

# **Reggies Bare Trust**

## **Declaration of Custody Trust for the**

## **Regan and Ross Superfund**

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**R and R 1 Pty Ltd ACN 627598207**

and

**Caruso and Johnson Pty Ltd ACN 627597988**

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**BETWEEN**

R and R 1 Pty Ltd ACN 627598207  
of 194 Quinns Hill Road W  
Stapylton, QLD, 4207  
Australia

(Custodian)

**AND**

**Caruso and Johnson Pty Ltd** ACN 627597988  
in its capacity as trustee for the Fund  
of 194 Quinns Hill Road W  
Stapylton, QLD, 4207  
Australia

(Trustee)

**Background**

- A The Fund is a Regulated Fund and the Trustee is the trustee for the Fund.
- B In limited circumstances, the law allows the trustee of a Regulated Fund to agree to borrow funds to acquire an investment for that Regulated Fund. The relevant law is in Part 7 of the SIS Act relating to borrowing by superannuation funds. The exceptions to the general prohibition on superannuation funds borrowing provide, among other things, that for a borrowing arrangement to be allowed:
- legal title to the investment must be held by a third party on behalf of the trustee of the Regulated Fund; and
  - the lender's rights against the trustee of the Regulated Fund for any default under the borrowing arrangement must relate only to the investment for which the trustee will purchase with the money it borrows.
- C The Trustee intends to borrow funds from a lender to acquire the Authorised Investment under an arrangement of the nature described in Recital B.
- D The Custodian agrees to act as the third party described in Recital B and to hold title to the Authorised Investment under this Deed.

**Operative provisions****A Custodian's Declaration of trust****What does the Custodian hold on trust?**

- 1 The Custodian declares that it will hold the benefit of the Custody Fund on trust for the Trustee under this Deed, with effect from the date:

- 1.1 that the Custodian purchases the Authorised Investment as contemplated by clause 3; or
  - 1.2 the date on which the Custodian receives any property to be held or applied in accordance with the trusts under this Deed.
- 2 The parties agree that the Trust is established and is to be maintained in connection with the limited recourse borrowing arrangement with the Lender.

#### **What information and money must the Trustee provide?**

- 3 The Custodian and the Trustee agree that:
  - 3.1 the details in the Schedule to this Deed are all the relevant details regarding the Authorised Investment and the Trustee will provide the additional information referred to in the Schedule as soon as possible and at least 6 Business Days prior to the scheduled settlement date; and
  - 3.2 the Trustee will provide to the Custodian all funds necessary to enable the Custodian to purchase the Authorised Investment identified in the Schedule.

When the Trustee does that, it will be taken to have requested the Custodian, and the Custodian will be taken to have agreed, to purchase and take legal title to the Authorised Investment under this Deed.

#### **What is the name of the Custody Trust?**

- 4 The parties agree that the name of the Custody Trust will be the Reggies Bare Trust.

### **B Custodian to hold title**

#### **What title must the Custodian hold?**

- 5 The Custodian agrees that (subject to clause 8), it will maintain legal title to the Authorised Investment until the Trustee directs it under clauses 9 to 12 of this Deed.

#### **What bank accounts are to be used?**

- 6 The Trustee must:
  - 6.1 designate one or more bank accounts of the Fund into which all amounts referred to in clause 7 may be deposited; and
  - 6.2 advise the Custodian of the details of that bank account or those accounts.

#### **Income, accruals, accretions**

- 7 The Custodian agrees to deposit, or arrange for the deposit of, the following amounts into the Cash Account or as otherwise directed by the Trustee:
  - 7.1 any interest, income or other proceeds that the Authorised Investment generates; and
  - 7.2 any accretions or accruals attributable to the Authorised Investment.

**May the Custodian have listed securities held by a CHESS sponsor?**

- 8 If the Authorised Investment is listed securities, then the Custodian may engage a duly licensed CHESS sponsor to hold the Authorised Investment — as long as the Custodian first obtains the Trustee's written consent. The Custodian may do that even though it has an obligation to maintain legal title to the Authorised Investments.

