

**SECTION SIX: WITNESS DECLARATION**

**(NOTE: Only ONE witness is required, but TWO witnesses are recommended.)**

<p>I declare:</p> <ul style="list-style-type: none"> <li>• I am over 18 (eighteen) years of age;</li> <li>• I am not a nominated beneficiary of the Member, Trustee or Member's Relative; and</li> <li>• This Form was signed and dated by the Member in my presence.</li> </ul>	<p>I declare:</p> <ul style="list-style-type: none"> <li>• I am over 18 (eighteen) years of age;</li> <li>• I am not a nominated beneficiary of the Member, Trustee or Member's Relative; and</li> <li>• This Form was signed and dated by the Member in my presence.</li> </ul>
Witness 1 Full Name:	Witness 2 Full Name:
Witness 1 Signature:	Witness 2 Signature:
Witness 1 Address:	Witness 2 Address:
Date:	Date:

**DEFINITIONS**

**Binding** means that, provided that no event has occurred that would invalidate the Nomination (such as the death of the Beneficiaries nominated, or the Beneficiaries nominated no longer being the Member's Legal Personal Representative or Dependant), the Trustee and Member's Alternate Decision-Maker are bound to pay the Member's Superannuation Interests (other than any interests supporting an Auto-Reversionary Pension Interest Agreement, Conditional Pension Interest Agreement or other Pension Interest Agreement with a valid reversionary term) to the Beneficiaries nominated in the proportions nominated.

**Dependant** includes the Member's legal or de facto Spouse, Member's Children (including step Children and adult Children), a Person in an Interdependency Relationship with a Member, a Person who is wholly or partially financially dependent on the Member, and any other Person the Superannuation Laws define as a Dependant of a Member. Note, only a Dependant as the term is defined in the *Income Tax Assessment Act 1997 (ITAA97)* is eligible to receive a Pension Interest from a Deceased Member.

**Interdependency Relationship** means the Person and the Member live together and have a close personal relationship and one or both of the parties provide the other with financial support and domestic support and personal care.

**Lapsing** means that the Nomination contained in the Death Benefit Nomination Form applies only for a set period of time, which shall expire upon the event/s indicated at Section Two(b) occurring.

**Member** means the person named at Section One.

**Non-binding** means that the Trustee and Alternate Decision-Maker may consider the Nomination made in the Death Benefit Nomination Form, but is not bound to pay the Member's Superannuation Interests in accordance with the Nomination made by the Member.

**Non-lapsing** means that the Nomination contained in the Death Benefit Nomination Form applies in perpetuity unless revoked by the Member by notice in writing to the Trustee, or until the Nomination is revoked by a new Death Benefit Nomination Form being submitted to and accepted by the Trustee.

**Legal Personal Representative** means the Person or Persons appointed on or following the Member's death as the Executor or Administrator of the Member's Estate.

<b>Total of Column C (must equal 100%, or the Nomination is invalid)</b>		<b>%</b>	

**SECTION FOUR: NOMINATION OF SECONDARY BENEFICIARY(IES) OF SUPERANNUATION INTERESTS**

If you wish to nominate an alternate Person/s (**Secondary Beneficiary** or **Secondary Beneficiaries**) to take if a person nominated at Table 1 (**Primary Beneficiary**) fails to survive you, then please do so by:

- Entering the full name of the Primary Beneficiary at Table 2 Column A.
- Entering the full name, address and relationship to you of the Secondary Beneficiary or Secondary Beneficiaries at Table 2 Column B.
- If there is only one Secondary Beneficiary for a Primary Beneficiary, then enter 100% in the corresponding Column C. If there are more than one Secondary Beneficiaries for a Primary Beneficiary, then ensure the total of the Secondary Beneficiaries provisions add up to 100%. *(Note: The interest divided here is only the interest which the Primary Beneficiary was entitled to as a consequence of the provision at Section Three.)*
- If there is only one Secondary Beneficiary for a Primary Beneficiary, then enter 100% in the corresponding Column C. If there are more than one Secondary Beneficiaries for a Primary Beneficiary, then ensure the total of the Secondary Beneficiaries provisions add to 100% if Tenants in Common. *(Note: The interest divided here is only the interest which the Primary Beneficiary was entitled to as a consequence of the provision at Section Three.)* If there is more than one Secondary Beneficiary and the interest is to make the benefit a joint Asset of them, then no percentage needs to be detailed.
- The below table allows three Secondary Beneficiaries entries beside each Primary Beneficiary. If there are more Secondary Beneficiaries nominated to any Primary Beneficiary, please note that you are expanding this Section Four, and use a separate sheet of paper attached to the Binding Death Benefit Nomination for such purpose. Each of your witnesses and you will need to sign the additional sheet of paper, to ensure its authenticity.
- Enter how you approve the benefit to be paid to the Secondary Beneficiary in Colum D. If you wish the benefit to be paid as a Pension, mark **(P)**. If you wish the benefit to be paid as a Lump Sum, mark **(LS)**. If you allow the Secondary Beneficiary to nominate his/her own preference, then mark **(SBP)**.

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>
Full name of Primary Beneficiary	Full name and addresses of Secondary Beneficiaries, and relationship to you	Joint Tenants ( <i>individual percentage not required</i> ), or Tenants in Common ( <i>include percentages of each individual Secondary Beneficiary</i> ).	As a Pension <b>(P)</b> , Lump Sum <b>(LS)</b> , or Secondary Beneficiary discretion <b>(SBD)</b> ?
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**DEATH BENEFIT NOMINATION FORM  
THE NORMAN O'REILLY SUPERANNUATION FUND**

**INSTRUCTIONS**

- In **Section One**, please complete your details.
- In **Section Two**, select the appropriate options at each of items (a) and (b). Please note that, if either or both of the items marked with an \* are selected, your execution of the Form is required to be witnessed at least ONE independent adult witnesses who is other than a Member of the Fund or a beneficiary nominated in this Form.
- In **Section Three**, please identify how you require your benefits to be paid in the event of your death. Eligible Primary Beneficiaries include the Legal Personal Representative of your deceased estate and/or your Dependants (e.g. Spouse, Children and/or a person who is financially dependent on you or in an Interdependency Relationship with you).
- In **Section Four**, please identify how you require your benefits to be paid in the event of your death. Eligible Secondary Beneficiaries include the Legal Personal Representative of your deceased estate and/or your Dependants (e.g. Spouse, Children and/or a person who is financially dependent on you or in an Interdependency Relationship with you).
- In **Section Five**, please read the statements contained and, if satisfied, complete your name, signature and the date. In the event you have selected at Section Two that the Nomination is either non-lapsing or binding (or both), please sign this document in the presence of at least **ONE** (1) independent adult witnesses who is other than a Member of the Fund, a Member's Relative, a Trustee of the Fund (including directors of a corporate trustee) and/or or a beneficiary nominated in this Form.
- Your witnesses will also need to complete **Section Six**.
- Once completed, forward the Form to the Trustee of the Fund.

