

- Fund, and/or as a consequence of a failure or refusal of the Fund's insurer to pay an insured benefit on circumstances favourable to the Fund and/or Member; and
- (e) losses suffered as a consequence of a good faith mistake or negligence of the Trustee (including Corporate Trustee) in the conduct of the Fund.
- 10.2 Notwithstanding Rule 10.1, the indemnity and lien read therein shall not apply in respect to:
- (a) conduct by a Person (including a Natural Person and/or Corporate Trustee) which is grossly negligent, fraudulent and/or a wanton disregard for the Person's obligations and responsibilities under the Superannuation Laws and/or Governing Rules (including Special Rules) of the Fund;
  - (b) administrative and civil penalties imposed on a Person in accordance with Parts 20 and 21 of the SISA;
  - (c) circumstances prohibited by the Superannuation Laws, including but not limited to SISR 13.13 (charges over a Member's benefits) and SISR 13.14 (charges over Fund Assets); and
  - (d) such other determinations by the Court, Regulator, or other Government authority having jurisdiction, providing the Person has no right to indemnity and/or a lien over Fund Assets.
- 10.3 Unless the Superannuation Laws, Regulator, or other Government authority having jurisdiction determines otherwise the Members (in their capacity as Members) shall not be required to indemnify any party in respect to any matter pertaining to the Fund.

## **11. Trustee Responsibilities**

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- 11.1 It is the responsibility of the Trustee to:
- (a) ensure that the Fund remains a Complying SMSF, although the Trustee may resolve to change the structure of the Fund to a small APRA Fund, or another type of fund permitted under the Superannuation Laws;
  - (b) ensure that the Governing Rules are current and available to the Members;
  - (c) act honestly in all matters concerning the Fund;
  - (d) exercise, in all matters affecting the Fund and its Members, the same degree of care, skill and diligence as any normal prudent Trustee;
  - (e) ensure that the Trustee's duties and powers are performed and exercised in the best interests of Members of the Fund;
  - (f) not enter into any contract, transaction or agreement, or do anything that would prevent or hinder the Trustee in suitably performing or exercising the Trustee's functions and powers;
  - (g) disclose any conflict of interest in any dealing, undertaking, transaction or investment on behalf of the Fund;
  - (h) provide Members access to all and any information required to be given to or viewed by Members, under the Superannuation Laws, subject to the *Privacy Act 1988 (Cth)*;

## 12. Trustee Powers

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- 12.1 Subject to the Superannuation Laws, the Trustee has unlimited powers.
- 12.2 The Trustee's powers over the Assets of the Fund are identical to those as if the Trustee were the legal and absolute beneficial owner of such Assets, including the right to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any Asset or part of any Asset comprising the whole or part of the Fund, including a Member's Superannuation Interest or a Reserve Account.
- 12.3 The express terms of Rules 12.4, 12.5, 12.6, 12.7 and 12.8 are not to be read as limiting the Trustee's powers.
- 12.4 **The Trustee Investment Powers:** The Trustee has the following express Investment Powers to:
- (a) **avoid diversification:** invest all, or a substantial part, of the Fund's Assets in one thing, or a collection of similar things, without regard to diversification;
  - (b) **acquire an interest in an Eligible Entity:** acquire in the name of the Trustee or a Member, an interest in an Eligible Entity to meet the Fund's liability to pay all or any part of a Pension Interest Benefit to the Member;
  - (c) **enter into contracts and undertake transactions:** enter into contracts, undertakings and other transactions for the benefit of the Fund and its Members whatsoever and wheresoever situate including both within Australia and outside Australia;
  - (d) **acquire and dispose of corporate, trust securities, equity or hybrid equity interest of any other entity:** acquire or dispose of any Company (including an eligible start up investment Company), trust, partnership or other entity in which the Trustee holds an equity or equity-like interest including shares, stocks, debentures, options, convertible notes, hybrid securities or is otherwise interested or concerned (securities) and to exercise all of the powers authorised under the Constitution and any other relevant documents concerning the powers of equity, debt and other interest holders of the entity, including but not limited to putting calls on securities, accepting transfers of securities, consenting to a reorganisation of a security (including, but not limited to a capital raising or reduction);
  - (e) **deal with real property:** acquire, dispose of, develop, turn into fractional or part interests, exchange, strata title, subdivide, partition within the Fund for a Member or specific Member's benefit, mortgage, sub-mortgage, lease, sub-lease, grant, maintain, insure, improve, renovate, re-lease or vary any right or easement or otherwise deal with any interest in real property, whether residential, commercial, off-the-plan, or of another nature;
  - (f) **deal with personal property:** acquire, dispose of, exchange, hire, lease, maintain, improve, mortgage or otherwise deal with any interest in personal property;
  - (g) **deal with intellectual property:** apply for, purchase, create or otherwise acquire, and to sell patents, patent rights, copyrights, trademarks, designs, formulae, licences, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use, of any other intellectual property rights and to use, exercise, develop or grant



Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same provided the said agency, licence or business does not breach the Sole Purpose Test or the Superannuation Laws;

- (r) **deal with itself and engage in conflicts of interest:** engage in conflicts of interest, whether by the Trustee, Member, Related Party of a Member or Custodian, including but not limited to acquiring as an Asset of the Fund, real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee, Member, Related Party of a Member, or Custodian, provided that any property so acquired is acquired for a consideration being not less or greater than the Market Value, except as permitted by the Superannuation Laws;
- (s) **deal with choses-in-action:** acquire choses-in-action, including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (t) **receive gifts, distributions and contributions:** receive property by gift inter-vivos, distribution under a will, SMSF Will or under the provisions of any other trust or otherwise from any Person, as an addition to the Fund, and such property may be segregated to any one or more Members, may be held unsegregated as an Asset of the Fund and/or may be allocated to the Reserve Accounts;
- (u) **acquire and deal with insurance policies:** acquire such insurance policies as the Trustee deems appropriate for the circumstances, provided the Superannuation Laws permit the Trustee, including but not limited to insurance in respect to general risk, property damage, audit, sickness, incapacity, trauma, accident and/or death, including where such policies are taken for one or more Members, and include, but are not limited to, investments bonds and or such other life or group policy products which the Trustee deems appropriate. The Trustee is further authorised to deal with, assign, dispose, and terminate such policy(ies), without providing notice to any party;
- (v) **instigate, defend and settle legal proceedings:** institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same, or to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (w) **acquire and/or hold investments with others:** invest in Assets of the Fund with other Person(s) (including Members and/or a Member's Relatives and Related Parties), including but not limited to as joint tenants, tenants in common in equal shares, tenants in common in other than equal shares, partners, joint venturers and/or such other means of ownership which does not otherwise breach the Superannuation Laws;
- (x) **invest in, sell, vary or transpose investments of any other type:** invest Assets of the Fund in any investment of any other type not otherwise expressly listed in these Governing Rules, retain such investment(s), dispose of such investment(s), change the nature of the investment(s), convert the investment(s) into money or such other benefit as may be determined reasonable by the Trustee, in its absolute discretion;

- (b) **settle the acquisition of a Security:** settle the acquisition of a security/securities, provided the acquisition and borrowing are on terms permitted by the Superannuation Laws;
- (c) **borrow to acquire a Single Acquirable Asset or Replacement Asset:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, in respect of the acquisition of a Single Acquirable Asset or Replacement Asset, and such other borrowing arrangements allowed by the Superannuation Laws, including a Limited Recourse Borrowing Arrangement (LRBA) made in accordance with sections 67, 67A and 67B of the SISA. The Trustee may enter into multiple LRBAs, in respect to the purchase of multiple Single Acquirable Assets;
- (d) **refinance a LRBA:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, in respect of the refinance of an existing LRBA made in accordance with sections 67, 67A and 67B of the SISA. The Trustee may refinance multiple LRBAs;
- (e) **maintain a Single Acquirable Asset:** borrow money or raise any financial accommodation from any Person or Person(s), including but not limited to Members, Members' Relatives, or Related Parties, to repair and maintain a Single Acquirable Asset of the Fund. The Trustee may enter separate LRBAs to fund the repairs and maintenance of each separate Single Acquirable Asset of the Fund;
- (f) **grant a charge, guarantee, security interest or mortgage:** grant a charge, guarantee, security interest or mortgage over any one or more of the Fund's Assets to the Fund's lenders (whether an unrelated party to the Fund, or related to the Fund (for example, a Member, Member's Relatives or Related Parties)), on terms permitted by the Superannuation Laws