**C Trustee to direct Custodian**

**What interest does the Trustee have in the Authorised Investment?**

- 9 At all times up to and including the Vesting Date, the Trustee:
- 9.1 has a vested and indefeasible interest in the Authorised Investment and any other assets comprising the Custody Fund; and
  - 9.2 is absolutely entitled to the Authorised Investment and any other assets comprising the Custody Fund as against the Custodian.

**How may the Trustee have the Authorised Investment transferred?**

- 10 The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the Authorised Investment and the other assets comprising the Custody Fund. The Custodian must do as directed. Before the Custodian transfers, or otherwise deals with, the Authorised Investment and any other asset comprising the Custody Fund as directed by the Trustee, the Custodian must notify the Lender in writing.

**What information must the Custodian collect, provide etc?**

- 11 The Custodian will use its best endeavours to obtain information concerning the Authorised Investment. It will communicate all that information to the Trustee as soon as practicable. For example, the Custodian must provide the Trustee with any information it needs to help it exercise a discretion about, say, voting, or about participating in bonus issues, capital reductions, share buy backs, rights plans, and so on.

**May the Trustee require the Custodian to execute charge documents?**

- 12 The Custodian must execute all documents the Trustee asks it to execute, including any required form of guarantee and indemnity and any other documents that are necessary to charge the Authorised Investment to secure the Trustee's payment to the Lender of all money owed in respect of the Authorised Investment.

**D Restriction on Custodian's Discretion**

- 13 Notwithstanding any other provision to the contrary set out in this Deed, the exercise of any Discretion (if any) by the Custodian under this Deed requires the consent of the Trustee in all instances.

## **E Trustee's warranties**

14 The Trustee warrants that:

- 14.1 the Fund is a Regulated Fund;
- 14.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- 14.3 the Trustee's investment in the Authorised Investment accords with the Fund's written investment strategy;
- 14.4 the Trustee is the sole trustee of the Fund;
- 14.5 the Trustee has the power and authority to enter into this Deed;
- 14.6 the Trustee has the power and authority to purchase the Authorised Investment; and
- 14.7 this Deed is legally binding on it, and the Deed is enforceable against it in accordance with its terms.

## **F Duration of Trust**

### **When does the Trust start and end?**

- 15 The Trust commences on the date described in Clause 1 and terminates on the Vesting Date.

### **What must the Trustee do before the Vesting Date?**

- 16 Before the Vesting Date, the Trustee must ensure:
- 16.1 that all money the Lender loaned to the Trustee in respect of the Authorised Investment has been repaid; and
  - 16.2 that any security or charge over the Authorised Investment has been discharged in full.

### **What must the Custodian and Trustee do on (or soon after) the Vesting Date?**

- 17 On the Vesting Date (or as soon as practicable after the Vesting Date) the Custodian must either:
- 17.1 transfer the Authorised Investment and any other assets comprising the Custody Fund to the Trustee; or
  - 17.2 otherwise deal with the Authorised Investment and other assets comprising the Custody Fund as the Trustee may direct in writing.

## **G Replacement or resignation of Custodian**

### **May the Trustee add, remove, or replace the Custodian?**

- 18 At any time, the Trustee may by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.

### **What must an outgoing Custodian do?**

- 19 The outgoing Custodian must as soon as practicable after being removed or replaced:
- 19.1 sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment and in any other asset comprising the Custody Fund to the new or continuing custodian; and
  - 19.2 sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investment or any other asset comprising the Custody Fund to the new or continuing custodian.

### **What must a continuing Custodian do?**

- 20 If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment, and in any other asset comprising the Custody Fund, to the new custodian jointly with the continuing custodian.

### **How may the Custodian resign?**

- 21 The Custodian may resign by providing at least 60 days written notice to the Trustee. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 19.1 to 19.2.

## **H Trustee indemnifies Custodian**

- 22 The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:
- 22.1 in relation to the purchase of the Authorised Investment;
  - 22.2 by virtue of the Custodian holding legal title to the Authorised Investment; and
  - 22.3 as a consequence of the Custodian complying with any direction of the Trustee under this Deed.

