



The *Strategist* SMSF

A Living Super deed

TTS Super Fund

Commencement Date:

- Deed of Establishment**
- Rules of the Fund**

Deed of Establishment and Rules of the Fund prepared by:
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Introduction

Thank you for choosing the *Strategist* Deed to operate your self managed superannuation fund ('SMSF'). We know you have made the right choice as the *Strategist* Deed has been developed by key industry experts that cover all aspects of SMSFs.

Legal structuring, asset protection, investment options and administrative management have all been keenly debated in order to bring you this document from a wide breadth of experience in the SMSF arena. The people who have been involved in this process are proud of their work and as such we would like to take the opportunity to introduce them to you. Please see over the page.

Most SMSF deeds are created by an individual who may have a very narrow and singular focus regarding this important area. We believe that although this is an easier way to deliver a product it lacks credibility and robustness. Our aim in delivering the *Strategist* Deed is to provide a document that has been debated and tested by the best in the industry.

The *Strategist* Deed Review Panel

Paul Berresford - Optimus Private Super Pty Ltd

Paul is a SMSF Specialist Advisor, Chartered Accountant (accredited Financial Planning Specialist) with in excess of 20 years experience in the financial services industry. Paul is a director of a SMSF Specialist Practice in Perth, WA, and has a wealth of knowledge in the areas of retirement & wealth accumulation strategies, asset protection, taxation, estate and business succession planning and SMSF compliance.

Peter Bishell - Self Managed Superannuation Members Association

Peter is a SMSF Specialist Advisor, a CPA and a Certified Financial Planner with over 25 years experience in financial services. Until recently Peter was Principal of Phase Three Superannuation and Retirement Consultants and is now CEO of SMSMA (Self Managed Superannuation Members Association Limited) where he regularly makes submissions to the government on consumer related issues relating to self managed superannuation funds. Peter is the author of "The Self Managed Superannuation Trusts Handbook".

David Busoli - Total Super Pty Ltd

David is a SMSF Specialist Advisor, CEO of a national SMSF compliance & administration company and founding member of SPAA. David provides education and strategy advice to financial advisers, accountants and trustees and has qualifications from four universities and 29 years practical superannuation experience.

Cindy McDonald - Opeza Superannuation Services Pty Ltd

Cindy is a SMSF Specialist Advisor, a CPA and CEO of a SMSF practice in Perth, WA. Cindy has worked in the industry for over 15 years and has in-depth knowledge and experience in the SMSF arena. Cindy regularly contributes to industry submissions. She is currently the WA Chairperson for SPAA and sits on the SPAA National Membership Committee.

Robert Richards - Robert Richards & Associates

Robert is a Solicitor and Public Accountant 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.

Russell Scott - Espreon Corporate Services Pty Ltd

Russell is a Chartered Accountant, a CPA, a qualified Company Secretary, a registered tax agent and a member of the ASIC Advisory Committee. Russell is General Manager of Espreon Corporate Services, a leading provider of documentation to establish companies, trusts and self managed superannuation funds. Russell has over 20 years experience in the finance sector, having worked with PriceWaterhouseCoopers, his own chartered accountancy practice and in senior financial management roles.

Susie Thearle - The Real Issue Pty Ltd

Susie is a SMSF Specialist Advisor and Chartered Accountant with over 16 years in Public Practice. Susie is on the SPAA Audit Sub Committee and assists SPAA in submissions to the government. She is also on the ATO *Simpler Super* Working Group for SMSF Approved Auditors and her practice provides specialist consultancy services in the areas of taxation and superannuation.

Establishment of TS Super 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 pension 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. However 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.

THE DEED

THIS DEED is made on

Darren McAllister of Level 7, 239 George Street Brisbane QLD 4000 ("Trustee")

Debbie Thomas of Level 7, 239 George Street Brisbane QLD 4000 ("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*.

NOW IT IS HEREBY AGREED

Initial Trustee

1. The Trustee if allowed by the rules of the Fund to be appointed as a trustee of the Fund is hereby appointed as the trustee of the Fund.

Establishment of the Fund

2. The Trustee hereby agrees to receive contributions and any other amounts paid to it on behalf of members and will hold those contributions and any income thereon according to the rules of the Fund.

Name of the Fund

3. The name of the Fund will be TS Super Fund or such other name as the Trustee might in writing determine.

Rules of the Fund

4. The rules of the Fund are those rules attached to this Deed, any amendment of or substitution of those rules, and any other rule that is deemed by any law to be a rule of the Fund.

Purpose of the Fund

5. The Fund is to be maintained solely for the provision of one or more of those purposes referred to in section 62 of the *Superannuation Industry (Supervision) Act 1993* as core purposes or ancillary purposes including any purpose that the Regulator (as defined by the *Superannuation Industry (Supervision) Act 1993*) approves in writing.

Complying Self Managed Superannuation Fund

6. The Fund must at all times do those things that allow it to be a "complying self managed superannuation fund" as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993* and must not do anything that would or might cause it not to be a "complying self managed superannuation fund" as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

Successor

7. A reference to an Act includes a reference to any successor act to that Act.

Replacement Trustee

8. If the Trustee or any person or entity appointed in place of the Trustee or in place of that other person or entity dies, is removed as a Trustee of the Fund or retires as a Trustee of the Fund such other person or entity as is appointed as Trustee by reason of the Rules will be the Trustee of the Fund.

Interpretation

9. In this Deed words in the singular number include the plural and words in the plural include the singular.

This Deed establishing **TS Super Fund** is hereby executed as a deed on the commencement date of .

Darren McAllister as Trustee

(Signature)

in the presence of: (Signature of Witness)

(Full Name of Witness)

Debbie Thomas as Trustee

(Signature)

in the presence of: (Signature of Witness)

(Full Name of Witness)

Sample Only

THE RULES OF THE FUND

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.

These concessions will not be available to the Fund unless the Trustee of the Fund is either a "constitutional corporation" (that is company) 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 or 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.

Appointing the Trustee

Rule 2. Who may and may not be a Trustee

Explanation

The Fund must have a Trustee.

Section 17A of the SIS Act must be satisfied in order for the Fund to be a Self Managed Superannuation Fund. This section requires that:

- *each Member must be a Trustee or if the Trustee is a company each Member must be a director of that company;*
- *a person who is not a Member may not be a Trustee or a director of a company which is a Trustee,*
- *except that a Legal Personal Representative may also be a Trustee.*

On the Death of a Member the Legal Personal Representative of that Member should be appointed as a Trustee or as director of a company that is a Trustee - see Rule 52.

For single member funds another person is required to be appointed as a Trustee, not being an employer of the Member unless also a relative of the Member.

However these Rules do not allow:

- *for the purpose of administrative simplicity*
- *for a company to be a Trustee if a Member is also a Trustee.*

If a company is appointed Trustee the constitution of that company should be compatible with the Rules.

Any person accepting appointment as a Trustee or director of a company that is the Trustee must read and agree to the Rules.

A disqualified person may not be a Trustee. A disqualified person may include a person who has committed a civil or criminal offence or is bankrupt.

If a natural person is a Trustee a company cannot also be a Trustee.

Rule

Who may be a Trustee

- 2.1.** Natural persons may be Trustees or a company may be the Trustee but natural persons and companies cannot both be Trustees.
- 2.2.** Subject to this Rule and Rule 52 below (which applies on death of a Member) an individual may only be a Trustee if the individual is a Member.

- 2.3.** Subject to this Rule and Rule 52 below (which applies on the death of a Member) a company may only be a Trustee if all the directors of the company are Members.
- 2.4.** Notwithstanding Rule 2.2 and Rule 2.3 if there is only one person who is a Member then:
- (a) that Member or a Legal Personal Representative of that Member and one other natural person who is a Relative of the Member or is a person who is not an employer of the Member may be the Trustee; or
 - (b) a company may be the Trustee the sole director of which is the Member or a Legal Personal Representative of the Member or the company may have two directors one of which is the Member or the Legal Personal Representative of the Member and another person who 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 then 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 have provided the Trustee with a written consent to the appointment and have acknowledged that they have read and agreed to be bound by the Rules.
- 2.8.** Notwithstanding any other provision of these Rules an Approved Trustee may be appointed as the Trustee.

Who may not be a trustee

- 2.9.** A person cannot be a Trustee if:

- (a) at any time:
 - (i) 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
 - (ii) 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.

2.10. A company cannot be a Trustee if:

- (i) 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
- (ii) 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
- (a) a receiver, or a receiver and manager, has been appointed in respect of property owned by the company; or
- (b) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (c) a provisional liquidator has been appointed in respect of the company; or
- (d) the company has begun to be wound up.

2.11. Notwithstanding Rules 2.9 and 2.10 above a person or company can be appointed as a Trustee if that appointment as a Trustee is authorised by the Regulator.

Sample Only

Rule 3. Appointment of a Trustee

Explanation

This Rule provides the mechanism for appointing those persons eligible to be appointed as Trustees. This Rule also allows an individual to be replaced as a Trustee by a company which is a Trustee and for a company which is Trustee to be replaced as Trustee by an individual.

Trustees of the Fund will be personally liable for any liabilities incurred by the Fund (although they may be entitled to indemnity by the Fund). Where there is more than one Trustee each Trustee is jointly and severally liable for the liabilities of the Fund. As a consequence persons causing the establishment of the Fund might prefer that a company be appointed the Trustee of the Fund rather than individuals being appointed Trustees of the Fund.

Rule

- 3.1.** Upon establishment of the Fund a person is appointed as Trustee provided that that person:
- (a) has agreed to be Trustee by reason of execution of the Deed; and
 - (i) has consented in writing to become a Member or is the Legal Personal Representative of a person; or
 - (ii) if the Fund has only one Member - 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 a Trustee; and,
 - (d) has read the Product Disclosure Statement.
- 3.2.** Upon establishment of the Fund a company is appointed as Trustee provided all the following conditions are met:
- (a) the company and its directors have agreed to be Trustee by reason of execution of the Deed;
 - (i) all directors have consented in writing to become Members or they are the Legal Personal Representative of a person and have agreed in writing to that person becoming a Member; or
 - (ii) if the Fund has only one Member and two directors - the director that is not a Member is a Relative of the Member or is a person who is not an employer of the Member;
 - (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 unless that person or a Legal Personal Representative of that person becomes a director of a company which is the 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 Legal Personal Representative has consented in writing to his 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 that Trustee is a company - a company all the directors of which are Members or are Legal Personal Representatives of Members
 - (c) provided that person or company is not already a Trustee.

Becoming a Regulated Superannuation Fund

Rule 4. The Trustee must ensure that the Fund is a Regulated Superannuation Fund

Explanation

To obtain a tax concession the Fund must be a Complying Self Managed Superannuation Fund. A Self Managed Superannuation Fund will not be a Complying Self Managed Superannuation Fund if it is not a Regulated Superannuation Fund.

Rule

The Trustee must cause the Fund to at all times be a Regulated Superannuation Fund.

Trustee Operations and Obligations

Rule 5. Removal and Retirement of a Trustee

Explanation

The purpose of this Rule is to provide a mechanism for the removal or retirement of a person or company as a Trustee.

Rule

5.1. A Member may retire as a Trustee provided:

- (a) a company of which the Member is a director is appointed as Trustee; or
- (b) a Legal Personal Representative of that Member is appointed as a Trustee.

5.2. If the Fund has only one Member, a person who is not a member and who is a Trustee may retire as a Trustee provided that another person who is a relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.

5.3. A company may retire as a Trustee provided:

- (i) all the directors of that company are appointed as Trustees; or
- (ii) another company is appointed as a Trustee, provided the directors of that company are also directors of the company retiring as Trustee.

- 5.4.** Notwithstanding any Rule a Trustee may retire as Trustee of the Fund if an Approved Trustee is or has first been appointed as the Trustee of the Fund;
- 5.5.** Subject to these Rules and the Act a person or company is removed as a Trustee:
- (a) if the Trustee is a Member - upon that person ceasing to be a Member;
 - (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 - on that 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;
 - (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,*
- acquisition and disposal of investments pursuant to the Fund's investment strategy,*
- approval of the payment of Benefits to a Member (including payment of a Pension),*
- payment of a Death Benefit,*
- acceptance of a Binding Death Benefit Nomination from a Member,*
- review of audit reports,*
- Creation of any Reserves.*

Normally the Manager, the person whom the Trustees have appointed to be responsible for the day-to-day administration of the Fund, will call meetings. However Members with Members' Account balances equal to 50% or more of the balances of all Members' Accounts can also call a meeting.

Where the Trustee is a company decisions will be made at meetings of the directors of that company rather than at meetings of the Trustees. In this case meetings of the company must be held in accordance with the constitution of that company. It is important that the constitution of any company that is a Trustee be compatible with the Rules.

These Rules are designed to ensure that Members would normally vote according to their interests in the Fund. The constitution of the Strategist special purpose company contains rules that are designed to only allow directors of any such company to vote at directors' meetings of that company according to the directors' interests in the Fund (or the interests of those members who those directors represent).

Rule

- 7.1.** If there is more than one Trustee the Trustees must meet if the Manager or Members, the balance of whose Members' Accounts is equal to more than one half of the balance of all Members' Accounts, serves a notice of the meeting upon the Trustees requiring the Trustees to make a decision in respect of the Fund.

- 7.2.** The Manager or Members must give reasonable notice of any such meeting to each of the Trustees (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by each Trustee) unless the Trustees unanimously agree that the meeting may be held on some earlier date. Such written notice must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (b) state the general nature of the business of the meeting.
- 7.3.** Where, through a link established by means of any system of telephone, audio or audio-visual communication approved by the persons entitled to attend a Trustee Meeting those persons will be taken to be assembled together at a meeting and all proceedings of those persons conducted with the aid of the link, will be as valid and effectual as if conducted at a meeting at which all those persons were physically present.
- 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 Account 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 shall not be passed at any Trustee Meeting unless it is passed by the casting of the 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.
- 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 the 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 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.

Rule 9. Trustee's covenants

Explanation

The Act requires that the rules of a Regulated Superannuation Fund contain certain covenants (if the rules do not contain these covenants the Rules are deemed to contain those covenants). Whilst some of those covenants are contained elsewhere in these Rules they have all been reiterated here to highlight the code of conduct that a Trustee must adopt as a Trustee.

Rule

A person by accepting appointment as a Trustee agrees:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another with whom the person felt morally bound to provide;
- (c) to ensure that duties and powers of the Trustee are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by a Trustee personally or,
 - (ii) that are money or assets as the case may be, of a Standard Employer-Sponsor, or an Associate of a Standard Employer-Sponsor, of the Fund;

- (e) not to enter into any contract or do anything else, that would prevent the Trustee from, or hinder the Trustee in properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and implement a written investment strategy in accordance with the provisions of the Act;
- (g) if there are any Reserves - to formulate and implement a written strategy for the prudential management of those Reserves consistent with the Fund's investment strategy and its capacity to discharge liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a Member access to Prescribed Information and any Prescribed Documents.

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 in its 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 thereafter 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.

Rule

By applying for membership of the Fund a Member acknowledges having read the Product Disclosure Statement and agrees to be bound by the terms of the Deed and the Rules. Subject to Rule 10.2 a Trustee may prohibit a person becoming a Member of the Fund if they are of the opinion that the person has not read and understood the Fund's Product Disclosure Statement, the Deed and the Rules of the Fund.

Rule 12. Application Form

Explanation

A person wishing to become a Member must provide the Trustee with an Application Form. The Application Form may (amongst other things) require such a person to:

acknowledge that the person has read the Product Disclosure Statement;

agree to be bound by the Rules;

be a Trustee of the Fund or a director of a company which is the Trustee of the Fund;

provide such information (including medical information) to the Trustee as the Trustee requires;

provide the Trustee with a death benefit nomination.

Rule

- 12.1.** A person shall not be admitted as a Member or receive a Pension from the Fund unless that person has completed an Application Form in the form required by the Trustee and has confirmed in writing that he or she has read the Product Disclosure Statement, Deed and Rules of the Fund and has agreed to be bound by the Rules of the Fund.
- 12.2.** Where a person may be entitled to be paid a Pension following the death of a Member and that person does not wish to become a Member or the Trustee decides that the person should not become a Member then the Trustee is to transfer that amount as would have been added to a Member's Pension Account to fund the payment of the Pension to that person to another Complying Superannuation Fund or Eligible Rollover Fund. Any such transfer is to be made in accordance with Rule 27 and must occur within three months of the time that the person became entitled to be paid a Pension.

Rule 13. Receipt of an Application Form

Rule

- 13.1.** On receipt of an Application Form from a person and after that person produces such documents and evidence, and submits to such medical examination and checks, as the Trustee may reasonably and lawfully require the Trustee may admit that person as a Member.
- 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 or 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 the 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 14.1).

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 such requests are restrictive (as to both whom Benefits may be paid and the mode of paying Benefits- for example the Member cannot compel the Trustee to pay a pension instead of a lump sum) and generally only have a three year life. This is not the case with the Superannuation Fund 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 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);

A Member to cause the Rules to be amended to ensure that Benefits payable as a consequence of that Member's death are paid in a particular way (there is no restriction to whom or how the Benefits might be paid). This Rule may only be varied with that Member's consent (Rule 16).

Rule 14. Non-binding Death Benefit Nomination

Explanation

A Member might request the Trustee to pay a Benefit after the death of the Member to persons nominated by that Member. However the Member might prefer -so as to not bind the Trustee- that this direction is made more as a statement of wishes than as a mandatory order.

Rule

- 14.1.** A Member or the Legal Personal Representative of a Member may provide the Trustee with a Non-Binding Death Benefit Nomination. This Nomination may request the Trustee, at its discretion, to provide Benefits on death of the Member to persons named by the Member in that nomination.
- 14.2.** Subject to the Act the Trustee must accept a Non-Binding Death Benefit Nomination.
- 14.3.** A Non-Binding Death Benefit Nomination is not binding upon the Trustee.
- 14.4.** Prior to the death of a Member the Member or the Legal Personal Representative of the Member may confirm, amend or revoke a Non-Binding Death Benefit Nomination previously given by the Member to the Trustee.
- 14.5.** A Member or the Legal Personal Representative of a Member may also direct the Trustee to act, do or carry out a particular course of action on their death or incapacity. However the Trustee is not bound by any such direction and the Trustee must not comply with that direction if it causes the Fund to become a Non-Complying Self Managed Superannuation Fund.

Rule 15. Binding Death Nomination

Explanation

The SIS Act states that, if the Rules of a Fund permit it, a Member of the Fund may require the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member. The Member does this by making what is commonly referred to as a "Binding Death Benefit Nomination".

The Trustee must accept a Binding Death Benefit Nomination. However the Trustee must first provide the Member with sufficient information for the purpose of submitting a Binding Death Benefit Nomination. It is important to understand that the nomination can only be for the benefit of SIS beneficiaries as defined under the ACT.

The Member may amend a Binding Death Benefit Nomination at any time provided the Trustee is notified in writing of that amendment.

A Binding Death Benefit Nomination (except if the Fund is a Self Managed Superannuation Fund) ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member.

Generally a Binding Death Benefit Nomination ceases to have effect on that date three years after it was first signed or last confirmed or updated by the Member. This is not the case with the Strategist SMSF deed where a Binding Death Benefit Nomination is permanent if worded to that effect unless altered by the member.

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 the 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:
 - (i) each of whom has turned 18; and
 - (ii) neither of whom is a person mentioned in the notice; and
 - (d) must contain a declaration signed, and dated, by the witness stating that the notice was signed by the Member or the Legal Personal Representative of a Member in his or her 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.
- 15.6.** A Binding Death Benefit Nomination which requires a Benefit to be paid to the spouse of a Member will be deemed to have been revoked if proceedings have been commenced pursuant to the Family Law Act 1975 or some similar foreign legislation seeking the dissolution of that Member's marriage to that spouse.
- 15.7.** Unless sooner revoked by the Member or the Legal Personal Representative of the Member who gave the Binding Death Benefit Nomination or deemed to have been revoked a Binding Death Benefit Nomination will have an indefinite term unless the Member has stipulated otherwise.
- 15.8.** Alternatively to Rules 15.1 to 15.7 above the Legal Personal Representative with the consent of the Trustee may subject to the Rules and the Act require the Trustee to provide Benefits payable on the death of the Member to whomever and howsoever as that Legal Personal Representative directs.

Rule 16. Incorporation of a Death Benefit request in the Rules

Explanation

The SIS Act states that if the Rules of a Fund permit it a Member may request the Trustee to provide any Benefits in respect of the Member, on or after the death of the Member, to the Legal Personal Representative or a Dependant of the Member provided any such request would not render the Fund to be a Non-Complying Self Managed Superannuation Fund.

These Rules permit a Member to request that the Trustee establish a Death Benefit Rule. The request if accepted will bind the Trustee to pay a Member's Benefits upon the Member's death as that Member requests.

However before accepting a Member's request to establish a Death Benefit Rule, the Trustee should assess the taxation implications and cash flow requirements that may be faced by the Fund in the event of any Death Benefit becoming payable upon the Member's death.

If the Trustee is of the view that the Trustee may be unable to comply with the Member's request the Trustee may, after discussion with the Member, request that the Member resubmit the request. The Trustee may also need to reassess the Fund's insurance plan and increase any life insurance cover.

Warning: Any requests for a Death Benefit Rule that was provided to the Trustee before 1 July 2007 should be reviewed in light of the new Super rules.

Rule

- 16.1.** A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- 16.2.** The Trustee may accept or reject any notice referred to at Rule 16.1 and must reject it if it holds a Binding Death Benefit Nomination for that Member. If the Trustee accepts the notice the Trustee shall be bound to act in accordance with that Death Benefit Rule that is established as a consequence of accepting the notice.
- 16.3.** A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and if amended the Trustee shall act in accordance with that amended Death Benefit Rule.
- 16.4.** The Trustee shall not accept any notice referred to at Rule 16.1 or 16.3 if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

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 death of the Member to their Spouse, Dependant or Legal Personal Representative the Trustee is bound to act in accordance with those terms and conditions.

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 new standards set out in the SIS Regulations.

Rule

- 17.1.** 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 condition 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 would cause the Fund to be a Non-Complying Self Managed Superannuation Fund.

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 or 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:

if the Member dies; or

the Member is no longer entitled to receive Benefits from the Fund; or

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

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;
- (b) the Trustee determining that the Member should no longer be a Member;
- (c) the death of the Member, or if the Trustee decides otherwise, no later than the time any Legal Personal Representative of the Member ceases to act as Trustee or director of the Trustee Company;
- (d) the date being no later than the earliest of either:
 - (i) four months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a Legal Personal Representative of that Member is appointed a Trustee; or
 - (ii) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a Legal Personal Representative of that Member is appointed as a Trustee.

Members' Accounts

Rule 20. The Trustee must keep Members' Accounts

Explanation

The Trustee must keep an individual account for each Member. An account may be either a Member's Accumulation Account or a Member's Pension Account. More than one Accumulation account or Pension Account may be kept for each Member.

The Trustee should ensure that a record is kept of the various components of a Member's Benefit in the Fund. This will assist the Trustee in determining the taxation consequences of any Benefits paid to a Member or upon the death of the Member to a Dependant or the Legal Personal Representative of the Member. These components are:

The Tax Free Component comprising:

a Crystallised Segment - is a consolidation of various existing components of a Member's Benefits calculated as at 30 June 2007 including any undeducted contributions, CGT exempt component, concessional component and Post June 1994 invalidity component; and

a Contributions Segment - includes all non-assessable Contributions made from 1 July 2007, typically a Member's personal or 'non-concessional' Contributions.

The Taxable Component is the balance of the Member's Benefit less the Tax Free Component and comprises:

An Element Taxed in the Fund - comprising Contributions and Earnings which have been subject to Tax in the Fund; and

An Element Untaxed in the Fund - uncommon in a Self Managed Superannuation Fund however this component may arise upon the death of a Member whereby the proceeds of an insurance policy on the life of the Member are received by the Trustee for payment to the Benefit of the Member's Dependants.

Rule

- 20.1.** The Trustee must keep for each Member an account that records Contributions received, Earnings, amounts allocated to or from Reserves, Benefits paid and 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

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; and
- (b) at the discretion of the Trustee such part of the Earnings as the Trustee believes should be added to that Member's Account; and
- (c) the amount of any Splittable Contributions as the Trustee has agreed to add to that Member's Account; and
- (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-Compliant Self Managed Superannuation Fund.

Rule 22. Deductions from a Member's Account

Explanation

Deductions from a Member's Account will normally represent expenses directly attributable to the Member or that portion of the Fund's general expenses that the Trustee requires to be allocated to the Member's Account. Deductions may also include any losses which the Trustee believes should be attributed to that Member, an Excess Contributions Tax liability assessed to the Member and any transfers such as transfers of Splittable Contributions taken by the Trustee from a Member's Account and transferred to another account.

Rule

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 deduct from a Member's Account:

- (a) that part of the expenses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (b) that part of any losses of the Fund that the Trustee believes should be deducted from that Member's Account; and
- (c) the amount of any payments of Benefits made to the Member or any other person from that Member's Account; and
- (d) the amount of any Taxes payable by the Trustee that the Trustee believes should be deducted from that Member's Account; and
- (e) the amount of any Excess Contributions Tax liability required to be deducted from that Member's Account in accordance with Rule 25; and
- (f) the amount of any Splittable Contributions that the Trustee has agreed to deduct from that Member's Account; and
- (g) any amount which is required to be deducted from that Member's Account because of a Payment Split; and
- (h) any other amount which the Trustee believes should be deducted from that Member's Account, including any amount to be transferred to a Reserve or to another Member's Account, provided that the amount of any such deduction would not cause the balance of the Member's Account to be less than that Member's Minimum Benefits unless allowed by the Act; and

provided that any such deduction 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 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 might 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 to assist the Trustee in 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 who must give to the Trustee a report in the form required by the Act.
- 23.2.** On establishment of the Fund and hereafter as the Trustee may determine the Trustee shall appoint such specialists as required by the Trustee to assist the Trustee in ensuring that the Fund remains a Complying Self Managed Superannuation Fund as well to assist the Trustee in 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:

- (i) a Member;*
- (ii) a Member's employer;*
- (iii) a Member's Spouse;*
- (iv) a relative of a Member;*
- (v) an employer of the Spouse or relative of the Member;*
- (vi) the Regulator;*
- (vii) the Government, or*
- (viii) any other person or entity,*

provided the Contributions are made in accordance with the Act. From 1 July 2007 annual limits have been imposed to cap the amount of Contributions which can be made by or for the benefit of a Member. More information is provided about these limits in the Product Disclosure Statement supplied with these Rules.

Contributions may be made in cash or by way of in specie transfer of assets. However care needs to be taken that the rules in the Act dealing with the acquisition of assets from Members are not contravened.

A Member must ensure that they provide the Trustee with their tax file number before any Contributions are made by them or on their behalf to the Fund.

Rule

A person may make Contributions to the Fund for the benefit of a Member provided the Fund will not, by reason of acceptance of those Contributions:

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

Rule 25. Excess Contributions

Explanation

Superannuation Contributions are subject to annual limits.

Any Contributions received by the Fund that are in excess of a relevant limit will be subject to additional tax. This tax - an Excess Contributions Tax - is imposed on individuals (and not the Fund). Where an Excess Contributions Tax liability arises a Member will be able, and in some cases must withdraw an amount equal to their tax liability from the Fund.

If a member is over 65 the Fund may return non-concessional contributions over the cap as per sub-regulation 7.04(3) and 7.04(4) of the SISR and ATO ID2007/225.

Rule

If a Member has an Excess Contributions Tax Liability and if a Member has lodged with the Trustee a Release Request the Trustee shall within thirty days of receipt of that request pay to the Member or at the Member's request pay to the Australian Taxation Office that amount which is the lesser of:

- (a) any amount which the Member has by notice attached to the Release Request requested that the Trustee pays to the Member or to the Australian Taxation Office; or
- (b) the amount of Excess Contributions calculated on that Release; or
- (c) the total amount of that Member's Superannuation Interest in the Fund.

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

Explanation

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

The Trustee has absolute discretion as to whether to accept any such transfer or not. The Trustee can make an acceptance subject to conditions. Where the Trustee resolves to accept 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 shall in its sole discretion 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 Splitable 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 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, and
- (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,
- (c) or if the Trustee is required by law or agreement made for the purposes of the Family Law Act 1975, the Trustee shall within such period as required by the Act or other law, allot, transfer or rollover the whole or that part of the Member's Account to that other Superannuation Entity or to the other Member's Account.

