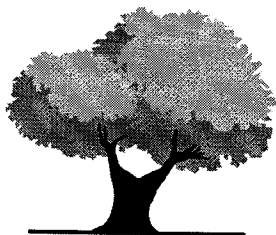


# The Lelievre Super Fund

*Strategist* SMSF Trust Deed,  
PDS & Rules



**A Living Super Deed**

Prepared by:

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# Introduction

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In recent years the Australian Government has encouraged the Australian population to take more of an active role in the management of their superannuation and savings for retirement. As a result more people have been taking an interest in their superannuation and, as a by-product, there has been an increased demand for Self Managed Superannuation Funds (SMSF's) as a popular investment vehicle.

The *Strategist* Deed has been developed by industry experts with extensive knowledge in SMSFs, including legal structuring, asset protection, investment options and administrative management. All aspects have been keenly discussed and debated, by people from a wide breadth of experience in the SMSF arena, to bring to you a document that has both credibility and robustness, to bring to you a document that has been debated and tested by experts in the industry.

We thank you for choosing the *Strategist* Deed to operate your Self Managed Superannuation Fund ('SMSF'). We know you have made the right choice.

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# The *Strategist* Deed Review Panel

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## **Amanda Chick – Everstone Private Pty Ltd**

Amanda is a Chartered Accountant and SMSF Specialist Advisor with over 10 years experience with SMSF's, Amanda has a wealth of knowledge in the areas of retirement and wealth accumulation strategies, asset protection, taxation, estate and business succession planning and SMSF compliance. She manages a SMSF Specialist practice in Perth, providing strategic SMSF advice to trustees and to other service professionals across Western Australia.

## **Mark Ellem – Tranzact Super**

Mark is an accredited SMSF Specialist Advisor with SPAA; a CPA; Member of the NIA, NTAA; Fellow of the TIA and a Registered Tax Agent. Mark is also a Member of the Small Independent Superannuation Funds Association (SISFA) and regularly presents to Financial Advisors, Accountants & Legal Practitioners on SMSF issues. Mark has over 15 years experience in SMSFs and in his current role as Senior Manager - SMSF with Tranzact Super he is responsible for SMSF administration and compliance matters and providing advice in the areas of superannuation and taxation.

## **Terri Loy – RBS Morgans**

Terri is an accredited SMSF Specialist Advisor with SPAA and has a Diploma of Financial Planning. Terri has worked in the industry since 1995 and is the Technical and Superannuation Manager for RBS Morgans, a national stockbroking and financial planning dealer group. Terri is responsible for the development and distribution of wealth management services to the RBS Morgans network, a role which also includes professional development workshops and seminars for advisers and clients.

## **Robert Richards – Robert Richards & Associates**

Robert is a Solicitor specialising in revenue and superannuation law, the management of tax audits and litigation and associated corporate and trust law. Robert is a regular contributor to articles in leading business and industry magazines on commercial law and current issues. As a legal practitioner, Robert is responsible for preparing the *Strategist* Superannuation Deed.

## **Susie Thearle – The Real Issue Pty Ltd**

Susie is a SMSF Specialist Advisor and SMSF Specialist Auditor. Susie is also a Fellow Chartered Accountant, with over 20 years in Public Practice, and Principal of a practice that provides SMSF Audit and specialist consultancy services throughout Australia as well as Regional Queensland. Susie is Chair of the Rockhampton Sub Chapter of SPAA, a Committee Member of Queensland Chapter of SPAA and the SPAA National Membership Committee and is part of the SPAA Audit Discussion Group. She has also served on the on the ATO (Australian Taxation Office) Simpler Super Working Group for SMSF Approved Auditors.

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# Product Disclosure Statement

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## 1. Introduction

Self Managed Superannuation Funds (“SMSF’s”) are very popular with Australians wanting to take control and manage their own superannuation assets. There is however a considerable amount of legislation that governs SMSF’s and there are various regulators of SMSFs such as the Australian Taxation Office (“ATO”) and the Australian Securities and Investments Commission (“ASIC”).

To commence or be a part of a SMSF is a big responsibility and one not to be taken lightly. The responsibility extends to each Member of a SMSF having to become a Trustee of the Fund, or, if the Fund has a corporate Trustee, a director of the Trustee company under the *Superannuation Industry (Supervision) Act 1993* (“SIS Act”).

## 2. The *Strategist* SMSF

This *Strategist* SMSF trust Deed package contains information and the governing rules to operate your own Self Managed Superannuation Fund. It has been designed to enhance your understanding, as a Member and a Trustee, of the benefits and strategies available within a Self Managed Superannuation Fund, or SMSF as they are commonly known. As well, this *Strategist* Deed package highlights the important obligations for the Trustee that go hand in hand with these benefits.

In 2006 the government made sweeping changes to superannuation legislation, known as the Simpler Super reforms. These reforms have introduced new benefits and opportunities for Members of a SMSF that became generally available from 1 July 2007. The *Strategist* SMSF trust Deed package allows for the benefits available through the Simpler Super reforms. Superannuation legislation is, however, constantly evolving which means that the information and governing rules in the *Strategist* SMSF are regularly reviewed and updated to reflect all new changes.

Before establishing a *Strategist* SMSF, it is vital that a potential Member read the information in this product disclosure statement, commonly referred to as a PDS, along with the governing rules. These documents provide the potential Member with information about the benefits that are payable by the Trustee of the Fund, when those benefits may be paid and how they will be paid. They also cover how a Member’s benefits are taxed or may be exempt from tax, the risks involved in being a Trustee and Member of a SMSF and how a SMSF compares with other superannuation funds;

## 3. Why the need to know so much?

The *Corporations Act 2001* provides that where a person is provided with a financial product they must receive a Product Disclosure Statement PDS.

A PDS is a statement that contains information required by the *Corporations Act 2001* to provide a person with sufficient information to make an informed decision about acquiring a financial product. Importantly the PDS must provide information about any significant benefits of a fund to which any prospective or existing Member may become entitled; as well as the circumstances, process and timeframe in which those benefits may be provided.

A financial product in relation to a SMSF includes various superannuation interests, including the following:

- making a contribution into a fund;
- paying a lump sum or pension from a fund;
- receiving a disability benefit from a fund;
- putting in place an investment strategy for a fund;
- paying out benefits after a Member's death;
- making an investment that is a financial product; and
- creating an insurance plan for the Trustee of the Fund.

It is important to understand that it is the Trustee's responsibility to provide Members and prospective Members with a PDS. This is the case even though the Members of the Fund are Trustees or directors of the corporate Trustee.

#### **4. Superannuation product comparisons**

A SMSF is one of a number of types of superannuation Funds in which a person may accrue their retirement savings and receive retirement benefits. A specialist superannuation adviser can provide a detailed understanding of the differences between various types of superannuation Fund.

Table 1 is an indicative guide that seeks to highlight the main differences between the more common forms of superannuation for a Member of a superannuation Fund. Before choosing any type of superannuation, a Member should seek professional advice.

#### **5. Are all SMSF's the same?**

Not all SMSFs are the same. The governing rules of a SMSF provide the Trustee with its powers and the Members with their benefit entitlements, as well as dealing with the general operation of the Fund. Governing rules may vary and it has been our experience that many Deeds may not have been regularly updated; for example many current SMSF governing rules do not allow for benefit payments in the event of temporary incapacity, taking a pension before retirement, splitting super contributions with a spouse, or borrowing to acquire investments and many SMSFs still force a Member to cash in their benefits, or commence a pension, upon the earlier time of reaching age 65 or full retirement (a compulsory cashing rule that was abolished in 2006).

The governing rules of the *Strategist* SMSF have been specifically designed to provide a wide range of benefits to Members, including those mentioned above, to provide Trustees with flexible powers to simplify the operation of the Fund. It is crucial that a Member, Trustee, director of a Trustee company or prospective Member read, understand and be aware of all these rules.

**Table 1: Superannuation Product Comparisons**

<b>Feature</b>	<b>Self Managed Superannuation Fund</b>	<b>Retail Superannuation Fund</b>	<b>Industry Superannuation Fund</b>
Investment choice	Unlimited*	Limited	Limited
Control of the Fund	Yes as Trustee or Director of a Trustee company	No	No
Compliance responsibilities	Full responsibility as Trustee or Director of a Trustee company	None	None
Fees payable			
- Establishment	Service fee to establish the SMSF	Yes	Nil
- Ongoing	Flexible	% Funds under management	% Funds under management or fee per month
Pension types available	Various*	Restricted	Restricted
Binding Death Benefit Nomination	Non-lapsing if the Deed Rules allow	Must be renewed every 3 years	Must be renewed every 3 years
Receive a pension* and continue contributing to super	Yes	May apply	May apply
Death benefits available			
- Lump sums	Yes	Yes	Yes
- Pensions	Only to dependants	Limited and only to dependants	Limited and only to dependants
Disability benefits available			
- Temporary	Yes	No	No
- Permanent	Yes	Yes – limited	Yes – limited
Membership	Number of Members limited, or Member can act as Trustee or Director of a Trustee company	Conditions apply	Conditions apply
Spouse splitting	Yes*	May apply	May apply

\* Subject to compliance with the relevant laws.

## **6. The purpose of the Fund**

The Fund is a Self Managed Superannuation Fund (SMSF). The sole or core purpose of a SMSF must be to provide retirement benefits to the Members or benefits to a deceased Member's dependants or legal estate.

Other purposes of a SMSF may be to provide Members who have reached their preservation age (age 55 for those born before 1960) with a transition to retirement pension, even though the Member is still working, or incapacity benefits to Members who are temporarily or permanently disabled. Benefits may be provided by way of lump sum or a pension or as a combination of lump sum and pension.

Members of SMSFs are normally family Members; for example the Members might be a husband and wife and their children. The Fund may, however, also include brothers, sisters, grandparents and other family Members. The Trustee may accept non-family Members into the Fund but as Membership of the Fund is limited it may be appropriate to restrict Membership to immediate family.

## **7. Ten key benefits of a *Strategist* SMSF**

The following benefits may arise where you choose to use the *Strategist* SMSF governing rules and have structured the SMSF to take full advantage of these rules - the services of a specialist SMSF adviser is recommended.

### **7.1. The Fund lets you look after your family**

For many people, their family is the most important thing in their lives. As such, the provision of financial benefits to family Members is a major concern and consideration.

Where a family Member is a Member of a fund they may access a variety of superannuation benefits at certain stages of their lives. In addition a Member may look after their dependants in the event of their death by way of a lump sum or income stream.

### **7.2. Providing a supplement to salary while working**

The governing rules provide a Member of the Fund with the ability to access their superannuation benefits before retirement, as a transition to retirement pension. The transition to retirement rules provide that, once a person reaches age 55 (if they are born before 1960 and a later age for those born after 1960), they can access all or part of their superannuation as a pension provided the pension cannot be converted to a lump sum. Once they retire they should be able to take part or all of their superannuation as a lump sum, provided this has been documented in the terms and conditions of the pension.

### **7.3. Provide a secure income in retirement**

In retirement, an income from alternative sources other than employment is a necessity. This may come from investments or from other sources such as social security. Upon retirement, a Trustee may establish a pension to provide a Member with a comfortable lifestyle for the rest of their life. The size and duration of the pension will depend upon a number of factors including the balance of the Member's account at the time of retirement, the amount of pension income drawn each year, the size of the Member's account and the return on the assets Funding the pension.

For example if the Member commences an allocated pension, or an account based pension, these pensions will only last as long as the underlying pension capital remains. Once the capital reduces to nil, the pension ceases. If the Member only withdraws a minimum amount each year, and the assets backing the pension performs well, then capital may actually increase rather than diminish.

Trustees seeking to pay a Member a pension should ensure that they receive advice from a specialist SMSF adviser. If the Trustee breaches superannuation legislation relating to pensions the Fund may be considered a non-complying SMSF and the Trustee may be liable to serious penalties.

#### **7.4. Offering a financial helping hand if your health deteriorates**

Health is one of those things that can never be taken for granted. A SMSF may provide Members with income if they become seriously ill or incapacitated. This income is to compensate a Member for lost income from employment. It may be payable for a certain period of time if a Member is only temporarily incapacitated or until the normal age of retirement if a Member is permanently incapacitated.

As with retirement income, the length and quantum of the incapacitation income stream depends upon the balance of a Member's account at commencement of the income stream. The amount payable to an incapacitated Member may be supplemented by reserves; known as self-insurance. Additionally, a Trustee may insure against a Member becoming incapacitated, so as to be able to pay a pension to a Member if the Member becomes incapacitated.

#### **7.5. Investment choice**

One of the major reasons that SMSFs have become so popular is the ability of the Trustee to invest the Fund's assets so as to reflect a Member's wishes.

The governing rules of the *Strategist* SMSF provide the Trustee with wide ranging investment powers allowing the Trustee to invest in shares, property, trusts, options, bonds and overseas investments, as well as borrowing to buy an investment via an instalment warrant arrangement. The Trustee must ensure, in terms of any investment, that:

- All investments are made on arm's length terms;
- The Trustee may not lend to Members or related parties;
- The Trustee may not invest more than 5% of the assets of the Fund in related entities such as a unit trust that the Member controls or in shares of an employer that contributes to the Fund;
- The Trustee cannot borrow or use the assets of the Fund as security for any borrowing except as allowed under the *SIS Act*;
- The purpose of any investment is to secure benefits for Members in the event of their retirement, incapacity or for their legal estate or dependant in the event of a Member's death. Any investment seeking to provide a Member or related party with a benefit not having one of these purposes is prohibited; and
- Generally the Trustee cannot acquire an asset from a Member or related party unless the asset is a listed security, widely-held trust, fixed term deposit or business real property.

#### **7.6. Low taxation fully sanctioned by the government**

If properly established and maintained a SMSF is very tax effective for its Members, including the payment of tax free lump sums or pensions to Members age 60 and over.

To benefit from these taxation benefits the SMSF must be set-up with the appropriate Trustee/Member structure and operate as a 'complying' SMSF. A complying SMSF is a fund where the Trustee does not breach any of the laws and regulations in the *SIS Act*, which we will call the superannuation laws, during the income year and is a fund which has been endorsed by the ATO. In addition, the Trustee must not breach any of the governing rules of the Fund, which is the main reason why the Trustee and Members should make themselves familiar with the Fund's rules.

As a complying SMSF, the Fund will benefit from a concessional rate of tax of no more than 15% on its taxable income (being assessable income less allowable deductions). The only exceptions relate to the taxation treatment of excess contributions and non-arm's length income received by the Fund. These are discussed in the section headed 'Taxation'.

If the Fund is **not** maintained as a complying Fund, then the Fund may be taxed at the rate of 45% and include as Fund income the market value of the assets of the Fund comprising the taxable component.

A contribution made by an employer, or a Member where that Member has claimed a tax deduction for the contribution, will be included in the Fund's assessable income.

A cap exists on the amount of contributions that can be made by or for the benefit of a Member. Where contributions are made in excess of the relevant caps, the individual Member is taxed on the amount in excess of the cap.

Where a capital gain is realised on the disposal of an asset held for more than one year, only two thirds of that gain will be included in the Fund's assessable income.

Where assets are set aside to pay pensions to Members, then any assessable income including capital gains made by the Fund on those assets is exempt from tax. Benefits payable to Members, either as a lump sum, a pension or combination of both after attaining age 60 are tax free. For those under age 60, benefits are subject to concessional rates of tax which are discussed later.

#### **7.7. Looking after your family when you die**

For many families, a SMSF is the most flexible and the most tax effective vehicle to provide benefits to a Member's spouse or children when the Member dies. For example a fund may provide a minor dependant of a deceased Member with a pension until the minor reaches age 25. This pension income is tax free to the minor if the deceased was over 60 years of age, or if the minor has no other assessable income and the amount is less than \$25,000. As with incapacity benefits referred to above, the quantum of the benefits payable to a Member's dependant or their legal estate may be enhanced where the Trustee has chosen to insure or self-insure against the Member's life.

A Member of a SMSF may leave their benefits in the Fund for the remainder of their lives without drawing upon them. Any benefits remaining on death may be passed tax free to a deceased Member's dependants. If the Member was receiving a pension prior to death and the Member had set up the pension to revert to their dependant upon death, the pension may continue and be paid to the dependants. If the deceased was over 60 years of age, the pension will be tax free in the dependants' hands. Otherwise it will be included in the dependant's assessable income and attract a 15% tax rebate. A dependant, for the purposes of these comments, is a tax dependant. Further information about the payment of death benefits is provided below under the heading 'Estate Planning'.



### **7.8. Access to the age pension**

Benefits from a fund are treated favourably for Centrelink purposes. In terms of the assets test, the Member's account balance in the Fund is not tested until the Member becomes entitled to an age pension (for a male this is at age 65 and for a female it is currently at age 63 but increasing to age 65 by 2014) or commences a pension from their Member account.

Until 20 September 2007, a Member may have commenced a partially or fully assets test exempt pension from the Fund. The underlying capital from which such a pension is paid is discounted for assets test purposes and favourably treated for income test purposes. This may have enabled some Members to access the age pension on top of the private pension they receive from their Fund, if they chose to transfer the majority of their assets into the Fund (subject to the investment restrictions and excluding the family home). The establishment of assets test exempt pensions has been abolished from 20 September 2007 although existing pensions of this type may continue.

### **7.9. Protection from creditors**

Protecting assets from creditors is a major concern for many people. One of the key benefits of a superannuation Fund is that when a person gets into serious financial difficulty, a Member's benefits may be protected from creditors. Clawback rules apply where a person has sought to escape their creditors by deliberately transferring assets or monies into a SMSF.

One downside of bankruptcy is that a person cannot remain as a Member of a SMSF if they are bankrupt as this will jeopardise the Fund's complying status. Should this arise the Trustee should consider various actions including transferring the Member's benefits to a commercial superannuation Fund where they may also be protected. Another alternative is to remove the existing Trustees and appoint a professional Trustee, also known as an approved Trustee.

### **7.10. Splitting benefits with a spouse**

A Member of a SMSF may apply to the Trustee to transfer some of their benefits to their spouse, including a de-facto and a same sex spouse. Only contributions made since January 2006 can be split from one Member to another and there is a limit on the amount of contributions that can be transferred which is 85% of any deductible contributions made on behalf of the Member. Non-deductible contributions cannot be split.

## **8. Trustee of the Fund**

A SMSF is a trust. A trust is essentially a relationship or a set of obligations between the Trustee and the beneficiaries of the trust. In a SMSF, the beneficiaries are the Members of the Fund. The Trustee holds and invests property (being contributions, rollovers and other monies received for the benefit of Members) under the terms of the trust Deed and at some time in the future (subject to an event such as retirement, disability or death) pays benefits to the Member, their dependant or estate.

As noted below, all Members must be Trustees or directors of a Trustee company of the Fund. In their role as Trustee, each Member has significant influence and control over the Fund. This differs from retail and industry based superannuation Funds where the Trustee stands apart from the Members.

