

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

**Administration**

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
  - records of all changes of trustees, including directors of the corporate trustee
  - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
  - all trustee declarations
  - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**

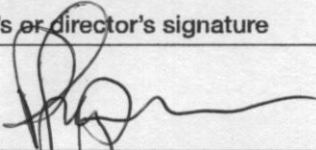
By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.
- I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.
- I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.

Trustee's or director's name

Ross Neville Grayson

Trustee's or director's signature



Date

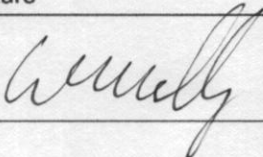
Day Month Year  
28 / 03 / 2014

**SIGN & DATE**

Witness' name (Witness must be 18 years old or over)

WILLIAM EDWARD KELLY

Witness' signature



Date

Day Month Year  
28 / 03 / 2014

**SIGN & DATE**

- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund – including trusts – or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
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  - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
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  - all trustee declarations
  - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
  - an annual statement of the financial position of the fund
  - an annual operating statement
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

**DECLARATION**

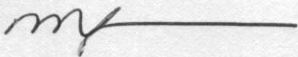
By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.
- I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.
- I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.

Trustee's or director's name

Melinda Ann Grayson

Trustee's or director's signature



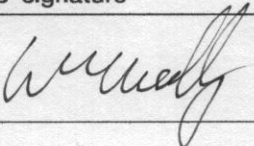
**SIGN & DATE**

Date  
 Day: 28 / Month: 03 / Year: 2014

Witness' name (witness must be 18 years old or over)

WILLIAM EDWARD KELLY

Witness' signature



**SIGN & DATE**

Date  
 Day: 28 / Month: 03 / Year: 2014



# Minutes of trustee meeting

Replacement and Rule Amendment Deed

## Grayson Superannuation Fund

---

Attended by all parties as themselves or as a director of an entity as described in the Schedule of the Replacement and Rule Amendment Deed.

**Held at:** 15 Sentinel Court, Raby Bay QLD 4163

**Date:** 28 / 03 / 2014

**Time:** 6:00 PM

**Present:** Ross Neville Grayson  
Melinda Ann Grayson

**Chairperson:** Melinda Ann Grayson  
was appointed Chairperson of the meeting.


**Quorum:** The Chairperson noted that a quorum was present at the meeting to pass the proposed resolution.

**Replacement and Rule Amendment Deed** The Chairperson tabled the Replacement and Rule Amendment Deed ('the Deed').

**Trustee resolutions:** It was resolved to adopt the amendments to the Trust Deed as contained in the Deed. The Replacement and Rule Amendment has been effected by the execution of the Deed.

**Meeting closed:** There being no further business, the meeting was declared closed.

Confirmed as a true and correct record.

  
.....  
Chairperson

# Grayson Superannuation Fund

## Replacement and Rule Amendment Deed

Prepared by:

**hunt&hunt**

Gateway  
1 Macquarie Place  
Sydney NSW 2000

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# Replacement and Rule Amendment Deed

---

This Deed is made on the date specified in the Schedule.

## **Parties**

The person, persons or entity named and described as the Retiring Trustee in the Schedule ('the Retiring Trustee')

The person, persons or entity named and described as the New Trustee in the Schedule ('the New Trustee')

The person or persons named and described as a Member in the Schedule ('the Member')

## **Background**

- A.** The fund ('Fund') came into existence by the execution of the Trust Deed on the Creation Date specified in the Schedule of this Deed;
- B.** The consent of the Members is required to amend the Trust Deed and the parties desire to amend it pursuant to the powers contained in it;
- C.** The Retiring Trustee wishes to retire as Trustee of the Fund and the New Trustee has consented to the appointment as Trustee of the Fund;
- D.** By virtue of the provisions of the Trust Deed specified in the Schedule ('the Replacement Provision') the replacement of Trustee is effected; and
- E.** The parties agree to give effect to the said amendments on the execution of this Deed.

**Agreed terms as follows:**

## **1. Definitions and Interpretations**

### **1.1. Definitions**

Any terms or phrases not defined in this Deed shall have the same meaning as that contained in the Trust Deed.

### **1.2. Interpretation**

In this Deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to one gender includes a reference to all other genders;
- (c) representations agreements covenants obligations or warranties, by more than one person shall include those persons jointly and each of them severally;
- (d) person means and includes natural person, firm or corporation; and
- (e) a reference to an item is a reference to an item in the Schedule.

## **2. Replacement and Acceptance**

### **2.1 Replacement of Trustee**

Pursuant to the powers conferred by the Replacement Provision and with the consent of the New Trustee, the Members remove the Retiring Trustee and appoint the New Trustee to act as trustee of the Fund with effect from the date of this Deed.

### **2.2 Acceptance of New Trustee**

The New Trustee accepts the appointment to act as trustee of the Fund and agrees to be bound by all the provisions of the Trust Deed.

## **3. Amendment of Trust Deed**

With the consent of the Members (evidenced by their execution hereof) the New Trustee pursuant to the power and authority conferred by the Amending Authority hereby amends the Trust Deed by adopting the Amending Provisions in lieu of its current Rules.

## **4. Confirmation and Ratification**

The parties hereby confirm and ratify that all requirements of the Trust Deed have been complied with and all notices given, meetings held and resolutions passed entitling the parties here to execute this Deed.

## **5. Governing Law**

This Deed shall be governed by and construed by reference to the law of the State or Territory where the Trustee resides.

**6. Further Execution**

Each of the parties to this Deed hereby covenants and agrees to execute, complete, deliver, make and do all such other assurances, documents, instruments, notices and acts as may be necessary or required to give effect to the terms of this Deed.

**7. Ultra Vires Provisions**

No provision of this Deed will to the extent that they will conflict with, are repugnant to or are not permitted by the provisions of the Act be able or be allowed to take effect.

**8. Alteration of Rights or Benefits**

Nothing in this Deed shall be construed in such a way as to:

- (a) alter or vary the objects of the Fund;
- (b) reduce, alter or vary the entitlements of any Member to payments from the Fund; or
- (c) conflict with or offend the provisions of the Act.

**9. Replacement and Rule Amendment Negated**

This Deed shall not take effect to the extent that:

- (a) any one or more of the provisions of this Deed are not able, allowed or required to take effect pursuant to the provision of the Act; and
- (b) the provision is not capable of amendment to enable or allow this Deed to take effect.



## Schedule

---

**Date of this Deed:** 25, 03, 2014

**Fund Name:** Grayson Superannuation Fund

**Creation Date:** 25/02/2005

**State:** QLD

**Retiring Trustee:** Ross Neville Grayson  
Melinda Ann Grayson

**New Trustee:** Grayson Superannuation Pty Ltd  
ACN 168 752 243

**Member:** Ross Neville Grayson  
15 Sentinel Court, Raby Bay QLD 4163  
Melinda Ann Grayson  
15 Sentinel Court, Raby Bay QLD 4163

**Amending Authority:** 12.8

**Replacement Provision:** 8

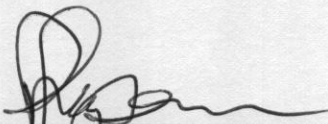
**Amending Provision:** By replacing Rules 1 to 13.2 with the replacement rules in this Deed specified as 'Annexure A'.

# Execution

---

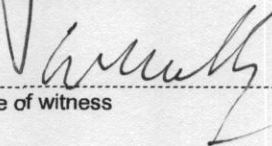
**EXECUTED as a Deed.**

**SIGNED, SEALED and DELIVERED by  
Ross Neville Grayson**

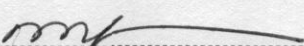
  
-----  
Ross Neville Grayson

in the presence of:

William Kelly  
-----  
Please print name of witness

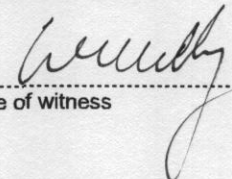
  
-----  
Signature of witness

**SIGNED, SEALED and DELIVERED by  
Melinda Ann Grayson**

  
-----  
Melinda Ann Grayson


in the presence of:

William Kelly  
-----  
Please print name of witness


  
-----  
Signature of witness

**EXECUTED by  
Grayson Superannuation Pty Ltd  
ACN 168 752 243**  
in accordance with section 127 of the  
*Corporations Act 2001* by the Directors or  
Director and/ or Secretary:

Ross Neville Grayson  
-----  
Please print name of Director/ Sole Director\*

  
-----  
Signature

Melinda Ann Grayson  
-----  
Please print name of Director/ Secretary\*  
\* Delete as appropriate

  
-----  
Signature

"Annexure A"

# Grayson Superannuation Fund

Strategist SMSF  
Rules of the Fund



A Living Super  
Deed

Prepared by:

hunt & hunt  
lawyers

Gateway  
1 Macquarie Place  
Sydney NSW 2000

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# The Rules of the Fund

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

## Part One: Establishment of the Fund

---

### Purpose of the Fund

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

##### **Explanation**

The Fund must be established and must be maintained solely for the provision of Core Purposes or for the provision of Core Purposes and Ancillary Purposes of the 'sole purpose test' in the *SIS Act*.

The *SIS Act* defines Core Purposes to include the provision of Benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.

The *SIS Act* also provides that the Trustee may maintain the Fund for both Core Purposes and for Ancillary Purposes. An Ancillary Purpose may include the provision of Temporary or Permanent Incapacity Benefits to a Member, where the Member terminates employment as a consequence of ill health.

An Ancillary Purpose also includes the provision of such Benefits as the Regulator has approved in writing.

Tax concessions will not be available to the Fund unless the Trustee of the Fund is either a Constitutional Corporation (that is a Corporate Trustee) or its sole or primary purpose is the provision of old age pensions (this however does not mean that a fund which does not have a corporate Trustee cannot pay a pension). Rule 1.2 reflects this requirement.

#### **Rule**

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

# Appointing the Trustee

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

### Who May be a Trustee

- 2.1. Natural persons may be Trustees or a company may be the Trustee but natural persons and Companies cannot both be Trustees.
- 2.2. Subject to this Rule and Rule 52 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.

#### Explanation

The Fund must have a Trustee.

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

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

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

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

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

- 2.3. Subject to this Rule and Rule 52 below (which applies on the death of a Member) a Constitutional Corporation may only be a Trustee if all the directors of the company are Members.



- 2.4. Notwithstanding Rules 2.2 and 2.3, if there is only one person who is a Member then:
- (a) that Member or a Legal Personal Representative of that Member and one other natural person who is a Relative of the Member, or is a person who is not an Employer of the Member, may be the Trustee; or
  - (b) a Constitutional Corporation may be the Trustee, if the sole director of which is the Member or a Legal Personal Representative of the Member, or the company may have two directors of which one is the Member or the Legal Personal Representative of the Member and another person is a Relative of the Member, or is a person who is not an Employer of the Member.
- 2.5. If the Member is under a legal disability, that Member cannot be appointed as a Trustee but a Legal Personal Representative of that Member shall be appointed as a Trustee.
- 2.6. If the Regulator appoints a person or company as a Trustee, that person or company may be a Trustee.
- 2.7. Notwithstanding any other provisions of these Rules a person or company, shall not be appointed as a Trustee unless they provide the Trustee with a written consent to that appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.8. Each person who is a director of a company which is to be a Trustee must provide a written consent to the appointment of that company and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.9. Notwithstanding any other provision of these Rules an Approved Trustee may be appointed as the Trustee.

#### **Who may not be a Trustee**

- 2.10. A person cannot be a Trustee if:
- (a) at any time:
    - (1) the person was convicted of an offence against or arising out of a law of the Commonwealth of Australia, a State or a Territory of Australia or a foreign country, being an offence in respect of dishonest conduct; or
    - (2) a Civil Penalty Order was made in respect of the person; or
  - (b) the person is an insolvent under administration; or
  - (c) a Regulator has disqualified the person (for the purposes of sections 126A or 126H of the *SIS Act*) and the Regulator has not waived that person's status as a disqualified person.
- 2.11. A company cannot be a Trustee if:

- (a) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of sections 126A or 126H of the *S/S Act*); and
- (b) the company knows or has reasonable grounds to suspect that:
  - (1) the person is not eligible under section 126B(1) of the *S/S Act* to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (2) the person is so eligible under section 126B(1) of the *S/S Act* to apply to APRA for a declaration waiving his or her status as a disqualified person but that person will not make an application under subsection 126B(3) of the *S/S Act* seeking a waiver of that status; or
- (c) a receiver, or a receiver and manager, has been appointed in respect of property owned by the company; or
- (d) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (e) a provisional liquidator has been appointed in respect of the company; or
- (f) the company has begun to be wound up.

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

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

#### **Explanation**

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

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

## Rule

- 3.1. Upon establishment of the Fund a person may be appointed as Trustee, provided that person:
- (a) has agreed to be a Trustee by reason of execution of the Deed; and
    - (1) has consented in writing to become a Member or is a Legal Personal Representative on behalf of a person and has consented in writing to that person becoming a Member or is a parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative and has consented in writing to that person becoming a Member; or
    - (2) if the Fund has only one Member, is a Relative of the Member or is a person who is not an Employer of the Member;
  - (b) has agreed to be bound by the Rules and has consented in writing to that person's appointment as a Trustee; and
  - (c) is eligible to be appointed a Trustee.
- 3.2. Upon establishment of the Fund, a company may be appointed as Trustee provided all the following conditions are met:
- (a) if the Fund has more than one Member:
    - (1) all directors have consented in writing to become Members, or they are the Legal Personal Representative of a person or parent or guardian of a person who is under a legal disability because of age and does not have a Legal Personal Representative and have agreed in writing to that person becoming a Member; or
    - (2) if the Fund has only one Member and the company has two directors – the director that is not a Member is a Relative of the Member, or is a person who is not an Employer of the Member;
  - (b) the company and its directors agree to be bound by the Rules and has consented in writing to its appointment as a Trustee;
  - (c) the company is eligible to be appointed a Trustee; and
  - (d) all the directors have read the Product Disclosure Statement.
- 3.3. Subject to the provisions of these Rules, where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee, provided that person or a Legal Personal Representative:
- (a) has agreed to be Trustee and:

- (1) has consented in writing to become a Member or is the Legal Personal Representative of a Member or parent or guardian of a person who is under a legal disability because of age and does not have a Legal Personal Representative; and
- (2) if the Fund has only one Member, that Legal Personal Representative is a Relative of the Member or is a person who is not an Employer of the Member;
- (b) has agreed to be bound by the Rules and has consented in writing to that person's appointment as a Trustee;
- (c) is eligible to be appointed as a Trustee; and
- (d) has read the Product Disclosure Statement;

unless that person or a Legal Personal Representative of that person becomes a director of a Company which is a Trustee in which case the provisions of clause 3.2 will apply.

