

SMSF TRUST DEEDS

Variation of SMSF Trust Deed Rules

Pro Fish Super Fund

SMSF Strategies Trust Deed and Governing Rules prepared by:

SMSF Strategies Pty Ltd
Phone: 07 5630 6548
Fax: 07 5630 6531
Email: admin@smsfstrategies.com

Minutes of the meeting to vary the rules of Pro Fish Super Fund

Date: 13/10/09

Attended by:

By the director of Pro Fish Super Investments Pty Ltd - ACN: 139 519 43 of 97 Noosa Drive, Noosa Heads, QLD 4565 as Trustee for the Pro Fish Super Fund.

Present:

Annie Jarrett.

Held at:

97 Noosa Drive, Noosa Heads, QLD 4565.

Chairperson:

Annie Jarrett was appointed Chairperson of the meeting.

Table a Motion to vary the Governing Rules of the Fund:

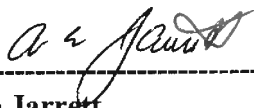
The Chairperson tabled a motion to amend the governing rules of the **Pro Fish Super Fund** by deed. The director of the Corporate Trustee for the Fund attests to the fact that the funds Trust Deed and its Rules cannot be found. However the director of the Corporate Trustee notes that the Rules provided for a variation by deed with the Trustee's consent provided member's benefits are not reduced. The purpose of the amendment is to enable the Trustees and the Members to take advantage of the Simpler Super reforms by adopting the SMSF Strategies governing rules as the governing rules of the fund.

Trustee Resolutions:

IT WAS RESOLVED to adopt the variation to the governing rules by replacing the rules as tabled before the meeting.

Meeting Closed:

Signed by the Chairperson:



Annie Jarrett

Deed of Variation

Executed as a Deed on: 13/10/09

Background:

1. The Trustee act as Trustee of the Pro Fish Super Fund (“the Fund”).
2. Annie Jarrett is the Member (“the Member”) of the Fund.
3. The Fund was established by deed dated **1 July 1994** (“the Deed”).
4. The director of the Corporate Trustee for the Fund attests to the fact that the funds Trust Deed and its Rules cannot be found. However the director of the Corporate Trustee notes that the Rules provided for a variation by deed with the Trustee’s consent provided member’s benefits are not reduced. The purpose of the amendment is to enable the Trustees and the Members to take advantage of the Simpler Super reforms by adopting the SMSF Strategies governing rules as the governing rules of the fund.
5. The amendment to the Rules of the Fund effected by this Deed does not result in a resettlement of the Fund at law, equity or under any Superannuation Law.
6. The Trustee wish to amend the Deed by substituting in place of the existing Rules those Rules (“the New Rules”) in the form annexed and marked “Annexure A” to this Deed.

Adoption of New Rules:

The existing rules of the Fund are replaced in their entirety with the New Rules as marked Annexure A to this Deed.

Signed by the director of Pro Fish Super Investments Pty Ltd – ACN: 139 519 43 as Trustee for Pro Fish Super Fund:



Annie Jarrett

Annexure A

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The SMSF Strategies Rules

Part One – Rules to Establish the Fund

Rule 1 – Things to know about these Rules and the Fund

- 1.1 The “**SMSF Strategy Guides**” in the Explanatory Memorandum to the Rules of the Fund is designed for information purposes only and is not to be construed as forming part of the Rules of the Fund. If in any dispute, misunderstanding or action regarding the Rules, the Trustee, Court, the Regulator or any other person may have regard to the “**SMSF Strategy Guide**” or any part of the Explanatory Memorandum to determine the Rule’s ordinary meaning.
- 1.2 Where singular is used in the Rules it is to also mean plural and if a gender is used it is also to mean the opposite gender.
- 1.3 A reference to any entity, body, company or person also includes a reference to those persons or entities that have authority to act on behalf of the party including their successors, assigns, representatives, Responsible Officers, a person holding someone’s Power of Attorney, Enduring Power of Attorney and a Legal Personal Representative.
- 1.4 Where a word is Capitalised it may be found in the “Definitions” Rule in Part Six of the Simpler Super Rules.
- 1.5 The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia. If the Trustee resides outside Australia or the Trustees reside in different Australian States then the governing law is that chosen by the Trustee and if not chosen by the Trustee it is the governing law of the State of NSW.
- 1.6 Where the term “SMSF” is used it means a “Self Managed Superannuation Fund” as defined in the Superannuation Laws.
- 1.7 Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or non-compliance certificate or adverse determination by the Regulator for the Trustee, Fund or Member.
- 1.8 The Rules may allow the Trustee to add to, vary, change or otherwise amend a Rule of the Fund. Any such addition, variation, change or amendment, provided it meets the relevant Rule variation requirements, is to be considered part of the original Rule. The Trustee may also create an additional Rule for the Fund where authorised under the Rules of the Fund. Any additional Rule may become a Special Rule of the Fund and will not be varied by any variation of these Rules unless the Trustee consents.
- 1.9 In accordance with Rule 1.7 and the requirement for the Trustees of the Fund to ensure that the Fund remains a complying SMSF, the Rules are written as being subject to the Superannuation Laws. Where the Trustee or any other person enters into a transaction, undertaking, agreement, understanding or any other arrangement that has the effect of the Trustee breaching the Superannuation Laws or being deemed a non-complying SMSF by

the Regulator as a consequence of the Trustee's or other persons action, the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered void ab-initio.

- 1.10** The core and ancillary purposes of the Fund, the Fund's Sole Purpose test, are to provide retirement, incapacity, sickness, death and any other benefits allowed by the Superannuation Laws to members of the Fund or to Members, former Members or for any other charitable purpose on the wind up of the Fund.

Rule 2 - Trusteeship of the Fund

- 2.1** At all times there must be a Trustee of the Fund commencing from the appointment of the Initial Trustee of the Fund. The Trustee may be one or more individuals or a company acting as Trustee of the Fund. Where the Trustees are individuals, the primary purpose of the Fund is to pay Income Streams to Members of the Fund unless otherwise authorised by the Superannuation Laws or the Regulator.
- 2.2** If the Trustee is a company, then any director of the Trustee Company must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws. If the Trustee is an individual they must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws.
- 2.3** The Trustee must ensure that, while these Rules are in force, the Fund is maintained as a Complying SMSF and a regulated superannuation fund including but not limited to meeting the membership and trustee standards as they apply at the time for a SMSF under the Superannuation Laws.
- 2.4** The Trustee of the Fund may resign at any time. The Trustee may appoint a new Trustee provided the Fund remains a Complying SMSF including a Replacement Trustee or an Additional Trustee. The Trustee, Replacement Trustee or Additional Trustee must consent to their appointment, not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws and agree to abide by the Rules of the Fund, the Superannuation Laws and ensure the Fund remains a complying SMSF.
- 2.5** Any Trustee is to be removed as Trustee under one or more of the following conditions:
- a) the Trustee resigns and a new Trustee has been appointed if required to ensure that the Fund remains a SMSF indefinitely;
 - b) where the Trustee is of the opinion that the continued appointment of the Trustee will result in the Fund becoming a non-complying SMSF;
 - c) if the Trustee is prohibited from being a Trustee under the Superannuation Laws or where the Regulator otherwise determines including where the Trustee is a Disqualified Person;
 - d) where the Trustee, Replacement Trustee or Additional Trustee is a person, where the Member that the Trustee, Replacement Trustee or Additional Trustee acts for is no longer a Member of the Fund.

- 2.6 The Trustee agrees to be bound by the Rules of the Fund, the Superannuation Laws and any direction the Regulator may provide if reasonable.
- 2.7 The Trustee or Member may be required at relevant times to notify or make a declaration to the Regulator or some other person of events, things, happenings or changes to the Fund. The Trustee or Member will ensure that it seeks to meet any such notification or declaration requirement in the specified time required.
- 2.8 Where the Fund is determined by the Regulator to no longer be a SMSF or the Trustee decides not to retain the Fund's SMSF status, the Trustee is to immediately resign and an RSE Licensee is to be appointed or all Members Superannuation Interests are to be rolled over to another regulated Superannuation Fund.
- 2.9 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, when a Member dies:
- a) The deceased Member's Legal Personal Representative, subject to their consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;
 - b) At the commencement of the payment of the Member's Death Benefits to the deceased Member's Dependants or their Legal Estate the Replacement Trustee appointed on behalf the deceased Member must resign;
 - c) If the Corporate Trustee has appointed the deceased Member's Legal Personal Representative as a director they are to be removed once Death Benefits commence to become payable to the deceased Member's Dependants or their Legal Estate. If the Corporate Trustee does not remove the deceased Member's Legal Personal Representative upon the payment of the deceased Member's Death Benefits then the Corporate Trustee is to be replaced as Trustee.
- 2.10 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, when a Member loses their mental capacity and is no longer able to function as a Trustee of the Fund:
- a) The mentally incapacitated Member's Legal Personal Representative, subject to their consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;
 - b) The Replacement Trustee is to have the same voting powers as the Member if they were acting as Trustee.

Rule 3 – Membership of the Fund

- 3.1 Any person or entity with the consent of the Trustee may become a Member of the Fund provided the Superannuation Laws allow and the Fund retains its status as a Complying SMSF. The Trustee must not accept a Member to the Fund if the person's Membership would result in the Fund no longer being a SMSF.
- 3.2 The Trustee may:

- a) impose terms and conditions for Members joining the Fund including but not limited to future Members.
 - b) establish different classes of Membership if so desired. Prior to establishing a new class of Membership, existing Members must be notified of the new class of membership and the associated rights, entitlements and benefits attached thereto. The Trustee may classify, in writing that recipients of Pension benefits are a separate class if so desired.
 - c) Limit the persons who may become or be Members of the Fund with any such amendment to be by way of a variation to the Rules of this Fund in accordance with Rule 26.
- 3.3** On becoming a Member of the Fund the Member must agree to abide by the Rules of the Fund. This includes but is not limited to acting as Trustee or director of the Corporate Trustee where required, providing a Member's Tax File Number and any other information the Trustee may require. The Member must adhere to any other requirements that may be necessary of Members joining a Complying SMSF.
- 3.4** The Legal Personal Representative of a Member including a deceased Member is deemed to be the Member for the purposes of the Rules and therefore holds all rights and entitlements of the Member or a deceased Member.
- 3.5** The Member, on joining the Fund agrees to have read and understood the Fund's Product Disclosure Statement.
- 3.6** A Member ceases to be a Member of the Fund, subject to the Trustee's discretion and the Superannuation Laws upon the earliest of any of the following to occur:
- a) The Member Rolls Over or transfers all of their Superannuation Interests to another complying Superannuation Fund unless the Trustee otherwise allows the Member to remain as a Member;
 - b) The Member dies and the Trustee has commenced to pay out Death Benefits to the Member's Legal Personal Representative or Dependents. In these circumstances the deceased Member's Legal Personal Representative will cease to be a Member of the Fund;
 - c) Five months has elapsed since the Member was capable of being a Trustee of the Fund or a director of the Corporate Trustee unless the Member has appointed a Replacement Trustee;
 - d) In the opinion of the Trustee the Member is a Disqualified Person;
 - e) The Trustee declares that a Member should cease being a Member where the Member's continued Membership may cause the Fund to lose its Complying SMSF status or for any other reason including the effective operation of the Fund or to ensure the Fund remains a SMSF;

- f) The Member is a party to proceedings or any agreement pursuant to the Family Law Act 1975 or equivalent legislation for de facto relationships under Commonwealth, State, Territory or a foreign law and the Trustee is of the opinion that the Member should cease being a Member of the Fund;
- g) When the Member no longer has any Superannuation Interest in the Fund and the Trustee determines that the Member should no longer be a Member of the Fund;
- h) If the Superannuation Laws, the Regulator or a Court requires the Member to cease their Membership of the Fund;
- i) Where the Trustee is of the opinion that for the benefit of the Fund the Member should cease their Membership of the Fund.

3.7 Where a Member ceases Membership of the Fund, the Trustee must resolve to pay the Member their Superannuation Interest as a Superannuation Benefit and/or Transfer Superannuation Interest within a reasonable time or as otherwise required under the Superannuation Laws.

3.8 If, upon cessation of Membership of the Fund, a Member is required to Rollover or transfer their Superannuation Benefits the Trustee must request from the transferring Member notification of the complying status of the transferee Superannuation Fund. The request must include a demand for a response from the departing Member within a reasonable period of time or such other time as is required under the Superannuation Laws. If the departing Member does not respond to the Trustee's requirements within a reasonable time, or such other time as the Superannuation Laws require, the Trustee may transfer the transferring Member's Superannuation Benefits to an Eligible Rollover Fund.

3.9 Any transfer, rollover or Superannuation Benefit payment must be made by the Trustee within any time required under the Superannuation Laws or alternatively within a reasonable period of time.

3.10 A Member or the Trustee may declare, for any income year, that a Member is not an Active Member for Australian superannuation fund purposes.

Rule 4 – Becoming an Operating Regulated SMSF

4.1 Upon establishment of the Fund and the initial appointment of the Trustee, the Trustee is to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws.

4.2 As soon as practicable the Trustee must take such actions, appoint such SMSF Professionals as required including an Auditor, a SMSF Adviser, deal with the Regulator and do all things necessary to make the Fund operational as a Complying SMSF including obtaining a tax file number .

Rule 5 – Creating and Transferring Member Superannuation Interests

- 5.1 The Trustee may, at the request of a Member, the Member's Legal Personal Representative or at the Trustee's discretion, create one or more Superannuation Interests on behalf of a Member or for the benefit of the Fund.
- 5.2 The Superannuation Interest created may include a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest, a Reserve or any other Superannuation Interest allowed under the Superannuation Laws.
- 5.3 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the Trustee may hold one or more Superannuation Interests on behalf of a Member.
- 5.4 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Member Superannuation Interest does not have to commence or be maintained with any Assets.
- 5.5 A Member may request the Trustee to transfer a Member Income Stream Superannuation Interest Roll Back amount to a Member Lump Sum Superannuation Interest. Unless otherwise allowed under the Superannuation Laws and requested by the Member this will not create a new Superannuation Interest.
- 5.6 Where the Member requests the transfer of a Member Lump Sum Superannuation Interest to commence a new Member Income Stream Superannuation Interest, notwithstanding that the Member may have an existing Member Income Stream Superannuation Interest, this will create a new Superannuation Interest where the Trustee decides a new Superannuation Interest is to be created and that the Superannuation Laws allow.
- 5.7 Where the Trustee transfers an amount between Superannuation Interests the Trustee may satisfy the transfer amount by allocating assets between the Member's Superannuation Interests equal in value to the transfer amount.

Rule 6 – Accepting Member Contributions, Rollovers and Transfers

- 6.1 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may accept an Authorised Contribution, a Rollover Superannuation Benefit or a Transfer Superannuation Interest on behalf of a Member or for the Fund from a Trustee of a Superannuation Fund, a Foreign Superannuation Fund, an employer, a Spouse, a Relative or any other person or entity.
- 6.2 The Authorised Contribution, Rollover Superannuation Benefit or any Transfer Superannuation Interest may be by way of Cash, Assets or in kind provided the Superannuation Laws allow and the Fund retains its Complying SMSF status. Where an Authorised Contribution is made by way of one or more Assets or in kind the Trustee is to determine a value for the Contribution under the Superannuation Laws or as required by the Regulator.
- 6.3 The Superannuation Laws may provide a maximum Contribution limit for Non-Concessional Contributions, Concessional Contributions and No-Tax File Number Contributions made on behalf of a Member during an income year or a period. Where such limits are prescribed the Trustee is to take into account the limit and any consequences when accepting any Contribution.

- 6.4 Where any contribution or part of a contribution has been made to the Fund which is subsequently held by the Trustee or Regulator to exceed the Member's Concessional or Non-Concessional Contributions Cap, the excess is deemed to be held by the Trustee in trust for the benefit of the contributor and is not to become Assets of the Fund.

Rule 7 - Creating an Investment Strategy for the Fund and Members

- 7.1 The Trustee of the Fund must formulate and give effect to an Investment Strategy for the Fund that meets the Superannuation Law requirements for a complying SMSF.
- 7.2 The Trustee may at any time create a separate Investment Strategy on behalf of one or more Member Superannuation Interests or Fund Accounts including a Reserve Account.
- 7.3 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the Trustee may at the request of a Member, but subject to the Trustee's discretion, establish a separate Investment Strategy for a Member Superannuation Interest. The Trustee may acquire a specific Asset on behalf of a Member Superannuation Interest provided the Member Superannuation Interest has sufficient resources to do so and the Superannuation Laws allow.
- 7.4 The Trustee may, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, transfer Assets between Investment Strategies and also between Superannuation Interests in the Fund. Any such transfer will be at a value to be determined by the Trustee or as required by the Superannuation Laws or the Regulator.
- 7.5 Where the Trustee has established a Reserve Account in the Fund the Trustee must formulate and give effect to an Investment Strategy for the Reserve Account in accordance with the Superannuation Laws. If there is more than one Reserve Account established for the Fund the Trustee may maintain a separate Investment Strategy for each Reserve Account, for one or more Reserve Accounts or for all Reserve Accounts in the Fund.
- 7.6 The Trustee may alter an Investment Strategy for the Fund, an Account of the Fund, a Superannuation Interest or Reserve Account at any time.
- 7.7 Where the Trustee has received a Contribution of Cash or Assets that breaches any Investment Strategy of the Fund, the Investment Strategy subject to receipt of the Contribution is deemed to be amended to encompass the cash or Asset Contribution until such time as the Trustee decides otherwise.
- 7.8 The Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings. The Trustee is to comply with any such requirements to ensure the Fund remains a Complying SMSF.

Rule 8 - Making Investments for the Fund and Members Benefit

8.1 The Trustee must invest the Cash and Assets of the Fund in accordance with an Investment Strategy. Any investment is to meet the Superannuation Laws, any relevant Trustee Law and ensure that the Fund retains its Complying SMSF status.

8.2 Provided the Superannuation Laws allow the Trustee may acquire and invest in any Asset or Cash wherever situate in or outside Australia including, but not limited to the following:

- a) Stocks and shares and other equity interests of any entity (including a company), units in a unit trust both private and public with an investment to include preference, convertible preference shares and units or any other type of equity, unit or hybrid equity instrument in an entity;
- b) Property either as a passive investment or for development purposes, sale or rental income purposes directly, indirectly or by way of joint venture, partnership, unit trust or trust provided that the property is not encumbered and the Trustee does not provide a guarantee in respect of any direct or indirect loan agreement incidental to the property unless the Superannuation Laws allow. In instigating any property transaction, the Trustee must ensure that the documentation relating to the transaction, including any indirect, joint venture or partnership interest, satisfies the Fund's Audit Standards as well as the Superannuation Laws. These include, but are not limited to, an appropriate valuation;
- c) Financial products including instalment warrants, SMSF borrowing trusts, options, futures, warrants, endowment warrants, unit trusts, property syndicates, joint ventures, hybrid trusts, pooled superannuation trusts and other instruments that provide the Trustee with a reward on its investment;
- d) Debt instruments including government and corporate bonds, mortgages, chattel leases, fixed term deposits, hybrid debt instruments and any other type of instrument where the investor receives an interest type of return;
- e) Discount investments where the Members of the Fund may obtain a discount on services under an agreement with a third party provided that the return available on the investment is the same as that which would be obtained by an investor not able to participate in the discount unless the Superannuation Laws or Regulator allow and that the investment does not cause the Trustee to breach the Superannuation Laws;
- f) Art, sculpture, wine or any other collectible;
- g) A business including share trading, property development or primary production provided the investment in the business does not breach the Sole Purpose Test, the Fund's Audit Standards or the Superannuation Laws;
- h) Intellectual property including a trade mark, copyright, licence, patent. The holding of the intellectual property may be direct, indirect, as part of a joint venture or as an interest by way of a licence;
- i) A Superannuation Income Stream or annuity from a life insurance company, Superannuation Fund, financial institution, trust, body corporate or person;

- j) A life insurance or friendly society bond or other investment including but not limited to an endowment, whole of life or other investment policy issued by any life insurance company wherever situate;
- k) Any managed fund, managed investment scheme, collective investment vehicle, trust or unit trust including a pooled superannuation trust provided the investment does not breach the Superannuation Laws;
- l) Entering into any joint venture, partnership, association or co-operative provided the Trustee assesses the risk of the venture and in particular the cash flow requirements and legal nature of the venture;
- m) Any other investment including a prudent investment under Trust Law;
- n) Assets of a Member of the Fund, Related Trust or a Related Party of a Member conditional upon the acquisition of the investment not breaching the Superannuation Laws;
- o) Instalment warrant and other SMSF borrowing arrangements as authorised under the Superannuation Laws from time to time including section 67 of the Superannuation Industry Supervision Act 1993;
- p) The investment in any financial or investment product that meets the conditions of the Sole Purpose Test and sections 66, 67, 84,85 and 109 of the Superannuation Industry Supervision Act 1993;

provided that the acquisition, investment and holding of the Asset is in accordance with the Fund's or Superannuation Interest's Investment Strategy whichever is relevant and in addition, the acquisition, investment and holding of the Asset does not breach the Superannuation Laws, including the Sole Purpose Test or the In-House Assets test.

8.3 The Trustee may acquire, hold and invest in any currency including maintaining a non-AUD\$ cash account.

8.4 Subject to any requirements under the Superannuation Laws or by the Regulator and to ensure that the Fund retains its Complying SMSF status, the Trustee may at any time determine the value of an Asset of the Fund but is otherwise not compelled to do so.

Rule 9 - Establishing a Reserve Account for the Fund

9.1 The Trustee may 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. Any Reserve Account may be for the benefit of current, past and future Members, their dependants, Legal Estate or the Trustee.

9.2 The Trustee must formulate an Investment Strategy for any Reserve Account in accordance with Rule 7. The Investment Strategy may be for one or more Reserves.

- 9.3 The Trustee may make additional Rules regarding the use, purpose and payment of Superannuation Benefits, General or Specific Expenses or for any other thing from any Reserve Account. Any Rule the Trustee makes regarding a particular Reserve Account may be declared by the Trustee to be a Special Rule.
- 9.4 The Trustee, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, may add by way of Cash or Assets to a Reserve Account from any Member Superannuation Interest, any other account of the Fund, any other Reserve Account, from Earnings or from any other source including another Superannuation Fund, trust or entity.
- 9.5 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may deduct and allocate from any Reserve Account of the Fund any amount or asset. Such amount or asset may be applied in whole or part for the benefit of any Superannuation Interest, to pay any General or Specific Expense of the Trustee or the Fund, to be added to another Reserve Account in the Fund or any other Superannuation Fund, to be added to any other account or Superannuation Interest, to be added to Fund or Superannuation Interest Earnings, make a Transfer Superannuation Interest to another Superannuation Fund or the Fund itself, to fund directly from the Reserve Account a Member Lump Sum Superannuation Interest or Member Income Stream Superannuation Interest, pay a Death Benefit or for any other purpose.
- 9.6 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, any trust distributions, insurance policy proceeds, other distributions, windfall gains, winnings or gifts that the Trustee does not declare as Earnings or Authorised Contributions of any Account or Member Lump Sum Superannuation Interest may be allocated to a Reserve Account. The Trustee has sole discretion as to which Reserve Account these amounts are to be added to.
- 9.7 No Member, Dependant of a Member, deceased Member, the Member's Legal Personal Representative or a deceased Member's Legal Estate has any right or entitlement to a Reserve Account unless so authorised under the Rules of the Fund.

