

- (a) *Generally deal with Fund assets:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
- (b) *Real property:* to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
- (c) *Personal property:* to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
- (d) *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
- (e) *To let:* to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
- (f) *Engage specialists:* to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in this deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- (g) *To lend:* subject to these Rules and the Act to lend and advance moneys;
- (h) *Bank accounts:* to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- (i) *Management expenses:* to pay out of the assets, Reserves or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (j) *Pay general expenses:* to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;

- (k) *Corporate securities:* with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
- (i) to pay calls on securities or to permit securities to be forfeited and sold;
 - (ii) to purchase securities and to take up securities of a new issue;
 - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (iv) to sell securities at such price and upon such terms with or without security as the Trustee decides;
 - (v) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - (vi) to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- (l) *Unit trust interests:* to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust;
- (m) *Franchises:* to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;
- (n) *Subdivision of property:* to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;

- (o) *Maintain property:* to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (p) *Power to set aside:* to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (q) *Future contracts and options:* to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or 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 provided the Trustee maintains a risk management strategy;
- (r) *Trustee's power to 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) *Policies:* to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member; to pay premiums transfer, surrender, change the situs 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;
- (t) *Agency and licences:* to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (u) *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;
- (v) *Receive gifts or distributions:* to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

- (w) *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;
- (x) *Intellectual property:* to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (y) *Release of powers:* by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (z) *Incidental powers:* to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee'

provided the application of any such power by the Trustee does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

- 29.2** A Trustee who is a natural person may become a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it.
- 29.3** Subject to the terms of these rules the Trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

Rule 30. The assets of the Fund are to be held in the Trustee's name

Explanation

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

Rule

- 30.1.** All the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member personally or by an employer of a Member of the Fund.
- 30.2.** No Member shall have any entitlement to a specific asset of the Fund nor can a Member direct a Trustee:

- (a) to allocate a specific asset or asset interest to a Member's Account;
- (b) to apply a specific asset to pay either a lump sum or pension benefit on behalf of a Member; or
- (c) to transfer a specific asset as a Death or Disablement Benefit.

Rule 31. Trustee may receive distributions or gifts

Explanation

The Trustee of the Fund may receive gifts or distributions, quite apart from any distributions received by the Trustee in respect of assets of the Fund, from:

- (i) any company;
- (ii) any trust including a family trust, testamentary trust or the legal estate of a deceased person;
- (iii) any partnership;
- (iv) any government or statutory body;
- (v) any business, commercial or investment enterprise;

so long as the acceptance of any such gift or distribution does not jeopardise the Fund's status as a Complying Self Managed Superannuation Fund. Distributions may be in cash or kind.

Rule

31.1. A person may make a distribution or gift in cash or kind to the Fund for the benefit of the Trustee, a Member or Members or for any other purpose provided the Fund will not by reason of acceptance of those distributions result in the Fund:

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

31.2. The Trustee may allocate any such distribution or gift at its discretion to the Fund's earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines.

Rule 32. The Trustee must not borrow

Explanation

Normally the Trustee cannot borrow. A borrowing includes an overdraft. This is a prohibition imposed by the Act. These Rules reflect that prohibition. As such this prohibition may prevent the Trustee from acquiring a particular investment. If the Trustee wishes to borrow they should first obtain advice from a specialist or the Auditor.

Rule

Except as otherwise provided by the Act the Trustee must not:

- (a) borrow money; or
- (b) maintain an existing borrowing of money.

Determination of Earnings

Rule 33. The Trustee must determine the earnings of the Fund

Explanation

The Trustee must determine the earnings of the Fund each year or for such other period that the Trustee chooses.

Rule

The amount of a Fund's earnings during any period is to be determined by the Trustee of the Fund and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's earnings.

Reserves

Rule 34. The Trustee may establish a Reserve

Explanation

The Trustee may create a Reserve. Normally a Reserve would be created to meet an expected liability of the Fund.