- 3.4. On appointment of a person as a Trustee, or on appointment of a company as a Trustee, after 30 June 2007 that person or each director of that company shall sign a declaration in that form as required by the *Act* certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.5. If a person is a Trustee or a director of a company which is a Trustee and another person is appointed after 30 June 2007 as a Trustee or as a director of a company which is a Trustee, then that person must ensure that the newly appointed person signs a declaration in that form as required by the *Act* certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.6. Any such declarations referred to in Rules 3.4 and 3.5 shall be kept for at least 10 years or such longer period so far as it is relevant and shall be available for inspection by the Regulator, if so required.
- 3.7. On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):
- (a) if the retiring Trustee is a person, another person who is a Member or a Legal Personal Representative of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a Legal Personal Representative or a company of which that Member or Legal Personal Representative of that member is a director; and
  - (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the Legal Personal Representative's of Members, or all the persons who are Members or in place of a Member the Legal Personal Representative of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a Legal Personal Representative.

## Becoming a Regulated Superannuation Fund

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

#### **Explanation**

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

#### **Rule**



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

## Trustee Operations and Obligations

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

#### **Explanation**

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

## **Rule**

- 5.1.** A Member may retire as a Trustee provided:
- (a) a Company of which the Member is a director is appointed as Trustee; or
  - (b) a Legal Personal Representative of that Member is appointed as a Trustee;
  - (c) If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an Employer of the Member is appointed as a Trustee.
- 5.2.** A company may retire as a Trustee provided:
- (a) all the directors of that company are appointed as Trustees; or
  - (b) another company is appointed as a Trustee, provided the directors of that company are also directors of the company retiring as Trustee.
- 5.3.** Notwithstanding any Rule, a Trustee may retire as Trustee of the Fund if an Approved Trustee is or has first been appointed as the Trustee of the Fund;
- 5.4.** Subject to these Rules and the *Act* a person or company is removed as a Trustee:
- (a) if the Trustee is a Member – upon that person ceasing to be a Member;
  - (b) if the Trustee is a Member – upon that Member becoming incapable of acting as Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee in place of that Member;
  - (c) if the Trustee is a company and on the date four months from the time any one or more of the directors of the company cease to be Members or the Legal Personal Representatives of Members;
  - (d) if the Trustee is prohibited from being a Trustee by reason of Rules 2.9, 2.10 or Rule 2.11; on that date a Trustee is so prohibited from being a Trustee;
  - (e) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund; on the day before the day the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

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

### **Explanation**

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

### **Rule**

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

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

### **Explanation**

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

- appointment of various professional advisers to the Fund, including the Auditor;
- establishment of a bank account or cash management trust for the Fund;
- setting of an investment objective and investment strategy for the Fund;
- admission of Members to the Fund;
- acquisition and disposal of investments pursuant to the Fund's investment strategy;
- approval of the payment of Benefits to a Member (including payment of a Pension);
- payment of a Death Benefit;
- acceptance of a Binding Death Benefit Nomination from a Member;
- review of audit reports; and
- creation of any Reserves.

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

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

### **Rule**

- 7.1. If there is more than one Trustee, the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision in respect of the Fund.

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

## 7.5.

- (a) The Trustees will determine by majority approval at the first meeting of Trustees one of the following as the method by which Trustees will be entitled to cast votes at all meetings of Trustees:
  - (1) each Trustee being entitled to cast the number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person plus that amount in any Reserve which an actuary has determined is supporting that person's Member's Account in paying a Pension ; or
  - (2) each Trustee being entitled to cast one vote each.
- (b) If the Trustees fail to make a determination in accordance with clause 7.5(a) or fail to adopt a method of voting, clause 7.5(a)(2) will apply. Notwithstanding subclauses 7.5(a) and 7.5(b), any voting rules in place prior to these Rules being adopted will continue to apply.
- (c) If clause 7.5(a)(2) applies and there is a deadlock in making any Trustee decision, the deadlock shall be resolved by weighting each Trustee's votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each

7.6. A resolution would not be passed at any Trustee Meeting, unless it is passed by the casting of a majority of the votes entitled to be cast by persons who are present at that meeting.

7.7. A person may appoint another person to act as that person's proxy at any Trustee Meeting. Any such appointment must be in writing.

7.8. If a circulating minute containing a statement that the Trustee is in favour of a resolution in the terms set out in that document has been signed by all persons entitled to attend a Trustee Meeting, a resolution in those terms will be taken to have been passed at a meeting held on the day and at the time at which the document was last signed by any such person. Two or more separate documents containing statements in identical terms, each of which is signed by one or more persons, will together be taken to constitute one document for the purposes of this Rule.

## Rule 8. Trustee's Records

### Explanation

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

## Rule

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

## Rule 9. Trustee's Covenants

### Explanation

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

### Rule

A person by accepting appointment as a Trustee agrees:

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

## Admittance of Members



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

### **Explanation**

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

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

## **Rule**

- 10.1.** The Trustee may, with absolute discretion, admit a person as a Member provided:
- (a) that person or that person's Legal Personal Representative or parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
  - (b) admission of that person as a Member would not cause the Fund to become a Non-Complying Self Managed Superannuation Fund; and
  - (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee; or
  - (d) a parent or guardian of that person, where that person is under a legal disability because of age and does not have a Legal Personal Representative, will accept the appointment as a Trustee and is not a disqualified person.
- 10.2.** Subject to these Rules and the *Act*, the Trustee must admit a person as a Member where that person will be paid a Pension from the Fund.
- 10.3.**
- (a) If a Member is the only Member of the Fund, the Member can provide the Trustee with a notice requiring the Trustee not to admit any other person as a Member of the Fund and the Trustee shall not then admit any person as a Member of the Fund, or
  - (b) Alternatively, if a Member so elects by notice to the Trustee and notwithstanding any other provision of these Rules, the property of the Fund transferred to the Fund by that Member can only be held in the Fund specifically for the Member and that property cannot be pooled with the Contributions or other assets of other Members and no other Member can obtain an interest in that property.
- 10.4.** A parent or guardian of a Member who is a Trustee of the Fund in place of that Member (because that Member is under a legal disability because of age and does not have a Legal Personal Representative), may exercise on behalf of that Member any rights or functions which that Member could exercise under the Rules (except those referred to in Rule 15 (Binding Death Benefit Rule)) provided such exercise is permitted by the *Act* and will not affect or compromise the Fund's status as a Complying Superannuation Fund.

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

**Explanation**

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

**Rule**

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

## **Rule 12. Application Form**

### **Explanation**

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

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

### **Rule**

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

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

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

## **Rule 13. Receipt of an Application Form**

### **Rule**

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

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

## Estate Planning

### **Explanation**

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

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

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

- A Member to provide the Trustee with a Non Binding Death Benefit Nomination. The Member by way of that nomination requests that the Trustee pays Benefits in accordance with the Member’s wishes but does not compel the Trustee to so pay the Benefits. A Member might decide to provide a Trustee with a Non Binding Death Benefit Nomination where the Member wishes to provide some guidance to the Trustee (and to provide the Trustee with some measure of protection if the Trustee acts accordingly to that nomination) but, recognising that there may be a need for flexibility, does not want to bind the Trustee (Rule 14);

- A Member to provide the Trustee with a Binding Death Benefit Nomination in which the Member requires the Trustee to pay Benefits after that Member's death to a Legal Personal Representative or Dependant of the Member. Whilst such requests are mandatory, they are restrictive as to whom Benefits may be paid, the mode of paying Benefits, and generally they only have a three year life. For example, the Member cannot compel the Trustee to pay a pension instead of a lump sum. This is not the case with the Strategist Deed where a Binding Death Benefit is permanent if worded to that effect, unless altered by the Member (Rules 15.1 to 15.7). A Member who requires more certainty as to the application of Benefits payable on the death of a Member should consider including a Death Benefit request in the Rules as allowed by Rule 16 of the Rules;
- A Member to require his or her Legal Personal Representative to determine, with the consent of the Trustee, as to how a Member's Benefits should be applied on the death of the Member. The disadvantage of this alternative is that the Trustee might not consent to that determination (Rule 15.8); and
- A Member to cause the Rules to be amended to ensure that Benefits payable as a consequence of that Member's death are paid in a particular way (there is no restriction to whom or how the Benefits might be paid). This Rule may only be varied with that Member's consent (Rule 16).

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

##### **Explanation**

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

##### **Rule**

- 14.1.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Non-Binding Death Benefit Nomination. This Nomination may request the Trustee, at the Trustee's discretion, to provide Benefits on the death of the Member to persons named by the Member in that nomination.
- 14.2.** Subject to the *Act*, the Trustee must accept a Non-Binding Death Benefit Nomination.

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

**Rule 15. Binding Death Benefit Nomination**

**Rule**

- 15.1. The Trustee must, when required to do so by the *Act*, provide a Member with that information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.

**Explanation**

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

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

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

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



- 15.2. A Member, or the Legal Personal Representative of a Member, may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 15.3. The Trustee must accept a Binding Death Benefit Nomination completed in accordance with this Rule, and shall be bound to act in accordance with that Binding Death Benefit Nomination so long as, in doing so, the Fund is not in breach of the *Act*.
- 15.4. A Binding Death Benefit Nomination (and any revocation or amendment to it):
- (a) must be in writing;
  - (b) must require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
  - (c) must be signed and dated by the Member in the presence of two witnesses, being persons:
    - (1) each of whom has turned 18; and
    - (2) neither of whom is a person mentioned in the notice; and
  - (d) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member or the Legal Personal Representative of a Member in their presence.
- 15.5. Prior to the death of a Member, the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Binding Death Benefit Nomination previously given by the Member to the Trustee. A confirmation must be in writing, dated and signed by the Member or the Legal Personal Representative of the Member. An amendment or revocation of a Binding Death Benefit Nomination must be in writing and must be dated and signed by the Member or the Legal Personal Representative of the Member in the presence of two witnesses each of whom has turned 18 and neither of whom is mentioned in the notice. The Trustee shall accept that confirmation amendment or revocation.
- 15.6. A Binding Death Benefit Nomination which requires a Benefit to be paid to the Spouse of a Member will be deemed to have been revoked if proceedings have been commenced pursuant to the *Family Law Act 1975* or some similar foreign legislation seeking the dissolution of that Member's marriage to that Spouse.
- 15.7. A member may revoke a Binding Death Benefit Nomination.
- 15.8. Unless sooner revoked by the Member, or the Legal Personal Representative of the Member who gave the Binding Death Benefit Nomination, or deemed to have been revoked, a Binding Death Benefit Nomination would have an indefinite term unless the Member has stipulated otherwise.

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

### **Explanation**

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

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

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

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

### **Rule**

- 16.1.** A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- 16.2.** The Trustee may accept or reject any notice referred to at Rule 16.1 and must reject such a notice if the Trustee holds a Binding Death Benefit Nomination from that Member. If the Trustee accepts the notice, the Trustee shall be bound to act in accordance with that Death Benefit Rule that would be established as a consequence of accepting the notice.

- 16.3.** A Member, or the Legal Personal Representative of the Member, may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and, if amended, the Trustee shall act in accordance with that amended Death Benefit Rule.
- 16.4.** The Trustee shall not accept any notice referred to at Rule 16.1 or 16.3 if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

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

**Explanation**

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

**Rule**

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

**Warning**

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

- End of Part One -

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## Part Two: Operation and Administration of the Fund

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### Termination of Membership

#### **Rule 18. Expulsion of a Member**

##### **Explanation**

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

##### **Rule**

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

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

## **Explanation**

Normally a Member will only cease being a Member:

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

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

## **Rule**

**19.1.** Unless prohibited by the *Act*, a Member shall be deemed to have ceased to be a Member on the first to occur of the following:

- (a) the Member no longer being entitled to receive Benefits from the Fund;
- (b) the Trustee determining that the Member should no longer be a Member;
- (c) the death of the Member, or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member ceases to act as Trustee or director of the Trustee company; and

- (d) the date being no later than the earliest of either:
- (1) four months from the date a Member became ineligible to be a Trustee, or to be a director of a company which is a Trustee, unless a Legal Personal Representative of that Member is appointed a Trustee; and
  - (2) the date just before a Member became ineligible to be a Trustee, or to be a director of a company which is a Trustee, unless a Legal Personal Representative of that Member is appointed as a Trustee.

## Members' Accounts

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

#### Explanation

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

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

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



Dependants.

**Rule**

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

- 20.4. The Trustee must keep a record of the Tax Free and Taxable Components of a Member's Benefit in a Member's Account or Accounts.

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

**Explanation**

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

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

**Rule**

- 21.1. On the last day of each month, or such other time as the Trustee might determine, or on any earlier date as required by the *Act*, the Trustee shall add to a Member's Account:

- (a) the amount of Contributions received by the Trustee for the benefit of the Member;
- (b) at the discretion of the Trustee, such part of the Earnings as the Trustee believes should be added to that Member's Account;
- (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account;
- (d) any amount to which a Member is entitled because of a Payment Split; and
- (e) such other amounts including allocations of Reserves or proceeds of any Policy as the Trustee might determine;

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

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

## Explanation

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

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

## Rule

- 22.1. On the last day of each month, or such other time as the Trustee might determine, or on any earlier date as required by the *Act*, the Trustee shall deduct from a Member's Account:
- (a) that part of the expenses of the Fund that the Trustee believes should be deducted from that Member's Account;
  - (b) that part of any loss of the Fund that the Trustee believes should be deducted from that Member's Account;
  - (c) the amount of any payments of Benefits made to the Member, or any other person, from that Member's Account;
  - (d) the amount of any Taxes payable by the Trustee, that the Trustee believes should be deducted from that Member's Account;
  - (e) the amount of any Excess Contributions Tax liability required to be deducted from that Member's Account in accordance with Rule 25; the amount of any Splittable Contributions that the Trustee has agreed to deduct from that Member's Account;
  - (f) any amount which is to required to be deducted from that Member's Account because of a Payment Split;
  - (g) any other amount which the Trustee believes should be deducted from that Member's Account, including any amount to be transferred to a Reserve or to another Member's Account;
  - (h) Excess Non- Concessional Contributions and associated earnings in accordance with Rules 25 and 32; and
  - (i) Excess Concessional Contributions on receipt of a Release Request; provided that the amount of any such deduction would not cause:

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

## Appointment of Auditor and Specialists

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

#### **Explanation**

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

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

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

#### **Rule**

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

# Contributions, Roll-overs and Transfers

## Rule 24. Who can make Contributions

### Explanation

The Trustee may accept Contributions from:

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

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

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

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

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

### Rule

- 24.1. A person may make Contributions to the Fund for the benefit of a Member, provided the Fund will not, by reason of acceptance of those Contributions:
- (a) become a Non-Complying Self Managed Superannuation Fund, or
  - (b) be in breach of the *Act*.

## Rule 25. Excess Contributions

### **Explanation**

Superannuation Contributions are subject to annual limits.

