

Widak Family Superannuation Fund

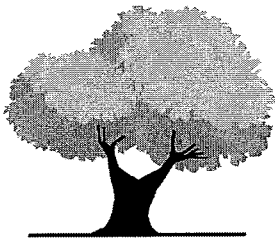
Strategist SMSF Trust Deed,
PDS & Rules

Prepared for:

Politis Investment Strategies

Widak Family Superannuation Fund

Strategist SMSF Trust Deed,
PDS & Rules



A Living Super Deed

Prepared by:

Robert Richards & Associates
Suite 3, Level 12, 53 Martin Place
Sydney, New South Wales

Introduction

In recent years the Australian Government has encouraged the Australian population to take more of an active role in the management of their superannuation and savings for retirement. As a result more people have been taking an interest in their superannuation and, as a by-product, there has been an increased demand for Self Managed Superannuation Funds (SMSF's) as a popular investment vehicle.

The *Strategist* Deed has been developed by industry experts with extensive knowledge in SMSFs, including legal structuring, asset protection, investment options and administrative management. All aspects have been keenly discussed and debated, by people from a wide breadth of experience in the SMSF arena, to bring to you a document that has both credibility and robustness, to bring to you a document that has been debated and tested by experts in the industry.

We thank you for choosing the *Strategist* Deed to operate your Self Managed Superannuation Fund ('SMSF'). We know you have made the right choice.

The *Strategist* Deed Review Panel

Amanda Chick – Everstone Private Pty Ltd

Amanda is a Chartered Accountant and SMSF Specialist Advisor with over 10 years experience with SMSF's, Amanda has a wealth of knowledge in the areas of retirement and wealth accumulation strategies, asset protection, taxation, estate and business succession planning and SMSF compliance. She manages a SMSF Specialist practice in Perth, providing strategic SMSF advice to trustees and to other service professionals across Western Australia.

Mark Ellem – Tranzact Super

Mark is an accredited SMSF Specialist Advisor with SPAA; a CPA; Member of the NIA, NTAA; Fellow of the TIA and a Registered Tax Agent. Mark is also a Member of the Small Independent Superannuation Funds Association (SISFA) and regularly presents to Financial Advisors, Accountants & Legal Practitioners on SMSF issues. Mark has over 15 years experience in SMSFs and in his current role as Senior Manager - SMSF with Tranzact Super he is responsible for SMSF administration and compliance matters and providing advice in the areas of superannuation and taxation.

Robert Richards – Robert Richards & Associates

Robert is a Solicitor specialising in revenue and superannuation law, the management of tax audits and litigation and associated corporate and trust law. Robert is a regular contributor to articles in leading business and industry magazines on commercial law and current issues. As a legal practitioner, Robert is responsible for preparing the *Strategist* Superannuation Deed.

Susie Thearle – The Real Issue Pty Ltd

Susie is a SMSF Specialist Advisor and SMSF Specialist Auditor. Susie is also a Fellow Chartered Accountant, with over 20 years in Public Practice, and Principal of a practice that provides SMSF Audit and specialist consultancy services throughout Australia as well as Regional Queensland. Susie is Chair of the Rockhampton Sub Chapter of SPAA, a Committee Member of Queensland Chapter of SPAA and the SPAA National Membership Committee and is part of the SPAA Audit Discussion Group. She has also served on the on the ATO (Australian Taxation Office) Simpler Super Working Group for SMSF Approved Auditors.

Index

PRODUCT DISCLOSURE STATEMENT	1
1. Introduction	1
2. The <i>Strategist</i> SMSF	1
3. Why do you need to know so much?	2
4. Superannuation Product Comparisons	2
5. Are all SMSFs the same?	2
6. The Purpose of the Fund	4
7. The Ten Key Benefits of a <i>Strategist</i> SMSF	4
8. Trustee of the Fund	7
9. Responsibilities of the Trustee	9
10. Approved Trustee	10
11. Member Rights and Entitlements	10
12. Pension Entitlements	13
13. Estate Planning	15
14. Taxation	17
15. Appointment of Specialists	21
16. Costs and Expenses of the Fund	21
17. Understanding the Governing Rules of the Fund	22
THE RULES OF THE FUND	23
Part One: Establishment of the Fund	23
Purpose of the Fund	23
Rule 1. The Fund must satisfy the Sole Purpose Test	23
Appointing the Trustee	24
Rule 2. Who may and may not be a Trustee	24
Rule 3. Appointment of a Trustee	26
Becoming a Regulated Superannuation Fund	28
Rule 4. The Trustee must ensure that the Fund is a Regulated Superannuation Fund	28
Trustee Operations and Obligations	28
Rule 5. Removal and Retirement of a Trustee	28
Rule 6. Remuneration and Indemnification of a Trustee	29
Rule 7. Meetings of the Trustee	29
Rule 8. Trustee's records	31
Rule 9. Trustee's Covenants	32
Admittance of Members	33
Rule 10. Who may become a Member	33
Rule 11. Members have read and are bound by the Rules	33
Rule 12. Application Form	34
Rule 13. Receipt of an Application Form	34
Estate Planning	35
Rule 14. Non-binding Death Benefit Nomination	36
Rule 15. Binding Death Benefit Nomination	36
Rule 16. Incorporation of a Death Benefit request in the Rules	38
Rule 17. Terms and conditions of a Pension deemed to be a Rule	39

Part Three: Payment of Benefits by the Trustee	65
Benefits payable to a Member	65
Rule 45. Benefits payable to a Member.....	65
Rule 46. When must Benefits be paid to a Member.....	65
Rule 47. Payment of a Lump Sum Benefit.....	66
Rule 48. Payment of a Pension Benefit.....	66
Incapacity	68
Rule 49. Member to advise Trustee of incapacity.....	68
Rule 50. Benefits payable for Temporary Incapacity.....	68
Rule 51. Benefits payable for Permanent Incapacity.....	69
Death Benefit	70
Rule 52. What must happen on death of a Member.....	70
Rule 53. Payment of a Death Benefit.....	70
Conversion of Benefits	72
Rule 54. Conversion of a Lump Sum Benefit into a Pension.....	72
Rule 55. Commutation of a Pension.....	72
Part Four: Changes to the Fund	73
Rule 56. Becoming a small APRA fund.....	73
Rule 57. Amendment of the Deed or the Rules.....	73
Part Five: Winding Up of the Fund	75
Termination	75
Rule 58. Termination of the Fund.....	75
Part Six: Interpretation	77
Governing Law	77
Rule 59. The governing law is the State in which the Trustee resides.....	77
Status of the Act	77
Rule 60. The Act is paramount.....	77
Interpretation	78
Rule 61. Rules as to interpretation.....	78
Definitions	78
Rule 62. Definitions.....	78
THE DEED	85

Product Disclosure Statement

1. Introduction

Self Managed Superannuation Funds ("SMSF's") are very popular with Australians wanting to take control and manage their own superannuation assets. There is however a considerable amount of legislation that governs SMSF's and there are various regulators of SMSFs such as the Australian Taxation Office ("ATO") and the Australian Securities and Investments Commission ("ASIC").

To commence or be a part of a SMSF is a big responsibility and one not to be taken lightly. The responsibility extends to each Member of a SMSF having to become a Trustee of the Fund, or, if the Fund has a corporate Trustee, a director of the Trustee company under the *Superannuation Industry (Supervision) Act 1993* ("SIS Act").

