

### 33.3 Administration of the Non-Binding Death Benefit Nomination

- (a) This Rule 33 shall be read with Rule 29.
- (b) The Trustee may settle the payment of one or more amounts distributable at the direction of the Member's Alternate Decision-Maker by way of Cash, settlement of a Pension Interest, continuation of a Pension Interest (if not otherwise subject to mandatory alternate terms), transfer of Benefits-in-Specie and/or such other benefits as may be payable for the purposes.
- (c) The Trustee must take all reasonable steps as may be required to ensure the Member's Alternate Decision-Maker's Payment Directions 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 an Eligible Pension Beneficiary to become a Member in the Fund.
- (e) The Trustee may refuse to accept a Member's Beneficiary as a Member of the Fund, and request the Member's Beneficiary to provide a **Notice of Payment Direction**.
- (f) If a Payment Direction prescribed by a resolution of the Member's Alternate Decision-Maker gives rise to a breach or potential breach of a Member's Beneficiary's Transfer Cap Balance (and/or such other capping criteria as may be prescribed by the Superannuation Laws), then the Trustee, Deceased Member's Alternate Decision-Maker and Member's Beneficiary shall work together expeditiously to arrange the affairs of the Member's Beneficiary and the Deceased's Member Superannuation Interests so as to limit or prevent a breach of the Member's Beneficiary's Transfer Cap Balance, and:
  - (i) where the Payment Direction cannot be effected without exceeding the Member's Beneficiary's Transfer Cap Balance, then the Payment Direction shall be amended **if requested by the Member's Beneficiary** to allow the Superannuation Interest (or such as is passing in accordance with the Payment Direction) to pass as a:
    - (I) Lump Sum to the Member's Beneficiary;
    - (II) Lump Sum or Pension Interest to one or more Eligible Pension Beneficiaries or Eligible Lump Sum Beneficiaries nominated by the Member's Beneficiary; or
    - (III) Lump Sum Payment to the Member's Legal Estate; and
  - (ii) any liability in respect to an Excess Transfer Balance Tax or other Excess Contribution Tax in respect to a payment to a Member's Beneficiary shall be the liability of the Member's Beneficiary.
- (g) If a Payment Direction resolved by the Member's Alternate Decision-Maker cannot be effected, such as where the Payment Direction is to a Person who does not qualify to receive the Payment (**Ineligible Income Beneficiary** and/or **Ineligible Lump Sum Beneficiary**), then such Payment Direction shall be void (**Quarantined Part**). The Quarantined Part shall be subject to the further resolution of the Member's Alternate Decision-Maker.

- (h) A Member shall revoke a 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 and witnessed and signed by one Natural Person who is not a Member and/or a Beneficiary nominated in the Binding Death Benefit Nomination; and
- (i) 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 32.

32.2 The terms of Rule 31 (excluding Rule 31.1(a), 31.1(o), 31.1(p)) are read and adopted in Rule 32, subject to the reference to "SMSF Will" being read as "Binding Death Benefit Nomination".

### **33. Protocol for settling and administering a Non-Binding Death Benefit Nomination and lapsed Binding Death Benefit Nomination**

#### **33.1 The Non-Binding Death Benefit Nomination**

- (a) A Non-Binding Death Benefit Nomination is a written direction of the Member, whether witnessed or not, which prescribes the Member's non-binding wishes in respect to the payment of his/her Member Superannuation Interests following the Member's death.
- (b) A Binding Death Benefit Nomination which has lapsed shall be treated as Non-Binding Death Benefit Nomination.
- (c) An approved format of a **Death Benefit Nomination** is shown at **Annexure C**; however, the Trustee may prescribe and/or consent to alternate forms of a Non-Binding Death Benefit Nomination.
- (d) A Non-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.
- (e) A Non-Binding Death Benefit Nomination is secondary to a SMSF Will and/or Binding Death Benefit Nomination, whether or not the Non-Binding Death Benefit Nomination is made before or after a SMSF Will and/or Binding Death Benefit Nomination.
- (f) A Non-Binding Death Benefit Nomination does not revoke an earlier SMSF Will or earlier Binding Death Benefit Nomination, unless the Non-Binding Death Benefit Nomination specifically directs as such - in which case the Non-Binding Death Benefit Nomination must be witnessed and signed by one Natural Person who is not a Member, Member's Relative and/or a Beneficiary nominated in either the SMSF Will or the Binding Death Benefit Nomination.
- (g) The Trustee may require the Non-Binding Death Benefit Nomination (and/or any variations thereof) be deposited with the Trustee prior to the death of the Member; however, the Member may deliver the Non-Binding Death Benefit Nomination in a sealed envelope and require the Trustee to



