SMSF TRUST DEED VARIATION

THE ANN ELLIOTT SUPER FUND

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SMSF Strategies

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DEED OF VARIATION OF THE ANN ELLIOTT SUPER FUND

THIS DEED IS DATED: 30th JUNE 2013

PARTIES:

1. **TRUSTEE OF THE FUND:** ANN MAREE ELLIOTT, KENNETH EDWARD TATAM of 8 MOLINE COURT, CHURCHLANDS, WA, 6018 ("**the Trustee**").

RECITALS:

a) ANN MAREE ELLIOTT and KENNETH EDWARD TATAM acts as Trustee of THE ANN ELLIOTT SUPER FUND ("**the Fund**").

b) ANN MAREE ELLIOTT and KENNETH EDWARD TATAM are the Members of the Fund **("the Members")**.

c) The Fund was established by deed dated 21 June 2010 ("**the Deed**") .

d) **Rule 6.14** of the Rules of the Fund allows the Trustees to vary the Deed so long as no amendment will reduce a Member's Benefit (as defined in those Rules). The purpose of the amendment is to enable the Trustees and the Members to take advantage of the Simpler Super reforms by adopting the SMSF Strategies governing rules as the governing rules of the fund.

PROVISIONS:

1. **Replacement of Rules:** The existing rules of the Fund are replaced in their entirety with the New Rules as marked "**Annexure A**" to this Deed pursuant to **Rule 6.14** of the Funds governing rules.

2. **No Resettlement at Law:** Any amendment to the Rules of the Fund effected by this Deed does not result in a resettlement of the Fund at law, equity or under any Superannuation Law.

EXECUTED AS A DEED BY:

The Trustees

ANN MAREE ELLIOTT, KENNETH EDWARD TATAM of 8 MOLINE COURT, CHURCHLANDS, WA, 6018:

ANN MAREE ELLIOTT
Trustee

KENNETH EDWARD TATAM
Trustee

TRAVIS TATAM

Name of Witness

Witness Signature

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THE SMSF STRATEGIES GOVERNING RULES

Part One – Rules to Establish the Fund

Rule 1 – Things to know about these Rules and the Fund

1.1 The **"SMSF Strategy Guide"** in the Explanatory Memorandum to the Rules of the Fund are designed for information purposes only and is not to be construed as forming part of the Rules of the Fund. If in any dispute, misunderstanding or action regarding the Rules, the Trustee, Court, the Regulator or any other person may have regard to the **"SMSF Strategy Guide"** or any part of the Explanatory Memorandum to determine the Rule's ordinary meaning.

1.2 Where singular is used in the Rules it is to also mean plural and if a gender is used it is also to mean the opposite gender.

1.3 A reference to any entity, body, company or person also includes a reference to those persons or entities that have authority to act on behalf of the party including their successors, assigns, representatives, Responsible Officers, a person holding someone's Power of Attorney, Enduring Power of Attorney and a Legal Personal Representative.

1.4 Where a word is Capitalised it may be found in the "Definitions" Rule in Part Six of the SMSF Strategies Rules.

1.5 The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia or chooses elsewhere. If the Trustee resides outside Australia or the Trustees reside in different Australian States then the governing law is that chosen by the Trustee and if not chosen by the Trustee it is the governing law of the State of Victoria**.**

1.6 Where the term "SMSF" is used it means a "Self-Managed Superannuation Fund" as defined in the Superannuation Laws.

1.7 Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless, at the discretion of the Trustee a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or non-compliance certificate or adverse determination delivered to the Regulator for the Trustee, Fund or Member.

Example: The Rules of the Fund provide that the Trustee of the Fund may accept an in-specie contribution. However as the Superannuation Laws and in particular section 66(1) of the SIS Act 1993 do not allow the Trustee of a SMSF to acquire residential property from a Member or Related Party, Rule 1.7 limits the Trustee's abilities to acquire an Asset from a related party as it breaches the Superannuation Laws.

1.8 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the Rules may allow the Trustee to add to, vary, change or otherwise amend a Rule of the Fund. Any such addition, variation, change or amendment, provided it meets the relevant Rule variation requirements, is to be considered part of the original Rule. The Trustee may also create an additional Rule for the Fund where authorised under the Rules of the Fund including the creation of a Reserve, SMSF Living Will, SMSF Will or Member Pension. Any additional Rule may become a Special Rule of the Fund if declared by the Trustee as such and may not be varied by any variation of these Rules unless with the specific consent of the Trustee and any Member affected by the Special Rule.

1.9 In accordance with Rule 1.7 and the requirement for the Trustees of the Fund to ensure that the Fund remains a Complying SMSF, the Rules are written as being subject to the Superannuation Laws. Where the Trustee or any other person enters into a transaction, undertaking, agreement, understanding or any other arrangement that has the effect of the

Trustee breaching the Superannuation Laws or being deemed a non-complying SMSF by the Regulator as a consequence of the Trustee's or other persons action, the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered to the extent it has breached the Superannuation Laws void ab-initio subject to and conditional upon the Superannuation Laws allowing.

1.10 The Sole Purpose test, including the core and ancillary purposes of the Fund are specified in Section 62 of the SIS Act 1993. These are to provide retirement, incapacity, sickness, death and any other benefits allowed by the Superannuation Laws to Members of the Fund or to Members, former Members or for any other purpose, determined by the Fund Trustee, upon the winding up of the Fund. This shall be the case except where the Trustees of the Fund are individuals then the primary purpose of the Fund shall be to provide old age pensions.

1.11 Where the Trustee of the Fund and the Member have agreed or put in place arrangements including but not limited to Reversionary Pensions, SMSF Wills, Death Benefit Nominations, under previous Governing Rules that are of the same effect as a Special Rule then these Rules are to be retained in their original form as a Special Rule of this Fund.

Example: A Member of a Fund has in place an Lifetime Complying Pension that was commenced in 2004 and seeks to retain the benefits of this Pension such that the Pension is not to be terminated. This sub-rule 1.11 ensures that the Pension continues on unvaried whilst the remaining Governing Rules are varied at execution of the deed of variation.

Rule 2 – Trusteeship of the Fund

2.1 At all times there must be a Trustee of the Fund commencing from the appointment of the Initial Trustee of the Fund. The Trustee may be one or more individuals and/or a company or companies acting as Trustee or Trustees of the Fund. Where the Trustees are individuals, the primary purpose of the Fund is to pay Income Streams or Pensions inclusive of old age pensions to Members of the Fund unless otherwise authorised by the Superannuation Laws or the Regulator.

2.2 If the Trustee is a company, then any director of the Trustee Company must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws. If the Trustee is an individual they must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws.

2.3 The Trustee must ensure that, while these Rules are in force, the Fund is maintained as a Complying SMSF and a regulated superannuation fund including but not limited to meeting the membership and trustee standards as they apply at the time for a SMSF under the Superannuation Laws.

Note: In order to obtain concessional taxation benefits the Trustee of the Fund must ensure that during any income year the Fund is maintained as a Complying SMSF. The Trustee is to be vigilant in that regard and may engage the services of professionals to ensure compliance.

2.4 The Trustee or Members of the Fund may by Deed appoint a new Trustee provided the Fund remains a Complying SMSF and the new Trustee or Trustees appointed may include a Replacement Trustee or an Additional Trustee. The new Trustee, Replacement Trustee or Additional Trustee must consent to their appointment, not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws and agree to abide by the Rules of the Fund, the Superannuation Laws and with best endeavours ensure the Fund remains a complying SMSF.

Example: One Member of a two Member Fund with individual Trustees dies and a Legal Personal Representative becomes a Replacement Trustee of the Fund. When Death Benefits become payable the Legal Personal Representative must resign and an Additional Trustee or new Member/Trustee must be appointed within six months from the date of resignation of the Replacement Trustee. If the remaining Trustee does not appoint a Replacement Trustee or new Member/Trustee the Fund will no longer be a SMSF and serious financial consequences may arise. Generally it is advised that the Trustee seek advice from a suitably

qualified SMSF legal expert at the time of death of any Member of the Fund.

2.5 Any Trustee is to be removed as Trustee under one or more of the following conditions:

a) the Members of the Fund in a Member's Meeting remove the Trustee of the Fund;

b) the Trustee retires or resigns and a new Trustee has been appointed by Deed by the resigning Trustee;

c) where the Trustee is of the opinion that the continued appointment of the Trustee will result in the Fund becoming a non-complying SMSF or the Fund becoming impractical;

d) if the Trustee is prohibited from being a Trustee under the Superannuation Laws or where the Regulator otherwise determines including where the Trustee is a Disqualified Person;

e) where the Member that the Trustee, Replacement Trustee or Additional Trustee acts for is no longer a Member of the Fund including the Trustee/Member or Director/Member themselves.

2.6 The Trustee agrees to be bound by the Rules of the Fund, the Superannuation Laws and any direction the Regulator may provide if reasonable.

2.7 The Trustee or Member may be required at relevant times under the Superannuation Laws to notify or make a declaration to the Regulator or some other person of events, things, happenings or changes to the Fund. The Trustee or Member will ensure that it seeks to meet any such notification or declaration requirement in the specified time required. The Trustee is not required to register any change in Trustee under any Superannuation or State Law.

2.8 Where the Fund is determined by the Regulator to no longer be a SMSF or the Trustee decides not to retain the Fund's SMSF status, the Trustee is to immediately resign and an RSE Licensee is to be appointed or all Members Superannuation Interests are to be rolled over to another regulated Superannuation Fund.

2.9 Where a Member of the Fund dies, within a period of five months from the date of the Members death:

a) The deceased Member's Legal Personal Representative, provided they have given written consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;

b) At the commencement of the payment of the Member's Death Benefits to the deceased Member's Dependants or their Legal Estate the Replacement Trustee appointed on behalf the deceased Member must resign;

c) If the Fund's Corporate Trustee has appointed the deceased Member's Legal Personal Representative as a director they are to be removed once Death Benefits commence to become payable to the deceased Member's Dependants or their Legal Estate. If the Corporate Trustee does not remove the deceased Member's Legal Personal Representative as a director upon the payment of the deceased Member's Death Benefits then the Corporate Trustee is to be replaced as Trustee.

2.10 Where a Member loses their mental capacity and is no longer able to function as a Trustee of the Fund:

a) The mentally incapacitated Member's Legal Personal Representative, subject to their consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;

b) The Replacement Trustee is to have the same voting powers as the Member if they were acting as Trustee.

2.11 Where the Superannuation Laws are amended in terms of Trustee and Member requirements for a SMSF the Trustee is to ensure that the Trustee meets the required changes for a SMSF within the time frame specified under the Superannuation Laws.

2.12 Any removal or appointment of a Trustee shall be effected by deed or written resolution by the Trustees or Members of the Fund as required in Rule 2. Any deed or resolution for this purpose does not need to be registered unless the Superannuation Laws otherwise require.

Rule 3 – Membership of the Fund

3.1 Any person or entity with the consent of the Trustee and including a deceased Member's Legal Personal Representative without Trustee consent may become a Member of the Fund provided the Superannuation Laws allow and the Fund retains its status as a Complying SMSF. The Trustee must not accept a Member to the Fund if the person's Membership would result in the Fund no longer being a SMSF unless the Trustee otherwise decides.

Example: This may exclude the acceptance of a non-resident Active Member or an additional member when the Fund has four members or the number of Members designated for a SMSF.

3.2 The Trustee may:

a) Impose terms and conditions for Members joining the Fund including but not limited to future Members.

b) Establish different classes of Membership if so desired. Prior to establishing a new class of Membership, existing Members must be notified of the new class of membership and the associated rights, entitlements and benefits attached thereto. The Trustee may classify, in writing that recipients of Income Stream benefits are a separate class if so desired.

c) Limit the persons who may become or be Members of the Fund with any such amendment to be by way of a variation to the Rules of this Fund.

3.3 On becoming a Member of the Fund the Member must agree to abide by the Rules of the Fund. This includes but is not limited to acting as Trustee or director of the Corporate Trustee where required; providing a Member's Tax File Number and any other information the Trustee may require including relevant insurance details. The Member must adhere to any other requirements that may be necessary of Members joining a Complying SMSF.

3.4 The Legal Personal Representative of a Member including a deceased Member is deemed to be the Member for the purposes of the Rules and therefore holds all rights and entitlements of the Member or a deceased Member. For the sake of clarity a deceased Member's Legal Personal Representative continues the deceased Member's membership under the Rules of the Fund provided the Superannuation Laws allow.

3.5 The Member, on joining the Fund agrees to have read and understood the Fund's Product Disclosure Statement.

3.6 A Member ceases to be a Member of the Fund, subject to the Trustee's discretion and the Superannuation Laws upon the earliest of any of the following to occur:

a) The Member Rolls Over or transfers all of their Superannuation Interests to another complying Superannuation Fund unless the Trustee otherwise allows the Member to remain as a Member;

b) The Member dies and the Trustee has paid out all the deceased Member's Death Benefits to the Member's Legal Personal Representative or Dependants or any other person, trust or entity. In these circumstances the deceased Member's Legal Personal Representative will cease to be a Member or be the continuation of the deceased Member of the Fund at the time Death Benefits are fully paid;

c) More than five months has elapsed since the Member was capable of being a Trustee of the Fund or a director of the Corporate Trustee unless the Member has appointed a Replacement Trustee;

d) In the opinion of the Trustee the Member is a Disqualified Person and the Member's continuing membership may result in the Fund no longer being a Complying SMSF unless the Regulator provides otherwise;

e) The Trustee declares that a Member should cease being a Member where the Member's continued Membership may cause the Fund to lose its Complying SMSF status or for any other reason including the effective operation of the Fund or to ensure the Fund remains a SMSF;

f) The Member is a party to proceedings or any agreement pursuant to the Family Law Act 1975 or equivalent legislation for de facto relationships under Commonwealth, State, Territory or a foreign law and the Trustee is of the opinion that the Member should cease being a Member of the Fund;

g) When the Member no longer has any Superannuation Interest in the Fund and the Trustee determines that the Member should no longer be a Member of the Fund;

h) If the Superannuation Laws, the Regulator or a Court requires the Member to cease their Membership of the Fund;

i) Where the Trustee is of the opinion that for the benefit of the Fund the Member should cease their Membership of the Fund, at the same time the Trustee is to remove the Member as Trustee or request the Corporate Trustee to remove the Member as director of the Corporate Trustee.

3.7 Where a Member ceases Membership of the Fund, the Trustee must resolve to pay the Member their Superannuation Interest as a Superannuation Benefit and/or Transfer Superannuation Interest within a reasonable time or as otherwise required under the Superannuation Laws.

3.8 If, upon cessation of Membership of the Fund, a Member is required to Rollover or transfer their Superannuation Benefits the Trustee must request from the transferring Member notification of the complying status of the transferee Superannuation Fund. The request must include a demand for a response in relation to the proposed transferee Superannuation Fund from the departing Member within a reasonable period of time or such other time as is required under the Superannuation Laws. If the departing Member does not respond to the Trustee's request within a reasonable time, or such other time as the Superannuation Laws require, the Trustee may transfer the transferring Member's Superannuation Benefits to an Eligible Rollover Fund.

3.9 Any Transfer, Rollover or Superannuation Benefit payment must be made by the Trustee within any time required under the Superannuation Laws or alternatively within a reasonable period of time.

Rule 4 – Becoming an Operating Regulated SMSF

4.1 Upon establishment of the Fund and the initial appointment of the Trustee, the Trustee is to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws.

4.2 As soon as practicable the Trustee must take such actions, appoint such SMSF Professionals as required including an Auditor, a SMSF Adviser, deal with the Regulator and do all things necessary to make the Fund operational as a Complying SMSF including obtaining a tax file number and Australian business number

Rule 5 – Creating and Transferring Member Superannuation Interests

5.1 The Trustee may, at the request of a Member, the Member's Legal Personal Representative or at the Trustee's discretion, create one or more Superannuation Interests on behalf of a Member or for the benefit of the Fund including a Reserve for the benefit of the Member or any other account allowed under the Superannuation Laws. The Trustee may hold one or more Superannuation Interests on behalf of a Member or their Legal Estate.

5.2 Any Superannuation Interest created by the Trustee for the Member may include a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest, a Reserve or any other Superannuation Interest or Member's account allowed under the Superannuation Laws.

5.3 A Member Superannuation Interest does not have to commence or be maintained with any Assets or Contributions.

5.4 A Member may request the Trustee to transfer a Member Income Stream Superannuation Interest Roll Back amount to a Member Lump Sum Superannuation Interest. Unless otherwise allowed under the Superannuation Laws and requested by the Member this will not create a new Superannuation Interest.

5.5 Where the Member requests the transfer of a Member Lump Sum Superannuation Interest to commence a new Member Income Stream Superannuation Interest, notwithstanding that the Member may have an existing Member Income Stream Superannuation Interest, this will create a new Superannuation Interest where the Trustee decides a new Superannuation Interest is to be created and that the Superannuation Laws allow.

5.6 Where the Trustee transfers an amount between Superannuation Interests the Trustee may satisfy the transfer amount by allocating Assets between the Member's Superannuation Interests equal in value to the transfer amount.

5.7 The Trustee may transfer a Member Superannuation Interest to another Complying SMSF or superannuation fund where the Trustee of the transferee fund accepts the terms and conditions of any transfer including to continue any Income Stream Superannuation Interest on behalf of the Member under the same terms and conditions as the Income Stream Superannuation Interest in the Transferor Fund.

Example: A Member of the Fund may be a reversionary beneficiary of a pension ("the original pension") in accordance with the requirements of a SMSF Will. To ensure that the deceased member's wishes are met upon transfer of the original pension to another fund the Trustee of the transferor fund must require the Trustee of the transferee fund to pay the pension in identical terms and conditions without variation to that of the original pension.

Rule 6 – Accepting Member Contributions, Rollovers and Transfers

6.1 The Trustee may accept an Authorised Contribution, a Rollover Superannuation Benefit or a Transfer Superannuation Interest on behalf of a Member or for the Fund from a Trustee of a Superannuation Fund, a Foreign Superannuation Fund, an employer, a Spouse, a Relative or any other person or entity.

6.2 The Authorised Contribution, Rollover Superannuation Benefit or any Transfer Superannuation Interest may be by way of Cash, Assets or a Contribution In Kind. Where an Authorised Contribution is made by way of one or more Assets or a Contribution In Kind the Trustee is to determine a value for the Contribution under the Superannuation Laws or as required by the Regulator.

6.3 The Superannuation Laws may provide a maximum Contribution limit for Non-Concessional Contributions, Concessional Contributions and No-Tax File Number Contributions made on behalf of a Member during an income year or a period. Where such limits are prescribed the Trustee is to take into account the limit and any consequences when accepting any Contribution including not to accept any Contribution in excess of the relevant limits

described under the Superannuation Laws for that specific type of Contribution.

6.4 Where the Trustee, by mistake accepts a Contribution in excess of any caps or limits under the Superannuation Laws, the Trustee may refund the Contribution to the contributor or any other person and within the time required under the Superannuation Laws or where the Regulator otherwise allows. The Trustee is to also refund or pay back any Contribution as required by the Regulator pursuant to an assessment, amended assessment or any other direction.

Rule 7 - Creating an Investment Strategy for the Fund and Members

7.1 The Trustee of the Fund must formulate and give effect to an Investment Strategy for the Fund that meets the Superannuation Law and Regulators requirements for a complying SMSF. The Investment Strategy which includes the Fund's Insurance Strategy pursuant to Rule 12 must be regularly reviewed by the Trustee of the Fund.

