

# **SUPERANNUATION FUND TRUST DEED UPDATE**

**Document Version:**  
**1.07/11/2018**

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**Date of Establishment:**

**Name of S.M.S. F:**

**Trustee (Company)**

**Members:**

**Please Note that this Document does not constitute advice**

A Deed is a complex legal instrument and will result in the parties being bound by its terms. This Deed is not designed to constitute advice nor is it specialised advice which may be relevant in all situations. The Deed may be deficient in your circumstances for the needs of the Trustee, Members or other parties. The users of this deed are therefore advised to seek Independent Legal, Financial and Accounting advice before becoming parties to the deed. Any deficiency in the deed and any liability which accrues due to such deficiency shall be the responsibility of the parties to the Deed. The writer of the deed takes no responsibility for the consequences of using the deed.

## 1. DEFINITIONS

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- (a) **Active income** adopts the interpretation taken within the SIS;
- (b) **Beneficiary** means members and any person entitled at the relevant and appropriate time to receive a payment from the Fund being established and/or as prescribed by relevant legislation;
- (c) **Date of Establishment** refers to the date outlined in the schedule;
- (d) **Dependent and Non-Dependent** adopt the interpretation taken within the SIS;
- (e) **Family Law Act** means the *Family Law Act 1975 (Cth)*;
- (f) **Member** means any person accepted by the Trustee(s) as a member of the Fund and who has not ceased to be a Member and shall include any person(s) in receipt of a pension from the Fund;
- (g) **SGC** means the *Superannuation Guarantee Charge Act 1992 (Cth)*, the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee (Administration) Regulations* as the context requires;
- (h) **SIS** means the *Superannuation Industry (Supervision) Act 1993*;
- (i) **SIS Regulations** means the Superannuation Industry (Supervision) Regulations;
- (j) **ITAA 1936** means the *Income Tax Assessment Act 1936 (Cth)*;
- (k) **ITAA 1997** means the *Income Tax Assessment Act 1997 (Cth)*;
- (l) **Legislation** refers to superannuation law or such other legislation as governs superannuation funds;
- (m) **Pension** means the allocation of funds given to Members from the Fund;
- (n) **Regulator** means the particular body or government institution which is responsible for the administration of the relevant aspects of Superannuation. Within this deed, this may constitute the Regulator of Taxation, the Australian Securities and Investments Commission or such other body as may administer the relevant aspects of Superannuation;
- (o) **SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994*, as amended from time to time;
- (p) **Social Security Act** means *Social Security Act 1991 (Cth)* and any regulations or determinations made pursuant to that Act;
- (q) **superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, Australian Prudential Regulation Authority, Australian Securities or Investment Commission or any other body

that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the Trustee believes may have retrospective effect; and

- (r) **Trustee** means the person or company who are the trustee(s) or the entities that will become the trustee(s) in accordance with the method provided in this document.

## **2. ARTICLE I - SETTING UP THE FUND**

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### **2.1 Formation of Fund**

Effective as of the Date of Establishment, The Trustee hereby desires to establish the “ ” as a self-managed superannuation fund as defined in section 17A of the SIS Act. This deed hereby establishes this fund as a self-managed superannuation fund. The members have agreed to be appointed as directors of the corporate trustee company of this Fund in accordance with the provisions of this deed, which all members have access to. The fund is an indefinitely continuing superannuation fund and is intended by the Trustees to be a regulated superannuation fund.

### **2.2 Purpose of the Fund**

The Fund is to be maintained for the primary (sole) purpose of providing superannuation retirement benefits to its members and for any secondary purposes such as providing death benefits to dependants and non-dependants of fund members, in the event of the death of a member of the fund consistent with section 62 of the SIS Act. In order to fulfil the primary purpose of this fund, the members and trustees of this fund are allowed to receive cash, super contributions and to invest; with mutual consent; in a mix of risk appropriate assets as permitted by this deed.

### **2.3 Compliance with Superannuation and Tax Laws**

- (a) The members and trustees of this Super Fund agree to be bound by the superannuation and tax legislation that self-managed super funds are governed by and to adhere to this deed. At all times, the Trustees and members shall ensure that the fund remains a complying superannuation fund in accordance with law, regulation, and practice.
- (b) The parties to this deed believe and assert that this trust deed complies with superannuation law. In particular, the{ } qualifies as a self-managed superannuation fund as defined in section 17A and other relevant sections of the SIS Act.
- (c) For the avoidance of doubt, the SIS Act shall apply to the extent of any inconsistency in this deed. All requirements of the superannuation laws which are absent in this deed shall be deemed to be included in this deed.

### **3. ARTICLE II - SMSF FUND MEMBERSHIP**

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#### **3.1 Becoming a member**

A person, who wishes to be admitted as a founding member of this fund, must complete and sign this deed as acceptance of fund membership. Members of the fund must act as directors of the trustee company and be bound by the conditions of this trust deed.

#### **3.2 Adding a minor to the fund**

- (a) A minor; persons under the age of 18 years; may be admitted to the fund, subject to approval from all members of the fund and provided that the appointment does not contravene any superannuation industry supervision act conditions.
- (b) The Trustee must ensure that when a minor turns 18 year of age, he or she must be appointed as trustee of the fund and a director of the trustee company, if one exists. Seek independent advice as to the ability of the minor to hold offices such as directorships in the Trust Company prior to allowing a Minor to become a member of the fund.

### **4. ARTICLE III - WHO CAN ACT AS A SMSF TRUSTEE**

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#### **4.1 Trustee Requirements**

- (a) Nobody can act or be appointed a director of a company to perform the duties of a Trustee of this fund if they are a disqualified person under section 120 of the SIS Act.
- (b) If this fund is a single member fund: A Trustee can only be:
  - (i) A constitutional corporation where the member is the sole director and is not a disqualified person.
- (c) If this fund is not a single member fund:
  - (i) A constitutional corporation where all members are also directors of the corporation and directors are not disqualified, persons. Or individual trustees and members of the fund where a minimum of 2 (two) member, trustees are required for individual trustee funds.

#### **4.2 Appointment and Removal of Trustee**

- (a) If for any reason the super fund is unable to appoint a Trustee then a new Trustee may be appointed by the Members, and if there are no Members able to appoint a new Trustee then by any person who is a Beneficiary and if more than 1 (one) then by the majority. The members may appoint a new or additional Trustee, or remove a Trustee, by a written resolution to that effect.