The Trustee might establish the following Reserves:

- *An investment reserve to which earnings will be added before being allocated to Members or another Reserve.*
- *A contributions reserve to which Contributions will be added.*
- *A pension reserve to which amounts will be added (generally on the advice of an actuary) so as to ensure that the Trustee has sufficient funds to pay a Pension.*
- *A miscellaneous reserve to which amounts will be added so as to provide the Fund with funds to be held in reserve for unexpected contingencies.*
- *A self-insurance Reserve.*

The Trustee should determine at the time of establishment of a Reserve:

- *What amounts are to be added to or deducted from the Reserve.*
- *The investment strategy to be adopted for that Reserve.*
- *The proposed application of that Reserve.*

Rule

34.1. The Trustee may from time to time establish such Reserves and add, deduct and allocate amounts to those Reserves as it considers appropriate (except that it may not establish a Reserve or add or deduct any amount to or from a Reserve if that establishment, adding, or deducting would result in the Fund becoming a Non-Complying Self Managed Superannuation Fund).

34.2. The Trustee must formulate and implement a separate investment strategy for the prudential management of assets in any Reserve. The investment strategy must be consistent with the Fund's investment strategy and with the Trustee's ability to discharge liabilities wherever actual or contingent, as and when they fall due.

Taxation

Rule 35. Payment of Tax and allocation to Members' Accounts

Explanation

The general rule is that a Complying Superannuation Fund will be assessed to tax on:

- (i) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (ii) earnings derived by the Fund on investment of Contributions; less*
- (iii) deductible expenses incurred by the Fund (which might include insurance expenses).*

Tax is levied at a rate of 15% on the net income of the Fund except special income where tax is levied at a rate of 47%. The allowance of any imputation credits received on franked dividends derived by the Fund will reduce the effective rate of tax payable by the Fund.

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

The Fund might also be subject to a Superannuation Contributions Surcharge imposed on the gross amount of Contributions received by the Fund.

Tax payable by the Fund need not be deducted from the Member's Account of any particular Member.

Rule

- 35.1.** The Trustee must pay all Tax properly assessed to the Trustee.
- 35.2.** The Trustee may in its discretion deduct from a Member's Account Tax paid or payable by the Trustee:
- (i) as a consequence of the receipt by the Trustee of a Contribution for the benefit of a Member,
 - (ii) payable on any income added to a Member's Account, and
 - (iii) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.
- 35.3.** The Trustee may in its discretion deduct from any account including a Reserve tax paid by the Trustee.
- 35.4.** If the Trustee receives a refund of tax the Trustee may add that refund to such Members' Accounts or Reserve as it so determines.

Insurance

Rule 36. The Trustee may establish an insurance plan

Explanation

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

Rule

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including the payment of Death Benefits) to Members or the Member's Dependents or the Legal Personal Representative of the Member in the event of the Member's death or disablement.

Rule 37. The Trustee may self insure

Explanation

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

- (i) engage an actuary to provide advice to the Fund;*
- (ii) determine the scope of the Fund's self insurance needs;*
- (iii) establish a self insurance Reserve;*
- (iv) set a separate investment strategy for the self insurance Reserve.*

Rule

The Trustee can elect to self insure and may establish a self insurance Reserve to which will be added, deducted and allocated such amounts as the Trustee determines.

Rule 38. The Trustee has discretion as to the application of any insurance proceeds

Rule

38.1. Subject to the Act the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund.

38.2. No Member or their Legal Personal Representative has any interest in any insurance proceeds that might be received by the Fund.

Annual Accounts

Rule 39. The Trustee must prepare annual accounts

Rule

39.1. The Trustee must keep such accounting records as correctly record and explain the transactions of the Fund.

- 39.2. Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited.
- 39.3. The Trustee must as soon as practical after the end of each Financial Year:
- (a) prepare a balance sheet recording the assets and liabilities of the Fund as at the preceding 30 June,
 - (b) prepare a profit and loss account recording the profit derived or loss incurred by the Fund for the preceding Financial Year (or part year if the Fund was not in existence for a full year),
 - (c) arrange for the Fund's balance sheet, profit and loss account and accounting records to be audited by an Approved Auditor,
 - (d) arrange for all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required.