Note: The Explanatory Memorandum of the Superannuation Laws states that "SIS subregulation 4.09(2) to require trustees to regularly review the entity's investment strategy. Trustees should conduct a review of the entity's investment strategy on a regular basis to take into account factors such as the changing circumstances of their fund and its members. Trustees may evidence this requirement by documenting decisions in the minutes of trustee meetings that are held during the income year."

7.2 The Trustee may at any time create a separate Investment Strategy on behalf of one or more Member Superannuation Interests or Fund Accounts including a Reserve Account.

7.3 The Trustee may at the request of a Member, but subject to the Trustee's discretion, establish a separate Investment Strategy for a Member Superannuation Interest. The Trustee may acquire a specific Asset on behalf of a Member Superannuation Interest provided the Member Superannuation Interest has sufficient resources to do so and the Superannuation Laws allow.

7.4 The Trustee may transfer Assets between Investment Strategies and also between Superannuation Interests in the Fund. Any such transfer will be at a value to be determined by the Trustee or as required by the Superannuation Laws or the Regulator.

Example: A SMSF holds BHX shares in a separate investment strategy for a Member's Lump Sum Superannuation Interest ("LSI") with a market value of $50,000. Additionally the Member has a Transition to Retirement Income Stream Interest ("TRIS") in the same SMSF with a separate investment strategy that has exhausted its cash component. The Trustee of the Fund may transfer the BHX shares to the TRIS, sell them to pay the income stream requirements in accordance with the TRIS. Simultaneously the Trustee transfers $50,000 of CBA shares from the Member's TRIS to the Members LSI to fund the transfer of assets.

7.5 Where the Trustee has established a Reserve Account in the Fund the Trustee must formulate and give effect to a Reserve Management Strategy for the Reserve Account where required by the Superannuation Laws. If there is more than one Reserve Account established for the Fund the Trustee where required by the Superannuation Laws may maintain a separate Reserve Management Strategy for each Reserve Account, for one or more Reserve Accounts or for all Reserve Accounts in the Fund. The Trustee of the Fund does not have to hold separate Assets aside for Reserve Account purposes unless the Superannuation Laws require and the Trustee determines to do so.

7.6 The Trustee may alter an Investment Strategy for the Fund, an Account of the Fund, a Superannuation Interest or Reserve Account at any time.

7.7 Where the Trustee has received an Authorised Contribution or the payout of an Insurance Policy that results in the breach of any Investment Strategy of the Fund, the Investment Strategy subject to receipt of the Authorised Contribution or Insurance Policy proceeds is deemed to be amended to encompass the Contribution or Insurance Policy proceeds until such time as the Trustee decides otherwise.

7.8 The Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings or leverage. The Trustee is to comply with any such requirements to ensure the Fund remains a Complying SMSF.

7.9 Where the last surviving Member of the Fund dies, the Member's LPR if appointed as Trustee or Director of the Fund's Corporate Trustee must, prior to making any Death Benefit payments on behalf of the deceased Member distribute any surplus, Assets or monies in Fund Reserve Accounts. Such distribution may include finance for an anti-detriment payment in accordance with section 295-485(a) of the ITAA 1997, a payment to any past Member or the deceased Member's Lump Sum Superannuation Interest, Member Income Stream Superannuation Interest, their Dependants, Legal Estate or charity.

Rule 8 – Making Investments for the Fund and Members Benefit

8.1 The Trustee must invest the Cash and Assets of the Fund in accordance with an Investment Strategy. Any investment is to meet the Superannuation Laws, any relevant Trustee Law and ensure that the Fund retains its Complying SMSF status thereby ensuring that the Trustee does not breach the relevant laws relating to related party investments or loans including the In-House Assets Test, the Sole Purpose Test or the holding of any specific Asset class or type.

8.2 Provided the Superannuation Laws allow, the Trustee may acquire and invest in any Asset or Cash wherever situate in or outside Australia including, but not limited to the following:

a) Stocks and shares and other equity interests of any entity (including a company), units in a unit trust both private and public with an investment to include preference, convertible preference shares and units or any other type of equity, unit or hybrid equity instrument in an entity;

b) Property either as a passive investment or for development purposes, sale or rental income purposes directly, indirectly or by way of joint venture, partnership, unit trust, bare trust, custodial trust, holding trust or trust provided that the property is not encumbered and the Trustee does not provide a guarantee in respect of any direct or indirect loan agreement incidental to the property unless the Superannuation Laws allow. In instigating any property transaction, the Trustee must ensure that the documentation relating to the transaction, including any indirect, joint venture or partnership interest, satisfies the Fund's Auditor if required and the Superannuation Laws. These include, but are not limited to, an appropriate valuation;

c) Financial products including instalment warrants, SMSF borrowing trusts, options, futures, warrants, endowment warrants, unit trusts, property syndicates, joint ventures, hybrid trusts, pooled superannuation trusts and other instruments that provide the Trustee with a reward on its investment;

d) Debt instruments including government and corporate bonds, mortgages, chattel leases, fixed term deposits, hybrid debt instruments and any other type of instrument where the investor receives an interest type of return;

e) Discount investments where the Members of the Fund may obtain a discount on services under an agreement with a third party provided that the return available on the investment is the same as that which would be obtained by an investor not able to participate in the discount unless the Superannuation Laws or Regulator allow and that the investment does not cause the Trustee to breach the Superannuation Laws;

f) Art, sculpture, wine, vintage cars or any other collectable provided the Superannuation Laws allow and the Trustee complies with any and all requirements in relation to the holding of a collectable;

g) A business including an active business including share trading, property development or primary production provided the investment in the business does not breach the Sole Purpose Test, the Fund's Audit Standards or the Superannuation Laws;

h) Intellectual property including a trade mark, copyright, licence, patent. The holding of the intellectual property may be direct, indirect, as part of a joint venture or as an interest by way of a licence;

i) A Superannuation Income Stream, Pension or annuity from a life insurance company, Superannuation Fund, financial institution, trust, body corporate or person;

j) A life insurance or friendly society bond, policy or other investment including but not limited to an endowment, whole of life or other investment or risk policy issued by any life insurance company wherever situate;

k) Any managed fund, managed investment scheme, collective investment vehicle, trust, Bare Trust, custodial trust, holding trust or unit trust including a pooled superannuation trust provided the investment does not breach the Superannuation Laws;

l) Entering into any joint venture, partnership, association or co-operative provided the Trustee assesses the risk of the venture and in particular the cash flow requirements and legal nature of the venture;

m) Any other investment including a prudent investment under Trust Law;

n) Assets of Member of the Fund, Related Trust or a Related Party of a Member conditional upon the acquisition of the investment not breaching the Superannuation Laws and in particular the Sole Purpose Test and the In House Assets Test. If the Superannuation Laws prevent the acquisition by the Trustee of a Related Party Asset the Trustee must not acquire the prohibited Asset;

o) Instalment warrant and other SMSF borrowing arrangements including single acquirable assets acquired under a limited recourse lending arrangements pursuant to sections 67A and 67B of the Superannuation Industry Supervision Act 1993;

p) Any investment that meets the sole purpose Test and sections 66, 67, 84,85 and 109 of the Superannuation Industry Supervision Act 1993;

provided that the acquisition, investment and holding of the Asset is in accordance with the Fund's or Superannuation Interest's Investment Strategy whichever is relevant and in addition, the acquisition, investment and holding of the Asset does not breach the Superannuation Laws, including the Sole Purpose Test or the In-House Assets test.

8.3 The Trustee may acquire, hold and invest in any currency including maintaining a non-AUD$ cash account.

8.4 Subject to any requirements under the Superannuation Laws or by the Regulator the Trustee may at any time determine the value of an Asset of the Fund but is otherwise not compelled to do so. However if the Superannuation Laws require a valuation at a specific time in respect of a Fund Asset the Trustee is to abide by the requirements of any valuation laws, Regulator guidelines or rules.

8.5 At any time the Trustee of the Fund may create an Asset for the Fund which is to be dealt with wholly and exclusively by the Trustee of the Fund as an Asset of the Fund.

Rule 9 – Establishing a Reserve Account for the Fund

9.1 The Trustee may establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, a Pensions Reserve, an Income Stream Reserve and a Self Insurance Reserve. Any Reserve Account may be for the benefit of current, past and future Members, their dependants, Legal

Estate or the Trustee.

9.2 The Trustee must formulate a Risk Management Strategy for any Reserve Account in accordance with Rule 7. The Risk Management Strategy may be for one or more Reserves.

9.3 The Trustee may make additional Rules regarding the use, purpose and payment of Superannuation Benefits, General or Specific Expenses or for any other thing from any Reserve Account. In making any Rule the Trustee is to take into account any guidelines or rulings issued by the Regulator or the Australian Prudential Regulatory Authority. Any Rule the Trustee makes regarding a particular Reserve Account may be declared by the Trustee to be a Special Rule.

9.4 Subject to the Superannuation Laws and the Fund remaining a Complying SMSF, the Trustee may add by way of Cash or Assets to a Reserve Account from any Member Superannuation Interest, any other account of the Fund, any other Reserve Account, from Earnings or from any other source including another Superannuation Fund, trust or entity.

Example: Part Five of the SIS Regulations 1994 prevent the Trustee of a SMSF from reducing a Member's minimum benefits except to pay a temporary incapacity benefit in limited circumstances. As such an amount cannot, under current laws be deducted from a Member's Superannuation Interests to be added to a Reserve unless it is for self- insurance according to the Commissioner. The powers authorised in Rule 9.4 are subject to the Superannuation Laws.

9.5 The Trustee may deduct and allocate from any Reserve Account of the Fund any amount or Asset. Such amount or Asset may be applied in whole or part to be added to Earnings or for the benefit of any Superannuation Interest, to pay any General or Specific Expense of the Trustee or the Fund, to be added to another Reserve Account in the Fund or any other Superannuation Fund, to be added to any other account or Superannuation Interest, to be added to Fund or Superannuation Interest Earnings, make a Transfer Superannuation Interest to another Superannuation Fund or the Fund itself, to fund directly from the Reserve Account a Member Lump Sum Superannuation Interest or Member Income Stream Superannuation Interest, pay a Death Benefit or for any other purpose.

9.6 Subject to the Superannuation Laws, Regulator's Guidelines and the Fund retaining its Complying SMSF status, any trust distributions, insurance policy proceeds, other distributions, windfall gains, winnings or gifts that the Trustee does not declare as Earnings or Authorised Contributions of any Account or Member Lump Sum Superannuation Interest may be allocated to a Reserve Account. The Trustee has sole discretion as to which Reserve Account these amounts are to be added to.

9.7 No Member, Dependant of a Member, deceased Member, the Member's Legal Personal Representative or a deceased Member's Legal Estate has any right or entitlement to a Reserve Account unless so authorised under the Rules of the Fund.

9.8 If the allocation of amounts from a Fund Reserve creates a tax liability for the Trustee of the Fund or a Member of the Fund, the Trustee may seek professional advice prior to entering into any allocation to determine its taxation consequences.

Example: An allocation from a Reserve, except where the allocation adheres to one of the exceptions in ITR 1997 - R292.25, is generally a concessional contribution for the Member of the Fund receiving the allocation of Reserve amounts. A Trustee or Trustees of a SMSF should seek competent advice from an appropriately qualified SMSF Professional Advisor where the establishment of or a payment from a Reserve of any description are contemplated.

Part Two – Some Important Planning Considerations

Rule 10 – Creating a Member SMSF Living Will

10.1 A Member may provide a Trustee with a Member SMSF Living Will detailing any Superannuation Benefits requested to be paid in the event of the Member's Temporary or Permanent Incapacity, Terminal Illness or other incapacity event including mental incapacity whereupon a Member may be paid benefits, Superannuation Benefits or Reserve benefits from the Fund without breaching the Superannuation Laws or the Sole Purpose Test.

Example: James Smith, who is in receipt of an Accounts Based Pension makes a binding SMSF Living Will requiring the Trustee of the Fund to continue paying $50,000 or the minimum pension payment for the benefit of any aged care in the event that he becomes mentally incapacitated and needs to be placed into aged care.

10.2 The Trustee may accept some or all of the Member's request under the Member SMSF Living Will including the category of Incapacity or other Superannuation Benefits to be paid, the amount to be paid, whether Reserve Benefits may be paid, to whom the Incapacity Superannuation Benefits are to be paid and the Member's Replacement Trustee, however, the Trustee is not compelled to do so.

10.3 If the Trustee formally accepts some or all of a Member's SMSF Living Will, then at the discretion of the Trustee, the terms and conditions of the Member SMSF Living Will so accepted may become a Special Rule of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status.

10.4 The Trustee may determine whether the Member SMSF Living Will Rule can be varied and in what circumstances and by whom.

10.5 The Trustee and Member may seek to appoint a SMSF Professional prior to making any formal request or acceptance of a Member's SMSF Living Will.

Rule 11 – Creating a Member SMSF Estate Plan and SMSF Will

SMSF Will and Non-Lapsing Binding Nomination

11.1 A Member may provide the Trustee with a request to accept any of the following:-

a) A non binding death benefit nomination;
b) A binding death benefit nomination;
c) A non lapsing binding death benefit nomination
d) A SMSF Will incorporating a non lapsing binding death benefit nomination and non-lapsing directions to the trustee

11.2 Any of the documents referred to in Clause 11.1 above may provide written direction to the Trustee requesting:

a) The manner and form in which Death Benefits will be paid in the event of the Member's death to one or more beneficiaries including as a lump sum, pension or combination of both.

b) The Beneficiaries the Death Benefits are to be paid to including the Dependants of the Member, the Member's Legal Estate or such person as are otherwise allowed to receive a Member's Death Benefits under the Superannuation Laws.

c) The amount or amounts of the Death Benefit to be paid to one or more beneficiaries in the event of a Member's death including the transfer of part or the whole of any Fund Asset in satisfaction of the payment of an amount of Death Benefit.

d) The terms and conditions upon which a beneficiary is to receive a Death Benefit from the Member's SMSF Estate including whether the Death Benefit is to revert to another person,

Legal Estate or entity in the event of the beneficiary's death, incapacity or the happening of a particular event.

e) The terms and conditions regarding the payment of any Reserve Benefit to the deceased Member's Dependants or Legal Estate.

f) 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 or Legal Estate.

11.3 The Trustee of the Fund may accept in writing or at a Trustee Meeting part of or all the Member's Non-Binding Death Benefit Nomination, Non-lapsing Binding Death Benefit Nominations and SMSF Will request, however, the Trustee is not obligated to do so.

11.4 Solely at the Trustee's discretion if the Trustee accepts part of or all a Member's Non-Binding Death Benefit Nomination, Non-lapsing Binding Death Benefit Nominations and Member SMSF Will, the Nominations or SMSF Will shall become a Special Rule of the Fund.

11.5 The Trustee may at the request of the Member create a Special Rule to make provision for the requirements of that Member's Non-Binding Death Benefit Nomination, Non-lapsing Binding Death Benefit Nominations and Member SMSF Will.

Note: The Trustee may determine whether any Special Rule created for a Member can be varied and under what circumstances including allowing a Member or the Trustee to be the only person that can vary the Special Rule.

11.6 The Trustee may at the request of the Member amend the provisions of the Deed to enable the provisions of the Special Rule to establish the applicable Member's Non-Binding Death Benefit Nomination, Non-lapsing Binding Death Benefit Nominations or SMSF Will.

11.7 The Trustee and Member may first obtain expert advice from a SMSF Specialist adviser prior to making any formal request or acceptance of a Member's SMSF Will.

11.8 The Trustee is not bound by any Member's Non-Binding Death Benefit Nomination.

Rule 12 – Creating an Insurance Strategy and Insurances in the Fund

12.1 The Trustee of the Fund may create an Insurance Strategy for the Fund, a Member of the Fund or any Superannuation Interest in the Fund and must create an Insurance Strategy if the Superannuation Laws require. The Insurance Strategy shall form part of the Fund's Investment Strategy.

12.2 The Trustee of the Fund may enter into any Contract of Life Insurance both within and outside Australia issued by any life insurance company, friendly society or other entity that provides insurance to Trustees or Members of a SMSF. Any premiums paid by the Trustee of the Fund may be deducted from Earnings of the Fund but may alternatively be deducted from one or all Member Superannuation Interests or Reserve Accounts.

Warning: The Commissioner has noted that if insurance premiums have been deducted from a member's account then any payout should be made to that account. Any premium repayments made from General Expenses of the Fund may not be deductible to the Fund.

12.3 The Trustee of the Fund is authorised to create a Self Insurance Reserve Account with such terms and conditions as the Trustee decides provided that the Superannuation Laws allow and the Trustee maintains an Investment Strategy for the Self Insurance Reserve Account.

12.4 No Member, Dependant of a Member, Legal Personal Representative of a Member or any other person has any interest in any Contract of Life Insurance or Self Insurance Reserve Account held by the Trustee even where it may be held in the name or for the benefit of the Member unless required by the Superannuation Laws or the Regulator.

12.5 Subject to the Superannuation Laws at the time, the Trustee may distribute, transfer or otherwise deal with any proceeds or distribution payable from or pursuant to a Contract of Life Insurance in accordance with any Insurance Strategy.

Note: In his determination SMSFD 2010/1 the Commissioner states "If a trustee of an SMSF pays premiums out of the SMSF's assets for a trauma insurance policy that provides for the insurer to pay any benefits to a trustee of the SMSF for accumulation in the fund, then the member does not benefit directly, in the sense that any payout is to be made to a trustee of the SMSF." As the payout is the Trustee's to allocate then a portion of any payout may be made to a Reserve where established to receive insurance payouts. However the Commissioner has noted that if insurance premiums have been deducted from a Member's account then any payout should be made to that Member's account.

12.6 No Member, Dependant of a Member, Legal Personal Representative of a Member or any other person has any interest in the proceeds or distribution from a Contract of Life Insurance or Self Insurance Reserve Account.

Part Three - Rules to Maintain and Operate the Fund

Rule 13 – Fund Assets, Contracts and Transactions to be in Trustee's Name

13.1 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. Where there is a change in name of the Trustee or a change in Trustee, the Trustee, as soon as practicable, must register all of the Fund's assets to reflect the change of name of the Trustee.

Note: Where the Trustee of the Fund is a Corporate Trustee any change in membership of the Fund by an additional member or a member's death requires a change or Directorship of the Corporate Trustee. This change does not require a change in investment registers or titles offices in which the Fund holds investments. In contrast SMSFs with individual Trustees where there is an addition of a new member Trustee or the death of a previous member Trustee requires the Trustees to provide appropriate notification to all investment registers and titles offices of the changes to the Trustee of the Fund.

13.2 Any contract, transaction or agreement of whatever nature undertaken by the Fund must be in the name of the Trustee unless the Trustee has appointed a Custodian or other person to act on behalf or as agent for the Trustee.

Note: The Superannuation Laws state that "SIS regulation 4.09A to require that a trustee of an SMSF keeps money and other assets of the fund separate from any money or assets held by the trustee personally or by a standard employer-sponsor or an associate of a standard employer-sponsor."

13.3 No Member, Dependant of a Member or deceased Member, the Member's Legal Personal Representative, a deceased Member's Legal Estate, an Employer Sponsor or Related Party of the same has any right, entitlement to any Asset of the Fund or may enter into any contract, transaction or agreement of whatever nature with the Fund unless the Superannuation Laws allow and the Fund continues to retain its Complying SMSF status.

