



**KellyTaxAccounting**

# LEADING MEMBER SMSF TRUST DEED

VARIATION OF ARMSTRONG  
SUPERANNUATION FUND

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# DEED OF VARIATION TO A LEADING MEMBER SMSF FOR ARMSTRONG SUPERANNUATION FUND

**THIS DEED IS DATED:**

**PARTIES:**

1. TRUSTEE OF THE FUND: ARMSTRONG SUPER INVESTMENTS PTY LTD - ACN: 645 547 379 OF 19 ANGEL STREET, STAPYLTON , QLD 4207 ATF ARMSTRONG SUPERANNUATION FUND ("the Trustee").
2. LEADING MEMBER: JACINTA NICOLE ARMSTRONG OF 37 AZANIAN STREET UPPER MOUNT GRAVATT QLD 4122 AUSTRALIA ("the Leading Member").

**RECITALS:**

1. The Trustee established a Trust and Superannuation Fund known as ARMSTRONG SUPERANNUATION FUND ("the Fund") on 25 September 2001 and subsequently varied on \*\*\*Variation Date\*\*\*.
2. The purpose of the Fund is to provide superannuation benefits to Members and in the event of their death, for their Dependants and to act for such other purposes as permitted from time to time under the Superannuation Industry (Supervision) Act 1993 ("SIS Act") and Superannuation Industry (Supervision) Regulations 1994 ("SIS Regulations").
3. The Leading Member is hereby appointed as the Leading Member of the Fund and will continue until no longer being able to continue due to death, mental incapacity or of their own choosing whereupon the Successor Leading Member, if alive and able, will become the new Leading Member. The process of passing down Leading Membership from the original Leading Member will continue indefinitely. In this Deed, the following person is appointed in the event of the death or incapacity of the preceding Leading Member - Second Leading Member - Trent Roy Armstrong.
4. The settlement of this Deed, resolved by the Trustee as the replacement Governing Rules of the Fund ("Replacement Governing Rules"), ensures the purpose of the Fund are consistent with the SIS Act and SIS Regulations.

**PROVISIONS:**

1. Replacement of Governing Rules: The Substituted Governing Rules of the Fund are replaced in their entirety with the Replacement Governing Rules marked as "Annexure A" to this Deed, pursuant to Rule 57.1 of the Substituted Governing Rules.
2. No Resettlement at Law: The replacement of the Substituted Governing Rules, with the Replacement Governing Rules, does not constitute a resettlement of the Fund at law, equity or under any Superannuation Law.
3. Leading Member: The Leading Member confirms that they will act as the initial Leading Member of the Fund in accordance with this Deed.

4. Successor Acts: A reference to an Act includes a reference to any successor Act to that Act.

**EXECUTED AS A DEED BY THE PARTIES:**

**1. TRUSTEE**

ARMSTRONG SUPER INVESTMENTS PTY LTD - ACN: 645 547 379 ATF ARMSTRONG SUPERANNUATION FUND


by being signed by the persons authorised to sign for the company pursuant to section 127 of the Corporations Act 2001:

  
.....  
Jacinta Nicole Armstrong  
Director


30/10/2020  
.....  
Date

  
.....  
Trent Roy Armstrong  
Director

30/10/2020  
.....  
Date

  
.....  
Kerry Joan Armstrong  
Director


30/10/2020  
.....  
Date

  
.....  
Joan Lorraine Armstrong  
Director

30/10/2020  
.....  
Date


**2. LEADING MEMBER**

**i. Signed by: Jacinta Nicole Armstrong**

  
.....  
Jacinta Nicole Armstrong  
Leading Member

30/10/2020  
.....  
Date

**Witnessed by:**

  
.....  
Witness Signature

30/10/2020  
.....  
Date

Michelle Gray  
.....  
Witness Name

# ANNEXURE A

## THE TRUST DEED AND GOVERNING RULES OF ARMSTRONG SUPERANNUATION FUND

<b>Rule</b>	<b>Description</b>
Rule 1	Preamble
Rule 2	The Trustee and its Broad Powers
Rule 3	Membership and the Leading Member
Rule 4	Operation and Administration of the Fund including Member Accounts
Rule 5	Contributions, Fund Transfers and Acquisitions of Assets
Rule 6	Member Benefits – Accessing and Type
Rule 7	Definitions

## **Rule 1. Preamble**

When reading, considering or utilising this Trust Deed and Governing Rules it is important to take into account, all of the following:

- a) Where a word is Capitalised it may be found in the "Definitions". The Definitions are core to the understanding of the various Rules in the Trust Deed and Governing Rules. It is crucial when reading a specific Rule to refer to the relevant Definitions noted in the Rule;
- b) Where singular is used in the Rules it is to also mean plural and if a gender is used it is also to mean the opposite gender;
- c) A reference to any entity, body, company or person also includes a reference to those persons or entities that have authority to act on behalf of the party including their successors, assigns, representatives, Responsible Officers, a person holding someone's Power of Attorney, an Enduring Power of Attorney and a Legal Personal Representative;
- d) The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia. At this time the Trustee has decided to apply the laws of Queensland. If the Trustee resides outside Australia or the Trustees reside in different Australian States, then the governing law is that chosen by the Trustee and if not chosen by the Trustee it is the governing law of the State of Victoria.
- e) Where the term "SMSF" is used it means a "Self-Managed Superannuation Fund" as defined in the Superannuation Laws.
- f) Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or non-compliance certificate or adverse determination by the Regulator for the Trustee, Fund or Member;
- g) In accordance with Rule 2.5 and the requirement for the Trustees of the Fund to ensure that the Fund remains a complying SMSF, the Rules are written as being subject to the Superannuation Laws. Where the Trustee or any other person enters into a transaction, undertaking, agreement, understanding or any other arrangement that has the effect of the Trustee breaching the Superannuation Laws or being deemed a non-complying SMSF by the Regulator as a consequence of the Trustee's or other persons action, the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered void ab-initio.
- h) Where there is a change in the Superannuation Laws that provides the Trustee with an opportunity to advance the retirement incomes or benefits of the Fund's Members or requires the Trustee to do an act or thing and these benefits or acts are not covered in the Fund's Trust Deed or Governing Rules then they are deemed to be incorporated into the Fund's Trust Deed. This Rule is to apply even if inconsistent with another Rule of the Fund.

## **Rule 2. The Trustee and its Broad Powers**

This Rule provides the core powers and functions of the Trustee. Apart from the Leading Member the Trustee controls the investments, operations, goings on, payments of benefits, receipt of contributions and any other manner or action to ensure the Fund is only a complying SMSF.

### **2.1 Type of Trustee**

The Trustee of the Fund may be more than one individual, a company or a mixture of both. For the longevity of the Fund and administrative simplicity a corporate Trustee is preferred as the Fund may only pay old age pensions where individual Trustees are in power. A corporate Trustee is not to be bound or limited in the types of superannuation benefits it pays, either during the life of a member or as a consequence of the member's death.

### **2.2 Individual Trustees require the Fund to pay Old Age Pensions – not recommended**

If the Trustees are only individuals, then the purpose of the Fund is to pay old age pensions as that term is expressed in the Superannuation Laws and the Commonwealth Constitution. For a multi-generational SMSF this is not recommended.

### **2.3 Trustee to Ensure the Fund is a Complying SMSF**

The Trustee of the Fund is to ensure, at all times, the Membership of the Fund is lineage, or hold such other enumerated link or relationship to the Leading Member and that decisions are made to grow, protect and benefit the Members of the Fund. In the event that another person seeks to circumvent any distribution of superannuation benefits and death benefits to persons or entities outside of the Leading Member's lineage or pre-determined relationship such as business partners, the Trustee is to seek advice and take remedial action wherever necessary.