Part Two – Some Important Planning Considerations

Rule 10 – Creating a Member SMSF Living Will

- 10.1** A Member may provide a Trustee with a Member SMSF Living Will detailing any Superannuation Benefits requested to be paid in the event of the Member's Temporary or Permanent Incapacity, Terminal Illness or other incapacity event whereupon a Member may be paid Superannuation Benefits from the Fund without breaching the Superannuation Laws or the Sole Purpose Test.
- 10.2** Subject to the Superannuation Laws, the Fund retaining its Complying SMSF status and the Rules of the Fund, the Trustee may accept some or all of the Member's requests under the Member SMSF Living Will including the category of Incapacity Superannuation Benefits to be paid, the amount to be paid, to whom the Incapacity Superannuation Benefits are to be paid and the Member's Replacement Trustee, however, the Trustee is not compelled to do so.
- 10.3** If the Trustee formally accepts some or all of a Member's SMSF Living Will, then at the discretion of the Trustee, the terms and conditions of the Member SMSF Living Will so accepted may become a Special Rule of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status.
- 10.4** The Trustee may determine whether the Member SMSF Living Will Rule can be varied and in what circumstances, provided the Superannuation Laws allow and the Fund retains its Complying SMSF status.
- 10.5** The Trustee and Member may seek to appoint a SMSF Professional prior to making any formal request or acceptance of a Member's SMSF Living Will.

Rule 11 – Creating a Member SMSF Estate Plan and SMSF Will

- 11.1** A Member may provide, subject to the Superannuation Laws, a Trustee with a request for a SMSF Will that includes non-binding and non-lapsing binding nominations as well as directions to the Trustee. The Member SMSF Will may provide written direction to the Trustee requesting:
- a) The manner and form in which Death Benefits will be paid in the event of the Member's death to one or more beneficiaries including Dependants of the Member, the Member's Legal Estate or such person as otherwise allowed to receive a Member's Death Benefits under the Superannuation Laws..
 - b) The amount or amounts of the Death Benefit to be paid to one or more beneficiaries in the event of a Member's death including the transfer of part or the whole of any Fund Asset in satisfaction of the payment of an amount of Death Benefit.
 - c) The terms and conditions upon which a beneficiary is to receive a Death Benefit from the Member's SMSF Estate including whether the Death Benefit is to revert to another

person, Legal Estate or entity in the event of the beneficiary's death, incapacity or the happening of a particular event.

- d) Whether the written directions in the SMSF Will are in part or whole, a Non-Binding Death Benefit Nomination or a Non-Lapsing Binding Death Benefit Nomination..

Any SMSF Will direction by a Member to the Trustee is only valid in part or whole to the extent it meets the requirements of the Member making a Non-Binding Death Benefit Nomination or a Non-Lapsing Binding Death Benefit Nomination under these Rules and the Superannuation Laws.

- 11.2** Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee of the Fund may accept part of or the entire Member SMSF Will request, however, the Trustee is not obligated to do so.
- 11.3** If the Trustee accepts part of or the entire Member SMSF Will, solely at the Trustee's discretion, the terms and conditions of the Member SMSF Will may become a Special Rule of the Fund subject to the Superannuation Laws and the Fund retaining its Complying SMSF status. The Trustee may determine whether any Rule created for a Member SMSF Will can be varied and under what circumstances.
- 11.4** The Trustee and Member may first obtain expert advice from a SMSF Specialist adviser prior to making any formal request or acceptance of a Member's SMSF Will.

Rule 12 – Creating an Insurance Plan and Insurances in the Fund

- 12.1** The Trustee of the Fund may create an Insurance Plan for the Fund, a Member of the Fund or any Superannuation Interest in the Fund. The Trustee is not bound by the Insurance Plan nor can any Member, Dependant of a Member, Legal Personal Representative of a Member or any other person hold the Trustee liable for not implementing all or part of the Fund's Insurance Plan.
- 12.2** Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee of the Fund may enter into any Contract of Life Insurance both within and outside Australia issued by any life insurance company, friendly society or other entity that provides insurance to Trustees or Members of a SMSF.
- 12.3** The Trustee of the Fund is authorised to create a Self Insurance Reserve Account with such terms and conditions as the Trustee decides provided that the Superannuation Laws allow and the Trustee maintains an Investment Strategy for the Self Insurance Reserve Account.
- 12.4** No Member, Dependant of a Member, Legal Personal Representative of a Member or any other person has any interest in any Contract of Life Insurance or Self Insurance Reserve Account held by the Trustee even where it may be held in the name or for the benefit of the Member unless required by the Superannuation Laws.
- 12.5** Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may distribute, transfer or otherwise deal with any proceeds or distribution payable from or pursuant to a Contract of Life Insurance as the Trustee sees fit including

an allocation to any Member Lump Sum Superannuation Interest, Member Income Stream Superannuation Interest, a Dependant of a Member or a deceased Member, the Member's Legal Personal Representative, the Member's Legal Estate or a Reserve Account.

- 12.6** No Member, Dependant of a Member, Legal Personal Representative of a Member or any other person has any interest in the proceeds or distribution from a Contract of Life Insurance or Self Insurance Reserve Account.

Part Three - Rules to Maintain and Operate the Fund

Rule 13 – Fund Assets, Contracts and Transactions to be in Trustee’s Name

- 13.1 The Trustee is to hold all Assets of the Fund in the name of the Trustee however a Custodian may hold an Asset on behalf of the Trustee provided the Superannuation Laws allow. Where there is a change in name of the Trustee or a change in Trustee, the Trustee, as soon as practicable, must register all of the Fund’s assets to reflect the change of name of the Trustee.
- 13.2 Any contract, transaction or agreement of whatever nature undertaken by the Fund must be in the name of the Trustee.
- 13.3 No Member, Dependant of a Member or deceased Member, the Member's Legal Personal Representative, a deceased Member's Legal Estate, an Employer Sponsor or Related Party of the same has any right, entitlement to any Asset of the Fund or may enter into any contract, transaction or agreement of whatever nature with the Fund unless the Superannuation Laws allow and the Fund continues to retain its Complying SMSF status.
- 13.4 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 that the Fund may be 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.

Rule 14 – Trustee Responsibilities

- 14.1. It is the responsibility of the Trustee, at all times, including under any Trustee Law to:
- a) ensure that the Fund remains a Complying SMSF;
 - b) ensure that the Fund Trust Deed and Rules remain current;
 - c) act honestly in all matters concerning the Fund;
 - d) exercise, in all matters affecting the Fund and its Members, the same degree of care, skill and diligence as any normal prudent Trustee;
 - e) ensure that the Trustee’s duties and powers are performed and exercised in the best interests of Members of the Fund;
 - f) not enter into any contract, transaction or agreement or do anything that would prevent or hinder the Trustee in suitably performing or exercising the Trustee’s functions and powers;

- g) disclose any conflict of interest in any dealing with or undertaking any transaction or investment on behalf of the Fund;
- h) provide to Members access to all and any information required to be given or viewed by Members under the Superannuation Laws but subject to the Privacy Act 1988;
- i) be aware of all and any changes to the Superannuation Laws to ensure that the Fund remains at all times a Complying SMSF;
- j) ensure the efficient administration of the Fund including, but not limited to, the payment of all taxes, excess contributions taxes and other imposts that must be paid by the Fund and the lodgement of all compulsory documentation to the Regulator in respect of the Fund and ensure that the Fund meets its Superannuation Law compliance responsibilities;
- k) keep all records, documents and minutes of valid Trustee meetings to enable the efficient administration and audit of the Fund by the Auditor and the Regulator so as to comply with all Superannuation Laws in respect of the keeping of records, documents and minutes for the Fund;
- l) notify the Regulator, in accordance with the provisions of the Superannuation Laws, of significant events and other events that occur in the Fund including any change in Trustee where required. The Trustee is to notify the Regulator of these events within the time period required;
- m) not seek to delegate Trustee powers and responsibilities under the Rules of the Fund or the Superannuation Laws unless otherwise permitted;
- n) keep informed of the Superannuation Laws and if required by the Superannuation Laws or the Regulator, undertake any education or other mandatory or voluntary knowledge requirements.

14.2 The Trustee must not be paid or otherwise receive any remuneration for acting or carrying out its responsibilities as Trustee of the Fund unless otherwise permitted under the Superannuation Laws and/or any determination by the Regulator.

14.3 Where required by the Superannuation Laws the Trustee may hear any complaint by a Member or their Legal Personal Representative regarding the Member's Superannuation Interest or Superannuation Benefit. The Trustee must attend to the complaint in a timely manner and respond to the complainant in an appropriate method.

Rule 15 - Trustee Powers

15.1 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee has unlimited powers as to the administration and control of the Assets of the Fund. The administration and control of the Assets of the Fund by the Trustee are identical to those as if the Trustee were the legal and beneficial owner of those Assets. These include the right 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 including a Member's Superannuation Interest or a Reserve Account.

15.2 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee has all the powers that a Trustee has at law and all the powers specifically conferred on the Trustee by these Rules including, but not limited to:

- a) **engage SMSF Professionals and other advisers:** to employ or engage agents or professionals in the execution of transactions, undertakings, acquisitions, disposal and other powers of the Trustee and to transact any business or to do any act required to be done in connection with the administration of the Fund including a SMSF Auditor 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;
- b) **enter into contracts and undertake transactions:** to enter into contracts, undertakings and other transactions for the benefit of the Fund and its Members whatsoever and wheresoever situate;
- c) **open Bank and cash accounts:** to open in the name of the Fund, any cheque, savings, cash or other bank account with any bank, financial institution or managed fund wherever situate, as the Trustee decides, with full power to operate or close any such account;
- d) **acquire Corporate or Trust securities:** with respect to any company or trust in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise all of the powers authorised under the constituent and any other relevant documents concerning the powers of equity, debt and other interest holders of the entity;
- e) **acquire Insurance Policies:** to effect or acquire policies of insurance from entities within or outside Australia of any kind on the life of any Member or in respect of sickness, incapacity, trauma 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;
- f) **deal with real property:** to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, maintain, improve, re-lease or vary any right or easement or otherwise deal with any interest in real property;
- g) **enter into lease arrangements:** 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;
- h) **lease property owned by the Fund:** to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules and the Superannuation Laws 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;

- i) **lend money:** subject to the Superannuation Laws and the Fund retaining its Complying SMSF status to lend and advance moneys;
- j) **borrow money:** subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, to borrow or raise any financial accommodation or Assets including under an instalment warrant or other borrowing arrangement authorised pursuant to section 67 of the Superannuation Industry Supervision Act 1993 or the Superannuation Laws, and to assign, pledge, mortgage or charge any of the Fund as security for such financial accommodation;
- k) **enter into futures contracts and options:** both within and outside Australia to buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, to place bids, make offers, hedge and effect orders including buying, selling, 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 so as to operate on, utilise or deal with the facilities of any stock or futures exchange no matter where situate provided the Trustee maintains a risk management strategy if required under the Superannuation Laws;
- l) **deal with personal property:** to acquire, dispose of, exchange, hire, lease, maintain, improve, mortgage or otherwise deal with any interest in personal property;
- m) **deal with intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulae, licences, 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 licences in respect of or otherwise turn to account the property rights or information so acquired;
- n) **obtain agencies 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 provide the said agency, licence or business does not breach the "Sole Purpose Test" or the Superannuation Laws;
- o) **pay management expenses:** to pay out of the Assets, Reserve Accounts or the Earnings of the Fund all costs charges and expenses incidental to the management and operation of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- p) **pay General Expenses:** to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any Assets of the Fund from the Assets, Reserve Accounts or the Earnings of the Fund and to manage such Assets and effect improvements and repairs as the Trustee may consider necessary or advisable;

- q) **set aside money in the Fund:** to set aside out of the Earnings of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt, tax or obligation due or accruing;
- r) **deal with itself:** notwithstanding any rule or law or equity to the contrary, 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;
- s) **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;
- t) **receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a will, SMSF 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;
- u) **instigate 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;
- v) **trade in foreign currency:** to undertake, contract, carry out or do anything including acquiring Assets in a foreign currency;
- w) **exercise all other 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;
- x) **Power to appoint an Attorney:** the Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- y) **Indemnities:** To give indemnities to or on behalf of any person the Trustee thinks fit;
- z) **Custodian:** to appoint any person as Custodian to hold legal title for any Asset acquired or to be acquired by the Trustee under such terms as the Trustee thinks fit.

15.3 The Trustee, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, may create one or more SMSF's with the same Rules, Members and Trustee including a Cloned SMSF.

- 15.4 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee is to be indemnified from the Assets of the Fund for any loss, damages or award against the Trustee arising from their role as Trustee of the Fund.
- 15.5 The Trustee is not authorised to carry out any transaction, undertaking, contract, business, investment or any other thing that would breach the Superannuation Laws and result in the Fund becoming a non-Complying SMSF. Any such transaction, undertaking, contract, business, investment or thing is rendered null and void ab-initio.

Rule 16 – Trustee Meetings and Decision Making

- 16.1 The Trustee is to hold a Trustee Meeting where any significant event, transaction, acquisition or disposal or other event directly related to the Fund is proposed. These matters include, but are not limited to, those that relate to an Asset of the Fund, Superannuation Interest, Investment Strategy, Reserve Account, Superannuation Benefit, Member of the Fund or where otherwise required under the Superannuation Laws.
- 16.2 There is no requirement for formal notice of a Trustee Meeting. However every Trustee or a Director of the Company that is Trustee must be afforded the opportunity of participating in the Trustee Meeting where possible.
- 16.3 A quorum for a meeting is where at least 50% of all available Trustees attend the Trustee Meeting.
- 16.4 For each decision by the Trustee or Replacement Trustee at a Trustee Meeting the Trustee or Replacement Trustee is to hold that number of votes equal to \$1 per vote in respect of the total Member Superannuation Interest Entitlements they represent as last recorded by the Trustee. Any Additional Trustee is to be provided with the number of votes as prescribed by the sole Member Trustee. The Trustees may at any Trustee Meeting, in accordance with the proportional voting rule, decide upon the appropriate voting arrangements to apply for that Trustee Meeting, any matter to be determined in the Trustee Meeting or in respect of any future Trustee Meetings or matters to be decided upon in those meetings.
- 16.5 A Trustee Meeting shall be valid where attendance by a Trustee is by telephone, by the internet, by way of circulating minute, facsimile or any other form where all Trustees are provided with the opportunity of attending, discussing and determining the items of the Trustee Meeting agenda and where a vote is cast.
- 16.6 A resolution shall be passed where more than 50% of the votes available at the Trustee Meeting vote in favour of the resolution.
- 16.7 Subject to the Superannuation Laws and despite Rule 16.4, at any Trustee Meeting dealing with a deceased Member's Death Benefits or a Member's Incapacity Superannuation Benefits only the Member's Legal Personal Representatives or Member whilst alive and legally capable and competent may vote on any resolution dealing with the deceased or incapacitated Member's Superannuation Interest, Death Benefits or Superannuation Benefits.

- 16.8 The Trustee of the Fund is to record and maintain all decisions of the Trustee for at least ten years unless otherwise required under the Superannuation Laws.

Rule 17 - Trustee to keep Accounts

- 17.1 At the Trustees' discretion the Trustee of the Fund is authorised to create various Accounts for the Fund including but not limited to Fund cash flow statements, operating statements, Fund Balance Sheets, Earnings accounts, Reserve Accounts and Member Superannuation Interests. The Trustee, however, must keep those Accounts as required under the Superannuation Laws.
- 17.2 The Trustee is to maintain accounts for the Fund, the Fund's Superannuation Interests, any Fund Reserve Account and for any other Account created by the Trustee and make additions and deductions from such Accounts according to the Rules of the Fund or the Superannuation Laws as required.
- 17.3 For accounting purposes the Trustee may determine the Value of the Assets of the Fund or a Member's Superannuation Interest at any time or as required by the Regulator or pursuant to the Superannuation Laws.
- 17.4 The Trustee is to determine, where required by the Superannuation Laws or the Regulator, a Member's Superannuation Interest Entitlement.
- 17.5 The Trustee may also keep records regarding the preservation status, the Tax-Free and the Taxable Components of any Member Superannuation Interest.
- 17.6 The Trustee must appoint an Auditor each income year and ensure that the Fund's Accounts are audited in accordance with any Audit or Accounting Standards and the Superannuation Laws.
- 17.7 The Trustee of the Fund must keep records and accounts of the Fund for at least five years or for such other time as the Superannuation Laws or the Regulator requires.

Rule 18 - Fund Earnings

- 18.1 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, at any time the Trustee may determine and declare the Earnings for one or more of the following Accounts:
- a) the Fund;
 - b) a Member's Superannuation Interest;
 - c) a group of Members' Superannuation Interests;
 - d) a Reserve Account; or,
 - e) any other Account or group of Accounts in the Fund.

18.2 The Trustee has sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where to allocate any Earnings of an Account including to a Member Superannuation Interest, a Reserve Account or any other Account of the Fund.

Rule 19 – Accounting for a Member Lump Sum Superannuation Interest

19.1 The Trustee of the Fund may establish an Account for a Member Lump Sum Superannuation Interest created on behalf of a Member under Rule 5.2.

19.2 The Trustee may determine at any time in relation to a Member Lump Sum Superannuation Interest the amount that is:

- a) preserved, unrestricted non-preserved, restricted non-preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;
- b) the taxable component including the element untaxed in the fund and in addition the tax free components as required by the Superannuation Laws.

19.3 Subject to the Superannuation Laws, the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee at its discretion may add to the Member Lump Sum Superannuation Interest the following amounts:

- a) Authorised Contributions made on behalf of the Member to the Fund;
- b) an allocation of Earnings according to Rule 18.2;
- c) allocations made by the Trustee from any of the Fund Reserve Accounts according to Rule 9.5;
- d) a Transfer Superannuation Interest made to the Fund or within the Fund on behalf of a Member;
- e) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Lump Sum Superannuation Interest;
- f) any amounts allocated to the Member Lump Sum Superannuation Interest by the Trustee from insurance policy proceeds under Rules 12.5;
- g) a Member Income Stream Superannuation Interest Roll Back amount;
- h) a refund of Excess Contributions Tax;
- i) a Contributions Splitting Amount from a Spouse;
- j) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- k) such other amounts that, at the Trustee's discretion, should be added to the Member Lump Sum Superannuation Interest.

19.4 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may deduct from the Member Lump Sum Superannuation Interest any of the following amounts:

- a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees incurred by the Trustee that in the Trustee's opinion should be deducted from the Member Lump Sum Superannuation Interest;
- b) a proportion of the General Expenses of the Fund or any Specific Expenses that the Trustee of the Fund determines should be deducted against the Member's Lump Sum Superannuation Interest;
- c) any Taxes or Tax Adjustment Payments that the Trustee determines should be deducted from the Member Lump Sum Superannuation Interest;
- d) insurance premiums for the payment of insurance requirements for the Member including life, disability, accident, salary continuance or trauma insurances that, in the opinion the Trustee, should be deducted from a Member Lump Sum Superannuation Interest;
- e) any Superannuation Lump Sum payment made by the Trustee on the death, Permanent Incapacity, Temporary Illness, Retirement, termination of employment, turning age 65 or for any other purpose for the benefit of the Member themselves, their Dependants, Legal Personal Representative or Legal Estate in the event of either the Member's death or Incapacity;
- f) any amount transferred to a Member Income Stream Superannuation Interest for the purpose of commencing or adding to a Member Income Stream Superannuation Interest;
- g) any Excess Contributions Tax or payment required under a properly issued Release Authority;
- h) a Contributions Splitting Amount to a Spouse;
- i) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- j) any amount allocated from the Member Lump Sum Superannuation Interest to a Reserve Account provided the allocation is in accordance with the Superannuation Laws;
- k) any other amounts the Trustee determines should be deducted from the Member's Lump Sum Superannuation Interest.

Rule 20 - Accounting for a Member Superannuation Income Stream Superannuation Interest

- 20.1** The Trustee of the Fund may establish an Account for a Member Income Stream Superannuation Interest created on behalf of a Member under Rule 5.2.
- 20.2** The Trustee may determine at any time in relation to a Member Income Stream Superannuation Interest the amount of the Income Stream that is the taxable component including the element untaxed in the fund as well as the tax free component.
- 20.3** Subject to the Superannuation Laws, the Fund retaining its Complying SMSF status and subject to the Rules of the Fund, the Trustee may add to the Member Income Stream Superannuation Interest:
- a) any allocation of Earnings according to Rule 18.2;
 - b) allocations made by the Trustee from any of the Fund Reserve Accounts under Rule 9.5;
 - c) a Transfer Income Stream Superannuation Interest made to the Fund on behalf of a Member;
 - d) any tax refunds or Tax Adjustment Payments allocated by the Trustee to the Member Income Stream Superannuation Interest;
 - e) any amounts allocated to the Member Income Stream Superannuation Interest by the Trustee from insurance policy proceeds under Rule 12.5;
 - f) an amount from a Member Lump Sum Superannuation Interest to commence a Superannuation Income Stream;
 - g) any amount transferred from another Member Income Stream Superannuation Interest or Reserve Account for the purpose of commencing a Superannuation Income Stream;
 - h) any Excess Contributions Tax refund;
 - i) such other amounts, at the Trustee's discretion, that should be added to the Member Income Stream Superannuation Interest.
- 20.4** Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may deduct from the Member Income Stream Superannuation Interest any of the following amounts:
- a) administration, audit, actuarial, legal, valuation, SMSF Professional, investment advisory or other professional expenses and fees incurred by the Trustee that, in the Trustee's opinion, should be deducted from the Member Income Stream Superannuation Interest;

- b) a proportion of the General Expenses of the Fund or any Specific Expenses including any Superannuation Income Stream payments made by the Trustee of the Fund for the benefit of the Member;
- c) any Taxes or Tax Adjustment Payments that the Trustee determines should be deducted from the Member Income Stream Superannuation Interest;
- d) insurance premiums for the payment of insurance requirements for the Member or any of their Dependant Members including life, disability, accident, salary continuance or trauma insurances that, in the opinion of the Trustee, should be deducted from the Member's Income Stream Superannuation Interest;
- e) any Superannuation Lump Sum payment made by the Trustee representing the commutation of a Member Income Stream as a consequence of a Member's request to commute the Income Stream or on the Member's death, Incapacity or as otherwise allowed under the Superannuation Laws;
- f) any amount transferred to another Member Income Stream Superannuation Interest for the purpose of commencing a Superannuation Income Stream;
- g) any Member Income Stream Superannuation Interest Roll Back amount;
- h) any Excess Contributions Tax or payment required under a properly issued Release Authority;
- i) a Contributions Splitting Notice amount allotted to a Spouse;
- j) a payment pursuant to the Family Law Act 1975 including a payment as a result of separation or divorce from a Spouse and a payment under a Family Law Payment Splitting Notice;
- k) any amount allocated from the Member Income Stream Superannuation Interest to a Reserve Account provided the allocation is in accordance with the Superannuation Laws;
- l) any other amounts the Trustee determines should be deducted from the Member's Income Stream Superannuation Interest.

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

- 21.1** The Trustee must pay all Taxes, duties, charges, fees and Taxes relating to the Fund's Assets, Earnings, and Contributions or on any other taxable consequence in accordance with the Superannuation Laws.
- 21.2** The Trustee is not personally liable for any taxation liability assessed to the Fund.
- 21.3** The Trustee has sole discretion as to whether any Taxes are a General Expense or a Specific Expense and which Superannuation Interests will be charged and the extent of any such charge provided any such determination is in accordance with the Superannuation Laws.

- 21.4 Where the Trustee receives an Excess Contributions Tax Release Authority on behalf of a Member, the Trustee is to give effect to the conditions, requirements and terms of the Excess Contributions Tax Release Authority. This must be in the time specified and simultaneously ensure that any other Trustee compliance or other requirement for a Complying SMSF in respect of Excess Contributions Tax Release Authorities are met in accordance with the Superannuation Laws.
- 21.5 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may receive tax refunds and has the sole discretion as to which Superannuation Interest or Reserve Account to add any tax refund irrespective of the source of the tax refund.
- 21.6 Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may make a Tax Adjustment deduction to a Superannuation Interest where the Trustee is of the opinion that a Superannuation Interest has benefited from the use of a tax benefit sourced from another Superannuation Interest. However, it is not mandatory for the Trustee to do so.