13.4 Where 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, that the Fund may be treated as a Non-Complying SMSF, the Trustee and other party to the transaction, arrangement, declaration or agreement are to treat the actions as void ab-initio. The Trustee is to ensure that both parties are to be put in, as best as possible, the same financial condition as arose prior to the entering into of the relevant transaction, arrangement, declaration or agreement.

Rule 14 – Trustee Responsibilities

14.1. It is the responsibility of the Trustee, at all times, including under any Trustee Law to:

a) ensure that the Fund remains a Complying SMSF;

b) ensure that the Fund Trust Deed and Rules remain current;

c) act honestly in all matters concerning the Fund;

d) exercise, in all matters affecting the Fund and its Members, the same degree of care, skill and diligence as any normal prudent Trustee;

e) ensure that the Trustee's duties and powers are performed and exercised in the best interests of Members of the Fund;

f) not enter into any contract, transaction or agreement or do anything that would prevent or hinder the Trustee in suitably performing or exercising the Trustee's functions and powers;

g) disclose any conflict of interest in any dealing with or undertaking any transaction or investment on behalf of the Fund;

h) provide to Members access to all and any information required to be given or viewed by Members under the Superannuation Laws but subject to the Privacy Act 1988;

i) ensure the efficient administration of the Fund including, but not limited to, the payment of all taxes, excess contributions taxes and other imposts that must be paid by the Fund and the lodgement of all compulsory documentation to the Regulator in respect of the Fund and ensure that the Fund meets its Superannuation Law compliance responsibilities;

j) keep all records, documents and minutes of valid Trustee meetings to enable the efficient administration and audit of the Fund by the Auditor and the Regulator so as to comply with all Superannuation Laws in respect of the keeping of records, documents and minutes for the Fund;

k) notify the Regulator, in accordance with the provisions of the Superannuation Laws, of significant events and other events that occur in the Fund including any change in Trustee where required. The Trustee is to notify the Regulator of these events within the time period required;

l) not seek to delegate Trustee powers and responsibilities under the Rules of the Fund or the Superannuation Laws unless otherwise permitted;

m) keep informed of the Superannuation Laws and if required by the Superannuation Laws or the Regulator, undertake any education or other mandatory or voluntary knowledge requirements;

n) deal with the Regulator and any other regulatory authority as required under the Superannuation Laws;

o) create an Insurance Strategy for the Fund; and

p) be aware of any changes to the Superannuation Laws that requires the Trustee of the Fund to remain a Complying SMSF.

14.2 The Trustee must not be paid or otherwise receive any remuneration for acting or carrying out its responsibilities as Trustee of the Fund unless otherwise permitted under the Superannuation Laws and/or any determination by the Regulator.

14.3 Where required by the Superannuation Laws the Trustee may hear any complaint by a Member or their Legal Personal Representative regarding the Member's Superannuation Interest or Superannuation Benefit. The Trustee must attend to the complaint in a timely manner and respond to the complainant in an appropriate method.

Rule 15 – Trustee Powers

15.1 The Trustee has unlimited powers as to the administration and control of the Assets of the Fund. The administration and control of the Assets of the Fund by the Trustee are identical to those as if the Trustee were the legal and beneficial owner of those Assets. These include the right to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or Asset comprising the whole or part of the Fund including a Member's Superannuation Interest or a Reserve Account.

15.2 The Trustee has all the powers that a Trustee has at law and all the powers specifically conferred on the Trustee by these Rules including, but not limited to:

a) **engage SMSF Professionals and other advisers:** to employ or engage agents or professionals in the execution of transactions, undertakings, acquisitions, disposal and

other powers of the Trustee and to transact any business or to do any act required to be done in connection with the administration of the Fund including engaging a SMSF Auditor and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;

b) **enter into contracts and undertake transactions:** to enter into contracts, undertakings and other transactions for the benefit of the Fund and its Members whatsoever and wheresoever situate;

c) **acquire Corporate or Trust securities:** with respect to any company or trust in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise all of the powers authorised under the constituent and any other relevant documents concerning the powers of equity, debt and other interest holders of the entity;

d) **acquire Insurance Policies:** to effect or acquire policies of insurance from entities within or outside Australia of any Asset of the Fund or of kind on the life of any Member or in respect of sickness, incapacity, trauma or accident to any Member, to pay premiums, transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;

e) **deal with real property:** to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, maintain, insure, improve, renovate, re-lease or vary any right or easement or otherwise deal with any interest in real property;

f) **enter into lease arrangements:** to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;

g) **lease property owned by the Fund:** to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules and the Superannuation Laws upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;

h) **lend money:** subject to the Superannuation Laws and the Fund retaining its Complying SMSF status to lend and advance moneys;

i) **borrow money:** subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, to borrow or raise any financial accommodation or Assets including under an instalment warrant or other borrowing or limited recourse lending arrangement authorised pursuant to sections 67, 67A and 67B or any other section allowing a Trustee of a SMSF to borrow under the Superannuation Industry Supervision Act 1993 or the Superannuation Laws, and to assign, pledge, mortgage or charge any of the Fund as security for such financial accommodation;

Note: The limited recourse lending laws contained in section 67A and 67B of the SIS Act 1993 provide an exemption to the Trustee borrowing money. However without a specific borrowing power – aligning the Rules with the borrowing exemptions the Trustee cannot borrow – even if it meets the exemption conditions in section 67A. Sub-rule 15.2 j) provides the Trustee with the specific power to enter into a limited recourse lending arrangement under section 67, 67A and 67B plus any future amendments that may be made to the Superannuation Laws allowing the Trustee of a SMSF to borrow.

j) **to create trusts:** to create trusts, companies and other entities for the purpose of investment by the Trustee including any Bare Trust, custodian trust or Holding Trust arrangement;

k) **enter into futures contracts and options:** both within and outside Australia to buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option, CFD or rights, to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange no matter where situate provided the Trustee maintains a risk management strategy if required under the Superannuation Laws;

l) **deal with personal property:** to acquire, dispose of, exchange, hire, lease, maintain, improve, mortgage or otherwise deal with any interest in personal property;

m) **deal with intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulae, licences, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired;

n) **obtain agencies, franchises and licences:** to apply for, purchase and hold any permit, agency, franchise or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same provide the said agency, licence or business does not breach the "Sole Purpose Test" or the Superannuation Laws;

o) **pay management expenses:** to pay out of the Assets, Reserve Accounts or the Earnings of the Fund all costs charges and expenses incidental to the management and operation of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;

p) **pay General Expenses:** to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any Assets of the Fund from the Assets, Reserve Accounts or primarily the Earnings of the Fund and to manage such Assets and effect improvements and repairs as the Trustee may consider necessary or advisable;

q) **set aside money in the Fund:** to set aside out of the Earnings of the Fund or Reserves from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt, tax or obligation due or accruing;

r) **deal with itself**: notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee or Fund Custodian provided that any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;

s) **deal with Choses-in-action:** to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;

t) **receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a will, SMSF Will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

u) **instigate legal proceedings:** to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;

v) **bloodline benefits:** to limit the range of persons, including directly or indirectly that may obtain a Death benefit from the Fund in the event of a Member's death;

w) **trade in foreign currency:** to undertake, contract, carry out or do anything including acquiring Assets in a foreign currency and dealing in a foreign currency;

x) **exercise all other powers:** to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee;

y) **indemnities:** to give indemnities to or on behalf of any person the Trustee thinks fit including the Trustee;

z) **appoint a custodian:** to appoint any person as Custodian to hold legal title for any Asset acquired or to be acquired by the Trustee under such terms as the Trustee thinks fit.

aa) **power to appoint an attorney:** The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.

bb) **bank bills:** the Trustee may raise money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing with any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund.

cc) **Trustee's duties:** any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.

dd) **conflict of interest**: generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or the Fund's Governing Rules or otherwise conferred notwithstanding that any person being a Trustee or any person being a Director or Shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

ee) **bank accounts, cash management trusts and promissory notes:** to open in the name of the Trustee of the Fund bank accounts, cash management trusts, term deposits and any other cash style products including the giving and taking of promissory notes.

ff) **additional powers:**

i. **real property:** to purchase, take on, lease or licence, develop, construct, hold, impose, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this rule, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;

ii. **grant or take options:** to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;

iii. **no profit:** without limitation to the above, to exercise any of its powers, including the power to sell and the powers to deal with real or personal whether at a profit or not;

iv. **invest and sell, vary or transpose investments:** to invest in its name or under its control the Fund in any one or more of the investments authorised by this document with power in its absolute discretion either to retain the investment in that form or to see or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price or without interest and with or without security) and power in its absolute discretion from time to time to vary or transpose any investments into others authorised by these rules.

15.3 The Trustee, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, may create one or more SMSF's with the same Rules, Members and Trustee including a Cloned SMSF.

15.4 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee is to be indemnified from the Assets of the Fund for any loss, damages or award against the Trustee arising from their role as Trustee of the Fund.

Rule 16 – Trustee Meetings and Decision Making

16.1 The Trustee is to hold a Trustee Meeting where any significant event, transaction, acquisition or disposal or other event directly related to the Fund is proposed. These matters include, but are not limited to, those that relate to an Asset of the Fund, Superannuation Interest, Investment Strategy, Reserve Account, Superannuation Benefit, Member of the Fund or where otherwise required under the Superannuation Laws.

16.2 There is no requirement for formal notice of a Trustee Meeting. However every Trustee or a Director of the Company that is Trustee must be afforded the opportunity of participating in the Trustee Meeting where possible.

16.3 A quorum for a meeting is where at least 50% of all available Trustees attend the Trustee Meeting and may include one Trustee.

16.4 Unless the Initial Trustee decides otherwise, for each decision by the Trustee or Replacement Trustee at a Trustee Meeting the Trustee or Replacement Trustee is to hold that number of votes equal to $1 per vote in respect of the total Member Superannuation Interest Entitlements they represent as last recorded by the Trustee. Any Additional Trustee is to be provided with the number of votes as prescribed by the sole Member Trustee. The Trustees may at any Trustee Meeting, in accordance with the proportional voting rule, decide upon the appropriate voting arrangements to apply for that Trustee Meeting, any matter to be determined in the Trustee Meeting or in respect of any future Trustee Meetings or matters to be decided upon in those meetings. Any Reserve Account balances are not to be used for voting purposes.

Note: A SMSF may have four members, generally from one family and comprising Members with different ages and vastly different superannuation interest balances. Under most trusts, each Trustee is afforded one vote at a Trustee meeting with the chairperson having a casting vote in the event of the Trustee votes being tied. However with some Members holding all of their retirement savings in a SMSF, the opportunity of taking pecuniary advantage of the one Trustee – one vote rule arises. As a default under these Rules, unless the Trustees agree on a different voting system, Trustee votes are based on Member Superannuation Interest balances to protect the Members with significant retirement savings. Although both voting methods – one vote with chairman casting vote v proportional voting, have not been canvassed in a Court of Law, to enshrine the proportional rule with certainty and security a SMSF Strategies special purpose corporate Trustee should be used where proportional voting

is the norm under the Corporations Act 2001.

16.5 A Trustee Meeting shall be valid where attendance by a Trustee is by telephone, by the internet, by way of circulating minute, facsimile or any other form where all Trustees are provided with the opportunity of attending, discussing and determining the items of the Trustee Meeting agenda and where a vote is cast.

16.6 A resolution shall be passed where more than 50% of the votes available at the Trustee Meeting vote in favour of the resolution.

16.7 Subject to the Superannuation Laws and despite Rule 16.4, at any Trustee Meeting dealing with a deceased Member's Death Benefits or a Member's Incapacity Superannuation Benefits only the Member's Legal Personal Representative or the Member whilst alive and legally capable and competent may vote on any resolution dealing with the deceased or incapacitated Member's Superannuation Interest, Death Benefits or Superannuation Benefits.

16.8 The Trustee of the Fund, subject to any binding Member Auto-reversionary Pension or SMSF Will, may limit the persons or entities that may claim or can benefit from the payment of any Death Benefits, either directly or indirectly following upon the death of a Member of the Fund. In order to limit the persons or entities the Trustee must resolve in a Trustee Meeting those persons or entities that may benefit from any Death Benefit payment upon the death of one, more or all Members of the Fund. The Trustee may also make any such limitation a Special Rule of the Fund.

16.9 The Trustee of the Fund is to record and maintain all decisions of the Trustee for a reasonable period of time unless otherwise required under the Superannuation Laws.

Rule 17 – Trustee to keep Accounts

17.1 At the Trustees' discretion the Trustee of the Fund is authorised to create various Accounts for the Fund including but not limited to Fund cash flow statements, operating statements, Fund Balance Sheets, Earnings accounts, Reserve Accounts and Member Superannuation Interests. The Trustee, however, must keep those Accounts as required under the Superannuation Laws.

17.2 The Trustee is to maintain accounts for the Fund, the Fund's Superannuation Interests, any Fund Reserve Account and for any other Account created by the Trustee and make additions and deductions from such Accounts according to the Rules of the Fund or the Superannuation Laws as required.

17.3 For accounting purposes the Trustee may determine the Value of the Assets of the Fund or a Member's Superannuation Interest at any time or as required by the Audit Standards, the Regulator or pursuant to the Superannuation Laws.

Note: Where the Superannuation Laws require a specific valuation method for Assets including property, shares, collectables and other investments of the Fund the Trustee is to abide by those Rules as if they were Rules of this Fund. In that regard SIS Regulation 8.02B to require that for the year of income 2012-13 and any later year of income, when preparing accounts and statements required by subsection 35B(1) of the Act, an asset must be valued at its market value. SMSFs must begin to value their assets at market value when preparing the fund's accounts and statements for the 2012-13 year of income.

17.4 The Trustee is to determine, where required by the Superannuation Laws or the Regulator, a Member's Superannuation Interest Entitlement. The Trustee may also keep records regarding the preservation status, the Tax-Free and the Taxable Components of any Member Superannuation Interest.

17.5 The Trustee must appoint an Auditor each income year and ensure that the Fund's Accounts are audited in accordance with any Audit or Accounting Standards or according to the requirements of the Superannuation Laws.

17.6 The Trustee of the Fund must keep records and accounts of the Fund for at least ten years or for such other time as the Superannuation Laws or the Regulator requires.

Rule 18 - Fund Earnings

18.1 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, at any time the Trustee may determine and declare the Earnings for one or more of the following Accounts:

a) the Fund;

b) a Member's Superannuation Interest;

c) a group of Members' Superannuation Interests;

d) a Reserve Account; or,

e) any other Account or group of Accounts in the Fund.

18.2 The Trustee has sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where to allocate any Earnings of an Account including to a Member Superannuation Interest, a Reserve Account or any other Account of the Fund. If the Fund does not hold any Reserve Accounts any allocation of Earnings must be fair and reasonable amongst Member Superannuation Interests.

18.3 Where the Trustee maintains separate Investment Strategies for one or more Member Superannuation Interests then only those Superannuation Interests are to receive Earnings attributable to Assets held by the Trustee for the benefit of the separate Investment Strategy.

Note: Allocation of Earnings of the Fund should be fair and reasonable between all Member Superannuation Interests of the Fund in accordance with SISR 5.03(2) except where a Member Superannuation Interest or group of Member Superannuation Interests maintain a separate Investment Strategy where Earnings from the Separate Investment Strategy should be allocated to those Superannuation Interests partaking in the Separate Investment Strategy. However the Superannuation Laws – SISR 5.03(1) and the Rules of the Fund allow the Trustee to allocate Earnings to a Reserve created for a specific or general purpose.

Rule 19 – Accounting for a Member Lump Sum Superannuation Interest

19.1 The Trustee of the Fund may establish an Account for a Member Lump Sum Superannuation Interest created on behalf of a Member under Rule 5.2.

19.2 The Trustee may determine at any time in relation to a Member Lump Sum Superannuation Interest the amount that is:

a) preserved, unrestricted non-preserved, restricted non-preserved or such other type of Superannuation Benefit as the Superannuation Laws allow or require;

b) the taxable component including the element untaxed in any Member Superannuation Interest and in addition the tax free components as required by the Superannuation Laws.

19.3 Subject to the Superannuation Laws, the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee may add to the Member Lump Sum Superannuation Interest the following amounts:

a) Authorised Contributions made on behalf of the Member to the Fund;

b) an allocation of Earnings according to Rule 18.2 and 18.3;

c) allocations made by the Trustee from any of the Fund Reserve Accounts according to Rule 9.5;

d) a Transfer Superannuation Interest made to the Fund or within the Fund on behalf of a Member;

e) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Lump Sum Superannuation Interest;

f) any amounts allocated to the Member Lump Sum Superannuation Interest by the Trustee from insurance policy proceeds under Rule 12.5;

g) a Member Income Stream Superannuation Interest Roll Back amount;

h) a refund of Excess Contributions Tax;

i) an amount subject to a Contributions Splitting Notice from a Spouse;

j) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;

k) such other amounts that, at the Trustee's discretion, should be added to the Member Lump Sum Superannuation Interest.

19.4 Subject to the Superannuation Laws the Trustee may deduct from the Member Lump Sum Superannuation Interest any of the following amounts:

a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees or proportion thereof incurred by the Trustee that in the Trustee's opinion should be specifically deducted from the Member Lump Sum Superannuation Interest and not Reserve Accounts of the Fund;

b) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be specifically deducted against the Member's Lump Sum Superannuation Interest;

c) any Taxes or Tax Adjustment Payments that the Trustee determines should be specifically deducted from the Member Lump Sum Superannuation Interest;

d) The manner of payment and from what source these payments have been deducted for all insurance premium requirements for a Member including life, disability, accident, salary continuance or trauma insurances shall be in accordance with the total unfettered discretion of the Trustee.

Note: The Commissioner has noted that if insurance premiums have been deducted from a Member's account then any payout should be made to that account.

e) any Superannuation Lump Sum payment made by the Trustee on the death, Permanent Incapacity, Temporary Illness, Retirement, termination of employment, turning age 65 or for any other purpose for the benefit of the Member themselves, their Dependants, Legal Personal Representative or Legal Estate in the event of either the Member's death or Incapacity;

f) any amount transferred to a Member Income Stream Superannuation Interest for the purpose of commencing a Member Income Stream Superannuation Interest;

g) any Excess Contributions Tax or payment required under a properly issued Release Authority;

h) a Contributions Splitting Amount to a Spouse;

i) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;

j) any other amounts the Trustee determines should be deducted from the Member's Lump Sum Superannuation Interest.

Rule 20 – Accounting for a Member Superannuation Income Stream Superannuation Interest

20.1 The Trustee of the Fund may establish an Account for a Member Income Stream Superannuation Interest created on behalf of a Member under Rule 5.2.

20.2 The Trustee may determine at any time in relation to a Member Income Stream Superannuation Interest the amount of the Income Stream that is the taxable component including the untaxed taxable component and the tax free component.

20.3 Provided the Superannuation Laws allow and the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee may add to the Member Income Stream Superannuation Interest:

a) any allocation of Earnings according to Rule 18.2 and 18.3;

b) allocations made by the Trustee from any of the Fund Reserve Accounts under Rule 9.5;

c) a Transfer Income Stream Superannuation Interest made to the Fund on behalf of a Member;

d) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Income Stream Superannuation Interest;

e) any amounts allocated to the Member Income Stream Superannuation Interest by the Trustee from insurance policy proceeds under Rule 12.5;

f) an amount from a Member Lump Sum Superannuation Interest to commence a Superannuation Income Stream;

g) any amount transferred from another Member Income Stream Superannuation Interest or Reserve Account for the purpose of commencing a new Superannuation Income Stream;

h) any Excess Contributions Tax refund;

i) such other amounts, at the Trustee's discretion, that should be added to the Member Income Stream Superannuation Interest.