- (e) The Trustee may refuse to accept a Member's Beneficiary, regardless of whether the Person is otherwise an Eligible Pension Beneficiary, as a Member of the Fund, and request the Member's Beneficiary to provide a **Notice of Payment Direction**.
- (f) If a Payment Direction prescribed in the SMSF Will gives rise to a breach or potential breach of a Member's Beneficiary's Transfer Cap Balance (and/or such other capping criteria as may be prescribed by the Superannuation Laws) (and the Member's Beneficiary is an Eligible Pension Beneficiary), then the Trustee, Deceased Member's Alternate Decision-Maker and Member's Beneficiary shall work together expeditiously to arrange the affairs of the Member's Beneficiary and the Deceased's Member Superannuation Interests so as to limit or prevent a breach of the Member's Beneficiary's Transfer Cap Balance, and:
  - (i) where the Payment Direction cannot be effected without exceeding the Member's Beneficiary's Transfer Cap Balance, then the Payment Direction shall be amended *if requested by the Member's Beneficiary* to allow the Superannuation Interest (or such as is passing in accordance with the Payment Direction) to pass as a:
    - (I) Lump Sum to the Member's Beneficiary;
    - (II) Lump Sum or Pension Interest to one or more Eligible Pension Beneficiaries or Eligible Lump Sum Beneficiaries nominated by the Member's Beneficiary; or
    - (III) Lump Sum Payment to the Member's Legal Estate; and
  - (ii) any liability in respect to an Excess Transfer Balance Tax or other Excess Contribution Tax in respect to a payment to a Member's Beneficiary shall be the liability of the Member's Beneficiary.
- (g) If a Payment Direction prescribed in the SMSF Will cannot be effected because the Member's Beneficiary is an Ineligible Lump Sum Beneficiary and no alternate Payment Direction is made in the SMSF Will to deal with the circumstances, then such Payment Direction shall be void (**Quarantined Part**) and the Quarantined Part shall be dealt with as a Death Benefit for which no nomination is made in accordance with Rule 34.
- (h) 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 31.
- (i) The Trustee (including the Deceased Member's Alternate Decision-Maker) shall do all things reasonable in the administration of the SMSF Will and has the power, notwithstanding Rule 12.11 and the preceding terms of Rule 31, to determine:
  - (i) the timing as to when a payment is made;
  - (ii) the withholding of any tax on payments from a Deceased Member's Superannuation Interest;
  - (iii) the review and approval of any Conditions of Release of Benefits in respect to a Member's Beneficiary (for example, review and determination of a Person as an Eligible Pension Beneficiary and/or an Eligible Lump Sum Beneficiary (whether or not such Person is

- (i) A SMSF Will must be signed and dated by the Member, and witnessed and signed by not less than one Natural Person who is not a Member, Member's Relative and/or a Beneficiary in the SMSF Will.

*Note: It is recommended that SMSF Will be signed by TWO Natural Persons who are not Members and/or Beneficiaries named in the SMSF Will. Per SMSFD 2008/3, section 59A of the SISA and SISR 6.17A do not apply to a SMSF – thus, a SMSF Will and/or any Nomination in respect to a Member's directions as to the payment of Death Benefits are not required to be witnessed by the Superannuation Laws by TWO Natural Persons. However, given the litigation risk of validating a Member's wishes, it is a best practice to have witness execution by TWO witnesses. Notwithstanding, the Governing Rule above shown only requires a single witness.*