### **Note 1: Benefits of a Trustee company versus Individual Trustees**

*One of the Trustee's more important obligations under the SIS Act is to keep the assets of the Fund separate from its own or those of the Members. It is much simpler to manage this obligation if title to the assets is held in the name of a Trustee company, particularly when holding real estate. Where there are individual Trustees it is often not clear whether the owners of the property are the Trustees in their own names or in their capacity as Trustees. This may lead to a dispute in the future or cause problems during an audit of the Fund. A Trustee company provides for greater asset protection.*

*Where there are individual Trustees and a Trustee dies, retires or is removed, then any assets of the Fund in the name of the departed Trustee must be switched into the names of the remaining Trustees. Equivalent re-naming would be required when a new Member joins the Fund and is appointed as a Trustee. This can be time consuming and expensive.*

*If a trust incurs a liability, the Trustee's personal assets may be exposed; for example, a contractor engaged to repair a rental property held by the Fund may suffer an injury and can sue the Trustee for damages. As a practical matter a Trustee company has a limited liability company and will reduce this risk, while an individual Trustee would suffer a personal liability.*

*A Trustee company is able to pay Members a lump sum as well as a pension. The SIS Act states that where the Trustees are individuals then a pension and not a lump sum needs to be taken by the Members. Practically though, the ATO does not generally enforce this rule where the trust Deed of the Fund with individual Trustees provides for the payment of a lump sum. The SIS Act allows retiree Members to draw upon their lump sum account for the remainder of their lives, and a corporate Trustee is recommended for SMSFs with Members using this strategic lump sum option.*

There are limited exceptions to the rule that a Member must be a Trustee. Where a Member is a minor, the law does not allow them to be a Trustee or director of a Trustee company. This means that, if the Fund is to remain a complying SMSF a minor's legal personal representative, parent or guardian must be appointed as Trustee on their behalf until they reach 18 years of age. Likewise, where a person becomes mentally incapacitated, a legal personal representative may be appointed to take the incapacitated Member's place as Trustee.

There is an additional requirement that all Trustees be Members of the Fund. This means, for example, that a Trustee company cannot have a director who is not a Member. It is generally advisable that, where a Trustee company is appointed, the Trustee company act as Trustee of one SMSF only, not for other trusts, and does not carry on investments or business in its own right.

There are limited exceptions to the rule requiring all Trustees to be Members of the Fund. In the event of the death of a Member, the deceased Member's legal personal representative (normally the executor of their legal estate) may be appointed as Trustee from the time of the Member's death until the time any death benefits commence to become payable.

This appointment will depend upon the terms of the trust Deed of the Fund. The rules of the *Strategist* SMSF (Rule 52) provide that the appointment as Trustee of the legal personal representative is automatic on death of the Member.

Where there is only one Member, there is a need to have more than one Trustee since a person cannot be a Trustee for themselves. As such, in a single Member Fund, another person must be appointed as Trustee provided they are not an employer of the Member. Alternatively a Trustee company with a sole director may be appointed as Trustee.

Where Trustees hold a meeting to decide various matters in the Fund (such as the establishment of an investment strategy, the making of investments, the acceptance of contributions, the payment of benefits and the like) the rules of the *Strategist* SMSF (Rule 7) provide that each individual Trustee will hold that number of votes as is equal to the account balance of the Members that they represent (including themselves). This should also be the case for a director of a corporate Trustee where a *Strategist* special purpose SMSF Trustee company has been established, but may not be where another type of company has been appointed Trustee.

Great care needs to be taken at the time of establishment of the Fund as to the type of Trustee. Although establishing individual Trustees would not incur a direct cost, individual Trustees may subsequently cost the Fund and its Members a considerable amount.

## **9. Responsibilities of the Trustee**

Being a Trustee or director of a Trustee company provides the Member/Trustee with a wide range of investment and other powers not available in retail, employer and industry based superannuation Funds. Being a Trustee is also about legal responsibility. This means at all times, a Trustee is required to act honestly, prudently and in the best interests of Members in relation to all matters concerning the Fund.

Members and prospective Members should be aware that both civil and criminal penalties can be imposed under the superannuation laws for any breach of these and other Trustee responsibilities including breaking the Fund's governing rules.

Prior to accepting an appointment as Trustee, it is important that a person consider the risks associated with such an appointment. The excuse that the Trustee was not aware of the superannuation laws or the rules of the Fund is not valid at law. From July 2007, a person becoming a Trustee or a director of a Trustee company of a SMSF must sign a declaration that they understand their duties attached to this role.

If a person is unwilling to take on the responsibilities as Trustee or director of a Trustee company, then it may be advisable to become a Member of a Retail or Industry based superannuation Fund.

In accordance with superannuation legislation, a Trustee must:

- Act honestly;
- Act in the best interests of Members and other beneficiaries;
- Keep the money and assets of the Fund separate from the Trustee's personal assets, and money and assets of another person including other trusts, companies and businesses that the Member or Trustee may have an interest in;
- Formulate and implement an investment strategy for the Fund. This strategy must follow the Fund's investment objectives and should be detailed in writing;
- Abide by the rules of the Fund at all times;
- Ensure that the Trustee does not breach any of the superannuation laws;

- Ensure proper accounting, including the maintenance of Member accounts;
- Appoint an auditor and other specialists to the Fund;
- Meet all regulatory obligations.

Failure to properly meet any of these responsibilities may render the Trustee liable to a substantial fine and, if the breach has been wilful, may result in a term of imprisonment. It is important therefore that the Trustee seeks the help of a specialist SMSF adviser where appropriate.

The ATO, as regulator of SMSFs, may also determine a fund to be non-complying, which will result in it losing many concessional tax advantages.

The ATO has the power to remove the Trustees of a SMSF who have not met their responsibilities and appoint their own Trustee to manage and operate the Fund, thereby ensuring that the Fund finds its way back to complying status.

## 10. Approved Trustee

As mentioned previously, there may be circumstances where it is appropriate or necessary to appoint an approved Trustee in place of the Members being appointed as Trustee, under the mechanism described above. For example, if a Member is prohibited by the superannuation laws from acting as a Trustee, or simply does not wish to assume the role and responsibility associated with being a Trustee, then an approved Trustee may be appointed. The effect of the appointment is that the Fund is converted from a SMSF to a “small APRA fund” or SAF as they are commonly known.

These Funds are regulated by APRA (Australian Prudential Regulation Authority) rather than the ATO. While the rules of the Fund may permit the appointment of an approved Trustee it is usually the case that the newly appointed approved Trustee will amend the Deed and rules at that time to reflect the change in the type of superannuation Fund. A small APRA fund is a public offer superannuation Fund and is therefore subject to more stringent regulation by the superannuation laws.

## 11. Member rights and entitlements

Under the *Strategist* SMSF governing rules Members have a number of rights and entitlements. It is incumbent upon Members and Trustees to make themselves aware of these entitlements and more importantly when and how they may be claimed. A thorough reading of the rules is required prior to any person being accepted as a Member. The ATO requires the Trustee to ensure that they know the rules of the Fund as well as the superannuation laws that apply to the Trustee. Ignorance is no excuse!

Some of the more important rights and entitlements subject to superannuation laws are:

### 11.1. Membership

Any person is able to become a Member provided:

- the person completes an application form stating that they have read the rules and agrees to abide by the rules;
- the person will also accept appointment as Trustee or become a director of the Trustee company; and
- the Trustee accepts the person as a Member.

## **11.2. Trusteeship**

As a Member of the Fund, the Member has the right to (and in fact must) become a Trustee; or, if allowed, appoint a person to become a Trustee in their place.

## **11.3. Contributions**

A Member or any other person such as an employer may contribute on behalf of the Member. These contributions may be made in cash or by an in specie transfer of assets.

There are now no longer age based limits, from 1 July 2009, for employer and self employed Member contributions. There are limits on how much can be contributed, referred to as the 'Concessional Contributions' cap, which is \$25,000 per person per year:

- This cap applies from July 2009;
- This cap or limit is imposed on the amount of employer, self-employed or other eligible Member contributions made for the benefit of a Member and taxed at the concessional rate (of no more than 15%) available to superannuation Funds;
- This cap will be indexed in increments of \$5,000 only, in line with AWOTE (Average Weekly Ordinary Time Earnings);
- An amount allocated from any reserve in the Fund to a Member's account from time to time may also be counted towards this cap;
- Any contributions made in excess of the cap are taxed in the hands of the individual Member at an extra 31.5%. The Member is able to request the Trustee to pay the tax from the Member's entitlement in the Fund;
- Any excess contributions will be counted against the 'Non-Concessional' cap (see Note 2 below);and
- Transitional arrangements exist during the financial years from 2007/08 to 2011/12. This cap is \$50,000 per person per year for Members turning 50 or more during that period, so as to allow people nearing retirement to fulfil expectations of amounts planned to be contributed to their Fund during this period.

There is a 'Non-Concessional Contributions' cap of \$150,000 per person per year on the amount of un-deducted or non-taxable contributions may be made by a Member:

- This cap applied from July 2007;
- These contributions are generally not included in the assessable income of the Fund;
- These contributions are known as 'non-concessional' contributions;
- This cap will be indexed to equate to six (6) times the value of the concessional cap from 1 July 2009;
- Averaging rules will apply allowing a Member under age 65 to contribute an amount equal to three (3) times the value of the non-concessional cap in one year (\$450,000) providing no further contributions are made in the following two income years;

- Any contributions made in excess of the cap each year are taxed in the hands of the individual Member at an extra 46.5%. The Member must withdraw money from the Fund to pay the tax; and
- Excess concessional or deductible contributions are counted towards this non-concessional contributions cap.

**Note 2: A very important word of caution:**

*If excess concessional contributions are made and this results in the non-concessional cap to be exceeded, then 93% tax may be paid on these excess concessional contributions. For example if a concessional contribution of \$60,000 and a non-concessional contribution of \$150,000 is made into a fund during the year ended 30 June 2009 then the \$10,000 excess will be counted towards the non-concessional cap. The tax payable on this excess contribution will be 15% contributions tax plus 31.5% excess contributions tax, per the concessional cap limits; plus 46.5% excess contributions tax per the non-concessional cap limit.*

In the period from 10 May 2006 to 30 June 2007 other transitional arrangements allowed Members to make un-deducted contributions of up to \$1,000,000. – This is no longer available.

Members aged 65-74 must meet the work test in the superannuation laws to be eligible to contribute.

There are two exemptions to these new contribution rules:

- a Member is able to contribute amounts up to a lifetime limit of \$1,000,000 (indexed) from the sale of assets qualifying under the small business capital gains tax (CGT) concessions. This exemption will also apply to pre-CGT assets that would otherwise have qualified, but for their pre-CGT status, or to assets sold as a result of the business owner suffering permanent incapacity; and
- a Member is able to contribute the proceeds of any settlement received for injuries resulting in permanent disablement.

#### **11.4. Transfers**

A Member may transfer benefits into and out of the Fund;

#### **11.5. Investments**

A Member may request the Trustee to implement a separate investment strategy in the Fund for the Member;

#### **11.6. Retirement Benefits**

The Trustee may pay the Member a retirement benefit by way of a lump sum or a pension. There is no longer a compulsory requirement for a retired Member to withdraw benefits upon reaching 65 years of age. This means that the Member may make a choice to leave their benefits in the Fund until their death, after which the benefits may be paid to a dependant or to their estate;

### **11.7. Access to benefits while still working**

The Trustee may commence a transition to retirement pension for a Member that has reached their preservation age but still continues to work. The Fund may still continue to accept contributions on behalf of the Member in these circumstances, enabling the Member to have both a Member's accumulation account and pension account operating simultaneously;

### **11.8. Incapacity Benefits**

The Trustee may pay the Member an incapacity benefit in the event the Member is temporarily or permanently incapacitated;

### **11.9. Death Benefit Nominations**

The Trustee may accept a binding death benefit nomination (Rule 15) from a Member requiring the Trustee to pay out the Member's benefits in the event of the Member's death to the dependant named in the nomination form. Unlike other types of superannuation Funds, where this nomination form must be renewed every three years, the *Strategist* SMSF Deed enables the Member to create a permanent binding death benefit nomination which only that Member can change.

The governing rules of the *Strategist* SMSF (Rule 16) also allow a Member to provide the Trustee with a written request to pay out their death benefits in a particular manner and form. Once this request is accepted, the Trustee is required to pay the benefits in the event of the Member's death to the dependant named in the written request in accordance with the Member's instructions. This request forms part of the governing rules of the Fund and may not be amended without the consent of the Member making the request. The form is not required to be renewed every three years however the Member may amend or revoke the request at any time.

Both options require the Trustee to ensure that any death benefits paid are made in accordance with the superannuation laws; otherwise the Fund could become non-complying.

### **11.10. Death Benefits**

The Trustee may pay death benefits by way of a lump sum or a pension to the deceased Member's legal estate or their dependants in such proportions and in such manner as the Trustee sees fit, unless a binding death benefit nomination or death benefit rule is operative.

## **12. Pension entitlements**

A Member or a dependant of a Member may become entitled to be paid an income stream from the Fund, called a pension.

Prior to 20 September 2007, new pensions available from a SMSF included the allocated pension, the non-commutable allocated pension, and the market linked pension. The defined benefit pension was another class of pension available to Members of a SMSF. The defined benefit pension ceased to be available from 1 January 2006, although those that commenced prior to this date may continue.

From 1 July 2007, the rules governing these pension types were largely replaced by new 'simplified and streamlined' pension rules. This meant that, from 1 July 2007, existing pensions may have adopted the new minimum payment rules and be taken to meet the new rules in the pension standards in the *SIS Regulations*. New pensions may commence under the new rules. From 20 September 2007, all new pensions should have commenced in line with the new rules.

There are two main categories of superannuation pension: an account based pension that commences with all or part of a Member's account balance in the Fund; or a non-account based pension. The latter has little application in a SMSF so will not be addressed in this PDS. The rules applicable to the new account based pension are covered below as well as the variation to these rules for a transition to retirement ('TTR') option. The implications for continuing defined benefit pensions are also addressed.

### 12.1. The account based pension

This pension:

- has a band for minimum payments of income each year as per the table below;
- the account cannot be increased after the commencement date by the addition of contributions or rollovers to the underlying capital of the pension;
- is commutable subject to special rules applying for transition to retirement pensions;
- cannot be used as security for any borrowings (income or underlying capital);
- can be transferred upon death of the Member to a dependant as a reversionary pension, or the balance of the pension account may be cashed and paid as a lump sum to a dependant or to the estate of the Member.

An important issue relates to the transfer of a pension to a 'reversionary beneficiary' upon a Member's death.

The pension rules prohibit the reversion or transfer of a pension to a dependant where that person is an adult child (25 or older) of the Member unless they have a specified permanent disability and are in need of ongoing support.

The pension rules specify that a pension (of any type) WILL NOT satisfy the rules if this occurs, which means that the Trustee is in breach of the superannuation laws and could cause the Fund to become a non-complying Fund.

**Table 2: Minimum Payment Percentage for Account Based Pensions**

Age of Member	% of account balance to be taken	% of account balance to be taken for 10/11*	% of account balance to be taken for 11/12
Under 65	4	2	3
65-74	5	2.5	3.75
75-79	6	3	4.5
80-84	7	3.5	5.25
85-89	9	4.5	6.75
90-94	11	5.5	8.25
95+	14	7	10.5



**\*Note: Pension Drawdown Relief:** On the 18 February 2009 the Government announced that it will suspend the minimum payment requirement for pensions for the 2008/2009; 2009/2010 and 2010/2011 financial years.

This is achieved through a 50% reduction in the minimum payments that would otherwise apply in the above financial years. The reduction in payments will apply to account-based, allocated and market-linked (term allocated) annuities and pensions.

## **12.2. The transition to retirement (TTR) pension**

This pension operates in the same way as the account based pension, with two important differences:

- The TTR pension cannot be taken as a lump sum until the Member meets a condition of release such as retirement, death, permanent disability or 65 years of age; and
- The maximum TTR pension payment in any one year is limited to 10% of the Member's account balance. For example if a 56 year old Member commenced a TTR pension on 1 July 2008 with a \$1,000,000 account balance, then the minimum pension payment would be \$40,000 per annum and the maximum amount available would be \$100,000 per annum.

## **12.3. Implications for defined benefit pensions**

A defined benefit pension includes income streams; such as a lifetime complying pension or a fixed term pension, to name the most common. The lifetime options are generally non-commutable except in very limited circumstances. One option for a Member is to roll the current lifetime pension into another non-commutable income stream.

Given that account based pensions are generally commutable (excluding TTR) a roll-over cannot occur except outside the SMSF into a life insurance company pension product. However, this is not an attractive option as a Member would sacrifice their capital in these circumstances.

Special rules under the *SIS Act* allow a Member to roll over their complying defined benefit lifetime pension into a market linked pension within a SMSF and still satisfy the pension rules. The governing rules of the *Strategist* SMSF allow this to occur for any Member wishing to take advantage of these rules. There may be strategic and taxation consequences of doing this, so a Member is best served by seeking appropriate advice before taking action.

## **13. Estate planning**

A key feature of a SMSF is the ability of a Member to directly provide for their dependants in the event of their death. A Member may also direct some or all of their superannuation benefits into their legal estate on death and allow those benefits to be distributed according to the deceased's will. This includes a pension that may have been payable to a Member at the time of their death.

A Member may provide the Trustee with binding and non-binding directions as to how their superannuation benefits are to be distributed in the event of their death. Such benefits are called death benefits and may be paid by way of lump sum or pension. The governing rules of the *Strategist* SMSF provide that a lump sum death benefit payment may consist of assets of the Fund. The following provides an overview of the important aspects of estate planning in a SMSF.

### 13.1. What happens on death of a Member?

If the Member was a Trustee or director of the Trustee company at the time of death, then the governing rules of the *Strategist* SMSF (Rule 52) provides that the deceased Member's executor is appointed as Trustee or director of the corporate Trustee. If a Member who is a Trustee dies or if the Member who dies was a director of a Trustee company, the executor of the Member is appointed as a Trustee or a director of the Trustee company.

The purpose of the above is to ensure that the Member's death benefit nominations are carried out according to the Member's wishes. However the appointment can only be in force until the death benefits commence to be paid out. At that time the executor must resign as Trustee and the Fund must continue to satisfy the basic conditions to continue as an SMSF, otherwise the Fund may lose its complying SMSF status.

### 13.2. Paying death benefits

The distribution of superannuation benefits upon death of a Member is not covered in a person's will. This is because the Trustee generally has full discretion as to the payment of benefits and, in the absence of any specific directions from the Member, must pay death benefits as soon as practical after the Member's death. There are a couple of different ways in which a Member may communicate their wishes for the disbursement of their benefits. These are covered below along with references to the relevant rules in the *Strategist* SMSF:

#### (a) **Non-Binding Death Benefit Nomination ('NBDBN') Rule 14**

A NBDBN is where the Member requests the Trustee to make certain payments to specified beneficiaries. This is generally done in writing using the application form when applying to become a Member of the Fund. As the nomination is non-binding, the Trustee is not obliged to carry out the request.