20.4 Provided the Superannuation Laws allow the Trustee may deduct from the Member Income Stream Superannuation Interest any of the following amounts:

a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees incurred or proportion thereof by the Trustee that, in the Trustee's opinion, should be deducted from the Member Income Stream Superannuation Interest;

b) a proportion of the General Expenses of the Fund or any Specific Expenses including any Superannuation Income Stream payments made by the Trustee of the Fund for the benefit of the Member;

c) any Taxes or Tax Adjustment Payments that the Trustee determines should be deducted from the Member Income Stream Superannuation Interest;

d) insurance premiums for the payment of insurance requirements for the Member or any of their Dependant Members including life, disability, accident, salary continuance or trauma insurances that, in the opinion of the Trustee, should be deducted from the Member's Income Stream Superannuation Interest where the Member does not hold a Lump Sum Superannuation Interest;

e) any Superannuation Lump Sum payment made by the Trustee representing the commutation of a Member Income Stream as a consequence of a Member's request to commute the Income Stream or on the Member's death, Incapacity or as otherwise allowed under the Superannuation Laws;

f) any amount transferred to another Member Income Stream Superannuation Interest for the purpose of commencing a Superannuation Income Stream;

g) any Member Income Stream Superannuation Interest Roll Back amount;

h) any Excess Contributions Tax or payment required under a properly issued Release Authority;

i) a Contributions Splitting Notice amount allotted to a Spouse;

j) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;

k) any amount allocated from the Member Income Stream Superannuation Interest to a Reserve Account provided the allocation is in accordance with the Superannuation Laws;

l) any other amounts the Trustee determines should be deducted from the Member's Income Stream Superannuation Interest.

Rule 21 - What happens to Taxes and Excess Contributions Tax?

21.1 The Trustee must pay all Taxes, duties, charges, fees and Taxes relating to the Fund's Assets, Earnings, and Contributions or on any other taxable consequence in accordance with the Superannuation Laws.

21.2 The Trustee is not personally liable for any taxation liability assessed to the Fund nor is any Member.

21.3 The Trustee must have regard to the Superannuation Laws as to which account, Earnings, Reserve Account or Superannuation Interest any tax is to be deducted in whole or part.

21.4 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 Excess Contributions Tax Release Authority are met in accordance with the Superannuation Laws.

21.5 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.

21.6 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may make a Tax Adjustment 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.

Rule 22 – Contributions Splitting

22.1 At any time, provided the Superannuation Laws allow, the Trustee may receive a Contributions Splitting Notice by a Member in relation to an Authorised Contribution made on behalf of the Member to the Fund.

22.2 The Contributions Splitting Notice must be in accordance with the Superannuation Laws or as prescribed by the Regulator. Any notice must only deal with those Authorised Contributions allowed to be split to a Spouse under the Superannuation Laws.

22.3 The Contributions Splitting Notice may detail the amount to be Allotted, Rolled Over or Transferred as a Transfer Superannuation Interest to a Member's Spouse. Subject to the Superannuation Laws, the Trustee may make the relevant contributions split by allocating, rollover or transferring Assets of the Fund in satisfaction of the contributions split.

22.4 The Trustee is to action the Contributions Splitting Notice within a reasonable period of time and no later than the time prescribed by the Superannuation Laws or the Regulator.

Rule 23 – Family Law

23.1 The Trustee may receive a Family Law Payment Splitting Notice from the Courts in relation to a Member's Superannuation Interests.

23.2 The Trustee is to make such accommodation to the Member whose Superannuation Interests are being split under the Family Law Payment Splitting Notice in terms of:

a) which of the Member's Superannuation Interest the Family Law Payment Splitting Notice is best utilised to meet the requirements of the notice;

b) whether the amount to be split to the Member's Spouse is preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow including the extent to which it consists of tax free, taxable and taxable untaxed components;

c) which Assets of the Fund may be utilised to meet the terms of the Family Law Payment Splitting Notice.

23.3 The Trustee is to action the Family Law Payment Splitting Notice within a reasonable period of time and no later than the time prescribed by the Courts, Superannuation Laws or the Regulator.

Rule 24 – Member Meetings and Decision Making

24.1 The Members may hold a Members Meeting where the Trustee of the Fund is to be removed or appointed pursuant to Rule 2 of the Fund's Rules or in such other circumstances as a Members Meeting is warranted, authorised or required by the Regulator or under the Superannuation Laws.

24.2 There is no requirement for formal notice of a Member's Meeting. However every Member must be afforded the opportunity of participating in the Member's Meeting where possible.

24.3 A quorum for a meeting is where at least 50% of all available Members attend the Member's Meeting and may include one Member.

24.4 For each decision by a Member at a Member's Meeting the Member is to hold that number of votes equal to $1 per vote in respect of the total Member Superannuation Interest Entitlements of the Member.

24.5 A Member's Meeting shall be valid where attendance by any Member is by telephone, by the internet, by way of circulating minute, facsimile or any other form where all Members are provided with the opportunity of attending, discussing and determining the items of the

Member Meeting agenda and where a vote is cast.

24.6 A resolution shall be passed where more than 50% of the votes available at the Member Meeting's vote in favour of the resolution.

24.7 The Trustee of the Fund is to record and maintain all decisions of the Members for a reasonable period of time unless otherwise required under the Superannuation Laws.

Part Four – Paying Superannuation Benefits from a Superannuation Interest

Rule 25 – Accessing Member Superannuation Benefits

25.1 The Trustee is authorised to pay out a Superannuation Lump Sum or Superannuation Income Stream from a Member Superannuation Interest where the Member meets a Condition of Release in accordance with the Superannuation Laws. However, only Superannuation Benefits permitted in conjunction with the relevant Cashing Restriction for that Condition of Release are authorised to be paid by the Trustee to the Member or any other person allowed pursuant to the Superannuation Laws.

Specific Benefits Payable by the Trustee of the Fund

25.2 Subject to the Superannuation Laws and without limiting the powers of the Trustee under Rule 25.1 of the Fund, the following Superannuation Benefits or other benefits may be paid by the Trustee at the Member's Request, the Trustee's discretion and if authorised under Rule 25.1:

a) where the Member, in the Trustee's opinion, is Temporarily Incapacitated, they may commence a Temporary Incapacity Superannuation Income Stream until such time as the Member is no longer Temporarily Incapacitated;

b) where the Member, in the Trustee's opinion, is Permanently Incapacitated, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

c) where the Member is Terminally Ill , they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

d) where the Member is Retired , they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

e) where the Member is aged 65 , they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

f) where a person who is a Member of the Fund dies, a Dependant of the Member or the deceased Member's Legal Estate may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

g) where the Member leaves the employment of an employer, or any of whose associates have at any time contributed into the Fund on behalf of the Member, they may take an Income Stream as prescribed by the Superannuation Laws;

h) where the Member has reached preservation age and commences a Superannuation Income Stream authorised under the Superannuation Laws for Members over preservation age including a Transition to Retirement Income Stream;

i) where the Member meets the conditions of Severe Financial Hardship the Trustee may pay a Superannuation Lump Sum to the Member as authorised under the Superannuation Laws;

j) where, as authorised by the Regulator or any other government entity responsible for deciding the payment of Superannuation Benefits on the basis of Compassionate Ground, the Trustee may pay a Superannuation Lump Sum to a Member on Compassionate Grounds;

k) where the Member has commenced an Income Stream Superannuation Interest, subject to the terms and conditions of the Income Stream Superannuation Interest, any Rule of the Fund or the Superannuation Laws, a Lump sum may be taken from the Income Stream Superannuation Interest at any time, including upon the death of the Member;

l) Any other Superannuation Lump Sum, Superannuation Income Stream or other payment authorised under the Superannuation Laws or by the Regulator.

25.3 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.

25.4 Rollovers and Transfers

Subject to the Superannuation Laws, the Trustee may Rollover a Superannuation Lump Sum, a Superannuation Income Stream or make a transfer of a Transfer Superannuation Interest for the benefit of a Member to an Eligible Entity.

25.5 SMSF Death Benefits

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a Member of the Fund dies the following Death Benefits may become payable by the Trustee of the Fund provided the conditions at Rule 16.7 are met:

a) Where a person who is a Member of the Fund dies and there is a valid and binding SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination in force for the Member, the Trustee must pay the Member's Superannuation Benefits in accordance with the SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination. This includes, subject to the Superannuation Laws, the payment of Superannuation Lump Sums and Superannuation Income Streams to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws including a charity.

   Note: To receive a pension a child must be either:-
   a) Under 18 years of age;
   b) Between 18 years of age and 25 years of age and be financially dependant;
   c) Certified as disabled under the federal laws and if so can receive a pension indefinitely."

b) Where a person who is a Member of the Fund dies and there is no binding and valid SMSF Will, Binding Death Benefit Nomination or Non-Lapsing Binding Death Benefit Nomination in force for the Member the Trustee has sole discretion, subject to the Superannuation Laws to pay, subject to the Superannuation Laws, the Member's Superannuation Benefits as one or more Superannuation Lump Sums or Superannuation Income Streams or combination of both to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws. If the Member has provided the Trustee with a Non-binding Death Benefit Nomination the Trustee may take into account the wishes of the Member in distributing the deceased Member's Superannuation Benefits but is not required to do so.

c) Subject to paragraph 25.5(d), where a Member has an Auto Reversionary Income Stream or Pension with an auto reversion transferrable to a Dependant of the Member, created pursuant to the provisions of the Pension Income Stream or, alternatively, by the Member's SMSF Will, then subject to the Superannuation Laws and the terms and conditions of the Income Stream, the Trustee shall transfer the deceased Member's Income Stream or Pension to the Auto-Reversionary Beneficiary as soon as practicable

after the Member's death. Upon this auto-reversionary event, amounts standing the credit of the deceased Member's Auto-Reversionary Pension are not to be considered as Member Superannuation Benefits but the Superannuation Benefits of the Auto-Reversionary Beneficiary. Subject to the terms and conditions of an Auto-Reversionary Income Stream or Pension and the Superannuation Laws at that time, the Auto-Reversionary Pension may be transferred to another Auto-Reversionary Beneficiary upon the death of the first or latter Auto-Reversionary Beneficiary.

d) A Member may establish a Conditional Reversionary Pension on the signing of a Conditional Pension Deed. The terms and conditions of the Conditional Pension, as set out in a "Conditional Pension Deed" shall be acknowledged and agreed to by the proposed recipient of the Conditional Pension by them executing a separate or the same Conditional Pension Deed with the terms and conditions of the payment of the Conditional Pension. The Member creating the Conditional Pension shall also be a party to the Conditional Pension Deed. The executed Conditional Pension Deed shall then, subject to the Superannuation Laws and at the direction of the Member become a Special Rule of the Fund.

e) In the event of the creation of a Conditional Pension Deed as provided in clause 25.5(d) above the Trustee must, subject to the Superannuation Laws, upon application by the Member, accept the Conditional Pension Deed as a Special Rule of the Fund and shall sign all documents and undertake all requirements for the establishment and provision of the Special Rule accordingly.

f) The Trustee may limit to whom or what Death Benefit Dependants the Member's Superannuation Benefits may be paid to except where there is a Binding SMSF Will, Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination, Conditional Pension Deed, or Ancillary Deed. This includes any Superannuation Benefits to be paid to a deceased Member's Legal Estate. To limit the Death Benefits Dependants that the Member's Superannuation Benefits may be paid to the Trustee must first hold a Trustee Meeting and notify all Members of any Trustee resolution on the matter.

25.6 SMSF Living Will Superannuation Benefits

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a person who is a Member suffers Temporary, Permanent or any other Incapacity or Terminal Illness the Trustee is required to, subject to available Fund resources, have regard to any Member SMSF Living Will. This includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the payment of Superannuation Lump Sums and Superannuation Income Streams to the Member, their Dependants or the Member's Legal Personal Representative.

25.7 Income Stream and Pension Roll Backs

At any time a Member in receipt of an Income Stream Superannuation Interest may Rollback part or all of their Income Stream Superannuation Interest to a Lump Sum Superannuation Interest in the Fund established for their benefit. The Roll Back amount may be satisfied by the transfer of assets between the Member's Income Stream Superannuation Interest and the Member's Lump Sum Superannuation Interest. Subject to the Superannuation Laws the Trustee may choose the value of any Asset subject to a Roll Back.

25.8 Income Stream and Pension Transfers

At any time a Member in receipt of an Income Stream Superannuation Interest may transfer part or all of their Income Stream Superannuation Interest to a Lump Sum Superannuation Interest or Income Stream Superannuation Interest to another complying Superannuation Fund. The Transfer amount may be satisfied by the transfer of Assets between the Member's Income Stream Superannuation Interest and the Member's Lump Sum Superannuation Interest or the Member's Income Stream Superannuation Interest in the transferee Fund. Subject to the Superannuation Laws the Trustee may choose the value of any Asset subject to a Transfer.

25.9 Compulsory Payments

It is not compulsory for the Trustee, except where the Superannuation Laws require, to pay a Superannuation Benefit to a Member unless the Trustee is requested to do so by the Member and the payment is permitted in accordance with the Conditions of Release in the Superannuation Laws.

25.10 Special Rules for Income Streams

Where the Trustee commences a Superannuation Income Stream for a Member, Dependant of a Member or deceased Member, the Member's Legal Personal Representative or a deceased Member's Legal Estate, the terms and conditions of the Member's Income Stream including whether it is Auto-reversionary and to whom are to automatically become a Special Rule of the Fund.

Rule 26– Guardian's for Fund Members

26.1 Appointment of Guardians for Fund Members

A Member of the Fund may appoint an individual as a Member's Fund Guardian for the purposes of the payment of that specific Member's benefits and the management of that Member's superannuation interests held in the Fund in accordance with the provisions of the Deed. This appointment must be in writing ("the Deed of Appointment") and must be executed by both the Member nominating and the Fund Member's Guardian appointed and must also be witnessed by two independent witnesses. A Fund Guardian may be appointed by a Conditional Pension Deed pursuant to clause 25.

26.2 Consent required by the Fund Member's Guardian

Subject to the provisions of the Deed of Appointment or Conditional Pension Deed, in the event of a Member of the Fund appointing a Member's Fund Guardian in accordance with Rule 26.1 hereof the Trustee cannot exercise any of the powers as conferred upon the Trustee in accordance with the provisions of this Deed relating exclusively to the specific Member who appointed the Fund Member's Guardian without the Guardian's prior written consent.

26.3 Appointment of Fund Member's Guardian as a Fund Member

Subject to the provisions of the Governing Rules of the Fund and Conditional Pension Deed a Guardian may be or become a Member of the Fund. In the event of a Guardian applying to become a Member of the Fund the Trustee must admit such Guardian as a Fund Member provided the Fund remains a SMSF.

26.4 Revocation of Fund Member's Guardian

The Member of the Fund who appointed the Fund Member's Guardian may revoke this appointment at any time by delivering to the party appointed as the Fund Member's Guardian a written notice of revocation of the role of Guardian. Such notice must be in writing and be signed and dated by the applicable Member. In the event that a Guardian becomes a member of the Fund and receives notice under this sub-clause, the Guardian's membership is terminated within 7 days if the Guardian does not resign as a member.

Part Five – Other Special Events

Rule 27– Winding up the Fund

27.1 The Trustee is to wind up the Fund in the following circumstances:

- on the death of the last remaining Member of the Fund and any Replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;
- the Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders that the Fund is to be wound up;
- 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;
- the Trustee resolves that the Fund is to be wound up.

27.2 The Trustee in winding up the Fund is to 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 26.3.

27.3 Following the payment of all amounts under Rule 27.2, if the Trustee has any Assets, Cash and Reserves the Trustee may distribute these Assets and Cash, subject to the Superannuation Laws to:

a) Members and former Members of the Fund;

b) Relatives of any Member or former Member;

c) any Legal Estate of a Member or former Member; or,

d) any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee determines.

Rule 28 – Changing the Fund's Rules or Name

28.1 The Trustee may at any time by simple resolution or Deed vary, change, delete from, add to or otherwise amend any or all of the Rules of the Fund provided the following conditions are adhered to:

a) Any variation, change, deletion, addition or amendment to the Rules shall strictly adhere to the Superannuation Laws and the Fund retaining its Complying SMSF status;

b) Where the Trustee has resolved that a Special Rule for the benefit of a Member shall take effect, the Special Rule shall form part of the provisions of any amended Rules of the Fund unless otherwise determined by the Member and/or the Trustee;

c) Any variation, change, deletion, addition or amendment to the Rules shall not detrimentally affect a Member's Superannuation Interests in the Fund;

d) Any variation, change, deletion of amendment to the Rules shall not result in a resettlement of the superannuation trust nor a capital gains tax event unless the Superannuation Laws require;

e) Where the Trustee of a Fund is adopting the SMSF Strategies Rules and has a defined benefit pension in existence pre-2004, a loan arrangement pre-1985 or any other Rule that advantages the Members of the Fund but which would be lost or diminished if the SMSF Strategies Rules were applied in-toto, any variation of the Rules is not to vary the Rules that advantage a Member and they are deemed to be incorporated into the Rules of the Fund.

28.2 The Trustee may at any time change the Fund's name provided the Regulator is informed if required under the Superannuation Laws. Any change in Fund name may be made by the Trustee by way of a simple resolution.

Part Six – Rules Definitions

Rule 29 – Definitions

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 includes a Pension where capital cannot be added to the Pension except to create a new Pension and that the standards in SIS Reg 1.03(1), 1.06(1), 1.06(9A) and 1.06(9B) apply or such other standards as prescribed for Accounts Based Pensions in the Superannuation Laws.

Active Member is a Member of the Fund that meets the criteria for active membership under the Superannuation Laws including the making of continuous contributions on behalf of the Member to the Fund.

Actuary is any professional actuary authorised under the Superannuation Laws to carry out the role of actuary to a Complying SMSF and which may include an actuary who is a practising Member of the Institute of Actuaries of Australia.

Additional Trustee is a person who is a non-Member of the Fund who is appointed as a Trustee of the Fund as a consequence of the Fund having only one Member.

Anti-detriment Reserve includes a Reserve established by the Trustee under the Rules of the Fund and for the purpose of ensuring that the Dependants or Legal Estate of the deceased Member are put in a better financial position than they expect from the deceased Member's SMSF Legal Estate through the allocation of an amount from the Anti-detriment Reserve to one of more of the deceased Member's Superannuation Interests or to the deceased Member's Dependants or Legal Estate.

Assets include, but are not limited to real, personal or intellectual property, shares, futures, collectables, businesses or business interests, any assets or property transferred or contributed to the Fund plus income, earnings and profits arising from those assets or property interests as well as any other asset that a Superannuation Fund may lawfully hold on behalf of a Member, Fund Superannuation Interest, Member Superannuation Benefit, for Insurance purposes as well as for the Dependants and the Legal Estate of a Member or deceased Member but excludes Cash.

Assets Test Exempt Superannuation Income Stream is a Superannuation Income Stream that is exempt, either wholly or partially from the Assets Test under the Social Security Act 1991.

Associate has the same meaning as found in the in house asset Rules found in Part 8 of the *SIS Act 1993.*

Auditor is an auditor authorised under the Superannuation Laws or by the Regulator to be an auditor of a SMSF.