A person appointed as Trustee must consent to act as a Trustee or director of corporate Trustee by providing notice of consent to all members.

- (b) A person can no longer be a director of a Trustee company, if he resigns, or is removed, or dies or becomes a disqualified person or is no longer a member of the super fund or is no longer a director of the corporate Trustee.
- (c) A person can no longer be a director of a Trustee company or a self-managed super fund, if they are the subject of a disqualifying event or legislative change which may from time to time occur under superannuation law.
- (d) A company is not permitted to act as Trustee of the fund, where the company acts as a trustee of another trust or business.

#### **4.3 Decision of Trustee(s)**

Where there are individual Trustees, each Trustee will have one vote. Where there are two Trustees then all decisions by Trustees must be unanimous. Where there are more than two Trustees the decision of the Trustee must be by majority vote. Where there are four Trustees or when there is a deadlock in decision making, votes will be based on the balance of the member accounts of each member. In the case of corporate Trustee, a decision of corporate Trustee of the fund shall be made in accordance with the constitution of the corporation.

#### **4.4 Trustee Covenants, Liability, and Indemnity**

- (a) The Trustee, each director or officer of the Trustee and each of its delegates shall be indemnified out of the Fund, except in the case of:
  - (i) fraud;
  - (ii) wilful or reckless failure to exercise proper care and diligence; or
  - (iii) a civil penalty order pursuant to SIS;
  - (iv) to be indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) under this Deed or at law.
- (b) The Trustees are not personally liable for any loss to the fund unless they acted dishonestly, fraudulently, intentionally or recklessly in discharging their duties as required by superannuation law. If the Trustees act honestly and in good faith, the Trustees are entitled to be indemnified out of the fund for any liability which they incurred on behalf of the Fund.

## **5. ARTICLE IV - ACCEPTABLE CONTRIBUTIONS**

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### **5.1 Types of acceptable contributions**

- (a) The following sources of contributions will be accepted for a member of the fund:
  - (i) made by the member;
  - (ii) other members of the fund;
  - (iii) employer contributions;
  - (iv) a member spouse;
  - (v) from another fund under contribution split rules;
  - (vi) a government body or a third party under the superannuation co-contribution scheme; or any other third party or person as prescribed in superannuation law.
- (b) The funds trustees must allow all contributions which are permitted under super laws (**SIS Act**) and regulations listed in section 7.04, 7.04(1), (2), (3), (4) and (6) of the Superannuation industry supervisory regulations.
- (c) The types of contributions acceptable by the funds trustees are:
  - (i) Cash;
  - (ii) Transfer or rollover of super holdings from another complying super fund;
  - (iii) In whole (in specie or a transfer of an asset) as allowed under the SIS Act;
  - (iv) Related party transactions (section 71, which are at arm's length section 109);
  - (v) In house assets (section 66, of which 5% is allowed, subject to annual valuation).
- (d) Types of contributions which are unacceptable are
  - (i) contributions which would cause the fund to cease to be a complying superannuation fund; or
  - (ii) where the Trustee has not received a member's tax file number;
  - (iii) any contributions which a rollover of an employment termination payments from the employer of a member are; any contribution in excess of the contribution caps, or otherwise not permitted by superannuation law from the 1<sup>st</sup> of July 2017. If after receiving the contribution on behalf of a member, the Trustee becomes aware that any of the above factors apply, the Trustee must refund (and debit the account of) the member with the appropriate amount within a

reasonable time, and in such a way as not to contravene superannuation law.

## **5.2 Splitting Super Payments**

- (a) The funds trustee may accept a request for the transfer of contributions from one spouse member into the account of another member spouse, or a request for the transfer of contributions into another complying superannuation fund in which the spouse of the member is a member, so long as the contribution is accepted consistently with the terms of the SIS Act and SIS Regulations Division 6.7. These requests for transfers of contributions splitting superannuation benefit must be made in the prescribed form as per superannuation law and independent legal and financial advice must be sought to ensure the compliance of such arrangements.
- (b) The following types of contributions to be split may be acceptable to the trustee of the fund subject to sub regulations 6.44 (2) c of SIS regulations 1994 and the receiving spouse providing a statement confirming adherence to these regulations:
  - (i) 85% of all concessional contributions;
  - (ii) 0% of non-concessional contributions;
  - (iii) any other allowed and defined splittable contribution in the superannuation law.

## **5.3 Allocation of Contributions and types of contributions**

### **(a) Concessional Contributions**

From the 1<sup>st</sup> of July 2017 all members aged 18-75 may make a Concessional contribution of up to:

- (i) \$25,000 per financial year per member,

members are able to carry forward unused portions of their concessional caps, with super savings of less than \$500,000 for a period of 5 (five) consecutive years starting from 1<sup>st</sup> July 2018.

### **(b) Non-Concessional Contributions**

- (i) From the 1<sup>st</sup> of July 2017 all members aged 18-75 may make Non-concessional contribution of up to:
  - (A) \$100,000 per financial year per member or bring forward three (3) of contribution to the total of \$300,000 per member in a single transaction, provided that each members super balance, is less than \$1.6 million dollars in total value as calculated at the end of the prior year.
  - (B) \$0 if the member is over 75 years of age.

<b>SUPER BALANCE 30th June 2018</b>	<b>NCC Cap 1st Year</b>	<b>Bring Forward Period</b>
Less than \$1.4 Million	\$300,000	3 Years
\$1.4 million to less than \$1.5 million	\$200,000	2 Years
\$1.5 million to less than \$1.6 million	\$100,000	N/A
\$1.6 million	NIL	N/A

- (ii) Members with more than \$1.6 million dollars in individual pension holdings, will need to revert fund to accumulation phase so as to not contravene the new super legislation.
- (iii) Contributions on behalf of members may be accepted as per section 7.04 of the SIS Act and credited as contributions to the funds account, a reserve account or interim account.
- (iv) All contributions received on behalf of members must be allocated as a contribution to the member within 28 days, pursuant to SISR 7.8(2)
- (v) The trustees of the fund may accept eligible co-contribution payments from the ATO on behalf of eligible members. Self-employed members earning more than 10% of income from one source are able to claim deductions for personal concessional contributions.
- (vi) From 1<sup>st</sup> July 2018, all personal contributions made by any member of a super fund is tax deductible, assessed against personal income.
- (vii) The trustees may provide a declaration and confirmation, from an employer of a member of the fund, to state that the member is over 65 years of age and employed on a full or part time basis, giving the meaning that the member has work at least 40 hours in a 30 consecutive day period, over a financial year period.
- (viii) The Trustees of the fund may treat certain expenses paid by the member for and on behalf of the fund, as concessional or non-concessional contributions of the member for superannuation purposes and credit the relevant member account accordingly.
- (ix) A contribution to the Fund must be made in the way the Trustee directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments.
- (x) The Trustee must not accept any of the following contributions:
  - (A) a contribution that is not permitted by superannuation law;
  - (B) a contribution or shortfall component the acceptance of which would prevent the Fund from qualifying as a complying superannuation fund;