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

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

### **Explanation cont.**

The government announced in the 2014 Federal Budget they will allow individuals the option of withdrawing superannuation contributions in excess of the non-concessional contributions cap made from 1 July 2013 and any associated earnings, with these earnings to be taxed at the individual's marginal tax rate. This new initiative is yet to be formalised in the *Act*.

Concessional contributions are taxed at 15% in the hands of the Fund. For 2013-2014 and later years, concessional contributions in excess of the concessional contributions cap will be included in a Member's assessable income and taxed at their income tax marginal rate rather than the excess concessional contributions tax of 31.5%. That additional tax can be paid from the Member's entitlement in the Fund at the Member's request. Excess concessional contributions will be counted against the Member's non-concessional contributions cap.

### **Rule**

- 25.1.** The Trustees are required to comply with the provisions of the *Act* concerning:
- (a) any Excess Contributions Tax imposed on a Member; and
  - (b) provided it is permitted by the *Act*, the withdrawal by a Member of Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings.
- 25.2.** If a Member has an Excess Contributions Tax Liability and has lodged a Release Request with the Trustee, the Trustee shall, if permitted by the *Act*, within thirty days of receipt of that request pay to the Member or, at the Member's request, pay to the Australian Taxation Office that amount which is the lesser of:

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

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

**Explanation**

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

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

**Rule**

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

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

### Explanation

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

Examples of where such transfers might be appropriate are:

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

### Rule

- 27.1. If a Member or the Legal Personal Representative of the Member:
- (a) requests the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account;
  - (b) the Trustee is satisfied that any such allotment, transfer or rollover will not cause the Fund to be a Non-Complying Self Managed Superannuation Fund; and
  - (c) or if the Trustee is required by law or agreement made for the purposes of the *Family Law Act 1975* the Trustee shall within such period as required by the *Act* or other law, allot, transfer or rollover the whole or that part of the Member's Account to that other Superannuation Entity or to the other Member's Account.
- 27.2. The Trustee has sole discretion, unless prohibited by the *Act*, to transfer the balance of a Member's Account to another Complying Superannuation Fund or to another Member's Account, provided that the Fund does not become a Non-Complying Self Managed Superannuation Fund or breach the Minimum Benefit provisions.
- 27.3. The Trustee may affect the transfer or rollover in the manner and form of the Trustee's choice, including whether the transfer is by way of cash or assets or has conditions attached.

## Investments



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

### **Explanation**

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

The investment strategy:

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

### **Explanation cont.**

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

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

## **Rule**

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

- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's (or part of the Fund's) investments as a whole, including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments, considering its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;
- (e) the needs of Members considering their age, income level and retirement needs; and

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

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

**Explanation**

The Trustee must invest the assets of the Fund.

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

**Explanation cont.**

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

**Rule**

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

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

## **Explanation**

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

## **Rule**

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

## Rule 31. Authorised investments

### Explanation

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

### Rule

- 31.1. Subject to the *Act* and these Rules; and provided an investment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee may invest the assets of the Fund as if the Trustee is the absolute and beneficial owner of those assets. In investing the assets of the Fund, the Trustee shall exercise such diligence and prudence as an ordinary prudent person would exercise in conducting his or her own affairs.
- 31.2. Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any monies requiring to be invested under these Rules, either alone or in partnership or co-ownership with any person. The Trustee may:
- (a) acquire any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust monies;
  - (b) acquire real or personal property or any interest therein and, without limiting the generality thereof, any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country;
  - (c) acquire fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
  - (d) acquire options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;

- (e) acquire a fixed deposit or monies at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (f) acquire any policy of assurance or insurance of any kind whatsoever and wherever made;
- (g) make loans to any person or company, except to Members or a Relative of a Member;
- (h) acquire gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (i) acquire foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (j) lodge monies with a permanent building society, wherever situated, by taking up shares or depositing Funds; and
- (k) acquire any reversionary or deferred property or rights of any description.

## Rule 32. Trustee Powers

### Explanation

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

### Rule

- 32.1. In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall in addition to those powers conferred on the Trustee by the Act have the following additional powers:
- (a) **Act notwithstanding personal interest:** generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee or any person being a relative of a Trustee or any person being a relative of a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his/her personal capacity or a shareholder or director or as a relative of the Trustee or relative of a director or shareholder of a Trustee or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee, but provided that this power may only be exercised in the circumstances permitted by the *SIS Act* and the *SIS Regulations*;
  - (b) **To accept contributions:** provided that the Trustee may not accept an amount as a Contribution if the acceptance of the contribution would to the knowledge of the Trustee cause the Fund to be liable to the Excess Contributions Tax;
  - (c) **To deal with assets:** to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
  - (d) **To deal with real property:** to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;

- (e) **To deal with personal property:** to acquire, dispose of, exchange, hire, lease, and mortgage or otherwise deal with any interest in personal property;
- (f) **To lease:** to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
- (g) **To let:** to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
- (h) **To engage specialists:** to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust Fund such Managers, agents, Self Managed Superannuation Fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business of the Fund, including to transact any business of the Fund under power of attorney of the Trustee or to do any act required to be done in connection with the administration of the trusts declared in the Deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- (i) **To lend:** subject to these Rules and the *Act* to lend and advance monies;
- (j) **To Borrow:** to borrow if that borrowing is allowed by the *SIS Act*;
- (k) **To deal with bank accounts:** to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- (l) **To pay management expenses:** to pay out of the assets, Reserves or the income of the Fund, all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (m) **To pay general expenses:** to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may

consider necessary or advisable and to pay any other insurance premiums the Trustee believes should be paid;

- (n) **To deal with corporate securities:** with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned (“securities”) to exercise the following powers in addition to powers conferred by law:
- (1) to pay calls on securities or to permit securities to be forfeited and sold;
  - (2) to purchase securities and to take up securities of a new issue;
  - (3) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
  - (4) to sell securities at such price and upon such terms as the Trustee decides and with or without security;
  - (5) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
  - (6) to agree in respect of a winding up with the liquidator of a company or any Member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or in-specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any monies by way of equality of division or partition;
- (o) **To deal with unit trust interests:** to acquire units of any fixed or flexible unit trust by way of application, purchase or settlement by the Trustee in the establishment of such unit trust and exercise all rights, including voting rights, and perform all obligations as a holder of any units in such trust and to accept all distributions by the Trustee of such unit trust;



- (p) **To deal with franchises:** to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;

- (q) **To deal with subdivision of property:** to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay monies by way of equality or partition;
- (r) **To maintain property:** to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (s) **Power to set aside:** to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (t) **To deal with future contracts and options:** to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, enter into, vary, exercise, abandon or sell any put or call option or rights, or place bids, make offers, hedge and effect orders including buy, sell, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things to operate on, utilise or deal with facilities of any stock or futures exchange, provided the Trustee maintains a derivatives risk management strategy;
- (u) **Trustee's power to deal with itself:** notwithstanding any rule or law or equity to the contrary:
  - (1) to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
  - (2) to dispose of any beneficial interest in property of the Fund to itself;
  - (3) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
  - (4) to lease any property of the Fund to itself;
- (v) **To deal with policies:** to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member, to pay premiums transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual

policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;

- (w) **To deal with agency and licences:** to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (x) **To deal with choses-in-action:** to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (y) **To receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a Will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

- (z) **To deal with legal proceedings:** to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (aa) **To deal with intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (bb) **To deal with the release of powers:** by irrevocable Deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release, any power shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (cc) **To deal with incidental powers:** to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee;
- (dd) **To grant power of attorney:** in the exercise of all or any of the powers herein confirmed upon the Trustee to appoint an attorney and to execute any power of attorney or such other instrument as in the opinion of the Trustee is necessary for the exercise of those powers, provided it is permitted by law;
- (ee) **To appoint a custodian:** to appoint a custodian to hold the legal title of any asset acquired, or to be acquired, by the Trustee on such terms as the Trustee thinks fit;
- (ff) **To deal with indemnities:** to give indemnities to, or on behalf of, any person that the Trustee thinks fit;
- (gg) **To deal with bills of exchange:** The Trustee may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund; and
- (hh) **To deal with Excess Non-Concessional Contributions:** Provided it is permitted by the *Act*, to allow a Member to withdraw Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings.

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

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

**Explanation**

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

**Rule**

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

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

**Explanation**

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

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

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

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

**Rule**

**34.1.** The Trustee can accept a distribution or a gift made to the Fund, provided the Fund will not by reason of acceptance of that distribution or gift become a Non-Complying Self Managed Superannuation Fund or the Trustee otherwise resolves that the Trustee should not accept that distribution or gift.

**34.2.** The Trustee may allocate any such distribution or gift at its discretion to the Earnings, a Reserve, a Member's Account or apply it for any such purpose

as the Trustee determines, including the payment of a Pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

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

**Explanation**

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

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

**Explanation cont.**

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

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

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

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

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

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

**Rule**

**35.1.** Except as otherwise provided by the *Act*, the Trustee must not:

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

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

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

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



## Earnings

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

### **Explanation**

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

### **Rule**

- 36.1.** The amount of the Fund's Earnings for all or part of a Financial Year is to be determined by the Trustee and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's Earnings.
- 36.2.** The Trustee has sole discretion as to where to allocate or how to apply Earnings, including allocating Earnings to a Member's Accumulation Account, a Member's Pension Account, or a Reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

## Reserves

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

## **Explanation**

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

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

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

## **Rule**

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

## **Taxation**

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

### **Rule**

**38.1.** The Trustee must pay all Tax properly assessed to the Trustee.

#### **Explanation**

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

- Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus
- Capital gains after deduction of same year and carried forward capital losses; plus
- Earnings derived by the Fund on investment of Contributions; less
- Deductible expenses incurred by the Fund (which might include insurance expenses); less
- Carried forward tax losses.

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

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

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

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

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

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

## Insurance

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

#### **Explanation**

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

#### **Rule**

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

### **Rule 40. The Trustee may self insure**

## Explanation

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

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

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

From 1 July 2013, most Trustees are prohibited from providing insured benefits for members unless they are supported by an insurance policy from an insurer, that is, a fund will not be able to self-insure. For funds that do self insure at 1 July 2013, this standard takes effect on 1 July 2016.

From 1 July 2014, a Trustee is prohibited from providing members with insured benefits other than those that satisfy the conditions of release of the *SIS Regulations* for death, terminal medical condition, permanent incapacity and temporary incapacity.

Under these limited conditions of release, a member cannot currently access trauma insurance and Total Permanent Disability (TPD) proceeds from a fund, unless an alternative condition of release is met. As a result, the insurance proceeds cannot be released to members at the time of their disability, but must remain within the fund until an appropriate condition of release is satisfied.

## Rule

- 40.1. Provided it is permitted by the *Act*, the Trustee can elect to self insure so long as the insured benefit is fully supported by an insurance policy provided by an external insurer. If a Fund has provided self insurance before 1 July 2013, it must comply with this provision from 1 July 2016.
- 40.2. The Trustee is prohibited from providing insured benefits other than those that are consistent with the conditions of release in the *SIS Regulations* for death, terminal medical condition, permanent incapacity and temporary incapacity.

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

## Rule

- 41.1. Subject to the *Act*, the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the proceeds to any Member's Account or to Reserves of the Fund.
- 41.2. No Member, nor their Legal Personal Representative, nor any other person, has any interest in any insurance proceeds that might be received by the Fund.
- 41.3. If a Benefit would ordinarily include an insured component under a Policy (for example a Benefit payable on the Member's death or disablement) but:
- (a) no amount is paid under that Policy; or
  - (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;
- an amount payable to the Member may be adjusted accordingly.
- 41.4. This clause is:
- (a) for the protection of the Trustees and the Fund; and
  - (b) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

## Annual Accounts

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

#### **Rule**

- 42.1. The Trustee must keep such accounting records as are required by the *Act*.
- 42.2. Such accounting records are to be kept in such form and supported by such documentation as to enable them to be properly audited.
- 42.3. The Trustee must, as soon as practical after the end of each Financial Year:
- (a) prepare a statement of financial position recording the assets and liabilities of the Fund as at the end of that preceding Financial Year;
  - (b) prepare an operating statement recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year);
  - (c) arrange for these statements and the accounting records of the Fund to be audited by an Approved Auditor;

- (d) arrange for all tax returns and other statements required to be lodged, pursuant to the *Act*, by the Fund and to be lodged as and when required; and
- (e) prepare any Member and other statements and reports as required by the *Act*.

**42.4.** The Trustee must retain the accounts and statements prepared in accordance with Rule 42.3 for a minimum period of 5 years after the end of the Financial Year to which they relate.

## Fund Compliance

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

#### **Explanation**

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

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

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

#### **Rule**

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

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

## Fund Insolvency

### **Rule 44. The Trustee must develop a Solvency Plan**

**Explanation**

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

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

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



## **Rule**

- 44.1.** Where the Trustee becomes aware or is notified by the Auditor, or the Fund's actuary, that the Fund is, or may become, insolvent, the Trustee must:
- (a) meet with the actuary or Auditor to determine a Solvency Plan to ensure the Fund's solvency including, but not limited to, reducing any Members' Accounts or Members' Benefits;
  - (b) notify Members of any action required under the Solvency Plan; and
  - (c) take such action as is required under the Solvency Plan prior to the lodgement of the Fund's next regulatory return.

- End of Part Two -

## Part Three: Payment of Benefits by the Trustee

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### Benefits Payable to a Member

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

### **Explanation**

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

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

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

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

### **Rule**

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

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

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

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

#### **Explanation**

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

### **Rule**

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

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

### **Explanation**

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

### **Rule**

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

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

## Explanation

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

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

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

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

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

- A minimum Pension payment calculated in accordance with the Member's age in Table 1. must be made at least annually;
- the underlying capital of the Pension cannot be increased after the commencement date by the addition of any Contributions or rollovers;
- the Pension is able to be converted to a Lump Sum Benefit subject to special rules applying for transition to retirement pensions;
- the Pension cannot be used as security for any borrowings (income or underlying capital);

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

**Table 1.**

Age of Member	% of account balance to be taken	% of account balance to be taken for 10/11	% of account balance to be taken for 11/12 & 12/13	% of account balance to be taken for 13/14
Under 65	4	2	3	4
65 - 74	5	2.5	3.75	5
75 – 79	6	3	4.5	6
80 – 84	7	3.5	5.25	7
85 – 89	9	4.5	6.75	9
90 - 94	11	5.5	8.25	11
95+	14	7	10.5	14

## Rule

- 48.1. A Member or the Member’s Legal Personal Representative may request the Trustee to pay a Pension to the Member, a Dependant of the Member, or a Legal Personal Representative of the Member, provided the Pension is taken to be a Pension for the purposes of the *SIS Act*. The payment of any

Pension must not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

- 48.2. All parts of the *SIS Regulations* that provide standards for the payment of a Pension are incorporated in, and form part of, these Rules and any amount paid by the Fund as a Pension must be provided under those Rules.
- 48.3. The capital supporting a pension may not be added to by way of contribution or roll-over after the Pension has commenced.
- 48.4. The Trustee may offer a Pension to a Member and must document the terms and conditions of the Pension and notify the Member in writing of these terms and conditions.