*Note: see sections 67A and 67B of the SISA, PCG 2016/5 and TD 2016/16.*

- (g) **negotiate and execute loan instruments:** negotiate and execute terms of borrowing, including loan instruments, on terms compliant with the Superannuation Laws;
  - (h) **benefit from and give indemnities:** receive the benefit of the indemnification rights benefitting the Trustee (whether Natural Persons or a Corporate Trustee) and give indemnification to a Custodian acting on behalf of the Trustee;
  - (i) **accept a forgiveness of the LRBA as a Contribution:** accept a forgiveness of the LRBA, in whole or in part, whether the Lender is a Member or otherwise, and treat the forgiveness as a Contribution-in-Kind of a Member or any other form of Contribution of a Member permitted by the Superannuation Laws; and
  - (j) **appoint a Custodian:** appoint any Person or Persons to act as Custodian to hold legal title for one or more Single Acquirable Assets, subject to one or more LRBAs, and to settle the terms of such Bare Trust arrangements as are deemed reasonable in the absolute discretion of the Trustee.
- 12.6 **The Trustee Administrative Powers:** The Trustee has the following express Administrative Powers to:
- (a) **determine and deal with Member Contributions Caps, Transfer Balance Caps, and Excess Transfers:** take advice, obtain disclosure of



- (j) **change nature of Fund:** change the Fund from a Complying SMSF to a small APRA Fund, or other type of fund allowed by the Superannuation Laws;
- (k) **engage in a conflict of interest:** engage in transactions in which a conflict of interest exists between the Trustee (including any one or more of them, or any one or more of the Directors of the Corporate Trustee) and the Fund and/or the Member(s), whether the conflict of interest is direct or indirect, provided the Trustee or Director(s) of the Corporate Trustee disclose the conflict of interest to the Members, the Members approve the transaction or arrangement subject to the conflict of interest, and provided the Superannuation Laws allow the transaction or arrangement;
- (l) **withhold amounts:** withhold an amount from any Pension Interest, Lump Sum Payment, Contributions, Reserves, Earnings, accretions and/or accumulations of any kind to settle a tax liability or other financial liabilities of the Fund, subject to the Superannuation Laws;
- (m) **take advice:** appoint and take advice from any Person in respect to any aspect of the Fund;
- (n) **determine timing:** determine, in its absolute discretion, the manner, timing and happening of any act, deed or matter shown in this Deed, subject only to the Superannuation Laws prescribing otherwise;
- (o) **limit the range of Persons eligible to be considered as a beneficiary of a Member's Death Benefits:** impose restrictions on the range of Persons (each an **Excluded Person**) who may be considered by a Deceased Member's Alternate Decision-Maker as a Deceased Member's Beneficiary, excepting that a Member may nonetheless appoint one or more **Excluded Persons** to take from his/her Superannuation Interests by way of a Binding Death Benefit Nomination, SMSF Will, and/or Pension Interest Agreement.
- (p) **refuse to deal with an Excluded Person:** refuse to disclose any Fund matter to an Excluded Person and refuse to accept an Excluded Person as a Member;
- (q) **refuse to give reasons and advice:** refuse to prescribe the reasons for any matter or decision of the Trustee and/or copy to any party any research or advice taken in respect to thereto; and

*Warning: The Regulator and/or Court may require the giving of reasons.*

- (r) **attend to membership matters:** receive, consider, effect, negotiate, and in any other way deal with membership matters, including but not limited to acceptance, termination, determination of incapacity matters (having regard to such evidence necessary for the purpose), pay benefits, establish and restructure various forms of Superannuation Interests, report to the Regulator, deal with employers and Contributors, deal with Member's Spouses and Alternate Decision-Makers, determine the payment of Auto-Reversionary Pension Interests, Conditional Pension Interests and Death Benefits (subject to the relevant restrictions imposed in the Governing Rules in respect thereto) and all other things relevant to attending to membership matters.