- (C) an employer contribution or shortfall component which the regulator lawfully directs the Trustee not to accept; or
  - (D) a contribution that the Trustee has determined not to accept because the Trustee has not been informed of the relevant Member's tax file number.
- (xi) If the Trustee becomes aware that a contribution or shortfall contribution has been accepted in breach of this deed, the Trustee must refund the amount within any time specified by superannuation law. However, the Trustee may deduct each of the followings from that amount:
- (A) any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
  - (B) reasonable administration charges; and
  - (C) any other amount the Trustee considers appropriate, acting reasonably.

#### **5.4 Downsizer contributions**

Super downsizer contributions may be received by the fund, provided the following conditions are met:

- (a) members are 65 years old or older at the time a downsizer contribution is made (there is no maximum age limit).
- (b) contributing are from the proceeds of the sale of a principal place of residence (home) where the contract of sale was exchanged on or after 1<sup>st</sup> July 2018.
- (c) The members owned the home; one member or both; for 10 years or more prior to the sale.
- (d) The proceeds (capital gain or loss) from the sale of the home are either exempt or partially exempt from capital gains tax (CGT) under the main residence exemption or would be entitled to such an exemption if the home was a CGT rather than a pre-CGT (acquired before 20<sup>th</sup> September 1985) asset.
- (e) The downsizer contribution is made within 90 days of receiving the proceeds from the sale of the principal place of residence

#### **5.5 Super Rollovers and Transfers**

Trustees may rollover or transfer any benefits accrued in the fund, on the request of a member, to any complying super fund. A rollover may be paid in cash, or as an in specie (whole asset at market value) transfer. Trustees of the fund may accept or receive rollovers on behalf of members and commute money or rollover money from pension to accumulation phase of the fund, pursuant to governing laws of the SIS Act.

## **6. ARTICLE V - INVESTMENTS**

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### **6.1 Allowed Investments**

- (a) Trustees of the fund are permitted to invest in investments which are allowed by the SIS Act and are namely compliant with the sole purpose test, section 62. When investing in the fund, trustees must formulate an investment strategy which takes into consideration the, age, income and risk appetites of all members.
- (b) The following are investments allowed by the fund:
  - (i) Shares, stocks, Exchange traded funds (**ETF's**), Managed funds and listed unit trusts and Listed investment companies, debentures, bonds, promissory notes, which afford the rights, and benefits, conditions or provisions, which are attached to any authorised stock exchanges consistently with the SIS Act and SIS Regulations;
  - (ii) Real estate, inclusive of:
    - (A) Residential investment property;
    - (B) Commercial Property or Business real property;
    - (C) House and land as a single contract,  
or any estate or interest therein alone or in partnership or co-ownership, syndicated or with any person (including a member) payable with single or payable in periodical instalments and with or subject to any options, rights, benefits, conditions or provisions such as borrowings consistent with section 67a, and 67b of the SIS Act and other SIS Regulations.
  - (iii) Compliant SMSF loans; limited recourse borrowing arrangements LRBA and related party loans, compliant with the SIS Act.
  - (iv) in fixed deposits or on a call with any bank or building society or with any other corporation or another person;
  - (v) units in a geared or ungeared, widely held unit trust or professionally managed unit trusts owning property or shares or combined or any other allowed investment as prescribed in superannuation law either listed or not listed in any authorised stock exchanges;
  - (vi) units in a related unit trust, provided such investments comply with the rules relating to such investments in the SIS Act and the SIS Regulations 13.22c;
  - (vii) futures, options and contracts for difference, currency pairs, provided the requirements of the SIS Act and the SIS Regulations and as per fund auditor requirements;

- (viii) In-house assets, which are less than 5% of the total assets of the fund or such investments consistent with the SIS Act or the SIS Regulations and subject to valuation;
  - (ix) life insurance cover (Life & Tpd cover) for the benefit of members and their nominated beneficiaries; and
  - (x) in any other investment not excluded by the SIS Act.
  - (xi) collectables; Metals, gold, silver and other such metals, diamonds, art, wine, cars, stamps, coins, subject to audit requirements;
  - (xii) crypto currencies, subject to trustee powers clause (bb).
  - (xiii) crypto currency trading and mining activities, subject to clear disclosure of these activities.
- (c) The Members and the Trustees are not permitted to invest in the following investments; except to the extent permissible by the SIS Act:
- (i) Borrowing of money from members or from the fund;
  - (ii) Gearing the assets of the fund;
  - (iii) acquire an asset from a related party;
  - (iv) invest in or loan to or provide financial assistance to members or enter into a lease arrangement with a related party;
  - (v) invest in or loan to or provide financial assistance or other security in or for the benefit of an employer of any Member;
  - (vi) invest in a related trust;
  - (vii) invest in any way other than on an arm's length basis;
  - (viii) invest in any investment not consistent with superannuation law; or
  - (ix) conduct any business, partnership or joint venture in breach of the SIS Act.

## **6.2 Investment Strategy**

- (a) Members must adopt an investment strategy and ensure that investments and insurance policies are reviewed periodically, consistent with SIS Regulations 4.09(2) to ensure that all investment and insurance arrangements are suitable in meeting the needs of members and beneficiaries.
- (b) The investment strategy must consider:
  - (i) Diversification;
  - (ii) Investment liquidity and measures to manage illiquid assets;
  - (iii) Risks;

- (iv) Cashflow for operating expenses, pension payments, reserves;
  - (v) Insurance cover for members;
  - (vi) Cost of investments.
- (c) Members, may sell, transfer or vary any investment which is consistent with the Fund's investment strategy, in exercising choice and absolute discretion in accordance with this deed. Members must develop an investment strategy appropriate to the goals of the fund and its members and ensure it is regularly reviewed or adjusted to reflect the changing needs of members and market changes. Members and Trustees of the fund may not depart from the investment strategy of the fund unless this investment is updated to reflect changes to members circumstances or needs.

## **7. ARTICLE VI - TRUSTEE POWERS**

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### **7.1 Limitations of Powers**

- (a) The Trustee has ultimate possible powers and choice to administer the Fund. The Trustee's powers shall be as extensive as is possible under superannuation law, including those powers that any individual would have as the legal and beneficial owner of those assets, and including all the powers conferred upon Trustees under law and specifically conferred by this deed notwithstanding that the Trustee or any director of Trustee company has a direct or personal interest whilst exercising any such powers. Trustee or any person being a director or shareholder of a Trustee company thereof has or may have a direct or personal interest in the mode or result of exercising such power 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.
- (b) The Trustee will not be restricted by any other act or legislation of Commonwealth of Australia as long as the powers are within legislative provisions of superannuation law.
- (c) The Trustee must act as the owner of the property of the fund as a prudent person and should do all such other things as may be incidental to exercise his powers conferred on him by this deed and superannuation law.
- (d) The Trustee is not required to give reasons for any of his decisions or acts done in the exercise of his permitted discretion unless limited by this deed or superannuation law. All decisions of the Trustee shall be final and binding on all members of the fund.
- (e) The Trustee may delegate his powers or duties or appoint any person as the representative or attorney for the purpose of executing any document or on any terms and conditions and execute any power of attorney or other instruments to effectuate the delegation, as long as the person appointed performs the acts on behalf of Trustees and the acts themselves are permitted within superannuation law.

## **7.2 Powers of Trustees**

The super fund trustee's powers are the following: The Trustee;

- (a) has complete control and management of the super fund in addition to any powers conferred by the SIS Act and the SIS Regulations;
- (b) must pay all trust expenses, taxes and collect all income of the fund;
- (c) must pay any tax liability incurred by the member as a result of excess concessional and non-concessional contributions to the fund, where the member has nominated the fund to pay such liability;
- (d) must prepare the accounts and income tax returns of the fund;
- (e) must have the accounts of the fund audited by an approved auditor;
- (f) must withhold and pay to the regulator pay as you go withholding tax and other relevant taxable amounts from earnings of the fund or must withhold and pay to the regulator any pay as you go withholding tax from the benefit payment of a member as prescribed by the Australian Tax Office;
- (g) may proportion any tax payable on benefits payable from the Fund between the taxable and tax-free component of the payment. The Trustee must, when determining the proportionate tax to be deducted from the payment, determine the amount of value of the payment and the amount of the taxable and tax-free components:
  - (i) if the payment is an income stream when the income stream commenced to be paid; and
  - (ii) if the payment is a lump sum payment immediately before the payment is made; and
  - (iii) if the payment of the benefit arises from the commutation of an income stream when the relevant income stream commenced.

Any proportioning is subject to the provisions of superannuation and tax law.

No proportioning may be made in the case of a superannuation guarantee payment, a superannuation co-contribution benefit payment, or contributions splitting superannuation benefit payment.

- (h) must transfer or rollover funds on behalf of a member to another complying fund if requested by the member; or by court order or agreement entered into by trustees and members;
- (i) must have the accounts of the fund audited by an approved auditor;
- (j) may pay benefits out of the fund to a member or a dependant of the member;
- (k) must deduct all proper and appropriate tax payments from any payments made to a member, dependant or beneficiary or personal legal representative. This deduction must occur before the payment is made and must be accounted to the Commissioner of Taxation at the earliest reasonable opportunity;

- (l) may decide who are dependants for the purposes of this deed;
- (m) may pay or apply benefits to a member or dependant of the member in case of the mental or physical ill health or incapacity of the member without being responsible for application of payment;
- (n) may pay benefits to a member or member's dependent or member's personal legal representative in specie, by transferring an asset of the Fund to the recipient without converting them into cash if:
  - (i) where the Trustee and the person receiving the benefit so agree as to the transfer of the asset; and
  - (ii) the transfer would not otherwise breach superannuation law.

The Trustee shall determine the value attributable to the asset after exercising a reasonable discretion and taking reasonable advice from an appropriately qualified valuer, but shall be equal in value to the amount of the benefit paid to the recipient at the date of payment or provision of the benefit. The Trustee has all the necessary powers to pay benefits in this manner, including the power to select the particular asset for transfer.

- (o) Must provide contingencies for liquidity and liabilities of the fund and consider insurance where necessary;
- (p) must consider insurance for members of the fund as per SIS Regulations 4.09(2) (d);
- (q) must disclose to all members of the fund any conflict of interest in any financial transaction of the fund;
- (r) must carry on or defend any legal proceedings, including handling of leasing of fund property upon the terms and conditions as the Trustee sees fit as prescribed in superannuation law;
- (s) must open and operate a bank account for the Fund;
- (t) Trustees and members may buy and sell investments consistent with the fund's investment strategy and the sole purpose test (section 62 SISA);
- (u) may enter into contracts on behalf of the fund;
- (v) The Trustee may do anything which is necessary or required to discharge its obligations under this deed and superannuation law;
- (w) The trustee and members may enter into a contract to purchase assets of the fund, subject to the conditions in section 109 of SIS Act;
- (x) Make payments from a reserve account or from insurance policy proceeds paid to the fund to satisfy a anti detriment obligations or a member request for payment in compliance with the SIS act obligations;
- (y) The trustee and members may in acquiescence with sections 67a and 67b of the SIS Act; under a limited recourse borrowing arrangement;