- 48.5. Subject to Rule 48.2, the Trustee has sole discretion to apply any amount standing in a Member's Accumulation Account, a Member's Pension Account or a Reserve for the benefit of the provision of a Pension to a Member, a Dependant of the Member, a Legal Personal Representative of the Member or some other person.

## Incapacity

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

#### **Rule**

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

### **Rule 50. Benefits payable for Temporary Incapacity**

#### **Explanation**

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

#### **Rule**

- 50.1. Where the Trustee is of the opinion that the Member is Temporarily Incapacitated the Trustee may pay a Temporary Incapacity Benefit to the Member, provided such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before becoming Temporarily Incapacitated;

- (b) that date on which the Trustee forms an opinion that the Member has become Permanently Incapacitated;
  - (c) the date of the death of the Member; and
  - (d) such other time as is allowed under the *Act*.
- 50.2.** Subject to the *Act*, the amount of that Temporary Incapacity Benefit shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.
- 50.3.** The Trustee may draw upon any Reserve to pay a Temporary Incapacity Benefit or, if there are no Reserves, deduct an amount from the Member's Account or any other account the Trustee so determines.

## **Rule 51. Benefits payable for Permanent Incapacity**

### **Explanation**

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

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

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

### **Rule**

**51.1.** If the Trustee is of the view that a Member has become Permanently Incapacitated and provided that any such payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee in its absolute discretion may but is not obliged to:

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

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

## **Death Benefits**

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

**Explanation**

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

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

## Rule

### 52.1. On death of a Member:

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

### Rule 53. Payment of a Death Benefit

#### Explanation

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

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

## Rule

- 53.1. On the death of a Member, the Trustee shall distribute the balance of the Member's Accounts as a Benefit in accordance with this Rule to one or more of the Member's Dependents, the Member's Legal Personal Representative, or any other account in the Fund including another Member's Account or a Reserve, provided any such distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

- 53.2.** If the Trustee holds a Non-Binding Death Benefit Nomination for the deceased Member, the Trustee may, but is not obliged to, pay such Benefits to such persons as are nominated in that Non-Binding Death Benefit Nomination of the deceased Member.
- 53.3.** If the Trustee holds a Binding Death Benefit Nomination for the deceased Member, the Trustee must pay such Benefits in the manner and form as are nominated in that Binding Death Benefit Nomination of the deceased Member. The Trustee is not required to make a payment under a Binding Death Benefit Nomination if that payment may result in the Fund becoming insolvent, or if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.4.** If, at the request of the deceased Member, the Trustee has established a Death Benefit Rule, the Trustee must pay any Benefits payable as a consequence of the death of that Member in accordance with that Death Benefit Rule. The Trustee must not establish a Death Benefit Rule if the Trustee holds a valid Binding Death Benefit Nomination. The Trustee is not required to make a payment under a Death Benefit Rule if that payment results in the Fund becoming insolvent or causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

- 53.5. If the terms and conditions of a Pension payable to the deceased Member have been incorporated as a Rule, the Trustee must pay the Pension according to the terms of that Pension provided any such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund. If the Trustee is not permitted to pay the Pension according to the terms of the Pension Rule, then Rules 53.1-53.4 apply wherever applicable.
- 53.6. Except if one or more of Rules 53.1, 53.2, 53.3, 53.4 or 53.5 apply, the Trustee shall distribute or transfer the balance of the Member's Accounts as the Trustee in its absolute discretion may decide, provided the distribution or transfer is permitted by the *Act*.
- 53.7. Notwithstanding Rule 53.1, the Trustee is authorised to pay such additional amounts to a Dependant or the Legal Personal Representative of a deceased Member as the Trustee, in the Trustee's absolute discretion, may decide, including an amount from a Reserve, provided the payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund. These amounts are not to be taken as forming part of the deceased Member's Benefits.

## Conversion of Benefits

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

#### Explanation

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

#### Rule

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

### Rule 55. Commutation of a Pension

#### Rule

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

- End of Part Three -



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## Part Four: Changes to the Fund

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

#### **Explanation**

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

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

Where a fund ceases being a Self Managed Superannuation Fund it must within 28 days of that change provide the Australian Taxation Office with details of that change.

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

#### **Rule**

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

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

#### **Explanation**

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

## Rule

- 57.1. Subject to any other provision of these rules, the Trustee may, in its absolute discretion, amend the Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the *Act*;
  - (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment, unless the Member or the Legal Personal Representative of the Member has in writing consented to any such amendment;

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

- End of Part Four -

## Part Five: Winding Up of the Fund

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### Termination

#### **Rule 58. Termination of the Fund**

## Explanation

On termination of the Fund the Trustee should:

**Step One:** have the Fund audited;

**Step Two:** determine the Market Value of the Fund's assets;

**Step Three:** determine if the cash assets of the Fund are sufficient to discharge the Fund's debts and liabilities. If not, the Trustee will determine which assets will be disposed of to obtain sufficient cash;

**Step Four:** pay out all expenses of the Fund including any Taxes, administration costs, government imposts, amounts due to Members, other expenses plus any expense incurred to wind up the Fund;

**Step Five:** declare a final distribution amount (being that amount that is equal to the value of the assets of the Fund less expenses paid).

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

- Members and former Members of the Fund;
- Relatives of any Member or former Member;
- any Legal Personal Representative of a Member or former Member;
- any other person; and
- a charity or public benevolent institution.

## Rule

**58.1.** The Fund shall be wound-up and terminated on the first to occur of the date:

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

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

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

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

- End of Part Five -

## Part Six: Interpretation

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### Governing Law

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



### **Explanation**

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

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

### **Rule**

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

## **Status of the Act**

### **Rule 60. The Act is paramount**

### **Explanation**

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

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

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

### **Rule**

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

**60.2. The provisions of this clause 60 override any other provisions of this Deed**

The Trustees must comply with the requirements of the *Act* and are fully empowered (without being obliged) to comply with any provision or standard of the *Act* which is not a requirement.

**60.3. Power to comply with the Act**

(a) The Trustees may:

- (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the *Act* (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.
- (b) The Trustee may rely on anything (including any statutory presumptions available to it) in the *Act*, to the extent that the Trustees are entitled to do so in their capacity as Trustee of the Fund.
  - (c) The Trustee is entitled to be indemnified out of the assets of the Fund for any liabilities that the Trustees properly incur pursuant to this clause.

**60.4. Deemed compliance**

The Trustees is deemed to comply with the *Act* and the Rules if the Regulator:

- (a) is satisfied that the Trustee has complied with the *Act*;
- (b) determines that the Fund will be treated as if it had complied with the *Act*, or
- (c) has advised the Trustees that it will not take action against the Trustees or the Fund in respect of a failure to comply with the *Act*.

**60.5. Conflict with the Act**

- (a) To the extent that any provision, or part of a provision, of the Rules conflicts with the *Act* or is invalid for any other reason whatsoever:
  - (1) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (2) to the extent that such conflict or invalidity cannot be avoided, the provision or part of the *Act* shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remaining Rules.
- (b) If a Rule would otherwise be void under the *Act* because it:
  - (1) subjects the Trustees to direction by another person; or
  - (2) permits a person to exercise a discretion without the consent of the Trustees;

other than in the circumstances permitted by the *Act*, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

## Interpretation

### **Rule 61. Rules as to interpretation**

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

## Definitions

## **Rule 62. Definitions**

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

<b>Act</b>	The <i>SIS Act</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , as the context applies and any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
<b>Application Form</b>	An application form provided by the Trustees for prospective members to complete and submit to the Trustees as referred to at Rule 12.
<b>Approved Trustee</b>	A Trustee as approved by the Regulator pursuant to Part 2A and Part 2B of the <i>SIS Act</i> .
<b>APRA</b>	The Australian Prudential Regulatory Authority or any successor authority to that authority.
<b>Associate</b>	A person who is an associate as defined by section 12 of the <i>SIS Act</i> .
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor <i>Act</i> or otherwise determined by the Regulator.
<b>Benefit</b>	A benefit or entitlement payable or distributable by the Fund including a Pension.
<b>Binding Death Benefit Nomination</b>	A death benefit nomination made by a Member in accordance with Rule 15 that must be followed by the Trustee in the event of the Member's death.
<b>Civil Penalty Order</b>	An order or declaration made by a court under section 196 of the <i>SIS Act</i> .
<b>Child</b>	Any person defined as a child by the <i>Act</i> .

**Commencement Date** In relation to a Pension has the meaning given by the *SIS Regulations*.

**Compliance Plan** A plan established for the purpose of Rule 43.

**Complying Self Managed Superannuation Fund** A fund which is a complying Self Managed Superannuation Fund for the purposes of section 42A of the *SIS Act*.

**Constitutional Corporation** A body corporate which is:

- (a) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the *Constitution of the Commonwealth of Australia*); or
- (b) a financial corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the *Constitution of the Commonwealth of Australia*).

**Contributions** Amounts paid or property transferred to the Trustee for the Benefit of a Member or Members.

**Contributions Segment** Means that part of a Superannuation Interest as defined in section 307-220 of the *Tax Act*.

**Core Purposes** Those purposes as defined in section 62 of the *SIS Act*.

**Crystallised Segment** Means that part of a Superannuation Interest as defined in section 307-225 of the *Tax Act*.

**Death Benefit Rule** A Rule established as a Rule by reason of Rule 16.

**Deed** The Deed establishing the Fund as amended from time to time.

**Dependant** Is a person that is defined as a dependant for the purposes of the *SIS Act* and includes the Spouse of the person, any Child of the person and any other person with whom the person had an interdependency relationship (as determined by the *SIS Act*).

<b>Earnings</b>	The earnings of the Fund determined in accordance with Rule 36.
<b>Element Taxed In The Fund</b>	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
<b>Element Untaxed In The Fund</b>	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
<b>Eligible Rollover Fund</b>	A fund defined by regulation 10.01 of the <i>SIS Regulations</i> as an eligible rollover fund.
<b>Employer</b>	Means for the purposes of Rule 2.4 a person whom some other person is taken to be an “employee” of for the purposes of section 17A of the <i>SIS Act</i> .
<b>Excess Concessional Contributions</b>	has the meaning given by section 291-20 of the <i>Income Tax Assessment Act 1997</i> .
<b>Excess Contributions Tax</b>	Any tax imposed by reason of the <i>Superannuation (Excess Concessional Contributions Tax) Act 2007</i> or the <i>Superannuation (Excess Non- Concessional Contributions Tax) Act 2006</i> or successor legislation.
<b>Financial Year</b>	A year ended 30 June or that period of twelve months adopted by the Trustee as the Fund’s financial year.
<b>Fund</b>	The Self Managed Superannuation Fund established by the Deed.
<b>Gainful Employment</b>	That activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation.
<b>Legal Personal Representative</b>	The executor of the Will or administrator of the estate of a deceased person, the Trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

**Lump Sum** A Benefit which is payable to a Member pursuant to Rule 47 in cash or in kind.

Includes an asset, in the context of payment of Benefits but not in circumstances of severe financial hardship or on compassionate grounds or to a former temporary resident under *SIS Regulations* 6.20A or 6.20B.

**Manager** The person or entity appointed by the Trustee to manage the Fund.

**Market Value** The amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) the sale occurred after proper marketing of the asset; and
- (c) the buyer and seller acted knowledgeably and prudently in relation to the sale.

**Member** Any person accepted by the Trustee as a Member of the Fund.

**Member's Account** An account established by the Trustee on behalf of a Member.

**Member's Accumulation Account** A Member's Account established by the Trustee, the balance of which is the amount that can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit and/or a Pension.

**Member's Benefit** The amount of a Benefit payable to a Member, their Dependant or Legal Personal Representative in the event of the Member's death as determined by the Trustee.

**Member's Pension Account** A Member's Account established by the Trustee from which the payment of a Pension will be debited.

**Minimum Benefits** An amount determined by the Trustee of the Fund as a minimum benefit for a Member pursuant to Part 5 of the *SIS Regulations*.

<b>Non-Binding Death Benefit Nomination</b>	A death benefit nomination as referred to in Rule 14 that is not binding upon the Trustee.
<b>Non-Complying Self Managed Superannuation Fund</b>	A superannuation Fund that is not a Complying Self Managed Superannuation Fund.
<b>Non-Concessional Contributions</b>	has the meaning given by section 292-90 of the <i>Income Tax Assessment Act 1997</i> .
<b>Non-Concessional Contributions Cap</b>	has the meaning given by section 292-85 of <i>the Income Tax Assessment Act 1997</i> .
<b>Payment Split</b>	A “payment split” as defined by section 90MD of the <i>Family Law Act 1975</i> .
<b>Pension</b>	Any pension payable by the Fund.
<b>Permanent Incapacity Benefit</b>	A Benefit payable pursuant to Rule 51.
<b>Permanently Incapacitated</b>	In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) where the Trustee is reasonably satisfied that that Member is unlikely, because of the ill health, ever again to be Gainfully Employed in any employment for which that Member is reasonably qualified by education, training or experience.
<b>Policy</b>	Means an insurance policy arranged by the Trustees in accordance with Rule 39.



<b>Preservation Age</b>	Means: <ul style="list-style-type: none"> <li>(a) for a person born before 1 July 1960 — 55 years;</li> <li>(b) for a person born during the year 1 July 1960 to 30 June 1961 — 56 years;</li> <li>(c) for a person born during the year 1 July 1961 to 30 June 1962 — 57 years;</li> <li>(d) for a person born during the year 1 July 1962 to 30 June 1963 — 58 years;</li> <li>(e) for a person born during the year 1 July 1963 to 30 June 1964 — 59 years; and</li> <li>(f) for a person born after 30 June 1964 — 60 years.</li> </ul>
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<b>Preserved Benefit</b>	A Benefit which Regulation 6.01 to the <i>SIS Act</i> states is a preserved benefit.
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<b>Prescribed Documents</b>	Any documents that are prescribed documents for the purposes of the <i>Act</i> .
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<b>Prescribed Information</b>	Any information which is prescribed information for the purposes of the <i>Act</i> .
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<b>Product Disclosure Statement</b>	The product disclosure statement of which these Rules form part.
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<b>Regulated Superannuation Fund</b>	A superannuation Fund that is a regulated superannuation Fund as defined within section 19 of the <i>SIS Act</i> .
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<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate a Self Managed Superannuation Fund as defined in section 10(1) of the <i>SIS Act</i> .
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<b>Related Party</b>	A person who is a related party as defined in section 10(1) of the <i>SIS Act</i> .
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<b>Relative</b>	Means for the purposes of Rule 2.4 a person whom is defined as a “relative” by section 71A of the <i>SIS Act</i> and for the purposes of Rule 23 means a person who is a “relative” as defined by section 65 of the <i>SIS Act</i> .
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<b>Release Request</b>	A written notice provided by the Commissioner of Taxation authorising the Member to withdraw monies from the Fund to pay Excess Contributions Tax as referred to at Rules 22 and 25.
<b>Reserve</b>	An amount as referred to at Rule 37.
<b>Responsible Officer</b>	Means: <ul style="list-style-type: none"> <li>(a) a director of a company;</li> <li>(b) a secretary of a company; and</li> <li>(c) an executive officer of a company.</li> </ul>
<b>Rules</b>	The rules of the Fund.
<b>Self Managed Superannuation Fund</b>	A fund that is a “Self Managed Superannuation Fund”, as defined in section 17A of the <i>SIS Act</i> .
<b>SIS Act</b>	The <i>Superannuation Industry (Supervision) Act 1993</i> .
<b>SIS Regulations</b>	The <i>Superannuation Industry (Supervision) Regulations 1994</i> .
<b>Specified Work Test</b>	Those conditions found in Part 6 of the SIS Regulations determining the time at which a person must be paid a Benefit from the Fund.
<b>Splittable Contribution</b>	An amount that has the meaning for the purposes of Part 6 of the SIS Regulations.
<b>Solvency Plan</b>	A plan established for the purposes of Rule 44.