- (j) The Trustee may require the SMSF Will (and/or any variations thereof) to be deposited with the Trustee prior to the death of the Member; however, the Member may deliver the SMSF Will in a sealed envelope and require the Trustee to deposit the sealed envelope with a third party for safe custody until the Member's death.
- (k) If the Member fails to deliver the SMSF Will to the Trustee prior to the death of the Member, the SMSF Will shall not be invalid.
- (l) The Trustee may, but is not required to, provide written notice acknowledging the receipt of a SMSF Will.
- (m) The SMSF Will shall be deemed as received by the Trustee on one or more of the following:
- (i) written acknowledgment by the Trustee:
- (1) if the Trustee is constituted by two (2) or more Natural Person Trustees, then the written acknowledgment of not less than two Natural Person Trustees acting in such capacity shall be sufficient;
  - (2) if the Trustee is constituted as a Corporate Trustee, and there are two (2) or more directors, then the written acknowledgement of not less than two directors acting in such capacity shall be sufficient;
  - (3) if the Trustee is constituted as a single Natural Person (such as in the case of the single Natural Person being the Alternate Decision-Maker of a Member), then the acknowledgement of the single Natural Person shall be sufficient;
  - (4) if the Trustee is constituted as a Corporate Trustee, and there is only one (1) director, then the written acknowledgement of the one director acting in such capacity shall be sufficient;
  - (5) a "written acknowledgement" may be by way of confirmation written on a copy of the SMSF Will, or by email, by letter, by facsimile or such other instrument capable of the consent of the Natural Persons above acting in the matter;
- (ii) return receipt by the Australian Postal Service confirming acceptance of an envelope containing the SMSF Will addressed to the Trustee at the address registered for the Trustee with the ATO; and/or
- (iii) the SMSF Will is recorded and/or stored in the books and records of the SMSF (including where reference to the storage of the SMSF Will is made in circumstances in which a Member requires the SMSF Will



- 30.4 **Treatment of Auto-Reversionary Pension Interest Agreements, Conditional Pension Interest Agreements or other Pension Interests (including other Pension Interest Agreements):** When a Member dies the following terms shall apply in respect to the Auto-Reversionary Pension Interest Agreement, Conditional Pension Interests Agreements and/or any other Pension Interest Agreements incorporating a reversionary term settled by the Member during his/her lifetime:
- (a) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to an Auto-Reversionary Pension Interest Agreement, then see Rule 35;
  - (b) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to a Conditional Pension Interest Agreement, then see Rule 36;
  - (c) if the Deceased Member died part or whole of the Deceased Member's Superannuation Interest was subject to a Pension Interest Agreement incorporating a reversionary term (other than a Pension Interest shown in the preceding terms of Rule 30.4), then see Rule 37; and
  - (d) if the Deceased Member died and part or whole of the Deceased Member's Superannuation Interest was subject to a Pension Interest Agreement without incorporating a reversionary term, then the Pension Interest Agreement shall be dealt with in accordance with the terms of Rule 30.2.
- 30.5 **Auto-Reversionary Pension Interest Agreement and Conditional Pension Interest Agreement Special Rules:** Notwithstanding any other term of the Rules, an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement and Pension Interest Agreements with a reversionary term are known as SMSF Estate Planning Special Rules, and are not subject to amendment, variation or striking except where the Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or Pension Interest Agreement with a reversionary term is amended, varied or struck under the respective terms of Rules 35 and/or 36. 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 30.5 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.
- 30.6 **Member's Alternate Decision-Maker:** The arrangements and terms referred to in this Rule 30 are to be read with the Governing Rules generally, including, in particular, Rules 6 and 12.11. If a Member becomes Mentally Incapacitated or dies, then Rule 6 shall apply in respect to the Member's Superannuation Interests.
- 30.7 **Recording of Determinations:** The Trustee and Member's Alternate Decision-Maker may, but shall be under no obligation to, record the reasoning for their determinations.
- 30.8 **Substantial Compliance:** Notwithstanding a defect in the execution or making of a SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination and/or Pension Interest Agreement, the Member's Alternate Decision-Maker may waive strict compliance and require the Trustee to recognise such Nomination notwithstanding the defective execution or form.

made before the day on which the member reaches normal minimum pension age under UK pension law unless the ill-health condition is met.

**Note:** The normal minimum pension age under UK pension law is currently age 55. For this purpose the membership of the fund is restricted to member aged 55 and over under clause 1.6. Clause 29.6 only applies to benefits payable to the member under the scheme, to the extent that they related to a transfer of sums or assets which would, subject to the Overseas Pension Scheme Regulations (UK) constitute a recognised transfer or a relevant transfer which may be directly to the Fund from overseas or the transfer of a QROPs benefit from another Superannuation Fund.