12.7 **The Trustee Disbursement Powers:** The Trustee has the following express Disbursement Powers to:

having jurisdiction, including but not limited to attending to Default Commutation Notices, Excess Transfer Balance Determinations, Excess Transfer Balance Tax, and credits and debits in respect to Transfer Balance Accounts;

- (l) **effect transfers, commutations and payments requested by Members:** pay, apply, set aside, deal with and otherwise disburse Member's Superannuation Interests and/or Fund Assets in respect to any Member requests, including but not limited to attending to credits and debits in respect to Transfer Balance Accounts;
- (m) **effect the payment of Superannuation Interests in accordance with the Payment Standards:** pay, apply, set aside, deal with and otherwise disburse the Members' Superannuation Interests in accordance with the Payment Standards of Part 6 of the SISR;
- (n) **allocate expenses for advice:** where the Trustee takes advice in respect to a Member specific matter, allocate, in whole or in part, the expenses associated therewith against the Member's Superannuation Interests; and
- (o) **manage and deal with the Fund:** manage and otherwise deal with the Fund in accordance with Part 4 of the SISR, and the Superannuation Laws generally.

12.8 **Trustee's Segregation Powers:** The Trustee has all the following express Segregation Powers:

- (a) **segregation generally:** accept, acquire, deal with and/or dispose of any one or more Assets of the Fund, in whole or in part, as a segregated Asset(s) of the Fund to the benefit of one or more Member Superannuation Interests, Reserve Account or other Fund Accounts, and to the exclusion of one or more Members of the Fund, on such terms deemed reasonable by the Trustee and in accordance with the Superannuation Laws. Without limitation, the Trustee may:
  - (i) receive one or more Asset(s), in whole or in part, as a Contribution-in-Specie from one, or more than one, Member or Contributor on behalf of one or more Members of the Fund (each a **Contributing Member**), and segregate the Asset(s) from the other Assets of the Fund, which Assets and net Earnings therefrom may then be applied to the benefit of a Contributing Member's Superannuation Interest or a Non-Contributing Member's Superannuation Interest (and equally, any losses in respect to such Assets may be applied as burdening the Contributing Member's Superannuation Interest or a Non-Contributing Member's Superannuation Interest);
  - (ii) acquire one or more Assets, in whole or in part, and hold such Asset(s) (or part(s) thereof) and the net Earnings therefrom on segregated account for any one or more Members of the Fund; and
  - (iii) a segregated account created as a consequence of this Rule 12.8, may be held as a Member Accumulation Interest, Member Pension Interest, Reserve Account or any other Superannuation Interest or Account allowed under the Superannuation Laws; and
- (b) **reverse segregation:** the Trustee may reverse the segregation of one or more Asset(s) (or part(s) thereof), and cause such Asset(s) (or part(s) thereof) to be held in any unsegregated manner allowed by the Superannuation Laws and any relevant State Duties Law under which the segregation was effected.



- (b) Where a term of Rule 12 would be prohibited as a consequence of Rule 12.10(a), such term shall be read down to a term which otherwise complies with the Superannuation Laws.
- 12.11 **Special Voting Matters:** Notwithstanding any other term of **Part Two**, at a Trustee Meeting dealing with the payment of a Deceased Member's Death Benefits or a Member's Incapacity Superannuation Benefits:
- (a) the Member's Alternate Decision-Maker has the authority to determine the Person(s) to benefit from the payment of a Member's Death Benefits, subject to the terms of any SMSF Will, Binding Death Benefit Nomination, Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and/or Pension Interest Agreement in accordance with Rules 6, 30, 38, and 39 (and any other Rule relevant to the matter);
  - (b) the Member's Alternate Decision-Maker has the authority to determine the Person(s) to benefit from the payment of the Member's Incapacity Superannuation Benefits subject to the terms of any SMSF Living Will, Conditional Pension Interest Agreement and/or Pension Interest Agreement in accordance with Rules 6, 30, and 38;
  - (c) the payment and facilitation of payment of the Member's Death Benefits and Member's Incapacity Superannuation Benefits must be made in accordance with the Payment Standards and the Superannuation Laws generally;
  - (d) Rule 12.11 is acknowledged as beneficial to the membership of the Fund. Each Member acknowledges his/her right to transfer his/her Superannuation Interest from the Fund during his/her lifetime and accepts the terms of this Rule as reasonable;
  - (e) Rule 12.11 is a Special Rule of the Fund and may be amended or struck only by express reference to the "Special Voting Matters Special Rule", by unanimous consent of the membership and recorded in writing; and
  - (f) If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