*It is highly recommended that the Member submit to the Trustee an Alternate Decision-Maker Nomination at the same time as completing the Death Benefit Nomination Form.*

**SECTION ONE: ABOUT THE MEMBER**

Member Name:

**SECTION TWO: NOMINATION OPTIONS**

- (a) The Nomination made in this Form is:
- \*binding on the Trustee of the Fund; or
  - \*\*non-binding.

*\*\*In the event that you have selected non-binding at Section Two(a), this Nomination is not binding on your Alternate Decision-Maker when deciding how your Superannuation Interests should be paid. If you make a non-binding direction, your Alternate Decision-Maker will be vested with authority to select your nominated beneficiaries subject to the Governing Rules (see Parts 2, 9 and 10 of the Governing Rules).*

- (b) The Nomination made in this Form is also:
- \*non-lapsing; or
  - \*\*\*lapsing, and expires after:
    - a period of 3 (three) years
    - other: \_\_\_\_\_

*\*\*\*In the event that you have selected lapsing at Section Two(b), this Nomination will expire after the period indicated by you. Following expiration of the period indicated, you must make a new Nomination (failing which, no Nomination is recorded for consideration by the Trustee).*

**APPLICATION FOR MEMBERSHIP FORM  
THE NORMAN O'REILLY SUPERANNUATION FUND**

Member Name:			
Tax File Number:		Date of birth:	
Address:			

1. I apply for membership in the Fund.
2. I am not bankrupt, and I agree to act as a natural person trustee, or as a director of a corporate trustee, and in this capacity to act in accordance with the terms of the Governing Rules of the Fund, Special Rules of the Fund and the Superannuation Laws.
3. I have had the opportunity to read and consider the Governing Rules.
4. I have also had the opportunity to meet with legal, financial and accounting advisors, and am satisfied that membership in the Fund is appropriate to my circumstances and needs.
5. I understand that if I am accepted as a member, my membership may be subject to restrictions and/or classifications.
6. I understand that I may only contribute to the Fund if I am eligible under the Superannuation Laws to do so, and this includes any contributions made by other parties on my behalf.
7. I understand that membership in a SMSF carries with it risks, including but not limited to risks associated with disagreement with other members, liquidity and investment risk, and such other risks which follow the nature of a SMSF arrangement.
8. I acknowledge the Trustee is not and will not be liable for any loss suffered as a result of transactions being delayed or frozen.
9. I agree that, unless I provide notice to the Trustee in writing, I do not require any insurance to be held within the Fund in respect of me.
10. I undertake to provide any relevant information or documentary evidence to the Trustee and agree to submit to health and medical tests as and when requested by the Trustee.
11. I acknowledge the Trustee may collect my personal identification documents (as shown in Section Two) and Tax File Number (TFN), which will be treated as confidential in accordance with the *Privacy Act 1988 (Cth)* (Privacy Legislation) and will only be used for legal purposes (such as identifying and locating my Superannuation Interests, and calculating tax on any eligible termination payment I may be entitled to receive).
12. I agree to provide the Trustee with my TFN. I authorise the Trustee to provide my TFN to any other Superannuation Fund in which my Superannuation Interest may be transferred to and/or to the ATO.
13. I authorise the Trustee to retain and store information on my behalf despite any provision to the contrary in any Privacy Legislation.
14. I understand that if I become a bankrupt person or subject to a Mandatory Transfer Event, the Trustee may, but is not required unless the Superannuation Laws prescribed, Roll-over my Superannuation Interests to any other Eligible Entity. If I have made a Default Superannuation Fund Nomination, then the Trustee will have regard to such nominations. I also understand that the Trustee may not seek my consent in rolling over my Superannuation Interests in the event I am bankrupt or subject to a Mandatory Transfer Event.
15. I understand if I can make a Binding Death Benefit Nomination and/or SMSF Will, the nomination may not be effected if I have nominated a person who is not eligible to receive the benefit under the Superannuation Laws, if I have made direction in respect to an Asset of the Fund which is not quarantined to my Superannuation Interest and/or I make a direction which threatens the solvency and/or SMSF Complying status of the Fund.
16. I understand that it is best practice to disclose my Binding Death Benefit Nomination and/or SMSF Will to the Trustee and for the Trustee to obtain legal, financial and/or accounting advice to ascertain if the nomination is lawful. I understand that the Trustee has no obligation to obtain advice before receiving my Binding Death Benefit Nomination and/or SMSF Will, and it is therefore important that I obtain independent advice and consult with the Trustee.



- If the Event shown at Table 2(B) occurs, then I appoint the person(s) shown in Column 1 of Table 2(C) to act in accordance with the decision-making requirements shown in Column 3 of Table 2(C).
- If I strike through Table 2(B) and 2(C), I intend only to appoint the person(s) shown in Table 1(A).

<b>TABLE 2(A) PRIMARY NOMINATION</b>		
<b>Column 1 Alternate Decision- Maker/Director</b>	<b>Column 2 Address of Alternate Decision-Maker/Director</b>	<b>Column 3 Decision-Making Requirements</b>
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
<b>TABLE 2(B) TERMINATION EVENT</b>		
(Please explain under what circumstances the Nomination at Table 2(A) would fail.)		
<b>TABLE 2(C) ALTERNATE NOMINATION</b>		
<b>Column 1 Alternate Decision- Maker/Director</b>	<b>Column 2 Address of Alternate Decision-Maker/Director</b>	<b>Column 3 Decision-Making Requirements</b>
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other

I acknowledge that the above Nomination shown in Tables 2(A) and 2(C) grants to the Person(s) shown in the Tables, the power to make decisions in respect to the administration of the Fund, including the payment, investment, distribution and/or such other matters relevant to such of my Superannuation Interests held in the Fund if I die.

I confirm that I have also made a Last Will with the above Nominations as Executors of my deceased estate, and that the Trustee may request a copy of the Last Will to hold with this Nomination (although I may black through any parts which are not relevant to my Superannuation Interests or the appointment terms made in this Nomination and/or deliver the Last Will in a sealed envelope to a third party to hold in safe custody on terms allowing the Trustee to obtain access to the Last Will on my death).

I understand that if I change my Last Will, I must advise the Trustee, to ensure that my membership files are kept current.

I understand that the Alternate Decision-Maker has the powers given to them in my Last Will, and as shown above.

Member Signature:

**ALTERNATE DECISION-MAKER NOMINATION FORM  
THE NORMAN O'REILLY SUPERANNUATION FUND**

**INSTRUCTIONS**

In **Section Two**, you may nominate one or more persons to act as your Alternate Decision-Maker **during your lifetime**. Please read **Parts 2, 9 and 10** of the Governing Rules before completing this Section Two. The nominations in Section One should match your Enduring Power of Attorney. Whilst it is best to attach a copy of your Enduring Power of Attorney, this Form does not require you to do so.