2. The *Strategist* SMSF

This *Strategist* SMSF trust Deed package contains information and the governing rules to operate your own Self Managed Superannuation Fund. It has been designed to enhance your understanding, as a Member and a Trustee, of the benefits and strategies available within a Self Managed Superannuation Fund, or SMSF as they are commonly known. As well, this *Strategist* Deed package highlights the important obligations for the Trustee that go hand in hand with these benefits.

In 2006 the government made sweeping changes to superannuation legislation, known as the Simpler Super reforms. These reforms have introduced new benefits and opportunities for Members of a SMSF that became generally available from 1 July 2007. The *Strategist* SMSF trust Deed package allows for the benefits available through the Simpler Super reforms. Superannuation legislation is, however, constantly evolving which means that the information and governing rules in the *Strategist* SMSF are regularly reviewed and updated to reflect all new changes.

Before establishing a *Strategist* SMSF, it is vital that a potential Member read the information in this product disclosure statement, commonly referred to as a PDS, along with the governing rules. These documents provide the potential Member with information about the benefits that are payable by the Trustee of the Fund, when those benefits may be paid and how they will be paid. They also cover how a Member's benefits are taxed or may be exempt from tax, the risks involved in being a Trustee and Member of a SMSF and how a SMSF compares with other superannuation funds;

3. Why the need to know so much?

The *Corporations Act 2001* provides that where a person is provided with a financial product they must receive a Product Disclosure Statement PDS.

A PDS is a statement that contains information required by the *Corporations Act 2001* to provide a person with sufficient information to make an informed decision about acquiring a financial product. Importantly the PDS must provide information about any significant benefits of a fund to which any prospective or existing Member may become entitled; as well as the circumstances, process and timeframe in which those benefits may be provided.

Table 1: Superannuation Product Comparisons

Feature	Self Managed Superannuation Fund	Retail Superannuation Fund	Industry Superannuation Fund
Investment choice	Unlimited*	Limited	Limited
Control of the Fund	Yes as Trustee or Director of a Trustee company	No	No
Compliance responsibilities	Full responsibility as Trustee or Director of a Trustee company	None	None
Fees payable			
- Establishment	Service fee to establish the SMSF	Yes	Nil
- Ongoing	Flexible	% Funds under management	% Funds under management or fee per month
Pension types available	Various*	Restricted	Restricted
Binding Death Benefit Nomination	Non-lapsing if the Deed Rules allow	Must be renewed every 3 years	Must be renewed every 3 years
Receive a pension* and continue contributing to super	Yes	May apply	May apply
Death benefits available			
- Lump sums	Yes	Yes	Yes
- Pensions	Only to dependants	Limited and only to dependants	Limited and only to dependants
Disability benefits available			
- Temporary	Yes	No	No
- Permanent	Yes	Yes – limited	Yes – limited
Membership	Number of Members limited, or Member can act as Trustee or Director of a Trustee company	Conditions apply	Conditions apply
Spouse splitting	Yes*	May apply	May apply

* Subject to compliance with the relevant laws.

Trustees seeking to pay a Member a pension should ensure that they receive advice from a specialist SMSF adviser. If the Trustee breaches superannuation legislation relating to pensions the Fund may be considered a non-complying SMSF and the Trustee may be liable to serious penalties.

7.4. Offering a financial helping hand if your health deteriorates

Health is one of those things that can never be taken for granted. A SMSF may provide Members with income if they become seriously ill or incapacitated. This income is to compensate a Member for lost income from employment. It may be payable for a certain period of time if a Member is only temporarily incapacitated or until the normal age of retirement if a Member is permanently incapacitated.

As with retirement income, the length and quantum of the incapacitation income stream depends upon the balance of a Member's account at commencement of the income stream. The amount payable to an incapacitated Member may be supplemented by reserves; known as self-insurance. Additionally, a Trustee may insure against a Member becoming incapacitated, so as to be able to pay a pension to a Member if the Member becomes incapacitated.

7.5. Investment choice

One of the major reasons that SMSFs have become so popular is the ability of the Trustee to invest the Fund's assets so as to reflect a Member's wishes.

The governing rules of the *Strategist* SMSF provide the Trustee with wide ranging investment powers allowing the Trustee to invest in shares, property, trusts, options, bonds and overseas investments, as well as borrowing to buy an investment via an instalment warrant arrangement. The Trustee must ensure, in terms of any investment, that:

- All investments are made on arm's length terms;
- The Trustee may not lend to Members or related parties;
- The Trustee may not invest more than 5% of the assets of the Fund in related entities such as a unit trust that the Member controls or in shares of an employer that contributes to the Fund;
- The Trustee cannot borrow or use the assets of the Fund as security for any borrowing except as allowed under the *SIS Act*;
- The purpose of any investment is to secure benefits for Members in the event of their retirement, incapacity or for their legal estate or dependant in the event of a Member's death. Any investment seeking to provide a Member or related party with a benefit not having one of these purposes is prohibited; and
- Generally the Trustee cannot acquire an asset from a Member or related party unless the asset is a listed security, widely-held trust, fixed term deposit or business real property.

7.6. Low taxation fully sanctioned by the government

If properly established and maintained a SMSF is very tax effective for its Members, including the payment of tax free lump sums or pensions to Members age 60 and over.

7.8. Access to the age pension

Benefits from a fund are treated favourably for Centrelink purposes. In terms of the assets test, the Member's account balance in the Fund is not tested until the Member becomes entitled to an age pension (for a male this is at age 65 and for a female it is currently at age 63 but increasing to age 65 by 2014) or commences a pension from their Member account.

Until 20 September 2007, a Member may have commenced a partially or fully assets test exempt pension from the Fund. The underlying capital from which such a pension is paid is discounted for assets test purposes and favourably treated for income test purposes. This may have enabled some Members to access the age pension on top of the private pension they receive from their Fund, if they chose to transfer the majority of their assets into the Fund (subject to the investment restrictions and excluding the family home). The establishment of assets test exempt pensions has been abolished from 20 September 2007 although existing pensions of this type may continue.

7.9. Protection from creditors

Protecting assets from creditors is a major concern for many people. One of the key benefits of a superannuation Fund is that when a person gets into serious financial difficulty, a Member's benefits may be protected from creditors. Clawback rules apply where a person has sought to escape their creditors by deliberately transferring assets or monies into a SMSF.

One downside of bankruptcy is that a person cannot remain as a Member of a SMSF if they are bankrupt as this will jeopardise the Fund's complying status. Should this arise the Trustee should consider various actions including transferring the Member's benefits to a commercial superannuation Fund where they may also be protected. Another alternative is to remove the existing Trustees and appoint a professional Trustee, also known as an approved Trustee.

7.10. Splitting benefits with a spouse

A Member of a SMSF may apply to the Trustee to transfer some of their benefits to their spouse, including a de-facto and a same sex spouse. Only contributions made since January 2006 can be split from one Member to another and there is a limit on the amount of contributions that can be transferred which is 85% of any deductible contributions made on behalf of the Member. Non-deductible contributions cannot be split.

8. Trustee of the Fund

A SMSF is a trust. A trust is essentially a relationship or a set of obligations between the Trustee and the beneficiaries of the trust. In a SMSF, the beneficiaries are the Members of the Fund. The Trustee holds and invests property (being contributions, rollovers and other monies received for the benefit of Members) under the terms of the trust Deed and at some time in the future (subject to an event such as retirement, disability or death) pays benefits to the Member, their dependant or estate.

As noted below, all Members must be Trustees or directors of a Trustee company of the Fund. In their role as Trustee, each Member has significant influence and control over the Fund. This differs from retail and industry based superannuation Funds where the Trustee stands apart from the Members.

Where there is only one Member, there is a need to have more than one Trustee since a person cannot be a Trustee for themselves. As such, in a single Member Fund, another person must be appointed as Trustee provided they are not an employer of the Member. Alternatively a Trustee company with a sole director may be appointed as Trustee.

Where Trustees hold a meeting to decide various matters in the Fund (such as the establishment of an investment strategy, the making of investments, the acceptance of contributions, the payment of benefits and the like) the rules of the *Strategist* SMSF (Rule 7) provide that each individual Trustee will hold that number of votes as is equal to the account balance of the Members that they represent (including themselves). This should also be the case for a director of a corporate Trustee where a *Strategist* special purpose SMSF Trustee company has been established, but may not be where another type of company has been appointed Trustee.

Great care needs to be taken at the time of establishment of the Fund as to the type of Trustee. Although establishing individual Trustees would not incur a direct cost, individual Trustees may subsequently cost the Fund and its Members a considerable amount.

9. Responsibilities of the Trustee

Being a Trustee or director of a Trustee company provides the Member/Trustee with a wide range of investment and other powers not available in retail, employer and industry based superannuation Funds. Being a Trustee is also about legal responsibility. This means at all times, a Trustee is required to act honestly, prudently and in the best interests of Members in relation to all matters concerning the Fund.

Members and prospective Members should be aware that both civil and criminal penalties can be imposed under the superannuation laws for any breach of these and other Trustee responsibilities including breaking the Fund's governing rules.

Prior to accepting an appointment as Trustee, it is important that a person consider the risks associated with such an appointment. The excuse that the Trustee was not aware of the superannuation laws or the rules of the Fund is not valid at law. From July 2007, a person becoming a Trustee or a director of a Trustee company of a SMSF must sign a declaration that they understand their duties attached to this role.

If a person is unwilling to take on the responsibilities as Trustee or director of a Trustee company, then it may be advisable to become a Member of a Retail or Industry based superannuation Fund.

In accordance with superannuation legislation, a Trustee must:

- Act honestly;
- Act in the best interests of Members and other beneficiaries;
- Keep the money and assets of the Fund separate from the Trustee's personal assets, and money and assets of another person including other trusts, companies and businesses that the Member or Trustee may have an interest in;
- Formulate and implement an investment strategy for the Fund. This strategy must follow the Fund's investment objectives and should be detailed in writing;
- Abide by the rules of the Fund at all times;
- Ensure that the Trustee does not breach any of the superannuation laws;

11.2. Trusteeship

As a Member of the Fund, the Member has the right to (and in fact must) become a Trustee; or, if allowed, appoint a person to become a Trustee in their place.

11.3. Contributions

A Member or any other person such as an employer may contribute on behalf of the Member. These contributions may be made in cash or by an in specie transfer of assets.

There are now no longer age based limits, from 1 July 2009, for employer and self employed Member contributions. There are limits on how much can be contributed, referred to as the 'Concessional Contributions' cap, which is \$25,000 per person per year:

- This cap applies from July 2009;
- This cap or limit is imposed on the amount of employer, self-employed or other eligible Member contributions made for the benefit of a Member and taxed at the concessional rate (of no more than 15%) available to superannuation Funds;
- This cap will be indexed in increments of \$5,000 only, in line with AWOTE (Average Weekly Ordinary Time Earnings);
- An amount allocated from any reserve in the Fund to a Member's account from time to time may also be counted towards this cap;
- Any contributions made in excess of the cap are taxed in the hands of the individual Member at an extra 31.5%. The Member is able to request the Trustee to pay the tax from the Member's entitlement in the Fund;
- Any excess contributions will be counted against the 'Non-Concessional' cap (see Note 2 below);and
- Transitional arrangements exist during the financial years from 2007/08 to 2011/12. This cap is \$50,000 per person per year for Members turning 50 or more during that period, so as to allow people nearing retirement to fulfil expectations of amounts planned to be contributed to their Fund during this period.

There is a 'Non-Concessional Contributions' cap of \$150,000 per person per year on the amount of un-deducted or non-taxable contributions may be made by a Member:

- This cap applied from July 2007;
- These contributions are generally not included in the assessable income of the Fund;
- These contributions are known as 'non-concessional' contributions;
- This cap will be indexed to equate to six (6) times the value of the concessional cap from 1 July 2009;
- Averaging rules will apply allowing a Member under age 65 to contribute an amount equal to three (3) times the value of the non-concessional cap in one year (\$450,000) providing no further contributions are made in the following two income years;

11.7. Access to benefits while still working

The Trustee may commence a transition to retirement pension for a Member that has reached their preservation age but still continues to work. The Fund may still continue to accept contributions on behalf of the Member in these circumstances, enabling the Member to have both a Member's accumulation account and pension account operating simultaneously;

11.8. Incapacity Benefits

The Trustee may pay the Member an incapacity benefit in the event the Member is temporarily or permanently incapacitated;

11.9. Death Benefit Nominations

The Trustee may accept a binding death benefit nomination (Rule 15) from a Member requiring the Trustee to pay out the Member's benefits in the event of the Member's death to the dependant named in the nomination form. Unlike other types of superannuation Funds, where this nomination form must be renewed every three years, the *Strategist* SMSF Deed enables the Member to create a permanent binding death benefit nomination which only that Member can change.

The governing rules of the *Strategist* SMSF (Rule 16) also allow a Member to provide the Trustee with a written request to pay out their death benefits in a particular manner and form. Once this request is accepted, the Trustee is required to pay the benefits in the event of the Member's death to the dependant named in the written request in accordance with the Member's instructions. This request forms part of the governing rules of the Fund and may not be amended without the consent of the Member making the request. The form is not required to be renewed every three years however the Member may amend or revoke the request at any time.

Both options require the Trustee to ensure that any death benefits paid are made in accordance with the superannuation laws; otherwise the Fund could become non-complying.

11.10. Death Benefits

The Trustee may pay death benefits by way of a lump sum or a pension to the deceased Member's legal estate or their dependants in such proportions and in such manner as the Trustee sees fit, unless a binding death benefit nomination or death benefit rule is operative.

12. Pension entitlements

A Member or a dependant of a Member may become entitled to be paid an income stream from the Fund, called a pension.

Prior to 20 September 2007, new pensions available from a SMSF included the allocated pension, the non-commutable allocated pension, and the market linked pension. The defined benefit pension was another class of pension available to Members of a SMSF. The defined benefit pension ceased to be available from 1 January 2006, although those that commenced prior to this date may continue.

From 1 July 2007, the rules governing these pension types were largely replaced by new 'simplified and streamlined' pension rules. This meant that, from 1 July 2007, existing pensions may have adopted the new minimum payment rules and be taken to meet the new rules in the pension standards in the *SIS Regulations*. New pensions may commence under the new rules. From 20 September 2007, all new pensions should have commenced in line with the new rules.

*Note: **Pension Drawdown Relief:** On the 18 February 2009 the Government announced that it will suspend the minimum payment requirement for pensions for the 2008/2009; 2009/2010 and 2010/2011 financial years.

This is achieved through a 50% reduction in the minimum payments that would otherwise apply in the above financial years. The reduction in payments will apply to account-based, allocated and market-linked (term allocated) annuities and pensions.