#### (b) **Binding Death Benefit Nomination ('BDBN') Rule 15**

A BDBN is where a Member requests that the Trustee pay all or part of their benefits to a nominated dependant or dependants, which can include the estate of a deceased Member. The Member will typically nominate a percentage of benefits to be paid in each case. The BDBN must be made in writing, in a specified format, and witnessed by two people who are not named beneficiaries in the BDBN. The Trustee must accept a legally valid request and, on the Member's death, the Trustee is bound to pay those benefits in accordance with the Member's nomination. The *Strategist* SMSF Deed allows this nomination to be indefinite. Other Funds generally require that it be renewed every three years.

#### (c) **Death Benefit Rule ('DBR') Rule 16**

If the Member desires more certainty that death benefits will be paid in accordance with their wishes, then the Member can request that the Trustee establish a DBR. The Member provides a written request to the Trustee stating the amount, form and circumstances in which a benefit is to be paid to nominated dependants. The Trustee must be satisfied that the request complies with the rules of the Fund and all relevant legislation, including the *SIS Act* and the *Tax Act*.

Upon acceptance of the Member's request, the DBR is documented and incorporated as a rule of the Fund. The Member can amend or revoke a DBR at any time and it can only be amended or revoked with the consent of the Member.

(d) **Reversionary Pension Rule 17**

A reversionary pension is a pension payable to a Member that reverts or automatically carries on in the name of the spouse, dependant or legal estate. A reversionary pension has built in estate planning. The decision as to who the pension is to be transferred is generally made at the time of commencement of the pension. Pension documentation guides what happens on the death of the pension Member; not a BDBN, NBDBN, or DBR.

Pension rules prohibit the reversion or transfer of a pension to a dependant who is an adult child (25 or older) of the Member, unless the dependent has a specified permanent disability and is in need of ongoing support. This prohibition applies even if the dependent is named as a reversionary beneficiary of a pension which commenced under the previous rules.

**13.3. Who is dependant?**

Both the *SIS Act* and the *Tax Act* provide a definition of dependant. A dependant under the *SIS Act* (SIS dependant) includes a Member's spouse (legal or de-facto, including same sex), their children and a person who is financially dependent on them. It also includes a person who is in an inter-dependent relationship with the Member such as a sister living with a Member, or possibly a same sex partner of a Member who lives under the same roof.

The SIS dependant differs from the dependant for the purposes of the taxation laws (Tax dependant). The tax definition excludes a child aged 18 and over unless they are financially dependent, or in an inter-dependent relationship with the Member. This means that the tax treatment of benefits received by a SIS dependant, who is not also a tax dependant, may not be as advantageous.

The new pension rules restrict the definition even further by excluding, as a reversionary pensioner, an adult child of a Member who is financially dependent or in an inter-dependent relationship with the Member.

Consider the relationship between a 50 year old woman living with and caring for her elderly mother. This is clearly an inter-dependent relationship. Any superannuation pension received by the mother would not be able to revert to the daughter under the new SIS rules. A lump sum payment would be required.

**13.4. The importance of estate planning**

Until a SMSF estate plan is created for the Member, the Trustee will have full control of what happens to the Member's superannuation benefits in the event of the Member's death. Estate planning is vital in a SMSF and needs to be considered at the time a person becomes a Member, or soon after; and then reviewed regularly to capture changes in circumstances. As estate planning is complex and there are many options, the Member should seek specialist SMSF advice to assist in creating and managing the SMSF estate plan.

**14. Taxation**

One of the major benefits of commencing a SMSF is that a fund is concessionally taxed on its income and Members and their dependants may be concessionally taxed on benefits received from the Fund. Importantly, these taxation concessions only apply where a fund is a complying superannuation Fund during the income year.

A non-complying SMSF is taxed at a rate of 45% on its income and capital gains, which emphasises the need for Trustees to be vigilant in monitoring the compliance of the Fund; and ensure that the Fund abides by its governing rules and relevant superannuation and taxation laws.

## 14.1. Taxation of the Fund

Broadly the Trustee of the Fund is taxed like any other taxpayer except that:

- Any taxable income of a complying superannuation Fund is taxed at a 15% rate, excluding non-arm's length income received by the Fund which is taxed at a 45% rate. Non-arm's length income may arise on income received from a fund's investments in private companies or trusts or from other non-arm's length transactions undertaken by the Fund;
- Any capital gains earned by the Trustee upon the disposal of an asset that has been held for more than one year is entitled to a 33 1/3% discount;
- Tax-deductible or 'concessional' contributions are included in the assessable income of the Fund. For the period from 1 July 2007 to 30 June 2009 the limit to the 'concessional contributions was \$50,000 per Member per year (across all their superannuation Fund interests) and \$100,000 for those aged 50 or more or turning 50 during this period. For the period from 1 July 2009 to 30 June 2012 the limit to the 'concessional contributions is \$25,000 per Member per year and \$50,000 for those aged 50 or more or turning 50 during this period. Any contributions received in excess of these thresholds will be subject to tax in the individual's hands at a rate of 31.5%;
- Taxable income excludes any income or capital gains earned on assets being used by the Trustee to provide pensions. These are exempt from taxation provided that the Trustee has segregated those assets from the accumulation assets of the Fund. Upon segregating, the Fund will have two parts, the accumulation side and the pension side, each with different taxation consequences. If the Trustee does not segregate the assets of the Fund when a pension commences, then the Trustee is required to obtain an actuarial report each year that will ascertain the portion of the income and capital gains of the Fund that will be tax exempt;
- The Trustee may obtain a tax deduction for premiums paid for life insurance, permanent disability, and temporary incapacity. The Trustee may also receive a tax deduction for self-insurance provided an actuary determines the arm's length amount of the premium that could have been claimed. The *Strategist* SMSF governing rules allow the Trustee to self-insure (Rule 40);
- Where a Member dies or becomes permanently incapacitated prior to age 65 and, while the Member is working, the Trustee may obtain a significant tax deduction based on a proportional amount of benefit paid to the Member or the Member's dependants or legal estate; and
- Where a Member dies and the Trustee has included some of the contributions on behalf of the Member in its assessable income in prior years, then the Trustee may be able to claim a tax deduction for any bonus payment made to the deceased Member's dependants or legal estate to compensate them for tax paid on these contributions. This bonus payment must be sourced from an appropriate reserve for this purpose to be established by the Trustee.

## 14.2. Taxation of Benefits to a Member

Benefits paid to a Member are taxed according to the Member's age, the type of benefit and the components that make up the Member's balance in the Fund.

Prior to the introduction of the Simpler Super reforms and, up until 30 June 2007, benefits had been taxed with reference to the lump sum or pension 'Reasonable

Benefit Limits' or RBLs; These RBLs were abolished with effect commencing 1 July 2007.

A Member's balance in the Fund has two different components for tax purposes; a 'taxable' component and a 'tax-free' component.

The tax free component includes:

- (a) A consolidation of existing superannuation interests calculated as at 30 June 2007 as a fixed amount and including any un-deducted contributions, pre-July 1983 component, CGT exempt component, concessional component and post-June 1994 invalidity component; this is called the 'crystallised segment' of the tax free component; and
- (b) Non-concessional contributions (un-deducted) made on or after 1 July 2007 that have not been included in the assessable income of the Fund; this is called the 'contributions segment' of the tax free component.

Tax free benefits received are not required to be included in a person's income tax return.

The taxable component is calculated to be the total of the Member's superannuation interest in the Fund less the tax-free component; and will comprise an element taxed in the Fund and, in limited circumstances, an element untaxed in the Fund. An element taxed in the Fund refers to that part of a Member's benefits (contributions and earnings) that have been subject to tax in the Fund, which is typically the case for Members of a SMSF.

The following table summarises the tax treatment applicable to the taxed element of the taxable component of benefits received by Members from 1 July 2007. The Medicare Levy is also payable on top of any rate greater than 0% and quoted below.

**Table 3: Taxation of Benefits to Members**

Age	Lump Sum	Pension
Age 60 and over	Tax free	Tax free
Preservation age <sup>1</sup> up to age 59	0% up to low rate cap of \$160,000 (2010/11 starting threshold and indexed thereafter)  15% tax on amount above low rate cap	Marginal income tax rates with a 15% tax rebate
Below preservation age	20%	Marginal income tax rates with no 15% tax rebate with the exception of disability pensions

### 14.3. Taxation of Death Benefits

There may be significant taxation advantages of paying a death benefit directly from a fund to a dependant rather than through the deceased's legal estate, despite there being various restrictions with respect to the payment of pensions to non-tax dependants.

<sup>1</sup> Currently age 55 for those born before 1960 – please refer to the definition of Preservation Age in the rules of the Fund.

The table below summarises rules that apply in relation to death benefits paid from the taxable component of a Member's benefits from 1 July 2007. The Medicare Levy is also payable on top of any rate greater than 0% and quoted below, unless paid from the deceased's legal estate.

While a person may be receiving a tax free income stream while they are alive, it may not seem important to keep track of the tax-free and taxable components. Upon death of a Member however it may be important if paying out death benefits to a non-dependant (within the meaning of the *Tax Act*), as the tax-free component retains its status in the hands of the dependant.

There are few circumstances in which a person may receive a death benefit that is sourced from an untaxed element in the Fund. The most typical situation is where the Trustee receives a payout on a life insurance policy held by the Fund on the life of the deceased Member. Where the Fund had claimed a tax deduction for the insurance premiums then a calculation is required to determine the proportion of the proceeds to be treated as an element untaxed in the Fund.

**Table 4: Taxation of Death Benefits**

Age of Deceased Member	Death Benefit	Age of Recipient	Taxation Treatment <sup>2</sup> (of Taxed Element)	Taxation Treatment (of Untaxed Element)
Any age	Lump sum	Any age	Dependant: Tax free	Dependant: Tax free
			Non-dependant: 15% Tax	Non-dependant: 30% Tax
Aged 60 & over	Pension	Any age	Dependant: Tax free	Dependant: Subject to marginal tax rates of the recipient with a 10% tax offset
			Non-dependant: Not allowable	Non-dependant: Not allowable
Under age 60	Pension	Aged 60 & over	Dependant: Tax free	Dependant: Subject to marginal tax rates of the recipient with a 10% tax offset
			Non-dependant: Not allowable	Non-dependant: Not allowable
		Under age 60	Dependant: Marginal tax rates with a 15% tax rebate	Dependant: Marginal tax rates
			Non-dependant: Not allowable	Non-dependant: Not allowable

<sup>2</sup> The tax free component of a Member's death benefit will always be tax free.

## **15. Appointment of specialists**

The superannuation and taxation laws, particularly as they apply to SMSFs, are complicated. Serious breaches may render a fund to be non-complying, which means that the Fund is taxed at a rate of 45%. In addition the Trustee may be subject to financial and criminal penalties. The rules allow a Trustee to appoint managers, advisers, and to engage other specialists to assist the Trustee in the management of the Fund. It is highly recommended that the Trustee appoint an experienced SMSF auditor and specialist SMSF adviser to look after the Fund.

## **16. Costs and expenses of the fund**

SMSFs can be costly to run depending on the size of the Fund, as most of the costs are fixed. For example, the costs of administering a fund with assets of \$100,000 may be the same as a fund with \$2,000,000 in assets.

Administration costs, although important, are not the only costs for a Trustee to manage and operate a complying SMSF. Some other costs may include but are not limited to:

- The acquisition of the Deed and the rules and establishment of the Fund as a regulated Self Managed Superannuation Fund;
- The potential acquisition of a Trustee company. (see Note 1 above on why a special purpose Trustee company is recommended);
- The provision of specialist advice to the Trustee or Members in relation to the establishment of the Fund, restructuring of Fund assets, plans for Member retirement incomes, incapacity benefits, or benefits payable in the event of the Member's death;
- The provision of investment advice concerning the development and implementation of the Fund's investment strategy;
- Brokerage and commissions payable in relation to investing the assets of the Fund;
- The acquisition by the Trustee of Fund insurance, including life, total and permanent disablement as well as temporary incapacity insurance, for the benefit of Members;
- Insuring assets of the Fund like real property or valuables such as antiques or art;
- Accounting and audit fees in relation to the preparation of audited accounts and tax returns required by superannuation law;
- The provision of actuarial advice, should the Fund self-insure or the Trustee pay a pension from a pool of the Fund's assets not segregated for this purpose; and
- Maintaining currency of the rules of the Fund and the product disclosure information supplied to Members.

## 17. Understanding the governing rules of the fund

A SMSF has a lifecycle, and the governing rules of the *Strategist* SMSF have been designed to reflect this.

This lifecycle at first requires the Fund to be formed, a Trustee appointed and Members admitted.

The Fund will then receive contributions and may receive transfers of benefits from other superannuation Funds.

Once monies or assets are received, the Trustee then invests those monies or assets. The Trustee must comply with superannuation law in all the SMSF's operational activities.

The *SIS Act* requires the Fund to be audited each and every year.

An important part of the SMSF lifecycle is that benefits are provided for Members. Most important for Members is to know: when, how and the value of benefits that are to be paid.

Although SMSF's can continue indefinitely, the Trustee may also terminate the Fund.

To reflect the lifecycle of the Fund the governing rules of the *Strategist* SMSF Deed are contained in the following Parts:

- Part One - Establishment of the Fund
- Part Two - Operation and Administration of the Fund
- Part Three - Payment of Benefits by the Trustee
- Part Four - Changes to the Fund
- Part Five - Winding up of the Fund
- Part Six - Interpretation

For a more detailed look at what each part contains, refer to the index at the start of the Rules.

Great care has been taken to ensure that the Rules remain as flexible as possible, yet still ensure that they meet current standards of superannuation law as well as other law that may impact on the Trustee and Members of the Fund. Other law includes taxation, bankruptcy, family, social security and Trustee laws.

Most Rules have been divided into two parts. The first part provides a broad explanation of the Rule. This explanation is designed to assist the reader to understand the purpose of the Rule. Importantly the explanation does not form part of the Rules; rather it is ancillary to them. The second part of each rule is the Rule itself.

At the end of the Rules are interpretative provisions. When reading the Rules, if a particular term or word is capitalised, then a definition may be found in Rule 62.



*Note: terms capitalised are defined in the Definitions.*

# Part One:

## Establishment of the Fund

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### Purpose of the Fund

#### Rule 1. The Fund Must Satisfy the Sole Purpose Test

##### Explanation

- *The Fund must be established and must be maintained solely for the provision of Core Purposes or for the provision of Core Purposes and Ancillary Purposes of the 'sole purpose test' in the SIS Act.*
- *The SIS Act defines Core Purposes to include the provision of Benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.*
- *The SIS Act also provides that the Trustee may maintain the Fund for both Core Purposes and for Ancillary Purposes. An Ancillary Purpose may include the provision of Temporary or Permanent Incapacity Benefits to a Member, where the Member terminates employment as a consequence of ill health.*
- *An Ancillary Purpose also includes the provision of such Benefits as the Regulator has approved in writing.*
- *Tax concessions will not be available to the Fund unless the Trustee of the Fund is either a Constitutional Corporation (that is a Corporate Trustee) or its sole or primary purpose is the provision of old age pensions (this however does not mean that a fund which does not have a corporate Trustee cannot pay a pension). Rule 1.2 reflects this requirement.*

##### Rule

- 1.1. The Trustee must ensure that the Fund is maintained for one or more of the Core Purposes and for one or more of the Ancillary Purposes and for no other purpose.
- 1.2. If the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of old age pensions.

## Appointing the Trustee

### Rule 2. Who May or May Not be a Trustee

#### Explanation

*The Fund must have a Trustee.*

- *Section 17A of the SIS Act must be satisfied in order for the Fund to be a Self Managed Superannuation Fund. This section requires that:*
  - *each Member must be a Trustee or, if the Trustee is a company, each Member must be a director of that company;*
  - *a person who is not a Member may not be a Trustee or a director of a company which is a Trustee, and*
  - *except that a Legal Personal Representative may also be a Trustee.*
- *On the Death of a Member, the Legal Personal Representative of that Member should be appointed as a Trustee or as director of a company that is a Trustee – see Rule 52.*
- *For single Member Funds, another person is required to be appointed as a Trustee, not being an employer of the Member unless also a Relative of the Member.*

*These Rules do not allow for the purposes of administrative simplicity, a company to be a Trustee if a Member is also a Trustee.*

*If a company is appointed Trustee, the constitution of that company should be compatible with the Rules.*

*Any person accepting appointment as a Trustee or director of a company that is the Trustee must read and agree to the Rules.*

*A disqualified person may not be a Trustee. A disqualified person may include a person who has committed a civil or criminal offence, or is bankrupt.*

#### Rule

##### Who May be a Trustee

- 2.1. Natural persons may be Trustees or a company may be the Trustee but natural persons and Companies cannot both be Trustees.
- 2.2. Subject to this Rule and Rule 52 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.
- 2.3. Subject to this Rule and Rule 52 below (which applies on the death of a Member) a Constitutional Corporation may only be a Trustee if all the directors of the company are Members.
- 2.4. Notwithstanding Rules 2.2 and 2.3, if there is only one person who is a Member then:
  - (a) that Member or a Legal Personal Representative of that Member and one other natural person who is a Relative of the Member, or is a person who is not an Employer of the Member, may be the Trustee; or

- (b) a Constitutional Corporation may be the Trustee, if the sole director of which is the Member or a Legal Personal Representative of the Member, or the company may have two directors of which one is the Member or the Legal Personal Representative of the Member and another person is a Relative of the Member, or is a person who is not an Employer of the Member.
- 2.5. If the Member is under a legal disability, that Member cannot be appointed as a Trustee but a Legal Personal Representative of that Member shall be appointed as a Trustee.
- 2.6. If the Regulator appoints a person or company as a Trustee, that person or company may be a Trustee.
- 2.7. Notwithstanding any other provisions of these Rules a person or company, shall not be appointed as a Trustee unless they provide the Trustee with a written consent to that appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.8. Each person who is a director of a company which is to be a Trustee must provide a written consent to the appointment of that company and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.9. Notwithstanding any other provision of these Rules an Approved Trustee may be appointed as the Trustee.

**Who may not be a Trustee**

**2.10.** A person cannot be a Trustee if:

- (a) at any time
  - (1) the person was convicted of an offence against or arising out of a law of the Commonwealth of Australia, a State or a Territory of Australia or a foreign country, being an offence in respect of dishonest conduct; or
  - (2) a Civil Penalty Order was made in respect of the person; or
- (b) the person is an insolvent under administration; or
- (c) a Regulator has disqualified the person (for the purposes of section 120A of the *S/S Act*) and the Regulator has not waived that person's status as a disqualified person.

**2.11.** A company cannot be a Trustee if:

- (a) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the *S/S Act*); and
- (b) the company knows or has reasonable grounds to suspect that:
  - (1) the person is not eligible under section 126B(1) of the *S/S Act* to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (2) the person is so eligible under section 126B(1) of the *S/S Act* to apply to APRA for a declaration waiving his or her status as a disqualified person but that person will not make an application under subsection 126B(3) of the *S/S Act* seeking a waiver of that status; or

- (c) a receiver, or a receiver and manager, has been appointed in respect of property owned by the company; or
- (d) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (e) a provisional liquidator has been appointed in respect of the company; or
- (f) the company has begun to be wound up.