Fund Compliance

Rule 40. The Trustee must maintain the Fund's complying status

Explanation

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

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

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

Rule

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

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

Fund Insolvency

Rule 41. The Trustee must develop a Solvency Plan

Explanation

It is very important for the Trustee of the Fund to ensure that the Fund is able to pay out Benefits and expenses as and when it is required to do so. In certain cases the Trustee may become aware that it has taken an action whether advertently or inadvertently that may result in the Fund becoming insolvent. In these circumstances the Trustee of the Fund must put in place a Solvency Plan that results in the Fund returning or maintaining a solvent position.

The action required under the Solvency Plan may arise from advice from the Fund's actuary, the Auditor, an adviser to the Fund or the Regulator. The Trustee must make every attempt and take any action to ensure that the Fund remains solvent or returns to a position of solvency.

Rule

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

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

Part Three: Payment of Benefits by the Trustee

Benefits Payable to a Member

Rule 42. Benefits payable to a Member

Explanation

If the Trustee is a company Members can elect whether to receive a Lump Sum Benefit or a Pension Benefit (or both a Lump Sum Benefit and a Pension Benefit). If the Trustee is not a company the principal purpose of the Fund must be the provision of Pension Benefits.

Rule

A Member or a Dependant of a Member or the Legal Personal Representative of a Member may be entitled to receive one or more of:

- (i) a Lump Sum Benefit,
- (ii) a Pension Benefit,
- (iii) a Temporary Incapacity Benefit,
- (iv) a Permanent Incapacity Benefit, or
- (v) such other amount as the Trustee might determine.

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

Rule 43. When must Benefits be paid to a Member

Rule

Subject to any other provision of these Rules, a Benefit must be paid to the Member as soon as practical after the date:

- (a) the Member
 - (i) has attained age 65 but not age 75; and
 - (ii) is not Gainfully Employed; or
- (b) the Member
 - (i) has attained age 75; and
 - (ii) is not Gainfully Employed for at least 30 hours each week; or
- (c) the Member dies; or

- (d) the Member requests payment of a Benefit and the Trustee is of the opinion that a payment may be made to the Member and that the making of the payment will not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund; or
- (e) otherwise required under the Act.

Rule 44. Payment of a Lump Sum Benefit

Explanation

Normally Lump Sum Benefits can only be paid to a Member on retirement of the Member (provided the Member is at least 55 years of age), the Member is permanently disabled, or if the Member turns 65 years of age. The Trustee may also be able to make payments to a Member on compassionate grounds or if that Member is suffering severe financial hardship.

Rule

Subject to the Rules a Member can at any time request the Trustee to pay to the Member, and the Trustee may at its discretion pay to the Member, that amount or part of that amount as is then equal to the balance of that Member's Accumulation Account. The Trustee can also determine whether the whole or any part of a Reserve should be paid to the Member in addition to the payment of that amount equal to the balance of the Accumulation Account.

Rule 45. Payment of a Pension Benefit

Explanation

The Rules allow the Trustee to pay Pensions. The Trustee can decide whether the Pension should be an Allocated, Asset Test Exempt, Complying, Lifetime or Fixed Term Pension as defined in Rule 59 of the Rules or some other Pension allowed under the Act. A Member or his or her Legal Personal Representative may request the Trustee to pay a Pension Benefit. The Trustee shall consult with an actuary to decide the type of Pension that may be paid and the terms and conditions of that Pension. A Pension may be paid from a Reserve.

Rule

- 45.1. A Member or the Member's Legal Personal Representative may request the Trustee to pay a Pension to the Member, a Dependant of the Member or a Legal Personal Representative of the Member, provided the Pension is of a type defined in Rule 59. The payment of any Pension must not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.
- 45.2. Prior to the payment of a Pension the Trustee must consult with an actuary to determine the amount to be set aside by the Trustee to fund the Pension, any Reserves required and the relevant terms and conditions of the Pension.
- 45.3. The Trustee in its sole discretion may apply any amount standing in a Member's Accumulation Account, Pension Accounts or a Reserve for the benefit of the provision of a Pension to a Member, a Dependant of the Member or a Legal Personal Representative of the Member. A Pension may be paid in cash or kind.

Incapacity

Rule 46. Member to advise Trustee of incapacity

Rule

- 46.1. As soon as practical after becoming incapacitated a Member or the Member's Legal Personal Representative shall advise the Trustee of that Member's incapacity. The Member shall submit to whatever medical examination might reasonably be required by the Trustee.
- 46.2. On receipt of that advice and notice of the result of any medical examination the Trustee shall determine whether the Member has been temporarily or permanently incapacitated.

Rule 47. Benefits payable for Temporary Incapacity

Explanation

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

The Trustee can pay a Temporary Incapacity Benefit if the Trustee has insured the Member (for such incapacity) or has established sufficient Reserves or has sufficient funds to pay such Benefits.

Rule

- 47.1. Where the Trustee is of the opinion that the Member is suffering from Temporary Incapacity the Trustee may pay a Temporary Incapacity Benefit to the Member, provided such payment does not jeopardise the Fund's status as a Complying Self Managed Superannuation Fund, for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before that temporary incapacity,
 - (b) that date on which the Trustee forms an opinion that the Member has become permanently incapacitated,
 - (c) the date of the death of the Member;
 - (d) or such other time as is allowed under the Act.
- 47.2. Subject to the Act the amount of the benefit (referred to at Rule 47.1.) shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.
- 47.3. The Trustee may draw upon any Reserves of the Fund to pay a Temporary Incapacity Benefit or, if there are no Reserves, make an allocation from the Member's Account.

Rule 48. Benefits payable for Permanent Incapacity

Explanation

Where a Member is permanently incapacitated the Trustee may pay a Member a Benefit until such time as the Member retires, recovers from the incapacity or dies. The Benefit may be a Lump Sum, a Pension or a mixture of a Lump Sum and Pension.

The funds for the payment of the Member's Permanent Incapacity Benefit may be sourced primarily from the Member's Account however the Trustee may use any Reserves to fund Permanent Incapacity Benefit payments. The Trustee may also be able to claim a tax deduction for the payment of a Permanent Incapacity Benefit. The deduction may be used by the Trustee to offset any assessable income in the current or future income years.

Rule

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

- (a) pay all of any balance of the Member's Accumulation and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a lump sum;
- (b) pay part of any balance of the Member's Accumulation and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum and the balance of the Member's Accounts (as increased from time to time) to the Member as a Pension;
- (c) pay all of any balance of the Member's Accumulation and Pension Accounts (as increased from time to time) to the Member, a Dependant or Legal Personal Representative of the Member as a Pension;
- (d) the Trustee may also allocate any Reserves of the Fund to the benefit of a Member, a Dependant or Legal Personal Representative of the Member in the event of their permanent incapacity for the purposes of paying a Lump Sum, Pension or combination of both.

Death Benefits

Rule 49. What must happen on death of a Member

Explanation

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

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

Rule

49.1. On death of a Member:

- (a) if the Member was a Trustee the deceased Member's Legal Personal Representative is by reason of this Rule appointed a Trustee for the period from the date of death of the Member until the date of payment of any Death Benefits payable as a consequence of the death of the Member,
- (b) if the Member was a director of a company which is a Trustee that company may continue as a Trustee from the date of death of the Member until the date of payment of any Death Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative of the Member is appointed as a director of the company for any such period and provided the company is otherwise eligible pursuant to these Rules to be a Trustee. If the Trustee resigns then all Members are to become Trustees including the deceased Member's Legal Personal Representative.

49.2. The Trustee shall determine whether it holds a Death Benefit Nomination or a replacement to a prior Death Benefit Nomination signed by the deceased Member.

49.3. The Trustee shall pay such Death Benefits as it is required to pay by reason of Rule 50 below.

49.4. The Trustee, in its absolute discretion may do any thing or act as directed by the deceased Member or their Legal Personal Representative but is not bound to do so and must not do any thing or act if it may result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

Rule 50. Payment of a Death Benefit

Explanation

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

The following is to apply in relation to the payment of a death Benefit:

- 1. Where the Trustee has accepted a Binding Death Benefit Nomination the Trustee must pay out the Benefits as required under the Binding Death Benefit Nomination;*
- 2. Where the Trustee has received a Non-Binding Nomination for a deceased Member the Trustee, at its sole discretion may pay out Benefits in accordance with the nomination but otherwise may apply them to any person or Reserve provided the application does not jeopardise the Fund's Complying Self Managed Superannuation Fund status;*
- 3. Where the Trustee has received no nomination from the Member or where any nominations are invalid the Trustee, at its sole discretion, may pay out Benefits in accordance with the Nomination but otherwise may apply them to any person or Reserve provided the application does not jeopardise the Fund's Complying Self Managed Superannuation Fund status;*
- 4. Where the Trustee has received directions from the Member in relation to the Fund the Trustee, in its sole discretion may comply with the directions provided that any such compliance does not detrimentally affect remaining Member Accounts or result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.*

Rule

50.1. If a Member dies:

- (a) if the Member has not made a Binding Death Benefit Nomination the Trustee shall distribute the balance of the Member's Accumulation Account to one or more of the Member's Dependants, the Member's Legal Personal Representative or any other Account in the Fund including another Member's Account or a Reserve as the Trustee in its absolute discretion may decide. In exercising that discretion the Trustee must consider but is not bound by any Non-binding Death Benefit Nomination previously supplied by the deceased Member to the Trustee;
- (b) if the Member has made a Binding Death Benefit Nomination the Trustee shall distribute the balance of the Member's Accumulation Account to those persons, the Member's Legal Personal Representative or an Account of the Fund as the Member nominated and in the manner and form required under the Binding Death Benefit Nomination. However the Trustee is not required to pay out that part of any Death Benefit under a Binding Death Benefit Nomination that may result in the Fund becoming insolvent.

50.2. Notwithstanding Rule 50.1 the Trustee is authorised to pay such additional amount to a Dependant or the Legal Personal Representative of a deceased Member as the Trustee in its absolute discretion may decide, provided the payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

50.3. The Trustee may comply with any directions left by a Member in terms of the Fund at its sole discretion provided that any such direction does not detrimentally affect any

remaining Member of the Fund or result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.

Conversion of Benefits

Explanation

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

Rule 51. Conversion of a Lump Sum Benefit into a Pension Benefit

Rule

- 51.1. At the request of a Member and subject to the Rules and the Act, the Trustee shall convert any Lump Sum Benefit payable to the Member into a Pension Benefit payable to the Member.
- 51.2. The Member must notify the Trustee of the type of Pension as required under Rule 45 and the Trustee is to use the Lump Sum entitlement to fund any Pension.
- 51.3. The Trustee may also apply any amount from a Fund Reserve Account for Pension purposes.

Rule 52. Commutation of a Pension Benefit into a Lump Sum Benefit or another Pension Benefit

Rule

- 52.1. At the request of a Member and subject to the Rules and the Act, the Trustee shall commute part or the whole of any Pension Benefit payable to the Member into a Lump Sum or a new Pension Benefit payable to the Member, a Dependant or Legal Personal Representative of the Member.
- 52.2. Prior to commuting the Pension the Trustee must determine the possible taxation consequences or commutation limits that may arise in relation to the commutation of the Pension Benefit and notify the Member, the Dependant or Legal Personal Representative of the Member of this information.
- 52.3. In determining the possible taxation consequences or commutation limits the Trustee may seek the advice of a specialist.