You may nominate one or more persons to act together; however, please identify whether two or more persons act jointly (meaning all must agree) or by majority resolution (meaning the group of persons act jointly and resolve matters by a decision of the majority).

You may also wish to nominate one person or group of persons to act on a certain condition, but if the condition fails - then you nominate alternate persons. Please complete Table 1(A), 1(B) and (C).

In **Section Three**, you may nominate an Alternate Decision-Maker to act for you **upon your death**. This is a powerful position. This nomination should match any nomination you have made in your Will. As with Section Two, you can nominate one or more persons to act as your Alternate Decision-Maker upon your death.

Once completed, please return to the Trustee.

**SECTION ONE: ABOUT THE MEMBER**

Member Name:

In making this Alternate Decision-Maker Nomination, I, the above-named Member, confirm that I have read and considered the Instructions and have had the opportunity to obtain legal, financial and accounting advice before executing the Nomination.

**SECTION TWO: NOMINATION OF ALTERNATE DECISION-MAKER DURING THE MEMBER'S LIFETIME**

I make the following Nomination of Alternate Decision-Maker to act as my Legal Personal Representative, in accordance with Section 17A of the *Superannuation Industry (Supervision) Act 1993 (SISA)* and Parts 2, 9 and 10 of the Governing Rules of the Fund during my lifetime on the terms shown:

- I appoint the person(s) shown in Column 1 of Table 1(A) to act in accordance with the decision-making requirements shown in Column 3 of Table 1(A).
- If the Event shown at Table 1(B) occurs, then I appoint the person(s) shown in Column 1 of Table 1(C) to act in accordance with the decision-making requirements shown in Column 3 of Table 1(C).
- If I strike through Table 1(B) and 1(C), I intend only to appoint the person(s) shown in Table 1(A).

**TABLE 1(A)  
PRIMARY NOMINATION**

<b>Column 1 Alternate Decision-Maker/Director</b>	<b>Column 2 Address of Alternate Decision-Maker/Director</b>	<b>Column 3 Decision-Making Requirements</b>
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority Resolution/Other
		Solely/Jointly/By Majority



and/or Member Pension Interest Superannuation Interest. If there is no value ascribed, then the Value of the Member's Superannuation Interest at the time of the last audit of the Fund, plus any additions made to the Superannuation Interest, less any deductions to the Superannuation Interest up to the time of the determined Value of the Member's Superannuation Interest. However, where the Superannuation Laws require a specified valuation or provide a formula the Trustee is to apply that valuation or formula to the calculation of the value of a Member's Superannuation Interest.

**Written or Writing** includes a delivery of information by any reasonable means, and expressly includes a writing as defined under section 9 of the ETA, which expression is adopted as authority for the Member, Trustee, SMSF Advisers and parties dealing with the Fund to conduct matters by any reasonable means, including but not limited to electronic transactions and the storage of such records by any means available for electronic communications.

*Tax) Act 2007 (Cth)* any applicable Trustee Law, and any other regulation, law or direction prescribed by the Regulator, Commonwealth or State Governments dealing with rights and obligations in respect to the operation of a complying Superannuation Fund and the holding of a Superannuation Interest in a complying Superannuation Fund.

**Suspended Interest** is as defined at Rule 6.5(a).

**Tax Adjustment Payment** is where the Trustee declares that, as a consequence of the use by the Fund or a Superannuation Interest (**User**) of a tax benefit including, but not limited to a franking credit, foreign tax credit, capital loss, income tax loss (as those terms are commonly known) or any other tax benefit sourced from a particular Superannuation Interest (**Supplier**), the Trustee is of the opinion that the User of the tax benefit should make a Tax Adjustment Payment to the Supplier of the tax benefit for the period of the benefit.

**Tax-Free Component** is that part of a Superannuation Benefit that is a tax-free component as determined under the Superannuation Laws.

**Taxable Component** is that part of a Superannuation Benefit that is not a Tax-Free Component, and includes elements Taxed and untaxed.

**Taxes** include any impost assessed by a Government to the Trustee of the Fund.

**Temporary Incapacity** is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any condition that the Trustee determines to be Temporary Incapacity for the purpose of these Governing Rules and includes where a Member has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed) due to ill-health (whether physical or mental) which causes the Member to cease to be Gainfully Employed but does not extend to Permanent Incapacity.

**Temporary Incapacity Pension Interest** is a Pension Interest payable by the Trustee of the Fund under the Superannuation Laws for a Member that is Temporarily Incapacitated and includes a Pension Interest that:

- (a) cannot be commuted or turned into a Lump Sum Payment;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or may be indexed provided that the indexation component, during any 12 month period, does not exceed the greater of 5% (five percent) per annum or the Consumer Price Index for the previous 12 months.

**Terminal Medical Condition** includes where:

- (a) two registered medical practitioners have certified, jointly or separately, that the Person suffers from an illness, or has incurred an injury, that is likely to result in the death of the Member within a period (the certification period) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person; and
- (c) for each of the certificates, the certification period has not ended.

**Termination Notice** is as defined at Rule 15.2(b).



Superannuation Interests between Superannuation Fund allowed under the Superannuation Laws.

**RSE Licensee** is a Trustee or other party that has been issued a license by the Regulator of non-SMSFs under the Superannuation Laws.

**Segregation Powers** has the meaning read at Rule 12.8.

**Self-Insurance Reserve Account** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Reserve Account established by the Trustee under the Governing Rules to provide Superannuation Benefits for Members in the event of their Temporary Incapacity, Permanent Incapacity or for any other reason as well as the payment of Superannuation Benefits to a Member's Dependents or the Member's Legal Estate.

*Note: If the Fund did not have self-insurance implanted at 20 July 2014, the Fund cannot offer self-insurance unless the Superannuation Laws allow.*

**Self-Managed Superannuation Fund** and **SMSF** is a Superannuation Fund which meets all of the terms and conditions of a Self-Managed Superannuation Fund as the term is defined under the Superannuation Laws.

**Settlement Instruments** means the contract, agreement, deed and/or minutes which settle an arrangement, obligation or show the commitment of parties to a thing, matter or act.

**Severe Financial Hardship** is financial hardship that the Trustee is of the opinion is severe and includes conditions as described under the Superannuation Laws for Severe Financial Hardship.

**Signed or Signature** means the giving of a person's intention in respect to information communicated by any reasonable means, including a mark, wet mark or by electronic communication (including digital signature) as described in section 10 of the ETA.

**Single Acquirable Asset** has the meaning given in the Superannuation Laws.

**SISA** is the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

**SISR** is the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

**SMSF Adviser** is a Person who is recognised by a Professional association, educational institution or the Regulator as a specialist in providing advice to Trustees or other Professionals on the Superannuation Laws as they apply to a SMSF.

**SMSF Contractor** may be, but does not necessarily have to be, a Member of the Fund, and includes a Person who performs services for the Fund which are other than services in respect to acting as a Trustee or Director of a Corporate Trustee, and on arm's length and commercial terms.