## **I Trustee to pay Custodian's costs**

- 23 The Trustee indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
- 23.1 the negotiation, preparation, execution, stamping and registration of this Deed;

- 23.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Deed; and
- 23.3 any amendment to, or consent, waiver or release of or under, this Deed.

## **J Notices to the parties**

- 24 All notices to be given to or demands to be made under this Deed must be in writing. They may be delivered in person or sent by mail to the party's current business address.
- 25 A notice is to be treated as received in accordance with the following:
- if delivered personally, on the actual date of receipt;
  - if it is sent by post in Australia:
    - using regular pre-paid post or registered post, 6 business days after pre-paid posting;
    - using priority pre-paid post or priority registered post, 4 business days after posting;
    - using express post, 2 business days after posting;
  - if it is sent by post to an address outside Australia, 10 business days after posting
  - if it is faxed or sent electronically, on the business day after it is sent.

## **K Jointly and Severally Liable**

- 26 If two or more persons or entities comprise a party to this Deed, then each person or entity is jointly and severally liable for the obligations of that party under this Deed.

## **L Limitation**

- 27 Notwithstanding anything else to the contrary contained in this Deed the Custodian and the Trustee agree that:
- 27.1 the Custodian's rights against the Trustee for, in connection with, or as a result of (whether directly or indirectly) either of the following defaults are limited to rights relating to the Authorised Investment:
- default on the relevant advance made by the Lender to the Trustee; or
  - default on the sum of the borrowing and charges related to that advance; and
- 27.2 if the Trustee has a right relating to the Authorised Investment (other than a right to acquire legal ownership of the Authorised Investment on repayment to the Lender of the relevant loan), then the Custodian's rights and the rights of any other person against the Trustee for, in connection with, or as a result of, (whether directly or indirectly) the Trustee's exercise of its right, are limited to rights relating to the Authorised Investment.



## **M Compliance with Superannuation Law**

- 28 The Custodian and the Trustee agree that all arrangements in respect of the Custody Trust as contained in, or referred to in, this Deed must be strictly in accordance with Superannuation Law including, without limitation, for the purpose:
- 28.1 of ensuring the concessional tax treatment of the Fund and of amounts paid into or out of the Fund; and
  - 28.2 of the Fund's status as a Regulated Fund.
- 29 For this purpose:
- 29.1 The provisions of this Deed which (whether expressly or impliedly) confer or impose discretions, powers, rights or obligations on the parties are to be read as:
    - 29.1.1 extending to confer or impose on the parties any discretions, powers, rights or obligations as may be necessary to ensure compliance with Superannuation Law; and
    - 29.1.2 circumscribing any discretions, powers, rights or obligations of the parties to the extent necessary to ensure compliance with Superannuation Law; and
  - 29.2 If a provision of this Deed (whether express or implied) is inconsistent with this purpose, then that provision must be read down to the extent necessary to ensure compliance with the requirements of this clause 29. If it is not possible to read down a provision of this Deed in that manner, then that provision is severable without effecting the validity or enforceability of the remaining part of that provision or of other provisions in this Deed.

## **N General and interpretation**

- 30 Time is of the essence of all obligations under this Deed.
- 31 This Deed may only be varied or replaced by a document executed by the parties.
- 32 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.
- 33 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Deed's termination.
- 34 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.
- 35 The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion.
- 36 This Deed is governed by, and interpreted under, the laws of the jurisdiction set in the Schedule.
- 37 If a party consists of more than one person, then this Deed binds them jointly and each of them severally.

- 38 This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.
- 39 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.
- 40 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 41 If it is not possible to read down a provision of this Deed in the manner described above, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.
- 42 A reference in this Deed to:
- 42.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 42.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 42.3 a person includes the legal personal representatives, successors and assigns of that person;
  - 42.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;
  - 42.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - 42.6 the singular includes the plural and vice versa; and
  - 42.7 a gender includes the other genders.
- 43 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

## **O Definitions**

- 44 In this deed unless expressed or implied to the contrary:

**Authorised Investment** means the investment specified in the Schedule.

**Business Day** means Monday to Friday excluding public holidays in the state or territory identified in the Schedule.

**Cash Account** means the account established under clause 6.

**Custody Fund** means the Authorised Investment together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Authorised Investment:

- all right title and interest of the Custodian from time to time in the Authorised Investment;
- all income and other proceeds generated from the holding of the Authorised Investment; and
- all other income, proceeds, accretions or accruals attributable to the Custody Trust.