Australian Superannuation Fund means a Superannuation Fund that meets the conditions of an Australian Superannuation Fund under the Superannuation Laws or is otherwise held to be an Australian Superannuation Fund by the Regulator.

Authorised Contribution made on behalf of a Member or Members of the Fund means a Contribution, whether by way of Cash, Asset or in-kind (including a Fund expense payment or the forgiveness of a debt), made to the Fund by a person, entity, government, Regulator, Employer Sponsor where the Trustee is satisfied that the Contribution has met the requirements for making a superannuation Contribution under the Superannuation Laws and that the acceptance of the Contribution by the Trustee of the Fund will not result in the Trustee of the Fund breaching the Superannuation Laws but does not include an allocation from a Reserve Account of the Fund.

Auto-Reversionary Income Stream or Pension means an Income Stream or Pension where a person including a Dependant ("the auto-reversionary beneficiary") is included in the Income Stream or Pension documentation as the recipient ("if alive") of the Member's Income Stream or Pension upon the death of the Income Stream or Pension Member or beneficiary. Where the Superannuation Laws do not allow an auto-reversionary beneficiary to continue, the auto-reversionary beneficiary's share of the Income Stream or Pension is to be commuted to a Lump Sum.

Bare/Holding Trust is a Trust and includes a Holding Trust established by the Trustee or some other party which holds one of more Assets on bare trust for the Trustee of the Fund. The trustee of the Bare Trust or Holding Trust is to hold any Asset of the Fund for the absolute entitlement of the Trustee of the Fund. A Bare Trust may be used for the purposes of the Trustee entering into any borrowing arrangement under the Superannuation Laws or a traditional instalment warrant arrangement or limited recourse lending arrangement pursuant to sections 67, 67A and 67B of the SIS Act 1993 or such other Superannuation Laws that allow the Trustee of a SMSF to borrow.

Benefits in Kind are Superannuation Benefits allowed to be paid under the Superannuation Laws that are neither Cash nor an Asset of the Fund and includes a set-off. The value of any Superannuation Benefit in Kind is to be determined by the Trustee of the Fund who may engage the services of a valuer in that regard.

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.

Cashing Restriction is any restriction in the Superannuation Laws that may apply where a Member satisfies a Condition of Release in respect of one of more of their Superannuation Interests.

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.

Cloned SMSF includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Complying SMSF that bears an identical set of Rules, Members and Trustee as the Fund.

Company includes any entity incorporated pursuant to Corporations Act 2001 or the Superannuation Laws.

Compassionate Grounds includes those grounds listed under the Superannuation Laws authorising the Trustee, subject to direction by the Regulator, to pay a Superannuation Lump Sum to Members based on Compassionate Grounds.

Complying SMSF means a superannuation fund that meets both the definition of a SMSF and the conditions of a complying SMSF under the Superannuation Laws or as otherwise determined by the Regulator.

Concessional Contributions are those Contributions and allocations defined as Concessional Contributions in the Superannuation Laws.

Conditional Pensions are income streams to be paid in accordance with Rules 25.8 d) and 25.8 e) of the Rules of the Fund.

Condition of Release includes those conditions of release of Superannuation Benefits in the Superannuation Laws and in particular Schedule 1 of the SIS Regulations 1994.

Contract of Life Insurance includes any policy as defined under the Superannuation Laws and in addition a policy for the Temporary Incapacity, Permanent Incapacity, Death, Trauma or any other event dependent upon the life of a Member of the Fund.

Contribution includes a payment, distribution or transfer of Cash or an Asset to the Fund or payment in kind on behalf of a Member of the Fund or the Trustee of the Fund that the Trustee or Regulator is of the opinion is a Contribution but does not include an allocation from a Reserve Account on behalf of a Member.

Contribution In Kind includes a deemed Contribution as declared or notified by the Trustee or the Regulator and would include a person meeting an expense or other legal obligation of the Trustee of the Fund including the forgiveness of a loan.

Contributions Reserve includes a Reserve of the Fund where unvested Contributions are made on behalf of a Member or a specific group of Members.

Contributions Splitting Notice is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Notice provided to the Trustee by a Member requesting an amount to be Allotted, Rolled Over or transferred as a Transfer Superannuation Interest to a Member's Spouse from benefits in the Fund where a Member has applied to the Trustee and the Trustee has accepted to Allot, Rollover or transfer the amount as requested.

Court includes any properly constituted Court situate in Australia whether at a Federal or State level including both criminal and civil Courts.

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

Custodian includes a person who holds an Asset or cash on behalf of the Trustee as bare trustee.

Death Benefit includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a payment, including by way of in-specie asset transfer, of a Superannuation Lump Sum or Superannuation Income Stream to a Dependant, the Legal Estate of the deceased Member of the Fund or any other person however excludes any on-going pension or income stream payment to a Reversionary Pension Beneficiary under an Auto-Reversionary Pension

Dependant includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Spouse of or a Child of a Member of the Fund or a person in an Inter-Dependent Relationship with a Member of the Fund or any financial dependant of a Member of the Fund irrespective of age and any other person the Trustee is of the opinion is a Dependant of the Member of the Fund at the relevant time. However the Trustee may limit those persons who may claim or receive a Death Benefit upon the death of a Member including any Dependant.

Earnings is the amount determined by the Trustee as Earnings of the Fund, Earnings of a specific Member Superannuation Interest or group of Members' Superannuation Interests, a Reserve Account or any other account, whatever the case may be for a period of time. In that regard the Trustee has the sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, of applying one of the following methods for determining Earnings of the Fund, the Member's Superannuation Interest or group of Members' Superannuation Interests or Reserve Account or any other account of the Fund, whatever the case may be:

i. **Accounts Method:** income according to established accounting principles for Superannuation Funds which may include a revaluation of any Assets of the Fund to their market value less any Fund expenses which include Fund taxes;

ii. **Trust Method:** net income as the term "net income" is defined under the taxation of trust provisions in the Superannuation Laws;

iii. **Income Method:** any amounts received as income plus any unrealised or realised capital gains and at the Trustee's discretion, any allocations from a Reserve Account less any disbursements the Trustee is of the view should be deducted from income including any general or specific expenses; or

iv. **Flexible Method:** any combination of the above or method that the Trustee is of the opinion properly reflects Earnings including any transfer from a Reserve Account to the Earnings of the Fund in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use **Method 3** as its default option.

Eligible Entity, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, includes any Superannuation Fund, Life Insurance Company or other entity that may accept a Rollover of a Superannuation Benefit or transfer of a Transfer Superannuation Interest from a SMSF including a Foreign Superannuation Fund where the Superannuation Laws allow.

Eligible Rollover Fund is a Superannuation Fund that is an Eligible Rollover Fund as defined under the Superannuation Laws.

Employer Sponsor is an employer who has agreed to make Authorised Contributions to the Fund on behalf of an employee of the Employer Sponsor or their associate.

Employer Rollover Superannuation Benefit includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Rollover of a Superannuation Lump Sum to the Fund for benefit of the Member as a consequence of the Member terminating their employment with the employer.

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 of the Fund 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.

Explanatory Memorandum is a document attached to the Rules of the Fund for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund.

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 for the purposes of the Superannuation Laws.

Fund means this Fund established and maintained as a Complying SMSF under the Fund's Rules.

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.

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 around the world.

Incapacity includes Temporary and Permanent Incapacity and Terminal Illness as well as those conditions under the Superannuation Laws that amount to incapacity.

Incapacity Superannuation Benefits include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, their Dependants, Legal Estate or other person in the event of a Member's Incapacity or for some other reason.

Income Stream Benefit includes any Pension, income stream or member's benefit that is not an accumulation superannuation interest.

Income Year is any year commencing 1 July and ending 30 June unless otherwise allowed by the Regulator.

In-House Assets Test is the requirement under the Superannuation Laws that limits the percentage of Assets a Trustee of a Fund may hold in Related Party and Related Trust investments and loans by the Trustee of the Fund.

Initial Trustee is the first Trustee or Trustees of the Fund.

Inter-Dependant Relationship is any relationship that meets the conditions of an inter-dependant relationship under the Superannuation Laws.

Insurance Strategy includes a plan established by the Trustee of the Fund to provide insurance cover for the Trustee in the event of any Fund Member's death or Temporary Incapacity, Permanent Incapacity or for any other reason. An Insurance Strategy forms part of the Fund's Investment Strategy.

Investment Reserve includes a Reserve that may be established by the Trustee for the purposes of smoothing investment returns amongst Member Superannuation Interests, allocating investment returns to specific Member Superannuation Interests and allocating to other Reserves of the Fund where the Superannuation Laws allow.

Investment Strategy includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a written document formulating the investment objectives and includes the Insurance Strategy and a plan for investing the monies and Assets of the Fund or Superannuation Interest as required which has regard to all of the circumstances surrounding the Fund including, but not limited to:

a) The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the prospective return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;

b) The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;

c) The liquidity of the Fund's investments considering its expected cash flow requirements; and

d) The ability of the Fund to discharge its existing and future liabilities.

Legal Estate includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a trust established or created under a trust deed, will, Bare trust, Enduring Power of Attorney, by way of Court order or in any other way for the purpose of holding a Member's Assets in the event that a Member lacks legal capacity or in respect of a deceased Member's Assets in the event of their death for distribution to Dependants, the Legal Estate or any other beneficiary.

Legal Personal Representative means upon the death of a Member the executor of a will or person who will be formally appointed as executor upon probate or administrator of the estate of a deceased person. It also includes the Trustee of the estate of a person under a legal incapacity or a person who holds an Enduring Power of Attorney granted by a Member of the Fund and includes any other person the Superannuation Laws allow as a Member's Legal Personal Representative.

Member is a person who has applied for Membership or been automatically appointed as a Member under the Rules of the Fund and has been accepted by the Trustee of the Fund as a Member and has become a Trustee or director of a Corporate Trustee unless the Member is able to appoint a Replacement Trustee or Additional Trustee under the Rules of the Fund and the Superannuation Laws. There is no requirement for the Member of the Fund to have a balance in their Member Accumulation Account. For the sake of clarity, a Member also incorporates a person's Legal Personal Representative in their position as Legal Personal Representative of the person even where the

person has died.

Member Income Stream Superannuation Interest includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the Trustee under the Fund Rules for the purpose of paying a Superannuation Income Stream or Pension, including a Superannuation Income Stream that is currently payable or one that is to commence at some time in the future. A Member Income Stream Superannuation Interest remains in force provided that there is an account balance including $1 or more.

Member Income Stream Superannuation Interest Roll Back means the commutation in whole or part of a Member Income Stream Superannuation Interest in the Fund and the subsequent transfer to a Member Lump Sum Superannuation Interest in the Fund.

Member Lump Sum Superannuation Interest includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the Trustee under the SMSF Strategies Rules for the purposes of paying a Lump Sum to a Member or some other person.

Member Meeting is a meeting of the Members as required by the Rules of the Fund and the Superannuation Laws or where matters regarding the Fund are discussed.

Member SMSF Living Will includes a formal or informal set of directions made by the Member or the Trustee under these Rules to benefit a Member, their Dependants or Legal Estate where the Member suffers Temporary Incapacity, Permanent Incapacity, mental infirmity, loss of mental capacity or terminal illness.

Member SMSF Will includes a formal or informal set of directions made under these Rules by a Member dealing with their SMSF Legal Estate to benefit a Member's Dependants or Legal Estate in the event of their death by way of the payment of Death Benefits.

Non-Binding Death Benefit Nomination is a nomination made by a Member in relation to the distribution of their Superannuation Benefits in the event of their death which is not a Binding Death Benefit Nomination or a Death Benefit Rule.

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

Non-Lapsing Binding Death Benefit Nomination includes, subject to the Superannuation Laws, a nomination in writing, as accepted by the Trustee that states:

a) the persons Legal Estate or other authorised entity specified in the notice that may receive the Member's Death Benefits;

b) the terms and conditions of the Superannuation Benefit that will be paid or transferred to that person or to each of those persons;

c) how and the amount of the benefit to be paid to that person or to each of those persons;

d) the notice is in effect; and

e) must be signed and dated by the Member and accepted by the Trustee of the Fund.

The notice is effective until such time as the Member revokes a notice unless the Superannuation Laws otherwise allow.

No Tax File Number Contributions are those Contributions where the Member has not supplied the Trustee with a valid Tax File Number or as defined as a No Tax File Number Contribution in the Superannuation Laws.

Pay includes credit, distribute, set-off or where a person receives an Asset or benefit in kind.

Pension includes a Superannuation Income Stream Benefit under these Rules or a pension under the Superannuation Laws.

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

a) to pay any Income Stream or Pension liability of the Trustee of the Fund whether by way of a payment of an amount or asset to a Member's Income Stream Superannuation Interest or directly to a Member with an Income Stream Superannuation Interest, such payment in satisfaction in whole or part of the Trustee's Income Stream liabilities in respect of that Member Income Stream Superannuation Interest;

b) to be used to commence a new Income Stream where an Income Stream Superannuation Member has commuted an Income Stream;

c) to pay a Death Benefit where a Member holding an Income Stream Superannuation Interest has died;

or such other payments as the Superannuation Laws allow in respect of Superannuation Income Streams.

Permanent Incapacity is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any condition that the Trustee determines amounts to Permanent Incapacity including in relation to a Member, means ill-health (whether physical or mental), where 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.

Preservation Age is the age specified under the Superannuation Laws according to when the Member is born. The preservation age for a Member is:

a) for a person born before 1 July 1960 – 55 years;

b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;

c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;

d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;

e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;

f) for a person born after 30 June 1964 – 60 years.

Product Disclosure Statement includes, subject to the Superannuation Laws, any statement by the Trustee or provided by another person for the benefit of the Trustee, that provides Members, prospective Members or any other person, material to enable them to understand the operations of the Fund, the Superannuation Interests available to Members, what Superannuation Benefits are payable by the Trustee and any other information required under the Superannuation Laws.

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 listed as such at www.smsfstrategies.com.

Related Party means a person defined as a related party under the Superannuation Laws.

Related Trust means a trust defined as a related trust under the Superannuation Laws.

Relative includes, in relation to an individual, the following:

a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual or of his or her spouse;

b) the spouse of that individual or of any other individual specified in paragraph (a).

Regulated Superannuation Fund is a superannuation fund, including a SMSF that 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.

Replacement Trustee is a person who has been appointed as Trustee of the Fund on behalf of a Member or deceased Member according to the Rules of the Fund or pursuant to the Superannuation Laws including the Legal Personal Representative of a deceased Member of the Fund, the Legal Personal Representative of a Member where the Member is under a legal disability because of age, mental incapacity or for some other reason, the Legal Personal Representative of a Member who holds the Member's Enduring Power of Attorney or any other person who may act as a Replacement Trustee under the Superannuation Laws.

Reserve Account includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an account created by the Trustee of the Fund with surplus Assets or from Earnings of the Fund and specifically includes amongst others: an Anti-Detriment Reserve, a Contributions Reserve, a Pensions Reserve, a Self Insurance Reserve and an Investment Reserve.

Reserve Benefits are benefits including Superannuation Benefits paid or payable directly by the Trustee of the Fund from a Reserve Account to a Member, former Member, their Legal Estate, a Deceased Member's Dependant or any other person or entity allowed under the Superannuation Laws.

Responsible Officer, in relation to a body Corporate means:

a) a director of the company;

b) a secretary of the company; or

c) an executive officer of the company.

Retirement and Retired includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a Member of the Fund who has reached preservation age and no longer intends to work again. It also includes:

a) where a Member of the Fund is over their preservation age and the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;

b) the Member is over age 60 and an arrangement under which the Member is gainfully employed has come to an end on or after that age or the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;

c) at any other time according to the Superannuation Laws.

Roll Back includes the transfer of part or all of a Member's Income Stream Superannuation Interest to a Lump Sum Superannuation Interest in the Fund established for the Rollback Member's benefit.

Rollover means paid as a Superannuation Lump Sum (other than by way of being transferred) between Superannuation Funds within the superannuation system including an Employer Rollover Superannuation Benefits where the Superannuation Laws allow.

Rollover Superannuation Benefit includes the payment of a Superannuation Lump Sum, a Superannuation Income Stream or any other Superannuation Benefits or Superannuation Interests between Superannuation Funds 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.

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

Self Managed Superannuation Fund and SMSF is a superannuation fund that meets all of the terms and conditions of a Self Managed Superannuation Fund as that term is defined under the Superannuation Laws.

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.

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 Rules of the Fund 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 Dependants or the Legal Estate of a deceased Member.

SIS Act 1993 is the *Superannuation Industry Supervision Act 1993.*

SIS Regulations 1994 are the *Superannuation Industry Supervision Regulations 1994.*

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 Legal Estate means the whole of the Superannuation Interests of the Member at a time determined by the Trustee including any allocation from a Reserve of the Fund to a Member Superannuation Interest.

SMSF Will includes any document accepted by the Trustee of the Fund dealing with the transfer of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's death.

Special Rule is a Rule created by the Trustee including a SMSF Will, Reserve and/or a Pension that forms part of the Rules of the Fund and is declared by the Trustee as a Special Rule of the Fund. Pursuant to Rule 1.9 a Special Rule cannot be varied except with the specific consent of the Trustee and where applicable the Member concerned. A Special Rule may be incorporated as a Schedule to the Rules of this Fund.

Specific Expenses include expenses incurred by the Trustee of the Fund that the Trustee is of the view relate directly to a Member Superannuation Interest as well as those expenses the Trustee declares to be a Specific Expense.

Spouse in relation to a person includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as a couple and also includes, where the Superannuation Laws allow, members of the same sex or any other relationship between two persons.

Superannuation Benefit includes a payment, the transfer of an Asset or a payment in kind, whether by way of a Superannuation Lump Sum or a Superannuation Income Stream from the Fund to a Member or other person or Legal Estate on behalf of a Member or deceased Member, provided the Superannuation Laws allow.

Superannuation Fund includes a provident, retirement, welfare or benefit fund both within and outside Australia and for the sake of removing any doubt - the Fund.

Superannuation Income Stream includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a series of periodical payments created by the Trustee for the benefit of a Fund Member or any other person and shall include conditions relating to the term of the Income Stream or pension, the quantum of payments, any indexation or other factors to be applied to the periodical payments and when or whether the Income Stream is commutable to a lump sum, has an automatic reversion or is capable of being transferred upon the death of the Member including a Conditional Reversionary Pension or a pension that has a residual capital value. A Superannuation Income Stream also includes, amongst other periodical payments, the following (subject to the terms and conditions of a Trustee of a SMSF offering the following Income Streams under the Superannuation Laws) which may or may not have an auto-reversionary:

a) Any pension or income stream whose terms and conditions comply with SIS Regulation 1.06(1) including the requirement that the pension or income stream cannot be added to by way of capital;

b) A lifetime complying pension [SIS Regulation 1.06(2)];

c) An Accounts Based Pension;

d) An allocated pension [SIS Regulation 1.06(4)];

e) A market-linked pension [SIS Regulation 1.06(8)];

f) A fixed-term complying pension [SIS Regulation 1.06(7)];

g) A non-commutable life pension [SIS Regulations Schedule 1 – Item 108];

h) A non-commutable allocated pension [SIS Regulation 6.01(2)];

i) A Transition to Retirement Income Stream [SIS Regulation 6.01(2)];

j) A non-commutable pension [SIS Regulation 6.01(2)];

k) A Temporary Incapacity Superannuation Income Stream – non-commutable income stream [SIS Regulation 6.01(2)];

l) An Assets Test Exempt Pension within the meaning of that term under the Social Security Act 1991 including, but not limited to sections 9A, 9B and 9BA; and

m) Any other pension or Superannuation Income Stream under the Superannuation Laws.

