binding Death Benefit Nomination may include any one or directions read at Rule 39.3.
- (e) A Binding Death Benefit Nomination shall be administered in accordance with the Alternate Decision-Maker and Trustee voting rights read at Rule 12.11.
- (f) A Binding Death Benefit Nomination may only make direction in respect to such of the Member's Superannuation Interests which are not subject to a valid and binding Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement with a reversionary term.

It is recommended that the Member incorporates his/her estate planning team, consisting of an accountant, financial planner and lawyer, each time a SMSF Will, Death Benefit Nomination, Last Will and/or EPOA is reviewed.

- (g) A Binding Death Benefit Nomination takes primacy over a Non-Binding Death Benefit Nomination, but is subordinate to a Member's SMSF Will made simultaneously or after the making of a Binding Death Benefit Nomination.

Note: A Member should complete either a SMSF Will or a Binding Death Benefit Nomination, but not both. The two instruments are essentially the same, except that the Fund prescribes the form of a Binding Death Benefit Nomination for Member convenience.

deposit the sealed envelope with a third party for safe custody until the Member's death.

- (h) The Trustee may, but is not required to, provide written notice acknowledging the receipt of a Non-Binding Death Benefit Nomination.
- (i) The Trustee may, but is not required to, offer advice (including by way of a SMSF Adviser) in respect to the making of a Non-Binding Death Benefit Nomination, including the risk and benefits thereof.
- (j) The Deceased Member's Alternate Decision-Maker may select one or more Persons to receive one or more Lump Sum Payments and/or Pension Interests. Such Persons are read as the Member's Beneficiary(ies) for purposes of Rule 33.3.
- (k) The Deceased Member's Alternate Decision-Maker may have regard to the Non-Binding Death Benefit Nomination, but has absolute discretion to select the Member's Beneficiaries, the percentage of the Deceased Member's Superannuation Interest payable to each of the Member's Beneficiaries and which Assets (including Cash) are to be paid to each of the Member's Beneficiaries in satisfaction thereof.
- (l) Notwithstanding Rule 33.1(k):
 - (i) the Trustee (including the Deceased Member's Alternate Decision-Maker) has the power to decide which Cash and/or Assets of the Fund will be made available to the Deceased Member's Alternate Decision-Maker for such purposes; and
 - (ii) if Cash and/or Assets have been segregated to a Deceased Member's Superannuation Interests, then the segregated Cash and/or Assets shall be applied in whole or in part (as the case may) in satisfaction of the Deceased Member's Superannuation Interests for allocation by the Deceased Member's Alternate Decision-Maker.

Note: Such power is premised on the Trustee having reserved authority to select the Assets and Cash to be made available to Deceased Member's Alternate Decision-Maker.

- (m) The Deceased Member's Alternate Decision-Maker and the Trustee shall be under no obligation to record the reasoning for the payment of the Deceased Member's Superannuation Interests in accordance with this Rule 33.
- (n) A Member shall revoke a Non-Binding Death Benefit Nomination by:
 - (i) making a later SMSF Will;
 - (ii) making a later Binding Death Benefit Nomination; and/or
 - (iii) delivering to the Trustee a written notice signed and dated by the Member.

33.2 Interpretation and advice on Non-Binding Death Benefit Nomination:
The Trustee may incur costs and engage an SMSF Adviser to provide advice on the drafting, execution, interpretation and/or administration of a Member's Non-Binding Death Benefit Nomination, and may debit such costs against the Member's Superannuation Interest (including a Deceased Member's Superannuation Interest), provided the Superannuation Laws and/or a Court does not otherwise determine the costs to be payable by an alternate party and/or Fund.