**Custody Trust** means the trust known as "Reggies Bare Trust" created by operation of this Deed.

**Deed** means this trust deed, including all schedules.

**Discretion** means a right or power to act in accordance with one's own judgment.

**Fund** means the Regan and Ross Superfund.

**Lender** means each person from whom the Trustee is borrowing in order to acquire Authorised Investment, as identified in the Schedule.

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

**Schedule** means the schedule to this Deed.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth).

**Superannuation Law** means:

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the Superannuation Industry (Supervision) Regulations 1994 (Cth); and
- any lawful requirement in relation to the Fund by any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to superannuation.
- It includes:
- changes to any such laws or requirements after the date of this Deed; and
- any proposed law or lawful requirement that the trustee believes may have retrospective effect.
- **Trustee** means the trustee for the time being of the Fund, who as at the date of this Deed is the person identified on page 1.

**Vesting Date** means either:

- the date which is 80 years from the date of this Deed; or
- any earlier date the Custodian and Trustee jointly determine.

## Execution

Executed by the parties.

Dated: 19 July 2018

Executed by

R and R 1 Pty Ltd ACN 627598207, in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cwth):



Ross Caruso, director



Regan Jenaya Johnson, director

Executed by

Caruso and Johnson Pty Ltd ACN  
627597988, in its capacity as trustee for the  
Fund, in accordance with section 127(1) of  
the *Corporations Act 2001* (Cwth):



Ross Caruso, director



Regan Jenaya Johnson, director

## Schedule

<b>Lender:</b>	Commonwealth Bank of Australia Pty Ltd
<b>Lender ABN/ACN (if applicable):</b>	123123124
<b>Lender Address for Notices:</b>	79 Adelaide Street Brisbane, QLD, 4000 Australia
<b>Loan Amount:</b>	As advised by the Trustee in writing
<b>Loan Term:</b>	As advised by the Trustee in writing
<b>Authorised Investment:</b>	x x, QLD, 4218 Australia Lot x on x, x
<b>Jurisdiction:</b>	Queensland
<b>Settlement Date (if applicable):</b>	As advised by the Trustee in writing.



## Minutes of Meeting of the Directors of Trustee of the Regan and Ross Superfund

<b>Venue</b>	194 Quinns Hill Road W, Stapylton QLD 4207
<b>Date</b>	19/07/2018 10:00
<b>Corporate Trustee Name</b>	Caruso and Johnson Pty Ltd
<b>Corporate Trustee ACN</b>	627597988
<b>Present</b>	Regan Jenaya Johnson, Ross Caruso
<b>Chair</b>	Ross Caruso

### Limited Recourse Borrowing Arrangement for the fund


- 1 **Noted** by the persons present that:
  - 1.1 The fund has applied to or intends to apply to Commonwealth Bank of Australia Pty Ltd (**Lender**) to borrow money for the purchase of the following asset (**Asset**):
 

x  
x, QLD, 4218  
Australia  
Lot x on x, x
  - 1.2 The fund has been provided with copies of the documents by which the fund will formally purchase the Asset;
  - 1.3 The Lender has agreed or expected to agree to lend \$ (**Loan Money**) to the fund on the condition that the Lender is provided with a charge or mortgage over the Asset, a Custodian is appointed to hold legal title to the Asset and the arrangements are otherwise in accordance with section 67A of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*;
  - 1.4 R and R 1 Pty Ltd (**Custodian**) has agreed to act as Custodian of the Assets;
  - 1.5 The fund has agreed with the Lender to ensure that the Custodian provides the Lender with a charge over the Asset;
  - 1.6 The arrangement is in compliance with the requirements of section 67A of the SIS Act; and
  - 1.7 The arrangement, including all associated transactions, will not result in the fund breaching the SIS Act or any other requirements of superannuation law.
- 2 **Tabled** by the persons present:

- 2.1 a declaration of custody trust by which the Custodian agrees to hold legal title to the Asset for the fund; and
- 2.2 a compliance letter being a letter from the fund to the Lender attesting to the fund's current and on-going compliance with the SIS Act and all other requirements of superannuation law.
- 3 **Resolved unanimously** by the persons present to:
  - 3.1 Adopt and execute each of the documents by the chair executing the compliance letter and the trustee executing the Declaration of Custody Trust by the trustee's directors signing the document in accordance with section 127(1) of the Corporations Act 2001; and
  - 3.2 To pay all relevant duty on the documents.
- 4 There being no further matters to discuss, the meeting was closed.

Date: 19/07/2018

Signed:

  
\_\_\_\_\_  
Ross Caruso  
Chair



## Regan and Ross Superfund

### **SMSF Limited Recourse Borrowing document pack — Bank lender**

Prepared for **Ross Caruso**  
Matter name **SMSF Borrowing bank for Ross Caruso**  
Prepared by **Reuben Bergola**  
Date downloaded **18 July, 2018 4:32 PM**

## What to do next

### **Read the Establishment Kit and understand the Pack – and its limitations**

The Establishment Kit attached to this document sets out how

- to use this SMSF Limited Recourse Borrowing Pack (**Pack**) for the Regan and Ross Superfund document package (for SMSF borrowing from a Bank lender); and
- how to establish the Reggies Bare Trust (**Custody Trust**).

The Establishment Kit is prepared and provided by Maddocks.

As the Establishment Kit explains, you must:

- 1 Be aware of how this Pack works;
- 2 Be aware of the consequences of establishing the limited recourse borrowing using this Pack;
- 3 Ensure that the Pack will help you achieve your objectives; and
- 4 Be aware of what else you need to do in addition to purchasing this Pack.

The Kit, to accompany your documents, has been prepared by the law firm Maddocks (not Cleardocs). The legal information and commentary in this Kit, and the master documents on which your documents are based, are general only. Cleardocs does not endorse the legal information and commentary, and the master documents and it disclaims responsibility for them. Your documents affect your legal rights and liabilities. You must consult a lawyer about their suitability and legal issues, and consult other professional advisers about other issues, including tax and financial issues.

### **To use this Pack for SMSF limited recourse borrowing, the Fund must obtain legal advice**

As the Establishment Kit explains, you must arrange for the fund to obtain legal advice, and accounting and financial advice, before using this Pack.

**Questions or further information about this Pack (not about your SMSF limited recourse borrowing)**

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If you have any questions, you can call Cleardocs on 1300 307 343.

**Cleardocs** will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document and the Establishment Kit is provided by our lawyers at Maddocks.

## **Establishment Kit: Custody Trust — SMSF Limited Recourse Borrowing Pack for borrowing from a Bank lender**

This Establishment Kit is prepared and provided by Maddocks. All the legal information contained in this Kit is provided by Maddocks.

### **Introduction: Summary**

In summary, you must:

- 1 Read this Establishment Kit;
- 2 Understand the documents in the Pack; and
- 3 Obtain legal advice before using this Pack — including in relation to how to establish the limited recourse borrowing contemplated by the Pack.

### **Understand the documents in this Limited Recourse Borrowing Pack and understand the Pack's limitations**

- 1 **Self Managed Super Funds only** The Cleardocs SMSF Limited Recourse Borrowing Pack (**Pack**) is suitable only for a regulated self managed superannuation fund, or SMSF. It is not suitable for any other type of superannuation fund.
- 2 **The Limited Recourse Loan Arrangement** Basically, the fund is borrowing money to purchase or help purchase a certain asset. If the fund defaults on its obligations to the lender to repay that loan, then the lender will have rights against the asset, purchased with the loan money (including to sell the asset and keep the proceeds). However, if the asset is of insufficient value to satisfy all of the fund's liabilities to the lender then the lender has no other rights against the fund or its assets.
- 3 **The Cleardocs SMSF Limited Recourse Borrowing Pack** The Pack comprises the following main documents to enable a SMSF to borrow money in accordance with Part 7 of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*, as part of an instalment warrant arrangement. The documents contemplated by the Pack operate, in simple terms, as follows:

