

Acquisition of Assets from Related Parties rule

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

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

In-House Assets Test

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

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

NowInfinity Guide – Rule 9 - Establishing a Reserve Account for the Fund

The Superannuation Laws authorise the Trustee to establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, a Pensions Reserve, an Income Stream Reserve and a Self Insurance Reserve if the Rules of the Fund allow. A Reserve Account is where the Trustee has set aside surplus Assets or Earnings of the Fund into an account which is not part of a Member's benefits. Providing the Superannuation Laws allow, the Rules of this Fund empower the Trustee at any time to establish one or more Reserve Accounts. These Accounts do not and never shall form part of the Fund's Member Superannuation Interests.

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

1. a Superannuation Income Stream or Pension Reserve Account – to fund current Superannuation Income Stream liabilities including a guarantee to pay an agreed rate of return on a Simpler Super Income Stream;
2. an "Anti-Detriment" Reserve Account - where a bonus or additional payment is made directly under the Simpler Super Rules to a Dependant of a deceased Member or the Legal Personal Representative of the deceased Member's Estate;
3. an Investment Reserve Account where the Trustee can allocate Earnings of the Fund. From this reserve the Trustee can populate other Reserve Accounts, make transfers to other Superannuation Funds or make Member Superannuation Benefit payments;
4. an expense Reserve Account where the Trustee can pay General and Specific expenses of the Fund;
5. an in-house assets Reserve Account where the Trustee can use the funds to lend to Members or related parties, acquire artwork and any other activity that would be classified as an in-house asset; and
6. a Contributions Reserve Account for short-term warehousing of Contributions for a term no greater than 28 days.

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

1. The source of surplus cash and Assets to be transferred to a particular Reserve Account including the transfer of cash or Assets from a Member Superannuation Interest to a Reserve Account or the receipt by the Trustee of an Authorised Contribution, Asset or investment which in the opinion of the Trustee is not an entitlement of a Member provided that any transfer or receipt is in accordance with the Superannuation Laws. This may include a distribution from a family trust or a gift to the Fund;
2. The Investment Strategy for the Reserve Account as required by the Superannuation Laws;
3. How, when and for what purpose amounts held in a particular Reserve Account are to be applied by the Trustee including the payment of any Superannuation Benefits in the event of the Member's Retirement, Temporary or Permanent Incapacity, Terminal Illness or as a Death Benefit;and
4. Whether the Reserve is to be used to pay out expenses of the Fund including, but not limited to, administration, General Expenses, insurance expenses, any Specific Expenses and the payment of Superannuation Income Streams and/or Lump Sums to Members or other entitled persons such as Dependants.

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

Part Two – Some Important Planning Considerations

Purpose

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

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

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

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

NowInfinity Guide – Rule 10 - Creating a Member SMSF Living Will

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

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

Permanent Incapacitated.

A Member may also suffer a Terminal Illness where two registered medical practitioners, including a specialist practising in the area of the Member's illness or injury, have certified, jointly or separately, that the person suffers from an illness or has incurred an injury that is likely to result in the death of the person within a period (the **certification period**) that ends not more than 12 months after the date of the certification.

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

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

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

1. The various components of the Member SMSF Living Will meet with the Superannuation Laws;
2. The Rules of the Fund allow any, some or all of the components of the Member SMSF Living Will; and
3. The Fund has the resources to fund the Member SMSF Living Will.

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

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

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

The opportunity of legal challenge is reduced when Death Benefits are not paid or payable to the Legal Estate of a deceased Member by the Trustee of a Complying SMSF, but directly to a beneficiary as specified by the deceased Member. This may not, however, have the best outcome generally for the beneficiary – as it may be more appropriate to direct the Death Benefit to the Estate.

The payment of Superannuation Death Benefits are not subject to the provisions of the Member's Will – unless specifically paid to the Legal Personal Representative of the deceased Member's Estate.

Accordingly, a SMSF Will can be of major strategic value to the Members of a Complying SMSF. The taxation benefits of Death Benefits paid to Dependants and the Legal Personal Representative of the deceased Member's Estate are outlined in the Product Disclosure Statement to the Simpler Super Rules.