### **2.4 Trustee Appointment and Removal by Leading Member**

The Leading Member of the Fund may appoint and remove the Trustee, including themselves or a company they control. The appointment, whether individuals or company must comply with the Superannuation Laws and the intent of the Trustee and Members of the Fund to ensure the Fund is a Complying SMSF. In removing any Trustee, the Trustee must take into account the desire for the Fund to be a Complying SMSF.

### **2.5 Trustee Responsibilities**

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



- a) ensure that the Fund remains a Complying SMSF;
- b) ensure that the Fund Trust Deed and Rules remain current;
- c) act honestly in all matters concerning the Fund;
- d) exercise, in all matters affecting the Fund and its Members, the same degree of care, skill and diligence as any normal prudent Trustee;
- e) ensure that the Trustee's duties and powers are performed and exercised in the best interests of Members of the Fund;
- f) not enter into any contract, transaction or agreement or do anything that would prevent or hinder the Trustee in suitably performing or exercising the Trustee's functions and powers;
- g) disclose any conflict of interest in any dealing with or undertaking any transaction or investment on behalf of the Fund;
- h) provide to Members access to all and any information required to be given or viewed by Members under the Superannuation Laws but subject to the Privacy Act 1988;
- i) ensure the efficient administration of the Fund including, but not limited to, the payment of all taxes, excess contributions taxes and other imposts that must be paid by the Fund and the lodgement of all compulsory documentation to the Regulator in respect of the Fund and ensure that the Fund meets its Superannuation Law compliance responsibilities;
- j) keep all records, documents and minutes of valid Trustee meetings to enable the efficient administration and audit of the Fund by the Auditor and the Regulator so as to comply with all Superannuation Laws in respect of the keeping of records, documents and minutes for the Fund;
- k) notify the Regulator, in accordance with the provisions of the Superannuation Laws, of significant events and other events that occur in the Fund including any change in Trustee where required. The Trustee is to notify the Regulator of these events within the time period required;
- l) not seek to delegate Trustee powers and responsibilities under the Rules of the Fund or the Superannuation Laws unless otherwise permitted;
- m) keep informed of the Superannuation Laws and if required by the Superannuation Laws or the Regulator, undertake any education or other mandatory or voluntary knowledge requirements;

- n) deal with the Regulator and any other regulatory authority as required under the Superannuation Laws;
- o) create an Insurance Strategy for the Fund; and
- p) be aware of any changes to the Superannuation Laws that requires the Trustee of the Fund to remain a Complying SMSF.

## 2.6 Trustee's Broad Investment Powers

The Trustees have the power to invest in, acquire, sell, dispose, transfer or create any Asset situate anywhere in the world, including businesses, property, shares, equities, securities, loans, intellectual property, digital assets, corporeal or incorporeal property. In making any investment the Trustee is to ensure that the investment does not breach the provisions of the Superannuation Laws and is not non-arm's length income. In creating any asset, the Trustee is to ensure that it is created for the benefit of the members of the Fund and does not breach the provisions of the Superannuation Laws and is not non-arm's length income.

## 2.7 General and Broad Trustee Powers to Act

The Trustees have the power to do, transact, arrange, organise, create, transfer, sell, dispose, assign, lend, borrow, run a business, conduct an operation or do anything to Fund assets, investments or deal with the property or Assets of the Fund provided that it does not breach the Superannuation Laws and is in accordance with any published Regulator guidelines or State based Trustee laws.

## 2.8 Delegation of Trustee Powers

The Trustee may delegate its powers, including to a Member or the Leading Member, however the Trustee shall always take responsibility for all actions involving the Fund. The delegation of its powers may include investment powers to members of the Fund so the Member can create a Separate Investment Strategy for one or more or all of their superannuation interests and benefits.

## 2.9 Trustee to Comply with and Abide by the Superannuation Laws

The Trustee and the Leading Member of the Fund must take into account and abide by the Superannuation Laws at all times. In so doing the Trustee may seek advice from the Fund's auditor, a specialist SMSF lawyer or professional or SMSF Adviser on any action contemplated or to be undertaken by the Trustee or Leading Member.

## 2.10 Trustee to Invest Monies of the Fund and maintain Investment Strategies

The Trustee must invest the monies of the Fund in Assets and other investments and set and maintain an Investment Strategy as per this rule and in accordance with the Superannuation Laws. The Trustee has the power to invest on behalf of all Members

and the Fund generally or enable Members to maintain a Separate Investment Strategy and hold specific investments within those investment strategies for the Member, one or more Member's Superannuation Interests or for the benefit of one or more Member's Superannuation Interests.

At times The Trustee will invest in land, leasehold or other property entitlements which have been acquired from one or more Members and federal or state based laws may require for tax, duty or other impost purposes (including concessions) for those investments to be held in a Separate Investment Strategy of the transferring Members. This is to acknowledge the Trustee's power in that regard.

#### 2.11 Trustee may maintain Reserves

The Trustee may maintain Reserves of the Fund in accordance with the Superannuation Laws and has complete discretion in the use of those Reserves, allocations to, allocations between and allocations from a Reserve including transferring Reserves to another SMSF if allowed. Where a Reserve is maintained the Trustee is to ensure that it maintains a strategy for the prudential management of any Reserve.

#### 2.12 Trustee may pay Superannuation Benefits

The Trustee may pay any or all Lump Sum, Pension, Income Stream, commutation and any other superannuation or non-superannuation benefits allowed as per the Superannuation Laws provided the Member is so entitled under those laws. Subject to the Superannuation Laws these benefits may be paid singly, jointly, contiguously, continue in the name of a dependant or other beneficiary, be paid to a Trust or estate on behalf of the Member or any person related to the Member.

#### 2.13 Trustee to Appoint Professionals

The Trustee is to appoint any professionals as required under the Superannuation Laws and for such duration as the Trustee determines. In so doing the Trustee is to ensure that the professional has appropriate professional indemnity and other insurances, is qualified to complete any advice or work done and does not have a conflict of interest with the Fund's operations.

#### 2.14 Trustee may Insure Members

As part of the Fund's Investment Strategy the Trustee is to create and prepare an Insurance Strategy for the Fund. In that regard the Trustee may insure any or all of its Members and for any purpose, including self-insure provided such purposes are allowed under the Superannuation Laws. The payment of any premiums is to be taken from the account of the Member for whom the insurance relates unless the Trustee chooses otherwise, including the payment of a premium from the Earnings of the Fund. No Member or beneficiary has any specific entitlement to the insurance benefits of the Fund.

2.15 Trustee to hold Fund Assets for the Benefit of Members and in its own name

The Trustee holds all monies and Assets on behalf of and for the benefit of the retirement of current, past and future Members of the Fund and in such proportion as this Deed or the Superannuation Laws require. No Member has any entitlement to any monies or assets of the Fund, nor any insurances even where the Member directs a Trustee to undertake a specific investment strategy on their behalf. The Trustee must ensure, even when using a Custodian or Bare Trust, that all Fund Assets and monies are held in the name of the Trustee or for the absolute entitlement of the Fund, the Trustee and its Members.

2.16 Trustee to act as sole Trustee

The Trustee is to act as the sole Trustee of the Fund and not in it's own right, conduct any other non-Fund business or act as a Trustee of any other Trust.

2.17 Trustee can act with itself and between Members

The Trustee has the power to act with itself and complete transactions, transfers, assignments and any other action as between Members, Member Superannuation Interests, Member Separate Investment Strategies including loans, investment or asset transfers, assignment of income streams or any other matter that can be completed under the Superannuation Laws.