**Custody Trust** – Section 67A of the SIS Act requires that the assets purchased with the loan monies must be held by a custodian pursuant to a simple trust arrangement (which is a different trust from the SMSF itself). This trust arrangement is established by the Custody Trust deed. The Custody Trust commences when the custodian named in the Custody Trust deed takes title to the asset purchased with the loan money.

**Minutes** – by which the trustee(s) approves the establishment of the Custody Trust and related arrangements.

**Compliance letter** – by which the trustees attest to the compliance of the Custody Trust arrangement in respect of section 67A of the SIS Act.

- 4 **The limitations of this Pack** This Pack evidences a limited recourse borrowing arrangement as contemplated by section 67A of the SIS Act. **However, it does not** provide the loan and security documents required for the fund to purchase the assets which will be purchased with the loan money. These additional documents are required to formalise the transfer of title to the asset from the vendor to the fund.

*The fund must obtain these documents from its lawyer, who will need to provide these documents as part of the legal services referred to below under the 'Obtain Legal Advice' section.*

*The fund must also ensure that it obtains the details which are not known at the date of establishing the Custody Trust deed (for example loan amounts, term of the loan, settlement date) and that it provides these details to the lender.*

- 5 **The limited recourse borrowing arrangement must comply with all other requirements of Superannuation Law** This Pack provides documents which satisfy the requirements of Part 7 of the SIS Act for evidencing a limited recourse borrowing arrangement. However, the limited recourse borrowing arrangement must comply with all other requirements of superannuation law. These include, but are not limited to:
- 6 **Requirements relating to the loan monies** Section 67A provides that the loan money borrowed by the fund from the lender may only be used for the acquisition of a single acquirable asset;

- 6.1.1 for expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the acquirable asset for example: conveyancing fees, taxes such as stamp duty, brokerage, loan establishment costs (but not expenses incurred in improving the acquirable asset); and
- 6.1.2 to refinance a borrowing (including any accrued interest on a borrowing) under a section 67A limited recourse borrowing arrangement.

The concept of a "single acquirable asset" also relates to a collection of assets in the same way they apply to a single asset if:

- the assets in the collection have the same market value as each other; or
- the assets in the collection are identical to each other.

**Requirements relating to the vendor** Superannuation law must not prohibit the fund from purchasing the asset from the vendor. For instance, section 66 of the SIS Act prohibits many acquisitions of assets from a 'related party' of the fund.

**Requirements relating to the asset** Superannuation law must not prohibit the fund from purchasing the asset.

For instance, section 62 of the SIS Act requires that the fund be maintained in accordance with the sole purpose test: the purchase and ownership of certain

assets may contravene the sole purpose test if, for instance, the assets are not assets of the type that have the purpose of providing benefits for fund members in retirement.

Another example is section 71 of the SIS Act, and related provisions, which limit a fund to investing no more than 5% of its assets in in-house assets. Consequently, the investment in the asset must not result in the fund breaching this rule.

**Requirements relating to investing prudently and strategically** By purchasing the asset, the fund must be investing prudently and strategically. Section 52 of the SIS Act requires the trustee (and its directors, if any) to exercise the care, skill and diligence of an ordinary prudent person, and to formulate an investment strategy for the fund. Consequently, by purchasing the asset the trustees, or the trustee and its directors, must act prudently and in accordance with the fund's investment strategy. The investment strategy itself may need to be reviewed or amended prior to purchasing the assets.

**Requirements relating to Investing at arm's length** By purchasing the asset, the fund must be investing either at arm's length or in a manner which ensures the other party to the transaction enjoys terms and conditions which are no more favourable to them than one would expect if the parties were dealing at arm's length. These requirements are contained in section 109 of the SIS Act and can apply to all aspects of the limited recourse borrowing arrangement including the terms on which the fund purchases the asset, or the terms on which the fund obtains the loan.