Superannuation Interest is any interest in a Superannuation Fund created under the Superannuation Laws and the Rules of the Fund including but not limited to a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest and a Reserve Account.

Superannuation Interest Entitlement is the amount determined by the Trustee, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, at any particular time that is the amount, which if paid in either cash or Assets of the Fund, would discharge the Trustee's liability in relation to the particular Superannuation Interest.

Superannuation Laws *mean the Commonwealth of Australia Constitution Act 1900, Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001,the Corporations Regulations, the Social Security Act 1991 (C'th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C'th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act*

2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

Superannuation Income Stream Reserve Account includes a Pension Reserve created by the Trustee, with or without the advice of an actuary to ensure that there are sufficient Assets held by the Trustee to enable the Trustee to meet its' current and future Superannuation Income Stream liabilities as and when they fall due.

Superannuation Lump Sum is a Superannuation Benefit that is not a Superannuation Income Stream and includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an amount paid out, an Asset transferred from the Fund or a payment in kind according to the Rules of the Fund to a person entitled to be paid a Superannuation Lump Sum or the payment of a Lump Sum upon the commutation of a Member Superannuation Income Stream.

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

Tax Adjustment Payment is where the Trustee declares that, as a consequence of the use by the Fund or a Superannuation Interest ("the 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 ("the 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.

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 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) that caused the Member to cease to be Gainfully Employed but does not extend to Permanent Incapacity.

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

a) cannot be commuted or turned into a Superannuation Lump Sum;

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% per annum or the Consumer Price Index for the previous 12 months.

Terminal Illness 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 person within a period (the ***certification period***) that ends not more than 12 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;

c) for each of the certificates, the certification period has not ended.

Transfer Superannuation Interest includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the transfer of part or all of one or more of a Member's Superannuation Interests from a Superannuation Fund (including a Foreign Superannuation Fund and the Fund itself) to a Superannuation Interest of a Member, their Spouse or any other person in the Fund or another Superannuation Fund.

Transition to Retirement Income Stream means an Income Stream Superannuation Interest that meets the terms and conditions of a Transition to Retirement Income Stream and a Non-commutable Allocated Pension or non-commutable pension under the Superannuation Laws.

Trustee is the Trustee of the Fund and includes a Replacement Trustee appointed for a Member or an Additional Trustee where the Member is the only Member and Trustee of the Fund.

Trustee Law means whichever of the *Trustee Act (NSW) 1925, the Trustee Act (Vic) 1958, the Trustee Act (SA) 1936, the Trustees Act (WA) 1962, the Trusts Act (Qld) 1973, the Trustee Act (Tas) 1898, the Trustee Act (ACT) 1957 and the Trustee Act (NT) 1907* applies and any other Commonwealth, State or Territory legislation that relates to the duties, role and investment powers of a Trustee of a trust including a trust that is a SMSF or Superannuation Fund.

Trustee Meeting is a meeting of the Trustee as required by the Rules of the Fund and the Superannuation Laws or where matters regarding the Fund are discussed.

Value of Assets of the Fund is the value of any asset of the Fund as determined by the Trustee of the Fund, subject to the Superannuation Laws, Audit Standards and any direction by the Regulator, which may include the Asset's historical cost, the replacement cost of the Asset, the market value of the Asset as at last accounting balance date or the current market value of the Asset. The Trustee may change valuation principles applicable to different Assets of the Fund unless the Superannuation Laws provide otherwise. However from 1 July 2012 the Trustee is to use market value for all valuations of the Assets of the Fund.

Value of a Member's Superannuation Interest is the value the Trustee determines in respect of a Member Superannuation Lump Sum Superannuation Interest or Member Superannuation Income Stream Superannuation Interest and if there is no such determination by the Trustee it is the value of the Member's particular 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.

SMSF Strategies Trust Deed

Explanatory Memorandum

The SMSF Strategies Trust Deed has been created to take advantage of the taxation and superannuation changes introduced by the government under the term 'Simpler Super' and 'Better Super' on 1 July 2008. This includes amongst other things:

- *No tax on income, or lump sums* taken from a complying superannuation fund post age 60.

- When a person who is 60 or older has all, or a significant majority, of their income producing investments in a superannuation fund, and their taxable income is less than $6,000 per annum, *they do not need to lodge an income tax return* (this may rise to 18,000 where the government introduces the Carbon Tax income tax rates amendments).

- A member of a fund who is age 55 and born before 1 July 1960 can access their super benefits as a low-taxed transition to retirement income stream, *even while working full or part time*. There is a 10% maximum limit on the amount of income the working member can take each year while working. Once they retire there is no limit on the amount of withdrawals.

- No tax penalties or limits on the amount of super benefits that can be withdrawn by members or their dependants and/or legal estate in the event of the member's death.

- Warehousing of super fund investments for the benefit of the next generation with the abolition of the requirement for superannuation benefits to be taken as a lump sum or pension at age 65.

- Relaxation of the assets test thresholds for social security purposes so that a home owning couple may be able to access a part pension while holding a significant parcel of assets.

- A number of superannuation fund members over age pension age will be able to access the health care card, telephone, and electricity allowances regardless of the amount of superannuation benefits they have in their fund.

- Insurance premiums in the fund for death, permanent and temporary disability of fund members are tax deductible.

- Death, terminal illness and permanent disability benefits paid out during the working life of a member are proportionally tax deductible to the fund.

- Taking an accounts based pension or allocated pension (commenced prior to 20 September 2007) from a fund that has upgraded to the Simpler Super Rules means lower income levels while allowing unlimited withdrawals for retirees, those over age 65 or who are permanently incapacitated in addition to the terminally ill.

This Explanatory Memorandum to the SMSF Strategies Trust Deed is for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund. It does not form part of the Rules of the Fund or the Fund's Trust Deed.

Part One – Rules to Establish the Fund

Purpose

The SMSF Strategies Trust Deed and Rules are designed for simplicity of understanding and use by Trustees, Members and advisers to the Trustee. They are unique and have been purpose-built for SMSF's and the introduction of the Simpler Super laws in Part III of the Income Tax Assessment Act 1997 which commenced on 1 July 2007. The Rules describe in a simple format the processes and requirements for both the Trustee and Members of the Fund to establish the Fund, accept Members and Contributions, how to run Trustee meetings, make investments, establish Member Superannuation Interests and pay out Superannuation Benefits. These Rules need to be read in conjunction with the Fund's Product Disclosure Statement. *However the Rules are not simply limited to new SMSF's but can also apply to existing regulated SMSF's seeking to upgrade their Fund Rules to the Simpler Super Rules.*

- **For New SMSF's**

Once the first Trustee is appointed and the SMSF Strategies Trust Deed executed, there are mandatory requirements that the Trustee must perform in order to make the Fund compliant and operative. These include but are not limited to becoming a regulated superannuation fund, establishing the Fund's complying status with the Regulator, accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy. Part One of the Deed qualifies the Rules regarding these essential steps to establishing a Complying SMSF. Additionally, Part One of the Deed is elaborated upon in this Explanatory Memorandum which includes definitive and separate SMSF Strategy Guides to make comprehension of the Rules simple. These Strategy Guides are not part of the Rules but are to simply provide guidance and understanding on the meaning of a Rule to the Trustee and Member of the Fund as well as the Fund's advisers or in the event of litigation or action by the Regulator.

- **For Existing SMSF's**

For Trustees of existing SMSF's that intend adopting the SMSF Strategies Trust Deed and Rules, the requirements to establish and maintain a Complying SMSF also apply to the on-going operation of the Fund. These include but are not limited to accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy.

SMSF Strategy Guide – Rule 1 – *Introduction*

To make the Rules of the Fund simple to understand we have written the SMSF Strategies Trust Deed and Rules in uncomplicated terms. Additionally, we also provide "SMSF Strategy Guides" in this Explanatory Memorandum to assist Trustees, Members, superannuation professionals, lawyers and the Courts to interpret the Rules. The SMSF Strategy Guides do not form part of the Rules. They are ancillary to the Rules. They are designed to provide clarity of application of the Rules in all situations and transactions relating to the Fund.

When applying the Rules, singular means plural so the word Trustee can mean Trustees, he can mean she and when referring to a company, trust or other entity it includes all those persons responsible for the entity's actions. The Rules of the Fund are to be governed by the law where the Trustee lives unless there is more than one Trustee and they live in different States or the Trustee lives overseas. In these instances the Trustee is to choose the governing law of the Fund and if there is no choice made by the Trustee, the governing law of the Fund is Victoria.

The Rules of the Fund are for a superannuation fund that has chosen to be a "Self-Managed Superannuation Fund". That term has been abbreviated to "SMSF" for the purposes of these Rules.

If there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are to prevail unless the breach of the Superannuation Laws does not result in a fine, penalty or non-compliance notice for the Fund, Trustee or Member. However these Rules contain several provisions not provided for within the Superannuation Laws. If this be the case the Rules are to be read and applied exclusively.

There is also discretion in accordance with some of the Rules for the Trustee to add to, change, create, add or amend these Rules where appropriate. The addition, change or amendment to any Rule is to be seen as a Rule in itself and may become a Special Rule whereby it automatically applies to any future Rule changes unless the Trustee and the Member agree otherwise.

The Fund is guided by the Sole Purpose Test in section 62 of the SIS Act 1993 which ensures that benefits are only paid from the fund on the occasion of a Member dying, retiring, becoming incapacitated or for such other purpose as allowed under the Superannuation Laws.

SMSF Strategy Guide– Rule 2 - *Trusteeship*

Trusteeship: The Rules of the Fund are designed specifically for a Complying SMSF. This means that firstly the Fund must have a Trustee continuously in place at all times. The Trustee may be a Corporate Trustee and/or Individual Trustees. The Trustee may even be a mix of both Corporate and Individual Trustees. Secondly, to be a Complying SMSF, all of the Members of the Fund must be Trustees of the Fund or directors of the Corporate Trustee. Where the Trustees are individuals, the sole or primary purpose of the Fund is to pay old age pensions. In contrast where the Trustee of the Fund is a Corporate Trustee then the Fund may pay income streams, pensions, lump sums and use the Fund for estate planning purposes.

Disqualified Persons: The Trustee of the Fund must not be a Disqualified Person unless the Regulator otherwise allows. There are serious penalties of up to two years imprisonment for persons acting as Trustees where they are Disqualified Persons under the Superannuation Laws. If the Trustee is an individual they must not be bankrupt or have been charged with an offence of dishonest conduct. If the Trustee is a Corporate Trustee then the Trustee must not be in liquidation or under administration and the Trustee must also ensure that there are no Responsible Officers of the company, including Member directors and company secretary, who are Disqualified Persons. A Disqualified Person may apply to the Regulator for an exemption under the Trustee Rules.

SMSF Trustee Conditions: The Rules of the Fund are for a Complying SMSF and a regulated superannuation fund. Under the Superannuation Laws all members must be a Trustee or director of a Corporate Trustee. However the Superannuation Laws provide that the Trustee of a SMSF is allowed to appoint a non-Member as Trustee of the Fund or director on the board of Trustees ("the Replacement Trustee"), in circumstances where:

1. If the Fund has one Member, the Fund may appoint an Additional Trustee (in addition to the mandatory Member as Trustee) being another person provided that the other Trustee is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.

2. If the Fund has a Corporate Trustee, the Corporate Trustee may appoint as a director (in addition to the mandatory Member as director) another person provided that the other director is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.

3. If a Member has died, the Legal Personal Representative of the Member is authorised to become a Replacement Trustee of the Fund or director of the Corporate Trustee subject to the Memorandum and Articles of Association of the Trustee company for the period beginning on the day the Member died until the day a Death Benefit becomes payable from the Fund.

4. If a Member of the Fund is under a legal disability, the Legal Personal Representative of the Member may become the Trustee of the Fund or take the Member's place as director of the body Corporate. If the Member is a child under the age of 18, the parent or guardian of the Member may also take the child's place as Trustee or director of the Corporate Trustee where there is no Legal Personal Representative.

5. The Legal Personal Representative of the Member has an Enduring Power of Attorney in force in respect of that Member except where the Member is a Disqualified Person. This includes where a non-resident of Australia is a Member of the Fund.

6. The Regulator has appointed a Replacement Trustee under the Superannuation Laws.

A Trustee or director of a Corporate Trustee must resign or be removed as Trustee if they become a Disqualified Person or relinquish Membership of the Fund. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status where a Member or Trustee becomes legally incompetent a Replacement Trustee may be appointed.

When a Member dies their Legal Personal Representative replaces the deceased Member as a Member of the Fund. They will have exclusive voting rights as to the payment of the deceased Member's Death Benefits. Immediately the deceased Member's Death Benefits commence to be payable they must resign instantly.

As a SMSF, the Trustee is required to notify the ATO of any changes in membership, Trusteeship, name change and other such things within a period of 21 days from the change. The ATO may also require a Trustee or Member to make a declaration to the Commissioner regarding their knowledge of the Superannuation Laws, their agreement to keep up to date with the Superannuation Laws and maintaining a current set of Rules of the Fund. The Trustee or Member is required to complete any such declaration.

SMSF Strategy Guide– Rule *3 - Membership*

Once formally appointed, the Trustee, in its capacity of Trustee of a complying SMSF, may admit Members to the Fund. As the Fund is to be maintained as a complying SMSF, the Trustee of the Fund must limit the number of Members in the Fund to no more than four Members unless the Superannuation Laws allow or there is a change in the definition of SMSF. Importantly the Simpler Super Rules have been drafted to allow an increase to the number of Members in the Fund should any change in the Superannuation Laws concerning Membership and SMSF's occurs.

When completing an application form for membership of the Fund the potential Member agrees:

1. To be bound by all of the Rules of the Fund.

2. To be a Trustee of the Fund or director of the Corporate Trustee unless there is a Replacement Trustee for the Member who has been validly appointed under the Superannuation Laws.

3. To provide information to the Trustee where required including medical information, Tax File Number and consent for the Trustee to hold that information despite anything to the contrary in the privacy legislation.

4. To have read and understood the Fund's Product Disclosure Statement.

In this Fund, except for any conditions imposed by the Trustee of the Fund, there are no general limitations on who can be a Member of the Fund. This means that a person may become a Member of the Fund at any age or where they do not have a Member Superannuation Interest balance.

Where the Member elects, the Member's Legal Personal Representative is taken to be the Member of the Fund including where the Member may have died. This allows the Executor of a deceased Member's estate to continue receiving a Superannuation Income Stream from the Fund or receiving Earnings on the Member's Superannuation Interests.

There will be occasions during the longevity of the Fund that for some reason a Member may leave the Fund. For example a departing Member may leave the Fund by transferring or rolling over their Superannuation Benefits to another Superannuation Fund. This would then require the Trustee to close the Member's Superannuation Interests. Additionally a Family Law action involving a Fund member may result in the Trustee being subject to discovery proceedings. In this instance the Trustee may decide to cease a Member's membership of the Fund to protect the privacy of the Fund and consequently the interests of the remaining Members.

If a Member decides to withdraw their Superannuation Benefits from the Fund pursuant to the Superannuation Laws, the Trustee is to arrange for the payment of the Member's entitlements as soon as possible. The payment of these entitlements may be in cash or in-specie by way of Assets of the Fund. It is compulsory that the Member's Superannuation Benefits must be transferred to the Member within any period required under the Superannuation Laws. If, subsequent to departing the Fund, the Member fails to advise the Trustee as to where their benefits are to be paid or transferred, the Member's Superannuation Benefits are to be transferred to an Eligible Rollover Fund nominated by the Trustee.

For the purposes of a determination of Australian Superannuation Fund status, a Member or the Trustee may declare the Member to be a non-Active Member of the Fund.

SMSF Strategy Guide– Rule 4 – *Becoming an Operating Regulated SMSF*

Where the Fund is a new Fund the Trustee must first establish the operations of the Fund. In addition to the Trustee's normal responsibilities in the management of the Fund, the Trustee is required to undertake the following to establish the Fund as operational:

Apply for an Australian Business Number and a Tax File Number for the Fund.

1. Establish one or more cash or cheque accounts for the Fund as a clearing account for Authorised Contributions and monies received and Superannuation Benefits and monies paid. Monies need to be deposited into this account as soon as practicable to cater for the running expenses of the Fund. Until monies are in a cash or cheque account the Fund is non-operational.

2. Appoint an Auditor to the Fund. The Superannuation Laws provide that an Auditor must be appointed to the Fund on a yearly basis to provide an assessment of the Fund's compliance with the Superannuation Laws.

3. Appoint SMSF Professionals where required such as a specialist SMSF adviser, SMSF Auditor, SMSF administrator, SMSF insurance adviser and in certain cases a SMSF investment manager, valuer or actuary.

4. Any other act required by the Trustee of the Fund necessary to enable the Fund to become operational and thus be ratified by the Regulator to be a Fund that is a Complying SMSF.

SMSF Strategy Guide– Rule 5 – *Creating and Transferring Member Superannuation Interests*

Superannuation Interests are a new concept in the Superannuation Laws and were introduced with the Simpler Super laws. As a result, the Trustee, on behalf of any Member, may be called upon to establish one or more Member Superannuation Interests. These may include a Member Lump Sum Superannuation Interest and/or a Member Income Stream Superannuation Interest. A Superannuation Interest does not have to have any funds or Assets set aside for it to be a valid Superannuation Interest. A Member may also have more than one Superannuation Interest including two or more Member Income Stream Superannuation Interests provided the Superannuation Laws allow and it does not result in the Fund being treated as a non-Complying SMSF.

Where a Member Rolls Back part or all of their Member Income Stream Superannuation Interest to a Member Lump Sum Superannuation Interest this will add to the Member's Lump Sum Superannuation Interest and not create a new Superannuation Interest unless authorised by the Superannuation Laws and requested by the Member. Where a Member commences a Superannuation Income Stream with a Member Lump Sum Superannuation Interest amount, this may create a new Member Income Stream Superannuation Interest. If there is an existing Member Income Stream Superannuation Interest, the Member has the choice to add to the current Member Income Stream Superannuation Interest which results in a new Superannuation Income Stream or commence a separate Member Income Stream Superannuation Interest.

At any time the Trustee may create one or more Superannuation Interests on behalf of the Fund including a Reserve.

Members should seek advice from a SMSF Professional before adding to an existing Member Superannuation Income Stream Superannuation Interest as this may have unintended taxation and social security results.

The Trustee can also transfer an Asset between Superannuation Interests in the Fund including different Member Superannuation Interests. Any such transfer should be done at a valuation determined by the Trustee or under the Superannuation Laws if required.

SMSF Strategy Guide – Rule 6 - *Accepting Member Contributions, Rollovers and Transfers*

Upon establishment of the Fund or at any other time while the Fund remains a Complying SMSF, the Trustee of the Fund may accept cash or Assets deposited into the Fund on behalf of specific Members of the Fund. The cash or Assets may come from one or more of the following sources:

1. An Authorised Contribution made to the Fund on behalf of a Member.
2. A Rollover Superannuation Benefit on behalf of a Member and/or
3. The transfer of a Transfer Superannuation Interest being a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest and/or a Reserve Account Superannuation Interest from the Fund, another Superannuation Fund or Foreign Superannuation Fund to the Fund on behalf of the Member or for the benefit of another Member or Members.