Part Four: Winding up or Changing the Fund

Termination

Rule 53. Termination of the Fund

Explanation

On termination of the Fund the Trustee should:

Step One – have the Fund audited;

Step Two – determine the market valuation of the Fund's assets;

Step Three – pay out all expenses of the Fund including any Taxes, administration costs, government imposts or other expenses plus any expense incurred to wind up the Fund;

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

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

- (i) Members and former Members of the Fund;*
- (ii) relatives of any Member or former Member;*
- (iii) any Legal Personal Representative of a Member or former Member;*
- (iv) any other person;*
- (v) a charity or public benevolent institution.*

Rule

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

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

53.2. The Trustee shall on Termination Date

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

- 53.3. The Trustee may in its sole discretion pay out the balance of the Fund to such charities or public benevolent institutions as it might determine provided any such payment does not breach the sole purpose test or otherwise render the Fund a Non-complying Self Managed Superannuation Fund.

Amendments

Rule 54. The Trustee may amend the Deed or the Rules

Explanation

Given that constant changes are made to the Act it is important the Rules of the Fund can be amended so as to ensure continued compliance with the Act.

Rule

The Trustee may in its absolute discretion amend the Deed or the Rules (in whole or in part) provided:

- (a) the Trustee gives all Members reasonable notice of any proposed change to the Deed or the Rules and explains the reason for the proposed change to the Deed or the Rules;
- (b) if there is more than one Member the change is authorised at a meeting of the Trustees or if the Trustee is a company, at a meeting of the directors of the Trustee Company;
- (c) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the Act;
- (d) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member has in writing consented to any such amendment;
- (e) the amendment does not allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the Rules then provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, or
- (f) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

Interpretation

Governing Law

Explanation

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

Rule 55. The governing law is to be nominated by the Trustee.

Rule

The Deed and the Rules are to be interpreted according to that law the Trustee nominates or if the Trustee makes no nomination according to that law as the Members might determine or if the Members make no such determination according to the laws of New South Wales.

Status of the Act

Rule 56. The Act is paramount

Explanation

The Act is defined in Rule 57 as the SIS Act, the various Income Tax Acts and regulations made pursuant to all of those acts. If the provisions of the Act are not adhered to the Fund might lose its status as a Complying Self Managed Superannuation Fund (with the result that it would not be concessional taxed).

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

Rule

The Rules are subject to the Act. If there is any inconsistency between the provisions of the Act and the Rules the provisions of the Act shall prevail. The Trustee shall not act contrary to any provision of the Act.

Interpretation

Rule 57. Rules as to interpretation.

Rule

- 57.1. Explanations accompanying a Rule may only be taken into account in interpreting a Rule:
- (a) in considering the purpose or object underlying a Rule; or
 - (b) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
 - (c) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
 - (d) in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.

- 57.2. A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.
- 57.3. Words importing any one gender include all genders and words importing the singular number include the plural and vice versa.
- 57.4. In determining whether the Fund will or will not be a Complying Superannuation Fund or Self Managed Superannuation Fund the Trustee shall only consider whether or not any course of action to be followed by the Trustee in relation to the Fund would or would not cause the Fund not to be a Complying Superannuation Fund or Self Managed Superannuation Fund and must not take into account any discretion which might or might not be exercised by the Regulator.
- 57.5. A reference to a provision of an Act includes a reference to any similar provision in any successor Act.

Definitions

Rule 58. Definitions

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

Act	The <i>SIS Act</i> , the <i>Income Tax Assessment Act 1936</i> , the <i>Income Tax Assessment Act 1997</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
Ancillary Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> .
Application Form	An application form as referred to at Rule 12.
Auditor	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act or otherwise determined by the Regulator.
Approved Trustee	A trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
APRA	The Australian Prudential Regulation Authority or any successor authority to that authority.
Associate	A person who is an associate as defined by section 12 of the <i>SIS Act</i> .
Accumulation Account	A Member account established by the Trustee of the Fund on behalf of the Member to which is credited Member Entitlements that are not Pension Benefits.
Benefit	A benefit payable by the Fund in cash or in kind.

Binding Death Nomination

A death benefit nomination made by a Member in accordance with Rule 14 that must be followed by the Trustee in the event of the Member's death.