### **Part Three – The Members**

#### **13. Membership of the Fund**

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- 13.1 Any Person, with the consent of the Trustee, may become a Member provided the Superannuation Laws allow.
- 13.2 A Mentally Incapacitated Member's Alternate Decision-Maker and/or Deceased Member's Alternate Decision-Maker may become a Member without Trustee consent, provided the membership does not cause the Fund to be a Non-Complying SMSF (*such as where the membership may exceed the limits imposed by section 17A of the SIS Act*) and/or otherwise breach the terms of a Special Rule of the Fund (*such as limitations on membership imposed where a Foreign Pension is transferred to the Fund*).
- 13.3 The Trustee must not accept a Person to become a Member, if the Person's membership would result in the Fund no longer being a Complying SMSF, unless the Trustee otherwise decides.

13.11 **Special Membership Conditions:** The Trustee may impose conditions on membership including:

- (a) limiting membership for a specific period of time;
- (b) limiting membership until the happening of an event (including events which are not in the control of the Member and/or Trustee);
- (c) limiting membership to Persons participating in specific programs or training;
- (d) limiting membership to Persons belonging to a family bloodline pool;

*For example, imposing a condition upon the Member that the Member's Spouse is not eligible as a Member in the event of a family breakdown, and refusing the creation of a Superannuation Interest for a Member's Spouse as a consequence of a Contributions Splitting Notice.*

- (e) limiting membership to bloodline ancestors and/or bloodline descendants of a Person or Persons (which Person may not be a Member); and/or
- (f) limiting membership on such other terms permitted by the Superannuation Laws.

13.12 **Special Membership Classifications:** The Trustee may classify membership, and prescribe as a condition of membership, that the Member receives the benefit and/or burden of variable classifications. In the absence of a resolution to settle variable membership classifications, the membership of the Fund shall constitute a single membership class with the rights and obligations shown in these Governing Rules.

13.13 **Membership Warranties:** As a condition of membership, each Member:

- (a) accepts the conditions and classifications imposed upon the Member's membership, as communicated by the Trustee upon admission as a Member (including any changes in conditions and/or classification as may be resolved by the Trustee from time to time);
- (b) promises to deal in good faith with the Trustee and other Members of the Fund;
- (c) warrants that the Member has had the opportunity to consider and read the Governing Rules and consider the Superannuation Laws;
- (d) warrants the Member has provided the Trustee with the Member's correct Tax File Number, current address and contact details and all other relevant personal information required to be held by the Trustee in respect to the Fund's Members;
- (e) warrants the Member has been given the opportunity to seek independent legal, financial and accounting advice in respect to the risks and benefits of membership in the Fund, and is satisfied in respect thereof that membership in the Fund is appropriate to the Member circumstances;
- (f) undertakes to abide by the Governing Rules and the Superannuation Laws, as amended from time to time;
- (g) promises to continually update and advise the Trustee of any matters which impact on the right to hold or continue membership in the Fund;
- (h) agrees to participate in any programs, medical examinations or other disclosures requested by the Trustee in respect to the assessment and/or



- that Member represents not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund).
- 14.4 A Member's Alternate Decision-Maker stands in the shoes of a Member on the terms of the EPOA, Appointment Order, Last Will and/or Alternate Decision-Maker Nomination for purposes of this Rule 14.
- 14.5 In any Member Meeting, each Member (including one or more Persons acting collectively as an Alternate Decision-Maker) is to be afforded one vote, with the Chairman having a casting vote in the event of a deadlock.
- 14.6 A resolution at a Member Meeting shall be passed where not less than 51% (fifty-one percent) of the votes available at the Member Meeting are cast in favour of the resolution (**Member Ordinary Resolution**), unless the Governing Rules prescribe a resolution is required to be made by a Member Special Resolution.
- 14.7 Written resolutions of the matters determined in Member Meetings must be kept, and signed by one or more Members and/or the Chairman. (*For clarity, electronic execution is authorised.*)
- 14.8 There shall be no obligation on the Members to hold Member Meetings.