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

1. The provision of a Superannuation Lump Sum – by way of cash or Assets to Dependants;

2. the Legal Personal Representative of the deceased Member's Estate;
3. The payment of a Superannuation Income Stream to Dependants (as defined for taxation purposes) of a deceased Member; and
4. The payment of a Reversionary Superannuation Income Stream to a Dependant. This is the continuation of an existing Superannuation Income Stream that was payable to a deceased Member of the Fund.

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

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

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

The Trustee is required to the Member's Non- Lapsing Binding Death Benefit Nomination and/or SMSF Will. This is subject to the availability of the Member's Superannuation Interests, the Superannuation Laws and the Rules of the Fund.

It is highly advisable that a Member seek specialist legal and financial advice before making a Binding Death Nomination, Non-Lapsing Binding Death Benefit Nomination and/or SMSF Will of any form.

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

Insurance plays an important part in the creation and maintenance of a SMSF Estate in the event of a Member's death and/or SMSF Living Will. As such, the Trustee may seek to establish an Insurance Strategy for the Fund for the benefit of the Trustee and the Fund's Members. The Insurance Strategy may provide for, but is not limited to, Superannuation Lump Sum or Superannuation Income Stream cover provided by an insurance company, friendly society or any other entity for the Trustee in the event of a Member's death or incapacity. This may be the case even where the Trustee is not required to pay a Death or Incapacity Superannuation Benefit to a Member.

In effecting any Insurance Strategy, the Trustee should take into account the financial requirements of the Fund in the event that a Member dies or becomes incapacitated and the Trustee is required to independently Fund a Death or Incapacity Superannuation Benefit. The Trustee may enter into a Contract for Life Insurance which includes, but is not limited to, policies for whole of life, endowment, salary replacement, trauma, risk, accident, total and permanent disability or any other insurance policy issued by a life insurance company, friendly society or other insurance entity either domestically or internationally.

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

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

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

in a SMSF;

2. Determine the scope of the Fund's Self Insurance requirements. These include the risk events to which the self-insurance will apply, which Members are to receive any Superannuation Benefits from the Self Insurance Reserve Account, the amount of the Superannuation Benefits to be paid and how they are to be paid to a Member, their Dependant or Legal Personal Representative;
3. Establish a Self Insurance Reserve Account to meet the contingencies of a Member payment event; and
4. Provide a separate Investment Strategy for the Self Insurance Reserve.

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

Part Three - Rules to Maintain and Operate the Fund

Purpose

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

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

NowInfinity Guide – Rule 13 - Fund Assets, Contracts and Transactions to be in Trustee's name

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

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

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

NowInfinity Guide – Rule 14 - Trustee Responsibilities

In addition to being a Superannuation Fund, the Fund is primarily a trust. It is the Trustee's duty and responsibility to act as a fiduciary on behalf of the Members of the Fund who are beneficiaries of the trust. It is also the Trustee's duty to ensure that the Fund remains at all times both a SMSF and a Complying SMSF and does not breach the Superannuation Laws.

The Trustee, in the discharge of its duties, should appoint SMSF Professionals, undertake continuing training in Superannuation Law and have an intimate knowledge of the Fund's Membership and investment strategy.

Additionally, the Trustee must ensure that the Fund's compliance requirements and responsibilities are met in accordance with both the Superannuation Laws and the Regulator. The Superannuation Laws or the Regulator may require the Trustee to undertake training or education on the Trustee's compliance responsibilities. It is the Trustee's task to fulfil any such requirements.

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

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

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

NowInfinity Guide – Rule 15 - Trustee Powers

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

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

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

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

NowInfinity Guide – Rule 16 – Trustee Meetings and Decision Making

The Trustee is required to hold a Trustee Meeting in order to make decisions about

significant events to transpire in relation to the Fund. Significant events are those events that impact upon the status of the Fund and its Members.

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

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

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

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

NowInfinity Guide – Rule 17- Trustee to keep Accounts

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

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

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

NowInfinity Guide – Rule 18 - Fund Earnings

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

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

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

Method 3 - Income Method: any amounts received as income plus any realised capital gains and at the Trustee's discretion any allocations from a Reserve Account less any

disbursements the Trustee determines that should be deducted from income including any General or Specific Expenses; or

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

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

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

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

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

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

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

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

1. preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;
2. the untaxed taxable, taxable or tax free components as required by the Superannuation Laws.