Business Real Property

In relation to an entity:

- (a) any freehold or leasehold interest of the entity in real property; or
- (b) any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (c) if another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph – any interest belonging to that class that is held by the entity;
- (d) where the real property is used wholly and exclusively in one or more businesses (whether carried on by the entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate;
- (e) real property used in one or more primary production businesses does not cease to be used wholly and exclusively in that business or those businesses only because:
 - (i) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
 - (ii) the area is also used primarily for domestic or private purposes;provided that the use for domestic or private purposes referred to in paragraphs (i) and (ii) is not the predominant use of the real property;
- (f) any real property classified as business real property under the Act.

Child

Any person under the age of 18.

Civil Penalty Order

An order or declaration made pursuant to section 193 of the *SIS Act*.

Compliance Plan

A plan established for the purpose of Rule 40.

Constitutional Corporation

A body corporate which is

- (a) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the *Constitution of the Commonwealth of Australia*),

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

**Complying
Self Managed
Superannuation
Fund**

A Fund which is a complying self managed superannuation fund for the purposes of section 42A of the *SIS Act*.

Core Purposes

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

Contributions

Amounts paid or transferred in cash or kind to the Trustee for the benefit of a Member or Members.

Deed

The deed establishing the Fund as from time to time as amended.

Dependant

In relation to a person is a financial dependant and includes the Spouse and any child of the person who may or may not be a financial dependant.

Financial Year

A year ended 30 June or that period of twelve months adopted by majority resolution of a meeting of the Members by the Members as the Fund's financial year.

Fund

The Superannuation Fund established by the Deed.

**Gainfully
Employed**

Employed or engaged for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

In-house Asset

An asset deemed to be an in-house asset under the Act.

**In-house Assets
Test**

The test under Part 8 of the *SIS Act* in relation to In-house Assets that if breached by the Trustee would render the Fund a Non-Complying Self Managed Superannuation Fund.

**Legal
Personal
Representative**

The executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

Lump Sum Benefit

A Benefit which is payable to a Member pursuant to Rule 44.

Manager

The person or entity appointed by the Trustee to manage the Fund which may include the Trustee itself.

Market Value

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

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

Member	Any person who is accepted by the Trustee as a Member of the Fund and includes the Member's Legal Personal Representative.
Member's Account	An account established by the Trustee of the Fund on behalf of the Member holding Member Entitlements.
Member's Accumulation Account	An account kept for a Member the balance of which is the amount that can be paid to the benefit as a lump sum benefit.
Member's Benefit	The amount of a Benefit payable to a Member or the Member's legal estate or Dependants in the event of the Member's death as determined by the Trustee and may include any allocation by the Trustee from Fund reserves to the benefit of the Member.
Member's Entitlement	That amount equal to the balance of a Member's Member's Account.
Minimum Benefits	Minimum benefits are those amounts determined by the Trustee of the Fund as a minimum benefit pursuant to Part 5 of the <i>Superannuation Industry (Supervision) Regulations 1994</i>
Normal Retirement Age	The sixty fifth birthday of the Member or such other age as the Trustee might determine.
Non-binding Death Benefit Nomination	A death benefit nomination as referred to in Rule 14 that is not binding upon the Trustee.
Non-Complying Self Managed Superannuation Fund	A superannuation fund that is not a Complying Self Managed Superannuation Fund.
Non-Regulated Fund	A superannuation fund that is not a Regulated Superannuation Fund.

Permanently Incapacitated

In relation to a Member means a Member who has ceased to be Gainfully Employed because of ill-health (whether physical or mental) where the Trustee is reasonably satisfied that that Member is unlikely, because of the ill health, ever again to be Gainfully Employed in any employment for which that Member is reasonably qualified by education, training or experience.

Pension Benefit

A Benefit which is a pension as defined by Rule 59.

Pension Account

An account to which the payment of a Pension to a Member should be credited.

Permanent Incapacity Benefit

A Benefit payable pursuant to Rule 48.

Prescribed Documents

Any documents that are prescribed documents for the purposes of the *SIS Act*.

Prescribed Information

Any information which is prescribed information for the purposes of the *SIS Act*.

Product Disclosure Statement

The product disclosure statement of which these Rules form part.