12.2. The transition to retirement (TTR) pension

This pension operates in the same way as the account based pension, with two important differences:

- The TTR pension cannot be taken as a lump sum until the Member meets a condition of release such as retirement, death, permanent disability or 65 years of age; and
- The maximum TTR pension payment in any one year is limited to 10% of the Member's account balance. For example if a 56 year old Member commenced a TTR pension on 1 July 2008 with a \$1,000,000 account balance, then the minimum pension payment would be \$40,000 per annum and the maximum amount available would be \$100,000 per annum.

12.3. Implications for defined benefit pensions

A defined benefit pension includes income streams; such as a lifetime complying pension or a fixed term pension, to name the most common. The lifetime options are generally non-commutable except in very limited circumstances. One option for a Member is to roll the current lifetime pension into another non-commutable income stream.

Given that account based pensions are generally commutable (excluding TTR) a roll-over cannot occur except outside the SMSF into a life insurance company pension product. However, this is not an attractive option as a Member would sacrifice their capital in these circumstances.

Special rules under the *SIS Act* allow a Member to roll over their complying defined benefit lifetime pension into a market linked pension within a SMSF and still satisfy the pension rules. The governing rules of the *Strategist* SMSF allow this to occur for any Member wishing to take advantage of these rules. There may be strategic and taxation consequences of doing this, so a Member is best served by seeking appropriate advice before taking action.

13. Estate planning

A key feature of a SMSF is the ability of a Member to directly provide for their dependants in the event of their death. A Member may also direct some or all of their superannuation benefits into their legal estate on death and allow those benefits to be distributed according to the deceased's will. This includes a pension that may have been payable to a Member at the time of their death.

A Member may provide the Trustee with binding and non-binding directions as to how their superannuation benefits are to be distributed in the event of their death. Such benefits are called death benefits and may be paid by way of lump sum or pension. The governing rules of the *Strategist* SMSF provide that a lump sum death benefit payment may consist of assets of the Fund. The following provides an overview of the important aspects of estate planning in a SMSF.

(d) **Reversionary Pension Rule 17**

A reversionary pension is a pension payable to a Member that reverts or automatically carries on in the name of the spouse, dependant or legal estate. A reversionary pension has built in estate planning. The decision as to who the pension is to be transferred is generally made at the time of commencement of the pension. Pension documentation guides what happens on the death of the pension Member; not a BDBN, NBDBN, or DBR.

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

13.3. Who is dependant?

Both the *SIS Act* and the *Tax Act* provide a definition of dependant. A dependant under the *SIS Act* (SIS dependant) includes a Member's spouse (legal or de-facto, including same sex), their children and a person who is financially dependent on them. It also includes a person who is in an inter-dependent relationship with the Member such as a sister living with a Member, or possibly a same sex partner of a Member who lives under the same roof.

The SIS dependant differs from the dependant for the purposes of the taxation laws (Tax dependant). The tax definition excludes a child aged 18 and over unless they are financially dependent, or in an inter-dependent relationship with the Member. This means that the tax treatment of benefits received by a SIS dependant, who is not also a tax dependant, may not be as advantageous.

The new pension rules restrict the definition even further by excluding, as a reversionary pensioner, an adult child of a Member who is financially dependent or in an inter-dependent relationship with the Member.

Consider the relationship between a 50 year old woman living with and caring for her elderly mother. This is clearly an inter-dependent relationship. Any superannuation pension received by the mother would not be able to revert to the daughter under the new SIS rules. A lump sum payment would be required.

13.4. The importance of estate planning

Until a SMSF estate plan is created for the Member, the Trustee will have full control of what happens to the Member's superannuation benefits in the event of the Member's death. Estate planning is vital in a SMSF and needs to be considered at the time a person becomes a Member, or soon after; and then reviewed regularly to capture changes in circumstances. As estate planning is complex and there are many options, the Member should seek specialist SMSF advice to assist in creating and managing the SMSF estate plan.

14. Taxation

One of the major benefits of commencing a SMSF is that a fund is concessionally taxed on its income and Members and their dependants may be concessionally taxed on benefits received from the Fund. Importantly, these taxation concessions only apply where a fund is a complying superannuation Fund during the income year.

A non-complying SMSF is taxed at a rate of 45% on its income and capital gains, which emphasises the need for Trustees to be vigilant in monitoring the compliance of the Fund; and ensure that the Fund abides by its governing rules and relevant superannuation and taxation laws.

Benefit Limits' or RBLs; These RBLs were abolished with effect commencing 1 July 2007.

A Member's balance in the Fund has two different components for tax purposes; a 'taxable' component and a 'tax-free' component.

The tax free component includes:

- (a) A consolidation of existing superannuation interests calculated as at 30 June 2007 as a fixed amount and including any un-deducted contributions, pre-July 1983 component, CGT exempt component, concessional component and post-June 1994 invalidity component; this is called the 'crystallised segment' of the tax free component; and
- (b) Non-concessional contributions (un-deducted) made on or after 1 July 2007 that have not been included in the assessable income of the Fund; this is called the 'contributions segment' of the tax free component.

Tax free benefits received are not required to be included in a person's income tax return.

The taxable component is calculated to be the total of the Member's superannuation interest in the Fund less the tax-free component; and will comprise an element taxed in the Fund and, in limited circumstances, an element untaxed in the Fund. An element taxed in the Fund refers to that part of a Member's benefits (contributions and earnings) that have been subject to tax in the Fund, which is typically the case for Members of a SMSF.

The following table summarises the tax treatment applicable to the taxed element of the taxable component of benefits received by Members from 1 July 2007. The Medicare Levy is also payable on top of any rate greater than 0% and quoted below.

Table 3: Taxation of Benefits to Members

Age	Lump Sum	Pension
Age 60 and over	Tax free	Tax free
Preservation age ¹ up to age 59	0% up to low rate cap of \$160,000 (2010/11 starting threshold and indexed thereafter) 15% tax on amount above low rate cap	Marginal income tax rates with a 15% tax rebate
Below preservation age	20%	Marginal income tax rates with no 15% tax rebate with the exception of disability pensions

14.3. Taxation of Death Benefits

There may be significant taxation advantages of paying a death benefit directly from a fund to a dependant rather than through the deceased's legal estate, despite there being various restrictions with respect to the payment of pensions to non-tax dependants.

¹ Currently age 55 for those born before 1960 – please refer to the definition of Preservation Age in the rules of the Fund.

15. Appointment of specialists

The superannuation and taxation laws, particularly as they apply to SMSFs, are complicated. Serious breaches may render a fund to be non-complying, which means that the Fund is taxed at a rate of 45%. In addition the Trustee may be subject to financial and criminal penalties. The rules allow a Trustee to appoint managers, advisers, and to engage other specialists to assist the Trustee in the management of the Fund. It is highly recommended that the Trustee appoint an experienced SMSF auditor and specialist SMSF adviser to look after the Fund.

16. Costs and expenses of the fund

SMSFs can be costly to run depending on the size of the Fund, as most of the costs are fixed. For example, the costs of administering a fund with assets of \$100,000 may be the same as a fund with \$2,000,000 in assets.

Administration costs, although important, are not the only costs for a Trustee to manage and operate a complying SMSF. Some other costs may include but are not limited to:

- The acquisition of the Deed and the rules and establishment of the Fund as a regulated Self Managed Superannuation Fund;
- The potential acquisition of a Trustee company. (see Note 1 above on why a special purpose Trustee company is recommended);
- The provision of specialist advice to the Trustee or Members in relation to the establishment of the Fund, restructuring of Fund assets, plans for Member retirement incomes, incapacity benefits, or benefits payable in the event of the Member's death;
- The provision of investment advice concerning the development and implementation of the Fund's investment strategy;
- Brokerage and commissions payable in relation to investing the assets of the Fund;
- The acquisition by the Trustee of Fund insurance, including life, total and permanent disablement as well as temporary incapacity insurance, for the benefit of Members;
- Insuring assets of the Fund like real property or valuables such as antiques or art;
- Accounting and audit fees in relation to the preparation of audited accounts and tax returns required by superannuation law;
- The provision of actuarial advice, should the Fund self-insure or the Trustee pay a pension from a pool of the Fund's assets not segregated for this purpose; and
- Maintaining currency of the rules of the Fund and the product disclosure information supplied to Members.

Note: terms capitalised are defined in the Definitions.

Part One:

Establishment of the Fund

Purpose of the Fund

Rule 1. The Fund Must Satisfy the Sole Purpose Test

Explanation

- *The Fund must be established and must be maintained solely for the provision of Core Purposes or for the provision of Core Purposes and Ancillary Purposes of the 'sole purpose test' in the SIS Act.*
- *The SIS Act defines Core Purposes to include the provision of Benefits to a Member upon his or her retirement or to the Legal Personal Representative or Dependants of the Member in the event of the Member's death.*
- *The SIS Act also provides that the Trustee may maintain the Fund for both Core Purposes and for Ancillary Purposes. An Ancillary Purpose may include the provision of Temporary or Permanent Incapacity Benefits to a Member, where the Member terminates employment as a consequence of ill health.*
- *An Ancillary Purpose also includes the provision of such Benefits as the Regulator has approved in writing.*
- *Tax concessions will not be available to the Fund unless the Trustee of the Fund is either a Constitutional Corporation (that is a Corporate Trustee) or its sole or primary purpose is the provision of old age pensions (this however does not mean that a fund which does not have a corporate Trustee cannot pay a pension). Rule 1.2 reflects this requirement.*

Rule

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

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

Who may not be a Trustee

- 2.10. A person cannot be a Trustee if:
 - (a) at any time
 - (1) the person was convicted of an offence against or arising out of a law of the Commonwealth of Australia, a State or a Territory of Australia or a foreign country, being an offence in respect of dishonest conduct; or
 - (2) a Civil Penalty Order was made in respect of the person; or
 - (b) the person is an insolvent under administration; or
 - (c) a Regulator has disqualified the person (for the purposes of section 120A of the *SIS Act*) and the Regulator has not waived that person's status as a disqualified person.
- 2.11. A company cannot be a Trustee if:
 - (a) the company knows, or has reasonable grounds to suspect, that a person who is, or who is acting as a Responsible Officer of the company has been disqualified by the Regulator (for the purposes of section 120A of the *SIS Act*); and
 - (b) the company knows or has reasonable grounds to suspect that:
 - (1) the person is not eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person; or
 - (2) the person is so eligible under section 126B(1) of the *SIS Act* to apply to APRA for a declaration waiving his or her status as a disqualified person but that person will not make an application under subsection 126B(3) of the *SIS Act* seeking a waiver of that status; or

- (b) the company and its directors agree to be bound by the Rules and has consented in writing to its appointment as a Trustee;
 - (c) the company is eligible to be appointed a Trustee; and
 - (d) all the directors have read the Product Disclosure Statement.
- 3.3.** Subject to the provisions of these Rules, where the Trustee accepts a person as a Member, that person or a Legal Personal Representative of that person is appointed as a Trustee, provided that person or a Legal Personal Representative:
- (a) has agreed to be Trustee and:
 - (1) has consented in writing to become a Member or is the Legal Personal Representative of a Member; and
 - (2) if the Fund has only one Member, that Legal Personal Representative is a Relative of the Member or is a person who is not an Employer of the Member;
 - (b) has agreed to be bound by the Rules and has consented in writing to that person's appointment as a Trustee;
 - (c) is eligible to be appointed as a Trustee; and
 - (d) has read the Product Disclosure Statement;
- unless that person or a Legal Personal Representative of that person becomes a director of a Company which is a Trustee.
- 3.4.** On appointment of a person as a Trustee, or on appointment of a company as a Trustee, after 30 June 2007 that person or each director of that company shall sign a declaration in that form as required by the Act certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.5.** If a person is a Trustee or a director of a company which is a Trustee and another person is appointed after 30 June 2007 as a Trustee or as a director of a company which is a Trustee, then that person must ensure that the newly appointed person signs a declaration in that form as required by the Act certifying that he or she understands their duties as a Trustee of a Self Managed Superannuation Fund or as a director of a company which is a Trustee of a Self Managed Superannuation Fund.
- 3.6.** Any such declarations referred to in Rules 3.4 and 3.5 shall be kept for at least 10 years or such longer period so far as it is relevant and shall be available for inspection by the Regulator, if so required.
- 3.7.** Upon the retirement or removal of a Trustee as Trustee or upon that Trustee being unable to act as Trustee including by reason of the death of the Trustee, at the direction of that Trustee, or if the Trustee is unable to make direction, upon the appointment of a person as the Legal Personal Representative of that Trustee, the following person or company is appointed as a Trustee in place of that Trustee, provided that the Legal Personal Representative has consented in writing as to appointment as a Trustee:
- (a) if that Trustee is a person; another person who is a Member or a Legal Personal Representative of a Member or a company of which the Member or the Legal Personal Representative of the Member is a director; or

- (b) if the Trustee is a Member – upon that Member becoming incapable of acting as Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee in place of that Member;
- (c) if the Trustee is a company and on the date four months from the time one or all of the directors of the company cease to be Members or the Legal Personal Representatives of Members;
- (d) if the Trustee is prohibited from being a Trustee by reason of Rules 2.9, 2.10 or Rule 2.11; on that date a Trustee is so prohibited from being a Trustee;
- (e) if the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund; on the day before the day the continued appointment of the Trustee as a Trustee will cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

Rule 6. Remuneration and Indemnification of a Trustee

Explanation

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

Rule

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

Rule 7. Meetings of the Trustees

Explanation

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

- *appointment of various professional advisers to the Fund, including the Auditor;*
- *establishment of a bank account or cash management trust for the Fund;*
- *setting of an investment objective and investment strategy for the Fund;*
- *admission of Members to the Fund;*

- 7.4. At any Trustee Meeting a quorum is equal to that number of Members, or the Legal Personal Representatives of those Members, the balance of whose Members' Accounts, is equal to more than one half of the aggregate balance of all Members' Accounts.
- 7.5. At any Trustee Meeting, unless the persons entitled to and present at that meeting unanimously agree otherwise, a person shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Accounts of that person plus that amount in any Reserve which an actuary has determined is supporting that person's Member's Account in paying a Pension.
- 7.6. A resolution would not be passed at any Trustee Meeting, unless it is passed by the casting of a majority of the votes entitled to be cast by persons who are present at that meeting.
- 7.7. A person may appoint another person to act as that person's proxy at any Trustee Meeting. Any such appointment must be in writing.
- 7.8. If a circulating minute containing a statement that the Trustee is in favour of a resolution in the terms set out in that document has been signed by all persons entitled to attend a Trustee Meeting, a resolution in those terms will be taken to have been passed at a meeting held on the day and at the time at which the document was last signed by any such person. Two or more separate documents containing statements in identical terms, each of which is signed by one or more persons, will together be taken to constitute one document for the purposes of this Rule.