2.18 Variation of the Rules of the Fund

Once established the Trustee may vary any or all of the Rules of the Fund. Any variation:

- a) Must be signed by the Trustee unless the variation is an auto-variation in sub-rule (d) below;
- b) Can alter prior or existing but now new Pensions and/or Income Streams as per Rule 6.7 but will not alter prior or existing SMSF Wills and/or Binding Directions on the Trustee or Members unless otherwise agree to between the Member effected and the Trustee;
- c) may be for change in name of the Fund only;
- d) may be agreed upon by the Trustee of the Fund, with the consent of the Leading Member, to be automatic upon a new set of Rules released under the LightYear Docs, automated trust deed upgrade offering at [www.lightyeardocs.com/annualdeedupgrade](http://www.lightyeardocs.com/annualdeedupgrade). In this case the Trustee, Members and Leading Member and deemed to have consented to use the latest set of Bloodline SMSF Rules as shown on the site. In addition any automatic upgrade will not alter prior or existing Pensions, Income Streams, SMSF Wills, Binding

Directions on the Trustee or Members unless otherwise agree to between the Member effected and the Trustee;

## 2.19 Wind up of the Fund

The Trustee with the consent of the Leading Member may wind up the Fund at any time provided:

- a) A specified date for the wind up is chosen and all members are duly notified of the terms and conditions of the wind up;
- b) The Accounts of the Fund are duly prepared detailing Member account balances including any Member Superannuation Interests, Reserve accounts and all Earnings are allocated to the time of the wind up less any expenses, professional fees and taxes;
- c) The Fund cannot be wound up until tax clearance is provided by the Fund's tax agent or auditor that no taxes are owing;
- d) If there is no Member left in the Fund, the last Member's legal personal representative is to be appointed as Trustee and Leading Member for the sole purpose of winding up the Fund.

## **Rule 3. Membership and the Leading Member**

This rule sets out terms and conditions of membership of the Fund and the key role the Leading Member has in appointing and removing Members of the Fund. At all times, unless the Leading Member decides otherwise, Members must be lineage of the Leading Member of the Fund or in such other relationship to be determined by the Leading Member.

### 3.1 The Leading Member

The Leading Member is the initial person who is hereby provided with the power to appoint and remove a Member or Trustee and is appointed as the Leading Member of the Fund. When the Leading Member no longer has legal or mental capacity or dies, the next Leading Member is that person nominated in this Deed. If no successor Leading Member is nominated it is to be the that person previously nominated in writing by the Leading Member as the successor Leading Member and if no such nomination, the eldest blood child of the Leading Member who is a Member of the Fund is to become Leading Member and if none, the Member the Trustee so appoints. This Deed may provide further successor Leading Members and these are to have primary effect before any written nomination by the current Leading Member.

### 3.2 Appointment of Members

There are no age or residency restrictions for Membership unless the Leading Member so details. In appointing a person to the Fund as a Member the Leading

Member must ensure that they have the person's consent to become a Member, have regard to the proposed Member's relationship to the Leading Member vis a vis the Leading Member's Bloodline, abide by the Rules of the Fund and to have read the Fund's product disclosure statement. The Leading Member is not required or forced to make a person a Member.

### 3.3 Number of Fund Members

The number of Members of the Fund is at the Leading Members discretion but should be no more than that number which is provided by the Superannuation Laws to ensure the Fund is a SMSF. However, if the Leading Member decides that the Fund should appoint more Members which would result in the Fund no longer being a SMSF, the Leading Member is to notify all other Members and offering them the ability to transfer out of the Fund with their superannuation benefits.

### 3.4 Relationship to the Leading Member

At all times the Leading Member is to ensure that Members of the Fund are lineage of the Leading Member or in some other such relationship to the Leading Member as the Leading Member determines, unless the Leading Member makes a specific exception in writing. The Leading Member's spouse is deemed to be automatically related to the Leading Member for the purpose of the Rules of this Fund but will not be upon a break down in any spousal relationship. The spouse of the Leading Member is not however deemed an automatic member of the fund unless signed member consent provided.

### 3.5 Termination of Membership

The Leading Member may terminate the Membership of any Member at any time and for whatever cause including the Member being subject to a legal action, including a Family Law action, a relationship separation or bankruptcy. All superannuation benefits of the terminated Member are to be determined and signed off by the Fund's auditor and paid within such reasonable time as the Superannuation Laws require.

### 3.6 Continuation of Membership to the Legal Personal Representative

The Legal Personal Representative of a Member including a deceased Member is deemed to be the Member for the purposes of the Rules and therefore holds all rights and entitlements of the Member or a deceased Member. For the sake of clarity, a deceased Member's Legal Personal Representative continues the deceased Member's membership under the Rules of the Fund until such time as the Superannuation Laws allow or the Trustee or Leading Member determines.

### 3.7 Member's Individual Sub-Funds

If the Trustee creates sub-Funds for Members under these Rules and as allowed under the Superannuation Laws, Fund Members have all rights and entitlements as contained in the Member's sub-Fund. These may include, but are not limited to:

- a) The accumulation of superannuation benefits directed and dedicated to that specific member;
- b) The payment of a superannuation or other benefit to the Member;
- c) Who the Member appoints as a replacement Trustee or director of the Corporate Trustee in the event of death or legal disability;
- d) The investment strategy and the investments that may be held specifically for the Member or one or more of the Member's superannuation interests or other benefits;
- e) The Member's Enduring Power of Attorney;
- f) The Members directions as to the disposal or use of their Superannuation Benefits in the event of their death (a SMSF Will) or mental or physical incapacity (SMSF Living Will) provided any such direction has been signed by the Member and witnessed by two non-related and non-beneficiaries;
- g) The Member's Will;
- h) Any Member health directive;
- i) Any other right or entitlement that the Leading Member agrees to in relation to the Member sub-fund.

#### **Rule 4. Operation and Administration of the Fund including Member Accounts**

The Fund is a continuously complying SMSF and is to be maintained by the Trustee, the Leading Member, Fund professionals and any other person for the benefit of Members of the Fund.

##### **4.1 Becoming an Operating SMSF**

At inception the Trustee of the Fund is to ensure the following actions are to be completed within a reasonable period of time:

- a) The Trustee is to elect and ensure that the Fund is to become a regulated superannuation fund as that term is defined under the Superannuation Laws;
- b) Obtain an Australian Business Number, a Tax File Number and register for GST(where required);

- c) Appoint an auditor to comply with any audit requirements laid down under the Superannuation Laws;
- d) Establish a bank or clearing account for the monies of the Fund that is separate and independent of any monies of any Member, the Trustees of the Fund personally or in terms of their business interests or any other non-Fund party;
- e) Establish Super Stream operations to the extent provided by the Superannuation Laws or the Regulator;
- f) Appointing an accountant, administrator or other professional to the Fund to ensure the Fund meets its compliance and financial return requirements under the Superannuation Laws. This may also include self-administration by the Trustee or the use of software or any other service offered by third parties including the Regulator;
- g) Ensure the Fund is a Complying SMSF and lodge any information, forms or other requirements to ensure as such;
- h) If required appoint an actuary to assess the liabilities of any pension, income stream or temporary incapacity pension the Trustee may pay or be required to pay.

#### 4.2 Accounting for the Fund

The Trustee is to ensure that all monies, investments, Contributions, Reserves, payments, transfers, distributions and any other thing that relates to the accurate determination of the financial position of the Fund is completed effectively and in accordance with the Superannuation Laws. This includes, but is not limited to the following:

- a) The valuation of the assets and investments of the Fund as required under the Superannuation Laws and with any guidance from the Fund's auditor if required;
- b) The allocation of a specific investment to any Investment Strategy maintained by the Fund or to any Separate Investment Strategy of a Member or a Member's Superannuation Interest, with or without the direction or consent of a Member;
- c) The transfer between Separate Investment Strategies or Superannuation Interests of any asset or investment provided the Trustee properly values the asset or investment to be transferred and ensures that any consideration is determined according to that value;
- d) The determination of the Fund's Earnings or the Earnings of any separate investment strategy the Trustee may hold for one or more Members and in addition a separate investment strategy for a specific Member superannuation interest;



- e) The payment of any expenses properly incurred by the Trustee of the Fund including administration fees, professional fees, interest, insurances, pension payments, income streams, general fees and expenses.