Rule 22 – Contributions Splitting

- 22.1 At any time, provided the Superannuation Laws allow, the Trustee may receive a Contributions Splitting Notice by a Member in relation to an Authorised Contribution made on behalf of the Member to the Fund.
- 22.2 The Contributions Splitting Notice must be in accordance with the Superannuation Laws or as prescribed by the Regulator. Any notice must only deal with those Authorised Contributions allowed to be split to a Spouse under the Superannuation Laws.
- 22.3 The Contributions Splitting Notice may detail the amount to be Allotted, Rolled Over or Transferred as a Transfer Superannuation Interest to a Member's Spouse. Subject to the Superannuation Laws, the Trustee may make the relevant contributions split by allocating, rollover or transferring assets of the Fund in satisfaction of the contributions split.
- 22.4 The Trustee is to action the Contributions Splitting Notice within a reasonable period of time and no later than the time prescribed by the Superannuation Laws or the Regulator.

Rule 23 – Family Law

- 23.1 The Trustee may receive a Family Law Payment Splitting Notice by the Courts in relation to a Member's Superannuation Interests.
- 23.2 The Family Law Payment Splitting Notice must be in accordance with the Superannuation Laws and must only deal with those matters, requirements and obligations allowed under the Superannuation Laws.
- 23.3 The Trustee is to make such accommodation to the Member whose Superannuation Interests are being split under the Family Law Payment Splitting Notice in terms of:

- a) which of the Member's Superannuation Interest the Family Law Payment Splitting Notice is best utilised to meet the requirements of the notice;
- b) whether the amount to be split to the Member's Spouse is preserved, unrestricted non-preserved, restricted preserved or such other type of Superannuation Benefit as the Superannuation Laws allow;
- c) which Assets of the Fund may be utilised to meet the terms of the Family Law Payment Splitting Notice.

23.4 The Trustee is to action the Family Law Payment Splitting Notice within a reasonable period of time and no later than the time prescribed by the Courts, Superannuation Laws or the Regulator.

Part Four – Paying Superannuation Benefits from a Member Superannuation Interest

Rule 24 – Accessing Member Superannuation Benefits

24.1 The Trustee is authorised to pay out a Superannuation Lump Sum or Superannuation Income Stream from a Member Superannuation Interest where the Member meets a Condition of Release in accordance with the Superannuation Laws. However, only Superannuation Benefits permitted in conjunction with the relevant Cashing Restriction for that Condition of Release are authorised to be paid by the Trustee to the Member or any other person allowed pursuant to the Superannuation Laws.

24.2 Specific Benefits Payable by the Trustee of the Fund

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, without limiting the powers of the Trustee under Rule 24.1 of the Fund, the following Superannuation Benefits may be paid by the Trustee:

- a) where the Member, in the Trustee's opinion, is Temporarily Incapacitated, they may commence a Temporary Incapacity Superannuation Income Stream until such time as the Member is no longer Temporarily Incapacitated;
- b) where the Member, in the Trustee's opinion, is Permanently Incapacitated, they may take a Superannuation Lump Sum and/or commence a Superannuation Income Stream at any time;
- c) where the Member is Terminally Ill they may take a Superannuation Lump Sum and/or commence a Superannuation Income Stream at any time;
- d) where the Member is Retired they may take a Superannuation Lump Sum and/or commence a Superannuation Income Stream at any time;
- e) where the Member is aged 65 they may take a Superannuation Lump Sum and/or commence a Superannuation Income Stream at any time;
- f) where a person who is a Member of the Fund dies, a Superannuation Lump Sum and/or a Superannuation Income Stream to a person or other entity authorised under the Superannuation Laws;
- g) where the Member leaves the employment of an employer, or any of whose associates have at any time contributed into the Fund on behalf of the Member, they may take a Lump Sum and/or Income Stream as prescribed by the Superannuation Laws;
- h) where the Member has reached preservation age and commences a Superannuation Income Stream authorised under the Superannuation Laws for Members over preservation age including a Transition to Retirement Income Stream;

- i) where the Member meets the conditions of Severe Financial Hardship the Trustee may pay a Superannuation Lump Sum to the Member as authorised under the Superannuation Laws;
- j) where, as authorised by the Regulator, the Trustee may pay a Superannuation Lump Sum to a Member on Compassionate Grounds;
- k) where the Member has commenced an Income Stream Superannuation Interest, subject to the terms and conditions of the Income Stream Superannuation Interest, any Rule of the Fund or the Superannuation Laws, a Lump sum may be taken from the Income Stream Superannuation Interest at any time, including upon the death of the Member;
- l) where any other Superannuation Lump Sum, Superannuation Income Stream or other payment authorised under the Superannuation Laws or by the Regulator.

24.3 Excess Contributions Tax Release Payments

The Trustee, if required under an Excess Contributions Tax Release Authority issued in respect of a Member, must pay to a Member or the Regulator, within the time prescribed by the Superannuation Laws, the amount prescribed under the Excess Contributions Tax Release Authority.

24.4 Rollovers and Transfers

Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the Trustee may Rollover a Superannuation Lump Sum, a Superannuation Income Stream or make a transfer of a Transfer Superannuation Interest for the benefit of a Member to an Eligible Entity.

24.5 SMSF Death Benefits

Where a person who is a Member of the Fund dies, the Trustee is to adhere where possible and if Fund cash flow allows, to any Member SMSF Will or Non-Lapsing Binding Death Benefit Nomination. This includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the payment of Superannuation Lump Sums and Superannuation Income Streams to the deceased Member's Dependants, the Member's Legal Personal Representative or the deceased Member's Legal Estate.

24.6 SMSF Living Will Superannuation Benefits

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

24.7 Income Stream and Pension Roll Backs

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

24.8 It is not compulsory for the Trustee, except where the Superannuation Laws require, to pay a Superannuation Benefit to a Member unless the Trustee is requested to do so by the Member and the payment is permitted in accordance with the Superannuation Laws.

24.9 Where the Trustee commences a Superannuation Income Stream for a Member, Dependant of a Member or deceased Member, the Member's Legal Personal Representative or a deceased Member's Legal Estate, the terms and conditions of the Member's Income Stream are to become a Special Rule of the Fund.

Part Five – Other Special Events

Rule 25 – Winding up the Fund

25.1 The Trustee is to wind up the Fund in the following circumstances:

- on the death of the last remaining Member of the Fund and any Replacement Trustee or the Corporate Trustee determines that the Fund is to be wound up;
- the Regulator or any other person or body authorised to wind up the Fund under the Superannuation Laws orders that the Fund is to be wound up;
- 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;
- the Trustee resolves that the Fund is to be wound up.

25.2 The Trustee in winding up the Fund is to pay any Taxes, General Expenses, Specific Expenses, Superannuation Benefits and any other amounts or disbursements to ensure that the Fund has no outstanding liabilities prior to paying out any distribution under Rule 25.3.

25.3 Following the payment of all amounts under Rule 25.2, if the Trustee has any Assets and Cash the Trustee may distribute these Assets and Cash, subject to the Superannuation Laws to:

- a) Members and former Members of the Fund;
- b) Relatives of any Member or former Member;
- c) any Legal Estate of a Member or former Member; or,
- d) any other entity or any trust or entity of a charitable, public benevolent, sporting, animal or political nature as the Trustee determines.

Rule 26 – Changing the Fund's Rules or Name

26.1 The Trustee may at any time by simple resolution vary, change, delete from, add to or otherwise amend any or all of the Rules of the Fund provided the following conditions are adhered to:

- a) Any variation, change, deletion, addition or amendment to the Rules shall strictly adhere to the Superannuation Laws and the Fund retaining its Complying SMSF status;
- b) Where the Trustee has resolved that a Special Rule for the benefit of a Member shall take effect, the Special Rule shall form part of the provisions of any amended Rules of the Fund unless otherwise determined by the Member and/or the Trustee;

c) Any variation, change, deletion, addition or amendment to the Rules shall not detrimentally affect a Member's Superannuation Interests in the Fund.

26.2 The Trustee may at any time change the Fund's name provided the Regulator is informed if required under the Superannuation Laws.

Part 6 – Rules Definitions

Rule 27 – Definitions

Accounts means those accounts, including trust accounts established by the Trustee for the Fund, a Member's Superannuation Interest or Interests, a group of Members' Superannuation Interests, a Reserve Account and any other account of the Fund.

Active Member is a Member of the Fund that meets the criteria for active membership under the Superannuation Laws.

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

Additional Trustee is a person who is a non-Member of the Fund who is appointed as a Trustee of the Fund as a consequence of the Fund having only one Member.

Allot means, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, to deduct an amount from a Member's Lump Sum Superannuation Interest or Income Stream Superannuation Interest and transfer it to another Superannuation Interest in the Regulated Superannuation Fund held by, or created for, the Member's Spouse or Ex-Spouse other than by a Transfer Superannuation Interest or Rollover.

Anti-detriment Reserve includes a Reserve established by the Trustee under the Rules of the Fund and for the purpose of ensuring that the Dependents or Legal Estate of the deceased Member are put in a better financial position than they expect from the deceased Member's SMSF Legal Estate through the allocation of an amount from the Anti-detriment Reserve to one of more of the deceased Member's Superannuation Interests or to the deceased Member's Dependents or Legal Estate.

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

Assets Test Exempt Superannuation Income Stream is a Superannuation Income Stream that is exempt, either wholly or partially from the Assets Test under the Social Security Act 1991.

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

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

Audit and Accounting Standards means the standards prescribed by the Regulator or Government body that enable the auditor to decide at the end of the year of income whether a Fund is a Complying SMSF including GS 2009.

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

Authorised Contribution made on behalf of a Member or Members of the Fund means a Contribution, whether by way of Cash, Asset or in-kind (including a Fund expense payment), made to the Fund where the Trustee is satisfied that the Contribution has met the requirements for making a superannuation Contribution under the Superannuation Laws including, but not limited to:

- a) the Member being under age 65 at the time the Contribution is made;
- b) the Member being aged 65 but less than age 70 and the Member is Part-Time Gainfully Employed in the Income Year that the Contribution is made or the Contribution is a Mandated Employer Contribution;
- c) the Member being aged 70 but less than age 75 and the Contribution is a Mandated Employer Contribution or the Member is Part-Time Gainfully Employed in the income year that the Contribution is made and the Contribution is made by the Member or the Member's employer;
- d) the Contribution being made at the time the Member is 75 or older and the Contribution is a Mandated Employer Contribution;
- e) the Contribution being made at some time after the times mentioned in a), b) and c) however the Trustee being reasonably satisfied that the Contribution relates to those periods;
- f) the acceptance of the Contribution by the Trustee of the Fund will not result in the Trustee of the Fund breaching the Superannuation Laws;

but does not include an allocation from a Reserve Account of the Fund.

Benefits in Kind are Superannuation Benefits that are neither Cash nor an Asset of the Fund and includes a set-off. The value of any Superannuation Benefit in Kind is to be determined by the Trustee of the Fund who may engage the services of a valuer in that regard.

Cash includes any currency and any amount held by the Trustee in a bank account, cash management trust, deposit account or similar account where cash may be held on deposit for the Trustee.

Cashing Restriction is any restriction in the Superannuation Laws that may apply where a Member satisfies a Condition of Release in respect of one of more of their Superannuation Interests.

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

Cloned SMSF includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Complying SMSF that bears an identical set of Rules, Members and Trustee as the Fund.

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

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

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

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

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

Contract of Life Insurance includes any policy as defined under the Superannuation Laws and in addition a policy for the Temporary Incapacity, Permanent Incapacity, Death, Trauma or any other event dependent upon the life of a Member of the Fund.

Contribution includes a payment, distribution or transfer of cash or an Asset to the Fund or payment in kind on behalf of a Member of the Fund that the Trustee is of the opinion is a Contribution but does not include an allocation from a Reserve Account on behalf of a Member.

Contributions Reserve includes a Reserve of the Fund where unvested Contributions are made on behalf of a Member or a specific group of Members.

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

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

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

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

Death Benefit includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, the payment, including by way of in-specie asset transfer, of a Superannuation Lump Sum or Superannuation Income Stream to a Dependant, the Legal Estate of the deceased Member of the Fund or any other person.

Death Benefit Rule is, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Special Rule made under the Simpler Super Rules in relation to the distribution of a Member's Superannuation Benefits in the event of their death according to the Member SMSF Will, if any.

Dependant includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Spouse of or a Child of a Member of the Fund or a person in an Inter-Dependent Relationship with a Member of the Fund or any financial dependant of a Member of the Fund irrespective of age and any other person the Trustee is of the opinion is a Dependant of the Member of the Fund at the relevant time.

Disqualified Person includes a person as defined in the Superannuation Laws and:

1. Where the Trustee is an individual person, a person where at any time (including prior to the establishment of the fund):

- a) the individual was convicted of an offence of dishonest conduct against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country;
- b) a civil penalty order has been made in relation to the Trustee as a consequence of a breach of the Superannuation Laws;
- c) the person is an undischarged bankrupt under the Bankruptcy Act 1966 or the law of any other country or external Territory; or
- d) who the Regulator has disqualified from being a Trustee under the Superannuation Laws.

2. Where the Trustee is a company:

- a) a receiver, or receiver and manager has been appointed in respect of property beneficially owned by the company; or
- b) an official manager or administrator has been appointed in respect of the company; or
- c) a provisional liquidator has been appointed in respect of the body; or
- d) the company has begun to be wound up;
- e) the body Corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the company, is a Disqualified Person and that they are not eligible to apply to APRA under Part 15 of the Superannuation Laws to claim a Disqualified Person waiver or that they do not wish to apply for such a waiver.

unless the Regulator has otherwise ruled that the person is not a Disqualified Person under the Superannuation Laws.

Earnings is the amount determined by the Trustee as Earnings of the Fund, Earnings of a specific Member Superannuation Interest or group of Members' Superannuation Interests, a Reserve

Account or any other account, whatever the case may be for a period of time. In that regard the Trustee has the sole discretion, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, of applying one of the following methods for determining Earnings of the Fund, the Member's Superannuation Interest or group of Members' Superannuation Interests or Reserve Account or any other account of the Fund, whatever the case may be:

1. **Accounts Method:** income according to established accounting principles for Superannuation Funds which may include a revaluation of any Assets of the Fund to their market value less any Fund expenses which include Fund taxes;
2. **Trust Method:** net income as the term "net income" is defined under the taxation of trust provisions in the Superannuation Laws;
3. **Income Method:** any amounts received as income plus any unrealised or realised capital gains and at the Trustee's discretion, any allocations from a Reserve Account less any disbursements the Trustee is of the view should be deducted from income including any general or specific expenses; or
4. **Flexible Method:** any combination of the above or method that the Trustee is of the opinion properly reflects Earnings;

in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use **Method 3** as its default option.

Eligible Entity, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, includes any Superannuation Fund, Life Insurance Company or other entity that may accept a Rollover of a Superannuation Benefit or transfer of a Transfer Superannuation Interest from a SMSF including a Foreign Superannuation Fund where the Superannuation Laws allow.

Eligible Rollover Fund is a Superannuation Fund that is an Eligible Rollover Fund as defined under the Superannuation Laws.

Employer Rollover Superannuation Benefit includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Rollover of a Superannuation Lump Sum to the Fund for benefit of the Member as a consequence of the Member terminating their employment with the employer.

Excess Contributions Tax includes an amount assessed by the Regulator for a period as being excessive in terms of Non-Concessional Contributions and Concessional Contributions in relation to a Member of the Fund under the Superannuation Laws.

Excess Contributions Tax Release Authority is an authority issued by the Regulator under the Superannuation Laws for the payment of Excess Concessional Contributions Tax and/or Excess Non-Concessional Contributions Tax.

Explanatory Memorandum is a document attached to the Rules of the Fund for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund.

Family Law Payment Splitting Notice is a notice issued to the Trustee of the Fund under the Superannuation Laws requiring the Trustee to split a Member's Superannuation Interest with the Member's Spouse or ex-Spouse.

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

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

Gainfully Employed includes where a Member is employed or self-employed for any gain or reward in any business, trade, profession, vocation, calling, occupation or employment including investment gain or reward where the Superannuation Laws allow.

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

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

Incapacity includes Temporary and Permanent Incapacity and Terminal Illness as well as those conditions under the Superannuation Laws that amount to incapacity.

Incapacity Superannuation Benefits include those Superannuation Benefits authorised under the Superannuation Laws or the Regulator to be paid to a Member, their Dependents, Legal Estate or other person in the event of a Member's Incapacity or for some other reason.

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

In-House Assets test is the requirement under the Superannuation Laws for the trustee of a fund to hold, subject to certain conditions and exceptions, no more than 5% of the Fund's assets as in-house assets as that term is defined in section 71 of the SIS Act 1993 and elsewhere in the Superannuation Laws.

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

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

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

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

Investment Strategy includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a written document formulating the investment objectives and a plan for

investing the monies and Assets of the Fund or Superannuation Interest as required which has regard to all of the circumstances surrounding the Fund including, but not limited to:

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

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

Legal Personal Representative means the executor of a will or administrator of the estate of a deceased person, the Trustee of the estate of a person under a legal incapacity or a person who holds an Enduring Power of Attorney granted by a Member of the Fund and includes any other person the Superannuation Laws allow as a Member's Legal Personal Representative.

Mandated Employer Contributions are Contributions defined as such under the Superannuation Laws.

Member is a person who has applied for Membership or been automatically appointed as a Member under the Rules of the Fund and has been accepted by the Trustee of the Fund as a Member and has become a Trustee or director of a Corporate Trustee unless the Member is able to appoint a Replacement Trustee under the Rules of the Fund and the Superannuation Laws. Member also includes a person's Legal Personal Representative in their position as Legal Personal Representative of the person even where the person has died.

Member Income Stream Superannuation Interest includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the Trustee under the Simpler Super Rules for the purpose of paying a Superannuation Income Stream, including a Superannuation Income Stream that is currently payable or one that is to commence at some time in the future.

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

Member Lump Sum Superannuation Interest includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest established by the

Trustee under the Simpler Super Rules for the purposes of paying a Lump Sum to a Member or some other person.

Member SMSF Life Will includes a formal or informal plan made by the Member or the Trustee under these Rules to benefit a Member, their Dependants or Legal Estate where the Member suffers Temporary Incapacity or Permanent Incapacity.

Member SMSF Living Will Rule is any Rule made under the Rules of the Fund by the Trustee providing for a Member in the event of the Member's Temporary Incapacity or Permanent Incapacity including but not limited to the payment of Superannuation Benefits and the removal of the Member as Trustee or director of a Corporate Trustee and appointment of a Replacement Trustee on behalf of the Member.

Member SMSF Will includes a formal or informal plan made under these Rules dealing with their SMSF Legal Estate whether by way of Non-Lapsing Binding Death Benefit Nomination and/or a Non-Binding Death Benefit Nomination to benefit a Member's Dependants or Legal Estate in the event of their death by way of the payment of Death Benefits.

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

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

Non-Lapsing Binding Death Benefit Nomination includes, subject to the Superannuation Laws, a nomination in writing whether in a SMSF Will, legal document or any other document that states:

- a) the person or persons specified in the notice that may receive the Member's Death Benefits;
- b) the terms and conditions of the Superannuation Benefit that will be paid or transferred to that person or to each of those persons;
- c) how and the amount of the benefit to be paid to that person or to each of those persons;
- d) the notice is in effect; and
- e) must be signed and dated by the Member and accepted by the Trustee of the Fund.

The notice is effective until such time as the Member revokes a notice unless the Superannuation Laws otherwise allow.

No Tax File Number Contributions are those Contributions where the Member has not supplied the Trustee with a valid Tax File Number or as defined as a No Tax File Number Contribution in the Superannuation Laws.

Part Time Gainful Employment means where the Member, during an income year, is or has been employed or self-employed for 40 hours over a thirty-day period for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

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

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

- a) to pay any Income Stream liability of the Trustee of the Fund whether by way of a payment of an amount or asset to a Member's Income Stream Superannuation Interest or directly to a Member with an Income Stream Superannuation Interest, such payment in satisfaction in whole or part of the Trustee's Income Stream liabilities in respect of that Member Income Stream Superannuation Interest;
- b) to be used to commence a new Income Stream where an Income Stream Superannuation Member has commuted an Income Stream;
- c) to pay a Death Benefit where a Member holding an Income Stream Superannuation Interest has died;
- d) for such other payments as the Superannuation Laws allow in respect of Superannuation Income Streams.

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

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

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

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

Related Party means a person defined as a related party under the Superannuation Laws.

Related Trust means a trust defined as a related trust under the Superannuation Laws.

Relative includes, in relation to an individual, the following:

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

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

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

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

Reserve Account includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Interest created by the Trustee of the Fund with surplus Assets or from Earnings of the Fund and specifically includes amongst others: an Anti-Detriment Reserve, a Contributions Reserve, a Pensions Reserve, a Self Insurance Reserve and an Investment Reserve.

Responsible Officer, in relation to a body Corporate means:

- a) a director of the company;
- b) a secretary of the company; or
- c) an executive officer of the company.

Retirement and Retired includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, where a Member of the Fund who has reached preservation age and no longer intends to work again. It also includes:

- a) where a Member of the Fund is over their preservation age and the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;
- b) the Member is over age 60 and an arrangement under which the Member is gainfully employed has come to an end on or after that age or the Trustee is satisfied that the Member will never again be engaged in part-time or full-time gainful employment;

c) at any other time according to the Superannuation Laws.

Reversionary Superannuation Income Stream includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Superannuation Income Stream payable or that may become payable to a person following the death of a prior Income Stream Member.

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

Rollover means paid as a Superannuation Lump Sum (other than by way of being transferred) between Superannuation Funds within the superannuation system including an Employer Rollover Superannuation Benefits where the Superannuation Laws allow.

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

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

Rules of the Fund include the Rules herein and include any addition, variation, change or amendment provided it meets the relevant Rule requirements as well as a Special Rule.

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

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

Self Insurance Reserve Account includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a Reserve Account established by the Trustee under the Rules of the Fund to provide Superannuation Benefits for Members in the event of their Temporary Incapacity, Permanent Incapacity or for any other reason as well as the payment of Superannuation Benefits to Dependants or the Legal Estate of a deceased Member.

Simpler Super Income Stream includes an Income Stream and an account based pension that meets all the conditions of SIS Regulations 1.06(1) and 1.06(9A).

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

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

SMSF Adviser is a person who is recognised by a professional association, educational institution or the Regulator as a specialist in providing advice to Trustees or other professionals on the Superannuation Laws as they apply to a SMSF.

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

SMSF Professional includes a person authorised and if required licensed under the Superannuation Laws to provide advice, audit services, administration services or any other services to the Trustee of a SMSF including a lawyer, accountant, financial planner or a SMSF Professional listed as such at www.smsfstrategies.com.

Sole Purpose Test means the test laid down from time to time in the Superannuation Laws regarding the provision of Superannuation Benefits to Members and others from the Fund and includes the requirement for the Trustee of the Fund to maintain the Fund for one or more of the following purposes (the *core purposes*):

- (i) the provision of benefits for each member of the fund on or after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund);
 - (ii) the provision of benefits for each member of the fund on or after the member's attainment of an age not less than the age specified in the regulations;
 - (iii) the provision of benefits for each member of the fund on or after whichever is the earlier of:
 - (A) the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or
 - (B) the member's attainment of an age not less than the age prescribed for the purposes of subparagraph (ii);
 - (iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred before the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
 - (v) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred before the member attained the age prescribed for the purposes of subparagraph (ii); and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both; or
- (b) for one or more of the core purposes and for one or more of the following purposes (the *ancillary purposes*):
- (i) the provision of benefits for each member of the fund on or after the termination of the member's employment with an employer who had, or any of whose associates had, at any time, contributed to the fund in relation to the member;
 - (ii) the provision of benefits for each member of the fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged and the cessation is on account of ill-health (whether physical or mental);
 - (iii) the provision of benefits in respect of each member of the fund on or after the member's death, if:
 - (A) the death occurred after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member

- was engaged (whether the member's retirement occurred before, or occurred after, the member joined the fund); and
- (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (iv) the provision of benefits in respect of each member of the fund on or after the member's death, if:
- (A) the death occurred after the member attained the age prescribed for the purposes of subparagraph (a)(ii); and
 - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (v) the provision of such other benefits as the Regulator approves in writing.