## **15. Membership Termination**

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- 15.1 A Member ceases to be a Member upon the earliest of any of the following to occur:
- (a) the Member holds no Superannuation Interest in the Fund, and the Trustee determines the Member should no longer be a Member;
  - (b) the Member dies and the Trustee has paid out the whole of the Deceased Member's Death Benefits to the Member's Legal Personal Representative, Dependants or such other Persons nominated by SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination or by Trustee determination (as the case may be) in accordance with the Governing Rules;
  - (c) the Trustee determines the Member to be a Disqualified Person;
  - (d) the Trustee determines the Member's membership compromises the Fund being a Complying SMSF;
  - (e) the Trustee determines the Member has committed a material breach of the Governing Rules or Superannuation Laws;
  - (f) the Member is a party to proceedings or any agreement pursuant to the *Family Law Act 1975 (Cth)*, and the Trustee determines that the Member should cease being a Member to preserve the Superannuation Interests of the other Members of the Fund;
  - (g) the Member is determined to be ineligible to be a Member by the Regulator, Court or other Government authority vested with jurisdiction in such matters;
  - (h) upon the happening of a condition of membership imposed on the Member by the Trustee (*see Rules 13.11 and 13.12*); or
  - (i) where the Trustee is of the opinion that, for the benefit of the Fund, the Member should cease his/her membership of the Fund.

Roll-over Superannuation Interest to the selected Eligible Roll-over Fund; and

- (iii) the Trustee shall not be liable to the Member for any loss or damage suffered as a consequence of a delay in payment of a Roll-over Superannuation Interest, if the Member fails to complete a Notice of Payment Direction, the Member fails to provide directions to the Trustee, and/or the Member otherwise gives incomplete or inaccurate directions to the Trustee in respect to any term of Rule 15.2. Further the Trustee shall not be liable to the Member for any loss or damage suffered as a consequence of a delay in payment of the Roll-over Superannuation Interest for the reasons shown in Rules 15.2(a)(i) and 15.2(a)(ii);
- (d) the Trustee may use any Government-authorized payment system, including but not limited to SuperStream;
- (e) the Trustee may deduct any costs associated with taking advice and effecting the Roll-over Superannuation Interest from the Member's Superannuation Interest;
- (f) the Trustee may, but is not obligated to, seek the undertaking of the Default Nominated Fund or Eligible Roll-over Fund to receive and hold the Roll-over Superannuation Interest on the same terms and conditions as such Roll-over Superannuation Interest was held by the Fund, including but not limited to any reversionary terms, Preservation Status and/or such other terms as may be relevant in respect to the Roll-over Superannuation Interest, Member, Member's Dependants and/or Member's Legal Estate;
- (g) the Trustee may allocate Earnings, General Expenses and/or Specific Expenses of the Fund to the Terminating Member's Superannuation Interest (including a Roll-over Superannuation Interest), provided the Trustee acts reasonably;
- (h) the receipt of the Roll-over Superannuation Interest by the Default Nominated Fund or Eligible Roll-over Fund shall constitute a discharge of the Trustee in respect to the Roll-over Superannuation Interest, and the rights of the Member in respect to the Fund shall be deemed terminated; and
- (i) the Trustee shall do such other things as the Trustee determines reasonable to cause the termination of the Member's membership, subject to the restraints imposed by the Superannuation Laws on the Trustee's exercise of power.

15.3 **Mandatory Transfer Event:** If a Member becomes a Disqualified Person (constituting a **Mandatory Transfer Event**), then the Trustee must refer to Rule 15.2 and take all reasonable steps to Roll-over a Disqualified Person's Superannuation Interests promptly, provided that the Trustee shall be under no obligation to take a step which would compromise the Fund's solvency or Complying SMSF status.