- (b) **Overseas Pension and Retirement Payments:** If Superannuation Benefits are referable to an Overseas Pension or Retirement Scheme, then the Trustee must abide by any release of benefits requirements made pursuant to the laws in respect to the Overseas Pension or Retirement Scheme.
- (c) **Excess Contributions Tax Release Payments:** The Trustee, if required under an Excess Contributions Tax Release Authority issued in respect of a Member, must pay to a Member or the Regulator, within the time prescribed by the Superannuation Laws, the amount prescribed under the Excess Contributions Tax Release Authority. This includes any excess Concessional Contributions or Non-Concessional Contributions required to be paid to the Regulator or under an Excess Contributions Tax Release Authority.
- (d) **Roll-overs and Transfers:** The Trustee may Roll-over a Lump Sum Payment, a Pension Interest or may make a transfer of a Roll-over Superannuation Interest for the benefit of a Member to an Eligible Entity. *See also Rules 15 and 17.*
- (e) **Pension Interest and Pension Roll-backs:** A Member in receipt of a Pension Interest may Roll-back part or all of their Member Pension Interest to a Member Lump Sum Payment. The Roll-back amount may be satisfied by the transfer of Assets and Cash between the Member Pension Interest and the Member Accumulation Interest.
- (f) **Pension Interest and Pension Transfers:** A Member in receipt of a Pension Interest may direct the Trustee to transfer part or all of his/her Member Pension Interest to an Accumulation Interest or to another Eligible Entity to hold for the Member. The Trustee shall have sole discretion to determine which Assets of the Fund are to be applied for such purpose and the Market Value of the Assets of the Fund at such time.
- (g) **Pension Interest Changes:** The Trustee, at the request of a Member, has the power to convert a Pension Interest to an Auto-Reversionary Pension Interest and/or Conditional Pension Interest. Similarly, the Trustee, at the request of the Member, has the power to convert an Auto-Reversionary Pension Interest and/or Conditional Pension Interest to a Pension Interest. Changes may be made in any manner agreed by the Trustee and Member, including but not limited to oral resolution, written resolution, agreement or deed. The changes will not, unless the Superannuation Laws prescribe, constitute a commutation of any Pension Interest. This Rule is to be read with Rules 12.11, 24, 25 and 29, where applicable.



Payment Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;

- (i) once the Trustee and Member have agreed on the Payment Direction (whether as originally submitted, or as amended as a consequence of a preceding terms of Rule 29.3), then the Trustee shall calculate the Tax Free Component, Taxable (Taxed and Untaxed) Component and Preservation Status with respect to the payment (whether as a Lump Sum Payment or Pension Interest) (excepting in circumstances in which the Superannuation Laws require a different manner of calculation or timing);
- (j) the proportioning of the components referred to in Rule 29.3(i) shall be binding on each and every payment from the Pension Interest and/or Lump Sum Payment settled as a consequence of the Payment Direction, unless or until the Superannuation Laws provide otherwise;
- (k) the Payment Direction, as effected in accordance with the preceding terms of Rule 29.3, shall be reviewed, amended and/or terminated at the request of the Member (**Further Payment Direction**), subject to the Trustee's discretion to action such Further Payment Direction on terms which do not compromise the solvency or Complying SMSF status of the Fund;
- (l) where the Trustee resolves a payment of either one or more instalments of a Pension Interest, or one or more Lump Sum Payments, the Member shall be absolutely entitled to the amount determined by such resolution on the date and conditions shown in the resolution. A resolution may be oral, provided that the resolution is reduced to writing within a reasonable time and communicated to the Member;
- (m) if an instalment of a Pension Interest, or a Lump Sum Payment is not paid on a date prescribed in a Trustee resolution, the Trustee shall hold such amount on trust for the Member;
- (n) unless the Pension Interest Agreement prescribes otherwise, a Pension Interest may be changed in form to an Auto-Reversionary Pension Interest and/or Conditional Pension Interest, without commutation or Roll-back, and vice versa; and
- (o) a reference to a Member in this Rule 29.3, includes where applicable the Member's Dependant, Member's Beneficiary and/or a Member's Legal Estate.

29.4 In giving effect to Rules 29.1, 29.2 and 29.3, the Trustee has a duty to act reasonably and in good faith. To this end, the Trustee shall make timely and proper disclosure to the Member and/or the Member's Alternate Decision-Maker, as the case may be. Notwithstanding, the Trustee shall be under no obligation to make any disclosure which compromises the interests of the other Members in the Fund, the Complying SMSF status of the Fund and/or solvency of the Fund.