Special Rule is a Rule created by the trustee including a SMSF Will and Pension that forms part of the Rules of the Fund and is declared by the Trustee as a Special Rule of the Fund.

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

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

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

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

Superannuation Income Stream includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, a series of periodical payments created by the Trustee for the benefit of a Fund Member or any other person and shall include conditions relating to the term of the Income Stream or pension, the quantum of payments, any indexation or other factors to be applied to the periodical payments and when or whether the Income Stream is commutable or has a residual capital value. A Superannuation Income Stream also includes, amongst other periodical payments, the following (subject to the terms and conditions of a Trustee of a SMSF offering the following Income Streams under the Superannuation Laws):

- a) Any pension or income stream that complies with SIS Regulation 1.06(1);
- b) A lifetime complying pension [SIS Regulation 1.06(2)];
- c) An account-based pension [SIS Regulation 1.03(1)];
- d) An allocated pension [SIS Regulation 1.06(4)];
- e) A market-linked pension [SIS Regulation 1.06(8)];

- f) A fixed-term complying pension [SIS Regulation 1.06(7)];
- g) A Simpler Super Income Stream [SIS Regulation 1.06(9A)];
- h) A non-commutable life pension [SIS Regulations Schedule 1 – Item 108];
- i) A non-commutable allocated pension [SIS Regulation 6.01(2)];
- j) A Transition to Retirement Income Stream [SIS Regulation 6.01(2)];
- k) A non-commutable pension [SIS Regulation 6.01(2)];
- l) A Temporary Incapacity Superannuation Income Stream – non-commutable income stream [SIS Regulation 6.01(2)];
- m) An Assets Test Exempt Pension within the meaning of that term under the Social Security Act 1991 including, but not limited to sections 9A, 9B and 9BA; and
- n) Any other pension or Superannuation Income Stream under the Superannuation Laws.

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

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

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

Superannuation Income Stream Reserve Account includes a Pension Reserve created by the Trustee, with or without the advice of an actuary to ensure that there are sufficient Assets held by the Trustee to enable the Trustee to meet its' current and future Superannuation Income Stream liabilities as and when they fall due.

Superannuation Lump Sum is a Superannuation Benefit that is not a Superannuation Income Stream and includes, subject to the Superannuation Laws and the Fund retaining its Complying SMSF status, an amount paid out, an Asset transferred from the Fund or a payment in kind

according to the Rules of the Fund to a person entitled to be paid a Superannuation Lump Sum or the payment of a Lump Sum upon the commutation of a Member Superannuation Income Stream.

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

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

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

Taxable Component is that part of a Superannuation Benefit that is not a tax-free component.

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

Temporary Incapacity Superannuation Income Stream is a Superannuation Income Stream payable by the Trustee of the Fund under the Superannuation Laws and includes a Superannuation Income Stream that:

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

Terminal Illness includes where:

- a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the *certification period*) that ends not more than 12 months after the date of the certification;
- b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
- c) for each of the certificates, the certification period has not ended.

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

Transition to Retirement Income Stream means an Income Stream Superannuation Interest that meets the terms and conditions of a Transition to Retirement Income Stream and a Non-commutable Allocated Pension under the Superannuation Laws.

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

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

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

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

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

SMSF Strategies Trust Deed

Explanatory Memorandum

The SMSF Strategies Trust Deed has been created to take advantage of the taxation and superannuation changes introduced by the government under the term 'Simpler Super' and 'Better Super' on 1 July 2008. This includes amongst other things:

- *No tax on income, or lump sums* taken from a complying superannuation fund post age 60.
- When a person who is 60 or older has all, or a significant majority, of their income producing investments in a superannuation fund, and their taxable income is less than \$6,000 per annum, *they do not need to lodge an income tax return.*
- A member of a fund who is age 55 and born before 1960 can access their super benefits as a low-taxed transition to retirement income stream, *even while working full or part time.* There is a 10% maximum limit on the amount of income the working member can take each year while working. Once they retire there is no limit on the amount of withdrawals.
- No tax penalties or limits on the amount of super benefits that can be withdrawn by members or their dependants and/or legal estate in the event of the member's death.
- Warehousing of super fund investments for the benefit of the next generation with the abolition of the requirement for superannuation benefits to be taken as a lump sum or pension at age 65.
- Relaxation of the assets test thresholds for social security purposes so that a home owning couple may be able to access a part pension while holding a significant parcel of assets.
- A number of superannuation fund members over age pension age will be able to access the health care card, telephone, and electricity allowances regardless of the amount of superannuation benefits they have in their fund.
- Insurance premiums in the fund for death, permanent and temporary disability of fund members are tax deductible.
- Death and permanent disability benefits paid out during the working life of a member are proportionally tax deductible to the fund.
- Taking an accounts based pension or allocated pension (commenced prior to 20 September 2007) from a fund that has upgraded to the Simpler Super Rules means lower income levels while allowing unlimited withdrawals for retirees, those over age 65 or who are permanently incapacitated in addition to the terminally ill.

This Explanatory Memorandum to the SMSF Strategies Trust Deed is for the purpose of providing the Trustee of the Fund, its advisers, the Courts, the Regulators and the Fund's auditor with guidance on the meaning of a specific or general Rule of the Fund.

Part One – Rules to Establish the Fund

Purpose

The SMSF Strategies Trust Deed and Rules are designed for simplicity of understanding and use by Trustees, Members and advisers to the Trustee. They are unique and have been purpose-built for SMSF's and the introduction of the Simpler Super laws in Part III of the Income Tax Assessment Act 1997 which commenced on 1 July 2007. The Rules describe in a simple format the processes and requirements for both the Trustee and Members of the Fund to establish the Fund, accept Members and Contributions, how to run Trustee meetings, make investments, establish Member Superannuation Interests and pay out Superannuation Benefits. These Rules need to be read in conjunction with the Fund's Product Disclosure Statement. *However the Rules are not simply limited to new SMSF's but can also apply to existing regulated SMSF's seeking to upgrade their Fund Rules to the Simpler Super Rules.*

For New SMSF's

Once the first Trustee is appointed and the SMSF Strategies Trust Deed executed, there are mandatory requirements that the Trustee must perform in order to make the Fund compliant and operative. These include but are not limited to becoming a regulated superannuation fund, establishing the Fund's complying status with the Regulator, accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy. Part One of the Deed qualifies the Rules regarding these essential steps to establishing a Complying SMSF. Additionally, Part One of the Deed is elaborated upon in this Explanatory memorandum which includes definitive and separate SMSF Strategy Guides to make comprehension of the Rules simple. These Strategy Guides are not part of the Rules but are to simply provide guidance and understanding on the meaning of a Rule to the Trustee and Member of the Fund as well as the Fund's advisers or in the event of litigation or action by the Regulator.

For Existing SMSF's

For Trustees of existing SMSF's that intend adopting the SMSF Strategies Trust Deed and Rules, the requirements to establish and maintain a Complying SMSF also apply to the on-going operation of the Fund. These include but are not limited to accepting Members, accepting Authorised Contributions, paying Superannuation Benefits, accepting Rollovers of and/or Transfers of Superannuation Interests on behalf of Members, creating Member Superannuation Interests, establishing a Reserve Account, creating a formal written Investment Strategy and making Investments according to the Fund's Investment Strategy.

SMSF Strategy Guide – Rule 1 – Introduction

To make the Rules of the Fund simple to understand we have written the SMSF Strategies Trust Deed and Rules in uncomplicated terms. Additionally, we also provide “SMSF Strategy Guides” in this Explanatory Memorandum to assist Trustees, Members, superannuation professionals, lawyers and the Courts to interpret the Rules. The SMSF Strategy Guides do not form part of the Rules. They are ancillary to the Rules. They are designed to provide clarity of application of the Rules in all situations and transactions relating to the Fund.

When applying the Rules, singular means plural, he can mean she and when referring to a company, trust or other entity it includes all those persons responsible for the entity’s actions. The Rules of the Fund are to be governed by the law where the Trustee lives unless there is more than one Trustee and they live in different States or the Trustee lives overseas. In these instances the Trustee is to choose the governing law of the Fund and if there is no choice made by the Trustee, the governing law of the Fund is NSW.

The Rules of the Fund are for a superannuation fund that has chosen to be a “Self Managed Superannuation Fund”. That term has been abbreviated to “SMSF” for the purposes of these Rules.

If there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are to prevail unless the breach of the Superannuation Laws does not result in a fine, penalty or non-compliance notice for the Fund, Trustee or Member. However these Rules contain several provisions not provided for within the Superannuation Laws. If this be the case the Rules are to be read and applied exclusively.

There is also discretion in accordance with some of the Rules for the Trustee to add to, change, create, add or amend these Rules where appropriate. The addition, change or amendment to any Rule is to be seen as a Rule in itself and may become a Special Rule whereby it automatically applies to any future Rule changes unless the Trustee and the Member agree otherwise.

The Fund is guided by the Sole Purpose Test in section 62 of the SIS Act 1993 which ensures that benefits paid from the fund are only on the occasion of a Member dying, retiring, becoming incapacitated or for such other purpose as allowed under the Superannuation Laws.

SMSF Strategy Guide – Rule 2 - Trusteeship

Trusteeship: The Rules of the Fund are designed specifically for a Complying SMSF. This means that firstly the Fund must have a Trustee continuously in place at all times. The Trustee may be a Corporate Trustee and/or Individual Trustees. The Trustee may even be a mix of both Corporate and Individual Trustees. Secondly, to be a Complying SMSF, all of the Members of the Fund must be Trustees of the Fund or directors of the Corporate Trustee. Where the Trustees are individuals, the sole or primary purpose of the Fund is to pay old age pensions. In contrast where the Trustee of the Fund is a Corporate Trustee then the Fund may pay income streams, pensions, lump sums and use the Fund for estate planning purposes.

Disqualified Persons: The Trustee of the Fund must not be a Disqualified Person unless the Regulator otherwise allows. There are serious penalties of up to two years imprisonment for persons acting as Trustees where they are Disqualified Persons under the Superannuation Laws. If the Trustee is an individual they must not be bankrupt or have been charged with an offence of dishonest conduct. If the Trustee is a Corporate Trustee then the Trustee must not be in

liquidation or under administration and the Trustee must also ensure that there are no Responsible Officers of the company, including Member directors and company secretary, who are Disqualified Persons. A Disqualified Person may apply to the Regulator for an exemption under the Trustee Rules.

SMSF Trustee Conditions: The Rules of the Fund are for a Complying SMSF and a regulated superannuation fund. Under the Superannuation Laws all members must be a Trustee or director of a Corporate Trustee. However the Superannuation Laws provide that the Trustee of a SMSF is allowed to appoint a non-Member as Trustee of the Fund or director on the board of Trustees (“the Replacement Trustee”), in circumstances where:

1. If the Fund has one Member, the Fund may appoint an Additional Trustee (in addition to the mandatory Member as Trustee) being another person provided that the other Trustee is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.
2. If the Fund has a Corporate Trustee, the Corporate Trustee may appoint as a director (in addition to the mandatory Member as director) another person provided that the other director is not an employee of the Member, unless the person is a Relative of the Member at the time of employment.
3. If a Member has died, the Legal Personal Representative of the Member is authorised to become a Replacement Trustee of the Fund or director of the Corporate Trustee subject to the Memorandum and Articles of Association of the Trustee company for the period beginning on the day the Member died until the day a Death Benefit becomes payable from the Fund.
4. If a Member of the Fund is under a legal disability, the Legal Personal Representative of the Member may become the Trustee of the Fund or take the Member’s place as director of the body Corporate. If the Member is a child under the age of 18, the parent or guardian of the Member may also take the child’s place as Trustee or director of the Corporate Trustee where there is no Legal Personal Representative.
5. The Legal Personal Representative of the Member has an Enduring Power of Attorney in force in respect of that Member except where the Member is a Disqualified Person. This includes where a non-resident of Australia is a Member of the Fund.
6. The Regulator has appointed a Replacement Trustee under the Superannuation Laws.

A Trustee or director of a Corporate Trustee must resign or be removed as Trustee if they become a Disqualified Person or relinquish Membership of the Fund. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status where a Member or Trustee becomes legally incompetent a Replacement Trustee may be appointed.

When a Member dies their Legal Personal Representative replaces the deceased Member as a Member of the Fund. They will have exclusive voting rights as to the payment of the deceased Member’s Death Benefits. Immediately the deceased Member’s Death Benefits commence to be payable they must resign instantly.

As a SMSF, the Trustee is required to notify the ATO of any changes in membership, Trusteeship, name change and other such things within a period of 21 days from the change. The ATO may also require a Trustee or Member to make a declaration to the Commissioner regarding

their knowledge of the Superannuation Laws, their agreement to keep up to date with the Superannuation Laws and maintaining a current set of Rules of the Fund. The Trustee or Member is required to complete any such declaration.

SMSF Strategy Guide– Rule 3 - Membership

Once formally appointed, the Trustee, in its capacity of Trustee of a complying SMSF, may admit Members to the Fund. As the Fund is to be maintained as a complying SMSF, the Trustee of the Fund must limit the number of Members in the Fund to no more than four Members unless the Superannuation Laws allow or there is a change in the definition of SMSF. Importantly the Simpler Super Rules have been drafted to allow an increase to the number of Members in the Fund should any change in the Superannuation Laws concerning Membership and SMSF's occurs.

When completing an application form for membership of the Fund the potential Member agrees:

1. To be bound by all of the Rules of the Fund.
2. To be a Trustee of the Fund or director of the Corporate Trustee unless there is a Replacement Trustee for the Member who has been validly appointed under the Superannuation Laws.
3. To provide information to the Trustee where required including medical information, Tax File Number and consent for the Trustee to hold that information despite anything to the contrary in the privacy legislation.
4. To have read and understood the Fund's Product Disclosure Statement.

In this Fund, except for any conditions imposed by the Trustee of the Fund, there are no general limitations on who can be a Member of the Fund. This means that a person may become a Member of the Fund at any age or where they do not have a Member Superannuation Interest balance.

Where the Member elects, the Member's Legal Personal Representative is taken to be the Member of the Fund including where the Member may have died. This allows the Executor of a deceased Member's estate to continue receiving a Superannuation Income Stream from the Fund or receiving Earnings on the Member's Superannuation Interests.

There will be occasions during the longevity of the Fund that for some reason a Member may leave the Fund. For example a departing Member may leave the Fund by transferring or rolling over their Superannuation Benefits to another Superannuation Fund. This would then require the Trustee to close the Member's Superannuation Interests. Additionally a Family Law action involving a Fund member may result in the Trustee being subject to discovery proceedings. In this instance the Trustee may decide to cease a Member's membership of the Fund to protect the privacy of the Fund and consequently the interests of the remaining Members.

If a Member decides to withdraw their Superannuation Benefits from the Fund pursuant to the Superannuation Laws, the Trustee is to arrange for the payment of the Member's entitlements as soon as possible. The payment of these entitlements may be in cash or in-specie by way of Assets of the Fund. It is compulsory that the Member's Superannuation Benefits must be transferred to the Member within any period required under the Superannuation Laws. If, subsequent to departing the Fund, the Member fails to advise the Trustee as to where their benefits are to be

paid or transferred, the Member's Superannuation Benefits are to be transferred to an Eligible Rollover Fund nominated by the Trustee.

For the purposes of a determination of Australian Superannuation Fund status, a Member or the Trustee may declare the Member to be a non-Active Member of the Fund.

SMSF Strategy Guide– Rule 4 – *Becoming an Operating Regulated SMSF*

Where the Fund is a new Fund the Trustee must first establish the operations of the Fund. In addition to the Trustee's normal responsibilities in the management of the Fund, the Trustee is required to undertake the following to establish the Fund as operational:

1. Apply for an Australian Business Number and a Tax File Number for the Fund.
2. Establish one or more cash or cheque accounts for the Fund as a clearing account for Authorised Contributions and monies received and Superannuation Benefits and monies paid. Monies need to be deposited into this account as soon as practicable to cater for the running expenses of the Fund. Until monies are in a cash or cheque account the Fund is non-operational.
3. Appoint an Auditor to the Fund. The Superannuation Laws provide that an Auditor must be appointed to the Fund on a yearly basis to provide an assessment of the Fund's compliance with the Superannuation Laws.
4. Appoint SMSF Professionals where required such as a specialist SMSF adviser, SMSF Auditor, SMSF administrator, SMSF insurance adviser and in certain cases a SMSF investment manager, valuer or actuary.
5. Any other act required by the Trustee of the Fund necessary to enable the Fund to become operational and thus be ratified by the Regulator to be a Fund that is a Complying SMSF.

SMSF Strategy Guide– Rule 5 – *Creating and Transferring Member Superannuation Interests*

Superannuation Interests are a new concept in the Superannuation Laws and were introduced with the Simpler Super laws. As a result, the Trustee, on behalf of any Member, may be called upon to establish one or more Member Superannuation Interests. These may include a Member Lump Sum Superannuation Interest and/or a Member Income Stream Superannuation Interest. A Superannuation Interest does not have to have any funds or Assets set aside for it to be a valid Superannuation Interest. A Member may also have more than one Superannuation Interest including two or more Member Income Stream Superannuation Interests provided the Superannuation Laws allow and it does not result in the Fund being treated as a non-Complying SMSF.

Where a Member Rolls Back part or all of their Member Income Stream Superannuation Interest to a Member Lump Sum Superannuation Interest this will add to the Member's Lump Sum Superannuation Interest and not create a new Superannuation Interest unless authorised by the Superannuation Laws and requested by the Member. Where a Member commences a Superannuation Income Stream with a Member Lump Sum Superannuation Interest amount, this may create a new Member Income Stream Superannuation Interest. If there is an existing

Member Income Stream Superannuation Interest, the Member has the choice to add to the current Member Income Stream Superannuation Interest which results in a new Superannuation Income Stream or commence a separate Member Income Stream Superannuation Interest.

At any time the Trustee may create one or more Superannuation Interests on behalf of the Fund including a Reserve.

Members should seek advice from a SMSF Professional before adding to an existing Member Superannuation Income Stream Superannuation Interest as this may have unintended taxation and social security results.

The Trustee can also transfer an Asset between Superannuation Interests in the Fund including different Member Superannuation Interests. Any such transfer should be done at a valuation determined by the Trustee or under the Superannuation Laws if required.

SMSF Strategy Guide – Rule 6 - Accepting Member Contributions, Rollovers and Transfers

Upon establishment of the Fund or at any other time while the Fund remains a Complying SMSF, the Trustee of the Fund may accept cash or Assets deposited into the Fund on behalf of specific Members of the Fund. The cash or Assets may come from one or more of the following sources:

1. An Authorised Contribution made to the Fund on behalf of a Member.
2. A Rollover Superannuation Benefit on behalf of a Member and/or
3. The transfer of a Transfer Superannuation Interest being a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest and/or a Reserve Account Superannuation Interest from the Fund, another Superannuation Fund or Foreign Superannuation Fund to the Fund on behalf of the Member or for the benefit of another Member or Members.

In each of the above cases, the Trustee must ensure that the Contribution, Rollover Superannuation Benefit or the Transfer Superannuation Interest is in accordance with the Superannuation Laws and where Assets are contributed such Contributions, Rollovers or Transfers are in accordance with the Superannuation Laws in relation to the acquisition of Assets by the Trustee of a Complying SMSF.

An Authorised Contribution is a Contribution made to a Fund on behalf of a Member, including the Member themselves, who:

- is under age 65.
- is a spouse of a person and is under age 65.
- is aged 65 – 69 and is engaged in part-time gainful employment (forty hours of work, business or self-employment over a thirty-day period during an income year).
- is aged 70 – 75 and is engaged in part-time gainful employment and the Contribution is made by an employer or by the Member.
- has a Contribution made by a person after the requisite times and the Superannuation Laws allow.

A Contribution is the transfer of cash or Assets for the benefit of a Member and includes an Employer Rollover Superannuation Benefit but no other Rollover Superannuation Benefit. It does not include an allocation to a Member Superannuation Interest from a Reserve Account nor a distribution or gift to the Trustee of the Fund. The Superannuation Laws and/or the Regulator may require the Trustee of the Fund to ascribe a value to any in-specie Contribution made on behalf of a Member or for the benefit of Members of the Fund. The Trustee is to determine a value for any in-specie Contribution taking into account any regulatory requirements.

The Rules of the Fund allow a Member to transfer their interest in a Foreign Superannuation Fund to the Fund. There may need to be specific amendments to the Rules, dependent upon the laws of the Foreign Superannuation Fund, for overseas transfers of Foreign Superannuation entitlements to occur.

Providing the Fund maintains its Complying SMSF status, when cash or Assets are transferred into the Fund the Trustee has a total unfettered discretion to determine which account the cash or Assets are to be credited to, provided the Member's Superannuation Interest is properly credited for the Contribution. In allocating the cash or Assets to a specific Member's Superannuation Interest, a Reserve Account or the Fund account the Trustee must ensure that the allocation to these accounts does not breach the Investment Strategy for that Superannuation Interest, Reserve Account or the Fund.

The Superannuation Laws provide a limit on Trustees of Complying SMSF's accepting Non-Concessional Contributions on behalf of a Member and where a Tax File Number has not been supplied. The Trustee is not allowed to accept a Contribution where no Tax File Number is supplied. Where the Trustee accepts a Contribution not allowed under the Superannuation Laws, the Trustee is deemed to hold that unacceptable Contribution on trust for the benefit of the contributor. The unacceptable Contribution is to be paid back to the contributor as soon as is reasonable.

The Trustee should seek professional SMSF advice in terms of the Contributions limit to ensure that the Fund retains its complying SMSF status.

SMSF Strategy Guide – Rule 7 - Creating an Investment Strategy for the Fund and Members

The Superannuation Laws provide that the Trustee of the Fund must formulate and give effect to an investment objective for the Fund and an Investment Strategy to meet that investment objective. The investment objective and Investment Strategy should be in writing and held for inspection at the offices of the Trustee.

Where the Trustee of the Fund runs one Investment Strategy for the whole of the Fund this is called a pooled Investment Strategy and is the default Investment Strategy for the Fund. Alternatively the Trustee of the Fund is authorised under these Rules to provide an Investment Strategy for each Member Superannuation Interest or in respect of a group of Member Superannuation Interests such as Member Lump Sum Superannuation Interests. In addition the Trustee of the Fund may implement an Investment Strategy for all Member Lump Sum Superannuation Interests and separate Investment Strategies for each Member Income Stream Superannuation Interest in the Fund. Where a separate Investment Strategy is used, specific Assets of the Fund must be set aside or segregated to meet the needs of the separate Investment Strategy.

It is compulsory, in accordance with the Superannuation Laws, to implement an Investment Strategy for all Reserve Accounts created by the Trustee of the Fund. The Investment Strategy for any Reserve Account must be prudently managed and the Trustee may apply one Investment Strategy for all of the Fund's Reserve Accounts or separate Investment Strategies for each Reserve Account.

When formulating an Investment Strategy for the Fund, the Trustee must have regard to the whole of the circumstances surrounding the Fund including, but not limited to:

1. The risk involved in making, retaining and realising Fund investments. Such decisions are determined by the likely return from the Fund's or Member's investments having regard to the investment objectives of the Fund and the expected cash flow requirements of the Trustee;
2. The composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;
3. The liquidity of the Fund's investments having regard to its expected cash flow requirements;
4. The ability of the Fund to discharge its existing and future liabilities; and
5. Any requirements under the Superannuation Laws or by the Regulator

In addition the Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings.