**SMSF Living Will** see **Member SMSF Living Will**.

**SMSF Will** see **Member SMSF Will**.

**Special Member Disclosure** has the meaning shown at Rule 13.10.

**Special Membership Conditions** has the meaning shown at Rule 13.11.

**Special Rule** means:

- (a) a term or circumstance referred to in the Governing Rules (included in this Deed or in any further amendments or variations to the Governing Rules from time to time) as a Special Rule, which term or circumstance is

- (o) any other pension or Superannuation Income Stream under the Superannuation Laws (see generally SISR 1.06).

**Pension Reserve** includes a Reserve established by the Trustee for the following purposes:

- (a) to pay any Pension Interest or Pension liability of the Trustee of the Fund whether by way of a payment of an amount or Asset to a Member Pension Interest or directly to a Member with a Pension Interest, such payment in satisfaction in whole or part of the Trustee's Pension Interest liabilities in respect of that Member Pension Interest;
- (b) to be used to commence a new Pension Interest where a Pension Interest Superannuation Member has commuted a Pension Interest;
- (c) to pay a Death Benefit where a Member holding a Pension Interest has died; and/or
- (d) such other payments as the Superannuation Laws allow in respect of Pension Interests.

**Permanent Incapacity** is any condition that the Trustee determines amounts to Permanent Incapacity including in relation to a Member, ill-health (whether physical or mental) which the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Person** means any Natural Person, body corporate, Government entity or other legal structure or entity of any kind.

**Personal Transfer Balance Cap** has the meaning given in the Superannuation Laws.

**Preservation Age** has the meaning given in the Superannuation Laws.

**Preservation Status** has the meaning given in the Superannuation Laws in respect to a Member Superannuation Interest, or part thereof.

**Professional** includes a Person authorised and if required licensed under the Superannuation Laws to provide advice, audit services, administration services or any other services to the Trustee of a SMSF, including a lawyer, accountant, financial planner or a SMSF Professional.

**Quarantined Part** means that part of a Member's Superannuation Interest which cannot be paid in a direction given in a Member's SMSF Will, Binding Death Benefit Nomination, Pension Interest Agreement and/or which has no binding payment direction by the Member in respect thereof.

**Regular Release Authority** is a notice howsoever given by the Regulator requiring a payment of a Member Superannuation Interest, or part thereof, including but not limited to an **Excess Contributions Tax Release Authority**.

**Regulated Superannuation Fund** is a Superannuation Fund, including a SMSF which has elected to become a Regulated Superannuation Fund under the Superannuation Laws.

**Regulator** is the Commissioner of Taxation, APRA, the Australian Securities Investment Commission or any other Governmental body that has jurisdiction for regulating the Superannuation Laws as it applies to circumstances of the Fund.

**Related Party** or **Related Parties** means a Person defined as a Related Party



witnessed by at least ONE Natural Person who is not a Member, Member's Relative, Trustee (including Director of a Corporate Trustee) or Beneficiary nominated in the SMSF Will.

**Member Special Resolution** means a vote cast in favour by not less than 75% (seventy five percent) of the Member votes available to be cast in a Member Meeting.

**Member's Beneficiary** includes a Person nominated in a Member's SMSF Will, Binding Death Benefit Nomination, Non-Binding Death Benefit Nomination, Pension Interest Agreements, Member's Dependants and Member's Legal Estate. A Member's Beneficiary must also qualify as an Eligible Income Beneficiary and/or Eligible Lump Sum Beneficiary to receive the benefit of a nomination of the Member's Superannuation Interest, notwithstanding being named as a Member's Beneficiary.

**Member's Dependant** means an Eligible Income Beneficiary and/or Eligible Lump Sum Beneficiary (as applicable).

**Membership Warranties** has the meaning read at Rule 13.13.

**Mentally Incapacitated** means a state of mental health whereby a Member lacks sufficient mental capacity to understand the nature and effect of the Member's decisions in respect to a matter.

**Mentally Incapacitated Member** means a Member who is suffering a legal incapacity by virtue of age, a state of mental health whereby a Member lacks sufficient mental capacity to understand the nature and effect of the Member's decisions in respect to a matter or bankruptcy.

**Minor Member** means a Member who is a Natural Person of less than 18 (eighteen) years of age.

**Natural Person** means a human being.

**Nominated Beneficiary** is as defined at Rule 37.4.

**Nomination** includes Nomination made under a Binding Death Benefit Nomination, SMSF Will, Pension Interest Agreement, or otherwise in respect to the payment of a Member's Superannuation Interests.

**Nomination of Default Superannuation Fund** is a written nomination by a Member of an Eligible Entity to which the Member's Superannuation Interests may be transferred by the Trustee on the happening of a Mandatory Transfer Event happening in respect to Member.

**Non-Binding Death Benefit Nomination** is a Nomination made by a Member in relation to the distribution of the Member's Superannuation Interests in the event of Member's death, other than a Nomination made in a Binding Death Benefit Nomination or SMSF Will.

**Non-Concessional Contributions** are those Contributions defined as Non-Concessional Contributions in the Superannuation Laws.

**Non-Contributing Member** is a Member of the Fund who is other than a Contributing Member.

**Non-Lapsing Binding Death Benefit Nomination** is a Binding Death Benefit Nomination which does not have a lapsing event, and continues until revoked by the Member and is subject to the Conditions of Release of Benefits and Payment Standards of the Superannuation Laws.

**Notice of Payment Direction** is a written direction made by a party in respect to the payment of a Member's Superannuation Interest, whether during the

event that a Member lacks legal capacity or dies. Where reference is to a Member's Legal Estate, then the reference is to the Legal Personal Representative of the Member's Legal Estate howsoever constituted.

**Legal Personal Representative** means:

- (a) the Person, Persons, or any combination thereof, appointed as Executor of a Member's Legal Estate;
- (b) the Person, Persons, or any combination thereof, appointed as Administrator of a Member's Legal Estate;
- (c) the Person, Persons, or any combination thereof, appointed as Attorney (under a duly executed General Power of Attorney, made in accordance with the laws of the State of residence of the Member at the date of making) for a mentally competent Member;
- (d) the Person, Persons, or any combination thereof, appointed as Attorney (under a duly executed EPOA, made in accordance with the laws of the State of residence of the Member at the date of making) for a Mentally Incapacitated Member;
- (e) the Person, Persons, or any combination thereof, appointed as administrator of a Member by a Court having jurisdiction over the matter, for a Mentally Incapacitated Member;
- (f) the Person, Persons, or any combination thereof, appointed as Legal Personal Representative by or for a Member, whether as a consequence of a Nomination in a testamentary instrument or by order of a Court having jurisdiction over the matter for a Deceased Member; and
- (g) such Person, Persons, or any combination thereof, the Superannuation Laws prescribe to be a Member's Alternate Decision-Maker and includes, for purposes of Governing Rules 4, 5 and 6, the Person or Persons nominated in an Alternate Decision-Maker Nomination.