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

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

The Product Disclosure Statement for the Simpler Super Rules notes that where the Trustee of the Fund retains Assets specifically to pay a current Superannuation Income Stream, any income or capital gains realised from a current Superannuation Income Stream's Assets are tax exempt.

The Trustee is also required to adhere to any Member's Excess Contributions Tax Release Authority. This is where the Member has been assessed by the Regulator to pay excess Concessional or excess Non-Concessional Contributions tax. This is not an impost on the Trustee but one that the Trustee must give effect to under the Superannuation Laws.

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

NowInfinity Guide - Rule 22 – Contributions Splitting

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

NowInfinity Guide - Rule 23 – Family Law

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

NowInfinity Guide – Rule 24 - Member Meetings

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

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

Part Four – Paying Superannuation Benefits from a Member Superannuation Interest

Purpose

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

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

1. Temporary Incapacity - only as a Temporary Incapacity Superannuation Income Stream;

2. Permanent Incapacity – as a Superannuation Lump Sum or a Superannuation Income Stream;
3. While working and at preservation age – as a Transition to Retirement Superannuation Income Stream;
4. Retirement – a Superannuation Lump Sum or a Superannuation Income Stream;
5. Age 65 – a Superannuation Lump Sum or a Superannuation Income Stream;
6. Terminal Illness - as a Superannuation Lump Sum or a Superannuation Income Stream; and
7. Death - Superannuation Lump Sums or a Superannuation Income Stream, subject to the Superannuation Laws.

NowInfinity Guide – Rule 25 – Accessing Member Superannuation Benefits

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

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

1. Temporary Incapacity and Permanent Incapacity;
2. Terminal Illness;
3. Retirement or at aged 65;
4. Under Severe Financial Hardship or on Compassionate Grounds;
5. When a Member reaches Preservation Age and can commence a Transition to Retirement Income Stream;
6. On the death of a Member of the Fund, numerous Superannuation Laws apply to the payment of Death Benefit Superannuation Lump Sums and Death Benefit Superannuation Income Streams. The Trustee shall pay due regard to any Member SMSF Will in making any Death Benefit payments. Benefits that may be paid at the time of the death of a Member include, but are not limited to:
 - a) a Superannuation Lump Sum may be paid on the death of a Member to a Dependant, the Legal Personal Representative of the deceased Member's Estate, charity or public benevolent institution; and
 - b) Superannuation Income Stream may be paid to a Dependant for taxation purposes which includes all those persons who are Dependants but in the case of a Child, only a Child who is aged less than 18 unless they were financially dependent upon the deceased Member. Where an Income Stream is paid to a Child in accordance with the Superannuation Laws, it must be commuted no later than the 25th birthday of the Child.

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

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

NowInfinity Guide – Rule 26 – Use of a Guardian

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

Part Five – Other Special Events

NowInfinity Guide – Rule 27 – Winding up the Fund

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

1. On the death of the last remaining Member of the Fund any replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;
2. The Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders the Fund is to be wound up;
3. The Superannuation Laws are amended such that the Fund can no longer remain a Complying SMSF and the Members agree to wind up the Fund; and
4. The Trustee simply resolves that the Fund is to be wound up.

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

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

NowInfinity Guide – Rule 28 – Changing the Funds Name or Rules

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

There may also be Special Rules of the Fund that have been put in place regarding Assets

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

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

– currently 21 days.

Part Six – Rules Definitions

Purpose

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

MINUTES OF MEETING TO ESTABLISH THE OPERATION OF MITTING FAMILY SUPER FUND

DATE:

PRESENT:

Jeffrey Mark Mitting and Jodie Kathleen Moffat

HELD AT:

79 Perseus Road, SILVER SANDS, WA 6210.

CHAIRPERSON:

Jeffrey Mark Mitting was appointed Chairperson of the meeting.

TABLE A MOTION TO ESTABLISH THE OPERATIONS OF THE FUND:

The Chairperson tabled a motion to establish the administrative platforms and appoint the relevant service providers in respect to the Fund's administration, which Fund shall be known by the name of: **Mitting Family Super Fund** by:

1. applying to become a regulated complying self-managed superannuation fund;
2. applying for an Australian Business Number and a Tax File Number for the Fund;
3. establishing a cash account (such as a cash management trust) or cheque account for the fund as a clearing account for contributions and monies received and benefits and monies paid. Monies need to be deposited into this account as soon as practicable to cater for the running expenses of the Fund;
4. appointing an administrator and/or accountant to the Fund. The administrator and/or accountant's role is to provide information and reports as required under any administration agreement between the Trustee of the Fund and the administrator;
5. appointing an auditor to the Fund. The Superannuation Laws provide that an auditor must be appointed to the Fund on a yearly basis to provide an assessment of the Fund's compliance with the Superannuation Laws. The appointment should be in writing and evidenced by a Trustee minute to appoint an auditor.