#### 4.3 Creating Member Superannuation Interests and other Accounts

The Trustee may, at the request of a Member, the Member's Legal Personal Representative or at the Trustee's discretion, create one or more Superannuation Interests on behalf of a Member or for the benefit of the Fund including a Reserve for the benefit of the Member or any other account allowed under the Superannuation Laws and in addition:

- a) The Trustee may hold one or more Superannuation Interests on behalf of a Member or their Legal Estate.
- b) A Member Superannuation Interest may include a Lump Sum Superannuation Interest, a Pension Superannuation Interest, a Sickness and Accident payment or any other such Superannuation Interest or other account which may be created by the Trustee to benefit a Member under the Superannuation Laws.
- c) Any Lump Sum Superannuation Interest may be created with or without any amount standing to the Member's Superannuation Interest nor any Contributions being made on behalf of a Member.
- d) Where a Pension is created from a Member Lump Sum Superannuation Interest, the Trustee may transfer any Separate Investment Strategy held for that Superannuation Interest to the Pension Superannuation Interest.

#### 4.4 Maintaining Member Accounts and Superannuation Interest

The Trustee is to maintain and regularly determine the value of a Member's account and all Member Superannuation Interests. Any such determination is to include:

- a) The market value of all contributions made to the Fund on behalf of the Member for the benefit of the Member's accumulation superannuation interest including government co-contributions, spouse contributions, grandparent or parent contributions, related party employment contributions. The valuation and exact timing of any contribution is to be made as required under the Superannuation Laws or by the Regulator;
- b) Any Earnings to be credited by the Trustee to one or more Member superannuation interests and where a separate investment strategy has been operating for a one or more Member superannuation interests, the Earnings of that superannuation interest;

- c) Any allocations by the Trustee from any Reserve account of the Fund or Reserve account from another fund;
- d) The transfer of any superannuation monies from another Fund, a Family Law Splitting payment from another Fund or the same Fund,
- e) The payment of any expenses specific to the Member or a Member Superannuation Interest including insurances, interest, property or other assets expenses;
- f) The payment of any superannuation benefits including Lump Sums, Pensions, Income Streams or any amount to be deducted from the Member's superannuation interests and payable to the Member, a related party of the Member, the Member's legal estate or any person or entity as allowed under the Superannuation Laws

#### 4.5 Payment of Taxes and Excess Contributions

The Trustee is to pay all taxes, duties, imposts or other monies levied by the Regulator, Federal or State authority or any other legally authorised body as determined in relation to:

- a) The taxable position of the Fund as a whole or in part including any BAS, GST or other taxable imposts;
- b) Stamp duties, land taxes and any other amounts in relation to the purchase, sale or keeping of any asset of the Fund;
- c) Excess contributions taxes levied on contributions made on behalf of a Member with any such taxes to be deducted from the Members account unless the Trustee determines otherwise;
- d) The withdrawal as a Lump Sum from a Member's account such amount as the Member or the Regulator determines or is allowable as a release authority under the excess contributions rules or in any other manner allowed under the Superannuation Laws.

### **Rule 5. Contributions, Fund Transfers and Acquisitions of Assets**

#### 5.1 Trustee to have power to accept monies, assets and gifts or in-kind benefits

The Trustee may accept any money or Asset by way of a trust distribution, gift, Contribution, Rollover, Transfer Superannuation Benefit on behalf of one or more past, current or future Members of the Fund. Such acceptance may be by way of cash, cash equivalent, one or more assets or property, in-kind or deemed or in such other manner or form as the Superannuation Laws and the Regulator allows.

## 5.2 Sub-Funds for Non-Allowed Receipts

The Superannuation Laws may prevent or penalise the Trustee of the Fund from accepting the transfer of money or Assets or receiving a Contribution or Rollover on behalf of a Member. In this case, the Trustee may hold the money or assets in a sub-trust that does not form part of the Assets of the Fund. Earnings on any sub-trusts are to be kept separate from all other Fund Assets and the Trustee is to ensure the sub-trust is properly accounted for and returned according to the Superannuation Laws as soon as practicable.

## 5.3 Suspense Accounts

The Trustee may accept an Asset, monies, payments, in-kind benefit, distribution or such other amount as described in Rule 4.1 and at their discretion (unless otherwise required under the Superannuation Laws) may hold these amounts in a suspense account before being credited to an account or Member Superannuation Interest. There is no limit, unless the Superannuation Laws otherwise provide, as to the time any specific amount is held in the Suspense Account. Any Suspense Account, and the Trustee may create as many as they choose, may have its own Investment Strategy if the Trustee so chooses.

## 5.4 Valuations of In-Specie and In-Kind Contributions and Transfers

Pursuant to Rule 4.1 the Trustee may accept an Asset, monies, payments, in-kind benefit, distribution or such other transfers on behalf of past, current or future Members. In so doing the Trustee is to determine the value of any non-cash transfer into the Fund and in the manner and form so required under the Superannuation Laws or by the Regulator.

## 5.5 Contributions Splitting

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

## 5.6 Family Law Splitting

The Trustee may receive and act upon a Family Law Splitting notice. The Trustee is to ensure that the Superannuation Laws as they apply to a Family Law Splitting Notice are to be complied with including:

- a) which of the Member's Superannuation Interest the Family Law Payment Splitting Notice is best utilised to meet the requirements of the notice;
- b) whether the amount to be split to the Member's Spouse is preserved, unrestricted

- c) non-preserved, restricted preserved or such other type of Superannuation Benefit as the
- d) Superannuation Laws allow including the extent to which it consists of tax free, taxable and taxable untaxed components;
- e) which Assets of the Fund may be utilised to meet the terms of the Family Law Payment;
- f) Splitting Notice;
- g) In relation to any splitting of a Member's superannuation benefits it is up to the Leading Member to maintain the bloodline status of the Fund and is not required, unless the Superannuation Laws require, to admit or retain a Member or person who is not bloodline of the Leading Member.

## **Rule 6. Member Benefits – Accessing and Type**

### **6.1 Accessing Member Superannuation Benefits**

The Trustee is authorised to make a Superannuation Lump Sum or Superannuation Income Stream from a Member Superannuation Interest where the Member meets a Condition of Release in accordance with the Superannuation Laws. However, only Superannuation Benefits permitted in conjunction with the relevant Cashing Restriction for that Condition of Release are authorised to be paid by the Trustee to the Member or any other person allowed pursuant to the Superannuation Laws. The range of Superannuation Income Streams and other benefits are detailed below and identified in the Definitions. The Trustee and the Leading Member may limit the payment of any superannuation benefits on the death of a Member to the family lineage of the Leading Member.