*Note: An Alternate Decision-Maker Nomination does not invalidate an EPOA, order of a Court or appointment in a Last Will of a Legal Personal Representative. An Alternate Decision-Maker Nomination is an instrument which can be used by the Fund to ensure transparency and limit legal disputes over the appointment of Person or Persons acting in substitution for a Member. In effect, the Alternate Decision-Maker Nomination is a system which allows the Members to record their Nominations of Legal Personal Representative in the Fund records.*

**Legal Personal Representative of the Member's Estate** see Legal Personal Representative.

**Limited Power of Attorney** means the powers read in the Governing Rules for one or more Persons to act for another Person, and does not have the scope of a General Power of Attorney or EPOA.

**LRBA** means a limited recourse borrowing arrangement as defined in the Superannuation Laws.

**Lump Sum Payment** means a payment made in Cash, Benefit-In-Kind and/or Benefit-in-Specie, whether or not paid to a Member, Member's Legal Estate or otherwise from a Member's Superannuation Interests, including but not limited to a payment following the commutation of a Pension Interest.

**Mandatory Transfer Event** means any one or more of the following:

- (a) a Member becoming a bankrupt person;
- (b) a Member committing fraud in his/her capacity as Trustee or Director of a corporate Trustee;



may be applicable for the purposes: *Electronic Transactions Act 2000 (NSW)*, *Electronic Transactions (Victoria) Act 2000 (VIC)*, *Electronic Transactions (Queensland) Act 2001 (QLD)*, *Electronic Transactions Act 2000 (SA)*, *Electronic Transactions Act 2011 (WA)*, *Electronic Transactions Act 2000 (TAS)*, *Electronic Transactions Act 2001 (ACT)* and *Electronic Transactions (Northern Territory) Act (NT)*.

**Excess Contribution** has the meaning given in the Superannuation Laws.

**Excess Contributions Tax** includes an amount assessed by the Regulator for a period as being excessive in terms of Non-Concessional Contributions and/or Concessional Contributions in relation to a Member under the Superannuation Laws.

**Excess Contributions Tax Release Authority** is an authority issued by the Regulator under the Superannuation Laws for the payment of Excess Concessional Contributions Tax and/or Excess Non-Concessional Contributions Tax.

**Excess Transfer Balance Tax** has the meaning given in the Superannuation Laws.

**Excluded Person** means a Person, Persons or classification of Persons excluded from being considered to receive a Member's Superannuation Benefits, as determined in accordance with the Governing Rules.

**Family Law Payment Splitting Notice** is a notice issued to the Trustee of the Fund under the Superannuation Laws requiring the Trustee to split a Member's Superannuation Interest with the Member's Spouse or ex-Spouse.

**Foreign Superannuation Fund** means a Superannuation Fund that is not an Australian Superannuation Fund.

**Fund** means this Fund established and maintained as a Complying SMSF, which Fund may be settled by deed or other instrument having the effect of a deed, and includes a trust, fund, scheme or such other arrangement as allowed under the Superannuation Laws. Notwithstanding, the Trustee may resolve to change the Fund to a Small APRA Fund, in accordance with the Governing Rules.

**Fund Assets** means all money and Assets, Contributions (including Contributions-In-Kind and Contributions-In-Specie), net Earnings and such other accumulations and accretions as the Superannuation Laws allow to be held by a Complying Superannuation Fund.

**Further Payment Direction** is as defined at Rule 29.3(k).

**Gainfully Employed** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**General Expenses** include expenses incurred by the Trustee of the Fund in relation to the day-to-day operations of the Fund, as well as those expenses the Trustee declares are General Expenses.

**Governing Rules** include the Governing Rules herein and include any addition, variation, change or amendment provided the addition, variation, change or amendment meets the relevant Rule requirements, and includes a Special Rule. Governing Rules also include any written or unwritten rules applied by the Trustee of the Fund in relation to the operation and management of the Fund.

**Government** includes the Australian Federal Government, the various State and Territory Governments of the States and Territories of Australia, Local Councils and any other legally convened Government, including, but not limited

**Contributions Reserve** includes a Reserve Account in which unvested Contributions are made on behalf of a Member or a specific group of Members. Any allocation to a Contributions Reserve is required to be allocated to a Member within 28 (twenty-eight) days after the month in which the contribution is placed into the Contributions Reserve.

**Contributions Splitting Notice** is a Notice provided to the Trustee by a Member requesting an amount to be allocated, Rolled-over and/or transferred as a Transfer Superannuation Interest to a Member's Spouse from the Member's Superannuation Interests.

**Contributor** includes a Member, Member's Associates, Member's Employer and/or any other Person who makes a Contribution for or on behalf of a Member, Member's Spouse and/or Member's Dependants to the Fund, provided the terms are compliant with the Superannuation Laws.

**Corporate Trustee** is any Trustee of the Fund which is a constitutional corporation, including a Company constituted for the purposes of acting as a Trustee of a SMSF under the Superannuation Laws.

**Court** includes any properly constituted Court, tribunal or jurisdictional forum situated in Australia whether at a Federal or State level including both criminal and civil Courts, tribunals and administrative forums vested with authority to decide a matter.

**CPIA** means the Conditional Pension Interest Agreement, SMSF Will and/or Binding Death Benefit Nomination in which a Member settles an arrangement which prescribes the reversion of the Member's Pension Interest upon an event described by the Member to one or more Reversionary Beneficiaries on conditions and terms prescribed therein.

**Custodian** includes a Person or Persons which holds an Asset or Cash on behalf of the Trustee as Bare Trustee (*see also Bare Trust*).

**Death Benefit** includes a payment, including a Benefit-in-Specie, Benefit-in-Kind and/or distribution of Cash of a Member's Superannuation Interest, and may be as a consequence of a term of a SMSF Will, Binding Death Benefit Nomination, Deceased Member's Alternate Decision-Maker discretion, Pension Interest Agreement and/or or any other mechanism permitted by the Superannuation Laws. A valid reversion in respect to a Pension Interest Agreement is not a Death Benefit.

**Death Benefit Rule** is a Special Rule of the Fund settled by a Member in respect to the payment of the Member's Superannuation Interest as a Death Benefit on terms contained in a Binding Death Benefit Nomination and/or SMSF Will. The Death Benefit Rule may only be revoked on terms contained therein and shall not be invalidated or revoked by an updating of the Governing Rules by auto-upgrade or subsequent instrument updating the Governing Rules except if separately resolved and recorded in writing by Trustee and relevant Member.

**Default Nominated Fund** has the meaning given at Rule 15.2(c)(i), and includes any Eligible Entity which a Member may nominate for the purposes shown in such Rule.

**Delivery or delivered** includes any reasonable means of providing communication by parties on a matter, and includes, but is not limited to the provision of email (including attachments) direction, hand delivery, delivery to an address of a party, and dispatch as authorised under Division 3 of the *Electronic Transactions Act 1999 (Cth) (ETA)*.



Pension Interest (**Original Beneficiary**), upon the death of the Original Beneficiary. The Auto-Reversionary Interest is subject to the Conditions of Release of Benefits and Payment Standards of the Superannuation Laws.

**Auto-Reversionary Pension Interest Agreement** has the same meaning as ARPIA.

**Bare Trust** means a trust established by the Trustee or some other party which holds an Asset on Bare Trust for the Trustee of the Fund. The trustee of the Bare Trust is to hold any Asset of the Fund for the absolute entitlement of the Trustee of the Fund. A Bare Trust are most often used, but are not limited to, limited recourse lending arrangements made pursuant to sections 67, 67A and 67B of SISA. A Bare Trust is also known as a Holding Trust.

**Benefit** means an amount of Cash, Benefit-in-Kind, and Benefit-in-Specie made in satisfaction of a Payment Direction, Trustee resolution or as a consequence of a Payment Direction or determination of the Trustee, in respect to a Member's Superannuation Interests

**Benefit-in-Kind** means a deemed benefit (other than a Benefit-in-Specie and/or payment of Cash) provided to or on behalf of a Member, Member's Dependant(s), or Member's Legal Estate.

**Benefit-in-Specie** means a transfer, in whole or in part, of an Asset of the Fund (other than a Benefit-in-Kind and/or payment of Cash) paid to a Member, Member's Dependant(s), Member's Legal Estate or otherwise as a consequence of a Payment Direction or determination of the Trustee, in respect to a Member's Superannuation Interests.

**Binding Death Benefit Nomination** means a set of instructions made by a Member in respect to the payment of the Member's Superannuation Interests upon the Member's death which are intended to bind the Trustee and Member's Alternate Decision-Maker in the payment of the Member's Superannuation Interests on death. The Nomination may be lapsing or non-lapsing. The Nomination must be signed by at least ONE Natural Person who is not a Member, Member's Relative, Trustee (including a Director of a Corporate Trustee) or a Beneficiary nominated in the Binding Death Benefit Nomination. Refer also to Rules 32.1 and 39.

**Calling Member** is as defined at Clause 14.1.

**Calling Trustee** is as defined at Clause 4.4(a).

**Cash** includes any currency, cheque, promissory note and any amount held by the Trustee in a bank account, cash management trust, deposit account or similar account where Cash may be held on deposit for the Trustee, and includes foreign currency and digital currency (for example, BitCoin).

**CGT Contributions Cap** is the limit prescribed by the Superannuation Laws which a Member of a Superannuation Fund may contribute as a CGT relief transfer amount.

**Child** in relation to a Person, includes an adopted Child, a step-Child or an ex-nuptial Child of the Person or any other Person as defined under the Superannuation Laws, except that a Member may, by way of his/her SMSF Will, Binding Death Benefit Nomination or Pension Interest Agreements, vary the definition in respect to the payment of his/her Superannuation Interests.

**Child Pension Interest** has the meaning given in the Superannuation Laws.

- 47.3 If one or more Governing Rules or terms shown in the Deed are deemed unlawful, then the relevant Governing Rules or terms shall be deemed to be severed, with the balance of the Deed continued on its terms.
- 47.4 If a capitalised term is not specifically defined in the Definitions section of the Deed, then the capitalised term has the meaning given in the Superannuation Laws.
- 47.5 If a term shown in the Deed is not capitalised, the term is to be interpreted in accordance with its ordinary meaning, and where relevant, by the meaning given in the Superannuation Laws.

## Part Fifteen – Definitions and Interpretation

### 48. Definitions

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- 48.1 If a word is capitalised in the Governing Rules but not shown in Rule 48, the word shall be read in accordance with the definition prescribed under the Superannuation Laws.
- 48.2 Words shown in italics (other than legislative references) are not to be deemed as Rules. Words shown in italics, including boxed content, are for commentary or illustrative purposes only.
- 48.3 The following Definitions shall apply in the interpretation of the terms of the Deed:

**Accounts** means those Accounts, including trust Accounts established by the Trustee for the Fund, a Member's Superannuation Interest or Interests, a group of Members' Superannuation Interests, a Reserve Account and any other account of the Fund.

**Accounts Based Pension** means a Pension Interest which is subject to SISR 1.03(1), 1.06(1), 1.06(9A) and 1.06(9B), and which cannot be transferred to any other Person except a Reversionary Beneficiary, the capital and income are not available for borrowing purposes (including offered as collateral for a borrowing arrangement, hedging or other finance term), the capital cannot be increased by way of Roll-over or Contributions (following commencement), and minimum payments (in terms of amount and frequency) must be made annually in accordance with the Superannuation Laws.

**Accumulation Interest** means is that part of a Member's Superannuation Interest which is not a Pension Interest, or supporting a Pension Interest.

**Actuary** has the meaning given in the Superannuation Laws, and includes a practising member of the Institute of Actuaries of Australia.

**Administrative Powers** has the meaning read at Rule 12.6.

**Allocated Pension** has the meaning given in the Superannuation Laws.

**Alternate Decision-Maker** means a Person or Persons nominated to act as the Legal Personal Representative of a Member in accordance with Rule 6.

**Alternate Decision-Maker Nomination** has the meaning given in Rule 6, and includes the approved form shown at **Annexure A**.

**Anti-Detriment Payments** are payments made by the Trustee, whether from Reserve, Earnings of the Fund or life insurance proceeds for the purpose of ensuring that the Dependants or Legal Estate of the Deceased Member are put in the same financial position in terms of Death Benefits that they would have



- (a) **Annual upgrade with Signature:** The Trustee may receive, from a subscription service offered by the relevant SMSF Advisers to the Trustee, an instrument having the effect of a variation of the Fund's Governing Rules, which instrument the Trustee may execute by analogue or electronic signature, and copy to the Members at such reasonable time thereafter, the effect of which is that the Governing Rules are thereafter varied on the date of execution by the Trustee;
  - (b) **Auto-upgrade:** The Trustee may apply for a subscription service through a relevant SMSF Adviser, which publishes varied Governing Rules in any reasonable manner considered by the Trustee, provided that the Trustee ensures the Members have access to the Governing Rules; and/or
  - (c) **Upgrade by alternative means:** The Trustee may undertake with its SMSF Adviser such other reasonable mechanism for complying with its legal obligations to maintain the Governing Rules at a standard required by the Superannuation Laws, provided such mechanism is resolved by the Members (with the resolution applicable for a fixed number of years, or indefinitely for the term of the Fund).
- 42.3 Notwithstanding Rule 42.2, and the adoption of any auto-upgrade or variation protocol, the terms and conditions shown at Rule 42.1 are imposed as an irrevocable burden on such protocol.

#### **43. Changing the Fund's Name**

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- 43.1 The Trustee may at any time change the Fund's name provided the Regulator is informed, if required, under the Superannuation Laws.
- 43.2 Any change in Fund name may be made by the Trustee by way Trustee Ordinary Resolution.

### **Part Fourteen – Delivery, Electronic Transactions Authority, Effective Date and Execution**

#### **44. Notice**

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- 44.1 Any notice of communication to or by a party:
  - (a) may be given by personal service, post, facsimile or email;
  - (b) must be in writing (including in a manner shown in the ETA), legible and in English addressed to the parties;
  - (c) in the case of a corporation, must be signed by an officer or under the common seal of the corporation;
  - (d) is deemed to be given by the sender and received by the addressee:
    - (i) if delivered in person, when delivered to the address;
    - (ii) if posted, 2 (two) business days (or 6 (six) business days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not;
    - (iii) if sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this Rule; or

- 40.3 The Trustee must have regard to the Superannuation Laws as to which Account, Earnings, Reserve Account or Superannuation Interest, tax is deducted from, whether in whole or part.
- 40.4 Where the Trustee receives an Excess Contributions Tax Release Authority on behalf of a Member, the Trustee is to give effect to the conditions, requirements and terms of the Excess Contributions Tax Release Authority. This must be in the time specified and simultaneously ensure that any other Trustee compliance or other requirements for a Complying SMSF in respect of the Excess Contributions Tax Release Authority are met in accordance with the Superannuation Laws.
- 40.5 Subject to the Superannuation Laws, the Trustee may receive tax refunds and has the sole discretion as to which Superannuation Interest or Reserve Account to add any tax refund irrespective of the source of the tax refund.
- 40.6 Subject to the Superannuation Laws, the Trustee may make a Tax Adjustment Payment deduction to a Superannuation Interest where the Trustee is of the opinion that a Superannuation Interest has benefited from the use of a tax benefit sourced from another Superannuation Interest; however, it is not mandatory for the Trustee to do so.

## **Part Twelve – Winding Up**

### **41. Winding up the Fund**

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- 41.1 The Trustee shall wind up the Fund in the following circumstances:
- (a) on the death of the last remaining Member, and the Alternate Decision-Maker or the Corporate Trustee determines that the Fund is to be wound up;
  - (b) the Regulator or any other Person or body authorised to wind up the Fund, orders that the Fund is to be wound up;
  - (c) the Superannuation Laws are amended such that the Fund can no longer remain a Complying SMSF and the Members agree to wind up the Fund;
  - (d) the Trustee resolves the Fund is to be wound up by Trustee Special Resolution; and/or
  - (e) the Members resolve that the Fund is to be wound up by Member Special Resolution.
- 41.2 Where the last surviving Member dies, the Member's Alternate Decision-Maker must, prior to making any Death Benefit payments on behalf of the Deceased Member, distribute any surplus Assets or monies in Fund Reserve Accounts.
- 41.3 The Trustee in winding up the Fund shall pay any Taxes, General Expenses, Specific Expenses, Superannuation Benefits and any other amounts or disbursements to ensure that the Fund has no outstanding liabilities prior to paying out any distribution under Rule 41.4.
- 41.4 Following the payment of all amounts under Rule 41.3, to the extent of any remaining Assets, Cash and/or Reserve Accounts, the Trustee may distribute such Assets, Cash and/or Reserve Accounts, subject to the Superannuation Laws, to:
- (a) Members and former Members of the Fund;
  - (b) Relatives of any Member or former Member;



Death Benefit (or part thereof) shall revert to another Person (Secondary Beneficiary) or the Legal Personal Representative of the Member's Estate in the event of the Primary Beneficiary's death, incapacity or the happening of a particular event or condition;

- (e) the terms and conditions upon which a Person (Primary Beneficiary) is to receive a Death Benefit from the Member's Superannuation Interests in the form of a Pension Interest, including but not limited to whether the Death Benefit (or part thereof) shall revert to another Person (Secondary Beneficiary) or the Legal Personal Representative of the Member's Estate in the event of the Primary Beneficiary's death, incapacity or the happening of a particular event or condition (*although for a Conditional Pension Interest to be binding in respect to the conditions aspect, the Trustee's written consent must be obtained before the death of the Member*);

*Warning: Conditions imposed on reversionary benefits and/or attempts to cascade the payment of Death Benefits from one beneficiary to another should only be settled with the advice of a SMSF Specialist Lawyer. Such conditional and cascading provisions are untested in the Superannuation Laws, and may not be binding.*

- (f) the terms and conditions regarding the payment of any Reserve Benefit to the Member's Dependants, Legal Personal Representative of the Member's Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws;

*Warning: Any such term or condition may only be expressed as a wish, inasmuch as the intent is to bind the Trustee to allocate Reserves to a Member's Death Benefits upon his/her death.*

- (g) the terms and conditions regarding the payment of any insurance proceeds payable on the life of the Member including a payment to an Anti-Detriment Reserve, the Deceased Member's Dependants, Legal Personal Representative of the Member's Legal Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws;

*Warning: The Superannuation Laws prohibit Anti-Detriment Payments from 1 July 2017.*

- (h) the terms and conditions of appointment of an Alternate Decision-Maker(s) to act in the place of the Member in the event of the Member's death or Mental Incapacity;

*Note: The Member is also directed to consider Section 17(A) of the SISA, and Governing Rules 4 and 5.*

- (i) such further matters determined relevant in the provision of a SMSF Estate Plan for the Member's Superannuation Interests, obligations and rights in the Fund; and
- (j) for clarity, where a reference is to a singular Person in this Rule, the reference may be read to Persons, and the terms may include multiple cascades and alternatives.

39.4 Rule 40 is to be read with Rule 30.

39.5 The Trustee must accept a Member's SMSF Will and/or Binding Death Benefit Nomination, and:

- (a) the Trustee shall be under no obligation to interpret or determine if a Member's SMSF Will and/or Binding Death Benefit Nomination nominates one or more Persons ineligible to receive Death Benefits under the

of the Fund, it is incumbent upon the Member who wishes to impose this burden, to seek the Trustee consent (which is in effect the consent of the membership) to such terms).

- 37.3 If a Pension Interest is established in accordance with Clause 37.2(c), the Member may include the terms prescribed in Rule 35.3. Notwithstanding, the terms shall only be binding on the Fund with the Trustee's written consent prior to the Member's death, which may be shown by any means reasonable in the circumstances. If the Member obtains Trustee consent, then the Member and Trustee will be deemed to have entered into a Conditional Pension Interest Agreement and the terms of Rule 36 shall apply.
- 37.4 If the Pension Interest Agreement (as settled between the Member and Trustee at settlement) nominates a Beneficiary (**Nominated Beneficiary**) on the death of the Member, then the Trustee shall have regard to such terms, and adopt the terms shown at Rule 35, excepting that a reference to:
- (a) Auto-Reversionary Event shall be read as the Member's death;
  - (b) Auto-Reversionary Pension Interest shall be read as Pension Interest;
  - (c) Auto-Reversionary Pension Interest Agreement shall be read as Pension Interest Agreement; and
  - (d) Reversionary Beneficiary shall be read as Nominated Beneficiary.

#### **Part Ten – Alternate Decision-Making and Estate Planning**

#### **38. Lifetime Planning – the Member SMSF Living Will**

- 38.1 A Member may make a SMSF Living Will to:
- (a) provide directions in respect to payments for:
    - (i) the Member's aged care expenses;
    - (ii) the Member's carers and other medical expenses;
    - (iii) the Member's Dependants;
    - (iv) the Member's ongoing financial liabilities (such as mortgages and other outgoings associated with the Member's personal Assets which do not form part of his/her Superannuation Interests); and
    - (v) any other amounts which the Member considers necessary to specifically require payment from the Member's Superannuation Interests (including allocations from any Reserve Accounts of the Fund).
  - (b) provide the Member's wishes in respect to the application of the Reserve Accounts of the Fund (if any); and
- Note: Such a wish would not have binding effect on Trustee.*
- (c) address any other special terms which the Member wishes to address in respect to his/her Superannuation Interests, the rights and obligations of a Corporate Trustee to act upon the Member becoming Mentally Incapacitated, and continuing until the Member is no longer Mentally Incapacitated.
- 38.2 A SMSF Living Will must be signed by the Member, and witnessed and signed by at least one Natural Persons who is not a Member, or a Member's Relative.



- (d) provided the Reversionary Beneficiary qualifies as an Eligible Pension Beneficiary, the Trustee shall comply with the terms of the Auto-Reversionary Pension Interest Agreement and the Notice of Payment Direction of the Reversionary Beneficiary, subject to the rights, discretions and obligations of the Trustee as otherwise shown in the Governing Rules;
- (e) if the Reversionary Beneficiary does not qualify as an Eligible Pension Beneficiary for the Auto-Reversionary Pension Interest on the happening of the Auto-Reversionary Event, then the Auto-Reversionary Pension Interest, or so much of it as was directed to be allocated on behalf of the Reversionary Beneficiary shall be paid as one or more Lump Sum Payments to the Reversionary Beneficiary provided the Reversionary Beneficiary qualifies as an Eligible Lump Sum Beneficiary, unless the Auto-Reversionary Pension Interest Agreement prescribes otherwise;
- (f) if a Reversionary Beneficiary refuses to take the Auto-Reversionary Pension Interest (whether as a Pension Interest or Lump Sum Payment, as the case may be) or the Reversionary Beneficiary is an Ineligible Lump Sum Beneficiary, and there is no alternate direction prescribed in the Auto-Reversionary Pension Interest Agreement then, in such circumstances, the Auto-Reversionary Pension Interest (or so much of it as has not been dealt with - the **Quarantined Part**), shall be dealt with as a Death Benefit in accordance with Rule 30.2; and
- (g) a reference to a Reversionary Beneficiary is also to a Successor Reversionary Beneficiary, where the term would otherwise apply in the circumstances.

### **36. Protocol for settling and administering a Conditional Pension Interest**

- 36.1 A Conditional Pension Interest is a type of Pension Interest shown on the terms of a Conditional Pension Interest Agreement, which prescribes that upon the happening of an event (**Conditional Pension Triggering Event**), the Conditional Pension Interest is settled to the benefit of one or more Person or Persons nominated therein as Conditional Pension Interest Beneficiaries and/or Successor Conditional Pension Interest Beneficiaries.
- 36.2 A Conditional Pension Interest Agreement may be established as a consequence of a SMSF Will and/or Binding Death Benefit Nomination of a Member. (See Rule 37.)
- 36.3 The difference between an Auto-Reversionary Pension Interest and a Conditional Pension Interest is that the Conditional Pension Interest may be settled at a future date, whereas an Auto-Reversionary Pension Interest is settled at the date of the Auto-Reversionary Pension Interest Agreement, or as soon as reasonably possible thereafter.
- 36.4 The terms of Rule 35 are adopted in Rule 36, excepting that a reference to:
  - (a) Auto-Reversionary Event shall be read as the Conditional Pension Triggering Event;
  - (b) Auto-Reversionary Pension Interest shall be read as Conditional Pension Interest;
  - (c) Auto-Reversionary Pension Interest Agreement shall be read as Conditional Pension Interest Agreement; and
  - (d) Reversionary Beneficiary shall be read as Conditional Pension Interest Beneficiary.

- (a) special commutation and/or payment terms in respect to the portability and/or treatment of the Auto-Reversionary Pension Interest on and after the death of the Originating Member;
- (b) special terms allowing for the Reversionary term to be varied or struck in circumstances prescribed therein, or at other times by the Member (even if not incorporated in the terms);
- (c) cascading provisions from a Reversionary Beneficiary, to a successor Reversionary Beneficiary (**Successor Reversionary Beneficiary**), if the Reversionary Beneficiary does not survive the Originating Member, to take on and following the death of a Reversionary Beneficiary, to take in substitution for the Reversionary Beneficiary if the Reversionary Beneficiary does not satisfy a condition contained therein, and such other terms as may be agreed between the Originating Member and Trustee;
- (d) allowance for the Auto-Reversionary Pension Interest to be a non-reversionary Pension Interest, without commuting or rolling back the Pension Interest, and such other changes in respect to the Pension Interest as the Originating Member and Trustee agree;
- (e) minimum and maximum payment rates during the lifetime of the Originating Member and/or during the lifetime of a Reversionary Beneficiary and/or Successor Reversionary Beneficiary;
- (f) allowance for multiple Reversionary Beneficiaries and/or Successor Reversionary Beneficiaries, with separate and unique terms in respect to the payment and eligibility criteria of each;
- (g) incorporation of appointment of a Guardian, to which the Trustee, Reversionary Beneficiaries and/or Successor Reversionary Beneficiaries are obligated or directed to consult on the terms shown therein;
- (h) prescription for the segregation and/or acquisition of certain Fund Assets to quarantine to the benefit and burden of one or more parts of the Auto-Reversionary Pension Interest of one or more Reversionary Beneficiary and/or Successor Reversionary Beneficiary; and/or
- (i) such other terms as agreed between the Member and Trustee, provided that:
  - (i) the Trustee (including any Trustee acting at a future point of time) shall be at liberty to apply the discretions and processes prescribed in the Governing Rules in respect to the determination of Earnings, allocation of Earnings, dealings with Reserve Accounts and other Fund Accounts, and otherwise reserving the right of the Trustee to Roll-over an Originating Member's, Reversionary Beneficiary's and/or Successor Reversionary Beneficiary's Superannuation Interests in the Fund to any other Eligible Roll-over Fund on the terms of the Governing Rules; and
  - (ii) the Trustee's costs in taking advice and dealing with the Auto-Reversionary Pension Interest Agreement may, at the Trustee's discretion, be charged to the Auto-Reversionary Pension Interest (including any part thereof where there is more than one Reversionary Beneficiary and/or Successor Reversionary Beneficiary, including but not limited to the expenses associated with delegation of the administrative, recordkeeping, communication and management responsibilities associated therewith).