29.5 Subject to the Superannuation Laws and without limiting the powers of the Trustee under the terms of Rule 29 (except as restricted in accordance with Rules 29.6 and 29.6(b)), the following Superannuation Benefits may be paid by the Trustee, at the request of a Member or the Member's Alternate Decision-Maker (if acting as a consequence of Rule 6):

- (a) if the Member has reached Preservation Age and Retired, the Member may take a Lump Sum Payment and/or commence a Pension Interest;

- (i) being a Temporary Resident, the Member meets the conditions of SISR 6.01B;
  - (ii) Retirement (*Note: See also SISR 6.01(2) and (7)*);
  - (iii) death;
  - (iv) Terminal Medical Condition;
  - (v) Severe Financial Hardship;
  - (vi) attaining 65 (sixty-five) years of age;
  - (vii) a Compassionate Ground;
  - (viii) attaining Preservation Age (subject to commutation restrictions);
  - (ix) receiving an Excess Contributions Tax Release Authority;
  - (x) having less than \$200 (two hundred dollars) in the Fund;
  - (xi) becoming subject to Permanent Incapacity (*Note: See also SISR 1.03C*); and
  - (xii) such other terms as prescribed by the Superannuation Laws from time to time for such purpose;
- (b) a Member is eligible to receive a **Pension Interest** upon the happening of any of the following events:
- (i) Retirement (*Note: See also SISR 6.01(2) and (7)*);
  - (ii) death;
  - (iii) Terminal Medical Condition;
  - (iv) attaining 65 (sixty-five) years of age;
  - (v) attaining Preservation Age;
  - (vi) becoming subject to a Temporary Incapacity;
  - (vii) becoming subject to Permanent Incapacity (*Note: See also SISR 1.03C*); and
  - (viii) such other terms as prescribed by the Superannuation Laws from time to time for such purpose;
- (c) a Member, Member's Dependants and/or Member's Legal Estate shall be read to meet a Condition of Release of Benefits for a Lump Sum Payment and Pension Interest on the death of the Member, subject to the limitation that only an Eligible Pension Beneficiary may receive a Pension Interest and only an Eligible Lump Sum Beneficiary may receive a Lump Sum Payment.

*For example, Brin and Cat are members of the Fund, and are married. Brin has an Auto-Reversionary Pension Interest Agreement, which nominates Cat as the Reversionary Beneficiary. Brin dies, and Cat survives. The Superannuation Laws allow Cat to receive either a Pension Interest or Lump Sum Payment, because she is Brin's Spouse. If Brin wanted to leave his Superannuation Interest to Tom, his adult non-dependent son as a Pension Interest, the Trustee would refuse such direction because Tom is not eligible to receive a Pension Interest from Brin's Superannuation Interest.*



- (a) which of the Member's Superannuation Interests (if more than one) the Family Law Payment Splitting Notice is best applied to meet the requirements thereof;
- (b) whether the amount to be split to the Member's Spouse is Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved or such other type of Classification as the Superannuation Laws allow or prescribe including the extent to which the accommodation and/or payment consists of Tax Free and Taxable (Untaxed and Taxed) Components;
- (c) if the Superannuation Laws allows, then, with the Member's consent, determinations in respect to debits and credits of the Member's Transfer Balance Cap, in the attendances on the Family Law Payment Splitting Notice; and
- (d) which Assets (including Cash) of the Fund will be utilised to meet the terms of the Family Law Payment Splitting Notice.

27.3 The Trustee is to action the Family Law Payment Splitting Notice within a reasonable period of time, but not later than the time prescribed by the Superannuation Laws or as directed by a Court.

27.4 This Rule 27 shall be read with Rule 12.9.

## **28. Fund Assets, Contracts and Transactions**

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28.1 The Trustee is to hold all Assets of the Fund in the name of the Trustee; however, a Custodian may hold an Asset on behalf of the Trustee provided the Superannuation Laws allow.

28.2 If there is a change of Trustee (including the retirement and/or removal of any one or more Persons and/or the appointment of any one or more Persons), the Trustee, as soon as practicable, must cause the transfer of the Fund's Assets to the Trustee(s) then acting.

*Note: Where the Trustee of the Fund is a Corporate Trustee, any change in Membership of the Fund requires a change of directorship of the Corporate Trustee, but the change to a Corporate Trustee's directorship does not require a change in the legal ownership of the Assets. Therefore, a Corporate Trustee gives rise to lesser complication in the event of the cessation of membership of a Member and/or the Mental Incapacity or death of a Member.*

28.3 Any contract, transaction or agreement of whatsoever nature undertaken on behalf of the Fund, must be in the name of the Trustee, unless the Trustee has appointed a Custodian to act on behalf of the Fund.