**Spouse**

In relation to a person includes:

- (a) another person who is legally married to the person;
- (b) another person who although not legally married to the person, lives with the person on a genuine domestic basis; and
- (c) another person (whether of the same sex or a different sex) with whom the person is or was in a relationship that was registered under a law of a State or a Territory prescribed for the purposes of Section 2E of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section.

**Standard-Employer-Sponsor**

A person who is a standard-employer-sponsor as defined in section 16(2) of the *S/S Act*.

**Superannuation Entity**

Means:

- (a) a superannuation Fund;
  - (b) an approved deposit Fund;
  - (c) a pooled superannuation trust; and
  - (d) a life insurance company or similar entity;
- whether such an entity is a resident or non – resident of Australia.

**Superannuation Interest**

In relation to a Member, means an interest in the Fund or such other interest as defined in section 995-1(1) of the *Tax Act* as determined by the Trustee with reference to section 307-200 of the *Tax Act* and relevant Regulations.

**Tax**

Includes all actual or anticipated tax, surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them.

**Tax Act** Either or both of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as the case may be including any replacement, modification or supplement to those Acts).

**Taxable Component** Has the meaning given by section 995-1(1) of the *Tax Act*.

**Tax Free Component** Has the meaning given by section 995-1(1) of the *Tax Act*.

**Temporarily Incapacitated** In relation to a Member, means a Member who has ceased to be gainfully employed, including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed, because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.

**Temporary Incapacity Benefit** A non-commutable income stream payable pursuant to Rule 50.

**Termination Date** The date on which the Fund terminates.

**Total Member Entitlements** That amount equal to the total value of all Members' Accounts.

**Trustee** A person or company that has been appointed a Trustee of the Fund under Rule 3.

**Trustee Meeting** A meeting as referred to at Rule 7.1.

*- End of Part Six -*

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# Trustee Consent

## Appointment and declaration of Trustee

### Grayson Superannuation Fund

**Grayson Superannuation Pty Ltd ACN 168 752 243** hereby consents to the appointment to act as Trustee of the Fund and to be bound by the Fund's trust deed ('Trust Deed') and all of the Rules and the Act as defined in the Trust Deed and to ensure that:

1. the Fund continues to be a Complying Superannuation Fund as defined in the Trust Deed; and
2. the Fund is continuously maintained as a self-managed superannuation fund.

The Trustee declares that:

- (a) to the best of its knowledge, all of the directors of the company as Trustee are members of the Fund unless specifically exempted under the Trust Deed or the Act;
- (b) to the best of its knowledge, no director of the company as Trustee is a disqualified person as that term is defined under the Trust Deed or the Act;
- (c) it is not insolvent; and
- (d) no administrator, receiver, manager, liquidator or provisional liquidator has been appointed to the Trustee, nor has any application been made to wind up the Trustee.

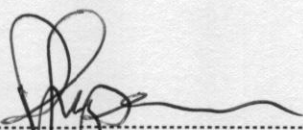
**EXECUTED** by  
**Grayson Superannuation Pty Ltd**  
**ACN 168 752 243**

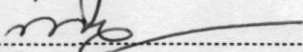
in accordance with section 127 of the  
*Corporations Act 2001* by the Directors or  
Director and/ or Secretary:

Ross Neville Grayson  
Please print name of Director/ Sole Director\*

Melinda Ann Grayson  
Please print name of Director/ Secretary\*

\* Delete as appropriate

  
Signature

  
Signature

25, 03, 2014  
Date





## Product Disclosure Statement

**Fund Name:** Grayson Superannuation Fund

**Trustee:** Grayson Superannuation Pty Ltd  
ACN 168 752 243

**Trustee Phone Number:**

07 3217 0311

**Member:** Ross Neville Grayson

**Date of issue:** 25, 03, 2014

This **Product Disclosure Statement (PDS)** is a summary of significant information and contains a number of references to important information (each of which forms part of the PDS). You should consider this information before making a decision about the Fund. The information provided in the PDS is general information only and does not take account of your personal financial situation or needs. You should obtain financial advice tailored to your personal circumstances.

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### 1. ABOUT THE FUND

- 1.1 The Fund as a Regulated Superannuation Fund and a Complying Superannuation Fund under the *Superannuation Industry (Supervision) Act (1993)* (SIS Act) is eligible for concessional tax treatment under the Tax Act. The regulator of the Fund is the Australian Taxation Office.
- 1.2 The provisions of the Fund are set out in the Fund's Deed and Rules. The Fund will also comply with the standards set out in the SIS Act and SIS Regulations.
- 1.3 The Trustee issues this Product Disclosure Statement (PDS) to existing and prospective new Members (if any) of the Fund.
- 1.4 The purpose of this PDS is to provide persons interested in becoming Members of the Fund with relevant information about the provisions of the Fund.
- 1.5 The *Corporations Act 2001* and Regulations provides that Members who become members of the Fund when it is established, are to be given this PDS as soon as practicable but within 3 months of becoming a Member. Other Members are to be given the PDS at the time they join the Fund.
- 1.6 Terms and phrases used in this PDS are defined in the Rules of the Fund, which are part of the Fund Deed
- 1.7 The Fund must have fewer than 5 Members.
- 1.8 Members of the Fund or their legal personal representative (LPR) must be either trustees of the Fund or directors of a corporate trustee.
- 1.9 A Member cannot be the Employer of another Member, unless they are Relatives.
- 1.10 In the case of a sole or one member Fund, the Member (or LPR) may be the sole director of a corporate Trustee or there may be two directors who are the Member (or LPR) and another person who is not an employer of the Member unless they are the Relative of the Member. Where the Trustee is not a corporate Trustee, the Member (or LPR) and another person who is not an employer of the Member unless they are the Relative of the Member, must be the Trustees of the Fund.

## **2. HOW SUPER WORKS**

- 2.1** Superannuation is a means of saving for retirement, which is, in part, compulsory. Most employees may choose the superannuation fund into which their employer will pay their superannuation guarantee contributions.
- 2.2** The primary purpose of a Fund, where the Trustees are persons, is to provide benefits in the form of old age pensions for its Members.
- 2.3** If the Trustee is a corporate trustee, benefits may be paid by lump sum payment when an appropriate condition of release has been met.
- 2.4** Contributions are made to the Fund on behalf of each Member and credited to the Member's Account. The Fund invests these contributions and amounts (e.g. earnings on investments) are credited to the Member's Account. Amounts (e.g. Fund expenses, tax and losses) are debited to Member's Account.
- 2.5** A Member's benefit is preserved in the Fund and cannot be received by the Member until such time as the Member satisfies a condition of release, such as retirement, death, permanent incapacity, attaining age 65. At that time, a Benefit representing the balance of the Member's Account and/or the proceeds of death or disability insurance taken out by the Fund, if any, may be payable to the Member. The Benefit may be in the form of a lump sum payment or Pension or both, depending on the Rules of the Fund and the provisions of the Act.
- 2.6** A Member and others, such as employers, the Government (by co-contributions), or spouses, may make contributions to the Fund on behalf of a Member.
- 2.7** Members may apply to split contributions with their spouse.
- 2.8** There are limits to the amount of contributions that can be made, and there are tax implications should contributions exceed certain capped amounts.
- 2.9** There are two types of contributions: concessional and non-concessional.
- 2.10** In general, all concessional contributions are included in the assessable income of the Fund. They include employer contributions, salary sacrifice contributions, deductible contributions made by a Member, super guarantee amounts transferred to the Fund.
- 2.11** Concessional (or tax deductible) contributions made to the Fund on behalf of a Member commence at \$25,000.00 per annum. From 1 July 2013 for Members who are 59 years old or over on 30 June 2013, the cap increases from \$25,000 to \$35,000. From the 2014-2015 or later financial years, for Members aged 49 years or over on the last day of the previous financial year, the cap increases to \$35,000.
- 2.12** Concessional contributions are taxed at 15% in the hands of the Fund. For 2013-2014 and later years, concessional contributions in excess of the cap will be included in a Member's assessable income taxed at their income tax marginal rate. That additional tax can be paid from the Member's entitlement in the Fund at the Member's request. Excess concessional contributions will be counted against the Member's non-concessional contributions cap, as set out below.
- 2.13** Members aged 65 years old or over, but under 75, who wish to contribute to the Fund, must satisfy the work test (currently 40 hours work in a consecutive 30 day period each financial year). The Fund cannot accept contributions from Members aged 75 or more (except those contributions an employer is required to make under an industrial award or agreement).
- 2.14** Non-concessional contributions are generally after tax contributions for which no tax deduction is claimed. For instance, they will include personal contributions made by a Member for which they do not claim a tax deduction.
- 2.15** Members can make non-concessional contributions when they are:
- (a) under 65 years of age, and may contribute up to \$150,000.00 per annum in the 2013-2014 financial year or \$450,000.00 over 3 years under a bring forward option triggered in the 2013 -2014 financial years. In the 2014-2015 financial years the non concessional cap will increase to \$180,000; or
  - (b) aged 65 years old and over but under 75 years of age, and may contribute up to \$150,000.00 per annum in the 2013-2014 financial years (with no averaging to be increased to \$180,000 in the 2014-2015 financial years) provided the Member satisfies the work test. The bring forward option remains at \$450,000 for that 3 year period.

- 2.16** Non-concessional contributions within the above limits will be tax free when contributed or withdrawn from the Fund. The earnings in the Fund on non-concessional contributions are taxed concessional at 15 per cent in the Fund.
- 2.17** Contributions made in excess of the non-concessional contributions cap are taxed at 47% for the 2014-2015 and later financial years (previously at 46.50%).
- 2.18** As specific rules apply and cap rates change over time Members should seek professional advice when making such contributions to avoid adverse taxation consequences.

### **3. BENEFITS OF INVESTING WITH THE FUND**

- 3.1** Benefits, based on the value of the Member's Account, are payable to Members as a lump sum payment or pension or both as permitted by the Rules of the Fund and the Act and when a condition of release is satisfied. Until a condition of release is satisfied a Member cannot obtain access to the Member's Benefit.
- 3.2** A Member is not compelled to withdraw benefits from the Fund and they may remain in the Fund indefinitely. A Member may elect to transfer their benefit from the Fund to another Superannuation Entity. If the Trustee expels a Member from the Fund, at the Trustee's discretion, the Member's benefit will be paid to the Superannuation Entity nominated by the Member, and if none is nominated, to an Eligible Rollover Fund chosen by the Trustee.
- 3.3** The value of the Member's Account is calculated based on contributions made for a Member, increases or decreases in the value of the Fund's investments and accrued income on contributions and investments less payment of taxes, Fund expenses and investment losses.

#### **3.4 Retirement**

On a Member's retirement (as defined by the SIS Regulations) or when turning 65 years, a Member will be entitled to payment of a Benefit calculated according to the value of the Member's Account.

Member benefits will be paid by the Trustees as permitted under SIS Act and Regulations in the form of a lump sum or a Pension or a combination of both.

#### **3.5 Pension Benefits**

The Trustee may permit a Member to elect to receive their lump sum Benefit in the form of an income stream called a Pension.

Pensions paid by the Fund after 1 July 2007 will be account based pensions.

A person can commence an account based pension in accordance with the rules provided:

- (a) the total payments made annually must be at least the amount calculated using the applicable percentage amount (shown in the table below) of the pension account balance. There is no maximum limit on the amount of annual payments that can be made.

<b>Age of member</b>	<b>Percentage of account balance in relevant Financial year</b>			
	<b>2007-08</b>	<b>2008-09 2009-10 2010-11</b>	<b>2011-12 2012-13</b>	<b>2013-14 onwards</b>
Under 65	4%	2%	3%	4%
65-74	5%	2.5%	3.75%	5%
75-79	6%	3%	4.5%	6%
80-84	7%	3.5%	5.25%	7%
85-89	9%	4.5%	6.75%	9%
90-94	11%	5.5%	8.25%	11%
95 or more	14%	7%	10.5%	14%

\* Note these withdrawal factors are indicative only. Refer to pro-rating, rounding and other rules in the SIS regulations to determine precise minimum annual payments.

In response to the downturn in global financial markets, the government provided pension drawdown relief in 2008-09, 2009-10 and 2010-11 by halving the minimum payment amounts. This relief was extended in 2011-12 and 2012-13 by reducing the minimum payment amounts by 25 per cent. The minimum payment amount returned to normal in 2013-14

- (b) an amount or percentage of the pension cannot be prescribed as being left over when the pension ceases;
- (c) the pension's capital value and the income from it cannot be used as security for borrowing;

- (d) the pension can be commuted;
- (e) the pension may be transferable to a Pension Dependant only on the death of the pensioner; and
- (f) the pension account balance cannot be increased by contributions or rollovers.

**3.6** A Transition to Retirement Pension may be paid to a Member who has reached their preservation age, as set out below, but continues to work. This pension is an account based pension that must meet certain other requirements, as follows:

- (a) total pension payments in any year must be no greater than 10% of the account balance at the start of that year; and
- (b) the pension cannot be commuted and taken as a lump sum until the member meets a condition of release of retirement (as defined in the SIS Regulations), death, Permanent Incapacity or attaining age 65.

**3.7** The preservation age depends on the date of birth of the Member as follows:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 to 30 June 1961	56
1 July 1961 to 30 June 1962	57
1 July 1962 to 30 June 1963	58
1 July 1963 to 30 June 1964	59
After 30 June 1964	60

**3.8** The Trustees may make available any other form of pension permitted by the Act.

**3.9** When a Member wishes to commence a Pension, the Trustee will outline the terms and conditions of the proposed Pension which on acceptance by the Member will be incorporated as a Rule of the Fund.

**3.10 Death Benefits**

**3.11** If a Member dies, a benefit is payable calculated according to the value of the Member's Account, and may include the proceeds of any relevant insurance policy taken out by the Trustees.

**3.12** In the absence of a valid Binding Death Benefit Nomination, the benefit will be payable to one or more of the Member's Dependants or the Member's estate in proportions determined by the Trustees.

**3.13** Members are able to notify the Trustees of one or more of the Member's Dependants or the Member's estate who they wish to be considered in the payment of the death benefit. Members can do so by providing the Trustees with a Non-Binding Death Benefit Nomination. The Trustees however are not bound by the wishes set out in this non binding nomination.

**3.14** Alternatively, Members may give a Binding Death Benefit Nomination to the Trustees nominating one or more of the Member's Dependants or the Member's estate to whom the Trustees will pay benefits on the Member's death. The Binding Death Benefit Nomination is binding on the Trustees.

**3.15** Both types of nominations can be updated at any time or withdrawn and should be revised if circumstances change – for example on marriage or having children.

**3.16** If a Member desires more certainty that death benefits will be paid in accordance with their wishes, then the Member can request that the Trustee establish a Death Benefit Rule ("DBR"). The Member provides a written request to the Trustee stating the amount, form and circumstances in which a benefit is to be paid to nominated dependents. The Trustee must be satisfied that the request complies with the rules of the Fund and all relevant legislation. The Trustee cannot establish a DBR if it holds a valid Binding Death Benefit Nomination. Upon acceptance of the Member's request, the DBR is documented and incorporated as a rule of the Fund. The Member can amend and revoke a DBR at any time and it can only be revoked or amended with the consent of the Member.

**3.17** A reversionary pension is a pension payable to a Member that reverts or automatically carries on after the Member's death in the name of the spouse or dependant. A reversionary pension has built in estate planning. The decision as to whom the pension is to be transferred is generally made at the time of commencement of the Pension. Pension documentation guides what happens on the death of the pension Member; not a Binding Death Benefit Nomination, Non Binding Death Benefit Nomination or DBR.

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

which commenced under the previous rules. The pension rules specify that a pension (of any type) WILL NOT satisfy the rules if this occurs and the Trustee is not required to make a payment under a Pension if that payment results in the Fund becoming insolvent or causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

If the reversionary pension is effective, it will override the member's valid Binding Death Benefit Nomination or DBR, if any. If the reversionary pension is ineffective, the pension will be transferred to the person named to receive the member's death benefit in the member's valid Binding Death Benefit Nomination or DBR, if any. If that person is not entitled to be paid a pension the balance standing in the member's pension account will be paid in accordance with the member's valid Binding Death Benefit Nomination or DBR and if there is none, at the discretion of the Trustees of the Fund in accordance with the Fund rules.

**3.18** Death benefits are tax free if paid as a lump sum to death benefit dependants (as defined by section 302.195 of the *Income Tax Assessment Act 1997*) of the Member. Tax is payable on lump sum payments to persons who are not death benefit dependants. The taxed element of a taxable component of a lump sum benefit paid to a non death benefit dependant will be taxed at 15 per cent plus Medicare levy. The untaxed element of a taxable component of a lump sum benefit paid to a non death benefit dependant will be taxed at 30 per cent plus Medicare levy.

**3.19** Some persons who may qualify to receive a death benefit as a Dependant may be liable for tax on the benefit if they do not fall within the definition of a death benefit dependant.

**3.20** Only a Pension Dependand (as specified in reg 6.21(2A) and 2(B) of the SIS Act) can apply to receive a death benefit as a pension, but the taxation treatment will depend on the age of the deceased Member and the Pension Dependand and whether the pension is paid from an element taxed or untaxed in the fund. For a pension paid from an element taxed in the fund:

- (a) if the deceased Member was aged 60 or over at the time of death, the pension payments to the Pension Dependand will be tax free;
- (b) if the deceased Member was under the age of 60 at the time of death, the pension will be taxed at the Pension Dependand's marginal tax rate and, if the Pension Dependand has reached their preservation age, is eligible for a tax offset equal to 15% of the taxed element of the taxable component. If (or when) the Pension Dependand is aged 60 and over, the pension payment will be tax free.

**3.21** The tax treatment of death benefits paid as pensions or lump sum payments will depend on whether the recipient is a death benefit dependant as defined in section 302.195 of the Tax Act.

### **3.22 Permanent Incapacity Benefit**

A Member who is Permanent Incapacitated may receive a benefit according to the value of the Member's Account, and may include the proceeds of any relevant insurance policy taken out by the Trustees.

### **3.23 Temporary Incapacity Benefit**

In some cases an income stream benefit may be payable when a Member is Temporarily Incapacitated from the Member's Account or from the proceeds of an insurance policy if taken out by the Fund, to cover such an event.

### **3.24 Severe Financial Hardship**

Members may apply for benefits to be paid on the basis of the Member's severe financial hardship in circumstances prescribed by the SIS Regulations.

### **3.25 Compassionate Grounds**

A Member may apply to the Regulator for the release of benefits to the Member on compassionate grounds as set out in the SIS Regulations. A lump sum, not exceeding an amount determined by the Regulator will be paid to a Member if the Member satisfies the requirements of the SIS Regulations.

## **4. RISKS OF SUPER**

**4.1** The Trustees or directors of a Corporate Trustee, (and therefore the Members because they are the Trustees or directors) have full responsibility for the management and administration of the Fund.

**4.2** This includes the significant function to invest contributions made to the Fund on behalf of Members. The Trustees are required to formulate, regularly review and give effect to an investment strategy to meet the Fund's investment objectives taking into account relevant circumstances, but they do not guarantee the performance of the Fund or any particular investment.

- 4.3 The performance of the Fund will depend on the success or otherwise of the investment strategy together with external factors, such as prevailing or changing economic conditions and future changes in superannuation law. The way in which the Fund performs, will affect the value of Benefits a Member will receive from the Fund. Importantly, Superannuation legislation is constantly evolving and is subject to change.
- 4.4 All investments carry risk. Different investment strategies may carry different levels of risk depending on the assets that make up the strategy. There is no guarantee that investments will maintain their values and if the values decrease, this will reduce the value of the Member's Account. Assets with the highest long-term returns may also carry the highest level of short-term risk.
- 4.5 The level of risk for each Member will vary depending on their age, investment time frames, where other parts of the Member's wealth is invested and the Member's risk tolerance. The amount of a Member's future superannuation savings (including contributions and returns) may not be enough to provide adequately for the Member's retirement.
- 4.6 The Trustees may seek professional assistance in performing their management, administration and investment functions.
- 4.7 As control of the Fund rests with the Trustees, prospective Members should be aware that voting in Trustee meetings to make decisions regarding the administration, investment and management functions of the Fund is according to the method adopted for Trustees who are Members as set out in paragraph 5.4 below, or if the Trustee is a corporate Trustee, as discussed in paragraph 5.5 below.
- 4.8 Factors such as current labour standards, environmental, social or ethical matters are not taken into account in the selection, retention or realisation of investments.

## 5. HOW WE INVEST YOUR MONEY

- 5.1 Members of the Fund, or their LPR, must be either Trustees of the Fund or directors of a corporate Trustee of the Fund
- 5.2 Trustees make decisions regarding the administration and management of the Fund, such as formulating, regularly reviewing and giving effect to the investment strategy and payment of Benefits to Members. Decisions will be made by Trustees at meetings.
- 5.3 The Trustees must comply with a number of strict duties and obligations specified in the SIS Act when making investment decisions. Failure to comply with the duties and obligations can result in the Trustees being subject to penalties and loss of complying status for the Fund.
- 5.4 Where the Trustees are persons, at the first Trustee meeting for the Fund the Trustees will decide whether
- (a) each Trustee at all meetings of Trustees will have the number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person plus that amount in any Reserve which an actuary has determined is supporting that person's Member's Account in paying a Pension; or
  - (b) each Trustee at all meetings of Trustees will only be entitled to one vote each and only on a deadlock will a Trustee have the number of votes equivalent to the nearest dollar amount of the Member's Account balance of the Member they represent and certain amounts in Reserve.

If the Trustees do not make a decision between 5.3(a) and (b) or fail to adopt a method of voting, 5.3(b) will apply to all meetings of Trustees. Notwithstanding the Rules, any voting rules in place prior to these Rules being adopted will continue to apply.

- 5.5 If the Trustee is a company, the constitution of the company will determine the voting power of directors and legal advice should be sought by prospective Members regarding the company's constitution and the voting rights that will apply to Trustee's decisions as meetings.
- 5.6 Current investment strategies of the Fund are set out in **Annexure 1 – "Investment strategies of the Fund"**.

## 6. FEES AND COSTS

- 6.1 The Trustee/s and the Director/s of the Corporate Trustee (other than an Approved Trustee) cannot charge the Fund fees for their services but can be reimbursed by the Fund for expenses incurred on behalf of the Fund in the management and administration of the Fund.
- 6.2 Fees and commissions may be paid by the Fund to the providers of financial products to the Fund where the Fund elects to invest in those financial products.

- 6.3** A fee may be paid by the Fund to a financial advisor if a financial advisor is consulted.
- 6.4** Any current fees payable in respect of the Fund are set out in **Annexure 2 – Fees and Costs**.

## **7. HOW SUPER IS TAXED**

- 7.1** You must provide your correct tax file number when you join the Fund. If you do not do so, the Fund cannot accept contributions. Non tax file number contributions income attracts an additional tax of 32% from 2014-2015 and any contributions that are accepted by the Fund must be refunded to the Member.
- 7.2** The Fund will attract concessional taxation treatment provided it remains a Regulated Superannuation Fund and a Complying Self Managed Superannuation Fund.
- 7.3** Tax is payable by the Fund on deductible or concessional contributions to the Fund and investment earnings of the Fund.
- 7.4** Taxation of contributions and Benefits is complex and it is recommended that professional advice is sought from a taxation advisor.
- 7.5** Benefits paid from a taxed source either as a lump sum or pension will be tax free when paid to Members who are 60 years of age or older.
- 7.6** Superannuation benefits paid from a taxed source to Members who are under 60 years of age are subject to tax as follows:
- (a) the exempt component will be paid tax free and comprises: the pre-July 83 component; the CGT exempt component; the post-June 1994 invalidity component; the concessional component and the non-concessional (post-tax) contributions;
  - (b) the taxable component comprises the current post-June 1983 component and the non qualifying component and is subject to varying rates of tax depending on the Member's age. If the Member is below their preservation age, the tax rate will be 20% plus Medicare levy on the whole amount. For Members of preservation age to age 59, from 2014/15 income year it will be paid tax free up to the low-rate cap amount of \$185,000.00 and amounts above the cap will be taxed at 15 per cent plus Medicare levy;
  - (c) the taxable component of a Pension paid to a Member who is under 60 years of age but has reached their preservation age, is taxed as assessable income and the Member is entitled to a pension rebate or tax offset equal to 15% of the taxable component of the pension; and
  - (d) once the Member receiving the Pension turns 60, their pension will be tax free;
- 7.7** Tax offsets may be available on certain contributions made for a non working or low income Member by the Member's spouse. Tax deductions may also be available for contributions by self-employed persons or by an employer for its employees.

## **8. INSURANCE IN YOUR SUPER**

As part of the investment strategy, the Trustees are required to consider whether they should hold a contract of insurance for one or more Members of the Fund. If the Trustees of the Fund elect to hold such a contract of insurance, the Trustees are required to give particulars set out in **Annexure 3** to the Members of the Fund.

## **9. HOW TO OPEN AN ACCOUNT AND ADDITIONAL INFORMATION**

### **9.1 Becoming a Member**

A person wishing to become a Member of the Fund must complete and submit an Application Form to the Trustees and must have read and agreed to be bound by the Fund's Deed and Rules.

### **9.2 Cooling off period**

- (a) There is no cooling-off period applicable to membership in this Fund.
- (b) Members can cancel their membership at any time; however, once contributions have been made to the Fund, it must be preserved in the superannuation system until a condition of release is satisfied.

### **9.3 Dispute resolution**

- (a) The Trustees are bound to act in accordance with the Fund Deed.

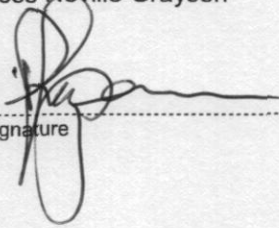


- (b) Self managed superannuation funds are specifically excluded from the jurisdiction of the Superannuation Complaints Tribunal. Legal advice should be sought if Members are dissatisfied with the Trustees' decisions.

**9.4 Annual reporting**

Each financial year, the Trustees will prepare the Fund's accounts and Members' statements disclosing financial and other information required under the SIS Act and Regulations.

EXECUTED by  
Ross Neville Grayson



-----  
Signature

25, 03, 2014  
-----  
Date

**ANNEXURE 1 – Investment strategies of the Fund**

1. Name of investment strategy:

.....  
.....  
.....

2. Description of investment strategy:

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.....  
.....

3. Assets classes invested:

.....  
.....  
.....

4. Investment return objective:

.....  
.....  
.....

5. Minimum suggested time frame for holding the investment:

.....  
.....  
.....

6. The risk level of the investment strategy:

.....  
.....  
.....

## ANNEXURE 2 – Fees & Costs

### DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

### TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) has a superannuation or managed investment fee calculator to help you check out different fee options.

This document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

<b>Type of Fees &amp; Costs</b>	
<b>Fees when your money moves in or out of the Fund</b>	<b>Amount</b>
Establishment fee	N/A
Contribution fee	N/A
Withdrawal fee	N/A
Termination fee	N/A
<b>Management costs</b>	
The fees and costs for managing the Fund	\$
<b>Fees payable to financial advisors</b>	
Advisor service fees	\$

[Note: If there are service fees, such as advisor service fees or acquired financial product fees, you may include a cross reference to the document that contains the information.]

### **ANNEXURE 3 – Contract of Insurance**

1. If the Trustees of the Fund elect to hold a contract of insurance, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) describe, in the form of a summary, the main types of insurance cover that a person can acquire; and
  - (b) describe, in the form of a summary, how to apply for insurance cover; and
  - (c) include a statement to the effect that there are costs associated with insurance cover; and
  - (d) describe, in the form of a summary, who is responsible for paying the insurance costs and how they are calculated.
  
2. If the Trustees of the Fund offer insurance cover by default, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) describe, in the form of a summary, the level and type of cover; and
  - (b) state:
    - (i) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person's circumstances; and
    - (ii) who is responsible for paying the costs; and
  - (c) state whether a person can:
    - (i) decline to acquire the cover; or
    - (ii) cancel the cover; and
  - (d) state how a person can decline to acquire the cover or cancel the cover; and
  - (e) state whether a person can change the person's insurance cover; and
  - (f) state how a person can change the person's insurance cover; and
  - (g) state, in the form of a warning, that, unless a person declines to acquire the default insurance cover or cancels it, the cost of the cover will be deducted from the person's account or from the person's contributions (as applicable); and
  - (h) include information about eligibility for, and the cancellation of, the insurance cover; and
  - (i) include information about any conditions and exclusions that are applicable to the insurance cover.
  