### **6.2 Specific Benefits Payable by the Trustee of the Fund**

Subject to the Superannuation Laws and without limiting the powers of the Trustee under Rule 5.1 of the Fund, the following Superannuation Benefits or other benefits may be made by the Trustee at the Member's Request, the Trustee's discretion and if authorised under Rule 5.1:

- a) where the Member, in the Trustee's opinion, is Temporarily Incapacitated, they may commence a Temporary Incapacity Superannuation Income Stream until such time as the Member is no longer Temporarily Incapacitated;
- b) where the Member, in the Trustee's opinion, is Permanently Incapacitated, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;

- c) where the Member is Terminally Ill, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time;
- d) where the Member is Retired, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time. The income stream may be a Family Lineage Pension;
- e) where the Member is aged 65, they may take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time. The income stream may be a Family Lineage Pension;
- f) where a person who is a Member of the Fund dies, a Dependant of the Member or the deceased Member's Legal Estate may, subject to any Binding Death Benefit Directions take a Superannuation Lump Sum or commence a Superannuation Income Stream or a combination of both at any time. The income stream may be a Family Lineage Pension;
- g) where the Member leaves the employment of an employer, or any of whose associates have at any time contributed into the Fund on behalf of the Member, they may take an Income Stream as prescribed by the Superannuation Laws;
- h) where the Member has reached preservation age and commences a Superannuation Income Stream authorised under the Superannuation Laws for Members over preservation age including a Transition to Retirement Income Stream;
- i) where the Member meets the conditions of Severe Financial Hardship the Trustee may pay a Superannuation Lump Sum to the Member as authorised under the Superannuation Laws;
- j) where, as authorised by the Regulator or any other government entity responsible for deciding the payment of Superannuation Benefits on the basis of Compassionate Ground, the Trustee may pay a Superannuation Lump Sum to a Member on Compassionate Grounds;
- k) where the Member has commenced an Income Stream Superannuation Interest, subject to the terms and conditions of the Income Stream Superannuation Interest, any Rule of the Fund or the Superannuation Laws, a Lump sum may be taken from the Income Stream Superannuation Interest at any time as a commutation payment, including upon the death of the Member;
- l) the commencement and payment of a Family Lineage Pension which meets the conditions of an income stream payment, is allowed pursuant to Rule 5.1 and is for the future benefit of dependants of the Family Lineage Pension member;
- m) where any other Superannuation Lump Sum, Superannuation Income Stream or other payment authorised under the Superannuation Laws or by the Regulator.

### 6.3 How Benefits are to be Made

Subject to the Superannuation Laws the Trustee of the Fund may satisfy the allocation of benefits to a Member as per Rule 5 by way of:

- a) cash or cheque payment, the issue of a promissory note or any other form of cash equivalent;
- b) the transfer of an Asset of the Fund equal to the value of the Member's benefit provided any such transfer does not detrimentally impact the Trustee or the Member, by way of superannuation compliance or taxation;
- c) the issue of a promissory note for the purposes of acquiring an Asset of the Fund;

at all times the Trustee is to ensure that where the Superannuation Laws require a payment to be made, rather than an in-specie Asset transfer that the Trustee consider the use of 6.3c) above.

### 6.4 SMSF Death Benefits and Binding Death Benefit Directions

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

- a) Where a person who is a Member of the Fund dies and there is a valid set of Binding Death Benefit Directions or a non-binding set of instructions in force for the Member, the Trustee must pay the Member's Superannuation Benefits in accordance with the Binding Death Benefit Directions or a non-binding set of instructions. This includes subject to the Superannuation Laws, the payment of Superannuation Lump Sums and Superannuation Income Streams to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws including a charity.
- b) Where a person who is a Member of the Fund dies and there is no Binding Death Benefit Directions or a non-binding set of instructions in force for the Member the Trustee has sole discretion to pay, subject to the Superannuation Laws, the Member's Superannuation Benefits as one or more Superannuation Lump Sums or Superannuation Income Streams or combination of both to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate or any other person or entity authorised under the Superannuation Laws. If the Member has provided the Trustee with a non-binding set of instructions the Trustee may take into account the wishes of the Member in distributing the deceased Member's Superannuation Benefits but is not required to do so.
- c) Where a Member has an Auto Reversionary Income Stream or Bloodline Pension with an auto reversion transferrable to a Dependiant or Bloodline Dependiant of

the Member, created pursuant to the provisions of the Pension Income Stream or, alternatively, by the Binding Death Benefit Directions or a non-binding set of instructions, then subject to the Superannuation Laws and the terms and conditions of the Income Stream, the Trustee shall transfer the deceased Member's Income Stream or Pension to the Auto-Reversionary Beneficiary as soon as practicable after the Member's death. Upon this auto-reversionary event, amounts standing the credit of the deceased Member's Auto-Reversionary Pension are not to be considered as Member Superannuation Benefits but the Superannuation Benefits of the Auto-Reversionary Beneficiary. Subject to the terms and conditions of an Auto-Reversionary Income Stream or Pension and the Superannuation Laws at that time, the Auto-Reversionary Pension may be transferred to another Auto-Reversionary Beneficiary upon the death of the first or latter Auto-Reversionary Beneficiary.

- d) The Trustee or the Leading Member may limit to whom or what the Death Benefit Dependants that the Member's Superannuation Benefits may be paid to such as the Family Lineage of the Leading Member except where there is an effective Binding Death Benefit Direction in place. This includes any Superannuation Benefits to be paid to a deceased Member's Legal Estate. To limit the Death Benefits Dependants that the Member's Superannuation Benefits may be paid to the Trustee must first hold a Trustee Meeting and notify all Members of any Trustee resolution on the matter.

#### 6.5 SMSF Living Will

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

#### 6.6 Income Stream and Pension Roll Backs

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

#### 6.7 Pension Variations not a new Pension

Where a Pension does not have a reversionary pension member, the Member may, with the agreement of the Trustee add one or more reversionary pension

beneficiaries (including relevant terms and conditions) to the existing Pension without it becoming a new Pension but a variation of the current Pension.

## **Rule 7. Definitions**

**Accounts** means those accounts, including trust accounts established by the Trustee for the Fund, for the purposes of establishing and maintaining the Fund as a Complying SMSF and may include separate accounts for Member interests, reserves, investments, investment strategies or for any purpose as the Trustee so determines.

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

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

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

**Additional Trustee** is a person who is a non-Member of the Fund who is appointed as a Trustee of the Fund as a consequence of the Fund having only one Member. This Trustee is appointed for Complying SMSF purposes only and must defer on all matters to the Leading Member or the existing Member Trustee of the Fund.

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

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

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

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



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

**Auto-Reversionary Income Stream or Pension** means an Income Stream or Pension where a person including a Dependant (“the auto-reversionary beneficiary”) is included in the Income Stream or Pension documentation as the recipient (“if alive”) of the Member’s Income Stream or Pension upon the death of the Income Stream or Pension Member or beneficiary. The Pension or Income Stream may revert jointly to two or more qualified persons or dependants in such proportions as the Pension or Income Streams allow. Where the Superannuation Laws do not allow an auto-reversionary beneficiary to continue the Pension or Income Stream, the auto-reversionary beneficiary’s share of the Income Stream or Pension is to be commuted to a Lump Sum which may be used to capitalise a Discretionary, Fixed, Family or Leading Member Trust.

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

**Benefits in Kind** are Superannuation Benefits allowed to be paid under the Superannuation Laws that are neither Cash nor an Asset of the Fund and includes a set-off.

**Binding Death Benefit Direction** includes any document accepted by the Trustee of the Fund dealing with the transfer of a Member’s Superannuation Benefits, including any Reserve Benefits in the event of a Member’s death. A Binding Death Benefit Direction is binding as upon the Trustee, both past, present and future.

**Cash** includes any currency, cheque, promissory note and any amount held by the Trustee in a bank account, cash management trust, deposit account or similar account where cash may be held on deposit for the Trustee. It also includes digital money and coins if this is considered to be cash by the Regulator.

**Cashing Restriction** is any restriction in the Superannuation Laws that may apply where a Member satisfies a Condition of Release in respect of one or more of their Superannuation Interests. For example this may limit the recipient of a Sickness or Accident Income Stream to a monthly payment no greater than the salary, wages or profits they were receiving before the sickness or accident and for as long as that condition continues.

**Child** in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of the person or any other person as defined under the Superannuation Laws.

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

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

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

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

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

**Contract of Life Insurance** includes any policy or contract as defined under the Superannuation Laws and in addition a policy for the Temporary Incapacity, Sickness and Accident, Permanent Incapacity, Death, Trauma or any other event dependent upon the life of a Member of the Fund and contracted by the Trustee with a qualified entity, insurance company or organisation that is the business of insurance, whether in Australia or overseas.