28.4 No Member, Member's Dependant, Member's Legal Estate, Member's Beneficiary, and/or other party has any right or entitlement to any Asset (including Cash) of the Fund, unless the Trustee resolves to allocate part or whole of the Asset (including Cash) to such a Person (*such as in the payment of a Member's Death Benefit from the Fund*).

28.5 A Member, Member's Dependant, Member's Beneficiary, Member's Legal Estate and/or Member's Alternate Decision-Maker may enter a contract, transaction or agreement of whatsoever nature with the Trustee, provided the Superannuation Laws allow.

28.6 If the Trustee enters into a transaction, arrangement, declaration or agreement, whether in writing or orally and the transaction, arrangement, declaration or agreement would result, in the opinion of the Fund's Auditor, in the Fund be treated as a Non-Complying SMSF or be subject to a penalty, the transaction, arrangement, declaration or agreement shall be void ab-initio, provided that the

- (a) Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved, or such other type of classification as the Superannuation Laws allow or prescribe;
- (b) Taxable Component, including the Element Untaxed in any Member's Superannuation Interest;
- (c) Tax-Free Component; and
- (d) Transfer Balance Cap (including credits or debits), with the Member's consent;

subject to the requirements of the Superannuation Laws.

25.3 The Trustee may pay, set aside and/or allocate to a Member Pension Interest the following amounts, subject to the Superannuation Laws:

- (a) Earnings from the Member Pension Interest;
- (b) Assets and/or Earnings from any of the Fund Reserve Accounts;
- (c) tax refunds;
- (d) any amounts allocated to the Member Pension Interest by the Trustee from insurance policy proceeds;
- (e) any amount transferred from another Member Pension Interest or Reserve Account for the purpose of commencing a new Pension Interest; and
- (f) such other amounts that the Trustee determines should be added to the Member Pension Interest;

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

25.4 The Trustee may deduct from a Member Pension Interest any of the following, subject to the Superannuation Laws:

- (a) Pension Interest payments made to a Member, Member's Dependents or Member's Legal Estate from the Member Pension Interest;
- (b) amounts paid for administration, audit, actuarial, legal, valuation, SMSF Adviser fees, or proportion thereof, incurred which the Trustee determines should be specifically deducted from the Member Pension Interest;
- (c) 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 Pension Interest;
- (d) 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;*
- (e) any losses allocated to the Member Pension Interest by the Trustee;
- (f) any losses associated with an Investment Strategy and/or Assets (including Cash) segregated for the Member Pension Interest;
- (g) any taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Pension Interest;
- (h) 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 E



24.1 The Trustee of the Fund may establish a Member Accumulation Interest in the Fund for each Member.

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

- (a) Preserved, Restricted Non-Preserved, Unrestricted Non-Preserved, or such other type of classification as the Superannuation Laws allow or prescribe;
- (b) Taxable Component;
  - (i) Untaxed Element;
  - (ii) Taxed Element;
- (c) Tax-Free Component; and/or
- (d) Transfer Balance Cap (including credits or debits), with the Member's consent;

subject to the requirements of the Superannuation Laws.

24.3 The Trustee may pay, set aside, and/or allocate to a Member Accumulation Interest the following amounts, subject to the Superannuation Laws:

- (a) Contributions made by the Member, or by a Contributor on behalf of the Member, to the Fund (including, but not limited to a Contribution-in-Specie and/or Contribution-in-Kind);
- (b) Earnings (including, but not limited to the net Earnings associated with any Investment Strategy and/or Assets (including Cash) segregated for the benefit of the Member's Accumulation Interest);
- (c) Assets and/or Earnings from any of the Fund Reserve Accounts;
- (d) Transfer Superannuation Interests and Roll-over Superannuation Interests transferred to the Fund, or within the Fund, on behalf of a Member;
- (e) tax refunds;
- (f) any amounts allocated to the Member Accumulation Interest by the Trustee from insurance policy proceeds;
- (g) Member Pension Interest Roll-back amount (including but not limited to Roll-backs from a Member Pension Interest of the Excess Transfer Balance Cap);
- (h) amounts subject to a Contributions Splitting Notice from a Member's Spouse;
- (i) payment 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
- (j) such other amounts that the Trustee determines should be added to the Member Accumulation Interest;

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

24.4 The Trustee may deduct from a Member Accumulation Interest any of the following, subject to the Superannuation Laws: