

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 and 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 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 of 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 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 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.

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.

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.*
- A member of a fund who is age 55 and born before 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 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.

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, 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 NSW.

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 paid from the fund are only 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:

1. Apply for an Australian Business Number and a Tax File Number for the Fund.
2. 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.
3. *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.*
4. 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.
5. 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 an Investment Strategy for all Reserve Accounts created by the Trustee of the Fund. The Investment 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; and
5. Any requirements under the Superannuation Laws or by the Regulator

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

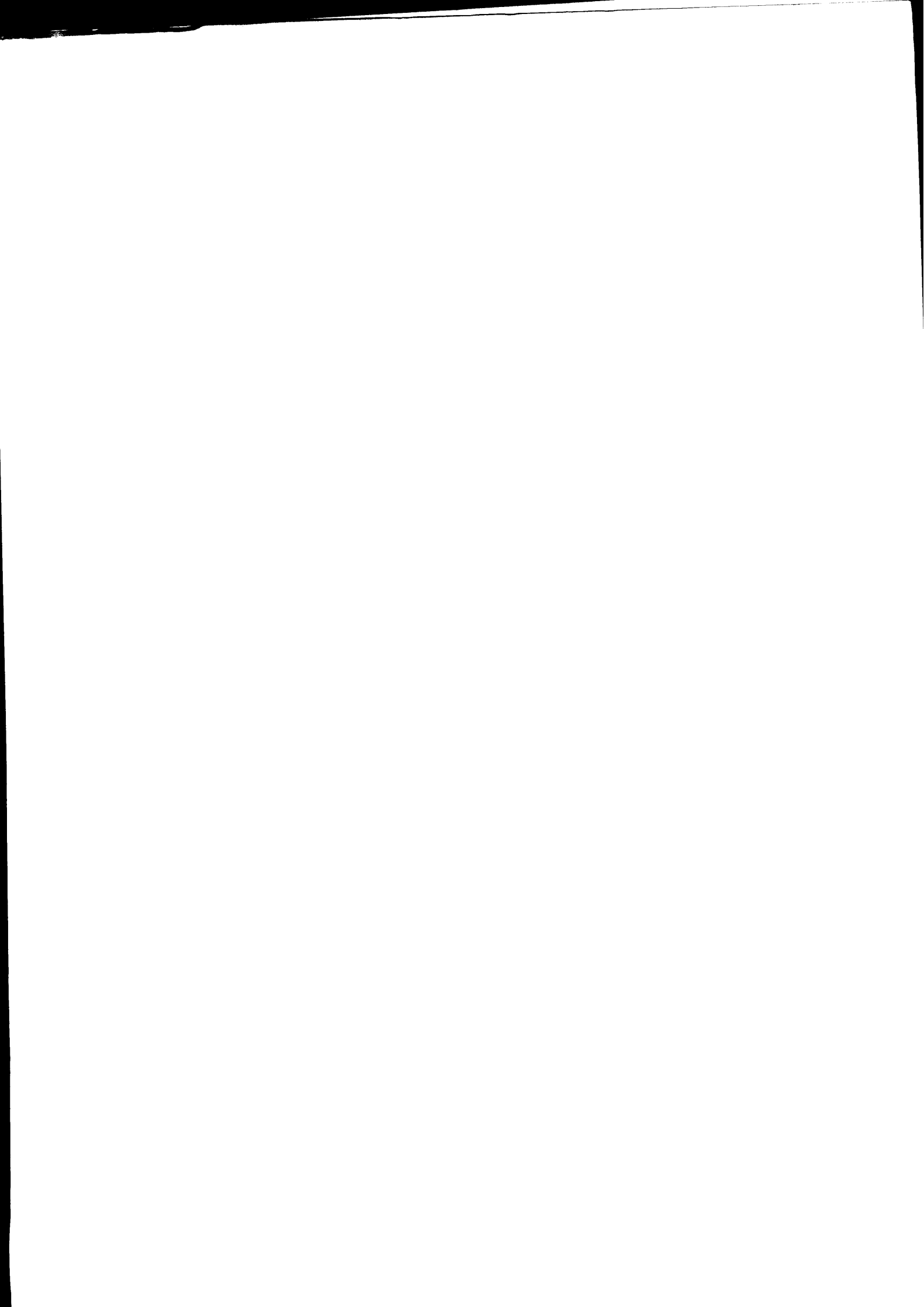
The Superannuation Laws also limit the amount that a Trustee of a Fund can invest in loans, investments and leases with Members, Employer Sponsors, Related Trusts and Related Parties. The current limit is 5% of the market value of the Assets of the Fund.

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:



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 Member's 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.

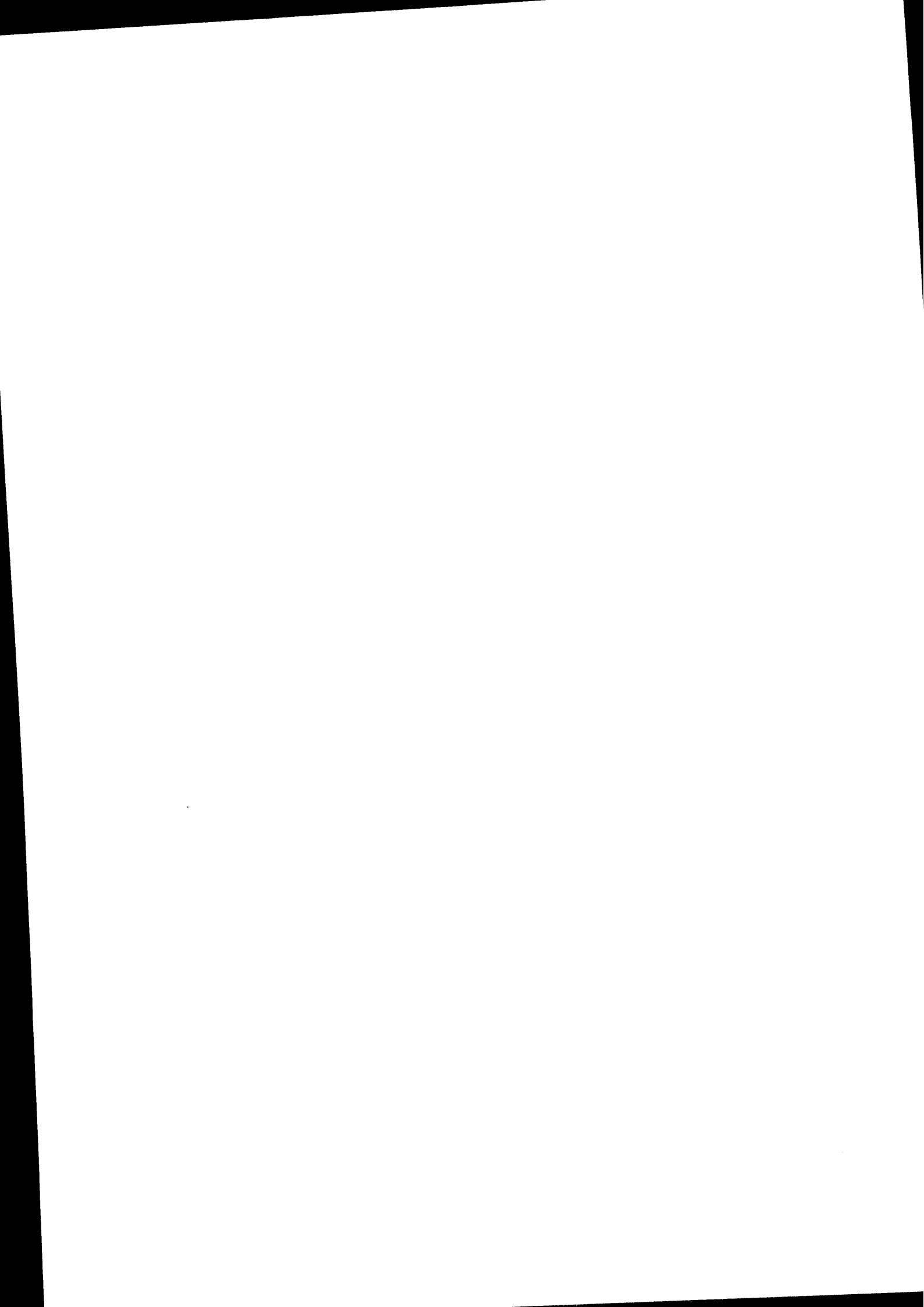
At the Trustee's discretion (or if requested by a Member) the Trustee may make the Member's SMSF Living Will a Rule of the Fund. Any Rule established by the Trustee would include the terms and conditions of the Member SMSF Living Will. The Trustee may determine in what circumstances the Member SMSF Living 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 Dependents and/or the deceased Member's Legal Estate.
- The payment of a Superannuation Income Stream to Dependents (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 Plan 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 Plan for the Fund for the benefit of the Trustee and the Fund's Members. The Insurance Plan 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 Plan, 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 Plan 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 Plan seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Fund Insurance Plan.

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.

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