**Contribution** includes a payment, distribution or transfer of Cash or an Asset to the Fund or payment in kind on behalf of a Member of the Fund or the Trustee of the Fund that the Trustee or Regulator is of the opinion is a Contribution but does not include an allocation from a Reserve Account on behalf of a Member. The value of a Contribution is to be determined by the Trustee as the time the Contribution is made and may have regard to any Regulatory guidelines.

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

**Contributions Reserve or Suspense Account** includes a Reserve or account of the Fund where unvested Contributions are made on behalf of a Member or a specific group of Members. Those contributions may be required to be allocated to one or more Members within a certain period of time as required under the Superannuation Laws.

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

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

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

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

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

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

**Earnings** is the amount determined by the Trustee as Earnings of the Fund, Earnings of a specific Member Superannuation Interest or group of Members' Superannuation Interests, a Reserve Account or any other account, whatever the case may be for a period of time.

**Excess Contributions Release Authority** is an authority issued by the Regulator, the Member, the Trustee or the Leading Member where allowed under the

Superannuation Laws in respect of the payment of Excess Concessional Contributions and/or Excess Non-Concessional Contributions.

**Family Law Payment Splitting Notice** is a notice issued to the Trustee of the Fund under the Superannuation Laws requiring the Trustee to split a Member's Superannuation Interest with the Member's Spouse or ex-Spouse. Any person is receipt of such a Notice who is not lineage of the Leading Member must leave the Fund no later than 30 days of the receipt of said notice.

**Family Lineage Income Stream** is any Income Stream Superannuation Interest as allowed under this Deed and the Superannuation Laws, which if reversionary or commutable upon death is for the benefit of the deceased members lineage.

**Foreign Superannuation Fund** means a Superannuation Fund that is not an Australian Superannuation Fund for the purposes of the Superannuation Laws.

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

**Funeral Reserve** is an account maintained by the Trustee of the Fund out of Fund surplus assets and Earnings for the express purpose of paying any funeral or other expenses, including immediate legal and administrative expenses in relation to the death of one or more Members of the Fund.

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

**Government** includes the Australian Federal Government, the various State and Territory Governments of the States and Territories of Australia, Local Councils and any other legally-convened Government around the world.

**Incapacity** includes Temporary and Permanent Incapacity and Terminal Illness as well as those conditions under the Superannuation Laws that amount to incapacity including sickness and accident where the Member is not gainfully employed in a position that they held prior to the sickness or accident.

**Incapacity Superannuation Benefits** include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, their Dependents, Legal Estate or other person in the event of a Member's Incapacity, including Temporary or Permanent Incapacity, sickness and accident (where a Cashing Restriction is met) or for some other reason.

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

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

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

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

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

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

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

- a) The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the prospective return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;
- b) The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;
- c) The liquidity of the Fund's investments considering its expected cash flow requirements; and
- d) The ability of the Fund to discharge its existing and future liabilities.

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

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

**Lineage** of a Leading or defined member of a Leading Member SMSF is the Leading Member's children or other lineal descendants such as grandchildren and great-grandchildren. It does not mean all heirs, but only the direct lineage. This can extend to limiting members only in the fund as well as the payment of any death benefits being paid to lineal dependents, directly or through the legal estate, only. The Leading Member has discretion to deem or include a non-lineage Member where desired.

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

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

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

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

**Member SMSF Living Will** includes a formal or informal set of binding directions made by the Member or the Trustee under these Rules to benefit a Member, their Dependents or Legal Estate where the Member suffers Temporary Incapacity,

Permanent Incapacity, mental infirmity, loss of mental capacity or terminal illness. It may include an Enduring Power of Attorney for a Member, health and living directions and provide for certain payments or arrangements to be made on behalf of the Member who has executed the SMSF Living Will with the Fund.

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

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

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

**No Tax File Number Contributions** are those Contributions where the Member has not supplied the Trustee with a valid Tax File Number or as defined as a No Tax File Number Contribution in the Superannuation Laws. These Contributions are to be held in a Suspense Account.

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

**Pension** includes an Income Stream Benefit under these Rules and any set of payments, income stream or annuity considered as a Pension under the Superannuation Laws. Further, pursuant to these rules, where a Pension does not have a reversionary pension member, the Member may, with the agreement of the Trustee add one or more reversionary pension beneficiaries to the existing Pension without it becoming a new Pension but a variation of the current Pension.

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

- a) to pay any Income Stream or Pension liability of the Trustee of the Fund whether by way of a payment of an amount or asset to a Member's Income Stream Superannuation Interest or directly to a Member with an Income Stream Superannuation Interest, such payment in satisfaction in whole or part of the Trustee's Income Stream liabilities in respect of that Member Income Stream Superannuation Interest;
- b) to be used to commence a new Income Stream where an Income Stream Superannuation
- c) Member has commuted an Income Stream;

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

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

**Permanent Incapacity** is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any condition that the Trustee determines amounts to Permanent Incapacity including in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

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

- a) for a person born before 1 July 1960 – 55 years;
- b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;
- f) for a person born after 30 June 1964 – 60 years.

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

**Related Party** means a person defined as a related party under the Superannuation Laws. Related Trust means a trust defined as a related trust under the Superannuation Laws. Relative includes, in relation to an individual, the following:

- a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual or of his or her spouse;
- b) the spouse of that individual or of any other individual specified in paragraph (a).



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

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

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

**Reserve Account** includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an account created by the Trustee of the Fund with surplus Assets, Suspense Contributions, insurance payments or from Earnings of the Fund and specifically includes amongst others: a Contributions Reserve, a Pensions Reserve, a Funeral Reserve and an Investment Reserve.

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

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

**Rollover** means paid as a Superannuation Lump Sum (other than by way of being transferred) between Superannuation Funds within the superannuation system whether manually or electronically through a Super Stream system.

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

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

**Rules of the Fund** include the Rules herein and include any addition, variation, change or amendment provided it meets the relevant Rule. Rules of the Fund also

include any written or unwritten rules applied by the Trustee of the Fund in relation to the operation and management of the Fund.

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

**Separate Investment Strategy** is where the Trustee of the Fund, at the request of the Member, undertakes to complete an investment strategy for the Member's accounts or specific Superannuation Interests. In addition at time the Trustee will invest in land, leasehold or other property entitlements which have been acquired from one or more Members and federal or state based laws may require for tax, duty or other impost purposes (including concessions) for those investments to be held in a Separate Investment Strategy of the transferring Members. This is to acknowledge the Trustee's power in that regard.

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

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

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

**SMSF Adviser** is a person who is recognised under the Superannuation Laws as a specialist in providing advice to Trustees or other professionals on the Superannuation Laws as they apply to a SMSF.

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

**SMSF Living Will** includes any document accepted by the Trustee of the Fund dealing with the payment of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's incapacity. A SMSF Will is binding as upon the Trustee, both past, present and future. It may include non-binding instructions or binding directions for the Member's welfare including accommodation, income payments, living and health care expenses, food and clothing.

**SMSF Will** includes any document accepted by the Trustee of the Fund dealing with the transfer of a Member's Superannuation Benefits, including any Reserve Benefits in the event of a Member's death. A SMSF Will is binding as upon the Trustee, both past, present and future.

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

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

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

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

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

- a) Any pension or income stream whose terms and conditions comply with SIS Regulation 1.06(1) including the requirement that the pension or income stream cannot be added to by way of capital;
- b) A lifetime complying pension [SIS Regulation 1.06(2)];
- c) An Accounts Based Pension;
- d) An allocated pension [SIS Regulation 1.06(4)];
- e) A market-linked pension [SIS Regulation 1.06(8)];
- f) A fixed-term complying pension [SIS Regulation 1.06(7)];
- g) A non-commutable life pension [SIS Regulations Schedule 1 – Item 108];
- h) A non-commutable allocated pension [SIS Regulation 6.01(2)];
- i) A Transition to Retirement Income Stream [SIS Regulation 6.01(2)];

- j) A non-commutable pension [SIS Regulation 6.01(2)];
- k) A Temporary Incapacity Superannuation Income Stream – non-commutable income stream [SIS Regulation 6.01(2)];
- l) An Assets Test Exempt Pension within the meaning of that term under the Social Security Act 1991 including, but not limited to sections 9A, 9B and 9BA;
- m) An income stream or pension under the Superannuation Laws which is a Family Lineage Income Stream; and
- n) Any other pension or Superannuation Income Stream under the Superannuation Laws.