In each of the above cases, the Trustee must ensure that the Contribution, Rollover Superannuation Benefit or the Transfer Superannuation Interest is in accordance with the Superannuation Laws and where Assets are contributed such Contributions, Rollovers or Transfers are in accordance with the Superannuation Laws in relation to the acquisition of Assets by the Trustee of a Complying SMSF.

An Authorised Contribution is a Contribution made to a Fund on behalf of a Member, including the Member themselves, who:

- is under age 65.
- is a spouse of a person and is under age 65.
- is aged 65 – 69 and is engaged in part-time gainful employment (forty hours of work, business or self-employment over a thirty-day period during an income year).
- is aged 70 – 75 and is engaged in part-time gainful employment and the Contribution is made by an employer or by the Member.
- has a Contribution made by a person after the requisite times and the Superannuation Laws allow.

A Contribution is the transfer of cash or Assets for the benefit of a Member and includes an Employer Rollover Superannuation Benefit but no other Rollover Superannuation Benefit. It does not include an allocation to a Member Superannuation Interest from a Reserve Account nor a distribution or gift to the Trustee of the Fund. The Superannuation Laws and/or the Regulator may require the Trustee of the Fund to ascribe a value to any in-specie Contribution made on behalf of a Member or for the benefit of Members of the Fund. The Trustee is to determine a value for any in-specie Contribution taking into account any regulatory requirements.

The Rules of the Fund allow a Member to transfer their interest in a Foreign Superannuation Fund to the Fund. There may need to be specific amendments to the Rules, dependent upon the laws of the Foreign Superannuation Fund, for overseas transfers of Foreign Superannuation entitlements to occur.

Providing the Fund maintains its Complying SMSF status, when cash or Assets are transferred into the Fund the Trustee has a total unfettered discretion to determine which account the cash or Assets are to be credited to, provided the Member's Superannuation Interest is properly credited for the Contribution. In allocating the cash or Assets to a specific Member's Superannuation Interest, a Reserve Account or the Fund account the Trustee must ensure that the allocation to these accounts does not breach the Investment Strategy for that Superannuation Interest, Reserve Account or the

Fund.

The Superannuation Laws provide a limit on Trustees of Complying SMSF's accepting Non-Concessional Contributions on behalf of a Member and where a Tax File Number has not been supplied. The Trustee is not allowed to accept a Contribution where no Tax File Number is supplied. Where the Trustee accepts a Contribution not allowed under the Superannuation Laws, the Trustee is deemed to hold that unacceptable Contribution on trust for the benefit of the contributor. The unacceptable Contribution is to be paid back to the contributor as soon as is reasonable.

The Trustee should seek professional SMSF advice in terms of the Contributions limit to ensure that the Fund retains its complying SMSF status.

SMSF Strategy Guide – Rule *7 - Creating an Investment Strategy for the Fund and Members*

The Superannuation Laws provide that the Trustee of the Fund must formulate and give effect to an investment objective for the Fund and an Investment Strategy to meet that investment objective. The investment objective and Investment Strategy should be in writing and held for inspection at the offices of the Trustee.

Where the Trustee of the Fund runs one Investment Strategy for the whole of the Fund this is called a pooled Investment Strategy and is the default Investment Strategy for the Fund. Alternatively the Trustee of the Fund is authorised under these Rules to provide an Investment Strategy for each Member Superannuation Interest or in respect of a group of Member Superannuation Interests such as Member Lump Sum Superannuation Interests. In addition the Trustee of the Fund may implement an Investment Strategy for all Member Lump Sum Superannuation Interests and separate Investment Strategies for each Member Income Stream Superannuation Interest in the Fund. Where a separate Investment Strategy is used, specific Assets of the Fund must be set aside or segregated to meet the needs of the separate Investment Strategy.

It is compulsory, in accordance with the Superannuation Laws, to implement a Reserve Management Strategy for all Reserve Accounts created by the Trustee of the Fund. The Strategy for any Reserve Account must be prudently managed and the Trustee may apply one Investment Strategy for all of the Fund's Reserve Accounts or separate Investment Strategies for each Reserve Account.

When formulating an Investment Strategy for the Fund, the Trustee must have regard to the whole of the circumstances surrounding the Fund including, but not limited to:

1. The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the likely return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;
2. The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;
3. The liquidity of the Fund's investments having regard to its expected cash flow requirements;
4. The ability of the Fund to discharge its existing and future liabilities;
5. Any requirements under the Superannuation Laws or by the Regulator; and
6. Whether the Members of the Fund should be covered by Insurance under Rule 12.

In addition the Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings.

The Trustee may seek professional advice in relation to the establishment of any Fund Investment Strategy or Risk Management Strategy. In seeking Investment or Risk Management Strategy advice the Trustee should ensure that the adviser is qualified to provide Investment Strategy advice for a Complying SMSF and is currently licensed and skilled to do so.

SMSF Strategy Guide – Rule 8 - *Making Investments for the Fund and Members Benefit*

The Trustee must invest the Assets of the Fund on behalf of Members of the Fund according to the Sole Purpose Test, the acquisition of Assets from Related Parties rule and with regard to the In-House Assets test.

Sole Purpose Test

The Sole Purpose Test provides that the Trustee must maintain the Fund for the sole purpose of providing the following Superannuation Benefits:

- Retirement or age 65 Superannuation Benefits for a Member;
- Permanent and Temporary Incapacity Superannuation Benefits for a Member or their Dependants;
- Death Benefits on behalf of a Member's Dependants and Legal Estate;
- A Transition to Retirement Superannuation Income Stream;
- Terminal Illness Benefits; and
- any other Benefit allowed by the Regulator or under the Superannuation Laws.

Although the Trustee has wide discretion in making any investment of the Fund, including investments both domestically and internationally, the Trustee must first have regard to the Fund's Investment Strategy and the Superannuation Laws. The Trustee must also ensure that any investment of the Fund does not provide a benefit of any description to a Member until that member satisfies a Condition of Release of their Superannuation Interest. This may breach the Sole Purpose Test. Such restrictions may limit a Trustee investing in a Business if a Member or Related Party derives a benefit which does not meet the Sole Purpose Test.

Acquisition of Assets from Related Parties rule

The Superannuation Laws prevent the Trustee from acquiring an Asset from a Member, Related Trust or a Related Party of a Member or an Employer Sponsor. There are some exceptions to the Member acquisition laws including, amongst others:

- the acquisition of Business Real Property;
- the acquisition of listed shares, securities and widely-held managed funds;
- the acquisition of certain in-house assets provided the investment does not take the Fund's level of in-house assets to beyond the 5% in-house assets threshold;
- the acquisition of units in a unit trust and shares in a company where the underlying entity meets certain criteria in the Superannuation Laws allowing such investments including no borrowings, no investments in other entities and no lending of assets to related parties;
- the investment meets the criteria for a geared investment under section 67 of the Superannuation Industry Supervision Act 1993.

In-House Assets Test

The Superannuation Laws also limit the amount that a Trustee of a Fund can invest in loans, investments and leases with Members, Employer Sponsors, Related Trusts and Related Parties. The current limit is 5% of the market value of the Assets of the Fund.

In addition, under the Superannuation Laws, all dealings with a Member, Employer Sponsor, Related Party or Related Trust must be at arm's length.

SMSF Strategy Guide – Rule 9 - *Establishing a Reserve Account for the Fund*

The Superannuation Laws authorise the Trustee to establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, a Pensions Reserve, an Income Stream Reserve and a Self Insurance

Reserve if the Rules of the Fund allow. A Reserve Account is where the Trustee has set aside surplus Assets or Earnings of the Fund into an account which is not part of a Member's benefits. Providing the Superannuation Laws allow, the Rules of this Fund empower the Trustee at any time to establish one or more Reserve Accounts. These Accounts do not and never shall form part of the Fund's Member Superannuation Interests.

Examples of some Reserve Accounts that may be created under the Simpler Super Rules include:

- a Superannuation Income Stream or Pension Reserve Account – to fund current Superannuation Income Stream liabilities including a guarantee to pay an agreed rate of return on a Simpler Super Income Stream.

- an "Anti-Detriment" Reserve Account - where a bonus or additional payment is made directly under the Simpler Super Rules to a Dependant of a deceased Member or the deceased Member's Legal Estate.
- an Investment Reserve Account where the Trustee can allocate Earnings of the Fund. From this reserve the Trustee can populate other Reserve Accounts, make transfers to other Superannuation Funds or make Member Superannuation Benefit payments.

- a Self Insurance Reserve Account where the Trustee can fund Temporary Incapacity Payments, Terminal Illness Benefits, Permanent Incapacity payments to Members as well as Death Benefit payments to Dependants and/or the Legal Estate of deceased Members.

- an expense Reserve Account where the Trustee can pay General and Specific expenses of the fund.

- an in-house assets Reserve Account where the Trustee can use the funds to lend to Members or related parties, acquire artwork and any other activity that would be classified as an in-house asset.

- a Contributions Reserve Account for short-term warehousing of Contributions for a term no greater than 28 days.

At the time of establishment of any Reserve Account, the Trustee may determine additional Rules for that Reserve Account including, but not limited to the following:

1. The source of surplus cash and Assets to be transferred to a particular Reserve Account including the transfer of cash or Assets from a Member Superannuation Interest to a Reserve Account or the receipt by the Trustee of an Authorised Contribution, Asset or investment which in the opinion of the Trustee is not an entitlement of a Member provided that any transfer or receipt is in accordance with the Superannuation Laws. This may include a distribution from a family trust or a gift to the Fund.

2. The Investment Strategy for the Reserve Account as required by the Superannuation Laws.

3. How, when and for what purpose amounts held in a particular Reserve Account are to be applied by the Trustee including the payment of any Superannuation Benefits in the event of the Member's Retirement, Temporary or Permanent Incapacity, Terminal Illness or as a Death Benefit.

4. Whether the Reserve is to be used to pay out expenses of the Fund including, but not limited to, administration, General expenses, insurance expenses, any Specific Expenses and the payment of Superannuation Income Streams and/or Lump Sums to Members or other entitled persons such as Dependants.

An allocation from a Reserve Account to a Member Superannuation Interest may result in the allocation being treated as a Concessional or Non-concessional Contribution. The Trustee should seek advice from a SMSF Professional prior to establishing and allocating from Reserve Accounts.

Part Two – Some Important Planning Considerations

Purpose

Long-term planning is a key feature of a well-functioning Complying SMSF. The three important areas of planning often neglected by Trustees but crucial to both Members and the Trustee of the Fund are Disability, Death Benefits and Insurance Planning.

Generally, SMSF's are Superannuation Funds run for the benefit of family Members. Although a SMSF is a Trust it has no perpetuity period like traditional Trusts. Therefore it is essential in the initial stage of a Member's tenure in the Fund to consider:

- What would the Member require in the event of their Temporary and Permanent Incapacity in the Fund?
- What would the Member desire in the event of their death?
- What insurances can the Trustee implement not only to include but also to enhance the Member's Incapacity and Death Benefit plans and additionally provide for some unpredicted contingency?

The SMSF Strategies Trust Deed and Rules introduce several new SMSF planning features including the ability of the Trustee of the Fund to offer Members the ability to create a SMSF Living Will to deal with their Superannuation Interests in the event of their incapacity and a SMSF Will to make provision for their dependants and others in the event of the Member's death.

SMSF Strategy Guide – Rule 10 - *Creating a Member SMSF Living Will*

At some time, whilst a member of the Fund, a Member may become incapacitated. The incapacity may be minor and only amount to a Temporary Incapacity which means the Member is no longer able to carry on their normal occupation or self-employment due to physical or mental ill-health. The Temporary Incapacity may last for only days or until such time as the Member returns to their previous occupation or self-employment, turns age 65, decides to retire, dies or the Temporary Incapacity becomes a Permanent Incapacity.

A Permanent Incapacity is where the Member is unable to undertake their usual occupation or self-employment for which they are qualified. For a Member to qualify as Permanently Incapacitated for taxation purposes it requires two medical practitioners to formally classify the Member to be Permanently Incapacitated. A Child Member of the Fund may be Permanent Incapacitated.

A Member may also suffer a Terminal Illness where two registered medical practitioners, including a specialist practising in the area of the Member's illness or injury, 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 person within a period (the ***certification period***) that ends not more than 12 months after the date of the certification.

A Member may create a Member SMSF Living Will. In the event of the Member's Temporary, Permanent Incapacity or Terminal Illness the SMSF Living Will may request the Trustee to:

- Pay a specific Income Stream Superannuation Benefit or Lump Sum Superannuation Benefit to the Member, their Dependants or Legal Personal Representative.
- Specify the terms and conditions of any Income Stream Superannuation Benefit.
- Elect the Member's Replacement Trustee if an Enduring Power of Attorney or Legal Personal Representative has been appointed.

The Trustee may accept part or all of a Members SMSF Living Will. The Trustee is not obligated to do so. In making its determination the Trustee must ensure that:

- The various components of the Member SMSF Living Will meet with the Superannuation Laws.

- The Rules of the Fund allow any, some or all of the components of the Member SMSF Living Will.

- The Fund has the resources to fund the Member SMSF Living Will.

At the Trustee's discretion (or if requested by a Member) the Trustee may make the Member's SMSF Living Will a Rule of the Fund. Any Rule established by the Trustee would include the terms and conditions of the Member SMSF Living Will. The Trustee may determine in what circumstances the Member SMSF Living Will Rule may be varied so as to preclude a future Trustee altering the Rule to the detriment of the Incapacitated Member in terms of their Superannuation Benefits.

It is advisable in all circumstances dealing with a Member SMSF Living Will that the Member and the Trustee seek expert advice from a SMSF Specialist adviser, actuary or auditor prior to finalising any Member SMSF Living Will.

SMSF Strategy Guide – Rule 11 - *Creating a Member SMSF Estate Plan and SMSF Will*

The opportunity of legal challenge is dramatically reduced when Death Benefits are not paid or payable to the Legal Estate of a deceased Member by the Trustee of a Complying SMSF but directly to a beneficiary as specified by the deceased Member. The payment of superannuation Death Benefits are not subject to the provisions of the Member's Will. Accordingly, a SMSF Will can be of major strategic value to the Members of a Complying SMSF. The taxation benefits of Death Benefits paid to Dependants and the deceased Member's Legal Estate are outlined in the Product Disclosure Statement to the Simpler Super Rules. This compares with the death of a Member where no nominations or SMSF Will have been made in respect of the Member's SMSF Estate. In these circumstances, under the SMSF Strategies Trust Deed the Executors of the Member's Legal Estate will control how the Member's Superannuation Interests are to be distributed.

A Member SMSF Will is an important legal document on how a Member seeks to distribute their SMSF Estate as Death Benefits to their Dependants or Legal Estate in the event of their death. Under the Superannuation Laws there are several possibilities:

- The provision of a Superannuation Lump Sum – by way of cash or Assets to Dependants and/or the deceased Member's Legal Estate.

- The payment of a Superannuation Income Stream to Dependants (as defined for taxation purposes) of a deceased Member.

- The payment of a Reversionary Superannuation Income Stream to a Dependant. This is the continuation of an existing Superannuation Income Stream that was payable to a deceased Member of the Fund.

There are two possible Member Death Benefit distribution methods available when making a Member SMSF Will under these Simpler Super Rules. These can be used in isolation or incorporated together to equate to a strong, secure disposition of a Member's SMSF Estate via a SMSF Will.

Method 1- **Non-Binding Death Benefit Nomination** - The Member provides the Trustee with a nomination as to how some or all of their Death Benefits may be distributed. Ultimately, the Trustee retains control of the distribution of the Death Benefits. This method may apply where a Member's Death Benefits are to be distributed to a single beneficiary (for example a spouse) who is to remain as the major Trustee of the Fund.

Method 2 – Non-Lapsing Binding Death Benefit Nomination - A Non-lapsing Binding Death Benefit Nomination allows the Member to direct the Trustee as to how their Death Benefits are to be distributed and in what form. Additionally, it can direct the Trustee as to who the deceased Member's Replacement Trustee is to be.

In accordance with the Trustee's discretion, the Trustee can accept all or part of the Member's Non-lapsing Binding Death Benefit Nomination and/or SMSF Will. This is subject to the availability of the Member's Superannuation Interests, the Superannuation Laws and the Rules of the Fund.

Additionally, the Trustee may qualify what terms and conditions of the Member's SMSF Will are to be incorporated into the Rules of the Fund. How SMSF Wills and Non-lapsing Binding Death Benefit Nominations are to be varied may also be noted as part of the terms and conditions of the SMSF Will or Nomination.

The SMSF Will and Non-lapsing Binding Death Benefit Nomination may become, subject to the Trustee's consent a Special Rule of the Fund.

It is highly advisable that both a Member creating and the Trustee accepting a Member SMSF Will or Non-lapsing Binding Death Benefit Nomination seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Member SMSF Will.

SMSF Strategy Guide – Rule 12 - *Creating an Insurance Strategy and Insurances in the Fund*

Insurance plays an important part in the creation and maintenance of a SMSF Estate in the event of a Member's death and/or SMSF Living Will. As such the Trustee may seek to establish an Insurance Strategy for the Fund for the benefit of the Trustee and the Fund's Members. The Insurance Strategy may provide for, but is not limited to, Superannuation Lump Sum or Superannuation Income Stream cover provided by an insurance company, friendly society or any other entity for the Trustee in the event of a Member's death or incapacity. This may be the case even where the Trustee is not required to pay a Death or Incapacity Superannuation Benefit to a Member.
In effecting any Insurance Strategy, the Trustee should take into account the financial requirements of the Fund in the event that a Member dies or becomes incapacitated and the Trustee is required to independently Fund a Death or Incapacity Superannuation Benefit. The Trustee may enter into a Contract for Life Insurance which includes, but is not limited to, policies for whole of life, endowment, salary replacement, trauma, risk, accident, total and permanent disability or any other insurance policy issued by a life insurance company, friendly society or other insurance entity either domestically or internationally.

No Member, their Dependants, Legal Personal Representative or Legal Estate has any entitlement or right to any proceeds from any policy of life insurance entered into by the Trustee whether in the name of the Member, the Fund or not.

The Insurance Strategy may also require the Trustee to Self Insure the Fund against any Member risk event that will necessitate a death or disability payment to a Member, their dependants or Legal Personal Representative. In the event that the Trustee seeks to Self Insure the Trustee should:

1. Engage the services of a SMSF actuary with skills in the provision of Self Insurance in a SMSF.

2. Determine the scope of the Fund's Self Insurance requirements. These include the risk events to which the self-insurance will apply, which Members are to receive any Superannuation Benefits from the Self Insurance Reserve Account, the amount of the Superannuation Benefits to be paid and how they are to be paid to a Member, their Dependant or Legal Personal Representative.

3. Establish a Self Insurance Reserve Account to meet the contingencies of a Member payment event.

4. Provide a separate Investment Strategy for the Self Insurance Reserve.

It is advisable that both a Member creating and the Trustee accepting an Insurance Strategy seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Fund Insurance Strategy.

Part Three - Rules to Maintain and Operate the Fund

Purpose

The routine operation of the Fund is to be undertaken by the Trustee. The compulsory requirements for the operation of the Fund include, but are not limited to, the preparation of Accounts, undertaking and realising investments, assessing Investment Strategies, making Superannuation Benefit payments, assessing the Fund's insurance needs, attending to any Member queries and all administrative requirements of the Fund. Many of these duties may be delegated to a third party provided the Trustee is of the opinion that the third party is qualified to accept any delegation of the Trustee's powers and is skilled to do so.