27.2. The Trustee at its sole discretion unless prohibited by the Act may transfer the balance of a Member's Account to another Complying Superannuation Fund or to another Member's Account provided that in so doing the Fund does not become a Non-Complying Self Managed Superannuation Fund or breach the Minimum Benefit provisions.

27.3. The Trustee may effect the transfer or rollover in the manner and form of its choice including whether the transfer is by way of cash or assets or has conditions attached.

Investments

Rule 28. The Trustee must formulate a written investment strategy

Explanation

The Trustee must prepare and implement a written investment strategy. This is a requirement of the Act. The investment strategy:

must reflect the purpose and circumstances of the Fund and have particular regard to the membership profile, Benefit structure, tax position and liquidity requirements of the Fund;

should set out the investment objectives of the Fund and detail how the trustee will achieve those objectives.

Breaches of the investment strategy requirement may result in the trustee being fined or sued for loss or damages. In addition, the Fund could become Non-Complying.

If the circumstances of the Fund change (for example because of the receipt of an exceptional Contribution) the Trustee should reconsider and, possibly, revise its investment strategy.

Rule

28.1. The Trustee must formulate and implement an investment strategy that considers the whole of the circumstances of the Fund including, but not limited to, the following:

- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments considering its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities.

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 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 also set an investment strategy for one or more Reserves of the Fund. Any such investment strategy must be based upon the prudent management of assets of the Reserve or such other requirements 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. A Member can request the Trustee to invest their account separately or jointly

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.

Rule

A Member or the Legal Personal Representative of the Member can request the Trustee to invest Contributions, transfers or rollovers made to the Fund for the benefit of that Member and income from the investment of those Contributions, transfers and rollovers separately from any other investments of the Fund. The Trustee need not accept that request.

Rule 31. Authorised investments

Explanation

These wide provisions are to ensure that there is no doubt as to a Trustee's ability to make various investments. The Trustee should not make investments if that would cause the Fund to fail the "sole purpose test" or become a Non-Complying Self Managed Superannuation Fund.

Rule

- 31.1.** Subject to the Act, these Rules and provided any investment does not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund the Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets. In investing the assets of the Fund the Trustee shall exercise that diligence and prudence as ordinary prudent person would exercise in conducting his or her own affairs.
- 31.2.** Unless otherwise prohibited by the Rules, the Trustee may invest the assets of the Fund in any investment the Trustee believes appropriate. The investments may be both within and outside Australia. In particular, the Trustee shall have the power to apply or invest any moneys requiring to be invested under these Rules either alone or in partnership or co-ownership with any person or persons
- (a) Authorised investments in 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 moneys;
 - (b) Real and personal property. In the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country;
 - (c) Shares: in the acquisition of 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) Option and rights: in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;

- (e) Deposit: on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (f) Insurance: in the acquisition of any policy of assurance or insurance of any kind whatsoever and wherever made;
- (g) Loans: in making loans to any person or company except to Members or a relative of a Member;
- (h) Precious objects: in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- (i) Commodity contracts: in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- (j) Permanent building society: in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- (k) Deferred property: in the acquisition of any reversionary or deferred property or rights of any description;
- (l) Warrants: in the acquisition of warrants.

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.

Rule

32.1. In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Deed, by the Rules or by law the Trustee shall in addition to those powers conferred on the Trustee by the Act have the following additional powers:

- (a) **To deal with assets:** to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
- (b) **Real property:** to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;

- (c) **Personal property:** to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
- (d) **Lease:** to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
- (e) **To let:** to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
- (f) **Engage specialists:** to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business of the Fund including to transact any business of the Fund under power of attorney of the Trustee or to do all that is required to be done in connection with the administration of the trusts declared in the Deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- (g) **To lend:** subject to these Rules and the Deed to lend and advance moneys;
- (h) **To Borrow:** to borrow if that borrowing is allowed by section 67(4A) of the *SIS Act*. To any percentage of the security valuation that the trustee deems appropriate in accordance with the investment strategy.
- (i) **Bank accounts:** to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- (j) **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;
- (k) **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;

- (l) **Corporate securities:** with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
- (i) to pay calls on securities or to permit securities to be forfeited and sold;
 - (ii) to purchase securities and to take up securities of a new issue;
 - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (iv) to sell securities at such price and upon such terms, with or without security as the Trustee decides;
 - (v) to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - (vi) to agree in respect of 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 specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- (m) **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 distributions by the trustee of such unit trust;
- (n) **Franchise:** 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;
- (o) **Subdivision of property:** to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- (p) **Maintain property:** to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- (q) **Power to set aside:** to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;

- (r) **Future contracts and options:** to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, enter into, vary, exercise, abandon or sell any put or call option or rights, or place bids, make offers, hedge and effect orders including buy, sell, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things to operate on, utilise or deal with facilities of any stock or futures exchange provided the Trustee maintains a risk management strategy;
- (s) **Trustee's power to deal with itself:** notwithstanding any rule or equity to the contrary:
- (i) to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;
 - (ii) to dispose of any beneficial interest in property of the Fund to itself;
 - (iii) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee;
 - (iv) to lease any property of the Fund to itself;
- (t) **Policies:** to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member, to pay premiums, transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- Agency and licences:** to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (v) **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;
- (w) **Receive gifts or distributions:** to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

- (x) **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;
- (y) **Intellectual property:** to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- (z) **Release of powers:** by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- (aa) **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.
- (bb) **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 these powers.
- (cc) **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.
- 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.
- 32.3.** These powers shall not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules or by law.
- 32.4.** In exercising these powers the Trustee must ensure at all times that the Fund remains a Complying Self Managed Superannuation Fund.
- 32.5.** A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it unless that appointment would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.
- 32.6.** Subject to the terms of these rules the Trustee may exercise or concur in exercising all powers and discretions given under this Deed or by law notwithstanding that it or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

Rule 33. The assets of the Fund are to be held in the Trustee's name

Explanation

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

Rule

- 33.1** Except if required for the purposes of section 67(4A) of the SIS Act, the assets of the Fund must be held in the Trustee's name and must be held separately from any assets held by the Trustee personally, a Member, by an employer of a Member or any other person unless otherwise allowed by the SIS Act.

Rule 34. Trustee may receive gifts or distributions

Explanation

The Trustee of the Fund may receive gifts or distributions (additional to investment income derived from any investments made by the Fund) from:

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

so long as the acceptance of any such gift or distribution does not cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

Gifts or distributions received by the Fund can be in cash or property. Distributions would normally be from a trust. Note that there can be adverse tax consequences if the Fund receives gifts or distributions.

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 "instalment warrant" borrowing rules mentioned below (which are not limited to "instalment warrants").

In September 2007, legislation was passed (section 67(4A) of the SIS Act) to allow superannuation funds to borrow. The "instalment warrant" borrowing 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 a Fund, that the Fund has a 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 you can structure a borrowing through a superannuation fund to allow a superannuation fund to acquire an asset, such as:

an investment property;

a share portfolio;

units in a unit trust.

Any borrowing arrangement must be done on a limited recourse basis; i.e. existing assets of the fund cannot be used as security in case the new investment performs poorly and results in a default.

The Fund must not be the legal owner of the investment but it must be the beneficial owner of the asset. This means that some other entity must hold the asset in trust for the fund, such as a separate trustee company, but not the same trustee as the Fund's. There is no rule as to who must hold legal title of the asset but it should not be the member as this may fail the sole-purpose test and result in the fund being non-compliant.

The trust holding the asset must not be an "active trust", as there may be adverse capital gains tax consequences to the trust when the Fund eventually calls for transfer of the legal title. This means that the entity holding the asset must hold it on trust while the fund will manage the asset; for example if the asset is real estate, the Fund must collect rent and attend to repairs.

There is no requirement on who the lender can 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.

To avoid capital gains tax and stamp duties on transfer of an asset from a trustee to a fund, the trustee must be a "bare trustee". This means that the trustee must not have any positive duties; this will automatically be the case when the asset is shares however when the asset is real estate a manager must be appointed to manage the asset.

Due to the complex nature of this arrangement and the importance of ensuring it is correctly established professional advice is recommended.

Rule

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

- (a) borrow money;
- (b) maintain an existing borrowing of money;
- (c) recognise, or anyway encourage or sanction, a charge over, or in relation to a Member's Benefits; or
- (d) give a charge over, or in relation to, an asset of the Fund.

35.1. The Fund may borrow unless this would render the Fund a non-complying Fund and provided that:

- (a) the borrowed money is applied for the purposes of the acquisition of an asset other than one which the fund is prohibited from acquiring;
- (b) the asset is held on trust so that the fund acquires a beneficial interest in the asset;
- (c) the fund has a right to acquire legal ownership of the asset; and
- (d) the rights of the lender against the superannuation fund for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the asset.

35.2. The Trustee must not acquire an asset from a member or an associate of a member unless that asset is an allowable acquisition under the Act and acquired at market value.

Earnings

Rule 36. The Trustee must determine and allocate the Earnings of the Fund

Explanation

The Trustee must determine the Earnings of the Fund each Financial Year.

Rule

36.1 The amount of the Fund's Earnings for all or part of a Financial Year is to be determined by the Trustee and may include income received and accrued, realised and unrealised gains and any other such amounts as the Trustee believes should form part of the Fund's Earnings.

36.2 The Trustee has sole discretion as to where to allocate or as to how to apply Earnings including allocating Earnings to an Accumulation Account, a Pension Account, or a Reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

Reserves

Rule 37. The Trustee may establish a Reserve

Explanation

The Trustee may create a Reserve. Normally a Reserve would be created to meet an expected liability of the Fund. A Member does not have any entitlement to amounts credited to a Reserve.

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 just for only one or more of the Members).

Further 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.

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 or 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 to Tax on:

- (i) Contributions made to the Fund on behalf of a Member (except non-deductible Contributions made by a Member); plus*
- (ii) Capital gains after deduction of same year and carried forward capital losses; plus*
- (iii) Earnings derived by the Fund on investment of Contributions; less*
- (iv) Deductible expenses incurred by the Fund (which might include insurance expenses); less*
- (v) Carried forward losses.*

Tax is levied at a rate of 15% on the net income of a Complying Superannuation Fund (although "special income" is taxed at a rate of 45%). Tax on capital gains on assets held by the Fund for more than a year is applied to only 2/3rds of the gain.

Carried forward losses do not include capital losses. Capital losses incurred as a consequence of a disposal of an asset acquired after 19 September 1985, whilst not deductible against ordinary income, may be offset against capital gains or carried forward to offset against future capital gains. Given possible long lead times between the incurrance of a capital loss and possible utilisation of that loss, the Trustee should ensure that adequate records are kept recording and evidencing the incurrance of that loss.

The allowance of any imputation credit received on franked dividends derived by the Fund will reduce the effective rate of Tax payable by the Fund.

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

Tax payable by the Fund need not be deducted from the Member's Account of any particular Member - it might be paid from a Reserve or deducted from Earnings.

Rule

38.1. The Trustee must pay all Tax properly assessed to the Trustee.

38.2. The Trustee may in its discretion deduct from a Member's Account Tax paid or payable by the Trustee:

- (a) as a consequence of the receipt by the Trustee of a Contribution for the benefit of a Member,
- (b) payable on any income added to a Member's Account, and
- (c) any Tax which the Trustee reasonably believes may be payable as a consequence of a payment to a Member.

38.3. The Trustee may in its discretion deduct from any account, including a Reserve, Tax paid or payable by the Trustee provided any such deduction will not cause the Fund to become non-complying.

38.4. If the Trustee receives a refund of Tax the Trustee may add that refund to such Members' Accounts or to such Reserve as it determines provided that addition will not cause the Fund to become non-complying.

Insurance

Rule 39. The Trustee may establish an insurance plan

Explanation

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

Rule

The Trustee may establish an insurance plan for the benefit of the Fund so as to enable the Fund to make payments (including the payment of 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:

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

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

Rule

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.

Rule 41. The Trustee has discretion as to the application of any insurance proceeds

Rule

- 41.1.** Subject to the Act the Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the proceeds to any Member's Account or to Reserves of the Fund.
- 41.2.** No Member nor their Legal Personal Representative nor any other person has any interest in any insurance proceeds that might be received by the Fund.

Annual Accounts

Rule 42. The Trustee must prepare annual accounts

Rule

- 42.1.** The Trustee must keep such accounting records as are required by the Act.
- 42.2.** Such accounting records are to be kept in such form and supported by such documentation as to enable them to be properly audited.
- 42.3.** The Trustee must as soon as practical after the end of each Financial Year:
- (a) prepare a statement of financial position recording the assets and liabilities of the Fund as at the end of that preceding Financial Year;
 - (b) prepare an operating statement recording the profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year);
 - (c) arrange for these statements and the accounting records of the Fund to be audited by an Approved Auditor;
 - (d) arrange for all tax returns and other statements required to be lodged pursuant to the Act by the Fund to be lodged as and when required; and
 - (e) prepare any Member and other statements and reports as required by the Act.
- 42.4.** The Trustee must retain the accounts and statements prepared in accordance with Rule 42.3 for a period of 5 years after the end of the Financial Year to which they relate.

Fund Compliance

Rule 43. Trustee must maintain the Fund's complying status

Explanation

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

In certain cases the Trustee may become aware that it has taken an action 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

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 than 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

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 aged 60 and over that payment will generally be 'tax free' to the Member.

There is no need for the Fund to be consistent in 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

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, or
- (e) such other Benefit as the Trustee might determine,

provided that any such Benefit would not result in the Fund breaching the Minimum Benefit provisions, the Fund becoming a Non-Complying Self Managed Superannuation Fund or would be 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 Dependants. This Rule ensures that Benefits are paid in accordance with the Core and Ancillary Purposes of the Fund.

Rule

A Benefit must be paid to a Member or to a Dependant of a Member or to the Legal Personal Representative of a Member or to some other person if that Benefit is so required to be paid by the Rules or the Act.

Rule 47. Payment of a Lump Sum Benefit

Explanation

Normally Lump Sum Benefits can only be paid to a Member on retirement of the Member (provided the Benefit is not a Preserved Benefit), the Member is permanently disabled, or if the Member turns 65 years of age. The Trustee may also be able to make payments to a Member on compassionate grounds or if that Member is suffering severe financial hardship.