Rule 8. Trustee's Records

Explanation

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

Rule

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

Admittance of Members

Rule 10. Who May Become a Member

Explanation

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

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

Rule

- 10.1.** The Trustee may, with absolute discretion, admit a person as a Member provided:
- (a) that person or that person's Legal Personal Representative has provided the Trustee with an Application Form and has agreed to be bound by the Rules;
 - (b) admission of that person as a Member would not cause the Fund to become a Non-Complying Self Managed Superannuation Fund; and
 - (c) the person or the Legal Personal Representative of that person is eligible to act and accept appointment as a Trustee or is eligible to be and is willing to accept appointment as a director of a company which is eligible to and will accept appointment as a Trustee.
- 10.2.** Subject to these Rules and the Act, the Trustee must admit a person as a Member where that person will be paid a Pension from the Fund.
- 10.3.**
- (a) If a Member is the only Member of the Fund, the Member can provide the Trustee with a notice requiring the Trustee not to admit any other person as a Member of the Fund and the Trustee shall not then admit any person as a Member of the Fund, or
 - (b) Alternatively, if a Member so elects by notice to the Trustee and notwithstanding any other provision of these Rules, the property of the Fund transferred to the Fund by that Member can only be held in the Fund specifically for the Member and that property cannot be pooled with the Contributions or other assets of other Members and no other Member can obtain an interest in that property.

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

Explanation

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

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

Estate Planning

Explanation

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

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

Further Explanation

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

- *A Member to provide the Trustee with a Non Binding Death Benefit Nomination. The Member by way of that nomination requests that the Trustee pays Benefits in accordance with the Member's wishes but does not compel the Trustee to so pay the Benefits. A Member might decide to provide a Trustee with a Non Binding Death Benefit Nomination where the Member wishes to provide some guidance to the Trustee (and to provide the Trustee with some measure of protection if the Trustee acts accordingly to that nomination) but, recognising that there may be a need for flexibility, does not want to bind the Trustee (Rule 14);*
- *A Member to provide the Trustee with a Binding Death Benefit Nomination in which the Member requires the Trustee to pay Benefits after that Member's death to a Legal Personal Representative or Dependant of the Member. Whilst such requests are mandatory, they are restrictive as to whom Benefits may be paid, the mode of paying Benefits, and generally they only have a three year life. For example, the Member cannot compel the Trustee to pay a pension instead of a lump sum. This is not the case with the Strategist Deed where a Binding Death Benefit is permanent if worded to that effect, unless altered by the Member (Rules 15.1 to 15.7). A Member who requires more certainty as to the application of Benefits payable on the death of a Member should consider including a Death Benefit request in the Rules as allowed by Rule 16 of the Rules;*
- *A Member to require his or her Legal Personal Representative to determine, with the consent of the Trustee, as to how a Member's Benefits should be applied on the death of the Member. The disadvantage of this alternative is that the Trustee might not consent to that determination (Rule 15.8); and*

Explanation cont.

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

Rule

- 15.1.** The Trustee must, when required to do so by the Act, provide a Member with that information that the Trustee reasonably believes the Member reasonably needs for the purpose of submitting a Binding Death Benefit Nomination.
- 15.2.** A Member, or the Legal Personal Representative of a Member, may provide the Trustee with a Binding Death Benefit Nomination or a replacement to a prior Binding Death Benefit Nomination.
- 15.3.** Subject to the Act the Trustee must accept a Binding Death Benefit Nomination and shall be bound to act in accordance with that Binding Death Benefit Nomination so long as, in doing so, the Fund is not in breach of the Act.
- 15.4.** A Binding Death Benefit Nomination:
- (a) must be in writing;
 - (b) must require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to a Legal Personal Representative or a Dependant of the Member;
 - (c) must be signed and dated by the Member in the presence of two witnesses, being persons:
 - (1) each of whom has turned 18; and
 - (2) neither of whom is a person mentioned in the notice; and
 - (d) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member or the Legal Personal Representative of a Member in their presence.
- 15.5.** Prior to the death of a Member, the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Binding Death Benefit Nomination previously given by the Member to the Trustee. A confirmation must be in writing, dated and signed by the Member or the Legal Personal Representative of the Member. An amendment or revocation of a Binding Death Benefit Nomination must be in writing and must be dated and signed by the Member or the Legal Personal Representative of the Member in the presence of two witnesses each of whom has turned 18 and neither of whom is mentioned in the notice. The Trustee shall accept that confirmation amendment or revocation.

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

Explanation

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

Rule

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

Warning

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

- End of Part One -

Part Two:

Operation and Administration of the Fund

Termination of Membership

Rule 18. Expulsion of a Member

Explanation

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

Rule

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

Rule 19. Ceasing to be a Member

Explanation

Normally a Member will only cease being a Member:

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

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

Rule

- 19.1.** Unless prohibited by the Act, a Member shall be deemed to have ceased to be a Member on the first to occur of the following:
- (a) the Member no longer being entitled to receive Benefits from the Fund;

Rule

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

Rule 21. Additions to a Member's Account

Explanation

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

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

Rule

- 21.1.** On the last day of each month, or such other time as the Trustee might determine, or on any earlier date as required by the Act, the Trustee shall add to a Member's Account:
- (a) the amount of Contributions received by the Trustee for the benefit of the Member;
 - (b) at the discretion of the Trustee, such part of the Earnings as the Trustee believes should be added to that Member's Account;
 - (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account;
 - (d) any amount to which a Member is entitled because of a Payment Split; and
 - (e) such other amounts including allocations of Reserves as the Trustee might determine;

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

Appointment of Auditor and Specialists

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

Explanation

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

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

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

Rule

23.1. On establishment of the Fund, and for every subsequent year of income, the Trustee must appoint an Auditor to audit the Fund. The Auditor must submit, to the Trustee, a report in the form required by the Act.

23.2. On establishment of the Fund, and thereafter as the Trustee may determine, the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in:

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

Contributions, Roll-overs and Transfers

Rule 24. Who can make Contributions

Explanation

The Trustee may accept Contributions from:

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

provided the Contributions are made in accordance with the Act.

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

Explanation

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

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

Rule

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

Rule 27. Allotments, Transfers and Rollovers of Benefits

Explanation

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

Examples of where such transfers might be appropriate are:

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

Rule

27.1. If a Member or the Legal Personal Representative of the Member:

- (a) requests the Trustee to allot, transfer or rollover all or part of their Member's Account to another Superannuation Entity or to another Member's Account;
- (b) the Trustee is satisfied that any such allotment, transfer or rollover will not cause the Fund to be a Non-Complying Self Managed Superannuation Fund; and

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

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

Explanation

The Trustee must invest the assets of the Fund.

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

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

Rule

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

Rule 30. Holding of assets for the Members

Explanation

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

The Trustee may:

- (a) acquire any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust monies;
- (b) acquire real or personal property or any interest therein and, without limiting the generality thereof, any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country;
- (c) acquire fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- (d) acquire options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;
- (e) acquire a fixed deposit or monies at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (f) acquire any policy of assurance or insurance of any kind whatsoever and wherever made;
- (g) make loans to any person or company, except to Members or a Relative of a Member;
- (h) acquire gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (i) acquire foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (j) lodge monies with a permanent building society, wherever situated, by taking up shares or depositing Funds;
- (k) acquire any reversionary or deferred property or rights of any description; and
- (l) acquire a warrant.