Delegation of any duties to be performed by the Trustee of the Fund does not relinquish the Trustee from the Trustee's various responsibilities under the Superannuation Laws and State Trustee laws. The Trustee, when applying its powers of delegation, must also ensure that they provide limitations as to who is to use these powers and the manner and time limits for when delegated duties are reported to the Trustee. Any such delegation of powers should be included in an executed service contract with the party delegated Trustee duties and retained at the Offices of the Trustee.

SMSF Strategy Guide – Rule 13 - *Fund Assets, Contracts and Transactions to be in Trustee's Name*

In addition to the Superannuation Laws the Rules of the Fund require all Assets, contracts, transactions or agreements of whatever nature entered into by the Trustee to be in the Trustee's name. Where there has been a change in Trustee it is incumbent upon the Trustee to ensure that all Assets of the Fund are correctly recorded in the new Trustee's name.

Only under limited circumstances may the Trustee enter into any contract, transaction or agreement with a Member, employer Sponsor of the Fund or a Related Party of a Member or Employer. The Superannuation Laws provide some exceptions to the prohibition on dealing with Members and these are qualified in Rule 8 on Investments as well as in the Product Disclosure Statement for these Rules.

Where 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 more than likely to result in the Fund being treated as a Non-Complying SMSF, the Trustee and other party to the transaction, arrangement, declaration or agreement as void ab-initio. The Trustee is to ensure that both parties are to be put in, as best as possible, the same financial condition as arose prior to the entering into of the relevant transaction, arrangement, declaration or agreement.

SMSF Strategy Guide – Rule 14 - *Trustee Responsibilities*

In addition to being a Superannuation Fund the Fund is primarily a trust. It is the Trustee's duty and responsibility to act as a Trustee on behalf of the Members of the Fund who are beneficiaries of the trust. It is also the Trustee's duty to ensure that the Fund remains at all times both a SMSF and a Complying SMSF.
For the Trustee to discharge its duties it should appoint SMSF Professionals, maintain current knowledge of Trustee requirements in the Superannuation Laws and have detailed knowledge of the Rules of the Fund. Additionally, the Trustee must ensure that the Fund's compliance requirements and responsibilities are met in accordance with both the Superannuation Laws and the Regulator. At times the Superannuation Laws or the Regulator may require the Trustee to undertake training or education on the Trustee's compliance responsibilities. It is the Trustee's task to fulfil any such requirements.

The Trustee is required to notify the Regulator of any significant events including, but not limited to, where there is a change in Membership of the Fund, a change to the Fund's Trustee, a change to the name of the Fund and a change of the Trustee's address. It is compulsory to notify the Regulator of these events within 21 days of the changes.

The Fund is a Complying SMSF and is therefore prevented by the provisions of the Superannuation Laws to pay or remunerate the Trustee in any manner whatsoever for undertaking the role of Trustee of the Fund. However, in the event that the Trustee provides professional services as part of their day-to-day business activities and the Fund engages that Trustee to provide similar professional services to the Fund, the Trustee may charge a fee commensurate with ordinary professional practice for the work performed.

Where required by the Superannuation Laws it is the responsibility of the Trustee to put in place an appropriate complaints procedure.

SMSF Strategy Guide – Rule 15 - *Trustee Powers*

For the Fund to be and remain as a Complying SMSF whilst simultaneously maximising the returns on the Assets of the Fund for the benefit of Members, the Trustee must have broad powers. These powers including, but not limited to, dealing both domestically and internationally with Assets, entering into various contracts and undertakings, dealing with various persons directly, investing widely and otherwise acting in the Members' best interests. Any such power exercised is subject to the Superannuation Laws and the Fund retaining its Complying SMSF status.
The Trustee is not authorised to conduct any transaction, investment, business or action that would make the Fund a non-Complying SMSF. If the Trustee does conduct any transaction, investment, business or action that makes the Fund a non-Complying SMSF, then the offending transaction, contract or action is void.

The Trustee may enter into a SMSF Borrowing arrangement under sections 67, 67A and 67B of the SIS Act 1993 which may require it to establish a Bare Trust, Holding Trust or Custodian arrangement. The Trustee is authorised to do all things required by the Superannuation Laws, Regulator or any lender to enter into a SMSF Borrowing arrangement.

Any individual Trustee or director of the Corporate Trustee is to be indemnified in any action taken against the Trustee where they were acting in their role as Trustee of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status. The Trustee may also provide indemnities to other parties to a transaction.

The Trustee may create, at any time, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Cloned SMSF that has the same Rules, Members and Trustees as the Fund.

SMSF Strategy Guide – Rule 16 – *Trustee Meetings and Decision Making*

The Trustee is required to hold a Trustee Meeting in order to make decisions about significant events to transpire in relation to the Fund. Significant events are those events that impact upon the status of the Fund and its Members.

The Superannuation Laws provide that matters determined at every valid Trustee meeting must be recorded in the minutes of the Trustee. These minutes and all records of the Fund must be held for a period of no less than 10 years.

At a Trustee meeting, each Trustee is given one vote per dollar balance in the Superannuation Interests of the voting Members that the Trustee represents. However, the Trustees may determine at a valid Trustee Meeting an alternative voting method of the Trustee for the purpose of that specific Trustee Meeting, a matter to be decided at that Meeting or for future Meetings. A specific resolution is necessary for alternative voting for Trustee Meetings at any one given time.

Any decision is to be passed at a Trustee Meeting by a simple majority of votes. It must be evidenced by dated minutes and signed by the chairperson of the specific meeting. Any decisions made at a valid Trustee meeting that may impact upon Member benefits, either directly or indirectly, must be notified to the Members within a reasonable period of time if they did not attend the meeting as Trustee or director of a Corporate Trustee. Where the Trustee is a Corporation, the constitution will qualify the voting and decision-making process for the Trustee.

Where the Trustee of the Fund is making any determination in respect of any Death Benefit payments, Incapacity Superannuation Benefits or other resolution with respect to a deceased or incapacitated Member's Superannuation Interests, the standard majority voting rule is not to apply at a Trustee meeting. In this event only the deceased or disabled Member's Legal Personal Representative is able to vote on matters dealing with the deceased or disabled Member's Superannuation Interests or Superannuation Benefits. In this respect however the deceased or disabled Member's Legal Personal Representative must be a Trustee. These provisos secure and protect the interests and wishes of the deceased or incapacitated Member.

SMSF Strategy Guide – Rule 17- *Trustee to keep Accounts*

It is a requirement of the Superannuation Laws that the Trustee must keep accurate accounts for the Fund on an Income Year basis and for a period of at least five years. These include, but are not limited to the Fund's set of accounts, accounts for any Member Superannuation Interests, Reserve Accounts and any other Accounts that the Trustee may create.

The Trustee may determine the Value of the Assets of the Fund under a variety of principles including historical cost, market value or according to some other standard at a time the Trustee so determines or as the Superannuation Laws or Regulator require. The Trustee may also determine the value of the Assets of the Fund at different times.

The Trustee must appoint an Auditor each income year and ensure that the Fund's Accounts are audited in accordance with any Audit Standards and the Superannuation Laws.

SMSF Strategy Guide – Rule 18 - *Fund Earnings*

The Trustee is to determine the method of calculating the Earnings of an Account relating to the Fund, a Member's Superannuation Interests or group of Members' Superannuation Interests or Reserve Account. For the purpose of the Rules of the Fund there are four methods that the Trustee may apply for determining Earnings for any particular Account:

Method 1 - Accounts Method: a determination of income according to established accounting principles for SMSF's or Superannuation Funds which may or may not include a revaluation of any Assets of the Fund to their market value less any Fund expenses;

Method 2 -Trust Method: net income is determined as the term "net income" is defined under the taxation of trust provisions of the Superannuation Laws;

Method 3 - Income Method: any amounts received as income plus any realised capital gains and at the Trustee's discretion any allocations from a Reserve Account less any disbursements the Trustee determines that should be deducted from income including any General or Specific Expenses; or

Method 4 - Flexible Method: any combination of the above or an alternative method that the Trustee is of the opinion suitably reflects Earnings of the Fund or an Account of the Fund. However, in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use **Method 3 – the Income Method** as its default option.

Where Earnings are determined and declared by a Trustee on any Account, the Trustee, at its discretion and subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, may allocate the Earnings to any Account whatsoever including a Reserve Account and the Account where the Earnings were derived.

SMSF Strategy Guide – Rule 19 – *Accounting for a Member Lump Sum Superannuation Interest and Rule 20 – Accounting for a Member Income Stream Superannuation Interest*

The Superannuation Laws and these Rules allow the Trustee to create a Superannuation Interest on behalf of a Member either at the Member's request or at the Trustee's discretion. The two types of Superannuation Interest that can be created in a Complying SMSF are a Member Lump Sum Superannuation Interest and a Member Income Stream Superannuation Interest.

Where a Superannuation Interest is created the Trustee is to establish an Account for each Superannuation Interest. Following the establishment of the Account, until terminated, the Trustee has the power under Rules 19 and 20 to add and/or deduct a variety of amounts from these accounts. Additions to these accounts are varied and include, but are not limited to, Contributions Splitting amounts, Family Law Splitting Payments and allocations from Reserve Accounts.

There is a broad measure of discretion in the Rules as to whether an amount is to be added to a Superannuation Interest and what category of Superannuation Interest. Once an amount is added to a Superannuation Interest it is vested and shall only benefit the Member, the Dependants of the deceased Member, the Member's Legal Personal Representative or deceased Member's Legal Estate. It is fixed in the Member's Superannuation Interest Account under Part 5 of the SIS Regulations 1994.

For each Superannuation Interest various expenses may be deducted on a proportional basis. Other Specific Expenses can be allocated to a particular Superannuation Interest Account as determined by the Trustee. Superannuation Income Stream and Superannuation Lump Sum payments are examples of Specific Expenses. Amounts such as an Excess Contributions Tax Release Authority may be deducted proportionally from all Member Superannuation Interests. Alternatively, amounts such as Excess Contributions Tax may be deducted from an Account for a specific Member's Superannuation Interest.

The Trustee is also required to determine the components of a Member's Superannuation Interest which may include:

a) preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;

b) the untaxed taxable, taxable or tax free components as required by the Superannuation Laws.

SMSF Strategy Guide – Rule 21 - *What happens to Taxes and Excess Contributions Tax?*

There are numerous Federal and State taxes and levies imposed upon the Trustee and Members of the Fund. These include, but are not limited to, income tax, capital gains tax, stamp duty, Contributions Tax and land tax.

The Product Disclosure Statement for the Simpler Super Rules notes that where the Trustee of the Fund retains Assets specifically to pay a current Superannuation Income Stream, any income or capital gains realised from a current Superannuation Income Stream's Assets are tax exempt.
The Trustee is also required to adhere to any Member's Excess Contributions Tax Release Authority. This is where the Member has been assessed by the Regulator to pay excess Concessional or excess Non-Concessional Contributions tax. This is not an impost on the Trustee but one that the Trustee must give effect to under the Superannuation Laws.

Where the Trustee receives a tax refund as a result of the payment of imputation credits from the Fund's investment in Australian listed company or managed funds the Trustee has discretion where to credit the amount of the tax refund. Where tax benefits attributable to a specific Superannuation Interest are utilised by an alternative Superannuation Interest the Trustee has the discretion to make a Tax Adjustment payment. This is not a mandatory requirement of the Trustee.

SMSF Strategies Guide - Rule 22 – *Contributions Splitting*

The Superannuation Laws allow a Member of a Fund to split their concessional contribution with their Spouse, who may or may not be a Member of the same Superannuation Fund. The splitting is carried out by the Member providing the Trustee with a Contributions Splitting Notice. Once received the Trustee will Allot, transfer or Rollover the amount subject to the Contributions Spilt to the Spouse Member's Lump Sum Superannuation Interest.

SMSF Strategies Guide - Rule 23 – *Family Law*

The Superannuation Laws allow a Member of a Fund or the Family Court to adjudicate or come to an agreement in relation to the split of superannuation matrimonial property. The Family Law Court or agreement may specify a percentage or $split of a Member's Superannuation Interest. The Trustee must abide by this decision. However the Trustee should also take into account the provisions of Part 7A of the SIS Regulations 1994 which allow the Trustee to consider which Superannuation Interest the Family Law split should be taken from.

SMSF Strategy Guide – Rule 24 - Member Meetings

There are times when the Members of a Fund may conduct a meeting such as to appoint a new Trustee pursuant to Rule 2.5 a). At any meeting of members a quorum is achieved where at least 50% of all available Members attend the Member's Meeting and may include one Member.

Importantly for each decision by a Member at a Member's Meeting the Member is to hold that number of votes equal to $1 per vote in respect of the total Member Superannuation Interest Entitlements of the Member. Member's meetings do not have to be in person but can be by way of phone, internet or such other form allowing Members to get to together to make valid binding decisions for the Fund.

Part Four – Paying Superannuation Benefits from a Member Superannuation Interest

Purpose

Where permitted under the Rules and in accordance with the Superannuation Laws, a Member may withdraw a Superannuation Lump Sum or commence a Superannuation Income Stream. However, it is not compulsory for a Member to immediately withdraw a Superannuation Lump Sum or commence a Superannuation Income Stream when they qualify to do so. In accordance with the Superannuation Laws the Member may retain their superannuation benefits in a Member Lump Sum Superannuation Interest until their death. At this time the deceased Member's Superannuation Interest would be paid by the Trustee of the Fund as a Death Benefit according to the deceased Member's SMSF Will, if any.

In accordance with the Superannuation Laws, circumstances that allow a Member to access Superannuation Benefits from their Superannuation Interests include:

- Temporary Incapacity - only as a Temporary Incapacity Superannuation Income Stream.
- Permanent Incapacity – as a Superannuation Lump Sum or a Superannuation Income Stream.
- While working and at preservation age – as a Transition to Retirement Superannuation Income Stream.
- Retirement – a Superannuation Lump Sum or a Superannuation Income Stream.
- Age 65 – a Superannuation Lump Sum or a Superannuation Income Stream.
- Terminal Illness - as a Superannuation Lump Sum or a Superannuation Income Stream.
- Death - Superannuation Lump Sums or a Superannuation Income Stream, subject to the Superannuation Laws.

SMSF Strategy Guide – Rule 25 – *Accessing Member Superannuation Benefits*

At any time, upon satisfying a condition of release under the Superannuation Laws, a Member may seek to be paid a Superannuation Benefit from one or more of the Superannuation Interests held by the Trustee of the Fund on their behalf. However, it is not a compulsory requirement of the Fund for a Member, upon satisfaction of a condition of release, to automatically commence their Superannuation Benefit. A Member is entitled to maintain their Superannuation Interests for the benefit of their Dependants or Legal Estate in their event of their death. A member of the Fund can also Rollover or transfer their Transfer Superannuation Interest to an Eligible Entity. This Eligible Entity may include, but is not limited to, a complying Superannuation Fund or another Complying SMSF.

There are several circumstances where a Member of the Fund can officially access their Superannuation Benefits from their Superannuation Interests. These circumstances include, but are not limited to the following:

- Temporary Incapacity and Permanent Incapacity;
- Terminal Illness;
- Retirement or at aged 65;
- Under Severe Financial Hardship or on Compassionate Grounds;
- When a Member reaches Preservation Age and can commence a Transition to Retirement Income Stream.

- On the death of a Member of the Fund, numerous Superannuation Laws apply to the payment of Death Benefit Superannuation Lump Sums and Death Benefit Superannuation Income Streams. The Trustee shall pay due regard to any Member SMSF Will in making any Death Benefit payments. Benefits that may be paid at the time of the death of a Member include, but are not limited to:

- *a Superannuation Lump Sum may be paid on the death of a Member to a Dependant, the deceased Member's Legal Estate, charity or public benevolent institution; and*

- *Superannuation Income Stream may be paid to a Dependant for taxation purposes which includes all those persons who are Dependants but in the case of a Child, only a Child who is aged less than 18 unless they were financially dependent upon the deceased Member. Where an Income Stream is paid to a Child in accordance with the Superannuation Laws, it must be commuted no later than the 25th birthday of the Child.*

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Dependant includes a Child of the Member, a person in an Inter-Dependant Relationship with the Member, any financial dependant of the Member irrespective of age and anyone who in the opinion of the Trustee is a Dependant of the Member.

The Member may request the Trustee to Allot, Rollover or transfer a Transfer Superannuation Interest for the benefit of a Spouse as part of the Contributions Splitting laws. Similarly, a Member can request the Trustee to Allot, Rollover or transfer a Transfer Superannuation Interest for the benefit of an ex-Spouse or Spouse pursuant to a Family Law Payment Splitting Notice. With respect to any Family Law Payment Splitting Notice, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, it shall be at the Trustee's total unfettered discretion as to how any Superannuation Interest or Superannuation Benefits are to be paid and to which Eligible Entity payment will be made.

SMSF Strategy Guide – Rule 26 – Use of a Guardian

A member may appoint a Guardian by Deed so that upon the death of the member the Guardian will police the payment of the member's death benefits to their intended recipients and will have the casting vote in relation to those payments and any matters pertaining to their payment. This is very beneficial for blended families (multiple marriages families), or families in which there are special needs recipients (recipients requiring special overseeing of their affairs due to eg. financial irresponsibility or substance abuse), to ensure that the death benefits are paid to the surviving spouse/partner and then on in favour of the bloodline.

Part Five – Other Special Events

SMSF Strategy Guide* – Rule 27 – *Winding up the Fund

In accordance with the provisions of the Superannuation Laws the Fund will continue in perpetuity or until the Fund is wound up. The Fund may be wound up under the following circumstances:

1. On the death of the last remaining Member of the Fund any replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;

2. The Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders the Fund is to be wound up;

3. 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;

4. The Trustee simply resolves that the Fund is to be wound up.

In the event of the Fund being wound up the Trustee is to disburse any remaining proceeds, Cash or Assets of the Fund. Any remaining proceeds, Cash or Assets of the Fund may be distributed by the Trustee, subject to the Superannuation Laws, to any of the following parties:

- Members and former Members of the Fund;
- Relatives of any Member or former Member;
- to any Legal Estate of a Member or former Member; or
- to any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee sees fit.

SMSF Strategy Guide* – Rule 28 – *Changing the Fund's Rules or Name

The Superannuation Laws regularly change. Trustees must maintain the Rules so they can implement and take advantage of any and all strategic possibilities the changing Superannuation Laws may allow. The Simpler Super Rules allow the Trustee to vary, change, delete from, add to or otherwise amend or upgrade the Rules with simply a special resolution. This simple ability to vary, change, delete from, add to or otherwise amend or upgrade the Rules of the Fund is conditional upon such variation, change, addition to, deletion from or amendment not detrimentally affecting a Member's Superannuation Interest in the Fund.

There may also be Special Rules of the Fund that have been put in place regarding Assets Test Exempt Pensions, other Income Streams, a SMSF Will, a SMSF Life Will as well as things that the Trustee or Member was allowed to do but may no longer be allowed under the existing Superannuation Laws. Any variation to the Rules of the Fund must take into account the Special Rule.

The Trustee may change the name of the Fund at any time provided the Regulator is informed of the change in name within the period required under the Superannuation Laws – currently 21 days.

Part Six – Rules Definitions

Purpose

Throughout the SMSF Strategies Trust Deed and Rules certain terms are mentioned on more than one occasion. These terms are important to the functioning and understanding of the Rules of the Fund. Such terms are defined in Part 6 of the Rules.