15.4 **Priority as to compliance with the Superannuation Laws:** Notwithstanding any other term of this Rule 15, the Trustee shall only be required to undertake steps which are compliant with the Superannuation Laws and do not result in the Fund becoming a Non-Complying SMSF. The Trustee shall not be liable for any loss or damage occasioned to any one or more Members in abiding by its obligations under the Superannuation Laws, notwithstanding a contrary term of this Rule.



- (c) refund the Contribution to the Contributor;
- (d) hold the amount on Bare Trust for the Contributor or Member;
- (e) refund the Contribution to the Member if the Trustee receives a Member Release Authority;
- (f) refund the Contribution to the Regulator if the Trustee receives a Regulator Release Authority; and/or
- (g) take such other action as may be required, or permissible in accordance with the Superannuation Laws.

16.6 In effecting Rule 16.5, the Trustee may:

- (a) deduct charges in respect to insurance premiums paid directly or indirectly in respect to the Contributions,
- (b) deduct taxes paid or payable in respect to the Contributions (including but not limited to Excess Transfer Balance Tax);
- (c) deduct reasonable administration charges and other amounts allowed by the Superannuation Laws; and/or
- (d) credit or debit (as the case may be) the Member's Transfer Balance Cap (if required by the Superannuation Laws, or otherwise requested by the Member).

16.7 The Trustee shall do all things necessary to facilitate and assist the processing of Contributions by any authorised payment system prescribed by the Superannuation Laws, including but not limited to SuperStream.

16.8 The Members may request the Trustee to provide a written **Employer Contribution Notification** for the purpose of communicating the details of the Fund to a Contributor.

## **17. Creating and Transferring Member Superannuation Interests**

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17.1 The Trustee may, in its absolute discretion or at the request of a Member or the Member's Alternate Decision-Maker, establish one or more Accounts (including Sub-Accounts) on behalf of a Member and/or the Fund (including a Reserve Account and/or Pension Reserve).

17.2 The Trustee may hold one or more Superannuation Interests on behalf of a Member or the Member's Legal Estate.

17.3 Any Member's Superannuation Interest may be established as a Member Accumulation Interest, a Member Pension Interest, a Reserve Account or any other Superannuation Interest or Member's Account allowed under the Superannuation Laws.

17.4 A Member's Superannuation Interest can be settled and continued without a transfer of any Asset or Cash, provided the Trustee agrees to such arrangement and the Superannuation Laws allow.

17.5 The Trustee may, with the consent of a Member, transfer, in whole or in part, a Member Accumulation Interest to a Member Pension Interest, and vice versa, and excepting where the Superannuation Laws require, such transfer shall not constitute the creation of a new Member Superannuation Interest (whether of a Member Accumulation Interest or Member Pension Interest).

- (d) apply Earnings and/or expenses (whether in accordance with a Fund Earning Rate, or as otherwise deemed reasonable by the Trustee) associated with each Investment Strategy to a separate Account, Sub-Account of the Fund (including any one or more Member's Accumulation Interests, Member Pension Interests, and/or Reserve Account).
- 18.4 The Trustee may amend any one or more Investment Strategies for the Fund Accounts and/or Member Superannuation Interest(s) at any time, by oral resolution, except where the Superannuation Laws require such amendment to be shown in writing.
- 18.5 If the Trustee receives Contributions and/or Insurance Proceeds which are not otherwise contemplated in an Investment Strategy, then, notwithstanding, the Investment Strategy shall be deemed to encompass such Contributions and/or Insurance Proceeds. In such deeming, this Rule 18.5 shall take precedence over any Investment Strategy.
- 18.6 The Trustee shall complete a risk management statement, or such other instrument as may be required by the Superannuation Laws, in respect to investments in derivatives, options, instalment warrants or other products with underlying borrowings or leverage. If the Superannuation Laws do not require a risk management statement or other instrument in the circumstances, then there shall be no obligation on the Trustee to do so as a consequence of the Governing Rules.