- (z) borrow, assign, pledge, mortgage, raise or charge fund assets as security for any SIS compliant financial transaction consistent with the fund's investment strategy and all governing laws
- (aa) may enter into borrowing arrangements, which are LRBA's (limited recourse borrowing arrangements) related party loans as per ATO ID 2010/162 who are
  - (i) Members of the fund;
  - (ii) A relative of fund members;
  - (iii) A Trust or Company;
  - (iv) Government or institution or other entity related or not to facilitate the purchase of any asset on behalf of the funds members pursuant to SMSFR 2012/1 and consistent with the SIS Act;
  - (v) All LRBA balances from the 1<sup>st</sup> of July 2018, will count towards each member; if a LRBA is jointly held; Transfer Balance Cap of \$1.6 million calculated retrospectively on a debit and credit basis annually.
- (bb) May, providing it is consistent with the *SIS Act 1993 & 1994* and SMSFR 2012/1 Purchase or sell, lease or license and develop, convey, surrender or construct, improve residential and commercial property, which is off the plan, house and land (single contract), strata titled property, child care centres, petrol stations and post offices, or develop specific, retail or commercial premises which are defined as a single acquirable asset under the SIS Act;
- (cc) are able to guarantee the payment of fees and may grant indemnities to or on behalf of trustees or to any fit persons. To further perform all obligations provided that the indemnity or guarantee are consistent with the SIS Act;
- (dd) are able to grant or partake in any put / call options for the purchase of real property or personal property of the fund, whether the sale occurring on the exercise of such option, results in profit or not and is consistent with sections 62 and 4.09a of the SIS Act;
- (ee) May invest in bitcoin and any other crypto coins or digital currencies available on a regulated Australian exchange or international exchange that recognises an SMSF account as the owner of the asset;
- (ff) Is able to raise funds (monies) subject to meeting all SIS conditions, tax and financial laws by, drawing, accepting, endorsing or dealing in a convertible note, promissory note or any other negotiable instrument. Repayment of such arrangements and any interest payments are subject to the discretion of the trustee and the terms the trustee establishes with other parties and members of the fund. All transactions of this nature are regarded as assets of the fund.
- (gg) May appoint or change any appointment of any person, entity or custodian to hold title for assets purchased or to be acquired by the super fund trustee on terms established by the trustee at their discretion, provided that the entity or persons are not restricted from acting in this capacity by the SIS Act;

- (hh) May elect for the fund to be a regulated fund and keep it regulated under the SIS Act;
- (ii) May purchase annuities or pensions for any fund members;
- (jj) May commute the fund upon the winding up of its investments;
- (kk) The Trustee may engage a qualified professional person to undertake or to advise on any of the above tasks.

### **7.3 Bare Trust**

- (a) A bare trust deed is an instrument that grants benefits both legal and beneficial to the trustees and members of a super fund. The trustees and members of the super must be trustees and members of the bare trust. The trustee of the bare trust agrees to hold and own any of the following types of assets, which are subject to a borrowing arrangement, pursuant to section 52(i) of the *SIS Act 1993* and consistent with the prohibition in section 67 of the SIS Act, which prohibits a super fund from directly:
  - (i) Borrowing money;
  - (ii) Maintaining an existing borrowing of money.
- (b) Types of assets subject to a borrowing that may be held by a Bare Trust are:
  - (i) Physical property; commercial and residential;
  - (ii) Collectables, such as artwork, metals, wine, cars and stamps;
  - (iii) Equities, shares, units and other financial instruments.
- (c) A separate bare trust must be entered into for each new type of asset acquired by the fund, without contravention of super laws. Assets must be registered in the name of trustees of the super fund where individual trustees are employed and by a corporate trustee company where a registered company is used to act as trustee of the fund.

### **7.4 Family Law Act - Splitting Arrangements**

- (a) Orders under Part VIII B of the *Family Law Act 1975 (Cth)*, must be complied with by trustees of the fund, with respect to splitting of super interests of members, where a breakdown of marriage, or domestic relationship occurs. Splitting of super interest of members must be in accordance with the SIS Act regulations.
- (b) All court orders or agreements in relation to superannuation splits must be completed within the timeframe limits stated by the courts or by the agreement. This includes, commutation of pensions and super rollovers to complying super funds.
- (c) The trustee must comply with the court order or agreement and must calculate income of the fund for part of the year, if required, including revaluation of all

assets of the fund, and must credit the member's share to the members account (accumulation or pension) on a certain specified date, so that a percentage (as per the court order or agreement) of assets may be allocated to the spouse.

- (d) Trustees of the fund may refuse to allow a non-member spouse to become a member of the fund. However, trustees must ensure the interest of a non-member spouse is intact from the day of the court order till payment of benefit to the non-member spouse or rolled out to a complying super fund. Trustee has discretion to move this pay out amount, to a reserve account till physically paid by the fund.

## 7.5 Trustee's Decision

The decision of the Trustee as to whether or not any pension will be paid or provided is final and binding.

# 8. ARTICLE VII - ESTATE & PENSION

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## 8.1 Vesting of Benefits

Subject to any overriding requirement in the superannuation law or law affecting the administration of a superannuation fund, the total amount of Member-financed benefits accruing to a Member from the date upon which this Fund is established shall vest in the individual Member on the day upon which the benefit or benefits accrue.

### (a) Estate

If the Trustee determines that a deceased Member or Pensioner is not survived by any Dependents; or in the Trustee's opinion having regard to the period of the dependency on the deceased Member and the extent of the dependency and any other matters the Trustee considers relevant, the whole of the Benefit should not be paid to the surviving Dependents; the death Benefit under this Deed (or that part not paid to the surviving Dependents) must be paid to the estate of the former Member, but if the Trustee is (or becomes) of the opinion that a grant of probate or letters of administration in respect of the estate will not be made, the Benefit payable under this Deed must, subject to the Requirements, be paid to one (1) or more dependants or non-dependants or other persons or be treated as a forfeited Benefit.

### (b) Payment of a Pension (Commencing a Pension)

- (i) The member must notify the trustee and other members of the fund of their intention to commence a pension pursuant to SIS Reg 1.06(8) by doing the following:
- (A) Confirm the member is of pension aged 60 or over;
  - (B) Minute the intention to start a pension;
  - (C) Sign a retirement or TTR pension declaration;
  - (D) Complete a pension form identifying the;

- (E) The assets to commence the pension (value in \$);
- (F) The minimum pension drawdown percentage (4%).
- (ii) Assets to be segregated, the value of assets, the income from these assets and the pension amount that the member intends to draw out and the frequency of the pension, drawdowns. A pension cannot be commenced if the above parameters are not met and specifically where the minimum payment of pension cannot be fulfilled.
- (iii) An actuarial certificate must be used where there are members, with funds and assets in accumulation phase and pension phase and where reserve accounts are in use:
  - (A) If the pension is being purchased by the member on any other day, the Trustee must adjust the opening balance of the financial year of the accumulation account at the beginning of the funds financial year with all the new credits and debits to the accumulation account to the date which is the pension's purchase date.
  - (B) The Trustee must also transfer from the income account (including valuation of investment assets), reserve account and equalisation account proportionately to the member accumulation account to the date which is the pension purchase date.
  - (C) The Trustee may use a fund earning rate or the earning rate may be the rate of income of the funds last financial year.
  - (D) Subject to the superannuation law, an income stream may commence on the day following the day when the Member (or other person) becomes entitled at Law to the income stream. Income streams accrue from day to day.