**2.12.** Notwithstanding Rules 2.9 and 2.10 above a person or company can be appointed as a Trustee if that appointment as a Trustee is authorised by the Regulator.

### **Rule 3. Appointment of a Trustee**

#### **Explanation**

*This Rule provides the mechanism for appointing those persons eligible to be appointed as Trustees. This Rule also allows an individual to be replaced as a Trustee by a company which is a Trustee and for a company which is Trustee to be replaced as Trustee by an individual.*

*Trustees of the Fund will be personally liable for any liabilities incurred by the Fund (although they may be entitled to indemnity by the Fund). Where there is more than one Trustee, each Trustee is jointly and severally liable for the liabilities of the Fund. As a consequence, persons causing the establishment of the Fund might prefer that a company be appointed the Trustee of the Fund rather than individuals being appointed Trustees of the Fund.*

#### **Rule**

**3.1.** Upon establishment of the Fund a person is appointed as Trustee, provided that person:

- (a) has agreed to be Trustee by reason of execution of the Deed; and
  - (1) has consented in writing to become a Member or is the Legal Personal Representative of a person; or
  - (2) if the Fund has only one Member, is a Relative of the Member or is a person who is not an Employer of the Member;
- (b) has agreed to be bound by the Rules and has consented in writing to that person's appointment as a Trustee; and
- (c) is eligible to be appointed a Trustee.

**3.2.** Upon establishment of the Fund, a company is appointed as Trustee provided all the following conditions are met:

- (a) that the Company be Trustee by reason of execution of the Deed:
  - (1) all directors have consented in writing to become Members, or they are the Legal Personal Representative of a person and have agreed in writing to that person becoming a Member; or
  - (2) if the Fund has only one Member and two directors – the director that is not a Member is a Relative of the Member, or is a person who is not an Employer of the Member;

- (b) the company and its directors agree to be bound by the Rules and has consented in writing to its appointment as a Trustee;
  - (c) the company is eligible to be appointed a Trustee; and
  - (d) all the directors have read the Product Disclosure Statement.
- 3.3.** Subject to the provisions of these Rules, where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee, provided that person or a Legal Personal Representative:
- (a) has agreed to be Trustee and:
    - (1) has consented in writing to become a Member or is the Legal Personal Representative of a Member; and
    - (2) if the Fund has only one Member, that Legal Personal Representative is a Relative of the Member or is a person who is not an Employer of the Member;
  - (b) has agreed to be bound by the Rules and has consented in writing to that person's appointment as a Trustee;
  - (c) is eligible to be appointed as a Trustee; and
  - (d) has read the Product Disclosure Statement;
- unless that person or a Legal Personal Representative of that person becomes a director of a Company which is a Trustee.
- 3.4.** On appointment of a person as a Trustee, or on appointment of a company as a Trustee, after 30 June 2007 that person or each director of that company shall sign a declaration in that form as required by the Act certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.5.** If a person is a Trustee or a director of a company which is a Trustee and another person is appointed after 30 June 2007 as a Trustee or as a director of a company which is a Trustee, then that person must ensure that the newly appointed person signs a declaration in that form as required by the Act certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.6.** Any such declarations referred to in Rules 3.4 and 3.5 shall be kept for at least 10 years or such longer period so far as it is relevant and shall be available for inspection by the Regulator, if so required.
- 3.7.** Upon the retirement or removal of a Trustee as Trustee or upon that Trustee being unable to act as Trustee including by reason of the death of the Trustee, at the direction of that Trustee, or if the Trustee is unable to make direction, upon the appointment of a person as the Legal Personal Representative of that Trustee, the following person or company is appointed as a Trustee in place of that Trustee, provided that the Legal Personal Representative has consented in writing as to appointment as a Trustee:
- (a) if that Trustee is a person; another person who is a Member or a Legal Personal Representative of a Member or a company of which the Member or the Legal Personal Representative of the Member is a director; or

- (b) if that Trustee is a company; a company where all the directors of which are Members or are Legal Personal Representatives of the Members;

provided that if that person or company is already a Trustee that person shall accept that appointment as if that person was an additional Trustee in place of that Member.

## **Becoming a Regulated Superannuation Fund**

### **Rule 4. The Trustee must ensure that the Fund is a Regulated Superannuation Fund**

#### **Explanation**

*To obtain a tax concession the Fund must be a Complying Self Managed Superannuation Fund. A Self Managed Superannuation Fund will not be a Complying Self Managed Superannuation Fund if it is not a Regulated Superannuation Fund.*

#### **Rule**

The Trustee must cause the Fund to be a Regulated Superannuation Fund at all times.

## **Trustee Operations and Obligations**

### **Rule 5. Removal and Retirement of a Trustee**

#### **Explanation**

*The purpose of this Rule is to provide a mechanism for the removal or retirement of a person or company as a Trustee.*

#### **Rule**

**5.1.** A Member may retire as a Trustee provided:

- (a) a Company of which the Member is a director is appointed as Trustee; or
- (b) a Legal Personal Representative of that Member is appointed as a Trustee.
- (c) If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an Employer of the Member is appointed as a Trustee.

**5.2.** A company may retire as a Trustee provided:

- (a) all the directors of that company are appointed as Trustees; or
- (b) another company is appointed as a Trustee, provided the directors of that company are also directors of the company retiring as Trustee.

**5.3.** Notwithstanding any Rule, a Trustee may retire as Trustee of the Fund if an Approved Trustee is or has first been appointed as the Trustee of the Fund;

**5.4.** Subject to these Rules and the Act a person or company is removed as a Trustee:

- (a) if the Trustee is a Member – upon that person ceasing to be a Member;

- (b) if the Trustee is a Member – upon that Member becoming incapable of acting as Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee in place of that Member;
- (c) if the Trustee is a company and on the date four months from the time one or all of the directors of the company cease to be Members or the Legal Personal Representatives of Members;
- (d) if the Trustee is prohibited from being a Trustee by reason of Rules 2.9, 2.10 or Rule 2.11; on that date a Trustee is so prohibited from being a Trustee;
- (e) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund; on the day before the day the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

## **Rule 6. Remuneration and Indemnification of a Trustee**

### **Explanation**

*A fund will not be a Complying Self Managed Superannuation Fund if the Trustee receives any remuneration for acting as Trustee, unless the Trustee is an Approved Trustee.*

### **Rule**

- 6.1. A Trustee shall not be entitled to be remunerated for acting as a Trustee, unless the Trustee is an Approved Trustee.
- 6.2. A Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee for expenses incurred by itself or a former Trustee in managing or administering the Fund provided:
  - (a) the Trustee, or the former Trustee, acted honestly in the matter in respect of which the indemnification is sought; and
  - (b) the Trustee, or the former Trustee, did not intentionally or recklessly fail to exercise, in relation to the matter in respect of which indemnification is sought, the degree of care and diligence that the Trustee, or the former Trustee, was required to exercise.

## **Rule 7. Meetings of the Trustees**

### **Explanation**

*If there is more than one Trustee, the Trustees should meet to decide matters such as the:*

- *appointment of various professional advisers to the Fund, including the Auditor;*
- *establishment of a bank account or cash management trust for the Fund;*
- *setting of an investment objective and investment strategy for the Fund;*
- *admission of Members to the Fund;*

**Explanation cont.**

- *acquisition and disposal of investments pursuant to the Fund's investment strategy;*
- *approval of the payment of Benefits to a Member (including payment of a Pension);*
- *payment of a Death Benefit;*
- *acceptance of a Binding Death Benefit Nomination from a Member;*
- *review of audit reports; and*
- *creation of any Reserves.*

*Normally the Manager, the person whom the Trustees have appointed to be responsible for the day-to-day administration of the Fund, will call meetings. However Members with Members' Account balances equal to 50% or more of the balances of all Members' Accounts can also call a meeting.*

*Where the Trustee is a company, decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case, meetings of the company must be held in accordance with the constitution of that company. It is important that the constitution of any company that is a Trustee be compatible with the Rules.*

*These Rules are designed to ensure that Members would normally vote according to their interests in the Fund. The constitution of the Strategist special purpose company contains rules that are designed to only allow directors of any such company to vote at directors' meetings of that company according to the directors' interests in the Fund (or the interests of those Members who those directors represent).*

**Rule**

- 7.1.** If there is more than one Trustee, the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision in respect of the Fund.
- 7.2.** The Manager or Members must give reasonable notice of any such meeting to each of the Trustees (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by each Trustee), unless the Trustees unanimously agree that the meeting may be held on some earlier date. Such written notice must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the business of the meeting.
- 7.3.** Where, through a link established by means of any system of telephone, audio or audio-visual communication approved by the persons eligible to attend a Trustee Meeting those persons will be taken to be assembled together at a meeting and all proceedings of those persons, conducted with the aid of the link, will be as valid and effectual as if conducted at a meeting at which all those persons were physically present.



- 7.4. At any Trustee Meeting a quorum is equal to that number of Members, or the Legal Personal Representatives of those Members, the balance of whose Members' Accounts, is equal to more than one half of the aggregate balance of all Members' Accounts.
- 7.5. At any Trustee Meeting, unless the persons entitled to and present at that meeting unanimously agree otherwise, a person shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person plus that amount in any Reserve which an actuary has determined is supporting that person's Member's Account in paying a Pension.
- 7.6. A resolution would not be passed at any Trustee Meeting, unless it is passed by the casting of a majority of the votes entitled to be cast by persons who are present at that meeting.
- 7.7. A person may appoint another person to act as that person's proxy at any Trustee Meeting. Any such appointment must be in writing.
- 7.8. If a circulating minute containing a statement that the Trustee is in favour of a resolution in the terms set out in that document has been signed by all persons entitled to attend a Trustee Meeting, a resolution in those terms will be taken to have been passed at a meeting held on the day and at the time at which the document was last signed by any such person. Two or more separate documents containing statements in identical terms, each of which is signed by one or more persons, will together be taken to constitute one document for the purposes of this Rule.

#### **Rule 8. Trustee's Records**

##### **Explanation**

*A written record must be kept of all decisions made by the Trustee in relation to the Fund. Those records should be held for ten years.*

##### **Rule**

- 8.1. If there is only one person who is a Trustee that person must make a written record of all decisions made by that person as Trustee.
- 8.2. If there is more than one person who is a Trustee a Trustee must keep minutes of every meeting held by the Trustees.
- 8.3. If the Trustee is a company the minutes of the meetings of the directors of that company acting as Trustee shall be deemed for the purposes of this Rule to be records of the Trustee.
- 8.4. Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

## Rule 9. Trustee's Covenants

### Explanation

*The Act requires that the Rules of a Regulated Superannuation Fund contain certain covenants (if the Rules do not contain these covenants the Rules are deemed to contain those covenants). Whilst some of those covenants are contained elsewhere in these Rules they have all been reiterated here to highlight the code of conduct that a Trustee must adopt as a Trustee.*

### Rule

A person by accepting appointment as a Trustee agrees:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another with whom the person felt morally bound to provide;
- (c) to ensure that duties and powers of the Trustee are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (1) that are held by a Trustee personally; or
  - (2) that are money or assets as the case may be, of a Standard Employer-Sponsor, or an Associate of a Standard Employer-Sponsor, of the Fund;
- (e) not to enter into any contract or do anything else, that would prevent the Trustee from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and implement a written investment strategy in accordance with the provisions of the Act;
- (g) if there are any Reserves – to formulate and implement a written strategy for the prudential management of those Reserves consistent with the Fund's investment strategy and its capacity to discharge liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a Member access to Prescribed Information and any Prescribed Documents.

## **Admittance of Members**

### **Rule 10. Who May Become a Member**

#### **Explanation**

*There are generally no restrictions on who can be a Member of the Fund provided the Member or their Legal Personal Representative is eligible to be appointed a Trustee. For example a Child, or a person that is not employed, may become a Member of the Fund.*

*This Rule would also allow the Trustee to admit a Spouse of a Member who is not also a Member as a Member to allow any superannuation splitting arrangement as ordered by the Family Court.*

#### **Rule**

**10.1.** The Trustee may, with absolute discretion, admit a person as a Member provided:

- (a) that person or that person's Legal Personal Representative has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
- (b) admission of that person as a Member would not cause the Fund to become a Non-Complying Self Managed Superannuation Fund; and
- (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee.

**10.2.** Subject to these Rules and the Act, the Trustee must admit a person as a Member where that person will be paid a Pension from the Fund.

**10.3.**

- (a) If a Member is the only Member of the Fund, the Member can provide the Trustee with a notice requiring the Trustee not to admit any other person as a Member of the Fund and the Trustee shall not then admit any person as a Member of the Fund, or
- (b) Alternatively, if a Member so elects by notice to the Trustee and notwithstanding any other provision of these Rules, the property of the Fund transferred to the Fund by that Member can only be held in the Fund specifically for the Member and that property cannot be pooled with the Contributions or other assets of other Members and no other Member can obtain an interest in that property.

### **Rule 11. Members Have Read and are Bound by the Rules**

#### **Explanation**

*This Rule is to protect the Trustee against any claims made by a Member who claims not to understand what rights and obligations the Trustee and Member has under the Law and Rules.*

## Rule

By applying for Membership of the Fund a Member acknowledges having read the Product Disclosure Statement and agrees to be bound by the terms of the Deed and the Rules. Subject to Rule 10.2, a Trustee may prohibit a person becoming a Member of the Fund if they are of the opinion that the person has not read and understood the Fund's Product Disclosure Statement, the Deed and the Rules of the Fund.

## Rule 12. Application Form

### Explanation

*Subject to Rule 10.2, a person wishing to become a Member must provide the Trustee with an Application Form. The Application Form may (amongst other things) require such a person to:*

- *acknowledge that the person has read the Product Disclosure Statement;*
- *agree to be bound by the Rules;*
- *be a Trustee of the Fund or a director of a company which is the Trustee of the Fund;*
- *provide such information (including medical information) to the Trustee as the Trustee requires; and*
- *provide the Trustee with a death benefit nomination.*

## Rule

**12.1.** A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has:

- (a) completed an Application Form in the form required by the Trustee;
- (b) confirmed in writing that he or she has read the Product Disclosure Statement, Deed and Rules of the Fund; and
- (c) agreed to be bound by the Rules of the Fund.

**12.2.** Where a person may be entitled to be paid a Pension following the death of a Member, and that person does not wish to become a Member or the Trustee decides that the person should not become a Member, then the Trustee is to transfer that amount as would have been added to a Member's Pension Account to Fund the payment of the Pension to that person to another Complying Superannuation Fund or Eligible Rollover Fund. Any such transfer is to be made in accordance with Rule 27 and must occur within three months of the time that the person became entitled to be paid a Pension.

## Rule 13. Receipt of an Application Form

### Rule

**13.1.** On receipt of an Application Form from a person and after that person produces such documents and evidence (which may include a medical examination and checks) as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.

- 13.2.** Within 6 weeks of receipt of an Application Form the Trustee shall advise the person applying for Membership whether or not that person has been accepted for admission as a Member and whether or not any conditions will be attached to that person's Membership of the Fund.
- 13.3.** If the Trustee has agreed to accept a person as a Member, but subject to conditions as to that person's Membership, that person can within 6 weeks of notification by the Trustee pursuant to Rule 13.2 either accept or reject that offer of Membership.
- 13.4.** If, after six weeks, a person neither accepts nor rejects an offer of Membership of the Fund that person shall be deemed to have accepted that offer of Membership.

## **Estate Planning**

### **Explanation**

*The assets of the Fund do not belong in whole or in part to any individual. That is, whilst a Member might think of his or her interest in the Fund as being an "asset" of that person, as a matter of law this is not the case.*

*This means that, when a Member dies, that Member will not be able to dispose of his or her interest in a fund by way of a Will.*

### **Further Explanation**

*To allow a Member to effectively dispose of his or her interest in a fund and to have some choice as to how to do so, these Rules allow:*

- *A Member to provide the Trustee with a Non Binding Death Benefit Nomination. The Member by way of that nomination requests that the Trustee pays Benefits in accordance with the Member's wishes but does not compel the Trustee to so pay the Benefits. A Member might decide to provide a Trustee with a Non Binding Death Benefit Nomination where the Member wishes to provide some guidance to the Trustee (and to provide the Trustee with some measure of protection if the Trustee acts accordingly to that nomination) but, recognising that there may be a need for flexibility, does not want to bind the Trustee (Rule 14);*
- *A Member to provide the Trustee with a Binding Death Benefit Nomination in which the Member requires the Trustee to pay Benefits after that Member's death to a Legal Personal Representative or Dependant of the Member. Whilst such requests are mandatory, they are restrictive as to whom Benefits may be paid, the mode of paying Benefits, and generally they only have a three year life. For example, the Member cannot compel the Trustee to pay a pension instead of a lump sum. This is not the case with the Strategist Deed where a Binding Death Benefit is permanent if worded to that effect, unless altered by the Member (Rules 15.1 to 15.7). A Member who requires more certainty as to the application of Benefits payable on the death of a Member should consider including a Death Benefit request in the Rules as allowed by Rule 16 of the Rules;*
- *A Member to require his or her Legal Personal Representative to determine, with the consent of the Trustee, as to how a Member's Benefits should be applied on the death of the Member. The disadvantage of this alternative is that the Trustee might not consent to that determination (Rule 15.8); and*

- *A Member to cause the Rules to be amended to ensure that Benefits payable as a consequence of that Member's death are paid in a particular way (there is no restriction to whom or how the Benefits might be paid). This Rule may only be varied with that Member's consent (Rule 16).*

#### **Rule 14. Non-binding Death Benefit Nomination**

##### **Explanation**

*A Member might request the Trustee to pay a Benefit after the death of the Member to persons nominated by that Member. The Member might prefer (so as to not bind the Trustee) that this direction is made more as a statement of wishes than as a mandatory order.*

##### **Rule**

- 14.1.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Non-Binding Death Benefit Nomination. This Nomination may request the Trustee, at the Trustee's discretion, to provide Benefits on the death of the Member to persons named by the Member in that nomination.
- 14.2.** Subject to the Act, the Trustee must accept a Non-Binding Death Benefit Nomination.
- 14.3.** A Non-Binding Death Benefit Nomination is not binding upon the Trustee.
- 14.4.** Prior to the death of a Member, the Member or the Legal Personal Representative of the Member, may confirm, amend or revoke a Non-Binding Death Benefit Nomination previously given by the Member to the Trustee.
- 14.5.** A Member or the Legal Personal Representative of a Member may also direct the Trustee to act, do or carry out a particular course of action on the Member's death or incapacity. However the Trustee is not bound by any such direction and the Trustee must not comply with that direction, if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

#### **Rule 15. Binding Death Benefit Nomination**

##### **Explanation**

*The SIS Act states that, if the Rules of a fund permit, a Member of the Fund may require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member. The Member does this by making what is commonly referred to as a Binding Death Benefit Nomination.*

*The Trustee must accept a Binding Death Benefit Nomination. However the Trustee must first provide the Member with sufficient information for the purpose of submitting a Binding Death Benefit Nomination. It is important to understand that the nomination can only be for the benefit of SIS beneficiaries as defined under the SIS Act.*

*The Member may amend a Binding Death Benefit Nomination at any time provided the Trustee is notified in writing of that amendment.*

*Generally, a Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member.*

**Explanation cont.**

*A Binding Death Benefit Nomination may be limited to the extent that a Member only nominates a person or persons and a proportion of the Member's Benefits to be paid to the person or each person. Accordingly a Member who wishes to have certainty about the manner in which Benefits are provided to a Dependant should consider making use of other options available as detailed in Rules 16 and 17. Alternatively, this Rule allows the Legal Personal Representative with consent of the Trustee after the death of a Member to apply the Member's Benefits as requested by the Legal Personal Representative*

**Rule**

- 15.1.** The Trustee must, when required to do so by the Act, provide a Member with that information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 15.2.** A Member, or the Legal Personal Representative of a Member, may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 15.3.** Subject to the Act the Trustee must accept a Binding Death Benefit Nomination and shall be bound to act in accordance with that Binding Death Benefit Nomination so long as, in doing so, the Fund is not in breach of the Act.
- 15.4.** A Binding Death Benefit Nomination:
- (a) must be in writing;
  - (b) must require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
  - (c) must be signed and dated by the Member in the presence of two witnesses, being persons:
    - (1) each of whom has turned 18; and
    - (2) neither of whom is a person mentioned in the notice; and
  - (d) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member or the Legal Personal Representative of a Member in their presence.
- 15.5.** Prior to the death of a Member, the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Binding Death Benefit Nomination previously given by the Member to the Trustee. A confirmation must be in writing, dated and signed by the Member or the Legal Personal Representative of the Member. An amendment or revocation of a Binding Death Benefit Nomination must be in writing and must be dated and signed by the Member or the Legal Personal Representative of the Member in the presence of two witnesses each of whom has turned 18 and neither of whom is mentioned in the notice. The Trustee shall accept that confirmation amendment or revocation.