The Trustee may seek professional advice in relation to the establishment of any Fund Investment Strategy or Risk Management Strategy. In seeking Investment or Risk Management Strategy advice the Trustee should ensure that the adviser is qualified to provide Investment Strategy advice for a Complying SMSF and is currently licensed and skilled to do so.

SMSF Strategy Guide - Rule 8 - Making Investments for the Fund and Members Benefit

The Trustee must invest the Assets of the Fund on behalf of Members of the Fund according to the Sole Purpose Test, the acquisition of Assets from Related Parties rule and with regard to the In-House Assets test.

Sole Purpose Test

The Sole Purpose Test provides that the Trustee must maintain the Fund for the sole purpose of providing the following Superannuation Benefits:

- Retirement or age 65 Superannuation Benefits for a Member;
- Permanent and Temporary Incapacity Superannuation Benefits for a Member or their Dependants;
- Death Benefits on behalf of a Member's Dependants and Legal Estate;
- A Transition to Retirement Superannuation Income Stream;

- Terminal Illness Benefits; and
- any other Benefit allowed by the Regulator or under the Superannuation Laws.

Although the Trustee has wide discretion in making any investment of the Fund, including investments both domestically and internationally, the Trustee must first have regard to the Fund's Investment Strategy and the Superannuation Laws. The Trustee must also ensure that any investment of the Fund does not provide a benefit of any description to a Member until that member satisfies a Condition of Release of their Superannuation Interest. This may breach the Sole Purpose Test. Such restrictions may limit a Trustee investing in a Business if a Member or Related Party derives a benefit which does not meet the Sole Purpose Test.

Acquisition of Assets from Related Parties rule

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

- the acquisition of Business Real Property;
- the acquisition of listed shares, securities and widely-held managed funds;
- the acquisition of certain in-house assets provided the investment does not take the Fund's level of in-house assets to beyond the 5% in-house assets threshold;
- the acquisition of units in a unit trust and shares in a company where the underlying entity meets certain criteria in the Superannuation Laws allowing such investments including no borrowings, no investments in other entities and no lending of assets to related parties;
- the investment meets the criteria for a geared investment under section 67 of the Superannuation Industry Supervision Act 1993.

In-House Assets Test

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

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

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

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

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

- 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.
- a “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 deceased Member’s Legal Estate.
- 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.
- a Self Insurance Reserve Account where the Trustee can fund Temporary Incapacity Payments, Terminal Illness Benefits, Permanent Incapacity payments to Members as well as Death Benefit payments to Dependents and/or the Legal Estate of deceased Members.
- an expense Reserve Account where the Trustee can pay General and Specific expenses of the fund.
- 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.
- 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.
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 Dependents.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

The opportunity of legal challenge is dramatically reduced when Death Benefits are not paid or payable to the Legal Estate of a deceased Member by the Trustee of a Complying SMSF but directly to a beneficiary as specified by the deceased Member. The payment of superannuation Death Benefits are not subject to the provisions of the Member's Will. Accordingly, a SMSF Will can be of major strategic value to the Members of a Complying SMSF. The taxation benefits of Death Benefits paid to Dependants and the deceased Member's Legal Estate are outlined in the Product Disclosure Statement to the Simpler Super Rules. This compares with the death of a Member where no nominations or SMSF Will have been made in respect of the Member's SMSF Estate. In these circumstances, under the SMSF Strategies Trust Deed the Executors of the Member's Legal Estate will control how the Member's Superannuation Interests are to be distributed.

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

- The provision of a Superannuation Lump Sum – by way of cash or Assets to Dependants and/or the deceased Member’s Legal Estate.
- The payment of a Superannuation Income Stream to Dependants (as defined for taxation purposes) of a deceased Member.
- The payment of a Reversionary Superannuation Income Stream to a Dependant. This is the continuation of an existing Superannuation Income Stream that was payable to a deceased Member of the Fund.

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

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

Method 2 – Non-Lapsing Binding Death Benefit Nomination

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

In accordance with the Trustee’s discretion, the Trustee can accept all or part of the Member’s Non-lapsing Binding Death Benefit Nomination and/or SMSF Will. This is subject to the availability of the Member’s Superannuation Interests, the Superannuation Laws and the Rules of the Fund. Additionally, the Trustee may qualify what terms and conditions of the Member’s SMSF Will are to be incorporated into the Rules of the Fund. How SMSF Wills and Non-lapsing Binding Death Benefit Nominations are to be varied may also be noted as part of the terms and conditions of the SMSF Will or Nomination.

The SMSF Will and Non-lapsing Binding Death Benefit Nomination may become, subject to the Trustee’s consent a Special Rule of the Fund.

It is highly advisable that both a Member creating and the Trustee accepting a Member SMSF Will or Non-lapsing Binding Death Benefit Nomination seek expert advice from a SMSF Professional, actuary or auditor prior to finalising any Member SMSF Will.

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

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

even where the Trustee is not required to pay a Death or Incapacity Superannuation Benefit to a Member.

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

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

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

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

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

Part Three - Rules to Maintain and Operate the Fund

Purpose

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

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

SMSF Strategy Guide – Rule 13 - Fund Assets, Contracts and Transactions to be in Trustee's Name

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

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

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

SMSF Strategy Guide – Rule 14 - Trustee Responsibilities

In addition to being a Superannuation Fund the Fund is primarily a trust. It is the Trustee's duty and responsibility to act as a Trustee on behalf of the Members of the Fund who are beneficiaries of the trust. It is also the Trustee's duty to ensure that the Fund remains at all times both a SMSF and a Complying SMSF.

For the Trustee to discharge its duties it should appoint SMSF Professionals, maintain current knowledge of Trustee requirements in the Superannuation Laws and have detailed knowledge of the Rules of the Fund. Additionally, the Trustee must ensure that the Fund's compliance requirements and responsibilities are met in accordance with both the Superannuation Laws and the Regulator. At times the Superannuation Laws or the Regulator may require the Trustee to undertake training or education on the Trustee's compliance responsibilities. It is the Trustee's task to fulfil any such requirements.

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

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

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

SMSF Strategy Guide – Rule 15 - Trustee Powers

For the Fund to be and remain as a Complying SMSF whilst simultaneously maximising the returns on the Assets of the Fund for the benefit of Members, the Trustee must have broad powers. These powers including, but not limited to, dealing both domestically and internationally with Assets, entering into various contracts and undertakings, dealing with various persons directly, investing widely and otherwise acting in the Members' best interests. Any such power exercised is subject to the Superannuation Laws and the Fund retaining its Complying SMSF status.

The Trustee is not authorised to conduct any transaction, investment, business or action that would make the Fund a non-Complying SMSF. If the Trustee does conduct any transaction, investment, business or action that makes the Fund a non-Complying SMSF, then the offending transaction, contract or action is void.

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

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

SMSF Strategy Guide – Rule 16 – Trustee Meetings and Decision Making

The Trustee is required to hold a Trustee Meeting in order to make decisions about significant events to transpire in relation to the Fund. Significant events are those events that impact upon the status of the Fund and its Members.

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

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

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

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

SMSF Strategy Guide – Rule 17 – Trustee to keep Accounts

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

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

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

SMSF Strategy Guide - Rule 18 - Fund Earnings

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

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

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

Method 3 - Income Method: any amounts received as income plus any realised capital gains and at the Trustee's discretion any allocations from a Reserve Account less any disbursements the Trustee determines that should be deducted from income including any General or Specific Expenses; or

Method 4 - Flexible Method: any combination of the above or an alternative method that the Trustee is of the opinion suitably reflects Earnings of the Fund or an Account of the Fund.

However, in the absence of any determination by the Trustee of its Earnings methodology, the Trustee is to use **Method 3 – the Income Method** as its default option.

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

SMSF Strategy Guide - Rule 19 - Accounting for a Member Lump Sum Superannuation Interest and Rule 20 - Accounting for a Member Income Stream Superannuation Interest

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

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

There is a broad measure of discretion in the Rules as to whether an amount is to be added to a Superannuation Interest and what category of Superannuation Interest. Once an amount is added to a Superannuation Interest it is vested and shall only benefit the Member, the Dependents 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 SIS Regulations 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:

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

SMSF Strategy 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.

SMSF Strategies 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 Spilt to the Spouse Member's Lump Sum Superannuation Interest.

SMSF Strategies 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 \$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 SIS Regulations 1994 which allow the Trustee to consider which Superannuation Interest the Family Law split should be taken from.

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:

- Temporary Incapacity - only as a Temporary Incapacity Superannuation Income Stream.
- Permanent Incapacity – as a Superannuation Lump Sum or a Superannuation Income Stream.
- While working and at preservation age – as a Transition to Retirement Superannuation Income Stream.
- Retirement – a Superannuation Lump Sum or a Superannuation Income Stream.
- Age 65 – a Superannuation Lump Sum or a Superannuation Income Stream.
- Terminal Illness - as a Superannuation Lump Sum or a Superannuation Income Stream.
- Death - Superannuation Lump Sums or a Superannuation Income Stream, subject to the Superannuation Laws.

SMSF Strategy Guide – Rule 24 – 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:

- Temporary Incapacity and Permanent Incapacity;
- Terminal Illness;
- Retirement or at aged 65;
- Under Severe Financial Hardship or on Compassionate Grounds;
- When a Member reaches Preservation Age and can commence a Transition to Retirement Income Stream.
- 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 Superannuation Lump Sum may be paid on the death of a Member to a Dependant, the deceased Member's Legal Estate, charity or public benevolent institution; and*
 - *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.

Part Five – Other Special Events

SMSF Strategy Guide – Rule 25 – 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;
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:

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

SMSF Strategy Guide – Rule 26 – Changing the Fund's Rules or Name

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 6 – Rules Definitions

Purpose

Throughout the SMSF Strategies 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.

SMSF TRUST DEEDS

SMSF Strategies Product Disclosure Statement

SMSF Strategies Product Disclosure Statement prepared by:

SMSF Strategies
Phone: 07 5630 6548
Fax: 07 5630 6531
Email: info@smsfstrategies.com

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Disclaimer

The Product Disclosure Statement, the SMSF Strategies Deed and the SMSF Strategies Rules (the SMSF Strategies Deed") are based on the Australian Superannuation and Taxation Laws as of 1 May 2009. Neither SMSF Strategies, Glenister & Co and their employees nor advisers accept any liability for any loss or damages of any kind whatsoever arising as a result of use of this document. The SMSF Strategies Trust Deed is not personal or general advice for the purposes of the Corporations Act 2001.

Introduction

**This Product Disclosure Statement includes the important Commissioner's guide to SMSF Trustees which can be found at Appendix A.*

1. The Simpler Super Reforms

The Simpler Super reforms which commenced on 1 July 2007 are, by far, the most significant positive advances to the taxation and superannuation system in Australia's *history*. They will be watched closely by many other western countries to see if they meet the underlying objectives of the government's retirement incomes policy – to keep Baby Boomers working longer, encourage Australians to fund their own retirement and reduce reliance on the social welfare system.

So, what are some of the **Simpler Super** changes?

- *No tax on income, or lump sums* taken from a complying superannuation fund post age 60.
- When a person who is 60 or older has all, or a significant majority, of their income producing investments in a superannuation fund, and their taxable income is less than \$6,000 per annum, *they do not need to lodge an income tax return.*
- A member of a fund who is age 55 and born before 1960 can access their super benefits as a low-taxed transition to retirement income stream, *even while working full or part time.* There is a 10% maximum limit on the amount of income the working member can take each year while working. Once they retire there is no limit on the amount of withdrawals.
- No tax penalties or limits on the amount of super benefits that can be withdrawn by members or their dependants and/or legal estate in the event of the member's death.
- Warehousing of super fund investments for the benefit of the next generation with the abolition of the requirement for superannuation benefits to be taken as a lump sum or pension at age 65.
- Relaxation of the assets test thresholds for social security purposes so that a home owning couple may be able to access a part pension while holding a significant parcel of assets.
- A significant number of superannuation fund members over age pension age will be able to access the health care card, telephone, and electricity allowances.
- Insurance premiums in the fund for death, permanent and temporary disability of fund members are tax deductible.
- Death and permanent disability benefits paid out during the working life of a member are proportionally tax deductible to the fund.
- Taking an accounts based pension or allocated pension from a fund that has upgraded to the SMSF Strategies trust deed means lower income levels while allowing unlimited

withdrawals for retirees, those over age 65 or who are permanently incapacitated in addition to the terminally ill.

2. What is a Self Managed Superannuation Fund (“SMSF”)?

A SMSF is a regulated superannuation fund with less than five members, who are primary family members or close associates. The sole purpose of the fund is to provide income streams and/or lump sum benefits to members where allowed under the Superannuation Laws.

The fund is an active collaboration of all members with each member, subject to a few exceptions, being required to become a Trustee of the fund or director of the fund’s Corporate Trustee. This guarantees the member’s involvement in the decision making process of the fund. All members of the fund, upon joining the fund and becoming a Trustee or director of a Corporate Trustee, agree to be bound by the Rules of the fund and the Superannuation Laws and declare that they have read the fund’s Product Disclosure Statement. They must also ensure that the fund remains a regulated and a complying SMSF under the Superannuation Laws.

The SMSF Strategies Rules which form part of the Fund’s trust deed, ensure that it is not the intent of the Trustee or director of the Corporate Trustee to provide benefits to members of the fund or others except where allowed under the Superannuation Laws. In addition it is not the intent of the SMSF Strategies Rules to allow the Trustee or director of a Corporate Trustee to breach any of the Superannuation Laws or become actively involved in a business.

3. Introducing the SMSF Strategies SMSF Trust Deed Package

SMSFs bring control, flexibility and choice to Trustees and members of a SMSF. With the wide ranging changes brought on by the introduction of the Simpler Super laws, SMSFs are a perfect vehicle for a member to minimise their tax and maximise their superannuation and estate planning opportunities.

The SMSF Strategies Trust Deed package is a comprehensive range of specialist SMSF products tailored to the needs of the Trustee and members of the fund. The key components of the package include:

- 1. A SMSF Strategies trust deed**, where the Trustees of the fund choose to establish a SMSF. For Trustees with an existing trust deed, upgrading the Fund’s rules to the SMSF Strategies Rules enables the Trustee to take advantage of the comprehensive strategies found in the Rules. The SMSF Strategies Trust Deed detail the rights, benefits and entitlements of members as well as providing rules on what the Trustee can – and cannot – do. The Rules also include detailed strategy guidance notes to ensure that members and Trustees alike can understand the meaning of specific rules. The Rules are an important learning tool for Trustees and members.
- 2. A Product Disclosure Statement (PDS)** that details the important features, risks, disadvantages and advantages, Trustee responsibilities, the taxation of the fund and members, as well as the estate planning opportunities for Trustees and members using the SMSF Strategies Trust Deed. It is a requirement of the Superannuation Laws that the Trustee provides a member or prospective member of a superannuation fund with a

Product Disclosure Statement. This Product Disclosure Statement ensures the Trustee adheres to its Superannuation Laws obligations.

3. **A SMSF Strategies Trust Deed video** presentation by Grant Abbott describing the requirements of the SMSF Strategies Trust Deed, member's benefits as well as the responsibilities of the Trustee of the fund. The presentation may be found at www.smsfstrategies.com
4. **A SMSF Strategies special purpose SMSF Corporate Trustee** where the Trustees of the fund have decided to establish a special purpose Corporate Trustee to act in concert with the SMSF Strategies Trust Deed and Rules. Given that SMSFs operate beyond one generation it is imperative for a Corporate Trustee to be established to ensure longevity of the Fund as well as minimising any administrative or taxation problems when a member of the fund dies.
5. **A SMSF Will.** Superannuation benefits cannot be dealt with in a person's Will. However they can in a SMSF Will – a key feature of the SMSF Strategies Trust Deed package. The SMSF Will allows a member to make a binding non-lapsing death benefit nomination to the Trustee of the Fund in respect of their superannuation benefits in the event of the member's death. There is a wide range of options including the streaming of tax free/taxable components to various dependants and non-dependants, protection of specific assets in the fund as well as nominating a Replacement Trustee for the deceased member. There are numerous strategies that apply to the SMSF Will. With the Simpler Super reforms a SMSF Will is a crucial, if not compulsory option for all members of a SMSF.
6. **A SMSF Strategies trustee minutes package** where the trustee utilises special purpose minutes to facilitate a wide range of transactions that may be undertaken by the Trustee and members of the fund including commencing an income stream, taking a lump sum, making a contribution and other important Trustee and member dealings.
7. **SMSF Borrowing.** The SMSF Strategies Trust Deed package provides the necessary documentation, rules and requirements to enable the trustees of a SMSF to borrow in accordance with the provisions of the SIS Act 1993. Borrowings can be both from a traditional third party lender or from a related party. The purpose of the borrowing can be for the Trustee of the Fund to acquire residential and commercial property, listed shares, managed funds, artwork and any other asset acquisition permitted by the SIS Act 1993. The acquisition of property must conform to the Superannuation Laws.
8. **SMSF Pensions.** There are a wide variety of SMSF pensions available to members of the SMSF when they meet a condition of release of their superannuation benefits. These include the tax advantaged Transition to Retirement Income Stream. This can commence when a member of the Fund reaches preservation age (age 55 for those born prior to 1960) *even though they may still be working*. A SMSF pension may include reversionary beneficiaries that allows the transfer of the pension on the death of a member or the occurrence of some other event. The Simpler Super package offers a wide range of pensions and documentation facilitating pension roll backs, commutations and segregation of assets.

A SMSF Life Will. A member of a SMSF may become legally incapacitated and incapable of managing their own financial affairs including their superannuation benefits. A SMSF Life Will allows the member to plan for such an event with a binding non-lapsing nomination to the Trustee of the Fund in respect of what is to occur to their superannuation benefits in the event of the member's incapacity. The SMSF Strategies Trust Deed

package provides the tools and mechanisms for a member, with the agreement of the Trustee of the Fund to create a SMSF Life Will.

The SMSF Strategies Trust Deed Package is Australia's only comprehensive package of integrated SMSF documentation purpose built with the Simpler Super reforms in mind. It does not carry the legacy of the past. It is purpose built for the Simpler Super reform legislation. Additionally it is the only package in Australia of SMSF products and documentation that provides for both a SMSF Will and SMSF Life Will.

Product Disclosure Statement

1. Introduction

Self managed superannuation funds, or SMSFs, were first established in 1994. At 31 December 2008 APRA statistics show that there were more than 400,000 SMSFs holding \$320 billion in assets. These included cash, shares, managed funds, property trusts, commercial and residential property. The average size of a SMSF is \$80,000 and is increasing year by year. According to an Australian Stock Exchange Survey in 2003 there are several reasons why people choose a SMSF over retail or industry based superannuation fund:

- Control and active involvement
- Choice of fund investments
- Perceived superior performance compared to traditional superannuation fund managers
- Cost effective administration, and reporting
- Flexibility
- Estate planning
- Taxation and accessing low taxed benefits

The ASX survey also showed that SMSFs aren't for everyone. Becoming a member of a SMSF means that "you need to know what you are doing under the superannuation and taxation laws as well as in terms of investing."

One of the most significant requirements to being a member of a SMSF is that, generally a member must act as Trustee of the fund. However if a company is the Trustee of the fund, the member must become a director of the Trustee - being Trustee or director of the Corporate Trustee means taking responsibility for decisions regarding all the transactions of the fund. In addition where the Trustees are individuals the sole or primary purpose of the fund is to pay old age pensions. In contrast where the Trustee of the fund is a Corporate Trustee then the fund may pay income streams, pensions, lump sums and use the fund for estate planning purposes. This is one of numerous reasons why a Corporate Trustee is generally favoured over individual Trustees for a SMSF.

Transactions the Trustee must preside over include investment decisions, creating an income stream for members, accepting contributions, appointing professional advisors if and when required, understanding the Superannuation Laws, ensuring that the Trust Deed is current and completing a wide range of reporting requirements for the Fund. Many superannuation fund members may not want this responsibility. They may find an industry or retail superannuation fund better suited to their needs. A good publication published by the ATO detailing the legal responsibilities of being a SMSF Trustee, entitled "DIY Super. It's your money – but not yet." This can be found at www.ato.gov.au The Commissioners publication on Setting up a SMSF has

also been included at Appendix A and forms part of this PDS to ensure that members or potential members of the Fund are aware of their responsibilities as a Trustee to the Fund.

The document you are reading now is the Product Disclosure Statement (PDS), for the SMSF Strategies trust deed is written by Grant Abbott BEc LLM in conjunction with Ian Glenister LLB – Australia’s leading licensed SMSF Specialist Lawyer and Amreeta Abbott SSA – specialist SMSF Adviser. The PDS is required under the Corporations Act 2001 and is specifically designed to provide future and current members of the SMSF with information that enables them to make an informed decision regarding their superannuation interests and the interests of the fund. Such interests include, but are not limited to making a contribution to the fund, commencing an income stream, taking a lump sum, creating a “SMSF Will” and setting in place a SMSF disability plan or “SMSF Life Will”.

However, the better educated a member, Trustee or director of a Corporate Trustee is about SMSFs the better advantaged they are. With in excess of 3,000 pages of Superannuation Laws and Commissioner of Taxation Rulings, it is potentially perilous for a member Trustee to remain uninformed. The hazard of making a mistake, small or otherwise is that the Trustee of the fund may not only be liable to a substantial financial penalty (up to \$220,000) and possible imprisonment, but the SMSF may be rendered a non-complying superannuation fund. This means that the market value of the assets of the fund are included in the fund’s taxable income and taxed at 45% - a heavy penalty or duty by anyone’s standards. Ignorance is neither an excuse nor a defence – being informed is the only way to avoid this.

In addition to the PDS and the SMSF Strategies Trust Deed, which are educational in their own right, other SMSF resources that may prove useful as educational tools for Trustees and members includes:

1. www.smsfstrategies.com – provides a wonderful range of SMSF strategy and compliance TV programs for Trustees of an SMSF.
2. The Commissioner of Taxation continues to produce a number of important resources for SMSF Trustees – and professionals alike. The website address for ATO superannuation resources is www.ato.gov.au.
3. The SMSF Strategies Trust Deed DVD – this DVD highlights the rights and entitlements of members and Trustees of a SMSF that use the *SMSF Strategies Trust Deed*. This DVD is available from your adviser, or you can find it at www.smsfstrategies.com

2. The SMSF Strategies Trust Deed

As already noted, being a Trustee or director of a Corporate Trustee requires various responsibilities. Of paramount consideration is to ensure that the Rules remain up to date (now required by the Commissioner), are known and understood by the Trustees and members, and that the Trustee abides by all of the Rules of the fund. However, the Rules of each superannuation fund vary. In many cases, this variance can be quite considerable. *If the Rules pre-date 1 July 2007, then they will limit the Trustee and members from accessing the wide range of tax, social security and other benefits under the Simpler Super reforms applicable from 1 July 2007.*

The SMSF Strategies Trust Deed is Australia’s first and only SMSF Trust Deed drafted specifically to cater for the Simpler Super reforms, also known as “Better Super”. They have been designed and written by Australia’s leading SMSF experts - Grant Abbott and Ian Glenister.

Importantly, the SMSF Strategies Trust Deed have been written in “plain English” terms. This allows members of the fund, the Trustees or directors of a Corporate Trustee to clearly understand how the fund is to operate, without having to learn an entire dictionary of technical legal terms or have a legal degree. In addition they qualify the member’s rights and entitlements under the SMSF Strategies Trust Deed. They also establish the obligations and responsibilities of both a member and Trustee or director of a Corporate Trustee of the fund.

Notwithstanding, the Rules of the fund the Trustees are subject to other laws including, the Superannuation Industry Supervision Act 1993, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Corporations Act 2001, the Social Security Act 1991, the Family Law Act 1975 and the various state based Trustee Acts. For the purpose of the SMSF Strategies Trust Deed and the PDS these are referred to collectively as the Superannuation Laws.

To optimise the advantages of the Simpler Super reforms, an upgrade of a pre-existing SMSF’s Trust Deed to the *SMSF Strategies Trust Deed* is a simple and inexpensive exercise. This enables the Trustee or director of a Corporate Trustee of a SMSF with an older Trust Deed to enjoy the benefits of the “Simpler Super” regime.

3. The SMSF Strategies Corporate Trustee

One of the primary issues to be confronted when creating a SMSF is who is going to be the Trustee or Trustees of the fund. There are two options – the members themselves individually can be the Trustees or a Corporate Trustee may be established.

Although there is a small initial expense to create a company to act as Trustee there are significant taxation, practical and financial benefits in choosing to do so. These include:

- a) Access to the low taxation rates for both the SMSF Trustee on fund income as well as where benefits are paid to members as a lump sum or pension. The Superannuation Laws allow a member of a superannuation fund to retain their superannuation benefits, in part or whole, in their lump sum account beyond retirement and even up until they die. As noted earlier where the Trustees are individuals the sole or primary purpose of the fund is to pay old age pensions. To retain superannuation benefits in a Member’s lump sum account until death where the fund has individual trustees may see the fund lose all of its tax concessions
- b) Ease of administration where members move in and out of the fund. Over time members of the fund come and go whether as a result of marriage, divorce, death, disability or bankruptcy. A requirement under the Superannuation Laws is that the SMSF Trustee must hold all of its assets in the names of the Trustee. With each change of Trustee all share and unit holder registries, land title offices and the like must be notified of the change in Trustee holding. With a Corporate Trustee the Trustee remains constant even though the underlying directors may change on occasion.
- c) Trustees are potentially confronted with being sued should an event occur to an asset of the fund. For example the Trustee of a fund may own a residential property. As a result of an accident or for some other reason a tenant or visitor may sue under owner’s liability. The tenant may sue any individual Trustee personally while directors of a Corporate Trustee may seek the shelter of the corporate veil.

As with SMSF Trust Deeds not all companies are suitable to act as a SMSF Corporate Trustee. The SMSF Strategies Corporate Trustee, like the SMSF Strategies Trust Deed have been purpose built specifically for the Simpler Super reforms. Additionally, the company is to act exclusively as a Trustee of a SMSF not to be the Trustee of a family trust or to run a business. For members with an existing dormant or unwanted company, an upgrade to the company constitution to convert the company to a Simpler Super Corporate Trustee is a simple and inexpensive exercise.

4. The SMSF Strategies Trust Deed Minutes Package

In accordance with the SMSF Strategies Trust Deed and the Superannuation Laws any major decision by the Trustee must be made in a valid Trustee meeting and confirmed by minutes evidencing the relevant decision. The decision to be made by the Trustee may include the establishment of the fund's Investment Strategy, commencing a Simpler Super Income Stream for a member of the fund, accepting an in-specie contribution of shares or real property, creating a Reserve Account in the fund and appointing an Auditor. The list of activities is non-exhaustive. These decisions are to be made according to the Rules of the fund. *Different SMSF Rules require different treatment and documentation.*

The SMSF Strategies Trust Deed Minutes Package is a tailor made set of minutes and other documents, created by Grant Abbott and Amreeta Abbott of SMSF Strategies, vital to the operation of the specific SMSF as made out in the name of the Trustee. Not only does the SMSF Strategies Trust Deed Minutes Package provide definitive documentary evidence for the Australian Taxation Office when a SMSF is confronted with a compliance audit but they also provide a strong foundation in the event of member divorce, benefit splitting, death or termination of Membership.

5. The Ten Benefits of a SMSF Strategies Trust Deed Fund

Not all SMSF Trust Deeds are the same! There are a number of crucial strategic benefits offered by the SMSF Strategies Trust Deed:

Benefit One: These are “Brand New” SMSF Strategies Trust Deed not just old SMSF rules with a band aid

The internet has transformed universal contact. It has created a revolution in business, investment, education, entertainment, communication and all manner of lifestyle. How did we ever survive without the Internet? Those not prepared to embrace technological advancement are being left behind. The Simpler Super reforms are to superannuation what the internet is to communications and the availability of information. They change almost every superannuation fundamental by introducing revolutionary superannuation, retirement funding and tax reform. The SMSF Strategies Trust Deed is unique and designed to work exclusively with the Simpler Super reforms. They are not an upgrade or redraft of a set of SMSF rules that pre-date the Simpler Super reforms. This means they do not have residual issues or problems that can arise by attempting to incorporate new ideas and strategies to rules that had their birth many years ago.

Benefit Two: Created by genuine SMSF Experts

Grant Abbott BEc LLM has authored three editions of the CCH “Guide to SMSFs” and a second publication the CCH “SMSF Strategy Guide”- all of which have sold out. CCH is and has been the world market leader in professional publications for the accounting, financial planning and tax

professions for over a century. Only the leader in their chosen field of specialisation is asked to write a book on a subject for other professionals. Grant is Australia's leading authority on SMSFs. Since the advent of SMSFs in 1994 Grant has delivered more than 1,000 presentations and training courses to SMSF professionals and Trustees.

Ian Glenister B.Juris LLB has been involved with SMSFs for more than a decade. His firm, Glenister & Co provides specialised SMSF documents to professionals and SMSF Trustees across Australia as well as SMSF estate planning advice. He is in demand as a speaker and brings strong SMSF legal understanding and strategic drafting skills to the SMSF Strategies Trust Deed Package.

Amreeta Abbott SSA brings a wealth of client SMSF advising skills to the SMSF Strategies Trust Deed package and has designed the ancillary documents to fit with the SMSF Strategies Trust Deed and Corporate Trustee. These documents ensure that a Trustee meets not only strict compliance requirements but builds a strong documentation trail for generations to come.

Benefit Three: Access to ongoing SMSF Education

The SMSF Strategies Trust Deed is not just another MSF Trust Deed. They are flexible, easy to read and designed for the future. As new strategies are discovered or the meanings of various SMSF laws are clarified by the ATO, Trustees need to stay informed. Trustees, as users of the SMSF Strategies Trust Deed have access to the wide range of complimentary SMSF strategy programs at SMSF TV on www.smsfstrategies.com, bi-monthly SMSF strategy newsletters and regular DVDs on specific SMSF topics including SMSF Estate Planning, SMSF Insurances and SMSF Income Streams. Importantly the various SMSF strategies taught by Grant Abbott, Ian Glenister, Amreeta Abbott and other SMSF specialists can only be used with the SMSF Strategies Trust Deed.

Benefit Four: Built for many Generations

Once established, the SMSF Strategies Trust Deed are purpose built to provide current and future generations of a family with tax free lump sums and income to be used when family members reach age 60. Children will follow their parents and grandchildren will follow their grandparents into the fund. Although there is a current limit on four members per SMSF, the SMSF Strategies Trust Deed can accommodate more than four family members in the event the government changes the Superannuation Laws to allow a SMSF to have five or more family members. The SMSF Strategies Trust Deed also allows a family to establish linked multi-SMSFs at any time including upon death or incapacity.

Benefit Five: Placing SMSF control in the right hands

In the past there have been occasions where the wishes or requirements of a Fund member, for whatever reason, have not been adhered to by the fund's Trustee. This may occur with a members' divorce, death or legal incapacity. How can this occur? Many SMSF trust deeds provide a single vote per Trustee at a Trustee meeting. In a case of separation or divorce with two Trustees at odds this can herald disaster. The Trustees of the fund may become deadlocked and the assets of the fund put at serious risk. Similarly there are many SMSF trust deeds where, without undisputed agreement by the Trustees, there is no ability to appoint a replacement Trustee such as the deceased member's executors to oversee a deceased or incapacitated member's wishes.

The SMSF Strategies Trust Deed provides each Trustee with voting rights based on the dollar value of the member's superannuation account balances to ensure that control of the fund remains

in the key member's hands. Additionally, in the event of member's death or incapacity the SMSF Strategies Trust Deed provides automatic Trustee replacement by the deceased member's executors to represent the deceased or incapacitated member. The replacement Trustee, in accordance with the SMSF Strategies Trust Deed, is provided with exclusive voting rights applicable to the deceased or incapacitated member's superannuation benefits.

Benefit Six: Contribute Investments and other Assets as well as Cash

The "life cycle" of many members revolves around education, employment or business involvement, superannuation guarantee contributions, marriage or lifetime partnership, the purchase of a residence with a mortgage, children and their education, investing, funding children's tertiary studies, making contributions to super, accessing superannuation benefits as an income stream or lump sum at retirement, incapacity and death.

The rate at which the "life cycle" occurs differs from member to member. Eventually, as a member reaches preservation age and can access their superannuation benefits, there is a tendency by the member to make larger and more frequent superannuation contributions. It is at this time the SMSF Strategies Trust Deed come to the aid of fund members by allowing them to transfer investments, even business real property, to their SMSF provided the Superannuation Laws are not breached. Stamp duty and capital gains tax considerations must always be considered in these circumstances.

Benefit Seven: Wide range of Trustee investments allowed

The choice of investments and control of the fund are some of the major motivating factors for members to establish a SMSF. Unlike the customary array of investments offered by a Trustee of a retail or industry based superannuation fund the SMSF Strategies Trust Deed expands the Trustees ability to invest in a wide and varied range of investments. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status a SMSF Strategies Trust Deed fund has the ability to invest in commercial assets, farms, options, futures contracts, property development and other joint ventures, art work and other collectibles, property syndicates, franchises, mining leases and many other tax effective investments. Significantly, the SMSF Strategies Trust Deed enables worldwide investment. They allow a Trustee the license to invest anywhere internationally.

Benefit Eight: Flexible Superannuation Accounts

Once a Member reaches preservation age it is now common practice for them to maintain both a lump sum and one or more superannuation income stream accounts. Additionally Trustee maintenance of one or more Reserve Accounts may occur. Each of these accounts is described as a Superannuation Interest, a new term that has emerged under the Simpler Super reforms. Subject to the Superannuation Laws, the SMSF Strategies Trust Deed provides the members of the fund with the opportunity of moving between their various superannuation interests as well as giving the Trustee the power to change assets between various fund interest accounts. This tactic enables the member to maximise their strategic superannuation opportunities.

Benefit Nine: Flexible Superannuation Benefits

The SMSF Strategies Trust Deed takes full advantage of the changes to the laws ushered in by the Simpler Super reforms. Members can access a wide range of superannuation benefits available for the first time including a transition to retirement income stream, an accounts based pension, accessing a lump sum at any time following a member's retirement, terminal illness or permanent

incapacity (as cash or in the form of a fund asset) or the member can just leave their superannuation benefits in the lump sum account to compound indefinitely.

Benefit Ten: Flexible SMSF Estate Planning

One of the most significant changes to the Australian superannuation landscape introduced in the Simpler Super reforms is a member's ability to transfer their superannuation wealth via their SMSF to future generations. The SMSF Strategies Trust Deed is drafted to enable a deceased member's superannuation death benefits to be transferred to a spouse, lifetime partner, children plus any other dependants and non-dependants of the deceased member. Subject to the Superannuation Laws and the Fund retaining its Complying SMSF status the payment of a member's superannuation death benefit may be way of lump sum or an accounts based pension. The benefits can also be paid via the estate of a deceased member or in accordance with a Testamentary Trust established in the deceased's member's will.

The SMSF Strategies Trust Deed has also introduced Australia's first "SMSF Will" where a member may provide a set of specific instructions to the Trustee of the fund to be followed at the time of the member's death. The Trustee, if they accept the SMSF Will, is bound by those instructions. They may include the provision for the payment of death benefits in a manner and form described under the SMSF Will, who is to be the replacement Trustee, which specific superannuation interest a death benefit is to be paid from or whether it is to be made by way of a distribution of a specific asset of the Fund. A SMSF Will can only be created under the SMSF Strategies Trust Deed.

SMSF Strategies Trust Deed - Key Features

The following key features are by no means exhaustive. To understand all that is required of being a Trustee, the benefits and entitlements of a member and the various strategic opportunities with the SMSF Strategies Trust Deed, members and prospective members should also read the SMSF Strategies Trust Deed. The SMSF Strategies Trust Deed has been written in *plain English* and includes an Explanatory Memorandum to elaborate on what the Deed means and how they may apply to a particular member set of circumstances.

1. Benefits for Members at Preservation Age, Retirement, Death or Incapacity

Subject to the Superannuation Laws and the fund retaining its Complying SMSF status, the sole purpose of the fund is to provide the members of the fund with the following benefits should they choose:

- An opportunity to commence a tax effective transition to retirement income stream once they reach preservation age. This is the case even though they may continue to work part time or full time and an employer or the member personally makes contributions into the fund.
- Lump sum or income stream benefits in the event of a member's retirement with benefits after age 60 tax free.
- Lump sum or income stream benefits at age 65.
- The ability to retain superannuation benefits in the member's lump sum account without any requirement to draw down upon the benefits. This account is known as a retirement accumulation account.
- The opportunity of leaving any superannuation benefits in the fund on the member's death directly to dependants, non-dependants or legal estate in the event of the member's death.
- Access to superannuation benefits where the member becomes temporarily or permanently incapacitated.
- Any other benefit allowed under the Superannuation Laws.

The Trustee is precluded from providing a superannuation benefit to a member except in the above circumstances. For example the Trustee cannot invest in art work and then allow the member to hold the art work at home without paying a market value lease fee. Even if a market value lease payment is made there is still a limit of 5% of the fund's assets that can be used by member or related parties. Importantly the Trustee is also not allowed to run an active business in the fund.

Importantly where the Trustees are individual persons, as opposed to a Corporate Trustee, some of the above benefits, such as the non-retirement lump sums and income streams may not be permitted under the Superannuation Laws.

***SMSF Strategy Guide:** A member is not required to take any of their superannuation benefits during their life and may use their SMSF as a legal tax effective estate planning vehicle should they choose. This is where a SMSF Will is an important tool to guarantee the distribution of superannuation benefits in the appropriate form and manner required by the member on their death.*

2. Members to be a Trustee

All members of the fund, subject to some limited exceptions under the Superannuation Laws are required to become a Trustee of the fund or in circumstances where the Trustee of the fund is a Corporate Trustee, a director of the Corporate Trustee. The SMSF Strategies Trust Deed provides the following important exceptions to the member/Trustee rule thereby allowing a Replacement Trustee to be appointed in the place of the member:

- On the member's death, the Replacement Trustee or replacement director of the Corporate Trustee is the executor of the member's legal estate.
- Where the Replacement Trustee or replacement director of a Corporate Trustee holds the member's enduring power of attorney. As the member's legal personal representative ("LPR") they can act on the member's behalf.
- Where the member is a minor and not able to act as a Trustee or director of a Corporate Trustee, a Replacement Trustee or replacement director of a Corporate Trustee may be used including the minor's LPR or where there is no LPR, a parent or guardian of the minor.
- If the member of the fund no longer resides in Australia, they may put in place a Replacement Trustee or replacement director of a Corporate Trustee if their Replacement Trustee holds the member's enduring power of attorney and acts as their LPR. This is to ensure that the fund remains an Australian superannuation fund and retains the taxation concessions available to this type of superannuation fund.

3. Trustee Responsibilities and appointing SMSF Experts

The Trustee is bound by **ALL** of the SMSF Strategies Trust Deed as well as the Superannuation Laws as they apply to SMSFs. The Superannuation Laws provide serious penalties for the Trustee including fines, penalties and in some circumstances imprisonment where the Trustee breaches the Rules and the Superannuation Laws. The Trustee has a range of important responsibilities, including amongst others:

- To be aware of, understand and act in accordance with the SMSF Strategies Trust Deed.
- To ensure that the Trust Deed of the fund is continuously upgraded to meet any changes and requirements of the Superannuation Laws.
- To abide by the Superannuation Laws.
- To document the fund's Investment Strategy and make investments for the fund according to the fund's Investment Strategy.

- To ensure that at all times the fund remains a Complying SMSF.
- To appoint SMSF experts to assist the Trustee in meeting its responsibilities. This includes an approved auditor, an accountant, a fund administrator, an investment strategist, a SMSF insurance adviser and a SMSF estate planning lawyer.

A trustee or director of a Corporate Trustee appointed after 1 July 2007 is required to affirm in writing as to the above. The affirmation is found in the ATO “Declaration for New Trustees of a SMSF”.

4. Trustee Investments and Investment Strategy

The Trustee of the fund has broad investment powers under the SMSF Strategies Trust Deed and is able to invest in private or public company shares; cash and fixed interest; commercial, rural and residential property; unit trusts and pooled superannuation trusts and is able to engage in property development and other pursuits provided the investment is in accordance with the Superannuation Laws. The Trustee cannot run an active business.

The Trustee of the fund may also borrow to acquire an asset provided the acquisition of the asset is permitted by the Superannuation Laws – *see below*. The structure for any borrowing must be by way of a bare trust to ensure the borrowing is non-recourse. The borrowing may be from a bank, building society, non-bank or a related party. The Commissioner of Taxation has issued guidelines in relation to SMSF borrowing.

The Fund’s Trustee can create separate investment strategies for each member of the fund. Alternatively a Trustee may establish separate investment strategies for differing member accounts including member’s lump sum or income stream accounts. However this is not a mandatory requirement. The Trustee can use their power to create a pooled investment strategy for all members of the fund and all accounts provided the investment strategy meets the necessary requirements of the Superannuation Laws.

However any investment made by the Trustee must meet with the fund’s written investment strategy. The Superannuation Laws establish requirement guidelines as to what must be contained in an investment strategy including:

- The risk involved in making, holding and realising, and the likely return from, the entity’s investments having regard to its objectives and its expected cash flow requirements.
- The composition of the entity’s investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification.
- The liquidity of the entity’s investments having regard to its expected cash flow requirements.
- The ability of the entity to discharge its existing and prospective liabilities.

Once one or more income streams are commenced the Trustee of the fund may run separate investment strategies for members where they have a lump sum and an income stream account. This will require the Trustee creating and authoring separate investment strategies and appropriate

confirming documentation. There may be significant taxation and estate planning advantages in creating separate investment strategies for lump sum and income stream superannuation interests.

The Superannuation Laws provide further rules restricting certain investments made by the Trustee of a Complying SMSF:

- The Trustee cannot acquire an asset from a member or related party to the fund whether by way of purchase or as a contribution on behalf of a member. A related party includes a member or any other entity such as a family trust or family company where a member of the fund or Trustee has the ability to control the entity. There are exceptions to the rule which includes listed shares, managed funds, term deposits and business real property.
- The Trustee of the fund may not invest more than 5% of its assets as in-house assets. An in-house asset is defined in the Superannuation Laws to be an investment in, a loan to or a lease of fund property to a member or related party. This would include art work, loans, property and instances such as a holiday home or residential property where the member's children live. Excluded from in-house assets is business real property which may be leased back to a member of the fund or a related party entity.
- Any dealings the Trustee of the fund has with any related party or any other person must be at arm's length and meet the sole purpose test.

5. Making Contributions to a Complying SMSF

The Superannuation Laws allow the Trustee to accept contributions on behalf of a member under the following conditions:

Table One – Contributions under the Superannuation Laws

Age of Member	Contribution condition
Under age 65	No conditions.
Age 65 – 69	The contributions are made under an industrial agreement or the member is engaged in part time gainful employment being 40 hours of gainful employment or self employment over a 30 day period during the contribution income year.
Age 70-74	The contributions are made under an industrial agreement or the member is engaged in part time gainful employment being 40 hours of gainful employment or self employment over a 30 day period during the contribution income year and the contributions are made by a member or their employer.
After those times	Contributions may be accepted by the Trustee after these times if in the Trustee's opinion they relate back to an earlier contribution time in the Trustee's opinion or the contributions are made under an industrial agreement.

Spouse	The spouse must be under age 65.
Co-contribution	A contribution that meets the co-contribution guidelines has been made by the member to a complying superannuation fund.
No TFN	The Trustee may not accept a contribution where the member has not provided the trustee with their Tax File Number.
Contributions above the excess non-concessional contribution limit	The Trustee may not accept contributions in excess of the member's non-concessional contribution threshold. This limit is dependent upon the member's age at the time of making the non-concessional contribution.

The SMSF Strategies Trust Deed allows the Trustee of a fund to accept any contribution on behalf of a member, including both cash and assets provided the fund retains its status as a Complying SMSF. By writing the Trust Deed in this manner it ensures the Deed copes with future contribution law changes.

In terms of superannuation contributions splitting the Trustee of a Complying SMSF may accept a split of up to 85% of any concessional contribution made to the fund on behalf of a member in a prior income year. The member has the following income year in which to notify the Trustee of the desire to split. A concessional contribution is one that is assessable income of the Trustee of the fund. For more with respect to the "Taxation of a SMSF" see below. A non-concessional contribution may not be split with a spouse.

6. Superannuation Benefits - Lump Sums and Income Streams

Under the Superannuation Laws when a member of the fund meets a condition of release of their superannuation benefits they may take either a lump sum or an income stream. The conditions of release include amongst others:

- Temporary Incapacity and Permanent Incapacity – although only an income stream may be taken where a member suffers temporary incapacity and only to the extent that it compensates them for the loss of wages, salary or business profits;
- Retirement or at aged 65;
- Under Severe Financial Hardship or on Compassionate Grounds;
- Where the Member has been diagnosed with a terminal illness that in the opinion of two qualified medical specialists may result in their death within the following 12 months;
- When a Member reaches Preservation Age and commences a Transition to Retirement Income Stream – no lump sum is available.
- 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 Superannuation Lump Sum may be paid on the death of a Member to a Dependant or the deceased Member's Legal Estate; and
- a Superannuation Income Stream may be paid to a Dependant for taxation purposes which includes all those persons who are Dependents but in the case of a Child, only a Child who is aged less than 18 unless they are a financial dependant where the maximum age is 25. 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.

The SMSF Strategies Trust Deed allows the payment of a variety of superannuation income streams and pensions. However under the Superannuation Laws where an income stream is commenced after 20 September 2007 only account based income streams may be taken. An account based income stream requires a member to withdraw a certain percentage of their account each year based on the value of their account at the start of the year. The percentage that must be withdrawn depends upon the age of the person and is indicated as follows:

Age of Member	% of account for income
Under 65	4
65 - 74	5
75-79	6
80-85	7
85-89	9
90-94	11
95 or more	14

7. Taxation of the SMSF and Members

SMSF Strategy Guide: *The taxation benefits described in this section are available with the use of the SMSF Strategies Trust Deed and Package and cannot be guaranteed where other SMSF trust deeds are used, particularly those that pre-date 1 July 2007!*

The Simpler Super reforms have ushered in significant changes to the taxation of superannuation funds and their members. Detailed below are some of the important new Simpler Super tax laws that apply to the Trustee of a SMSF and its members.

a) Taxation in the Fund

Where the Trustee of a SMSF complies with the Rules of the fund and the Superannuation Laws it should be treated by the Commissioner of Taxation as a Complying SMSF. This means that the Trustee of the fund is entitled to concessional taxation treatment. Broadly the tax treatment for the Trustee of a Complying SMSF is:

- Where the assets of a Complying SMSF are set aside to fund lump sum benefits for the members of the fund the Trustee is to include as assessable income - interest, dividends, rents and other items that would ordinarily be assessable to a taxpayer. In addition the Trustee is to include as assessable income those contributions made on behalf of a member of the fund by another person excluding spouse contributions, child contributions, government co-contributions and a rollover of superannuation benefits from another complying superannuation fund.
- The Trustee is entitled to claim a tax deduction for expenses in running the fund.
- If the Trustee pays life or disability insurance premiums they will be entitled to claim a tax deduction for the insurance premium.
- The Trustee is entitled to a 33 1/3% discount on any capital gains realised on lump sum assets.
- The taxation rate on the taxable income of a Complying SMSF is 15% less any tax offsets such as imputation credits or foreign tax offsets.
- Where the assets of Complying SMSF are held aside for use by the Trustee to pay current income streams then any income or capital gains realised on those investments is tax free. However imputation credits can still be used by the Trustee of the fund even though any dividend income is tax free.
- Imputation credits that remain unused will be refunded to the Trustee.
- If a member of the fund dies or becomes disabled during their working life and the Trustee pays out a lump sum benefit or an income stream, the Trustee may be entitled to a partial deduction for the payment.
- The SMSF Strategies Trust Deed provides the Trustee with the ability to create an anti-detriment reserve thereby enabling the Trustee to pay an anti-detriment benefit to a deceased member's dependants or legal estate. Any such payment will see the Trustee receiving a tax deduction equal to the amount of the payment divided by 0.15 – a \$100,000 anti-detriment benefit payment would result in the trustee of the fund receiving a \$666,667 deduction.

b) Contributions to the SMSF for a member

Where a contribution is made to the fund on behalf of a member, if it is made by an employer it is tax deductible. However, a contribution made on behalf of a spouse is not tax deductible but may entitle the contributing spouse to a tax offset. Where a member makes an employer salary sacrifice contribution to a Complying SMSF on their behalf this is not included in the member's assessable income or reportable fringe benefits.