**19. Special Rules regarding State-Based Tax and Duty Exemptions and Concessions**

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- 19.1 Despite any contrary term of the Governing Rules, if a Member transfers property, or an interest in property, to the Fund on the condition that the property, or interest in property, is to be held specifically for the Member to enable the Member to obtain a tax or duty exemption or concession under State taxes, then:
- (a) the property, or interest in the property, can only be held in the Fund specifically for the transferring Member, so the property or interest in the property cannot be pooled with the contributions or other Assets of another Member and no other Member can obtain an interest in the property;
  - (b) if necessary, the Trustee may create a sub-fund for the purposes of holding the property, or interest in the property; and
  - (c) the property, or interest in property, or the proceeds of sale of the property, or interest in the property, if sold, can only be held in the Fund to be provided to the transferring Member as a Retirement Benefit.

*Note: Special attention needs to be had to ongoing Government announcements in respect to the restrictions on segregation.*

**Part Six – Reserve Accounts**

**20. Establishing a Reserve Account for the Fund**

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- 20.1 The Trustee may establish one or more Reserve Account for the Fund which may include amongst others an Investment Reserve, a Contributions Reserve, a Pensions Reserve and a Pension Interest Reserve, provided the Superannuation Laws allow. Any Reserve Account may be for the benefit of current, past and future Members, Members' Dependants, a Member's Legal Estate, Members' Beneficiaries and/or the Trustee.



**21. Insurances, Annuities and Insurance Strategy (inclusive or exclusive of Annuities)**

- 21.1 The Trustee may create an Insurance Strategy for the Members of the Fund and/or one or more individual Insurance Strategies for each Member. The Insurance Strategy(ies) shall form part of the Fund's Investment Strategy.
- 21.2 The Trustee may enter into any policy of insurance with an Australian or foreign provider, in respect to one or more Members, for any one or more contingencies permitted by the Superannuation Laws, including, but not limited to, a Member's death, a Member's Temporary Incapacity and/or a Member's Total and Permanent Incapacity.
- 21.3 The Trustee may enter into any annuity or deferred annuity contracts upon the life of one or more Members or Members' Dependants, on terms permitted by the Superannuation Laws.
- 21.4 The Trustee may cross-insure and split insurances between one or more Members of the Fund, Fund Accounts and/or other parties, and on such terms and agreements as the parties may agree, provided the Superannuation Laws allow.

*Warning: Refer to ATO ID 2015/10, SMSFR 2008/1, and SMSFR 2008/2.*

- 21.5 The Trustee may enter into any contract of insurance to establish a Self-Insurance Reserve Account in respect to risks associated with liquidity and/or cash flow which may be compromised as a consequence of a call on the payment of a Member's Superannuation Interests on the death, Temporary Incapacity, and/or Total and Permanent Incapacity of any one or more Members of the Fund, provided the Self Insurance Reserve Account is compliant with the Superannuation Laws.

*See SISR also 4.07E.*

- 21.6 The Trustee has absolute discretion to deal with the policies and/or contracts for any matter referred to in the preceding terms of Rule 21, including but not limited to termination, variation, assignment, sale, surrender, enforcement and/or renewal thereof.

*Insurance premiums may be deducted from Earnings of the Fund, or any one or more Member Superannuation Interests and/or Reserve Accounts, provided any Insurance Proceeds received in respect to the policies to which the premiums apply are dealt with in accordance with the Superannuation Laws. (See also SISR 4.07D and 4.07E.)*

- 21.7 The Trustee may pay, apply or set aside the Insurance Proceeds received in respect to an insurance policy held directly or indirectly for a Member, net of costs (including taxes) associated with the receipt, handling and distribution of such policy.
- 21.8 No Member, Dependant of a Member, Binding Death Benefit Beneficiary, Member's Legal Estate, Member's Alternate Decision-Maker, or any other Person has any interest in any contract of insurance, proceeds or distributions of the proceeds of a contract of insurance and/or a Self-Insurance Reserve Account, including but not limited to where such contract or Account is held in the name of a Member or for the benefit of a Member, unless the Trustee (or where applicable, the relevant Member's Alternate Decision-Maker - see Rule 6) determines to make a relevant Person absolutely entitled to such contract and/or Account, or the Superannuation Laws require a relevant Person(s) to be entitled thereto.