- 15.6. A Binding Death Benefit Nomination which requires a Benefit to be paid to the Spouse of a Member will be deemed to have been revoked if proceedings have been commenced pursuant to the Family Law Act 1975 or some similar foreign legislation seeking the dissolution of that Member's marriage to that Spouse.
- 15.7. A member may revoke a Binding Death Benefit Nomination.
- 15.8. Unless sooner revoked by the Member, or the Legal Personal Representative of the Member who gave the Binding Death Benefit Nomination, or deemed to have been revoked, a Binding Death Benefit Nomination would have an indefinite term unless the Member has stipulated otherwise.

**Rule 16. Incorporation of a Death Benefit request in the Rules**

**Explanation**

*The SIS Act states that, if the Rules of a fund permit, a Member may request the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member, provided any such request would not render the Fund to be a Non-Complying Self Managed Superannuation Fund.*

*These Rules permit a Member to request that the Trustee establish a Death Benefit Rule. The request if accepted will bind the Trustee to pay a Member's Benefits upon the Member's death as that Member requests.*

*However before accepting a Member's request to establish a Death Benefit Rule, the Trustee should assess the taxation implications and cash flow requirements that may be faced by the Fund in the event of any Death Benefit becoming payable upon the Member's death.*

*If the Trustee is of the view that the Trustee may be unable to comply with the Member's request the Trustee may, after discussion with the Member, request that the Member resubmit the request. The Trustee may also need to reassess the Fund's insurance plan and increase any life insurance cover.*

**Rule**

- 16.1. A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- 16.2. The Trustee may accept or reject any notice referred to at Rule 16.1 and must reject if the Trustee holds a Binding Death Benefit Nomination from that Member. If the Trustee accepts the notice, the Trustee shall be bound to act in accordance with that Death Benefit Rule that would be established as a consequence of accepting the notice.
- 16.3. A Member, or the Legal Personal Representative of the Member, may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and, if amended, the Trustee shall act in accordance with that amended Death Benefit Rule.
- 16.4. The Trustee shall not accept any notice referred to at Rule 16.1 or 16.3 if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.



**Rule 17. Terms and Conditions of a Pension deemed to be a Rule**

**Explanation**

*Rule 48.2 states that the Trustee must document the terms and conditions set down for the payment of a Pension and notify the Member of these terms and conditions. This Rule deems that those terms and conditions to be part of the Rules. This ensures that where, for example, the terms and conditions of a Pension provide for a reversion of the Pension on the death of the Member to their Spouse, Dependant or Legal Personal Representative and the Trustee is bound to act in accordance with those terms and conditions.*

**Rule**

A Member, or the Legal Personal Representative of the Member, may in writing notify the Trustee of his or her acceptance of the terms and conditions of a Pension payable according to Rule 48 as a Rule. Upon that acceptance by the Member, or the Legal Personal Representative of the Member, those terms and conditions will be deemed to be a Rule unless payment of the Pension causes the Fund to be a Non-Complying Self Managed Superannuation Fund.

**Warning**

*Pension arrangements entered into prior to 1 July 2007 must be reviewed to ensure that the terms and conditions of the Pension meet the current standards set out in the SIS Regulations.*

- End of Part One -

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## Part Two:

# Operation and Administration of the Fund

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### Termination of Membership

#### Rule 18. Expulsion of a Member

##### Explanation

*The object of this Rule is to allow the Trustee to expel a Member for any reason the Trustee considers necessary. The Trustee might do this if the Trustee felt that a Member's continued Membership of the Fund was not in the interests of the Fund. An example might be where there is a family break down and inter personal relationships threaten the viability of the Fund.*

##### Rule

- 18.1.** The Trustee may expel a Member as a Member of the Fund for any reason that the Trustee determines. At the same time the person must retire as Trustee of the Fund.
- 18.2.** If a Member is expelled from the Fund pursuant to Rule 18.1, the balance of the Member's Accounts is to be transferred to such other Superannuation Entity as requested by the Member; and, if the Trustee of the Fund has not received a transfer notification from a Member or former Member within a period of sixty days from the time the Trustee notified the Member of their expulsion, the Trustee may transfer the Member's Accounts to an Eligible Rollover Fund.

#### Rule 19. Ceasing to be a Member

##### Explanation

*Normally a Member will only cease being a Member:*

- (a) if the Member dies; or*
- (b) the Member is no longer entitled to receive Benefits from the Fund; or*
- (c) the Member ceases to be eligible to be a Trustee (or ceases to be eligible to be a director of a company which is a Trustee).*

*The Trustee also has the power to determine that a Member should no longer be a Member (for example, if two Members who are Spouses separate or divorce, the Trustee might decide that, in the interests of the Fund, one of those persons should not be a Member of the Fund).*

##### Rule

- 19.1.** Unless prohibited by the Act, a Member shall be deemed to have ceased to be a Member on the first to occur of the following:
- (a) the Member no longer being entitled to receive Benefits from the Fund;

- (b) the Trustee determining that the Member should no longer be a Member;
- (c) the death of the Member, or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member ceases to act as Trustee or director of the Trustee company; and
- (d) the date being no later than the earliest of either:
  - (1) four months from the date a Member became ineligible to be a Trustee, or to be a director of a company which is a Trustee, unless a Legal Personal Representative of that Member is appointed a Trustee; and
  - (2) the date just before a Member became ineligible to be a Trustee, or to be a director of a company which is a Trustee, unless a Legal Personal Representative of that Member is appointed as a Trustee.

## Members' Accounts

### Rule 20. The Trustee must keep Members' Accounts

#### Explanation

*The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one Member's Accumulation Account or Member's Pension Account may be kept for each Member.*

*The Trustee should ensure that a record is kept of the various components of a Member's Benefit in the Fund. This will assist the Trustee in determining the taxation consequences of any Benefits paid to a Member or upon the death of the Member to a Dependant or the Legal Personal Representative of the Member. These components are:*

- *The Tax Free Component comprising:*
  - *a Crystallised Segment, which is a consolidation of various existing components of a Member's Benefits calculated as at 30 June 2007 including any un-deducted Contributions, CGT exempt component, concessional component and post June 1994 invalidity component; and*
  - *a Contributions Segment, which includes all non-assessable Contributions made from 1 July 2007, typically a Member's personal or 'non-concessional' Contributions.*
- *The Taxable Component is the balance of the Member's Benefit less the Tax Free Component and comprises:*
  - *An Element Taxed in the Fund comprising Contributions and Earnings which have been subject to Tax in the Fund; and*
  - *An Element Untaxed in the Fund, which is uncommon in a Self Managed Superannuation Fund. This component may arise upon the death of a Member where the proceeds of an insurance policy on the life of the Member are received by the Trustee for payment to the Benefit of the Member's Dependants.*

## Rule

- 20.1.** The Trustee must keep, for each Member, an account that records:
- (a) Contributions received, Earnings, amounts allocated to and from Reserves, Benefits paid; and
  - (b) all other amounts that the Trustee resolves should be added to or deducted from those accounts.
- 20.2.** The balance of a Member's Account must be positive.
- 20.3.** The Trustee can keep more than one account for a Member, including more than one Member's Accumulation Account and more than one Member's Pension Account.
- 20.4.** The Trustee must keep a record of the Tax Free and Taxable Components of a Member's Benefit in a Member's Account or Accounts.

## Rule 21. Additions to a Member's Account

### Explanation

*Additions to a Member's Account will normally represent Contributions, roll-overs or Earnings. Additions may also include an allocation made by the Trustee from a Reserve into a Member's Account.*

*Contributions may include Splittable Contributions that have been transferred from a Member's Spouse in accordance with the Spouse contributions splitting rules in the Act (see Rule 27).*

## Rule

- 21.1.** On the last day of each month, or such other time as the Trustee might determine, or on any earlier date as required by the Act, the Trustee shall add to a Member's Account:
- (a) the amount of Contributions received by the Trustee for the benefit of the Member;
  - (b) at the discretion of the Trustee, such part of the Earnings as the Trustee believes should be added to that Member's Account;
  - (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account;
  - (d) any amount to which a Member is entitled because of a Payment Split; and
  - (e) such other amounts including allocations of Reserves as the Trustee might determine;

provided that any such addition to the Member's Account does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## **Rule 22. Deductions from a Member's Account**

### **Explanation**

*Deductions from a Member's Account will normally represent expenses directly attributable to the Member, or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include:*

- *any losses which the Trustee believes should be attributed to that Member;*
- *an Excess Contributions Tax liability assessed to the Member; and*
- *any transfers such as transfers of Splittable Contributions taken by the Trustee from a Member's Account and transferred to another account.*

### **Rule**

- 22.1.** On the last day of each month, or such other time as the Trustee might determine, or on any earlier date as required by the Act, the Trustee shall deduct from a Member's Account:
- (a) that part of the expenses of the Fund that the Trustee believes should be deducted from that Member's Account;
  - (b) that part of any loss of the Fund that the Trustee believes should be deducted from that Member's Account;
  - (c) the amount of any payments of Benefits made to the Member, or any other person, from that Member's Account;
  - (d) the amount of any Taxes payable by the Trustee, that the Trustee believes should be deducted from that Member's Account;
  - (e) the amount of any Excess Contributions Tax liability required to be deducted from that Member's Account in accordance with Rule 25; the amount of any Splittable Contributions that the Trustee has agreed to deduct from that Member's Account;
  - (f) any amount which is required to be deducted from that Member's Account because of a Payment Split; and
  - (g) any other amount which the Trustee believes should be deducted from that Member's Account, including any amount to be transferred to a Reserve or to another Member's Account;

provided that the amount of any such deduction would not cause:

- (1) the balance of the Member's Account to be less than that Member's Minimum Benefits, unless allowed by the Act; or
- (2) the Fund to become a Non-Complying Self Managed Superannuation Fund.

## Appointment of Auditor and Specialists

**Rule 23.** The Trustee must appoint an Approved Auditor and may appoint a specialist

### Explanation

*The Trustee must each year appoint an Auditor to audit the Fund. The Auditor is required to produce an annual audit opinion report.*

*The law relating to Self Managed Superannuation Funds is extremely complex. A failure to comply with the law might see the Fund severely penalised and cause a Trustee to be fined and even imprisoned. As a consequence, the Trustee might decide that it is prudent that a specialist be appointed to assist the Trustee in:*

- *ensuring that the Fund remains a Self Managed Superannuation Fund; and*
- *the administration and management of the Fund.*

### Rule

- 23.1.** On establishment of the Fund, and for every subsequent year of income, the Trustee must appoint an Auditor to audit the Fund. The Auditor must submit, to the Trustee, a report in the form required by the Act.
- 23.2.** On establishment of the Fund, and thereafter as the Trustee may determine, the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in:
- (a) ensuring that the Fund remains a Complying Self Managed Superannuation Fund; and
  - (b) the management and administration of the Fund.

## Contributions, Roll-overs and Transfers

**Rule 24.** Who can make Contributions

### Explanation

*The Trustee may accept Contributions from:*

- *a Member;*
- *a Member's Employer;*
- *a Member's Spouse;*
- *a Relative of a Member;*
- *an Employer of the Spouse or Relative of the Member;*
- *the Regulator;*
- *the Government, and*
- *any other person or entity,*

*provided the Contributions are made in accordance with the Act.*

**Explanation cont.**

*From 1 July 2007 annual limits have been imposed to cap the amount of Contributions which can be made by or for the benefit of a Member. More information is provided about these limits in the Product Disclosure Statement supplied with these Rules.*

*Contributions may be made in cash or by an in-specie transfer of assets. Care needs to be taken that the rules in the Act dealing with the acquisition of assets from Members are not contravened.*

*A Member must ensure that they provide the Trustee with their tax file number, before any Contributions are made by them or on their behalf to the Fund.*

**Rule**

**24.1.** A person may make Contributions to the Fund for the benefit of a Member, provided the Fund will not, by reason of acceptance of those Contributions:

- (a) become a Non-Complying Self Managed Superannuation Fund, or
- (b) be in breach of the Act.

**Rule 25. Excess Contributions****Explanation**

*Superannuation Contributions are subject to annual limits.*

*Any Contributions received by the Fund that are in excess of a relevant limit will be subject to additional tax. This tax (an Excess Contributions Tax) is imposed on individuals and not the Fund. Where an Excess Contributions Tax liability arises a Member will be able to, and in some cases must, withdraw an amount equal to their tax liability from the Fund.*

*If a Member is over 65, the Fund must return non-concessional Contributions in excess of the cap; as per sub-regulation 7.04(3) and 7.04(4) of the SISR and ATO ID2007/225.*

**Rule**

**25.1.** If a Member has an Excess Contributions Tax Liability and has lodged a Release Request with the Trustee, the Trustee shall within thirty days of receipt of that request pay to the Member or, at the Member's request, pay to the Australian Taxation Office that amount which is the lesser of:

- (a) any amount requested that the Trustee pay to the Member or to the Australian Taxation Office, which the Member has, by notice, attached to the Release Request;
- (b) the amount of Excess Contributions Tax stated on that Release; and
- (c) the total amount of that Member's Superannuation Interest in the Fund.



**Rule 26. The Trustee may accept a transfer from another Superannuation Entity**

**Explanation**

*A Member may request that the Trustee accept a transfer of an amount from another Superannuation Entity.*

*The Trustee has absolute discretion as to whether to accept any such transfer. The Trustee can make an acceptance subject to conditions. Where the Trustee resolves to accept an in-specie transfer of assets, the Trustee must ensure that the transfer of the assets to the Fund does not breach the Act or the Rules of the Fund.*

**Rule**

A Member, or the Legal Personal Representative of the Member, may request that the Trustee accept a transfer of an amount from another Superannuation Entity. The Trustee has the sole discretion to determine whether or not to accept the whole or part of such amount and whether or not conditions should apply to the acceptance of that transfer. The Trustee cannot accept a transfer of an amount to the Fund if acceptance of that amount would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

**Rule 27. Allotments, Transfers and Rollovers of Benefits**

**Explanation**

*A Member may request the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account. The Trustee may also at its discretion so allot, transfer or rollover all or part of a Member's Account.*

*Examples of where such transfers might be appropriate are:*

- *upon receipt of a request from a Member to transfer an amount of Splittable Contributions from their Member's Account to their Spouse's Member's Account;*
- *where a Payment Split is required to be made for the purposes of Part VIII B of the Family Law Act 1975; and*
- *where one Member separates from his or her Spouse who is also a Member.*

**Rule**

**27.1.** If a Member or the Legal Personal Representative of the Member:

- (a) requests the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account;
- (b) the Trustee is satisfied that any such allotment, transfer or rollover will not cause the Fund to be a Non-Complying Self Managed Superannuation Fund; and

- (c) or if the Trustee is required by law or agreement made for the purposes of the *Family Law Act 1975* the Trustee shall within such period as required by the Act or other law, allot, transfer or rollover the whole or that part of the Member's Account to that other Superannuation Entity or to the other Member's Account.

**27.2.** The Trustee has sole discretion, unless prohibited by the Act, to transfer the balance of a Member's Account to another Complying Superannuation Fund or to another Member's Account, provided that the Fund does not become a Non-Complying Self Managed Superannuation Fund or breach the Minimum Benefit provisions.

**27.3.** The Trustee may affect the transfer or rollover in the manner and form of the Trustee's choice, including whether the transfer is by way of cash or assets or has conditions attached.

## Investments

### **Rule 28. The Trustee must formulate a written investment strategy**

#### **Explanation**

*The Trustee must prepare and implement a written investment strategy. This is a requirement of the Act. The investment strategy:*

- *must reflect the purpose and circumstances of the Fund and have particular regard to the Members' profile, Benefit structure, tax position and liquidity requirements of the Fund; and*
- *should set out the investment objectives of the Fund and detail how the Trustee will achieve those objectives.*

*Breaches of the investment strategy requirement may result in the Trustee being fined or sued for loss or damages. In addition, the Fund could become a Non-Complying Self Managed Superannuation Fund*

*If the circumstances of the Fund change (for example because of the receipt of an exceptional Contribution), the Trustee should reconsider and possibly revise the Fund's investment strategy.*

#### **Rule**

**28.1.** The Trustee must formulate and implement an investment strategy that considers the whole of the circumstances of the Fund including, but not limited to, the following:

- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's (or part of the Fund's) investments as a whole, including the extent to which the investments are diverse or involve the Fund in 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 prospective liabilities.

- 28.2. The investment strategy must be documented in writing and signed by the Trustee.
- 28.3. The investment strategy may consist of one strategy for the whole of the Fund, or separate investment strategies for the various parts of the Fund.
- 28.4. The Trustee must review the Fund's investment strategy at least annually and may amend that investment strategy after such review or at any other time the Trustee believes is appropriate. If the Trustee amends an investment strategy, all Members affected by any such amendment shall be advised in writing of all details of the amendment.
- 28.5. A Member may, at any reasonable time, request the Trustee to produce the Fund's investment strategy for inspection and the Trustee shall comply with this request by the Member.
- 28.6. The Trustee must set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the Reserve, or such other requirements as laid down in the Act.
- 28.7. In setting the investment strategy, the Trustee may act on the advice of an investment adviser provided the Trustee reasonably believes that the adviser is qualified and has the necessary skills to provide such advice.