Rule 32. Trustee Powers

Explanation

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

- (k) **To pay management expenses:** to pay out of the assets, Reserves or the income of the Fund, all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- (l) **To pay general expenses:** to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable and to pay any other insurance premiums the Trustee believes should be paid;
- (m) **To deal with corporate securities:** with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
 - (1) to pay calls on securities or to permit securities to be forfeited and sold;
 - (2) to purchase securities and to take up securities of a new issue;
 - (3) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (4) to sell securities at such price and upon such terms as the Trustee decides and with or without security;
 - (5) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - (6) to agree in respect of a winding up with the liquidator of a company or any Member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or in-specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any monies by way of equality of division or partition;
- (n) **To deal with unit trust interests:** to acquire units of any fixed or flexible unit trust by way of application, purchase or settlement by the Trustee in the establishment of such unit trust and exercise all rights, including voting rights, and perform all obligations as a holder of any units in such trust and to accept all distributions by the Trustee of such unit trust;
- (o) **To deal with franchises:** to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;

- (w) **To deal with choses-in-action:** to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (x) **To receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a Will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- (y) **To deal with legal proceedings:** to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (z) **To deal with intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (aa) **To deal with the release of powers:** by irrevocable Deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release, any power shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (bb) **To deal with incidental powers:** to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee;
- (cc) **To grant power of attorney:** in the exercise of all or any of the powers herein confirmed upon the Trustee to appoint an attorney and to execute any power of attorney or such other instrument as in the opinion of the Trustee is necessary for the exercise of those powers;
- (dd) **To appoint a custodian:** to appoint a custodian to hold the legal title of any asset acquired, or to be acquired, by the Trustee on such terms as the Trustee thinks fit;
- (ee) **To deal with indemnities:** to give indemnities to, or on behalf of, any person that the Trustee thinks fit; and
- (ff) **To deal with bills of exchange:** The Trustee may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund.

32.2. These powers shall be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules or by law.

Rule

- 34.1.** The Trustee can accept a distribution or a gift made to the Fund, provided the Fund will not by reason of acceptance of that distribution or gift become a Non-Complying Self Managed Superannuation Fund or the Trustee otherwise resolves that the Trustee should not accept that distribution or gift.
- 34.2.** The Trustee may allocate any such distribution or gift at its discretion to the Earnings, a Reserve, a Member's Account or apply it for any such purpose as the Trustee determines, including the payment of a Pension to a Member, their Legal Personal Representative or to a Dependant in the event of the Member's death.

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

Explanation

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

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

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

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

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

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

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

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

Rule

- 35.1.** Except as otherwise provided by the Act, the Trustee must not:
- (a) borrow money;
 - (b) maintain an existing borrowing of money;

Explanation Cont.

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

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

Rule

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

Taxation

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

Explanation

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

- (1) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (2) Capital gains after deduction of same year and carried forward capital losses; plus*

Insurance

Rule 39. The Trustee may establish an insurance plan

Explanation

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

Rule

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

Rule 40. The Trustee may self insure

Explanation

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

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

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

Rule

40.1. The Trustee can elect to self insure and may establish a Reserve:

- (a) to which such amounts as the Trustee might require shall be added for the purpose of self insurance;
- (b) from which the Trustee may pay amounts required to be paid as a consequence of the Trustee self insuring against an event; and
- (c) from which amounts no longer required for the purpose of self insurance may be transferred to such other Reserve or to such Member's Account as the Trustee may determine.

Explanation cont.

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

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

Rule

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

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

Fund Insolvency**Rule 44. The Trustee must develop a Solvency Plan****Explanation**

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

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

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

Rule

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

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

Part Three:

Payment of Benefits by the Trustee

Benefits Payable to a Member

Rule 45. Benefits payable to a Member

Explanation

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

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

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

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

Rule

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

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

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

Rule 46. When must Benefits be paid to a Member

Explanation

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

Explanation cont.

The 50% reduction will also apply to 'transition to retirement' pensions so long as they are paid through one of the above measures.

If a Member has already taken their 50% minimum payment for the year they are unable to re-contribute the excess back into their pension account. However a person may make contributions to an accumulation account where they are eligible to do so.

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

- A minimum Pension payment calculated in accordance with the Member's age as below that must be made at least annually:

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

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

Rule

- 50.1.** Where the Trustee is of the opinion that the Member is Temporarily Incapacitated the Trustee may pay a Temporary Incapacity Benefit to the Member, provided such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund for a period commencing from the time of that Temporary Incapacity to the earlier of:
- (a) that date the Member is re-engaged in the kind of employment engaged in by the Member immediately before becoming Temporarily Incapacitated;
 - (b) that date on which the Trustee forms an opinion that the Member has become Permanently Incapacitated;
 - (c) the date of the death of the Member; and
 - (d) such other time as is allowed under the Act.
- 50.2.** Subject to the Act, the amount of that Temporary Incapacity Benefit shall be no more than that amount which the Member was receiving from his Gainful Employment before that Temporary Incapacity.
- 50.3.** The Trustee may draw upon any Reserve to pay a Temporary Incapacity Benefit or, if there are no Reserves, deduct an amount from the Member's Account or any other account the Trustee so determines.

Rule 51. Benefits payable for Permanent Incapacity

Explanation

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

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

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

Rule

- 51.1.** If the Trustee is of the view that a Member has become Permanently Incapacitated and provided that any such payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund, the Trustee in its absolute discretion may but not obliged to:
- (a) pay all of any balance of the Member's Accumulation Account and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit;
 - (b) pay part of any balance of the Member's Accumulation Account and Pension Accounts to the Member, a Dependant or Legal Personal Representative of the Member as a Lump Sum Benefit and the balance of the Member's Accounts (as increased from time to time) to the Member as a Pension; and

Explanation cont.

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

Rule

- 53.1.** On the death of a Member, the Trustee shall distribute the balance of the Member's Accounts as a Benefit in accordance with this Rule to one or more of the Member's Dependants, the Member's Legal Personal Representative, or any other account in the Fund including another Member's Account or a Reserve, provided any such distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.2.** If the Trustee holds a Non-Binding Death Benefit Nomination for the deceased Member, the Trustee may, but is not obliged to, pay such Benefits to such persons as are nominated in that Non-Binding Death Benefit Nomination of the deceased Member.
- 53.3.** If the Trustee holds a Binding Death Benefit Nomination for the deceased Member, the Trustee must pay such Benefits in the manner and form as are nominated in that Binding Death Benefit Nomination of the deceased Member. The Trustee is not required to make a payment under a Binding Death Benefit Nomination if that payment may result in the Fund becoming insolvent, or if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.4.** If, at the request of the deceased Member, the Trustee has established a Death Benefit Rule, the Trustee must pay any Benefits payable as a consequence of the death of that Member in accordance with that Death Benefit Rule. The Trustee is not required to make a payment under a Death Benefit Rule if that payment results in the Fund becoming insolvent or causes the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.5.** If the terms and conditions of a Pension payable to the deceased Member have been incorporated as a Rule, the Trustee must pay the Pension according to the terms of that Pension provided any such payment does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 53.6.** Except if one or more of Rules 53.1, 53.2, 53.3, 53.4 or 53.5 apply, the Trustee shall distribute or transfer the balance of the Member's Accounts as the Trustee in its absolute discretion may decide.
- 53.7.** Notwithstanding Rule 53.1, the Trustee is authorised to pay such additional amounts to a Dependant or the Legal Personal Representative of a deceased Member as the Trustee, in the Trustee's absolute discretion, may decide, including an amount from a Reserve, provided the payment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund. These amounts are not to be taken as forming part of the deceased Member's Benefits.