Where the member makes a contribution on their own account, it is deductible to the extent that 10% or less of their assessable income and reportable fringe benefits comes from employment, being a director or where another person is required to make Superannuation Guarantee Contributions on the member's behalf.

Due to the generous taxation advantages attached to superannuation the government has introduced thresholds on both deductible (concessional) and non-deductible (non-concessional)

contributions. The table below highlights the thresholds and the tax penalties where the thresholds are exceeded.

Table Two – Excess Contributions Tax

Type of contribution	Threshold per annum	Excess Contributions Tax	Transitional Rules
Concessional	\$50,000*	31.5%	\$100,000 for over 50's to 2012
Non-concessional	\$150,000#	45%	To age 65 there is a three year bring forward rule which may apply.
Golden Handshake	\$140,000	45%	The pre 30 June 2007 golden handshake rules apply where a pre-existing contract at 11 May 2006 allows for a golden handshake.

* the concessional contribution threshold is to be indexed to CPI but in \$5,000 increments.

the non-concessional contribution threshold is three times the concessional contribution threshold.

c) Benefits paid to a Member

All of the benefits held on behalf of a member in the member's lump sum account are classified as a superannuation interest under the Superannuation Laws. If an income stream is commenced this is generally a separate superannuation interest where a separate amount is set aside by the Trustee of the fund. Any benefit paid from a superannuation interest may have a different tax free/taxable component proportion and thus different taxation consequences to the member or a deceased member's dependants, non-dependants or their legal estate.

d) The proportioning rule

Superannuation benefits whether taken as a lump sum or income stream are to be divided by the Trustee of the fund into a tax free and a taxable component. The proportion used is the same as the superannuation interest that holds the superannuation benefit.

For example, a 57 year old member of a Complying SMSF taking a transition to retirement income stream may have a tax free/taxable component proportion equal to 40/60. Any income stream benefit taken from that superannuation interest will be 40% tax free and 60% taxable component. This will include any commutation of the income stream at a later time once the member retires. At the same time as holding an income stream the member may also be making salary sacrifice contributions to the fund with all the contributions being taxable component. The proportion for the lump sum account is 100% taxable component. Any superannuation interest taken from the lump sum account will always be 100% taxable component.

The tax free component of a superannuation interest consists of two components:

- **The contributions segment** – this component represents any member contributions into the fund after 1 July 2007 for which the member has not claimed a tax deduction.

- **The crystallised segment** – this component is to be determined on 30 June 2007 in relation to lump sum superannuation benefits and represents the pre-83 component, the CGT exempt component, undeducted contributions, post June 1994 invalidity component and the concessional component of the lump sum account at that time. For income streams that were payable at 30 June 2007, transitional rules apply to enable the Trustee to determine the crystallised segment for the income stream where a specific trigger event applies including if they were over age 60 on 30 June 2007. Where a member holds an interest in a superannuation fund they should seek advice from their superannuation adviser in relation to the crystallised segment of their superannuation interests.

The tax free component also includes any government co-contribution. The taxable component of the superannuation interest is the value of the superannuation interest less the tax free component. The taxable component also includes any “splittable” contribution payment as well as any superannuation guarantee payment received by the Trustee.

e) The taxation of benefits to a member

Where a superannuation benefit is paid to a member, as a lump sum or income stream it will be taxed as follows:

- **Tax Free Component** - Any tax free component payable to a member or to dependants, non-dependants or the legal estate on the death of a member is always tax free in their hands. This includes both lump sums and income streams.
- **Taxable Component** - The following table highlights the taxation treatment of benefits payable to a member. It should be noted that the preservation age for a person born prior to 1960 is aged 55.

Table Three – Taxation of the Taxable Component

Type of Benefit	Under preservation age	Between preservation age and age 60	Age 60 and over
Lump sum	20%	First \$140,000 is tax free with any remainder taxed at 16.5%	Tax free
Income stream	Assessable income	Assessable income + 15% tax offset	Tax free
Permanent disability income stream	Assessable income + 15% tax offset	Assessable income + 15% tax offset	Tax free
Temporary disability benefit	Assessable income	Assessable income	Assessable income

8. SMSF Estate Planning with a SMSF Will

One of the most important benefits of using the SMSF Strategies Trust Deed is that it allows the member to provide death benefits directly to non-dependants, dependants and the legal estate of a deceased member.

The SMSF Strategies Trust Deed also introduces Australia's first "SMSF Will" where a member of a Fund can provide specific written instructions for the Trustee of the fund that must be followed in the event of the member's death. In effect the SMSF Will is a non-lapsing binding death benefit nomination made on behalf of the member. The Trustee, if they accept the SMSF Will, is bound by those instructions. They may include the provision of death benefits in a manner and form described under the SMSF Will, who shall be the replacement Trustee in the event of the death of the Member, which superannuation interest a specific death benefit is to be paid from and whether such benefit is to be made by way of a distribution of a specific fund asset. A SMSF Will can only be created in accordance with the provisions of the SMSF Strategies Trust Deed.

The SMSF Strategies Trust Deed and the taxation consequences for member death benefits are:

- A SMSF Will allows the Trustee of the fund to make lump sum payments by way of assets – called an "in-specie" death benefit payment.
- For taxation purposes, a lump sum can be paid to a dependant or the Trustee of the legal estate who may pass them on directly to a dependant of the deceased member. Alternatively the Trustee of the legal estate may create a trust to hold only the superannuation death benefits for dependants only. In these circumstances any lump sum death benefits payment is tax free.
- Lump sum payments made direct to non-dependants are taxed at 16.5% on the taxable component (including Medicare levy) with no tax on the tax free component.
- A SMSF Will allows the Trustee of the fund to provide an income stream to a tax dependant of a member. This income stream is known as a reversionary income stream. If the deceased member was over age 60 at the time of death or the dependant was over age 60 at the time of commencement of the income stream then the income payments are tax free to the dependant. If the dependant is able to convert the income stream into a lump sum the lump sum payment would be tax free.
- If the reversionary pension member (deceased member's dependant) is less than aged 60, as was the deceased member, then the taxable component of the income stream is assessable with a 15% tax offset.

Strategy Guidance Note: *A SMSF Will and any corresponding death benefit payments from a SMSF fall outside any external Will the member may have put in place. Importantly, the Trustee is not legally bound by any direction the member may have made in the Will regarding their superannuation benefits.*

The Superannuation Laws define a dependant to include a spouse, child, a financial dependant or a person who has a close interpersonal relationship with the member. However for taxation purposes a "dependant" includes a spouse, a child under the age 18, a person who the member has a close interpersonal relationship with as well as any person who is a financial dependant.

Thus a child over age 18 would be considered a non-dependant for taxation purposes unless they were a financial dependent.

9. Costs of running a SMSF

There are a range of costs associated with establishing, operating and maintaining a SMSF. The level of costs incurred will also depend on the extent that the Trustee has sought expertise in ensuring the fund remains complying and also has the best possible strategic set up for the Trustee and members. These costs should be compared carefully to the costs associated with being a member of an industry based or retail superannuation fund.

Saving on not getting the best possible advice or for that matter, acquiring the most strategic and up to date SMSF Trust Deed and Rules is a false saving as it limits far larger taxation savings as well as opening up the Trustee to potential fines, imprisonment and having the fund's assets subject to tax as a non-Complying SMSF. The extent of the costs will depend on the specific service provider and Trustees should discuss all costs with their SMSF professionals.

Setting up a self-managed super fund

What you need to know



Our commitment to you

We are committed to providing you with guidance you can rely on, so we make every effort to ensure that our publications are correct.

If you follow our guidance in this publication and it turns out to be incorrect or misleading, and you fail to comply with the law as a result, we must still apply the law correctly. However, we will take the fact that you followed our guidance into account when deciding what action, if any, we should take.

If you make an honest mistake in trying to follow our guidance in this publication and you fail to comply with the law as a result, we will take the reason for the mistake into account in deciding what action to take.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at www.ato.gov.au or contact us.

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Commissioner's foreword

Self-managed super funds (SMSFs) can be a great way to provide for your retirement. Now that you've decided to establish your own fund, it's important you are aware of your responsibilities and obligations as a trustee.

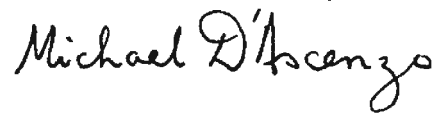
The Australian Taxation Office (ATO), as regulator of SMSFs, is responsible to help protect the retirement income system by ensuring that SMSFs follow the rules outlined in the super and income tax legislation.

In recognition of this, our compliance program around SMSFs has increased substantially over the last two years and will be maintained and enhanced in years ahead.

We have maintained a strong focus on education to encourage voluntary compliance in the market. We now have a suite of publications that you can use according to where you are in managing your fund, our electronic

SMSF Newsletter readership is growing everyday and is an ideal way for you to keep in touch with what is happening, and we have redesigned our website so that information is easier to find.

Remember, if you need help with your fund, you can contact us for specific advice about how the super laws apply to your situation.



Michael D'Ascenzo
Commissioner of Taxation



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Setting up an SMSF is about more than taking steps to get it started. You also need to make important decisions about how to structure and run your fund.

We recommend you seek professional advice before setting up your fund. However, this introduction will help you make sure you've covered the essentials by:

- helping you understand how you can structure your fund
- providing the steps you'll need to take to set up your fund and start operating it
- explaining your obligations and responsibilities
- showing you where to go for more information.

It also contains a series of checklists at the end of each chapter to:

- guide you through the process
- help you check that you've covered all the necessary steps.

➤ Remember, if you use a professional adviser to help you set up your fund, you're still responsible for making sure it's done correctly.

01

Deciding to set up an SMSF

Managing your own super is a big responsibility, so it's important you make sure it's the best option for you.

Things to consider

Setting up and operating an SMSF is a major financial decision. After all, the responsibility for running the fund and complying with the law rests solely with you as trustees.

While SMSFs are great for some people, they don't suit everyone. Managing your own super takes time, knowledge, skill and money, so before deciding to set up an SMSF, it's important to understand the following:

- what's involved in managing your own fund
- what it means to be a trustee.

You need to:

- consider whether you have
 - the time, knowledge and skill to manage your own super
 - the assets and money to make the fund viable
- compare the costs and benefits of running an SMSF with those of other retirement saving options
- make sure you're setting up the fund, solely to pay retirement benefits to members.

An SMSF is just one way to manage your super and save for your retirement. You should also consider other options before you make a final decision.

- **We recommend you speak to an SMSF professional (such as a licensed financial adviser) to discuss whether an SMSF is right for you.**

What it means to be a trustee

When you set up an SMSF, you take on the role of either a:

- trustee
- director of a company that is a trustee (called a corporate trustee).

A trustee is a person or company that holds and invests the fund's assets for the benefit of the members' retirement.

As a trustee or director, you'll be responsible for the following:

- running the fund
- making decisions that affect the retirement interests of each fund member, including yourself.

You need to comply with the super and tax laws so your fund is entitled to tax concessions and members' interests are protected.

You need to also:

- act in the best interests of all fund members when you make decisions
- manage the fund separately from your own affairs
- ensure the money in the fund is only accessed where the law allows it (see 'Paying super benefits to members' on page 19).

Being a trustee gives you the chance to actively manage your own super and make your own investment choices, but it also brings responsibilities. All trustees and directors are equally responsible for managing the fund and making decisions – even if one takes a more active role in its day-to-day running.

- **For a summary of your role and responsibilities, see page 22. For more information, refer to *Running a self-managed super fund* (NAT 11032).**

02

Preparing to set up your fund

You'll need to choose the best way to structure your fund so it complies with the law and suits you and the other members' circumstances.

Once you've decided to set up an SMSF you need to:

- decide on the type of trustee for your fund (a company or up to four individuals)
- make sure you (and the other members) are eligible to be a trustee
- check the residency requirements your fund needs to meet to be a complying fund and receive tax concessions.

Structuring your fund

For your fund to be an SMSF it needs to meet several requirements under the super laws.

The requirements are different depending on whether your fund is one of the following:

- a corporate trustee
- individual trustees
- a single member.

If your fund has individual trustees, it's an SMSF if all of the following applies:

- it has four or less members
- each member is a trustee
- no member is an employee of another member, unless they're related
- no trustee is paid for their duties or services as a trustee.

If your fund has a corporate trustee, it's an SMSF if all of the following applies:

- it has four or less members
- each member of the fund is a director of the company
- each director of the corporate trustee is a member of the fund
- no member is an employee of another member, unless they're related
- the corporate trustee is not paid for its services as a trustee
- no director of the corporate trustee is paid for their duties or services as director in relation to the fund.

Single member funds

It's possible for you to set up your fund with only one member.

If you have a corporate trustee for a single member fund, the member needs to be one of the following:

- the sole director of the trustee company
- one of only two directors, that is either
 - related to the other director
 - not an employee of the other director.

You can also have two individual trustees. One trustee needs to be the member and the other needs to be one of the following:

- a person related to the member
- any other person who does not employ them.

A trustee or director can't be paid for their services as a trustee or director in relation to the fund.

➤ **We regulate SMSFs. All other funds are regulated by the Australian Prudential Regulation Authority (APRA). For more information about our role and how we work with you and others to regulate your fund, refer to *How your self-managed super fund is regulated* (NAT 71454).**

Types of trustees

Once you understand how you can structure your fund, you need to decide on the type of trustee you'll use. You can choose either one of the following:

- a corporate trustee
- up to four individual trustees.

A corporate trustee is a company incorporated under the law that acts as a trustee for the fund. Generally, to be an SMSF, all directors of the company need to be members and all members need to be directors of the company. If you already have a company, you may choose to use it as trustee.

Your choice of trustee will make a difference to the way you administer your fund and the types of benefits it can pay, so you need to make sure it suits your circumstances.

When making your decision, we recommend you:

- discuss your trustee options with an SMSF professional
- consider the benefits and costs of each type of trustee (for your situation).

The following table contains some general information about the things you should consider when choosing the trustees for your fund.

	Individual trustees	Corporate trustee
Setting up your fund		
Administrative cost	The fund can be less costly to establish as you don't have to set up a separate company to act as trustee.	It can be more costly to set up the fund initially as you need to establish a company to act as trustee (if you don't already have one). ➤ For more information about what's involved in setting up a company, refer to the Australian Securities & Investments Commission (ASIC) website at www.asic.gov.au
Single member funds	You can have a single member fund if you have two individual trustees (you can't be the only trustee).	You can have a single member fund and be the sole director of the trustee company.
Governing rules	Trustees need to follow the rules in the following: ■ the fund's trust deed ■ the super laws.	Directors of the corporate trustee need to follow the rules in all of the following: ■ the fund's trust deed ■ the super laws ■ the company's constitution ■ the <i>Corporations Act 2001</i> (administered by ASIC).
Ongoing administration & reporting		
Administration	The fund has less reporting obligations and can be simpler to administer. Changing trustees can mean increased paperwork and administrative costs.	Having a corporate trustee can make it easier to: ■ administer the ownership of fund assets ■ keep the assets of the fund separate from any personal or business assets.
Reporting	As a trustee, you need to: ■ lodge a <i>Self-managed super fund annual return</i> (SMSF annual return) for the fund ■ pay an annual supervisory levy, to us.	As a director of the corporate trustee, you have reporting obligations to ASIC (in addition to those of individual trustees). You need to pay an annual review fee to ASIC.

	Individual trustees	Corporate trustee
Changes to trustees & members		
Administration of fund assets	<p>Fund assets should be held in the name of all individual trustees as trustees for the fund.</p> <p>If there is a change in trustees, you need to:</p> <ul style="list-style-type: none"> ■ change the name on the ownership documents (such as a title deed) for each fund asset ■ notify all relevant authorities/registries. <p>! This process can be time-consuming and costly if your fund owns many assets, such as a wide range of shares.</p>	<p>Fund assets should be held in the name of the company as trustee for the fund.</p> <p>If there is a change in directors, you don't have to change the name on the ownership documents for each fund asset (as the trustee is still the same).</p>
Becoming a single member fund	<p>If your fund has two trustees and one leaves or dies, you need to appoint another trustee in their place for your fund to continue to be an SMSF.</p>	<p>If the company has two directors, and one leaves or dies, you don't have to replace them (a corporate trustee can have a single director).</p> <p>The trustee doesn't change if a member/director dies or leaves the fund.</p>
Reporting	<p>If there is a change in trustees or members you need to notify us within 28 days.</p>	<p>If there is a change in directors, you need to:</p> <ul style="list-style-type: none"> ■ notify us within 28 days ■ report the change to ASIC within 28 days.
Paying benefits to members	<p>The trust deed needs to state that the fund's sole or primary purpose is to provide old age pensions.</p> <p>Your fund can pay lump sum benefits provided the trust deed specifically allows it to.</p>	<p>Your fund can pay benefits in the form of a lump sum or pension.</p>

Trustee eligibility

In most cases, all members of the fund need to be trustees, so it's important to make sure all members are eligible to be a trustee.

Generally, anyone 18 years or over and not under a legal disability (such as a bankrupt, minor and people with a mental impairment) can be a trustee of a super fund unless they're a disqualified person.

A person is disqualified if one of the following applies:

- they have ever been convicted of an offence involving dishonesty
- they have ever been subject to a civil penalty order under the super laws
- they are considered insolvent under administration
- they are an undischarged bankrupt
- they have been disqualified by a regulator (for example, by us or APRA).

! Penalties can apply if you act as a trustee while disqualified.

A company can't be a trustee if one of the following applies:

- they are a responsible officer of the company (such as a director, secretary or executive officer) is a disqualified person
- they are a receiver, official manager or provisional liquidator has been appointed to the company
- action has started to wind up the company.

You'll need to declare that you and the other trustees or directors, aren't disqualified when you register your fund with us. In certain circumstances (such as minor dishonesty offences) a disqualified person can apply to us in writing for a waiver.

Minors

Generally, members under 18 years of age can't be trustees of a super fund. A parent or guardian can be a trustee for a member who's under 18 years of age and does not have a legal personal representative.

Having a resident fund

To be a complying super fund and receive tax concessions, your fund needs to be a resident regulated super fund at all times during the income year. This means your fund needs to meet the definition of an 'Australian superannuation fund' for tax purposes.

If your fund is a non-complying fund, its assets (less certain contributions) and its income are taxed at the highest marginal tax rate.

- ! **If a member moves or travels overseas for an extended period, this may affect the residency status of the fund.**
- > **Your fund needs to meet certain conditions to be an 'Australian superannuation fund'. For more information, refer to *Residency of self-managed super funds* (NAT 72286).**

Check your progress

Structuring your fund

- Your fund is structured so it meets the definition of an SMSF. (see page 6)

Having a resident fund

- You know your fund meets the residency requirements to be a complying fund and receives tax concessions. (see page 10)

Types of trustees

- You have considered the benefits and costs of appointing a corporate trustee or individual trustees. (see page 8)
- You have considered whether you need to discuss your trustee options with an SMSF professional. (see pages 7 and 8)
- You have decided on the type of trustee for your fund. (see page 10)

Trustee eligibility

- Each individual or the company is eligible to be a trustee. (see page 10)
- No individual or responsible officer of the company is a disqualified person. (see page 10)

03

Getting your fund started

Once you've decided how to structure your fund, there are steps you'll need to take to get it started.

It's important to set up your fund correctly so:

- it's a complying super fund and qualifies for tax concessions
- you avoid penalties
- your fund is able to pay specific benefits
- it's as easy as possible to administer.

An SMSF professional can help you set up your fund. For example:

- a legal practitioner can draft your fund's trust deed
- an accountant or administrator can help you organise the paperwork and register your fund with us
- a financial adviser can help you prepare an investment strategy.

Many SMSF professionals also offer packages or kits to make the process easier. If you purchase a package or kit, it's important to make sure the trust deed complies with the latest changes to the law and is unique to the following:

- your fund
- its objectives
- the members' circumstances.

! If you use an SMSF professional to help you set up your fund, you're still responsible for making sure it's done correctly.

An SMSF is a trust

As all SMSFs are trusts, there are certain steps you need to follow under trust law to set up your fund.

A trust is an arrangement where a person or company (the trustee) holds assets (trust property) in trust for the benefit of others (the beneficiaries). A super fund is a special type of trust, set up and maintained for the sole purpose of providing retirement benefits to its members (the beneficiaries).

To create a trust, you need to have the following:

- trustees
- property (assets)
- identifiable beneficiaries
- the intention to create a trust.

You also need to have a trust deed prepared for the fund.

Obtaining a trust deed

A trust deed is a legal document that sets out the rules for establishing and operating your fund. Together with the super laws, they form the fund's 'governing rules' and detail the following:

- the powers, duties and responsibilities of the fund's trustees
- the rights of the members.

An SMSF professional can help you organise a trust deed for your fund, but as it's a legal document, you need to make sure it's prepared by someone qualified to do so.

The trust deed covers areas such as:

- the fund's objectives
- who the trustees are
- who can be a trustee
- how trustees are appointed or removed
- who can be a member
- when contributions can be made
- how benefits can be paid (pension or lump sum) within SISA requirements
- when benefits can be paid
- how to appoint professional advisers (such as an auditor)
- the procedures for winding up the fund.

The trust deed needs to be tailored to your fund and correctly drafted to meet its objectives and the members' needs (for example, allowing for the payment of specific benefit payments).

If your fund has individual trustees, the trust deed needs to state that the fund's sole purpose is to pay retirement benefits.

All trustees need to sign and date the trust deed and ensure it is properly executed according to state or territory laws.

! All trustees are bound by the trust deed and are equally responsible if its rules are not followed, so it's important that all trustees understand the contents of the deed.

As a trustee, you need to make sure the trust deed is regularly reviewed and updated so it complies with the super laws (including changes to the law) and the members' needs.

Appointing trustees

Once you've decided on the type of trustee(s) for your fund, the next step is to appoint them. New funds usually appoint trustees under the fund's trust deed.

Remember, for your fund to be an SMSF, generally all members of the fund need to be trustees or directors of the corporate trustee (see 'Preparing to set up your fund' on page 6).

All trustees and directors need to consent in writing to being appointed and you need to keep these records for at least 10 years.

Holding fund assets

To be legally established, your fund needs to hold assets. The trustees hold the fund's assets in trust for the benefit of the members.

An SMSF is usually established by making a contribution to the fund at the same time as the trust deed is executed. A contribution can take the form of money or a transfer of certain assets, for example listed shares and securities.