Rule

- 47.1.** Provided the Fund remains a Complying Self Managed Superannuation Fund and subject to the Rules, a Member or the Legal Personal Representative of the Member can at any time request and the Trustee may at its discretion pay a Lump Sum Benefit to the Member.
- 47.2.** Subject to Rule 47.1 the Trustee may only pay a Lump Sum Benefit to a Member that does not exceed the balance of that Member's Accumulation Account.
- 47.3.** The Trustee may determine that the whole or any part of a Reserve can be paid to the Member in addition to the payment of that amount made pursuant to Rule 47.2.

Rule 48. Payment of a Pension Benefit

Explanation

The Rules allow the Trustee to pay a Pension provided payment of the Pension is authorised by the Act. This means that the Pension must meet certain standards that are set out in the SIS Regulations and the Rules of the Fund must reflect these standards. This includes Pensions that may have commenced in a Fund before 1 July 2007 such as 'allocated', 'market linked' and 'defined benefit' Pensions.

The Fund may pay a Pension to a Member who has reached their Preservation Age even though that Member continues to work. This is known as a 'transition to retirement' pension.

The Trustee must set out the terms and conditions of a Pension in writing and notify these to the Member commencing the pension. These terms and conditions then form part of the Fund's Rules.

From 1 July 2007 members of a self managed superannuation fund may be paid a simple account based Pension - a Simple Pension. From 20 September 2008 the other pension types will not generally be available to a Member of a Self Managed Superannuation Fund. These Rules allow the payment of a Simple Pension with any or all of the balance of a Member's Account in the Fund.

The terms and conditions for this Simple Pension must include the following in light of Simpler Super rules:

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
Under 65	4
65-74	5
75-79	6
80-84	7
85-89	9
90-94	11
95+	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 - see below;

the Pension cannot be used as security for any borrowings (income or underlying capital);

upon death of the Member 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.

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 age 65;*
- *the maximum Pension payment in any one year is limited to 10% of the balance of the Member's Pension Account.*
- *the Simpler Super pension rules restrict the type of Dependants to whom a reversionary Pension may be paid or transferred. The rules prohibit the reversion or transfer of a Pension to a Dependant when 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

- 48.1.** A Member or the Member's Legal Personal Representative may request the Trustee to pay a Pension to the Member, a Dependant of the Member or a Legal Personal Representative of the Member, provided the Pension is taken to be a pension for the purpose of the SIS Act. The payment of any Pension must not result in the Fund becoming a Non-Complying Self Managed Superannuation Fund.
- 48.2.** All parts of the *SIS Regulations* that provide standards for the payment of a pension are incorporated in and form part of these Rules and any amount paid by the Fund as a Pension must be provided under those rules.
- 48.3.** The Trustee may offer a Pension to a Member and must document the terms and conditions of the Pension and notify the Member in writing of these terms and conditions.
- 48.4.** Subject to rule 48.2 the Trustee in its sole discretion may apply any amount standing in a Member's Accumulation Account, a Member's Pension Account or a Reserve for the benefit of the provision of a Pension to a Member, a Dependant of the Member, a Legal Personal Representative of the Member or some other person.

Incapacity

Rule 49. Member to advise Trustee of incapacity

Rule

- 49.1.** As soon as practical after becoming incapacitated a Member or the Member's Legal Personal Representative shall advise the Trustee of that Member's incapacity. The Member shall submit to whatever medical examination might reasonably be required by the Trustee.
- 49.2.** On receipt of that advice and after receipt of any medical opinion that the Trustee might require the Trustee shall determine whether or no the Member has been Temporarily Incapacitated or Permanently Incapacitated.

Rule 50. Benefits payable for Temporary Incapacity

Explanation

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

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) the 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; or
 - (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, a Pension or combination of a Lump Sum 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 the 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:

- (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;
- (c) pay all of any balance of the Member's Accumulation Account and Pension Accounts (as increased from time to time) to the Member, a Dependant or Legal Personal Representative of the Member as a Pension;

51.2. The Trustee may also allocate an amount from any Reserves of the Fund to the benefit of a Member, a Dependant or Legal Personal Representative of the Member in the event of the Member's Permanent Incapacity for the purposes of paying a Lump Sum Benefit, a Pension or combination of both.

Death Benefits

Rule 52. What must happen on death of a Member

Explanation

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

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

Rule

On death of a Member:

- (a) if the Member was a Trustee, the deceased Member's Legal Personal Representative is by reason of this Rule appointed a Trustee for the period from the date of death of the Member until the date of payment of any Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative is eligible, pursuant to these Rules, to be a Trustee and has consented to act as such;
- (b) if the Member was a director of a company which is a Trustee that company may continue as a Trustee from the date of death of the Member until the date of payment of any death Benefits payable as a consequence of the death of the Member provided the Legal Personal Representative of the Member is appointed as a director of the company for any such period and provided the company and the Legal Personal Representative is otherwise eligible pursuant to these Rules to be a Trustee and has consented to act as such;
- (c) subject to Rule 48 the Trustee may continue to pay any Pension previously payable to the Member to the Legal Personal Representative of the Member.

Rule 53. Payment of a Death Benefit

Explanation

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

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. However 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. However 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 its 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.

Conversion of Benefits

Rule 54. Conversion of a Lump Sum Benefit into a Pension

Explanation

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

Rule

- 54.1.** At the request of a Member or, in the event of the Member's death, at the request of the Member's Dependant or Legal Personal Representative and subject to the Rules and the Act, the Trustee may convert any Lump Sum Benefit payable to the Member either in whole or in part into a Pension payable to the Member or if the Member is deceased the Dependents or Legal Personal Representative of the Member.
- 54.2.** The Member or, in the event of the Member's death, the Member's Dependant or Legal Personal Representative must notify the Trustee of the type of Pension as required under Rule 48 and the Trustee is to use the Lump Sum entitlement to fund any Pension.

Rule 55. Commutation of a Pension

Rule

- 55.1.** At the request of a Member or, in the event of the Member's death, at the request of the Member's Dependant or Legal Personal Representative and subject to the Rules and the Act, the Trustee may commute part or the whole of any Pension payable to the Member in accordance with Rule 55.2 and 55.3.
- 55.2.** Any amount resulting from the commutation may be applied by the Trustee:
- (a) to pay a Lump Sum Benefit or some other type of Pension to the Member, a Dependant or Legal Personal Representative of the Member; or
 - (b) to be allocated into the Member's Accumulation Account.
- 55.3.** Prior to commuting the Pension the Trustee must determine the possible taxation consequences or commutation limits that may arise in relation to the commutation of the Pension and notify the Member, Dependant or Legal Personal Representative of the Member of this information.

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 a 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 that rather than the members being the Trustee 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.** 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;
 - (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the Legal Personal Representative of the Member has in writing consented to any such amendment;
 - (c) the amendment does not amend the term of a Pension which has been incorporated as a Rule or a Death Benefit Rule unless the Member or the Legal Personal Representative of the Member who accepted the term of the Pension or who requested the Death Benefit Rule to be incorporated has in writing consented to any such amendment;
 - (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the Rules then provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, and
 - (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

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 shall determine which assets will be disposed of to obtain sufficient cash;*
- **Step Four** - *pay out all expenses of the Fund including 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:

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

58.2. The Trustee shall on Termination Date:

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

58.3. After the Trustee has made all such payments as the Trustee is required or has resolved to pay pursuant to Rule 58.2 the Trustee may distribute the remaining assets of the Fund to such charities or public benevolent institutions as it might determine provided any such payment does not breach the sole purpose test or otherwise render the Fund a Non-Complying Self Managed Superannuation Fund.