Part Four:

Changes to the Fund

Rule 56. Becoming a Small APRA fund

Explanation

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

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

Where a fund ceases being a Self Managed Superannuation Fund it must within 21 days of that change provide the Australian Taxation Office with details of that change.

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

Rule

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

Rule 57. Amendment of the Deed or the Rules

Explanation

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

Rule

- 57.1.** Subject to any other provision of these rules, the Trustee may, in its absolute discretion, amend the Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed or the Rules does not result in the Fund becoming a Non-Complying Superannuation Fund or being in breach of the Act;

Part Five:

Winding Up of the Fund

Termination

Rule 58. Termination of the Fund

Explanation

On termination of the Fund the Trustee should:

Step One *have the Fund audited;*

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

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

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

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

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

- (1) Members and former Members of the Fund;*
- (2) Relatives of any Member or former Member;*
- (3) any Legal Personal Representative of a Member or former Member;*
- (4) any other person; and*
- (5) a charity or public benevolent institution.*

Rule

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

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

Part Six:

Interpretation

Governing Law

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

Explanation

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

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

Rule

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

Status of the Act

Rule 60. The Act is paramount

Explanation

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

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

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

Rule

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

Application Form	An application form as referred to at Rule 12.
Approved Trustee	A Trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
APRA	The Australian Prudential Regulatory 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> .
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.
Benefit	A benefit or entitlement payable or distributable by the Fund including a Pension.
Binding Death Benefit Nomination	A death benefit nomination made by a Member in accordance with Rule 15 that must be followed by the Trustee in the event of the Member's death.
Civil Penalty Order	An order or declaration made by a court under section 196 of the <i>SIS Act</i> .
Child	Any person defined as a child by the Act.
Commencement Date	In relation to a Pension has the meaning given by the <i>SIS Regulations</i> .
Compliance Plan	A plan established for the purpose of Rule 43.
Complying Self Managed Superannuation Fund	A fund which is a complying Self Managed Superannuation Fund for the purposes of section 42A of the <i>SIS Act</i> .
Constitutional Corporation	A body corporate which is: <ul style="list-style-type: none"> (a) a trading corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i>), (b) a financial corporation formed within the limits of the Commonwealth of Australia (within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i>).
Contributions	Amounts paid or property transferred to the Trustee for the Benefit of a Member or Members.
Contributions Segment	Means that part of a Superannuation Interest as defined in section 307-220 of the <i>Tax Act</i> .
Core Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> .

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: <ul style="list-style-type: none"> (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale; (b) the sale occurred after proper marketing of the asset; and (c) the buyer and seller acted knowledgeably and prudently in relation to the sale.
Member	Any person accepted by the Trustee as a Member of the Fund.
Member's Account	An account established by the Trustee on behalf of a Member.
Member's Accumulation Account	A Member's Account established by the Trustee, the balance of which is the amount that can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit and/or a Pension.
Member's Benefit	The amount of a Benefit payable to a Member, their Dependant or Legal Personal Representative in the event of the Member's death as determined by the Trustee.
Member's Pension Account	A Member's Account established by the Trustee from which the payment of a Pension will be debited.
Minimum Benefits	An amount determined by the Trustee of the Fund as a minimum benefit for a Member pursuant to Part 5 of the <i>SIS Regulations</i> .
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.
Payment Split	A "payment split" as defined by section 90MD of the Family Law Act 1975.
Pension	Any pension payable by the Fund.
Permanent Incapacity Benefit	A Benefit payable pursuant to Rule 51.
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.

Responsible Officer	(a) a director of a company, (b) a secretary of a company; and (c) an executive officer of a company.
Rules	The rules of the Fund.
Self Managed Superannuation Fund	A fund that is a "Self Managed Superannuation Fund", as defined in section 17A of the <i>SIS Act</i> .
Simple Pension	A Pension defined in regulation 6.01(1) of the <i>SIS Regulations</i> .
SIS Act	The <i>Superannuation Industry (Supervision) Act 1993</i> .
SIS Regulations	The <i>Superannuation Industry (Supervision) Regulations 1994</i>
Specified Work Test	Those conditions found in Part 6 of the <i>SIS Regulations</i> determining the time at which a person must be paid a Benefit from the Fund.
Splittable Contribution	An amount that has the meaning for the purposes of Part 6 of the <i>SIS Regulations</i> .
Solvency Plan	A plan established for the purposes of Rule 44.
Spouse	In relation to a person includes: <ul style="list-style-type: none"> (1) a person who may or may not be legally married but lives with a Member on a genuine domestic basis; (2) any other person accepted by the Trustee and as permitted by the Act; and (3) any other persons (regardless of sex) with whom the person is or was registered under a law of state or territory for the purpose of section 22B of the acts interpretation Act 1901 (cth) as a kind of relationship.
Standard-Employer-Sponsor	A person who is a standard-employer-sponsor as defined in section 16(2) of the <i>SIS Act</i> .
Superannuation Entity	(a) a superannuation Fund; (b) an approved deposit Fund; (c) a pooled superannuation trust; and (d) a life insurance company or similar entity, whether such an entity is a resident or non – resident of Australia.

The Deed

Establishment of Widak Family Superannuation Fund

Explanation

A superannuation Fund is a form of trust. Trusts are normally required to be established by Deed. By execution of this Deed, the Trustee formally establishes the Fund.

To benefit from concessional taxation rules, the sole purpose of the Fund must be the provision of superannuation Benefits or retirement, incapacity or death benefits to Members (or Relatives of deceased Members). The Fund might also be able to provide Pension Benefits to Members prior to the retirement of the Member. The Fund should not be formed to carry on a business.

In order for this Deed to be admissible as evidence in a court of law, it may have to be stamped in the local jurisdiction of the Trustee.

The Deed does not contain the Rules of the Fund. Rather the Rules of the Fund are contained in a separate document and unlike the Deed can be (and should be) amended from time to time to reflect legislative changes.

THIS DEED is made on 01 April 2014

By:

Widak Investments Pty Ltd ACN 168 864 079 ('the Trustee')

WHEREAS

- A.** The Trustee is that person who has executed this Deed or, if more than one person, those persons collectively.
- B.** The Trustee wishes to establish a superannuation Fund ("the Fund").
- C.** By execution of this Deed the Trustee signifies its consent to its appointment as the first Trustee of the Fund and acknowledges that it has read and agrees to be bound by the Rules of the Fund.
- D.** The Trustee intends that the Fund should be a complying Self Managed Superannuation Fund as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

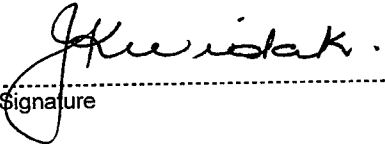
This Deed establishing **Widak Family Superannuation Fund** is hereby executed as a Deed.

EXECUTED AS A DEED by **Widak Investments Pty Ltd ACN 168 864 079** in accordance with *section 127 of the Corporations Act 2001*, by its Directors or Director and/or Secretary:

Richard Widak
Please Print Name of Director


Signature

Judith Widak
Please Print Name of Director/ Secretary*


Signature

* Delete as appropriate