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

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

**Superannuation Laws** mean the Commonwealth of Australia Constitution Act 1900, Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations (1994), the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax Regulations, the Corporations Act 2001, the Corporations Regulations, the Social Security Act 1991 (C'th), the Social Security Regulations, the Veterans Entitlement Act 1986 (C'th), the Veterans Entitlement Regulations, the Family Law Act 1975, the Family Law Regulations, the Bankruptcy Act 1966, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006, Superannuation (Excess Concessional Contributions Tax) Act 2006, Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Amendment Act 2006 and any other law dealing with an Australian Superannuation Fund as amended from time to time.

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

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

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

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

**Taxable Component** is that part of a Superannuation Benefit that is not a Tax-Free component.

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

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

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

**Terminal Illness** includes where:

- a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the certification period) that ends not more than 12 months after the date of the certification;

- b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
- c) for each of the certificates, the certification period has not ended.

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

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

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

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

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

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

**Value of a Member's Superannuation Interest** is the value the Trustee determines in respect of a Member Superannuation Lump Sum Superannuation Interest or Member Superannuation Income Stream Superannuation Interest and if there is no such determination by the Trustee it is the value of the Member's particular Superannuation Interest at the time of the last audit of the Fund plus any additions made to the Superannuation Interest less any deductions to the Superannuation

Interest up to the time of the determined value of the Member's Superannuation Interest. However, where the Superannuation Laws require a specified valuation or provide a formula the Trustee is to apply that valuation or formula to the calculation of the value of a Member's Superannuation Interest.

# PRODUCT DISCLOSURE STATEMENT FOR A SELF-MANAGED SUPERANNUATION FUND

This Product Disclosure Statement (“PDS”) provides you with details of the risks and benefits of a Self-Managed Superannuation Fund (“SMSF”) and the different types of SMSF’s.

## 1. INTRODUCTION - WHY A SMSF?

A SMSF is a popular choice for many Australians as it puts them in control of their investments. It does this by requiring members of the SMSF to act as trustees of the Fund or if the Fund has a company acting as a trustee, then each member must act as a director of the trustee company. As key decision makers the Trustee can decide on what the SMSF should invest in, including shares, property and even whether to borrow to acquire property in the Fund. More than 1.2M Australians have chosen to be a part of a SMSF by themselves, with their spouse or more members of the family. At this time only four members can be members of a SMSF and it is generally best if they are from the same family.

## 2. ARE THERE RISKS WITH A SMSF?

SMSFs are not set and forget and do require work. If you don’t want to put in the work then it is best to take a back seat and use a retail or industry based super fund. You must own them, work them and be fully responsible for them.

There are risks in running a SMSF:

- a) **You are trustee of the Fund** – this means you take responsibility for all the Fund’s ups, downs and compliance requirements. You may get an accountant or adviser to help you but at the end of the day, you are legally responsible. As such it is important for you and any other trustee to ensure that you are aware of the laws and guidelines that apply to SMSFs. We suggest that once you have read this guide (PDS), you might want to go the ATO website and see the video on *“Thinking about a self-managed super.”* As the ATO video says – you are the person in control and, if you make a mistake there can be serious penalties. Don’t jump in without considering the risks and we believe you should seek out a good accountant, financial planner or SMSF specialist to help you.
- b) **Time Involved** – like anything, this is not a fly by night decision – once you are in, you are potentially in for life so make sure that you have the time to spend on choosing your investments, liaising with your accountant to get your income and compliance returns done on time.. Time is usually one of the reasons that ASIC, the regulator for financial planners and SMSF auditors has suggested that if you don’t have the time, keep your super in an Industry or Retail super fund.

**Costs** – For some, running a SMSF can be done on a shoestring – the so called DIY funds, but for many, outsourcing the important areas you are not good at to an



accountant or professional SMSF administrator saves time, prevents mistakes, ensures compliance, but of course it all costs money.

- c) **Investments** – You cannot use the investments in the fund for your own use – the only exception is property used in your own business. A SMSF is not a play thing and people have been imprisoned for not abiding by the laws. So, when you invest you should stick to property, shares, cash, fixed interest and other investments to make your retirement more comfortable.
- d) **The Demented Trustee:** Once one of the trustees has dementia they have to bow out of the running of the fund and the person with their Enduring Power of Attorney may take their place as trustee of the fund – even though they may not be a member of the fund. Many don't have an Enduring Power of Attorney which can create management problems in the Fund. It is important to seek advice and arrange to get enduring powers of attorney for all SMSF trustees.
- e) **Constant Legal Changes:** Because SMSFs are the largest sector of the superannuation industry and have the largest balances SMSF members get the most out of any taxation benefits. After all a member in a \$3M SMSF who is living on tax free retirement income is in a pretty good tax position in comparison to someone with \$100,000 in a retail super fund or a person not in super with sizable wealth and income.

### 3. HOW MUCH DO YOU NEED TO SET UP A SMSF?

The Australian and Securities Investment Commission (“ASIC”) has released guidelines for financial planners and other licensed persons – *Information Statement 206 Advice on Self-Managed Superannuation Funds: Disclosure of Costs (“INFO206”)* that states:

*“On average, SMSFs with balances below \$500,000 have lower returns after expenses and tax, and will often be uncompetitive, compared to APRA-regulated funds. Therefore, in many cases, a recommendation for a retail client to set up an SMSF with a balance of \$500,000 or below may not be in their best interests as they may not be in a better position when compared to using an APRA-regulated superannuation fund..”*

A lot will depend also on how much your accountant charges you and this is often dependent upon the number and types of assets that go into the fund. Take the time to sit down and work out the costs having regard to the ASIC Information Statement.

### 4. THE TEN BENEFITS OF A SMSF

#### **Benefit One: A SMSF lets you look after your family**

For the majority of people, their family is the most important thing in their lives. The SMSF provides members with an opportunity to lay down the foundations to provide a retirement income stream for their immediate family and possibly generations to come. Currently only four family members can become members of a SMSF although the government is sitting on

legislation that takes that number up to six. Ask your SMSF professional on the state of play of membership if you have more than four members.

### **Benefit Two: Providing a secure income in retirement**

The major reason for establishing a SMSF is to ensure that, when an individual stops earning income, he or she will have a stable, secure alternative to keep the lifestyle that he or she is accustomed to. The SMSF has a range of income options that can be tailored to a member's and their family's lifestyle in retirement. This includes a pension which can be created for a member that automatically passes to the member's spouse on death – which is a great estate planning tool that is not impacted by the member's Will. However, there is a Transfer Balance Limit when commencing the pension or pensions in the SMSF of a maximum of \$1.6M meaning only that amount can be transferred for pension purposes. Any amount above this limit can remain in the Fund in the member's accumulation or lump sum account where income is taxed at a rate of 15% compared to tax exempt pension income.

### **Benefit Three: Offering a financial helping hand if your health deteriorates**

Health is one of those things that can never be taken for granted. So, if a member's health declines, they need to have access to a safe, secure income that takes the financial worry out of becoming seriously ill or even incapacitated. A SMSF allows members access to a range of benefit options in times of sickness and ill-health. This is the case even though the sickness is of a temporary nature. Permanent disability is a time of great change and superannuation benefits are able to be accessed during these times of trouble.