3. If the Trustees of the Fund do not offer insurance cover by default, but offers insurance cover as an option, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) the level and type of insurance cover available;
  - (b) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person's circumstances;
  - (c) eligibility for, and the cancellation of, the insurance cover;
  - (d) conditions and exclusions that are applicable to the insurance cover;

- (e) other significant matter in relation to insurance cover, for example:
  - (i) Information about how a person can apply for the insurance cover.
  - (ii) Information about how a person can subsequently change or cancel the insurance cover.

**4.** The Trustee of the Fund:

- (a) may provide information in paragraph 2(h) and (i) and paragraph 3 above; and
  - (b) may provide additional information about insurance cover;
- by applying, adopting or incorporating a matter in writing.

**5.** If information about:

- (a) eligibility for, or the cancellation of, the insurance cover; or
- (b) any conditions and exclusions that are applicable to the insurance cover;

is provided for in accordance with paragraph (4), the Trustees must include a warning to the effect that the matter may affect a person's entitlement to insurance cover and that the information should be read before deciding whether the insurance is appropriate.

**6.** If information about:

- (a) the level and type of optional insurance cover available; or
- (b) the actual cost of the optional insurance cover in dollars, or the range of costs that would be payable depending on a person's circumstances; or
- (c) any other significant matter in relation to insurance cover;

is provided for in accordance with paragraph 4, the Trustees must include a warning to the effect that the information should be read before deciding whether the insurance is appropriate.

## Product Disclosure Statement

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**Fund Name:** Grayson Superannuation Fund

**Trustee:** Grayson Superannuation Pty Ltd  
ACN 168 752 243

**Trustee Phone Number:**

07 3217 0311

**Member:** Melinda Ann Grayson

**Date of issue:** 25, 03, 2014

This **Product Disclosure Statement** (PDS) is a summary of significant information and contains a number of references to important information (each of which forms part of the PDS). You should consider this information before making a decision about the Fund. The information provided in the PDS is general information only and does not take account of your personal financial situation or needs. You should obtain financial advice tailored to your personal circumstances.

### Contents

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3.	Benefits of Investing With the Fund.....	3
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### 1. ABOUT THE FUND

- 1.1 The Fund as a Regulated Superannuation Fund and a Complying Superannuation Fund under the *Superannuation Industry (Supervision) Act (1993)* (SIS Act) is eligible for concessional tax treatment under the Tax Act. The regulator of the Fund is the Australian Taxation Office.
- 1.2 The provisions of the Fund are set out in the Fund's Deed and Rules. The Fund will also comply with the standards set out in the SIS Act and SIS Regulations.
- 1.3 The Trustee issues this Product Disclosure Statement (PDS) to existing and prospective new Members (if any) of the Fund.
- 1.4 The purpose of this PDS is to provide persons interested in becoming Members of the Fund with relevant information about the provisions of the Fund.
- 1.5 The *Corporations Act 2001* and Regulations provides that Members who become members of the Fund when it is established, are to be given this PDS as soon as practicable but within 3 months of becoming a Member. Other Members are to be given the PDS at the time they join the Fund.
- 1.6 Terms and phrases used in this PDS are defined in the Rules of the Fund, which are part of the Fund Deed
- 1.7 The Fund must have fewer than 5 Members.
- 1.8 Members of the Fund or their legal personal representative (LPR) must be either trustees of the Fund or directors of a corporate trustee.
- 1.9 A Member cannot be the Employer of another Member, unless they are Relatives.
- 1.10 In the case of a sole or one member Fund, the Member (or LPR) may be the sole director of a corporate Trustee or there may be two directors who are the Member (or LPR) and another person who is not an employer of the Member unless they are the Relative of the Member. Where the Trustee is not a corporate Trustee, the Member (or LPR) and another person who is not an employer of the Member unless they are the Relative of the Member, must be the Trustees of the Fund.



## Product Disclosure Statement

**Fund Name:** Grayson Superannuation Fund

**Trustee:** Grayson Superannuation Pty Ltd  
ACN 168 752 243

**Trustee Phone Number:**

07 3217 0311

**Member:** Ross Neville Grayson

**Date of issue:** 25, 03, 2014

This **Product Disclosure Statement (PDS)** is a summary of significant information and contains a number of references to important information (each of which forms part of the PDS). You should consider this information before making a decision about the Fund. The information provided in the PDS is general information only and does not take account of your personal financial situation or needs. You should obtain financial advice tailored to your personal circumstances.

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## **2. HOW SUPER WORKS**

- 2.1** Superannuation is a means of saving for retirement, which is, in part, compulsory. Most employees may choose the superannuation fund into which their employer will pay their superannuation guarantee contributions.
- 2.2** The primary purpose of a Fund, where the Trustees are persons, is to provide benefits in the form of old age pensions for its Members.
- 2.3** If the Trustee is a corporate trustee, benefits may be paid by lump sum payment when an appropriate condition of release has been met.
- 2.4** Contributions are made to the Fund on behalf of each Member and credited to the Member's Account. The Fund invests these contributions and amounts (e.g. earnings on investments) are credited to the Member's Account. Amounts (e.g. Fund expenses, tax and losses) are debited to Member's Account.
- 2.5** A Member's benefit is preserved in the Fund and cannot be received by the Member until such time as the Member satisfies a condition of release, such as retirement, death, permanent incapacity, attaining age 65. At that time, a Benefit representing the balance of the Member's Account and/or the proceeds of death or disability insurance taken out by the Fund, if any, may be payable to the Member. The Benefit may be in the form of a lump sum payment or Pension or both, depending on the Rules of the Fund and the provisions of the Act.
- 2.6** A Member and others, such as employers, the Government (by co-contributions), or spouses, may make contributions to the Fund on behalf of a Member.
- 2.7** Members may apply to split contributions with their spouse.
- 2.8** There are limits to the amount of contributions that can be made, and there are tax implications should contributions exceed certain capped amounts.
- 2.9** There are two types of contributions: concessional and non-concessional.
- 2.10** In general, all concessional contributions are included in the assessable income of the Fund. They include employer contributions, salary sacrifice contributions, deductible contributions made by a Member, super guarantee amounts transferred to the Fund.
- 2.11** Concessional (or tax deductible) contributions made to the Fund on behalf of a Member commence at \$25,000.00 per annum. From 1 July 2013 for Members who are 59 years old or over on 30 June 2013, the cap increases from \$25,000 to \$35,000. From the 2014-2015 or later financial years, for Members aged 49 years or over on the last day of the previous financial year, the cap increases to \$35,000.
- 2.12** Concessional contributions are taxed at 15% in the hands of the Fund. For 2013-2014 and later years, concessional contributions in excess of the cap will be included in a Member's assessable income taxed at their income tax marginal rate. That additional tax can be paid from the Member's entitlement in the Fund at the Member's request. Excess concessional contributions will be counted against the Member's non-concessional contributions cap, as set out below.
- 2.13** Members aged 65 years old or over, but under 75, who wish to contribute to the Fund, must satisfy the work test (currently 40 hours work in a consecutive 30 day period each financial year). The Fund cannot accept contributions from Members aged 75 or more (except those contributions an employer is required to make under an industrial award or agreement).
- 2.14** Non-concessional contributions are generally after tax contributions for which no tax deduction is claimed. For instance, they will include personal contributions made by a Member for which they do not claim a tax deduction.
- 2.15** Members can make non-concessional contributions when they are:
- (a) under 65 years of age, and may contribute up to \$150,000.00 per annum in the 2013-2014 financial year or \$450,000.00 over 3 years under a bring forward option triggered in the 2013 -2014 financial years. In the 2014-2015 financial years the non concessional cap will increase to \$180,000; or
  - (b) aged 65 years old and over but under 75 years of age, and may contribute up to \$150,000.00 per annum in the 2013-2014 financial years (with no averaging to be



increased to \$180,000 in the 2014-2015 financial years) provided the Member satisfies the work test. The bring forward option remains at \$450,000 for that 3 year period.

- 2.16 Non-concessional contributions within the above limits will be tax free when contributed or withdrawn from the Fund. The earnings in the Fund on non-concessional contributions are taxed concessional at 15 per cent in the Fund.
- 2.17 Contributions made in excess of the non-concessional contributions cap are taxed at 47% for the 2014-2015 and later financial years (previously at 46.50%).
- 2.18 As specific rules apply and cap rates change over time Members should seek professional advice when making such contributions to avoid adverse taxation consequences.

### 3. BENEFITS OF INVESTING WITH THE FUND

- 3.1 Benefits, based on the value of the Member's Account, are payable to Members as a lump sum payment or pension or both as permitted by the Rules of the Fund and the Act and when a condition of release is satisfied. Until a condition of release is satisfied a Member cannot obtain access to the Member's Benefit.
- 3.2 A Member is not compelled to withdraw benefits from the Fund and they may remain in the Fund indefinitely. A Member may elect to transfer their benefit from the Fund to another Superannuation Entity. If the Trustee expels a Member from the Fund, at the Trustee's discretion, the Member's benefit will be paid to the Superannuation Entity nominated by the Member, and if none is nominated, to an Eligible Rollover Fund chosen by the Trustee.
- 3.3 The value of the Member's Account is calculated based on contributions made for a Member, increases or decreases in the value of the Fund's investments and accrued income on contributions and investments less payment of taxes, Fund expenses and investment losses.

#### 3.4 Retirement

On a Member's retirement (as defined by the SIS Regulations) or when turning 65 years, a Member will be entitled to payment of a Benefit calculated according to the value of the Member's Account.

Member benefits will be paid by the Trustees as permitted under SIS Act and Regulations in the form of a lump sum or a Pension or a combination of both.

#### 3.5 Pension Benefits

The Trustee may permit a Member to elect to receive their lump sum Benefit in the form of an income stream called a Pension.

Pensions paid by the Fund after 1 July 2007 will be account based pensions.

A person can commence an account based pension in accordance with the rules provided:

- (a) the total payments made annually must be at least the amount calculated using the applicable percentage amount (shown in the table below) of the pension account balance. There is no maximum limit on the amount of annual payments that can be made.

Age of member	Percentage of account balance in relevant Financial year			
	2007-08	2008-09 2009-10 2010-11	2011-12 2012-13	2013-14 onwards
Under 65	4%	2%	3%	4%
65-74	5%	2.5%	3.75%	5%
75-79	6%	3%	4.5%	6%
80-84	7%	3.5%	5.25%	7%
85-89	9%	4.5%	6.75%	9%
90-94	11%	5.5%	8.25%	11%
95 or more	14%	7%	10.5%	14%

\* Note these withdrawal factors are indicative only. Refer to pro-rating, rounding and other rules in the SIS regulations to determine precise minimum annual payments.

In response to the downturn in global financial markets, the government provided pension drawdown relief in 2008-09, 2009-10 and 2010-11 by halving the minimum payment

amounts. This relief was extended in 2011-12 and 2012-13 by reducing the minimum payment amounts by 25 per cent. The minimum payment amount returned to normal in 2013-14

- (b) an amount or percentage of the pension cannot be prescribed as being left over when the pension ceases;
- (c) the pension's capital value and the income from it cannot be used as security for borrowing;
- (d) the pension can be commuted;
- (e) the pension may be transferable to a Pension Dependant only on the death of the pensioner; and
- (f) the pension account balance cannot be increased by contributions or rollovers.

**3.6** A Transition to Retirement Pension may be paid to a Member who has reached their preservation age, as set out below, but continues to work. This pension is an account based pension that must meet certain other requirements, as follows:

- (a) total pension payments in any year must be no greater than 10% of the account balance at the start of that year; and
- (b) the pension cannot be commuted and taken as a lump sum until the member meets a condition of release of retirement (as defined in the SIS Regulations), death, Permanent Incapacity or attaining age 65.

**3.7** The preservation age depends on the date of birth of the Member as follows:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 to 30 June 1961	56
1 July 1961 to 30 June 1962	57
1 July 1962 to 30 June 1963	58
1 July 1963 to 30 June 1964	59
After 30 June 1964	60

**3.8** The Trustees may make available any other form of pension permitted by the Act.

**3.9** When a Member wishes to commence a Pension, the Trustee will outline the terms and conditions of the proposed Pension which on acceptance by the Member will be incorporated as a Rule of the Fund.

**3.10 Death Benefits**

**3.11** If a Member dies, a benefit is payable calculated according to the value of the Member's Account, and may include the proceeds of any relevant insurance policy taken out by the Trustees.

**3.12** In the absence of a valid Binding Death Benefit Nomination, the benefit will be payable to one or more of the Member's Dependants or the Member's estate in proportions determined by the Trustees.

**3.13** Members are able to notify the Trustees of one or more of the Member's Dependants or the Member's estate who they wish to be considered in the payment of the death benefit. Members can do so by providing the Trustees with a Non-Binding Death Benefit Nomination. The Trustees however are not bound by the wishes set out in this non binding nomination.

**3.14** Alternatively, Members may give a Binding Death Benefit Nomination to the Trustees nominating one or more of the Member's Dependants or the Member's estate to whom the Trustees will pay benefits on the Member's death. The Binding Death Benefit Nomination is binding on the Trustees.

**3.15** Both types of nominations can be updated at any time or withdrawn and should be revised if circumstances change – for example on marriage or having children.

**3.16** If a Member desires more certainty that death benefits will be paid in accordance with their wishes, then the Member can request that the Trustee establish a Death Benefit Rule ("DBR"). The Member provides a written request to the Trustee stating the amount, form and circumstances in which a

benefit is to be paid to nominated dependents. The Trustee must be satisfied that the request complies with the rules of the Fund and all relevant legislation. The Trustee cannot establish a DBR if it holds a valid Binding Death Benefit Nomination. Upon acceptance of the Member's request, the DBR is documented and incorporated as a rule of the Fund. The Member can amend and revoke a DBR at any time and it can only be revoked or amended with the consent of the Member.

- 3.17** A reversionary pension is a pension payable to a Member that reverts or automatically carries on after the Member's death in the name of the spouse or dependant. A reversionary pension has built in estate planning. The decision as to whom the pension is to be transferred is generally made at the time of commencement of the Pension. Pension documentation guides what happens on the death of the pension Member; not a Binding Death Benefit Nomination, Non Binding Death Benefit Nomination or DBR.