You need to open a bank account for the fund before a member can make a cash contribution (see 'Opening a bank account' on page 14).

> For more information about contributions, see 'Accepting contributions and rollovers' on page 17.

Ownership of your fund's assets

One of your trustee responsibilities is to ensure the assets of the fund are protected.

Assets should be recorded in a way that:

- distinguishes them from your personal or business assets
- clearly shows legal ownership by the fund.

This can protect fund assets in the event of a creditor dispute and prevent costly legal action to prove who owns them.

Fund assets (other than money) should be held in the name of one of the following:

- the individual trustees as trustees for the fund
- the corporate trustee as trustee for the fund.

The assets can't be held in the name of a trustee or member as an individual.

Examples

The Jones Family Super Fund has two individual trustees, Bill and Penny Jones. Where legally possible, the fund's assets need to be held in the name of Bill and Penny Jones as trustees for the Jones Family Super Fund.

The Anderson Super Fund has a corporate trustee, ABC Pty Ltd. Where possible, the fund's assets need to be held in the name of ABC Pty Ltd as trustee for the Anderson Super Fund.

In some states, where it's not possible to use the name of the fund, you need to clearly show and document your fund's ownership of the asset, for example by using one of the following:

- a caveat
- legal instrument
- declaration of trust.

➤ **For more information about CGT, refer to *Selling or transferring assets* (NAT 70642) available on our website at www.ato.gov.au**

Signing a trustee declaration

If you're a new trustee (or director of a corporate trustee) you need to sign a declaration within **21 days** of becoming a trustee or director.

By signing the declaration, you're stating you understand your duties and responsibilities as a trustee or director of the corporate trustee.

You need to keep the declaration for as long as it is relevant, or otherwise for at least 10 years.

The declaration needs to be available for us to see if we request it as part of an audit or review.

❗ **If you don't sign and retain the declaration, or make it available to us when we request it, penalties may be imposed.**

➤ **To obtain a copy of the *Trustee declaration* (NAT 71089) or for more information:**

- visit our website at www.ato.gov.au and search for 'Trustee declaration'
- phone us on **1300 720 092**.

Recording each member's tax file number (TFN)

When a member joins your fund, it's important you record their TFN. You'll also be asked to provide each trustee's or director's TFN when you register the fund with us.

If a member has not quoted their TFN:

- your fund can't accept certain contributions made on their behalf, including personal and eligible spouse contributions
- your fund needs to pay extra tax on some contributions made to that member's account, including
 - employer and salary sacrifice contributions
 - personal contributions the member claims as an income tax deduction
- the member may not be able to receive the super co-contribution.

➤ **For more information about TFNs and how we tax contributions:**

- visit our website at www.ato.gov.au
- refer to *Running a self-managed super fund* (NAT 11032).

Registering with us

Once your fund is legally established and all trustees have signed a trustee declaration, you need to register your fund with us.

When registering your fund, you can:

- elect for it to be regulated. You need to do this within 60 days of establishing your fund
- obtain a TFN
- obtain an Australian business number (ABN)
- register for GST.

➤ You can do this either:

- **online via the Australian Business Register at www.abr.gov.au**
- **by completing the *ABN registration for superannuation entities* (NAT 2944) form and lodging it with us. You can obtain a copy, by phoning us **1300 720 092**.**

Electing for your fund to be regulated

For your fund to be a complying fund and receive tax concessions, you need to elect for it to be regulated and comply with the super laws.

You need to make the election within **60 days** of establishing your SMSF; otherwise, we may not accept your fund as a regulated fund. Generally, your fund is established after the trust deed has been signed and the first contribution is made.

Funds that are not regulated are not entitled to tax concessions, and the members' employers (and the members who are self-employed) can't claim deductions for contributions they make to the fund.

If you make the election more than 60 days after you establish it, you need to tell us your reasons for the delay in writing.

Once you have asked us to regulate your fund, the election can't be reversed. Your fund will continue to be regulated until it's wound up.

Obtaining a TFN and ABN

We allocate a TFN and an ABN to all funds that register with us.

Once we give you an ABN, we place some of your fund's details on the Australian Business Register.

Funds with an ABN are also included on the Super Fund Look-up website at www.abn.business.gov.au Other super funds can use Super Fund Lookup to check whether your fund is a complying fund for transferring super benefits.

Registering for GST

You need to register the fund for GST if its annual turnover is greater than \$75,000. Annual turnover commonly includes gross income from the lease of equipment or commercial property. Your fund needs to have an ABN to register for GST.

Opening a bank account

You need to open a bank account in your fund's name for either of the following:

- to manage the fund's operations
- to accept cash contributions and rollovers of super benefits.

All contributions and rollovers are deposited into the fund's account. The money is then:

- invested, according to the fund's investment strategy
- used to pay the fund's expenses and liabilities.

Earnings on fund investments are also credited to the fund's account.

Although you don't have to open a separate bank account for each member, you need to still keep a separate record of their entitlement (called a 'member account'). Each member account will record the following:

- contributions made on behalf of the member
- any fund earnings allocated to them
- payments of any super benefits.

The fund's bank account needs to be kept separate to each of the trustees' individual bank accounts and any related employers' bank accounts.

We recommend you use safeguards, such as joint bank account signatories, to protect the assets of the fund.

- ❗ **All your fund's assets (including money) need to be kept separate from your personal or business assets.**

Check your progress

Obtaining a trust deed

- You have organised a trust deed for your fund. (see page 12)
- The trust deed is tailored to the fund, its objectives and the member's circumstances. (see page 12)
- All trustees have read and understand the trust deed. (see page 12)
- The trust deed has been signed by all trustees, dated and properly executed. (see page 12)

Appointing trustees

- You have appointed individual trustees or a corporate trustee to manage your fund. (see page 12)
- All trustees or directors have consented in writing to their appointment. (see page 12)

Holding fund assets

- The fund has assets (usually by making an initial contribution to the fund). (see page 12)
- The fund's assets are held in the name of the trustee(s). (see page 12)

Signing a trustee declaration

- All trustees or directors of the corporate trustee have signed a trustee declaration within 21 days of becoming a trustee or director. (see page 13)
- All trustees or directors know they need to retain the declaration and make it available to the Tax Office if requested. (see page 13)

Recording each member's TFN

- You have a record of each member's TFN. (see page 13)

Registering with the Tax Office

- You have elected for your fund to be regulated within 60 days of establishing it. (see page 14)
- You have obtained a TFN for the fund. (see page 14)
- You have obtained an ABN for the fund. (see page 14)
- You know whether or not your fund needs to register for GST. (see page 14)

Opening a bank account

- You have opened a bank account in the name of the fund. (see page 14)
- You know you need to keep a record of each member's benefit in the fund. (see page 14)

04

Starting to operate your fund

Once your fund is legally established, there are a number of steps you should consider as a trustee or director.

There are a number of things you need to think about and put in place when starting to operate your fund. The following general information will help you get started.

➤ **For more detailed information about these topics, refer to *Running your self-managed super fund* (NAT 11032).**

Preparing an investment strategy

Before you start making investments, you need to prepare an investment strategy.

An investment strategy sets out the fund's investment objectives and how you plan to achieve them. It provides you and the other trustees with a framework for making investment decisions to increase member benefits for their retirement.

A financial adviser can help you prepare an investment strategy, but you and the other trustees are responsible for managing the fund's investments.

There is no prescribed format for the investment strategy, but it needs to reflect the purpose and circumstances of the fund.

When preparing your investment strategy, you need to consider the following:

- diversification (investing in a range of assets and asset classes)
- the risk and likely return from investments, to maximise member returns
- the liquidity of fund's assets (how easily they can be converted to cash to meet fund expenses)
- the fund's ability to pay benefits when members retire and other costs the fund incurs
- the members' needs and circumstances.

Your investment strategy should be in writing so you can show your investment decisions comply with it and the super laws.

➤ **For more information about preparing an investment strategy and helpful tips on investing, refer to the ASIC consumer website at www.fido.gov.au**

Accepting contributions and rollovers

As a trustee, you need to know the rules for accepting contributions and rollovers. These rules are set out in:

- your fund's trust deed
- the super laws.

You need to also make sure any contributions and rollovers are:

- properly documented, including the amount, type and breakdown of components
- allocated to the fund members' accounts.

Contributions

A contribution is a payment made to your fund in the form of money or an asset other than money (called an 'in specie' contribution).

You need to accept contributions according to the following:

- your fund's trust deed
- the 'contribution standards' in the super laws
- the contribution limits that apply (called 'contribution caps')
- any investment restrictions.

Whether your fund can accept contributions for a member will depend on the following:

- the type of contributions
- whether the member has exceeded the contribution caps
- the age of the member
- whether they've quoted their TFN.

Provided the governing rules of your fund allow it, your SMSF can generally accept the following:

- employer contributions
- personal contributions
- salary sacrifice contributions
- super co-contributions
- eligible spouse contributions.

As a trustee, you generally can't acquire non-cash assets from related parties, such as the following:

- fund members
- their families and partners
- related companies and trusts.

There are some significant exceptions including:

- listed shares and securities
- business real property (land and buildings used wholly and exclusively in a business).

Example

A member of XYZ Super Fund owns a single residential property and wants to contribute it to the fund. The trustees can't accept the contribution as it would be a breach of the investment restrictions (because the member is a related party of the fund and the trustees can't acquire an asset from a related party unless an exception applies).

You need to allocate contributions to each fund member's account within **28 days** after the end of the month that you receive them.

Remember, you should also consider how CGT applies to any assets you transfer into the fund or sell to make contributions to your fund.

! You may incur a penalty if you fail to comply with the contribution standards and investment restrictions.

Rollovers and transfers

Once your fund is established, a member can rollover or transfer some or all of their existing super benefits to it. Before they can do this, they need to provide proof to their former super fund that your SMSF is a regulated complying super fund.

Your fund will be included on the list of regulated complying super funds on the Super Fund Look-up website at www.abn.business.gov.au once it is registered with us. You'll be sent a notice of compliance for your fund once you've lodged the first annual return.

Members can use a *Request to transfer whole balance of superannuation benefits between funds* (NAT 71223) form to rollover the **whole** balance of their super benefits to your fund.

➤ **To obtain a copy of this form, visit our website at www.ato.gov.au**

If a member only wants to rollover **part** of their super benefits from another fund, they will need to contact the fund directly to organise the paperwork.

Rollovers and transfers are not treated as contributions to the fund.

Record keeping

One of your responsibilities as a trustee of an SMSF is to keep proper and accurate fund records.

You need to keep certain records under the super and tax laws, and others to:

- meet your tax and audit obligations
- operate your fund efficiently.

Keeping good records will:

- provide you with an accurate history of your fund
- support the decisions you (and other trustees) make on the fund's behalf
- help us and approved auditors work out whether you have complied with the super laws.

When setting up your fund, you should consider the following:

- how you'll manage the fund's records
- whether you'll appoint an SMSF professional to help you.

Records you need to keep include the following.

Administrative records	Financial and tax records
Minutes of trustee meetings and decisions (where fund matters were discussed)	Accounting records to explain the transactions and financial position of the fund
Records of change in fund details (such as trustees)	Annual operating statement (balance sheet)
Trustee declarations	Statement of financial position (profit and loss)
Written consents to act as trustee	Records needed to prepare your fund's annual returns and accounts
Records needed to complete your fund's annual audit	Annual returns
Audit reports	Records that explain your fund's assessable income and deductible expenses
Trust deed	Documents showing ownership of fund assets
Investment strategy	Bank account statements
Registration documents (ABN, TFN and GST notifications)	Records to show contributions, rollovers and payments to members
Notice of fund compliance (received after lodgment of first year's return)	Record of each member's account
Death benefit nominations	PAYG payment summaries
Letter of engagement and Management letter (see 'Appointing an approved auditor' on page 23)	

Generally, records need to be kept for a minimum of five or 10 years. For example, you need to keep the following:

- financial records, such as accounts, for a minimum of five years
- non-financial records, such as minutes of meetings and decisions, for at least 10 years.

If you use an SMSF professional, you should discuss with them what records they will look after and which ones you'll need to keep.

Appointing SMSF professionals

Under the super laws, you need to appoint an **approved auditor** to audit your fund's operations each year.

- **For more information about appointing an approved auditor, see page 23.**

In certain circumstances, you also need to appoint an actuary and obtain an actuarial certificate if your fund starts to pay a pension to a member. An actuary works out the following:

- whether your fund can meet its pension liabilities
- what assets are being used to fund pension payments to members, as the income from these assets is exempt from tax.

- **For more information about when you need to use an actuary, refer to *Role and responsibilities of trustees* (NAT 11032).**

When you set up your fund, you should also consider whether to use one or more other SMSF professionals to help you manage the fund. For example:

- a **tax agent** can complete and lodge your fund's annual income tax and regulatory return, provide you with taxation advice and represent you in your dealings with us
- an **accountant** can help prepare your fund's accounts and its annual financial position and operating statements
- a **fund administrator** can help you manage the day-to-day running of your fund and meet your annual reporting and administrative obligations
- a **legal practitioner** can review and update your fund's trust deed and give you advice on such things as divorce, estate planning or disputes between trustees
- a **financial adviser** can help you prepare an investment strategy and provide you with financial and investment advice.

Sometimes, a professional can take on more than one role in helping you manage your fund. For example, your fund's accountant will often also be your fund's tax agent.

If you decide to use an SMSF professional, choose one who's qualified and right for you and your circumstances. To provide financial advice, a person needs to hold an Australian Financial Services License.

- **You can check whether your financial adviser is appropriately licensed or authorised to provide such advice on the ASIC website at www.asic.gov.au**

Generally, only a registered tax agent can charge a fee to prepare and lodge your fund's tax return or provide you with tax advice.

- **You can check whether your tax agent is registered by going to the Tax Agent's Board website at www.tabd.gov.au**

- ⓘ **Even if you use a professional, the responsibility for running the fund and making decisions rests with you and the other trustees.**

Paying super benefits to members

As a trustee, you need to know the rules for paying benefits to members, so you know when and how they can be paid. These rules are set out in:

- your fund's trust deed
- the super laws (referred to as 'payment standards').

In some cases, SMSFs are set up to pay a super benefit to a member almost immediately, that is, as soon as the member has either:

- rolled over any existing entitlements
- made contributions to the fund.

A member can only access all or part of their super benefits if they satisfy one of the conditions in the super laws.

If your fund's governing rules allow it, you can generally pay a super benefit as one of the following:

- a lump sum
- an income stream (pension or annuity)
- a combination of both.

You need to make sure all benefits are properly documented, and that you comply with any reporting and administrative requirements, such as:

- registering for pay as you go (PAYG) withholding
- issuing payment summaries
- obtaining actuary certificates.

It's possible for your fund to pay super benefits and still have member's contributing to it.

➤ **For more information about when and how super benefits can be paid and your reporting obligations:**

- refer to *Running a self-managed super fund* (NAT 11032)
- visit our website at www.ato.gov.au

⊖ **You should be wary of promoters who approach you to set up an SMSF with the purpose of either:**

- withdrawing some or all of your super earlier than allowed under the law
- paying for things other than your retirement.

These arrangements are illegal and severe penalties may apply to you, as well as the recipient of the benefit.

Planning for the future

Setting up an SMSF is about more than just organising the paperwork to get started – it's about planning for the future. We recommend you, and the fund's members consider things such as death benefit nominations and insurance.

- **We have provided some general information about these topics below. However, for more information that is specific to your circumstances, we recommend you speak to an SMSF professional.**

Death benefit nominations

A **death benefit** is a payment made from a super fund on the death of a member. It's usually paid to either:

- one or more of the member's dependants (such as a spouse or child)
- their estate.

In some cases, it may be paid to a non-dependant.

- **For more information about death benefits and how they are taxed, refer to our website at www.ato.gov.au and search for 'death benefits'.**

A member can nominate who they want their death benefit paid to, by way of a death benefit nomination.

A **death benefit nomination** is a notice given to the trustees setting out who to pay the death benefit to and in what proportion. It can be one of the following:

- binding – that is, it directs the trustees to pay the member's death benefit to a legal personal representative or dependant
- non-binding – that is, it notifies the trustees of the member's preferred beneficiaries, leaving the trustees to make the final decision.

If your fund does not have a valid binding nomination for a member, their death benefit is paid according to the fund's trust deed, with the trustees being guided, as appropriate, by any non-binding nomination.

Insurance

When your fund acquires new assets, such as real property and collectibles, we recommend you insure these assets to protect the fund from financial loss.

Also consider arranging insurance to protect your fund's members (or their dependants) against death, injury, ill-health or income loss.

Insurance premiums your fund pays may be tax deductible.

Example

A commercial property the trustees of XYZ Super Fund own is destroyed by fire. Because the property was insured, the fund was protected and they were compensated for their loss.

Check your progress

Preparing an investment strategy

- Your fund has a written investment strategy. (see page 16)
- The investment strategy is unique to the fund and the members' circumstances. (see page 16)
- All investments in the strategy comply with the super laws. (see page 16)

Accepting rollovers and contributions

- You have:
 - accepted contributions and rollovers to your fund according to the super laws and the fund's trust deed
 - kept a record of all contributions and rollovers and allocated them to each member's account. (see pages 17 and 18)

Record-keeping

- You have considered how you will manage the fund's records. (see page 18)
- You know your record keeping responsibilities. (see page 18)
- You have a personal copy of the following records:
 - your consent to act as trustee
 - your signed trustee declaration
 - your fund's trust deed
 - your fund's investment strategy (see page 18).

Appointing SMSF professionals

- You have considered whether to use one or more SMSF professionals to help manage your fund. (see page 19)
- You know you need to appoint an approved auditor for each income year. (see page 19)

Planning for the future

- The fund's members have considered whether to lodge a death benefit nomination with the trustees. (see page 20)
- You have considered obtaining life, disability or income protection insurance on the members' behalf. (see page 20)
- You have arranged insurance to protect the fund's assets. (see page 20)

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Understanding your role and responsibilities

Complying with the super and tax laws is your responsibility, even if you use a super or tax professional, or a financial adviser. So it's important you understand what you need to do.

As a trustee, your duties and responsibilities include:

- making sure the fund's sole purpose is to pay retirement benefits to members
- accepting contributions and paying benefits (pension and lump sum) according to the super and tax laws
- making investment decisions and complying with any restrictions
- ensuring an approved auditor is appointed for each income year
- completing administrative tasks, such as lodging annual returns and record-keeping
- reviewing and updating the fund's trust deed and investment strategy.

You need to tell us within **28 days** if there is a change in any of the following:

- trustees
- directors of the corporate trustee
- members
- contact details (contact person, phone and fax numbers)
- address (postal, registered or address for service of fund notices).

- **To tell us about changes to your fund, either:**
 - use our online service at www.abr.gov.au if you're registered electronically with us (that is, you have an ATO primary digital certificate)
 - lodge a *Change of details for superannuation entities* (NAT 3036) form.

To avoid penalties, make sure you understand and comply with your duties and responsibilities under the super and tax laws. If you don't comply, we can:

- impose administrative penalties
- make an agreement with you to rectify the problem
- make your fund non complying (which means your fund loses its tax concessions)
- disqualify you as a trustee
- prosecute in the most serious of cases.

- **For more information about your duties and responsibilities as trustee, and the penalties that may apply if you don't comply, refer to *Running a self-managed super fund* (NAT 11032).**

Investing your fund's money

Being a trustee of an SMSF gives you more flexibility when it comes to investing your fund's money. Unlike some other super funds, you can choose the investments for your fund, so long as you invest according to the following:

- the fund's trust deed
- the investment strategy
- the super laws.

While the super laws don't tell you what you can and can't invest in, they do set out certain investment restrictions you **need to** comply with.

For example, unless an exception applies, trustees generally **can't**:

- lend the fund's money or provide financial assistance to members and their relatives
- acquire assets from related parties of the fund including
 - fund members and their associates
 - all the fund's standard employer-sponsors and their associates
- borrow money on the fund's behalf (certain instalment warrant arrangements are allowed)
- lend to, invest in or lease to a related party of the fund (including related trusts), more than 5% of the fund's total assets
- enter into investments on the fund's behalf that are not made or maintained on an arm's length (commercial) basis.

❗ **The investment restrictions are some of the most important rules you need to comply with under the super laws. If you don't, we may impose significant penalties. We recommend you speak to an SMSF professional to make sure your investments comply with the law.**

➤ **For more information about the investment rules, including the limited exceptions under the super laws:**

- visit our website at www.ato.gov.au
- refer to *Running a self-managed super fund* (NAT 11032).

➤ **For more information about investing, including helpful financial tips, refer to the ASIC consumer website at www.fido.gov.au**

Appointing an approved auditor

You need to appoint an approved auditor to audit the fund each year. An approved auditor will:

- examine your fund's financial statements
- assess your overall compliance with the super laws.

An approved auditor needs to be a registered company auditor or a member of certain professional organisations. They need to follow professional auditing standards that require the audit to be conducted independently. An SMSF professional may help you find an approved auditor.

Before the annual audit, you or your SMSF professional needs to prepare information about your accounts and transactions for the previous income year. This information is then sent to the approved auditor.

The auditor will provide you with a letter of engagement confirming they accept the appointment and the scope of the audit.

You need to give the auditor any further documentation they request so they can audit your fund.

Once the approved auditor has completed your fund's audit, they will provide you with the following:

- an audit report
- a management letter, which summarises the findings of the audit and any action taken or proposed by the trustees.

You need to have an auditor's report before you lodge your fund's SMSF annual return. The law requires that you appoint your auditor at least 30 days before the annual return is due to be lodged. To ensure you lodge on time, you need to allow enough time for your auditor to conduct the audit.

The auditor will also notify us if one of the following occurs:

- find you've breached certain super laws
- have concerns about your fund's financial position.

➤ **For more information about who can be an approved auditor, and their duties and responsibilities, refer to *Running a self-managed super fund* (NAT 11032).**

Your annual responsibilities

As a trustee there are some things you need to do each year under the super and tax laws. There are also some things you need to do to make sure your fund complies with the law and it operates effectively.

Use the following checklist each year to make sure you meet your annual responsibilities.

Check your progress

The trustees of your fund need to:

- ensure the fund's record-keeping is up to date in preparation for the annual audit and lodgement of annual returns
- organise for your fund's annual financial statements to be prepared (statement of financial position and operating statement)
- make sure an approved auditor is appointed to audit the fund
- lodge the fund's annual return and report contributions made on behalf of the fund's members to the Tax Office by the due date
- pay the supervisory levy and the fund's income tax liability when due
- lodge a business activity statement with the Tax Office by the due date (if your fund is registered for GST)
- review your fund's trust deed and investment strategy and update them as required.

Keep in mind that you need to lodge an annual return for the income year in which you set up your fund. As part of this return, you also need to report contribution information to us for all members every year, including those members with nil contributions.

! To avoid penalties, make sure you understand and comply with your annual duties and responsibilities.

More information

Finding the right information for you

If you need more information about SMSFs, refer to our other publications:

This introduction provides basic information about how to set up an SMSF.



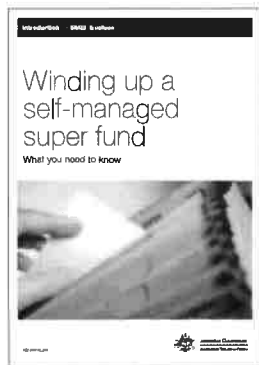
Thinking about self-managed super (NAT 72579) provides you with the steps you need to consider before setting up an SMSF.



Running a self-managed super fund (NAT 11032) highlights your responsibilities and obligations as a trustee when operating your SMSF.



Winding up a self-managed super fund (NAT 8107) provides you with the requirements you need to follow when winding up your fund.



Useful services

To obtain a copy of our publications or for more information:

- visit www.ato.gov.au
- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday
- phone our publication ordering service on **1300 720 092**
- write to us at:
Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