### **Benefit Four: Investment choice**

The large majority of people or families who find their way into SMSFs want to have some say as to how they invest their money – including their superannuation. As trustee of a SMSF, the power of choosing investments for the fund resides with the trustee; however, great care needs to be taken to ensure that the trustee meets the relevant superannuation laws in terms of investment choice. These laws include the need to draft and successfully implement an investment strategy as well as ensure that, within confined limits, no asset of the fund is used by a member of the fund, their relatives or any entity related or closely associated with them or their family. But things are pretty wide open – the trustee can't invest in art, related party investments except for business property but shares, residential property, commercial property, options, overseas investments, start-ups, Early Stage Investment companies, syndicates are all legal investment options.

### **Benefit Five: Low taxation fully sanctioned by the government**

Taxation in Australia is significant, but the government has chosen to save on future welfare payments by providing tax incentives for Australians to become self-funded retirees. And with 9.5% of an employee's salary directed to superannuation – self funded retirement is a good chance for most long term employees. One of the biggest tax concessions is the tax free nature of pension and lump sum payments for a member of a superannuation fund post age 60.

### **Benefit Six: Looking after your family when you die**

The SMSF is a great vehicle to provide lump sums or income streams to a member's spouse, children or grandchildren when the member dies (subject to dependency and ages when it comes to pensions) — and it lets the trustee of the SMSF control the process with limited fear of legal challenge compared to a Will. Importantly where a member puts in place a strategic SMSF estate planning strategy, it resides outside the member's will. This is not known to many SMSF members and trustees who forget to put in place their personal SMSF estate plan, thus missing out on highly valued taxation concessions and also opening the deceased member's benefits to the lawyers and in some case the Public Trustee.

### **Benefit Seven: Access to the Age Pension**

The Aged Pension is available for persons over age pension age – currently age 65. However, it is subject to an Income and Assets test. A member's benefits in a SMSF once a member reaches age pension age is included for Assets test purposes as is income withdrawn from the fund. Under the Assets test a couple with a family home and less than \$869,500 in super and other assets may be entitled to an age pension. The lower the assets the greater the pension with a full pension available where a home owning couple has \$605,000 in assets including superannuation. Until age 65 superannuation is not included for Assets test purposes.

### **Benefit Eight: Protection from creditors**

This is a sleeper and, for most people, is not used as part of an asset protection strategy at all. However, where a person gets into serious financial difficulty, the government has provided rules in the bankruptcy laws that broadly protect a member's benefits in the fund from creditors with the exception of any pension income. This can be a relief when unfortunate financial events occur.

### **Benefit Nine: Transition to Retirement Income (“TRIS”)**

Members of a SMSF born before 1 July 1964 – once they reach preservation age have the unique ability to access their superannuation benefits as an income stream whilst working. If under age 60, the pension will form part of the member's assessable income - however it will attract a 15% tax offset. From age 60 any TRIS income will be tax free. So, while working, a post age 58 employee, small business owner, professional or other person with a SMSF may access TRIS income - much like salary - that is extremely tax effective.

### **Benefit Ten: Superannuation Contributions Splitting**

Under the laws it is possible for a member of a superannuation fund to split their benefits with their spouse. Spouse includes a de facto spouse under the superannuation laws. The advantages of this, is where both spouse members of the fund are between the ages of 58-60 and using the transition to retirement strategy, then the benefits of the 15% tax rebate is maximised. Further where one member is older than the other and will thus reach the tax-

free pension and/or lump sum status before the other, then it makes strategic sense to split any contributions for the younger spouse to the older spouse. However, it is only employer or deductible superannuation contributions that can be split and then to a maximum of 85%.

## **5. INTRODUCING THE FAMILY SUPER FUND – THE SMSF WITH SMARTS**

There are more than 650,000 SMSFs in Australia controlling more than \$750 Billion – so on average each fund holds more than \$1.2M. The majority of these funds have been established for one reason only and that is to enable members of the fund to control the investment of their superannuation monies. Although this is a powerful driver, this single focus often limits that strategic possibilities of the fund and misses the whole point of these powerful vehicles.

### **What type of SMSF do you have or want?**

There is a wide range of SMSF clients - those that want to do everything themselves (the DIY'ers), the SMSF'ers and those that are happy to build their fund into a strong, family superannuation fund:

#### ***I. The DIY superfund***

This is a super fund where there is a strong hands on focus by the trustees of the fund - *the true Bunnings DIY style of fund*. The trustee generally does the accounts of the fund using an accounting program such as MYOB or spread sheets. All bank reconciliations, income receipts and expenses are accounted for and the management of the investments are undertaken by the trustee. Due to the complexity of the superannuation and taxation laws, the trustee will need an accountant to compile the tax return and must have an independent audit under the SIS Act 1993. As can be imagined, unless the trustee is only investing in one or two simple property investments, there is a lot of work that must be done by the trustee – for a trustee trading shares it can be a full-time job. This has been identified by ASIC which states it may take up to 500 hours per annum to run a SMSF by yourself.

However not knowing basic or more advanced SMSF strategies may cost the Trustee and the members in the long run. The same can be said with estate planning where it is likely that a distribution by a DIY super fund may result in a family provisions challenge.

#### ***II. Self-Managed Super Fund***

This is the next level above the DIY superannuation fund and one that the majority of SMSFs run. Again, the focus is on investments but the trustees of a SMSF generally have the advantage of tax and superannuation advice from their accountants and financial planners. SMSF strategy in a SMSF may be around pensions, estate planning, insurance and taxation strategies. The strategic input will depend on the

SMSF skills of the advising professional and the willingness of the trustee to learn and enquire what is possible within their fund.

### **III. The Family SMSF**

The Family SMSF is the same tax structure as a DIY super fund and a SMSF but the key focus is on the family. Surprisingly, of all the SMSFs in Australia that have the opportunity of bringing up to currently four members of a family into the fund, only 10% have chosen to do so. Surprisingly 20% of SMSFs have only one member with 70% having only two members. This is a great loss of opportunity – can anyone imagine what it would be like to establish a family trust with only one or two beneficiaries. No accountant in their right mind would recommend this course of action. In addition legislation has been drafted to increase the number of members in a SMSF to six, although it has yet to be enacted.

To see the difference between the Family Super Fund and the DIY or SMSF fund, consider some of the following Family Super Fund strategies:

- An adult child member in the fund has an accident and spends six months off work. The trustees of the Family Super Fund can begin to pay out salary continuance benefits to the incapacitated member to ensure that their salary and wages are kept to a level they were, before the accident. It is a requirement under the superannuation laws that SMSF trustees consider insurance on all their members including, in this case sickness and accident, total and permanent disability and life insurance;
- Mum is the sole remaining parent member of the fund and has been diagnosed with dementia. The adult child members are in the fund guiding her superannuation benefits towards the best in health and psychological care for their mother;
- The retiree pension members of the fund invest in Australian shares with imputation credits. These credits are used by the trustee of the fund to reduce any of the fund's tax liabilities including any contributions tax liability of the younger members of the fund that salary sacrifice;
- Younger adult members choose to use their superannuation to acquire a property by way of a limited recourse borrowing arrangement. This can be completed by holding the property solely for the benefit of the child in a separate accumulation account with its own investment strategy. The older members of the Fund can share assets for pension and accumulation purposes;
- The SMSF has a Leading Member of the Fund who, essentially controls the fund and acts as a protector ensuring benefits only go to members of the fund and the lineage or bloodline of the Leading Member.

In short, Family SMSFs have a very special place in Australia, and for that matter the world. If designed and used properly - they allow the aggregation and investment of a family's

superannuation benefits, as well as providing a pool of monies and assets to look after family members including children and grandchildren at the time of an accident, sickness, permanent disability, death, pre-retirement and retirement. To make the most of your SMSF, turn it into a Family SMSF or even a Leading Member Family SMSF.

*This is the end of the Product Disclosure Statement for a Self-Managed Superannuation Fund.*