Sample Only

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 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.

Interpretation

Rule 61. Rules as to interpretation.

Rule

- 61.1.** Explanations accompanying a Rule are for information and disclosure purposes only but may be taken into account in interpreting a Rule:
- (a) in considering the purpose or object underlying a Rule; or
 - (b) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
 - (c) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
 - (d) in determining the Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.
- 61.2.** A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.
- 61.3.** Words importing any one gender include all genders and words importing the singular number include the plural and vice versa.
- 61.4.** Unless the contrary intention appears when a word or phrase is given a particular meaning other parts of speech and grammatical forms of the word or phrase have a corresponding meaning.
- 61.5.** In determining whether the Fund will or will not be a Complying Superannuation Fund or Complying Self Managed Superannuation Fund the Trustee shall only consider whether or not any course of action to be followed by the Trustee in relation to the Fund would or would not cause the Fund not to be a Complying Superannuation Fund or Complying Self Managed Superannuation Fund and must not take into account any discretion which might or might not be exercised by the Regulator.
- 61.6.** A reference to a provision of an Act includes a reference to any similar provision in any successor Act.
- 61.7.** A reference in these Rules to "pay" includes a reference to "credit" or "distribute".

Definitions

Rule 62. Definitions

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

Act	The <i>SIS Act</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
Ancillary Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
Application Form	An application form as referred to at Rule 12.
Auditor	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act, otherwise determined by the Regulator.
Approved Trustee	A trustee as approved by the Regulator pursuant to section 26 of the <i>SIS Act</i> .
APRA	The Australian Prudential 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> .
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 Proceedings Order	An order or declaration made by a court under section 196 of the <i>SIS Act</i> .
Child	Any person as defined for the purposes of 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> .
Crystallised Segment	Means that part of a Superannuation Interest as defined in section 307-225 of the <i>Tax Act</i> .
Death Benefit Rule	A Rule established as a Rule by reason of Rule 16.
Deed	The deed establishing the Fund as amended from time to time.
Dependant	Is a person that is defined as a dependant for the purposes of the <i>SIS Act</i> and includes the Spouse of the person, any Child of the person and any other person with whom the person had an interdependent relationship (as determined by the <i>SIS Act</i>).
Earnings	The Earnings of the Fund determined in accordance with Rule 36.
Element Taxed In The Fund	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
Element Untaxed In The Fund	Means that part of the Taxable Component as defined in section 307-275 of the <i>Tax Act</i> .
Employer	Means for the purposes of Rule 2.4 a person whom some other person is taken to be an "employee" of for the purposes of section 17A of the <i>SIS Act</i> .
Excess Contributions Tax	Any tax imposed by reason of the Superannuation (<i>Excess Concessional Contributions Tax</i>) Act 2007 or the Superannuation (<i>Excess Non- Concessional Contributions Tax</i>) Act 2006 or successor legislation.
Financial Year	A year ended 30 June or that period of twelve months adopted by the Trustee as the Fund's financial year.

Fund	The self managed superannuation fund established by the Deed.
Gainful Employment	That activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation.
Legal Personal Representative	The executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.
Lump Sum Benefit	A Benefit which is payable to a Member pursuant to Rule 47 in cash or in kind.
Manager	The person or entity appointed by the Trustee to manage the Fund.
Market Value	<p>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:</p> <p>(a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</p> <p>(b) the sale occurred after proper marketing of the asset;</p> <p>(c) the buyer and seller acted knowledgeably and prudently in relation to the sale.</p>
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	From 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.
Preservation Age	Means: <ul style="list-style-type: none"> (a) for a person born before 1 July 1960 - 55 years; or (b) for a person born during the year 1 July 1960 to 30 June 1961 - 56 years; or (c) for a person born during the year 1 July 1961 to 30 June 1962 - 57 years; or (d) for a person born during the year 1 July 1962 to 30 June 1963 - 58 years; or (e) for a person born during the year 1 July 1963 to 30 June 1964 - 59 years; or (f) for a person born after 30 June 1964 - 60 years.
Preserved Benefit	A Benefit which Regulation 6.01 to the <i>SIS Act</i> states is a preserved benefit.
Prescribed Documents	Any documents that are prescribed documents for the purposes of the Act.
Prescribed Information	Any information which is prescribed information for the purposes of the Act.
Product Disclosure Statement	The product disclosure statement of which these Rules form part.
Regulated Superannuation Fund	A superannuation fund that is a regulated superannuation fund as defined within section 19 of the <i>SIS Act</i> .
Regulator	The Commissioner of Taxation or any person or entity appointed to regulate a self managed superannuation fund as defined in section 10(1) of the <i>SIS Act</i> .

Related Party	A person who is a related party as defined in section 10(1) of the <i>SIS Act</i> .
Relative	Means for the purposes of Rule 2.4 a person whom is defined as a "relative" by section 71A of the <i>SIS Act</i> and for the purposes of Rule 23 means a person who is a "relative" as defined by section 65 of the <i>SIS Act</i> .
Release Request	A written notice provided by the Commissioner of Taxation authorising the Member to withdraw monies from the Fund to pay Excess Contributions Tax as referred to at Rule 25.
Reserve	An amount as referred to at Rule 37.
Responsible Officer	(a) a director of a company, or (b) a secretary of a company, or (c) an executive officer of a company.
Rules	The rules of the Fund.
Self Managed Superannuation Fund	A fund 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> .
Successor Plan	A plan established for the purposes of Rule 44.
Spouse	In relation to a person includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person or such other person as the Act may allow or determine.
Standard-Employer-Sponsor	A person who is a standard-employer-sponsor as defined in section 16(2) of the <i>SIS Act</i> .

Superannuation Entity	<p>(a) a superannuation fund, or</p> <p>(b) an approved deposit fund, or</p> <p>(c) a pooled superannuation trust; or</p> <p>(d) a life insurance company or similar entity,</p> <p>whether such an entity is a resident or non - resident of Australia.</p>
Superannuation Interest	In relation to a Member means an interest in the Fund or such other interest as defined in section 995-1(1) of the <i>Tax Act</i> as determined by the Trustee with reference to sections 307-200 of the <i>Tax Act</i> and relevant Regulations.
Tax	Any tax levied by any taxation law.
Tax Act	The <i>Income Tax Assessment Act 1997</i> .
Taxable Component	Has the meaning given by section 995-1(1) of the <i>Tax Act</i> .
Tax Free Component	Has the meaning given by section 995-1(1) of the <i>Tax Act</i> .
Temporarily Incapacitated	In relation to a Member means a Member who has ceased to be gainfully employed, including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed, because of ill-health (whether physical or mental) but does not mean a Member who is Permanently Incapacitated.
Temporary Incapacity Benefit	A non-commutable income stream payable pursuant to Rule 50.
Termination Date	The date on which the Fund terminates.
Total Member Entitlements	The amount equal to the total value of all Members' Accounts.
Trustee	A person or company that has been appointed a trustee of the Fund under Rule 3.
Trustee Meeting	A meeting as referred to at Rule 7.1.