**Rule 29. The Trustee must invest the assets of the Fund**

**Explanation**

*The Trustee must invest the assets of the Fund.*

*The Trustee must ensure all investment decisions are made in accordance with the investment strategy.*

*While all of the assets of the Fund might be in cash, the Trustee of the Fund must have determined in an investment strategy that the holding of cash is the appropriate investment for the Fund at this time.*

**Rule**

The Trustee must invest the assets of the Fund in accordance with the Fund's investment strategy.

**Rule 30. Holding of assets for the Members**

**Explanation**

*The Trustee may adopt a "pooled investment strategy" or a "separate investment strategy" for the Fund. A Member may request the Trustee to adopt a separate investment strategy for that Member; the Trustee may invest amounts held for the benefit of any one Member differently from the way amounts are invested for other Members.*

## Rule

- 30.1.** Subject to Rule 30.2 below a Member, or the Legal Personal Representative of the Member, can request that the Trustee:
- (a) invest Contributions, transfers, or rollovers made to the Fund for the benefit of that Member; and
  - (b) separate income from the investment of those Contributions, transfers, or rollovers from any other investments of the Fund.
- The Trustee need not accept that request.
- 30.2.** If so requested by an irrevocable request made by a Member the Trustee shall hold any property transferred by the Member to the Fund provided the Trustee has accepted the transfer of that property;
- (a) solely for the benefit of the Member;
  - (b) solely for the purpose of providing a retirement benefit to the Member; and
  - (c) specifically for the benefit of the Member as a Member.
- 30.3.** If Rule 30.2 applies:
- (a) Neither the property nor the proceeds of the sale of the property can be pooled with property held for another Member; and
  - (b) No other Member can obtain an interest in the property or in the proceeds of sale of the Property.
- 30.4.** Neither the Member nor the Trustee can revoke Rules 30.3 or 30.4 to be varied or deleted.

## Rule 31. Authorised investments

### Explanation

*These wide provisions are to ensure that there is no doubt as to a Trustee's ability to make various investments. The Trustee should not make investment that would cause the Fund to fail the "sole purpose test"; or become a Non-Complying Self Managed Superannuation Fund.*

## Rule

- 31.1.** Subject to the Act and these Rules; and provided an investment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee may invest the assets of the Fund as if the Trustee is the absolute and beneficial owner of those assets. In investing the assets of the Fund, the Trustee shall exercise such diligence and prudence as an ordinary prudent person would exercise in conducting his or her own affairs.
- 31.2.** Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any monies requiring to be invested under these Rules, either alone or in partnership or co-ownership with any person:

The Trustee may:

- (a) acquire any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust monies;
- (b) acquire real or personal property or any interest therein and, without limiting the generality thereof, any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country;
- (c) acquire fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- (d) acquire options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;
- (e) acquire a fixed deposit or monies at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (f) acquire any policy of assurance or insurance of any kind whatsoever and wherever made;
- (g) make loans to any person or company, except to Members or a Relative of a Member;
- (h) acquire gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (i) acquire foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (j) lodge monies with a permanent building society, wherever situated, by taking up shares or depositing Funds;
- (k) acquire any reversionary or deferred property or rights of any description; and
- (l) acquire a warrant.

**Rule 32. Trustee Powers**

**Explanation**

*This Rule is designed to give the Trustee sufficient powers to administer the Fund and manage the investments of the Fund.*

## Rule

**32.1.** In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall in addition to those powers conferred on the Trustee by the Act have the following additional powers:

- (a) **To accept contributions:** provided that the Trustee may not accept an amount as a Contribution if the acceptance of the contribution would to the knowledge of the Trustee cause the Fund to be liable to the Excess Contributions Tax;
- (b) **To deal with assets:** 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;
- (c) **To deal with real property:** to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
- (d) **To deal with personal property:** to acquire, dispose of, exchange, hire, lease, and mortgage or otherwise deal with any interest in personal property;
- (e) **To lease:** 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;
- (f) **To let:** to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules 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;
- (g) **To engage specialists:** to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust Fund such Managers, agents, Self Managed Superannuation Fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business of the Fund, including to transact any business of the Fund under power of attorney of the Trustee or to do any act required to be done in connection with the administration of the trusts declared in the Deed, 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;
- (h) **To lend:** subject to these Rules and the Act to lend and advance monies;
- (i) **To Borrow:** to borrow if that borrowing is allowed by the *SIS Act*;
- (j) **To deal with bank accounts:** to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;

- (k) **To pay management expenses:** to pay out of the assets, Reserves or the income of the Fund, all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (l) **To pay general expenses:** to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable and to pay any other insurance premiums the Trustee believes should be paid;
- (m) **To deal with corporate securities:** with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
  - (1) to pay calls on securities or to permit securities to be forfeited and sold;
  - (2) to purchase securities and to take up securities of a new issue;
  - (3) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
  - (4) to sell securities at such price and upon such terms as the Trustee decides and with or without security;
  - (5) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
  - (6) to agree in respect of a winding up with the liquidator of a company or any Member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or in-specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any monies by way of equality of division or partition;
- (n) **To deal with unit trust interests:** to acquire units of any fixed or flexible unit trust by way of application, purchase or settlement by the Trustee in the establishment of such unit trust and exercise all rights, including voting rights, and perform all obligations as a holder of any units in such trust and to accept all distributions by the Trustee of such unit trust;
- (o) **To deal with franchises:** to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;

- (p) **To deal with subdivision of property:** to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay monies by way of equality or partition;
- (q) **To maintain property:** to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (r) **Power to set aside:** to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (s) **To deal with future contracts and options:** to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, enter into, vary, exercise, abandon or sell any put or call option or rights, or place bids, make offers, hedge and effect orders including buy, sell, 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 to operate on, utilise or deal with facilities of any stock or futures exchange, provided the Trustee maintains a derivatives risk management strategy;
- (t) **Trustee's power to deal with itself:** notwithstanding any rule or law or equity to the contrary:
  - (1) 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 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;
  - (2) to dispose of any beneficial interest in property of the Fund to itself;
  - (3) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
  - (4) to lease any property of the Fund to itself;
- (u) **To deal with policies:** to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability 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;
- (v) **To deal with agency and licences:** to apply for, purchase and hold any permit, agency 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;



- (w) **To 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;
- (x) **To receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a 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;
- (y) **To deal with 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;
- (z) **To deal with intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulas, licenses, 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 licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (aa) **To deal with the release of powers:** by irrevocable Deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release, any power shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (bb) **To deal with incidental 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;
- (cc) **To grant power of attorney:** in the exercise of all or any of the powers herein confirmed upon the Trustee to appoint an attorney and to execute any power of attorney or such other instrument as in the opinion of the Trustee is necessary for the exercise of those powers;
- (dd) **To appoint a custodian:** to appoint a custodian to hold the legal title of any asset acquired, or to be acquired, by the Trustee on such terms as the Trustee thinks fit;
- (ee) **To deal with indemnities:** to give indemnities to, or on behalf of, any person that the Trustee thinks fit; and
- (ff) **To deal with bills of exchange:** The Trustee may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in 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.

**32.2.** These powers shall be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules or by law.

- 32.3.** These powers shall not be limited by, or be construed so as to be limited by, any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law.
- 32.4.** In exercising these powers, the Trustee must ensure at all times that the Fund remains a Complying Self Managed Superannuation Fund.
- 32.5.** A Trustee who is a natural person may be a director of any company in which any monies forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it, unless that appointment would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 32.6.** Subject to the terms of these Rules, the Trustee may exercise or concur in exercising all powers and discretions given under this Deed or by law, notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers 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.

**Rule 33. The assets of the Fund are to be held in the Trustee's name**

**Explanation**

*The SIS Act as well as the Rules require that all the assets of the Fund be in the Trustee's name and held separately from any assets held by the Trustee personally, a Member, or by an Employer of a Member. No Member has any entitlement to a specific asset of the Fund.*

**Rule**

Except if allowed or required by the SIS Act, the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member, or an Employer of a Member.

**Rule 34. Trustee may receive gifts or distributions**

**Explanation**

*The Trustee of the Fund may receive gifts or distributions (additional to investment income derived from any investments made by the Fund) from:*

- *any company;*
- *any trust including a family trust, testamentary trust or the legal estate of a deceased person;*
- *any partnership, business, commercial or investment enterprise; and*
- *any government or statutory body*

*so long as the acceptance of any such gift or distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.*

*Gifts or distributions received by the Fund can be in cash or property. Distributions would normally be from a trust (note that there can be adverse tax consequences if the Fund receives gifts or distributions).*

## Rule

- 34.1.** The Trustee can accept a distribution or a gift made to the Fund, provided the Fund will not by reason of acceptance of that distribution or gift become a Non-Complying Self Managed Superannuation Fund or the Trustee otherwise resolves that the Trustee should not accept that distribution or gift.
- 34.2.** The Trustee may allocate any such distribution or gift at its discretion to the Earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines, including the payment of a Pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

## **Rule 35. The Trustee must not borrow unless permitted by the Act**

### **Explanation**

*The Trustee will not normally be allowed to borrow or mortgage or charge the assets of the Fund. A borrowing includes an overdraft or a margin account.*

*Except for limited short term borrowings the major exception to the "no borrowings" rules contained within the SIS Act are the "limited recourse borrowing arrangements" rules.*

*These rules allow a fund to borrow to acquire an asset provided the legal title to the asset (or replacement asset) is held on trust for the fund, that the fund has the right to acquire legal ownership of the asset (or replacement asset) and that the rights of the lender are limited to the asset (or replacement asset). This means that a fund can borrow to acquire an asset, such as:*

- an investment property;*
- a share; and*
- a unit in a unit trust.*

*Any borrowing arrangement must on a limited recourse basis. That is if the fund defaults on a borrowing the lender's rights against the fund are limited to the asset acquired as a result of the borrowing.*

*A fund must not be the legal owner of the asset. Rather it must be the beneficial owner of the asset.*

*There are no limitations as to whom the lender must be but the most obvious arrangement would be for a bank to lend directly to a fund. A member or associated party can also lend money to the fund as long as the arrangement is on arms-length terms.*

*Due to the complex nature of the "limited recourse borrowing rules" before implementing a non-recourse borrowing it may be appropriate to seek professional advice.*

## Rule

- 35.1.** Except as otherwise provided by the Act, the Trustee must not:
- (a) borrow money;
  - (b) maintain an existing borrowing of money;

- (c) recognise, or anyway encourage or sanction, a charge over, or in relation to a Member's Benefits; and
- (d) give a charge over, or in relation to, an asset of the Fund.

**35.2.** The Fund may borrow, unless this would render the Fund a non-complying Fund, provided that:

- (a) the borrowed money is applied for the purposes of the acquisition of an asset other than one which the Fund is prohibited from acquiring;
- (b) the asset is held on trust so that the Fund acquires a beneficial interest in the asset;
- (c) the Fund has a right to acquire legal ownership of the asset; and
- (d) the rights of the lender against the Fund for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the asset.

**35.3.** The Trustee must not acquire an asset from a Member, or an Associate of a Member, unless that asset is an allowable acquisition under the Act and acquired at market value.

## Earnings

### **Rule 36. The Trustee must determine and allocate the Earnings of the Fund**

#### **Explanation**

*The Trustee must determine the Earnings of the Fund each Financial Year.*

#### **Rule**

**36.1.** The amount of the Fund's Earnings for all or part of a Financial Year is to be determined by the Trustee and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's Earnings.

**36.2.** The Trustee has sole discretion as to where to allocate or how to apply Earnings, including allocating Earnings to a Member's Accumulation Account, a Member's Pension Account, or a Reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

## Reserves

### **Rule 37. The Trustee may establish a Reserve**

#### **Explanation**

*The Trustee may create a Reserve. Normally a Reserve would be created to meet an expected liability of the Fund. A Member does not have any entitlement to amounts credited to a Reserve.*

### **Explanation Cont.**

*As examples the Trustee might establish a Reserve to which the following amounts may be added:*

- *Earnings before being allocated to Members;*
- *An amount (generally on the advice of an actuary) so as to ensure that the Trustee has sufficient Funds to pay a Pension;*
- *Amounts to be held in reserve for unexpected contingencies;*
- *Self-insurance amounts (whether for the Members generally, or for only one or more of the Members);*
- *The Trustee might establish a Reserve from which tax deductible amounts may be paid to the Legal Personal Representative or Dependant of a Member in the event of the Member's death; and*
- *The Trustee should determine at the time of establishment of a Reserve;*
  - *What amounts are to be added to or deducted from the Reserve;*
  - *The investment strategy to be adopted for that Reserve; and*
  - *The proposed application of that Reserve.*

### **Rule**

- 37.1.** The Trustee may, from time to time, establish such Reserves and add, deduct and allocate amounts to those Reserves as it considers appropriate (except that it may not establish a Reserve or add or deduct any amount to or from a Reserve if that would result in the Fund becoming a Non-Complying Self Managed Superannuation Fund).
- 37.2.** The Trustee must formulate and implement a separate investment strategy for any Reserve. The investment strategy must be consistent with the Fund's investment strategy and with the Trustee's ability to discharge liabilities wherever actual or contingent, as and when they fall due.
- 37.3.** No Member, nor any other person, shall have any entitlement to any amount in a Reserve.

### **Taxation**

#### **Rule 38. Payment of Tax and allocation to Members' Accounts**

#### **Explanation**

*The general rule is that a Complying Superannuation Fund will be assessed for Tax on:*

- (1) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (2) Capital gains after deduction of same year and carried forward capital losses; plus*

## **Explanation Cont.**

- (3) *Earnings derived by the Fund on investment of Contributions; less*
- (4) *Deductible expenses incurred by the Fund (which might include insurance expenses); less*
- (5) *Carried forward tax losses.*

*Tax is levied at a rate of 15% on the net income of a Complying Superannuation Fund (although "special income" is taxed at a rate of 45%). Tax on capital gains on assets held by the Fund for more than a year is applied to only 2/3rds of the gain.*

*Carried forward tax losses do not include capital losses. Capital losses incurred as a consequence of a disposal of an asset acquired after 19 September 1985, whilst not deductible against ordinary income, may be offset against capital gains or carried forward to offset against future capital gains. Given possible long lead times between the incurrence of a capital loss and possible utilisation of that loss, the Trustee should ensure that adequate records are kept recording and evidencing the incurrence of that loss.*

*The allowance of any imputation credits received on franked dividends derived by the Fund will reduce the effective rate of Tax payable by the Fund.*

*Where a Trustee holds assets for the purposes of paying a Pension, the Trustee will not be subject to Tax on any income or gains derived from the investment of assets used to Fund payment of those Pensions.*

*Tax payable by the Fund need not be deducted from any particular Member's Account (it might be paid from a Reserve or deducted from Earnings).*

## **Rule**

- 38.1.** The Trustee must pay all Tax properly assessed to the Trustee.
- 38.2.** The Trustee may, in the Trustee's discretion, deduct from a Member's Account Tax paid or payable by the Trustee:
  - (a) as a consequence of the receipt by the Trustee of a Contribution for the Benefit of a Member;
  - (b) payable on any income added to a Member's Account; and
  - (c) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.
- 38.3.** The Trustee may, in the Trustee's discretion, deduct from any account, including a Reserve, Tax paid or payable by the Trustee provided any such deduction will not cause the Fund to become non-complying.
- 38.4.** If the Trustee receives a refund of Tax, the Trustee may add that refund to such Members' Accounts or such Reserve as it determines, provided that addition will not cause the Fund to become non-complying.

## Insurance

### Rule 39. The Trustee may establish an insurance plan

#### Explanation

*The Trustee may establish an insurance plan. The insurance plan may provide lump sum or annuity cover payable in the event of a Member's death or disablement. Other insurances that may be acquired by the Trustee include sickness and accident, trauma, permanent disability and life insurance.*

#### Rule

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including the payment of Benefits on death or disability) to a Member, a Member's Dependant or the Legal Personal Representative of a Member in the event of a Member's death, disablement, illness or as otherwise allowed by the Act.

### Rule 40. The Trustee may self insure

#### Explanation

*The insurance plan may also require the Trustee to self-insure the Fund (so as to enable the Trustee to pay a Benefit to a Member or to a Member's Legal Personal Representative). In the event that the Trustee seeks to self-insure, the Trustee should:*

- (1) engage an actuary to provide such advice to the Fund;*
- (2) determine the scope of the Fund's self insurance needs;*
- (3) establish a self insurance Reserve; and*
- (4) set a separate investment strategy for the self insurance Reserve.*

*An amount paid from a Reserve established for the purpose of self insurance might be tax deductible.*

#### Rule

**40.1.** The Trustee can elect to self insure and may establish a Reserve:

- (a) to which such amounts as the Trustee might require shall be added for the purpose of self insurance;
- (b) from which the Trustee may pay amounts required to be paid as a consequence of the Trustee self insuring against an event; and
- (c) from which amounts no longer required for the purpose of self insurance may be transferred to such other Reserve or to such Member's Account as the Trustee may determine.

**Rule 41. The Trustee has discretion as to the application of any insurance proceeds**

**Rule**

- 41.1. Subject to the Act, the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the proceeds to any Member's Account or to Reserves of the Fund.
- 41.2. No Member, nor their Legal Personal Representative, nor any other person, has any interest in any insurance proceeds that might be received by the Fund.

**Annual Accounts**

**Rule 42. The Trustee must prepare annual accounts**

**Rule**

- 42.1. The Trustee must keep such accounting records as are required by the Act.
- 42.2. Such accounting records are to be kept in such form and supported by such documentation as to enable them to be properly audited.
- 42.3. The Trustee must, as soon as practical after the end of each Financial Year:
- (a) prepare a statement of financial position recording the assets and liabilities of the Fund as at the end of that preceding Financial Year;
  - (b) prepare an operating statement recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year);
  - (c) arrange for these statements and the accounting records of the Fund to be audited by an Approved Auditor;
  - (d) arrange for all tax returns and other statements required to be lodged, pursuant to the Act, by the Fund and to be lodged as and when required; and
  - (e) prepare any Member and other statements and reports as required by the Act.
- 42.4. The Trustee must retain the accounts and statements prepared in accordance with Rule 42.3 for a period of 5 years after the end of the Financial Year to which they relate.