## The Fund must obtain legal advice

- 1 There are two primary reasons why the fund must obtain legal advice:
  - 1.1 **The limitations of this Pack** As explained above, this Pack does not include the loan and security documents (which the Bank lender will provide), nor the transaction documents required for the fund to acquire the asset which will be purchased with the loan money. These additional documents are required to formalise the transfer of title to the asset from the vendor to the fund. A lawyer can provide these documents.
  - 1.2 **SMSF Compliance with Superannuation Law** Although this Pack provides documents which will satisfy the requirements of Part 7 of the SIS Act, the limited recourse borrowing arrangement must otherwise be in compliance with all the requirements of superannuation law. A lawyer can advise on these matters.
- 2 Options for obtaining legal advice:
  - 2.1 As the land is located in Queensland, you will have to contact a lawyer in that State or Territory to undertake the conveyancing necessary to transfer the land to the fund.
  - 2.2 The fund may also wish to seek advice from this lawyer concerning the fund's compliance with superannuation law.

### The fund may require other advice

- 3 **The fund may need tax and financial advice** In addition to legal advice, the fund may require taxation and, or alternatively, financial advice. The fund may require advice concerning the taxation implications of the purchase of the asset, including any stamp duty which may be payable on the transfer of the asset to the fund, or concerning the fund's investment strategy.
- 4 For these reasons the fund may require taxation advice from its lawyer or accountant, or financial advice from its accountant or financial planner.

### Stamp Duty implications associated with this Pack

- 5 **Duty may be payable on the documents provided with this Pack** Stamp duty treatment of the Custody Trust depends on the relevant jurisdiction. You should contact the relevant revenue officer in your state or territory to check the current requirements – the details of each revenue office in Australia is set out below.

State/Territory	Revenue office contact details
Victoria	State Revenue Office GPO Box 4389 Melbourne VIC 3001 Ph: 13 21 61 <a href="http://www.sro.vic.gov.au">www.sro.vic.gov.au</a>
Queensland	Office of State Revenue GPO Box 2593 Brisbane QLD 4001 Ph: 1300 300 734 <a href="http://www.osr.qld.gov.au">www.osr.qld.gov.au</a>
New South Wales	Office of State Revenue GPO Box 4042 Sydney NSW 2001 Ph: (02) 9689 6200 <a href="http://www.osr.nsw.gov.au">www.osr.nsw.gov.au</a>
Tasmania	State Revenue Office GPO Box 1374

	HOBART TAS 7001 Ph: 03 6166 4400
South Australia	Revenue SA GPO Box 1353 Adelaide SA 5001 Ph: (08) 8226 3750 <a href="http://www.revenuesa.sa.gov.au">www.revenuesa.sa.gov.au</a>
Western Australia	Office of State Revenue GPO Box T1600 Perth WA 6845 Ph: (08) 9262 1100 <a href="http://www.finance.wa.gov.au">www.finance.wa.gov.au</a>
ACT	ACT Revenue Office GPO Box 293 Civic Square ACT 2608 Ph: (02) 6207 0028 <a href="http://www.revenue.act.gov.au">www.revenue.act.gov.au</a>
Northern Territory	Territory Revenue Management GPO Box 154 Darwin NT 0801 Ph: 1300 305 353 <a href="http://www.revenue.nt.gov.au">www.revenue.nt.gov.au</a>

## Any questions?

### Obtaining legal advice from Maddocks

If you wish to obtain legal advice from Maddocks for any of the reasons identified above then you can contact Maddocks by calling 03 9288 0555 and asking for a member of the Cleardocs Help Desk Team.

### General questions concerning this SMSF Limited Recourse Borrowing Pack

If you have any general questions concerning Cleardocs or this Pack, then you can call Cleardocs on 1300 307 343.

**Cleardocs** will answer all your administrative queries. These include, queries about our service, our website, registering the user, payment or feedback.

**Maddocks** will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.