## **8.2 Transition to Retirement Pensions**

- (a) The Trustee must advise members that a transition to retirement pension paid from a concessionally taxed source to a member aged between 55 years and 59 years (subject to preservation rules) will be taxable at the 15% tax rate from 1<sup>st</sup> July 2017 on earnings; and any account based pension paid from a taxed source to a member aged 60 and over will be tax free to the member, regardless of the components forming the pension, provided the member has met preservation age and is retired. The Trustee must ensure that independent financial and legal advice is provided to such members to ensure compliance with the legislation.
- (b) A person commencing a pension must meet preservation age to commence a pension and a Transition to retirement pension must:
  - (i) Pay either a minimum pension payment of 4% of the value of pension assets/or;

- (ii) Provide a maximum pension payment of 10% of the value of pension assets.
- (c) From 1<sup>st</sup> July 2017 a pension commenced cannot exceed the \$1.6 million pension starting balance cap. The proceeds of any pension account in excess of \$1.6 million per member, must be reverted to accumulation phase or withdrawn subject to the SIS Act and the deed conditions.
- (d) The Trustee may on request from a member, pay “lump sum” payments in-specie, which is in the form of assets of the fund instead of cash payment to the member.
- (e) The Trustee must not pay any pension benefit in-specie which is in the form of assets of the fund instead of cash payment to the member. The Trustee must pay pension payments only in cash.
- (f) On commutation of any pension, the Trustee may pay a “lump sum” to the member in-specie that is, in the form of assets of the fund. A member may commute any pension to accumulation phase (super) after completing.
  - (i) A minute to record the intention to commute a pension and notify all members of the fund;
  - (ii) move any assets held in pension phase back to accumulation.
- (g) The Trustee may fund a pension for a member by purchasing an Annuity for the member. All TTR pension convert to an account-based pension (**ABP**) from age 65, or if the member retires and has met a condition of release.

### **8.3      Return to Accumulation Phase**

- (a) The Trustee upon being requested to do so by a Member may terminate the payment of a pension and rollover the balance of the Member’s net account balance back to an accumulation account for a Member who:
  - (i) Has returned to work; or
  - (ii) Has no need for an income stream because of changed circumstances; or
  - (iii) Has decided to change the income stream or benefit generally that the Member is receiving; or
  - (iv) Wishes to take advantage of a chance in the superannuation law; or
  - (v) Satisfies some other requirement of the superannuation law that permits a rollover.
- (b) If the benefits are paid as an accumulation, then the Member or the Member’s dependants or legal personal representative as the case requires shall be paid at least the total of:

- (i) the Member's contributions and investment earnings thereon less any expenses applicable to those amounts (excluding any salary sacrifice contributions);
- (ii) the Member's mandated employer contributions and investment earnings thereon less any expenses applicable to those amounts (excluding any salary sacrifice contributions); and
- (iii) any roll-overs or transfer from other funds.

#### **8.4 Reversionary Pensions**

- (a) The Trustee must not allow a member (or reversionary beneficiary) to nominate a non-dependant of the member (or reversionary beneficiary) as a nominated reversionary beneficiary. A member must only nominate a dependent as defined in section 10 of the SIS Act.
- (b) Upon the death of a member receiving a pension, the Trustee may pay a pension to the reversionary beneficiary nominated by the member. The Trustee may pay to the reversionary beneficiary a pension in accordance with superannuation law.
- (c) However, if the reversionary beneficiary is not a dependant of the member the Trustee must not affect the payment of pensions to a non-dependant reversionary beneficiary. In such a situation, the Trustee must only pay a lump sum to the non-dependant.
- (d) Upon the death of a member receiving a pension who did not nominate a dependent reversionary beneficiary, the Trustee may pay a pension to a dependant of the member. If there are no dependents alive, the Trustee must pay a lump sum to the non-dependants of the member as listed in the death benefit nomination form.
- (e) If an individual in receipt of a reversionary pension is a non-member of the fund, then the Trustees may invite the non-member to become a member of the fund as permitted by legislation.

### **9. ARTICLE VIII - DEATH OF A MEMBER**

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#### **9.1 Death and TPD Benefit Payments**

In the case of death of a member, the Trustee must pay the balance of the member's account to the beneficiaries nominated by the member. If the member is a tax dependent as defined in superannuation law, the Trustee may pay to the beneficiary a pension; where the beneficiary is a non-tax dependent as defined in superannuation law, the Trustee must pay a lump sum, which is subject to tax.

Any Death and TPD benefits paid to a SMSF from Life and TPD insurance payouts, must be received by the funds accumulation account before a pension is commenced.

## **9.2 Binding Death Benefit Nomination**

A Member may fill out a binding death nomination form, which directs the Trustee as to who should be paid a death benefit on the death of a fund member. The member can either list his or her dependents and or legal personal representative. A binding death nomination can be revoked by the member in writing, or the member can renew the binding nomination by supplying a new form, whereby that form shall be valid until changed.

## **9.3 Payment of Death Benefit**

- (a) The Trustee may pay a death benefit to a beneficiary, in specie, by transferring the member's segregated assets or fund's share of assets, to the beneficiary, or alternatively, the death benefit may be paid in cash as a lump sum payment.
- (b) If a payment is a death benefit to a non-dependant, the Trustee must withhold tax from the payment as required by superannuation law.
- (c) If a beneficiary is entitled to the proceeds from a life insurance policy, made out to the Trustees of the fund, then the Trustee may assign the proceeds to be paid directly to the beneficiary.
- (d) If there is no nomination of dependants in place, the Trustees may pay the benefit to the legal personal representative of the estate of the member.
- (e) The Trustee may release an amount, by way of an advance, to the legal personal representative of a member for the purposes of the member's funeral and/or other expenses relating to the death of the member. Trustees should pay the member's death benefit to the beneficiaries as soon as practical.
- (f) If there are unclaimed monies and no known beneficiaries, the Trustee must pay such unclaimed money in accordance with the legislation governing the payment of such unclaimed money.
- (g) Once the Trustee has paid a death benefit, it will no longer be liable for any damages to any person who claims to be entitled to the death benefit.
- (h) If a death benefit is to be paid to a beneficiary who is under a legal disability or a minor, then the Trustee may make the payment to the legal personal representative or guardian or parent or person who has custody of the beneficiary.