Regulated Superannuation Fund

A superannuation fund that is a regulated superannuation fund as defined within section 19 of the *SIS Act*.

Regulator

The Commissioner of Taxation or such other government body appointed to regulate a self managed superannuation fund as defined in section 10(1) of the *SIS Act*.

Related Party

A person who is a related party as defined in section 10(1) of the *SIS Act*.

Reserve

An account established by the Trustee in accordance with Rule 34.

Responsible Officer

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

Rules

The rules of the Fund.

Self Managed Superannuation Fund

A fund which is a "self managed superannuation fund" as defined in section 17A of the *SIS Act*.

SIS Act

The *Superannuation Industry (Supervision) Act 1993*.

Solvency Plan

A plan established for the purposes of Rule 41.

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 the husband or wife of the person or such other person as the Act may allow or determine.

Standard-Employer-Sponsor

A person who is a standard-employer-sponsor as defined in section 16(2) of the *Superannuation Industry (Supervision) Act 1993*.

Superannuation Entity

- (a) a Regulated Superannuation Fund, or
- (b) an approved deposit fund, or
- (c) a pooled superannuation trust.

Tax

Any tax levied by any taxation law including any surcharge levied pursuant to the *Superannuation Contributions Tax Imposition Act 1997* (or any successor legislation).

Temporarily Incapacitated

In relation to a Member means a Member who has ceased to be gainfully employed because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.

Temporary Incapacity Benefit

A non-commutable income stream payable pursuant to Rule 47.

Termination Date

The date on which the Fund terminates.

Total Member Entitlements

That amount equal to the total value of all Members' Accounts.

Trustee

A person or company appointed a trustee of the Fund under Rule 3.

Rule 59. Pension Definitions

Explanation

The Trustee may pay any pension authorised under the Act including those pensions defined in the Superannuation Industry (Supervision) Regulations 1994, the Social Security Act 1991 and the Veterans' Entitlements Act 1986 which include:

***Complying Pension** - Includes a lifetime complying pension that meets the standards found in Regulation 1.06(2) of the superannuation laws and a fixed term complying pension that meets the standards found in 1.06(7) of the superannuation laws at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying a complying pension.*

***Allocated Pension** - Includes a pension that meets the standards found in Regulation 1.06(4) and 1.06(5) of the superannuation laws at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying an allocated pension.*

***Flexi Pension** - Is a pension that may be offered by the trustee to members of the fund that is flexible as to term, pension payment and residual capital value provided it meets the standards laid down for the flexi pension in Regulation 1.06(6) of the superannuation laws at the time of commencing the pension. The term also includes such other standards as may be required under the superannuation laws in respect of the trustee of the fund paying a flexi pension. A flexi pension includes a lifetime commutable pension and a fixed term commutable.*

***Assets Test Exempt Pension** Is a pension that is exempt from the assets test under the social security and veterans entitlement laws.*

Rule

A Pension Benefit for the purposes of the Fund is any series of payments that are determined or held to be a Pension under any Act, law, court or otherwise and includes any Pension that meets the conditions of:

- (a) a lifetime complying pension pursuant to Regulation 1.06(2) and (3) of the Superannuation Industry (Supervision) Regulations 1994;
- (b) an allocated pension pursuant to Regulation 1.06(4) and (5) of the Superannuation Industry (Supervision) Regulations 1994;
- (c) a flexi pension pursuant to Regulation 1.06(6) of the Superannuation Industry (Supervision) Regulations 1994;
- (d) a fixed term complying pension pursuant to Regulation 1.06(7) of the Superannuation Industry (Supervision) Regulations 1994;
- (e) a lifetime Assets Test Exempt income stream pursuant to Section 9A of the Social Security Act 1991;
- (f) a fixed term Assets Test Exempt income stream pursuant to Section 9B of the Social Security Act 1991;

- (g) a lifetime Assets Test Exempt income stream pursuant to Section 5JA of the *Veterans' Entitlements Act 1986*;
- (h) a fixed term Assets Test Exempt income stream pursuant to Section 5JB of the *Veterans' Entitlements Act 1986*.