**Fund Compliance**

**Rule 43. Trustee must maintain the Fund's complying status**

**Explanation**

*The Trustee must ensure that at all times the Fund is a Complying Self Managed Superannuation Fund. This means that it must at all times comply with the provisions of the SIS Act and its regulations and the Rules of this Fund.*



**Explanation cont.**

*In certain cases the Trustee may become aware that it has taken an action that may result in the Fund losing its status as a Complying Self Managed Superannuation Fund. In these circumstances, the Trustee must prepare a Compliance Plan that results in the Fund returning to or ensuring its Complying Self Managed Superannuation Fund status.*

*The action required under the Compliance Plan may result from advice from the Fund's Auditor, an adviser to the Fund, or the Regulator.*

**Rule**

**43.1.** Where the Trustee becomes aware or is notified by the Auditor, an adviser to the Fund, or the Regulator, that the Fund may lose its status as a Complying Self Managed Superannuation Fund, the Trustee must:

- (a) liaise with the Auditor, adviser or Regulator to determine a Compliance Plan to ensure the Fund's status as a Complying Self Managed Superannuation Fund is maintained;
- (b) notify Members of any action required under the Compliance Plan; and
- (c) take such action as is required under the Compliance Plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

**Fund Insolvency****Rule 44. The Trustee must develop a Solvency Plan****Explanation**

*The Trustee must be able to pay Benefits and expenses as and when it is required.*

*If the Trustee believes that the Fund may become insolvent, then the Trustee must prepare a Solvency Plan which, if followed, would ensure that the Fund remains solvent.*

*The Solvency Plan may be written by the Trustee, the Fund's actuary, the Auditor, an advisor to the Fund or the Regulator.*

**Rule**

**44.1.** Where the Trustee becomes aware or is notified by the Auditor, or the Fund's actuary, that the Fund is, or may become, insolvent, the Trustee must:

- (a) meet with the actuary or Auditor to determine a Solvency Plan to ensure the Fund's solvency including, but not limited to, reducing any Members' Accounts or Members' Benefits;
- (b) notify Members of any action required under the Solvency Plan; and
- (c) take such action as is required under the Solvency Plan prior to the lodgement of the Fund's next regulatory return.

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## Part Three:

# Payment of Benefits by the Trustee

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### Benefits Payable to a Member

#### Rule 45. Benefits payable to a Member

##### Explanation

*Upon becoming entitled to receive a Benefit from the Fund, a Member may choose to receive that Benefit by way of a lump sum or an income stream or as a combination of both. In some instances, the Member may be required to receive a Benefit as a lump sum and in other instances, as an income stream.*

*A Member may choose to receive a Lump Sum Benefit as an in specie transfer of assets.*

*If a Benefit is paid to a Member who is 60 years of age and over, that payment will generally be 'tax free' to the Member.*

*There is no need for the Fund to be consistent as to the mode of payment of Benefits to Members. For example, a Pension might be paid to one Member and a lump sum to another.*

##### Rule

**45.1.** A Member, or a Dependant of a Member, or the Legal Personal Representative of a Member, or any other person, may be entitled to receive one or more of:

- (a) a Lump Sum Benefit;
- (b) a Pension Benefit;
- (c) a Temporary Incapacity Benefit;
- (d) a Permanent Incapacity Benefit; and
- (e) such other Benefit as the Trustee might determine,

provided that any such Benefit would not result in the Fund breaching the Minimum Benefits provisions; becoming a Non-Complying Self Managed Superannuation Fund; or in breach of the Act or these Rules.

#### Rule 46. When must Benefits be paid to a Member

##### Explanation

*This Self Managed Superannuation Fund has been established to provide Benefits to the Members, or to their Dependents. This Rule ensures that Benefits are paid in accordance with the Core and Ancillary Purposes of the Fund.*

## Rule

A Benefit must be paid to a Member, or to a Dependant of a Member, or to the Legal Personal Representative of a Member, or to some other person, if that Benefit is so required to be paid by the Rules or the Act.

### **Rule 47. Payment of a Lump Sum Benefit**

#### **Explanation**

*The SIS Act contains complete rules requiring a Member's benefit to be preserved with the superannuation system. These rules apply to both Lump Sum Benefits and Pension Benefits (see Rule 48 below). Most persons will not be entitled to be paid a lump sum from a superannuation fund until they retire or turn 65 years of age.*

## Rule

- 47.1.** Provided the Fund remains a Complying Self Managed Superannuation Fund and subject to the Rules, a Member or the Legal Personal Representative of the Member can at any time request, and the Trustee may at its discretion pay, a Lump Sum Benefit to the Member.
- 47.2.** Subject to Rule 47.3, the Trustee may only pay a Lump Sum Benefit to a Member that does not exceed the balance of that Member's Accumulation Account.
- 47.3.** The Trustee may determine that the whole or any part of a Reserve can be paid to the Member in addition to the payment of that amount made pursuant to Rule 47.2.

### **Rule 48. Payment of a Pension Benefit**

#### **Explanation**

*The Rules allow the Trustee to pay a Pension, provided payment of the Pension is authorised by the Act. This means that the Pension must meet certain standards that are set out in the SIS Regulations, and the Rules of the Fund must reflect these standards. This includes Pensions that may have commenced in a fund before 1 July 2007 such as 'allocated', 'market linked' and 'defined Benefit' Pensions.*

*The Fund may pay a Pension to a Member who has reached Preservation Age, even though that Member continues to work. This is known as a 'transition to retirement' Pension.*

*The Trustee must set out the terms and conditions of a Pension in writing and notify these to the Member prior to commencing the Pension. These terms and conditions then form part of the Fund's Rules.*

*From 1 July 2007, Members of a Self Managed Superannuation Fund may be paid a simple account based Pension (a Simple Pension). From 20 September 2007, the other Pension types will not generally be available to a Member of a Self Managed Superannuation Fund. These Rules allow the payment of a Simple Pension with any or all of the balance of a Member's Account in the Fund.*

*On the 18 February 2009 the Government announced a Pension Drawdown relief which will reduce the minimum payment amount by 50% for the 2008/2009, 2009/2010 and 2010/2011 financial years. This will apply to account-based, allocated and market-linked (term allocated) annuities and pensions.*

**Explanation cont.**

The 50% reduction will also apply to 'transition to retirement' pensions so long as they are paid through one of the above measures.

If a Member has already taken their 50% minimum payment for the year they are unable to re-contribute the excess back into their pension account. However a person may make contributions to an accumulation account where they are eligible to do so.

The terms and conditions for this Simple Pension must include the following:

- A minimum Pension payment calculated in accordance with the Member's age as below that must be made at least annually:

Age of Member	% of account balance to be taken	% of account balance to be taken for 10/11	% of account balance to be taken for 11/12
Under 65	4	2	3
65 - 74	5	2.5	3.75
75 - 79	6	3	4.5
80 - 84	7	3.5	5.25
85 - 89	9	4.5	6.75
90 - 94	11	5.5	8.25
95+	14	7	10.5

- the underlying capital of the Pension cannot be increased after the commencement date by the addition of any Contributions or rollovers;
- the Pension is able to be converted to a Lump Sum Benefit subject to special rules applying for transition to retirement pensions;
- the Pension cannot be used as security for any borrowings (income or underlying capital);
- upon the Member's death, the Pension can be transferred to a Dependant as a reversionary Pension, or the balance of the Pension account may be cashed and paid as a lump sum to a Dependant or to the Legal Personal Representative of the Member; and
- The special rules applying, for a transition to retirement Pension, include that:
  - The Pension cannot be taken as a Lump Sum Benefit until the Member meets a condition of release such as retirement, death, permanent disability or 65 years of age;
  - The maximum Pension payment in any one year is limited to 10% of the balance of the Member's Pension Account; and
  - The pension rules restrict the type of Dependents to whom a reversionary Pension may be paid or transferred. The Rules prohibit the reversion or transfer of a Pension to a Dependant where that person is a Child of the Member and is an adult (25 years and older), unless they have a permanent disability that meets the provisions of the Disability Services Act, 1986 and are in need of ongoing support.

## Rule

- 48.1. A Member or the Member's Legal Personal Representative may request the Trustee to pay a Pension to the Member, a Dependant of the Member, or a Legal Personal Representative of the Member, provided the Pension is taken to be a Pension for the purposes of the *SIS Act*. The payment of any Pension must not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.
- 48.2. All parts of the *SIS Regulations* that provide standards for the payment of a Pension are incorporated in, and form part of, these Rules and any amount paid by the Fund as a Pension must be provided under those Rules.
- 48.3. The capital supporting a pension may not be added to by way of contribution or roll-over after the Pension has commenced.
- 48.4. The Trustee may offer a Pension to a Member and must document the terms and conditions of the Pension and notify the Member in writing of these terms and conditions.
- 48.5. Subject to Rule 48.2, the Trustee has sole discretion to apply any amount standing in a Member's Accumulation Account, a Member's Pension Account or a Reserve for the benefit of the provision of a Pension to a Member, a Dependant of the Member, a Legal Personal Representative of the Member or some other person.

## Incapacity

### Rule 49. Member to advise Trustee of incapacity

#### Rule

- 49.1. If a Member wishes the Trustee to determine whether or not that Member is Temporarily Incapacitated or Permanently Incapacitated the Member or the Legal Personal Representative of that Member shall advise the Trustee of that. The Trustee shall before determining that a Member is Temporarily Incapacitated or is Permanently Incapacitated may require the Member to submit to any medical examination which the Trustee believes is reasonably necessary for the Trustee to determine whether or not the Member is Temporarily Incapacitated or is Permanently Incapacitated.
- 49.2. On receipt of that advice and after receipt of any medical opinion that the Trustee might require, the Trustee shall determine whether or not the Member has been or is Temporarily Incapacitated or Permanently Incapacitated.

### Rule 50. Benefits payable for Temporary Incapacity

#### Explanation

*The Trustee may be able to pay a Member a Temporary Incapacity Benefit, provided that the amount of that Benefit is not greater than the amount the Member was receiving from Gainful Employment. An amount received from Gainful Employment would include salary, wages, a share of the profit of a partnership, a distribution from a trust, a bonus, or any other form of benefit, provided it was linked to the provision of services by the Member.*

## Rule

- 50.1.** Where the Trustee is of the opinion that the Member is Temporarily Incapacitated the Trustee may pay a Temporary Incapacity Benefit to the Member, provided such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before becoming Temporarily Incapacitated;
  - (b) that date on which the Trustee forms an opinion that the Member has become Permanently Incapacitated;
  - (c) the date of the death of the Member; and
  - (d) such other time as is allowed under the Act.
- 50.2.** Subject to the Act, the amount of that Temporary Incapacity Benefit shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.
- 50.3.** The Trustee may draw upon any Reserve to pay a Temporary Incapacity Benefit or, if there are no Reserves, deduct an amount from the Member's Account or any other account the Trustee so determines.

## Rule 51. Benefits payable for Permanent Incapacity

### Explanation

*Where a Member is Permanently Incapacitated, the Trustee may pay the Member a Benefit until such time as the Member retires or dies. The Benefit may be a Lump Sum Benefit, a Pension or combination of a Lump Sum Benefit and Pension.*

*The Trustee might be able to make any such payment directly from that person's Member's Account. Alternatively or additionally, the payment might be Funded from a Reserve.*

*The Trustee may be able to claim a tax deduction for the payment of a Permanent Incapacity Benefit. Any such deduction may be used by the Trustee as an offset against same year or future year assessable income of the Fund.*

## Rule

- 51.1.** If the Trustee is of the view that a Member has become Permanently Incapacitated and provided that any such payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee in its absolute discretion may but not obliged to:
- (a) pay all of any balance of the Member's Accumulation Account and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit;
  - (b) pay part of any balance of the Member's Accumulation Account and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit and the balance of the Member's Accounts (as increased from time to time) to the Member as a Pension; and

- (c) pay all of any balance of the Member's Accumulation Account and Pension Accounts (as increased from time to time) to the Member, a Dependant or Legal Personal Representative of the Member as a Pension;

51.2. The Trustee may also allocate an amount from any Reserves of the Fund to the benefit of a Member, a Dependant or Legal Personal Representative of the Member in the event of the Member's Permanent Incapacity for the purposes of paying a Lump Sum Benefit, a Pension or combination of both.

## Death Benefits

### Rule 52. What must happen on death of a Member

#### Explanation

*A purpose of the Fund is to provide Benefits to a Member's Dependents or Legal Personal Representative, on death of the Member. Where a Member dies, the Trustee may pay a Benefit to the Member's Dependents or Legal Personal Representative in accordance with any Binding or Non-Binding Death Benefit Nominations made by the Member or Death Benefit Rule established at the request of the Member. The Benefit may be a Lump Sum Benefit, a Pension or a combination of a Lump Sum Benefit and Pension.*

*Prior to any Benefits being paid, a person must be appointed Trustee in place of the deceased Member. Typically, this is the Legal Personal Representative of the Member. That person may only remain Trustee for the period until death Benefits commence to be paid, otherwise the Fund may lose its complying status.*

#### Rule

52.1. On death of a Member:

- (a) if the Member was a Trustee the deceased Member's Legal Personal Representative is by reason of this Rule appointed a Trustee for the period from the date of death of the Member until the date of payment of any Benefits payable as a consequence of the death of the Member, provided the Legal Personal Representative is eligible, pursuant to these Rules, to be a Trustee and has consented to act as such;
- (b) if the Member was a director of a company which is a Trustee, that company may continue as a Trustee from the date of death of the Member until the date of payment of any death Benefit payable as a consequence of the death of the Member, provided the Legal Personal Representative of the Member is appointed as a director of the company for any such period; and the company and the Legal Personal Representative is otherwise eligible, pursuant to these Rules, to be a Trustee and has consented to act as such;
- (c) subject to Rule 48, the Trustee may continue to pay any Pension previously payable to the Member to the Legal Personal Representative of the Member.

### Rule 53. Payment of a Death Benefit

#### Explanation

*The payment of a Benefit on death of a Member may be made from the Member's Account or a Reserve. The Trustee may also be able to claim a Tax deduction for the payment of such a Benefit.*



**Explanation cont.**

*After the death of a Member, the Trustee should determine whether it holds a Non-Binding Death Benefit Nomination for the Member, a Binding Death Benefit Nomination for the Member, or has established a Death Benefit Rule at the request of the Member to pay Benefits to particular people in a particular manner and disperse Benefits as authorised by this Rule.*

**Rule**

- 53.1.** On the death of a Member, the Trustee shall distribute the balance of the Member's Accounts as a Benefit in accordance with this Rule to one or more of the Member's Dependents, the Member's Legal Personal Representative, or any other account in the Fund including another Member's Account or a Reserve, provided any such distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.2.** If the Trustee holds a Non-Binding Death Benefit Nomination for the deceased Member, the Trustee may, but is not obliged to, pay such Benefits to such persons as are nominated in that Non-Binding Death Benefit Nomination of the deceased Member.
- 53.3.** If the Trustee holds a Binding Death Benefit Nomination for the deceased Member, the Trustee must pay such Benefits in the manner and form as are nominated in that Binding Death Benefit Nomination of the deceased Member. The Trustee is not required to make a payment under a Binding Death Benefit Nomination if that payment may result in the Fund becoming insolvent, or if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.4.** If, at the request of the deceased Member, the Trustee has established a Death Benefit Rule, the Trustee must pay any Benefits payable as a consequence of the death of that Member in accordance with that Death Benefit Rule. The Trustee is not required to make a payment under a Death Benefit Rule if that payment results in the Fund becoming insolvent or causes the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.5.** If the terms and conditions of a Pension payable to the deceased Member have been incorporated as a Rule, the Trustee must pay the Pension according to the terms of that Pension provided any such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.6.** Except if one or more of Rules 53.1, 53.2, 53.3, 53.4 or 53.5 apply, the Trustee shall distribute or transfer the balance of the Member's Accounts as the Trustee in its absolute discretion may decide.
- 53.7.** Notwithstanding Rule 53.1, the Trustee is authorised to pay such additional amounts to a Dependant or the Legal Personal Representative of a deceased Member as the Trustee, in the Trustee's absolute discretion, may decide, including an amount from a Reserve, provided the payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund. These amounts are not to be taken as forming part of the deceased Member's Benefits.

## Conversion of Benefits

### Rule 54. Conversion of a Lump Sum Benefit into a Pension

#### Explanation

*Members in receipt of Benefits have the flexibility of converting their Benefits to another style of Benefit, provided that such a conversion is allowed under the Act and does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.*

#### Rule

- 54.1.** At the request of a Member or, in the event of the Member's death, at the request of the Member's Dependant or Legal Personal Representative; and, subject to the Rules and the Act, the Trustee may convert any Lump Sum Benefit, payable to the Member by converting that benefit either in whole or part into a Pension payable to the Member or, if the Member is deceased, the Dependents or Legal Personal Representative of the Member.
- 54.2.** The Member or, in the event of the Member's death, the Member's Dependant or Legal Personal Representative must notify the Trustee of the type of Pension required under Rule 48 and the Trustee is to use the Lump Sum Benefit entitlement to Fund any Pension.

### Rule 55. Commutation of a Pension

#### Rule

- 55.1.** At the request of a Member or, in the event of the Member's death, at the request of the Member's Dependant or Legal Personal Representative and subject to the Rules and the Act, the Trustee may commute part or the whole of any Pension payable to the Member in accordance with Rule 55.2 and 55.3.
- 55.2.** Any amount resulting from the commutation may be applied by the Trustee to:
- (a) pay a Lump Sum Benefit or some other type of Pension to the Member, a Dependant or Legal Personal Representative of the Member; or
  - (b) be allocated into the Member's Accumulation Account.
- 55.3.** Prior to commuting the Pension, the Trustee must determine the possible taxation consequences or commutation limits that may arise in relation to the commutation of the Pension and notify the Member, Dependant or Legal Personal Representative of the Member of this information.

- End of Part Three -

## Part Four:

# Changes to the Fund

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### **Rule 56.      Becoming a Small APRA fund**

#### **Explanation**

*This Deed is not a suitable Deed for a fund that is not a Self Managed Superannuation Fund. A fund will not be a Self Managed Superannuation Fund if it has more than four Members.*

*If the Fund ceases to be a Self Managed Superannuation Fund it will be in breach of the SIS Act, unless its Trustee is an Approved Trustee. An Approved Trustee is some entity, such as a publicly listed Trustee company that APRA has declared may be appointed as the Trustee of a fund that is not a Self Managed Superannuation Fund.*

*Where a fund ceases being a Self Managed Superannuation Fund it must within 21 days of that change provide the Australian Taxation Office with details of that change.*

*In some instances, the Members of a fund might believe that even though the Fund has less than four Members and that, rather than the Members being the Trustees, an Approved Trustee should be the Trustee. The Members may not wish to undertake the responsibilities attached to the role of Trustee or may have particular family reasons for wanting an Approved Trustee to be the Trustee. This Rule allows an Approved Trustee to be appointed as the Trustee at any time. These Rules are not suitable to Funds where an Approved Trustee is the Trustee.*

#### **Rule**

- 56.1.** Notwithstanding any other provision of these Rules, at any time the then Trustee may retire as the Trustee and appoint an Approved Trustee as the Trustee.
- 56.2.** If an Approved Trustee is appointed as the Trustee, the Members shall forthwith meet and agree to a replacement to these Rules.

### **Rule 57.      Amendment of the Deed or the Rules**

#### **Explanation**

*Given that constant changes are made to the Act it is important the Rules of the Fund can be amended so as to ensure continued compliance with the Act. The Rules of most Funds are amended or replaced from time to time.*

#### **Rule**

- 57.1.** Subject to any other provision of these rules, the Trustee may, in its absolute discretion, amend the Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the Act;

- (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment, unless the Member or the Legal Personal Representative of the Member has in writing consented to any such amendment;
- (c) the amendment does not amend the term of a Pension which has been incorporated as a Rule or a Death Benefit Rule, unless the Member or the Legal Personal Representative of the Member who accepted the term of the Pension, or who requested the Death Benefit Rule to be incorporated, has in writing consented to any such amendment;
- (d) the amendment does not allow a person, other than a Constitutional Corporation, to be eligible to be appointed as a Trustee, unless the Rules then provide, and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old age pensions, and
- (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions, unless the Rules provide, and will continue to provide after the amendment is made, that the Trustee must be a Constitutional Corporation.