TRUSTEE RESOLUTIONS:

IT WAS RESOLVED by the Trustee to complete the following:

1. establish a cash account and deposit funds in the account to be held in the name of the Trustee;
2. notify the ATO of the Fund's intent to become a regulated self-managed superannuation fund as well as completing ABN and TFN forms to be filed with the ATO;
3. formulate and implement an investment strategy of the Fund in accordance with section 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994*;
4. appoint relevant professionals including, where required, an accountant, administrator, auditor, SMSF expert, SMSF investment expert and any other professional.
5. accept Jeffrey Mark Mitting and Jodie Kathleen Moffat as initial Members of the Fund.

MEETING CLOSED:

SIGNED BY THE CHAIRPERSON:



Jeffrey Mark Mitting

Dated: 15 Dec 16

APPLICATION OF MEMBERSHIP TO MITTING FAMILY SUPER FUND

I, **Jeffrey Mark Mitting of 79 Perseus Road, SILVER SANDS, WA 6210**, hereby apply for membership of the Fund. I agree, upon acceptance of my membership, to:

1. be bound by all of the Governing Rules of the Fund, a copy of which is at the office of the Trustee;
2. be bound by all decisions of the Trustee of the Fund including decisions that may impact upon my membership benefits provided those decisions are made in accordance with the Governing Rules of the Fund, the Superannuation Laws, the Trustee Laws and that they do not detrimentally impact my benefits;
3. provide information to the Trustee where required, including medical information enabling the Trustee to facilitate any death or incapacity insurance on my behalf;
4. provide my tax file number to the Trustee, provided the Trustee abides by the laws relating to the collection and dissemination of my tax file number;
5. consent to the Trustee to hold my private information despite anything to the contrary in the *Privacy Act 1988 (Cth)*;
6. provide the Trustee, within a reasonable period of time a detailed estate plan that may include a binding death benefit nomination or request for a death benefit rule to be made on my behalf;
7. ensure that at the time of making any superannuation contributions that those contributions are made in accordance with the Superannuation Laws; and
8. notify the Trustee when I become incapacitated, retired, meet an alternate condition of release of my superannuation interests in accordance with the Superannuation Laws, or if I become divorced.

DATE OF BIRTH: 04 August 1960
TFN: 628 491 313



Jeffrey Mark Mitting

Dated: 15 Dec 16

APPLICATION OF MEMBERSHIP TO MITTING FAMILY SUPER FUND

I, **Jodie Kathleen Moffat of 79 Perseus Road, SILVER SANDS, WA 6210**, hereby apply for membership of the Fund. I agree, upon acceptance of my membership, to:

1. be bound by all of the Governing Rules of the Fund, a copy of which is at the office of the Trustee;
2. be bound by all decisions of the Trustee of the Fund including decisions that may impact upon my membership benefits provided those decisions are made in accordance with the Governing Rules of the Fund, the Superannuation Laws, the Trustee Laws and that they do not detrimentally impact my benefits;
3. provide information to the Trustee where required, including medical information enabling the Trustee to facilitate any death or incapacity insurance on my behalf;
4. provide my tax file number to the Trustee, provided the Trustee abides by the laws relating to the collection and dissemination of my tax file number;
5. consent to the Trustee to hold my private information despite anything to the contrary in the *Privacy Act 1988 (Cth)*;
6. provide the Trustee, within a reasonable period of time a detailed estate plan that may include a binding death benefit nomination or request for a death benefit rule to be made on my behalf;
7. ensure that at the time of making any superannuation contributions that those contributions are made in accordance with the Superannuation Laws; and
8. notify the Trustee when I become incapacitated, retired, meet an alternate condition of release of my superannuation interests in accordance with the Superannuation Laws, or if I become divorced.

DATE OF BIRTH: 28 April 1966
TFN: 143 268 002



Jodie Kathleen Moffat

Dated: 15/12/16