## **9.4 Payment of Death Benefit when Member is in Pension**

- (a) Where there is a valid binding death benefit nomination in place and the member is on a pension, upon the death of that member, if there is no reversionary beneficiary nominated, the Trustees must pay the member's death benefit in accordance with the binding death benefit nomination into the funds accumulation account.
- (b) Non-dependants may no longer be reversionary beneficiaries of a pension benefit.

- (c) Where there is a non-binding death benefit nomination in place or an invalid binding death nomination and the member is in a pension, upon the death of the member, if there is no reversionary beneficiary nominated, the Trustees may pay the member's death benefit to nominees listed in non-binding death benefit form but need not comply with the terms of the non-binding nomination form.
- (d) If the member has a reversionary pension to a dependent, and no dependants of the member remain, and that member dies, then the Trustees must pay the balance of the fund to non-dependants as a lump sum.
- (e) If a death benefit has to be paid for a member who is in a pension, from his pension account, then upon the death of the member, the Trustee must transfer the funds of the member from pension account to accumulation account of the member, until such time as they are paid out to a beneficiary of the member.

## **10. ARTICLE IX - FORFEITURE OF BENEFITS**

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### **10.1 Forfeiture of Benefits**

Any Member, former Member, or after their death any dependants or legal personal representatives of a Member or former Member or the relative of a Member or former Member who cannot (subject to reasonable enquiry having been made) be located and whose dependants cannot be located by the Trustee during a period of two years after a payment was last made to him or her by an employer, particulars of which employer have been given in writing to the Trustee or by the Trustee or if the employment was immediately before ceasing to have contact with the Trustee, self-employed, then from the date the Member was last in contact with the Trustee, shall forfeit entitlement to all his or her benefits and in the event that they shall not have prior to that date given notice of their retirement from the Fund shall on that date cease to be a Member of the Fund. Any benefits that have accrued to a Member, former Member and beneficiary that is forfeited under this Article must be paid to the Regulator or the appropriate receiver of unclaimed monies in accordance with any requirement of superannuation law.

The Trustee must hold upon trust and pay or apply any benefits which have been forfeited which represent Members' vested contributions or preserved payment benefits to or for the benefit of the Member or his or her dependants or any one of them in such portions between them and on such terms as the Trustee may from time to time in the Trustee's absolute discretion determine provided that no benefit may be paid to or in respect of a Member whilst the Member remains in full time gainful employment (except in the case of a transition to retirement income stream) and any balance not so applied by the Trustee must be dealt with as if it were a forfeited benefit as provided in this Article.

### **10.2 Unapplied forfeited benefits**

Moneys released in respect of any benefits forfeited and not subsequently paid or applied in accordance with this Article and superannuation law shall remain in the Fund for the general purposes of the Fund.

### **10.3 Remaining forfeited benefits**

Subject to any overriding requirement of superannuation law, the Trustee may, exercising an absolute discretion, pay or apply any benefits which have been forfeited:

- (a) to or for the benefit of the Members or former Members of the Fund or any of their respective dependants or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time exercising an absolute discretion, deem fit;
- (b) to or for the benefit of Members or former Members of the Fund who have rights to receive benefits from the Fund or for any of their respective dependants on a basis that the Trustee considers reasonable having regard to all the circumstances in which contributions may be paid in lieu of contributions which were otherwise payable by an Employer or a Member to the Fund;
- (c) to repay to an Employer or a contributor contribution made to the Fund in respect of a Member whose rights to receive benefits under the Fund have ceased; or
- (d) for any other purpose permitted from time to time by the Superannuation Law; or
- (e) as required by the Superannuation Law.

### **10.4 Members account residue**

Any Member or former Member or other Beneficiary who has been paid all benefits which the Trustee considers should be paid to him or her in accordance with these Rules and who still has a residual amount standing to his or her credit shall, subject to these rules and superannuation law, upon the day that the Trustee declares that all benefits due to the Member have been paid to the Member, forfeit such amount and such amount shall be dealt with as a forfeited benefit.

## **11. ARTICLE X - ADMINISTRATION RESPONSIBILITIES**

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### **11.1 Accounts & Administration**

- (a) The Trustees must deposit all monies belonging to the fund in the fund's bank account promptly upon receipt; and keep fund monies separate from their own money pursuant to SIS Regulation 4.09A.
- (b) Trustees must promptly pay all transaction costs including (but not limited too): administration costs & expenses to creditors, income tax, supervisory levy to the regulator and premiums to insurers of the fund.
- (c) If any asset for some legal reason cannot be held by the trustee on behalf of the fund then the Trustees must clearly document the fund's ownership of the asset with a caveat, legal instrument or a declaration of trust.

- (d) The Trustees of the fund must prepare an operating statement, a statement of financial position, member accounts and an asset register at market value at the end of each financial year; and must also prepare any other accounts, register or statement required by superannuation law and lodge these return with the Australian tax office (ATO) or via the services of a registered tax agent, accountant or SMSF Administration provider.
- (e) All books and records of the fund must be made available to all members and regulators on request. In preparing accounts of the fund, the Trustees must apply applicable accounting standards and proper accounting practices. All accounting reporting should be in Australian dollars.
- (f) A copy of these Rules must be kept by the Trustee at the Trustee's office and shall be open to inspection by any Member at all reasonable times. Every Member upon request to the Trustee must be supplied with a copy of this Deed and Rules of the Fund.

## **11.2 Auditing of Fund**

The members of the fund must employ an independent and ASIC registered auditor to audit the self-managed super fund. The audit of the fund must be in compliance with schedule 1AAA of SIS Regulations and conducted as per the audit and assurance standards board's audit practice standards in guidance statement GS 009 Auditing Self-Managed Superannuation funds

## **12. ARTICLE XI - AMENDMENTS TO THE DEED**

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The Trustee is entitled at any time with the consent of the Company (if held by a corporate Trustee), by instrument in writing executed by the Trustee and the Company; and without giving prior notice to the Members; to amend, add to or revoke all or any of the provisions of the Deed including this clause:

- (a) If at any time the sole or primary purpose of the Fund is the provision of old age pensions then the Deed must not then be amended to provide for a different sole or primary purpose unless the Deed is also amended to require (or at that time requires) that the Trustee must be, and must continue to be, a constitutional corporation as defined in SIS.
- (b) If at any time the sole or primary purpose of the Fund is not the provision of old age pensions the Deed must not be amended to allow an individual to be appointed as Trustee of the Fund unless the Deed is also amended to provide (or at that time provides) that the sole or primary purpose of the Fund is, and will continue to be, the provision of old age pensions.
- (c) The purpose of variation to comply with law, the variation must be only to enable the Fund to comply with any law, custom or practice of the Commonwealth or any state or territory of Australia in relation to superannuation, pensions, Taxation, insurance, employee trust funds or employee benefits generally or otherwise.