- End of Part Four -

# Part Five:

## Winding Up of the Fund

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### Termination

#### Rule 58. Termination of the Fund

##### Explanation

*On termination of the Fund the Trustee should:*

- Step One**      *have the Fund audited;*
- Step Two**      *determine the Market Value of the Fund's assets;*
- Step Three**    *determine if the cash assets of the Fund are sufficient to discharge the Fund's debts and liabilities. If not, the Trustee will determine which assets will be disposed of to obtain sufficient cash;*
- Step Four**     *pay out all expenses of the Fund including any Taxes, administration costs, government imposts, amounts due to Members, other expenses plus any expense incurred to wind up the Fund;*
- Step Five**     *declare a final distribution amount (being that amount that is equal to the value of the assets of the Fund less expenses paid).*

*Any final distribution amount may at the Trustee's discretion (and subject to the Act) be distributed by the Trustee to any of:*

- (1) Members and former Members of the Fund;*
- (2) Relatives of any Member or former Member;*
- (3) any Legal Personal Representative of a Member or former Member;*
- (4) any other person; and*
- (5) a charity or public benevolent institution.*

##### Rule

- 58.1.** The Fund shall be wound-up and terminated on the first to occur of the date:
- (a) on which the Trustee resolves that the Fund should be wound up and terminated;
  - (b) the Fund must be wound up for the purpose of the Act;
  - (c) the Fund ceases to have Members; or
  - (d) the Regulator requires that the Fund be wound up.

**58.2.** The Trustee shall on Termination Date:

- (a) dispose of assets of the Fund in order to have sufficient cash to meet any debts and liabilities of the Fund. The Trustee has discretion to determine which of the Fund's assets are to be disposed of;
- (b) pay out any debts and liabilities of the Fund;
- (c) determine to whom any Benefits are to be paid, including former Members, trusts that former Members were beneficiaries of, the Legal Personal Representative of former Members or any other person. The Trustee retains sole discretion as to where Benefits are to be paid and how they are to be made including in-specie or cash Benefits and is to ensure that the payment of any Benefits does not breach the sole purpose test; and
- (d) pay out any Benefits due by the Fund to the Members. The Trustee retains sole discretion as to how these amounts are to be paid, including making an in-specie transfer of assets or cash amounts;

**58.3.** After the Trustee has made all such payments as the Trustee is required, or has resolved to pay pursuant to Rule 58.2, the Trustee may distribute the remaining assets of the Fund to such charities or public benevolent institutions as it might determine, provided any such payment does not breach the sole purpose test or otherwise render the Fund a Non-Complying Self Managed Superannuation Fund.

- End of Part Five -

# Part Six:

## Interpretation

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### Governing Law

**Rule 59.** The governing law is the State in which the Trustee resides

#### Explanation

*The governing law is simply that law which is to be applied by a court if the court is required to consider the Rules.*

*The governing law is the State in which the Trustee resides.*

#### Rule

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

### Status of the Act

**Rule 60.** The Act is paramount

#### Explanation

*The Rules define the Act to include the SIS Act, the Income Tax Assessment Acts 1936 and 1997 and the regulations made pursuant to those acts.*

*If the Fund fails to comply with a provision of an Act, the Fund might become a Non-Complying Self Managed Superannuation Fund (with the result that it would not be concessional taxed).*

*If the Trustee contravenes a provision of the Act, the Trustee might be subject to a fine or criminal penalty. This Rule is designed to protect the Fund in the event that the Rules of the Fund, and the provisions of an Act, contain some unintentional inconsistency but more importantly, in case the provisions of the Act change (and it is almost certain that the provisions of the Act will, at sometime, change).*

#### Rule

The Rules are subject to the Act. If there is any inconsistency between the provisions of the Act and the Rules, the provisions of the Act shall prevail. Provided there is no inconsistency between the provisions of these Rules and the Act, any authority or discretion given to the Trustee by the Act shall be incorporated into these Rules as if a Rule.

## Interpretation

### Rule 61. Rules as to interpretation

- 61.1. Explanations accompanying a Rule are for information and disclosure purposes only, but may be taken into account in interpreting a Rule:
- (a) in considering the purpose or object underlying a Rule;
  - (b) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text, taking into account the purpose or object underlying the Rule;
  - (c) in determining a Rule's meaning, if the Rule is ambiguous or obscure; and
  - (d) in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.
- 61.2. A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.
- 61.3. Words importing any one gender include all genders and words importing the singular number include the plural and vice versa.
- 61.4. Unless the contrary intention appears, when a word or phrase is given a particular meaning other parts of speech and grammatical forms of the word or phrase have a corresponding meaning.
- 61.5. In determining whether the Fund will or will not be a Complying Superannuation Fund or Complying Self Managed Superannuation Fund, the Trustee shall only consider whether or not any course of action to be followed by the Trustee in relation to the Fund would or would not cause the Fund not to be a Complying Superannuation Fund or Complying Self Managed Superannuation Fund; and must not take into account any discretion which might or might not be exercised by the Regulator.
- 61.6. A reference to a provision of an Act includes a reference to any similar or a successor provision in that Act or to any similar provision in any successor Act.
- 61.7. A reference in these Rules to "pay" includes a reference to "credit" or "distribute".

## DEFINITIONS

### Rule 62. Definitions

- 62.1. In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.



<b>Application Form</b>	An application form as referred to at Rule 12.
<b>Approved Trustee</b>	A Trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
<b>APRA</b>	The Australian Prudential Regulatory Authority or any successor authority to that authority.
<b>Associate</b>	A person who is an associate as defined by section 12 of the <i>SIS Act</i> .
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act or otherwise determined by the Regulator.
<b>Benefit</b>	A benefit or entitlement payable or distributable by the Fund including a Pension.
<b>Binding Death Benefit Nomination</b>	A death benefit nomination made by a Member in accordance with Rule 15 that must be followed by the Trustee in the event of the Member's death.
<b>Civil Penalty Order</b>	An order or declaration made by a court under section 196 of the <i>SIS Act</i> .
<b>Child</b>	Any person defined as a child by the Act.
<b>Commencement Date</b>	In relation to a Pension has the meaning given by the <i>SIS Regulations</i> .
<b>Compliance Plan</b>	A plan established for the purpose of Rule 43.
<b>Complying Self Managed Superannuation Fund</b>	A fund which is a complying Self Managed Superannuation Fund for the purposes of section 42A of the <i>SIS Act</i> .
<b>Constitutional Corporation</b>	A body corporate which is: <ul style="list-style-type: none"> <li>(a) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i>),</li> <li>(b) a financial corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i>).</li> </ul>
<b>Contributions</b>	Amounts paid or property transferred to the Trustee for the Benefit of a Member or Members.
<b>Contributions Segment</b>	Means that part of a Superannuation Interest as defined in section 307-220 of the <i>Tax Act</i> .
<b>Core Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> .

<b>Crystallised Segment</b>	Means that part of a Superannuation Interest as defined in section 307-225 of the <i>Tax Act</i> .
<b>Death Benefit Rule</b>	A Rule established as a Rule by reason of Rule 16.
<b>Deed</b>	The Deed establishing the Fund as amended from time to time.
<b>Dependant</b>	Is a person that is defined as a dependant for the purposes of the <i>SIS Act</i> and includes the Spouse of the person, any Child of the person and any other person with whom the person had an interdependency relationship (as determined by the <i>SIS Act</i> ).
<b>Earnings</b>	The earnings of the Fund determined in accordance with Rule 36.
<b>Element Taxed In The Fund</b>	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
<b>Element Untaxed In The Fund</b>	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
<b>Employer</b>	Means for the purposes of Rule 2.4 a person whom some other person is taken to be an "employee" of for the purposes of section 17A of the <i>SIS Act</i> .
<b>Excess Contributions Tax</b>	Any tax imposed by reason of the Superannuation ( <i>Excess Concessional Contributions Tax</i> ) Act 2007 or the Superannuation ( <i>Excess Non- Concessional Contributions Tax</i> ) Act 2006 or successor legislation.
<b>Financial Year</b>	A year ended 30 June or that period of twelve months adopted by the Trustee as the Fund's financial year.
<b>Fund</b>	The Self Managed Superannuation Fund established by the Deed.
<b>Gainful Employment</b>	That activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation.
<b>Legal Personal Representative</b>	The executor of the Will or administrator of the estate of a deceased person, the Trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.
<b>Lump Sum Benefit</b>	A Benefit which is payable to a Member pursuant to Rule 47 in cash or in kind.
<b>Manager</b>	The person or entity appointed by the Trustee to manage the Fund.

<b>Market Value</b>	The amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> <li>(a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</li> <li>(b) the sale occurred after proper marketing of the asset; and</li> <li>(c) the buyer and seller acted knowledgeably and prudently in relation to the sale.</li> </ul>
<b>Member</b>	Any person accepted by the Trustee as a Member of the Fund.
<b>Member's Account</b>	An account established by the Trustee on behalf of a Member.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustee, the balance of which is the amount that can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit and/or a Pension.
<b>Member's Benefit</b>	The amount of a Benefit payable to a Member, their Dependant or Legal Personal Representative in the event of the Member's death as determined by the Trustee.
<b>Member's Pension Account</b>	A Member's Account established by the Trustee from which the payment of a Pension will be debited.
<b>Minimum Benefits</b>	An amount determined by the Trustee of the Fund as a minimum benefit for a Member pursuant to Part 5 of the <i>SIS Regulations</i> .
<b>Non-Binding Death Benefit Nomination</b>	A death benefit nomination as referred to in Rule 14 that is not binding upon the Trustee.
<b>Non-Complying Self Managed Superannuation Fund</b>	A superannuation Fund that is not a Complying Self Managed Superannuation Fund.
<b>Payment Split</b>	A "payment split" as defined by section 90MD of the Family Law Act 1975.
<b>Pension</b>	Any pension payable by the Fund.
<b>Permanent Incapacity Benefit</b>	A Benefit payable pursuant to Rule 51.
<b>Permanently Incapacitated</b>	In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) where the Trustee is reasonably satisfied that that Member is unlikely, because of the ill health, ever again to be Gainfully Employed in any employment for which that Member is reasonably qualified by education, training or experience.

<b>Preservation Age</b>	<p>Means:</p> <ul style="list-style-type: none"> <li>(a) for a person born before 1 July 1960 — 55 years;</li> <li>(b) for a person born during the year 1 July 1960 to 30 June 1961 — 56 years;</li> <li>(c) for a person born during the year 1 July 1961 to 30 June 1962 — 57 years;</li> <li>(d) for a person born during the year 1 July 1962 to 30 June 1963 — 58 years;</li> <li>(e) for a person born during the year 1 July 1963 to 30 June 1964 — 59 years; and</li> <li>(f) for a person born after 30 June 1964 — 60 years.</li> </ul>
<b>Preserved Benefit</b>	A Benefit which Regulation 6.01 to the <i>SIS Act</i> states is a preserved benefit.
<b>Prescribed Documents</b>	Any documents that are prescribed documents for the purposes of the Act.
<b>Prescribed Information</b>	Any information which is prescribed information for the purposes of the Act.
<b>Product Disclosure Statement</b>	The product disclosure statement of which these Rules form part.
<b>Regulated Superannuation Fund</b>	A superannuation Fund that is a regulated superannuation Fund as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate a Self Managed Superannuation Fund as defined in section 10(1) of the <i>SIS Act</i> .
<b>Related Party</b>	A person who is a related party as defined in section 10(1) of the <i>SIS Act</i> .
<b>Relative</b>	Means for the purposes of Rule 2.4 a person whom is defined as a “relative” by section 71A of the <i>SIS Act</i> and for the purposes of Rule 23 means a person who is a “relative” as defined by section 65 of the <i>SIS Act</i> .
<b>Release Request</b>	A written notice provided by the Commissioner of Taxation authorising the Member to withdraw monies from the Fund to pay Excess Contributions Tax as referred to at Rule 25.
<b>Reserve</b>	An amount as referred to at Rule 37.

<b>Responsible Officer</b>	<p>(a) a director of a company,</p> <p>(b) a secretary of a company; and</p> <p>(c) an executive officer of a company.</p>
<b>Rules</b>	The rules of the Fund.
<b>Self Managed Superannuation Fund</b>	A fund that is a “Self Managed Superannuation Fund”, as defined in section 17A of the <i>SIS Act</i> .
<b>Simple Pension</b>	A Pension defined in regulation 6.01(1) of the <i>SIS Regulations</i> .
<b>SIS Act</b>	The <i>Superannuation Industry (Supervision) Act 1993</i> .
<b>SIS Regulations</b>	The <i>Superannuation Industry (Supervision) Regulations 1994</i>
<b>Specified Work Test</b>	Those conditions found in Part 6 of the <i>SIS Regulations</i> determining the time at which a person must be paid a Benefit from the Fund.
<b>Splittable Contribution</b>	An amount that has the meaning for the purposes of Part 6 of the <i>SIS Regulations</i> .
<b>Solvency Plan</b>	A plan established for the purposes of Rule 44.
<b>Spouse</b>	<p>In relation to a person includes:</p> <p>(1) a person who may or may not be legally married but lives with a Member on a genuine domestic basis;</p> <p>(2) any other person accepted by the Trustee and as permitted by the Act; and</p> <p>(3) any other persons (regardless of sex) with whom the person is or was registered under a law of state or territory for the purpose of section 22B of the acts interpretation Act 1901 (cth) as a kind of relationship.</p>
<b>Standard-Employer-Sponsor</b>	A person who is a standard-employer-sponsor as defined in section 16(2) of the <i>SIS Act</i> .
<b>Superannuation Entity</b>	<p>(a) a superannuation Fund;</p> <p>(b) an approved deposit Fund;</p> <p>(c) a pooled superannuation trust; and</p> <p>(d) a life insurance company or similar entity,</p> <p>whether such an entity is a resident or non – resident of Australia.</p>

<b>Superannuation Interest</b>	In relation to a Member, means an interest in the Fund or such other interest as defined in section 995-1(1) of the <i>Tax Act</i> as determined by the Trustee with reference to section 307-200 of the <i>Tax Act</i> and relevant Regulations.
<b>Tax</b>	Any tax levied by any taxation law.
<b>Tax Act</b>	The <i>Income Tax Assessment Act 1997</i> .
<b>Taxable Component</b>	Has the meaning given by section 995-1(1) of the <i>Tax Act</i> .
<b>Tax Free Component</b>	Has the meaning given by section 995-1(1) of the <i>Tax Act</i> .
<b>Temporarily Incapacitated</b>	In relation to a Member, means a Member who 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, because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.
<b>Temporary Incapacity Benefit</b>	A non-commutable income stream payable pursuant to Rule 50.
<b>Termination Date</b>	The date on which the Fund terminates.
<b>Total Member Entitlements</b>	That amount equal to the total value of all Members' Accounts
<b>Trustee</b>	A person or company that has been appointed a Trustee of the Fund under Rule 3.
<b>Trustee Meeting</b>	A meeting as referred to at Rule 7.1.

- End of Part Six -

# The Deed

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## Establishment of The Lelievre Super Fund

### Explanation

*A superannuation Fund is a form of trust. Trusts are normally required to be established by Deed. By execution of this Deed, the Trustee formally establishes the Fund.*

*To benefit from concessional taxation rules, the sole purpose of the Fund must be the provision of superannuation Benefits or retirement, incapacity or death benefits to Members (or Relatives of deceased Members). The Fund might also be able to provide Pension Benefits to Members prior to the retirement of the Member. The Fund should not be formed to carry on a business.*

*In order for this Deed to be admissible as evidence in a court of law, it may have to be stamped in the local jurisdiction of the Trustee.*

*The Deed does not contain the Rules of the Fund. Rather the Rules of the Fund are contained in a separate document and unlike the Deed can be (and should be) amended from time to time to reflect legislative changes.*

**THIS DEED** is made on 18<sup>th</sup> December 2012

By:

**Lelievre Super Investments Pty Ltd ACN 161 695 816** ('the Trustee')

### WHEREAS

- A.** The Trustee is that person who has executed this Deed or, if more than one person, those persons collectively.
- B.** The Trustee wishes to establish a superannuation Fund ("the Fund").
- C.** By execution of this Deed the Trustee signifies its consent to its appointment as the first Trustee of the Fund and acknowledges that it has read and agrees to be bound by the Rules of the Fund.
- D.** The Trustee intends that the Fund should be a complying Self Managed Superannuation Fund as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

**NOW IT IS HEREBY AGREED:**

**1. Initial Trustee**

The Trustee, if allowed by the Rules of the Fund to be appointed as a Trustee of the Fund, is hereby appointed as the Trustee of the Fund.

**2. Establishment of the Fund**

The Trustee hereby agrees to:

- (a) receive Contributions and any other amounts paid to it on behalf of Members; and
- (b) hold those Contributions and any income thereon according to the Rules of the Fund.

**3. Name of the Fund**

The name of the Fund will be **The Lelievre Super Fund**, or such other name as the Trustee might determine in writing.

**4. Rules of the Fund**

The Rules of the Fund are those Rules attached to this Deed, any amendment of or substitution of those Rules, and any other rule that is deemed by any law to be a Rule of the Fund.

**5. Purpose of the Fund**

The Fund is to be maintained solely for the provision of one or more of those purposes referred to in section 62 of the *Superannuation Industry (Supervision) Act 1993* as Core Purposes or Ancillary Purposes, including any purpose that the Regulator (as defined by the *Superannuation Industry (Supervision) Act 1993*) approves in writing.

**6. Complying Self Managed Superannuation Fund**

The Fund must at all times do those things that allow it to be a Complying Self Managed Superannuation Fund, as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993* and must not do anything that would or might cause it not to be a Complying Self Managed Superannuation Fund, as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

**7. Successor Acts**

A reference to an Act includes a reference to any successor act to that Act.

**8. Replacement Trustee**

If the Trustee or any person or entity appointed in place of the Trustee or in place of that other person or entity dies, is removed as a Trustee of the Fund, or retires as a Trustee of the Fund; such other person or entity as is appointed as Trustee by reason of the Rules will be the Trustee of the Fund.

**9. Amendment or replacement of rules of the Fund**

The rules of the Fund may be amended by new rules attached to this Deed or any amendment or substitution of the rules.

**10 Interpretation**


In this Deed words in the singular number include the plural and words in the plural include the singular.



This Deed establishing **The Lelievre Super Fund** is hereby executed as a Deed.

**EXECUTED AS A DEED** by **Lelievre Super Investments Pty Ltd ACN 161 695 816** in accordance with *section 127 of the Corporations Act 2001*, by its Directors or Director and/or Secretary:

.....Marcel Lelievre.....  
Please Print Name of Director

x   
-----  
Signature

.....Megan Lelievre.....  
Please Print Name of Director/ Secretary\*

x   
-----  
Signature

\* Delete as appropriate

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