Pension rules prohibit the reversion or transfer of a pension to a dependant who is an adult child (25 or older) of the Member, unless the dependent has a specified permanent disability and is in need of ongoing support. This prohibition applies even if the dependent is named as a reversionary beneficiary of a pension which commenced under the previous rules. The pension rules specify that a pension (of any type) WILL NOT satisfy the rules if this occurs and the Trustee is not required to make a payment under a Pension if that payment results in the Fund becoming insolvent or causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

If the reversionary pension is effective, it will override the member's valid Binding Death Benefit Nomination or DBR, if any. If the reversionary pension is ineffective, the pension will be transferred to the person named to receive the member's death benefit in the member's valid Binding Death Benefit Nomination or DBR, if any. If that person is not entitled to be paid a pension the balance standing in the member's pension account will be paid in accordance with the member's valid Binding Death Benefit Nomination or DBR and if there is none, at the discretion of the Trustees of the Fund in accordance with the Fund rules.

- 3.18** Death benefits are tax free if paid as a lump sum to death benefit dependants (as defined by section 302.195 of the *Income Tax Assessment Act 1997*) of the Member. Tax is payable on lump sum payments to persons who are not death benefit dependants. The taxed element of a taxable component of a lump sum benefit paid to a non death benefit dependant will be taxed at 15 per cent plus Medicare levy. The untaxed element of a taxable component of a lump sum benefit paid to a non death benefit dependant will be taxed at 30 per cent plus Medicare levy.

- 3.19** Some persons who may qualify to receive a death benefit as a Dependant may be liable for tax on the benefit if they do not fall within the definition of a death benefit dependant.

- 3.20** Only a Pension Dependant (as specified in reg 6.21(2A) and 2(B) of the SIS Act) can apply to receive a death benefit as a pension, but the taxation treatment will depend on the age of the deceased Member and the Pension Dependant and whether the pension is paid from an element taxed or untaxed in the fund. For a pension paid from an element taxed in the fund:

- (a) if the deceased Member was aged 60 or over at the time of death, the pension payments to the Pension Dependant will be tax free;
- (b) if the deceased Member was under the age of 60 at the time of death, the pension will be taxed at the Pension Dependant's marginal tax rate and, if the Pension Dependant has reached their preservation age, is eligible for a tax offset equal to 15% of the taxable element of the taxable component. If (or when) the Pension Dependant is aged 60 and over, the pension payment will be tax free.

- 3.21** The tax treatment of death benefits paid as pensions or lump sum payments will depend on whether the recipient is a death benefit dependant as defined in section 302.195 of the Tax Act.

**3.22 Permanent Incapacity Benefit**

A Member who is Permanent Incapacitated may receive a benefit according to the value of the Member's Account, and may include the proceeds of any relevant insurance policy taken out by the Trustees.

**3.23 Temporary Incapacity Benefit**

In some cases an income stream benefit may be payable when a Member is Temporarily Incapacitated from the Member's Account or from the proceeds of an insurance policy if taken out by the Fund, to cover such an event.

### **3.24 Severe Financial Hardship**

Members may apply for benefits to be paid on the basis of the Member's severe financial hardship in circumstances prescribed by the SIS Regulations.

### **3.25 Compassionate Grounds**

A Member may apply to the Regulator for the release of benefits to the Member on compassionate grounds as set out in the SIS Regulations. A lump sum, not exceeding an amount determined by the Regulator will be paid to a Member if the Member satisfies the requirements of the SIS Regulations.

## **4. RISKS OF SUPER**

- 4.1** The Trustees or directors of a Corporate Trustee, (and therefore the Members because they are the Trustees or directors) have full responsibility for the management and administration of the Fund.
- 4.2** This includes the significant function to invest contributions made to the Fund on behalf of Members. The Trustees are required to formulate, regularly review and give effect to an investment strategy to meet the Fund's investment objectives taking into account relevant circumstances, but they do not guarantee the performance of the Fund or any particular investment.
- 4.3** The performance of the Fund will depend on the success or otherwise of the investment strategy together with external factors, such as prevailing or changing economic conditions and future changes in superannuation law. The way in which the Fund performs, will affect the value of Benefits a Member will receive from the Fund. Importantly, Superannuation legislation is constantly evolving and is subject to change.
- 4.4** All investments carry risk. Different investment strategies may carry different levels of risk depending on the assets that make up the strategy. There is no guarantee that investments will maintain their values and if the values decrease, this will reduce the value of the Member's Account. Assets with the highest long-term returns may also carry the highest level of short-term risk.
- 4.5** The level of risk for each Member will vary depending on their age, investment time frames, where other parts of the Member's wealth is invested and the Member's risk tolerance. The amount of a Member's future superannuation savings (including contributions and returns) may not be enough to provide adequately for the Member's retirement.
- 4.6** The Trustees may seek professional assistance in performing their management, administration and investment functions.
- 4.7** As control of the Fund rests with the Trustees, prospective Members should be aware that voting in Trustee meetings to make decisions regarding the administration, investment and management functions of the Fund is according to the method adopted for Trustees who are Members as set out in paragraph 5.4 below, or if the Trustee is a corporate Trustee, as discussed in paragraph 5.5 below.
- 4.8** Factors such as current labour standards, environmental, social or ethical matters are not taken into account in the selection, retention or realisation of investments.

## **5. HOW WE INVEST YOUR MONEY**

- 5.1** Members of the Fund, or their LPR, must be either Trustees of the Fund or directors of a corporate Trustee of the Fund
- 5.2** Trustees make decisions regarding the administration and management of the Fund, such as formulating, regularly reviewing and giving effect to the investment strategy and payment of Benefits to Members. Decisions will be made by Trustees at meetings.
- 5.3** The Trustees must comply with a number of strict duties and obligations specified in the SIS Act when making investment decisions. Failure to comply with the duties and obligations can result in the Trustees being subject to penalties and loss of complying status for the Fund.
- 5.4** Where the Trustees are persons, at the first Trustee meeting for the Fund the Trustees will decide whether
- (a) each Trustee at all meetings of Trustees will have the number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person

plus that amount in any Reserve which an actuary has determined is supporting that person's Member's Account in paying a Pension; or

- (b) each Trustee at all meetings of Trustees will only be entitled to one vote each and only on a deadlock will a Trustee have the number of votes equivalent to the nearest dollar amount of the Member's Account balance of the Member they represent and certain amounts in Reserve.

If the Trustees do not make a decision between 5.3(a) and (b) or fail to adopt a method of voting, 5.3(b) will apply to all meetings of Trustees. Notwithstanding the Rules, any voting rules in place prior to these Rules being adopted will continue to apply.

- 5.5 If the Trustee is a company, the constitution of the company will determine the voting power of directors and legal advice should be sought by prospective Members regarding the company's constitution and the voting rights that will apply to Trustee's decisions as meetings.
- 5.6 Current investment strategies of the Fund are set out in **Annexure 1 – "Investment strategies of the Fund"**.

## 6. FEES AND COSTS

- 6.1 The Trustee/s and the Director/s of the Corporate Trustee (other than an Approved Trustee) cannot charge the Fund fees for their services but can be reimbursed by the Fund for expenses incurred on behalf of the Fund in the management and administration of the Fund.
- 6.2 Fees and commissions may be paid by the Fund to the providers of financial products to the Fund where the Fund elects to invest in those financial products.
- 6.3 A fee may be paid by the Fund to a financial advisor if a financial advisor is consulted.
- 6.4 Any current fees payable in respect of the Fund are set out in **Annexure 2 – Fees and Costs**.

## 7. HOW SUPER IS TAXED

- 7.1 You must provide your correct tax file number when you join the Fund. If you do not do so, the Fund cannot accept contributions. Non tax file number contributions income attracts an additional tax of 32% from 2014-2015 and any contributions that are accepted by the Fund must be refunded to the Member.
- 7.2 The Fund will attract concessional taxation treatment provided it remains a Regulated Superannuation Fund and a Complying Self Managed Superannuation Fund.
- 7.3 Tax is payable by the Fund on deductible or concessional contributions to the Fund and investment earnings of the Fund.
- 7.4 Taxation of contributions and Benefits is complex and it is recommended that professional advice is sought from a taxation advisor.
- 7.5 Benefits paid from a taxed source either as a lump sum or pension will be tax free when paid to Members who are 60 years of age or older.
- 7.6 Superannuation benefits paid from a taxed source to Members who are under 60 years of age are subject to tax as follows:
  - (a) the exempt component will be paid tax free and comprises: the pre-July 83 component; the CGT exempt component; the post-June 1994 invalidity component; the concessional component and the non-concessional (post-tax) contributions;
  - (b) the taxable component comprises the current post-June 1983 component and the non qualifying component and is subject to varying rates of tax depending on the Member's age. If the Member is below their preservation age, the tax rate will be 20% plus Medicare levy on the whole amount. For Members of preservation age to age 59, from 2014/15 income year it will be paid tax free up to the low-rate cap amount of \$185,000.00 and amounts above the cap will be taxed at 15 per cent plus Medicare levy;
  - (c) the taxable component of a Pension paid to a Member who is under 60 years of age but has reached their preservation age, is taxed as assessable income and the Member is entitled to a pension rebate or tax offset equal to 15% of the taxable component of the pension; and

(d) once the Member receiving the Pension turns 60, their pension will be tax free;

7.7 Tax offsets may be available on certain contributions made for a non working or low income Member by the Member's spouse. Tax deductions may also be available for contributions by self-employed persons or by an employer for its employees.

**8. INSURANCE IN YOUR SUPER**

As part of the investment strategy, the Trustees are required to consider whether they should hold a contract of insurance for one or more Members of the Fund. If the Trustees of the Fund elect to hold such a contract of insurance, the Trustees are required to give particulars set out in **Annexure 3** to the Members of the Fund.

**9. HOW TO OPEN AN ACCOUNT AND ADDITIONAL INFORMATION**

**9.1 Becoming a Member**

A person wishing to become a Member of the Fund must complete and submit an Application Form to the Trustees and must have read and agreed to be bound by the Fund's Deed and Rules.

**9.2 Cooling off period**

- (a) There is no cooling-off period applicable to membership in this Fund.
- (b) Members can cancel their membership at any time; however, once contributions have been made to the Fund, it must be preserved in the superannuation system until a condition of release is satisfied.

**9.3 Dispute resolution**

- (a) The Trustees are bound to act in accordance with the Fund Deed.
- (b) Self managed superannuation funds are specifically excluded from the jurisdiction of the Superannuation Complaints Tribunal. Legal advice should be sought if Members are dissatisfied with the Trustees' decisions.

**9.4 Annual reporting**

Each financial year, the Trustees will prepare the Fund's accounts and Members' statements disclosing financial and other information required under the SIS Act and Regulations.

EXECUTED by  
Melinda Ann Grayson

.....  
Signature

25, 03, 2014  
.....  
Date

**ANNEXURE 1 – Investment strategies of the Fund**

1. Name of investment strategy:

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2. Description of investment strategy:

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3. Assets classes invested:

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4. Investment return objective:

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5. Minimum suggested time frame for holding the investment:

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6. The risk level of the investment strategy:

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## ANNEXURE 2 – Fees & Costs

### DID YOU KNOW?

Small differences in both investment performance and fees and costs can have a substantial impact on your long term returns.

For example, total annual fees and costs of 2% of your account balance rather than 1% could reduce your final return by up to 20% over a 30 year period (for example, reduce it from \$100 000 to \$80 000).

You should consider whether features such as superior investment performance or the provision of better member services justify higher fees and costs.

### TO FIND OUT MORE

If you would like to find out more, or see the impact of the fees based on your own circumstances, the Australian Securities and Investments Commission (ASIC) website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au)) has a superannuation or managed investment fee calculator to help you check out different fee options.

This document shows fees and other costs that you may be charged. These fees and costs may be deducted from your money, from the returns on your investment or from the assets of the managed investment scheme as a whole.

You should read all the information about fees and costs because it is important to understand their impact on your investment.

<b>Type of Fees &amp; Costs</b>	
<b>Fees when your money moves in or out of the Fund</b>	<b>Amount</b>
Establishment fee	N/A
Contribution fee	N/A
Withdrawal fee	N/A
Termination fee	N/A
<b>Management costs</b>	
The fees and costs for managing the Fund	\$
<b>Fees payable to financial advisors</b>	
Advisor service fees	\$

[Note: If there are service fees, such as advisor service fees or acquired financial product fees, you may include a cross reference to the document that contains the information.]



### **ANNEXURE 3 – Contract of Insurance**

1. If the Trustees of the Fund elect to hold a contract of insurance, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) describe, in the form of a summary, the main types of insurance cover that a person can acquire; and
  - (b) describe, in the form of a summary, how to apply for insurance cover; and
  - (c) include a statement to the effect that there are costs associated with insurance cover; and
  - (d) describe, in the form of a summary, who is responsible for paying the insurance costs and how they are calculated.
  
2. If the Trustees of the Fund offer insurance cover by default, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) describe, in the form of a summary, the level and type of cover; and
  - (b) state:
    - (i) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person's circumstances; and
    - (ii) who is responsible for paying the costs; and
  - (c) state whether a person can:
    - (i) decline to acquire the cover; or
    - (ii) cancel the cover; and
  - (d) state how a person can decline to acquire the cover or cancel the cover; and
  - (e) state whether a person can change the person's insurance cover; and
  - (f) state how a person can change the person's insurance cover; and
  - (g) state, in the form of a warning, that, unless a person declines to acquire the default insurance cover or cancels it, the cost of the cover will be deducted from the person's account or from the person's contributions (as applicable); and
  - (h) include information about eligibility for, and the cancellation of, the insurance cover; and
  - (i) include information about any conditions and exclusions that are applicable to the insurance cover.
  
3. If the Trustees of the Fund do not offer insurance cover by default, but offers insurance cover as an option, the Trustees are required to provide the following information to the Members of the Fund:
  - (a) the level and type of insurance cover available;
  - (b) the actual cost of the cover in dollars, or the range of costs that would be payable depending on a person's circumstances;
  - (c) eligibility for, and the cancellation of, the insurance cover;

- (d) conditions and exclusions that are applicable to the insurance cover;
- (e) other significant matter in relation to insurance cover, for example:
  - (i) Information about how a person can apply for the insurance cover.
  - (ii) Information about how a person can subsequently change or cancel the insurance cover.

**4.** The Trustee of the Fund:

- (a) may provide information in paragraph 2(h) and (i) and paragraph 3 above; and
- (b) may provide additional information about insurance cover;

by applying, adopting or incorporating a matter in writing.

**5.** If information about:

- (a) eligibility for, or the cancellation of, the insurance cover; or
- (b) any conditions and exclusions that are applicable to the insurance cover;

is provided for in accordance with paragraph (4), the Trustees must include a warning to the effect that the matter may affect a person's entitlement to insurance cover and that the information should be read before deciding whether the insurance is appropriate.

**6.** If information about:

- (a) the level and type of optional insurance cover available; or
- (b) the actual cost of the optional insurance cover in dollars, or the range of costs that would be payable depending on a person's circumstances; or
- (c) any other significant matter in relation to insurance cover;

is provided for in accordance with paragraph 4, the Trustees must include a warning to the effect that the information should be read before deciding whether the insurance is appropriate.