## **13. ARTICLE XII - WINDING UP OF FUND**

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- (a) The Trustee must wind up the fund if the fund has no members or if all the members agree in writing to wind up the fund, or when superannuation law requires the fund to be wound up. The Trustees must before winding up the fund:
  - (i) Dispose of all the assets of the fund to pay members benefits;
  - (ii) Lodge the last income tax return and the regulatory return of the fund and pay all expenses which are due to creditors and professionals engaged;
  - (iii) Pay all benefits to the members or transfer and or roll over member's entitlements to another complying super fund as prescribed in superannuation law.
  - (iv) Close the income account and reserve account and transfer the balance to the member's accounts as prescribed in superannuation law and as detailed in the benefit rollover statements.
- (b) In the case of death of the last member, the Trustee must pay any benefit in such a manner as they feel is equitable having regard to that member's binding death nomination. In the absence of a binding death nomination and where the last member of the fund is deceased, if there are no dependants or known beneficiaries, the Trustee is required to follow the superannuation law relating to unclaimed monies or wait for a family law courts instruction to pay proceeds and wind up the fund.

### **13.2 Reserve Accounts**

- (a) The members and trustees of the fund may at their discretion set up a reserve account which may be utilized for any of the following purposes, provided that an actuarial certificate is used for the operation of a reserve account:
  - (i) To provide a shortfall facility for property strategies;
  - (ii) To improve the super fund's returns;
  - (iii) To provide for tax payments and other fees;
  - (iv) To provide an amount for a past member, existing, pension member and beneficiary as well as to increase accumulation and pension accounts of members in accordance with the SIS Act and the tax provided there is no breach of trust laws.
- (b) Any Reserve Account must be utilised in accordance with the relevant legislative and legal provisions and for a proper purpose. Failure to account for and use a Reserve Account appropriately may constitute a breach of fiduciary duty actionable at law.

## **14. ARTICLE XIII - MISCELLANEOUS**

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### **14.1 Standards and rules**

- (a) The covenants set out and the standards prescribed by superannuation law and any additions to or modifications of those requirements, covenants and standards that may be in operation or become operative at any time after the date of this Deed, shall be **DEEMED TO BE INCLUDED IN THESE RULES** and where any inconsistency exists between any matter or thing contained in or referred to in these Rules and the covenants and standards so prescribed and any other regulation and any additions to or modifications of those covenants, standards, requirements and regulations that may become operative at any time after the date of this Deed such covenant, standard, requirement, or regulation, shall take precedence and **SHALL BE DEEMED** to be incorporated in these Rules as and from the date upon which such amendment, addition or modification shall become law.
- (b) A requirement that the Fund comply with the rules relating to the appointment of a Trustee, the investment rules and the rules for payment of benefits and pensions, contained in superannuation law **SHALL BE DEEMED** to be incorporated in these Rules.

### **14.2 Trustee not in contravention**

The Trustee shall not be taken to be in contravention of these Rules or to be in breach of trust if the Trustee does anything, or fails to do anything, which is in contravention of superannuation law or any provision of these Rules if:

- (a) the contravention is permitted by the Superannuation Law; or
- (b) the contravention is approved by the Regulator or the person or persons (if any) specified for that purpose, in accordance with superannuation law; or
- (c) the contravention is rectified within 28 days, or (where applicable) such other period allowed by superannuation law, from the date the Trustee became aware of the contravention.

### **14.3 Dispute Resolution**

For all disputes or with respect to the Fund or to the construction or meaning of this Deed must (if the Trustee so requires) be referred to a single arbitrator agreed to by the Parties to the question or dispute, or in default of agreement, to an arbitrator appointed pursuant to the provisions of the relevant Commercial Arbitration Act or similar legislation in the state or territory in which this Deed is executed.

### **14.4 Right of action**

No right of action accrues in respect of any dispute until the question or dispute has been adjudicated on by the arbitrator.

## **14.5 Severability**

If anything in this Deed is unenforceable, illegal or void then it is severed, and the rest of this Deed remains in force.

## **14.6 Notices**

A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing. In addition to any other method of service provided by law, the Notice may be:

- (a) sent by prepaid post to, or
- (b) delivered at the address of the addressee set out in this Deed or subsequently notified.

## **14.7 Governing law and jurisdiction**

This Deed is governed by the laws of the state or territory of the Commonwealth of Australia in which the Deed is executed. The Trustee, Members and Beneficiaries submit to the non-exclusive jurisdiction of the courts of that state or territory and of the Commonwealth of Australia.

## **14.8 Valuations**

The members of the super fund must undertake to value physical assets of the super fund, namely property and collectables and ensure appropriate insurance policies are held.

Members must apply a recognised market valuation method for valuing assets, such as:

- (a) A real estate agent's valuation, a qualified market valuation;
- (b) Use a rational and reasonable process;
- (c) Be capable of explaining the process to the funds auditor.

## **14.9 Conditions of Release (accessing your super monies)**

These are the main provisions under which you can withdraw money from a super fund.

- (a) Reaching preservation age (view table on [page 29](#)) and choosing to access some or all of your super balance as a transition to retirement pension while remaining employed on a full- or part-time basis;
- (b) Permanent retirement from the workforce on or after your preservation age;
- (c) Termination of employment after turning age 60 (without necessarily retiring permanently);
- (d) Reaching age 65 (whether you are retired or not);

- (e) Death (benefits are paid to your dependants or personal legal representative);
- (f) Permanent incapacity;
- (g) Access unrestricted non-preserved benefits held within your super fund;
- (h) Diagnosis of a terminal medical condition;
- (i) Severe financial hardship;
- (j) Eligibility for approval on compassionate grounds;
- (k) Termination of employment with an employer-sponsor where your preserved amount is less than \$200;
- (l) Permanent departure from Australia if you are an eligible temporary resident;
- (m) Satisfying any other condition of release as specified in superannuation law.

#### **14.10 Independent Legal and Financial Advice**

The members of the fund have obtained independent legal and financial advice on the appropriateness of this deed and the transactions that are to be undertaken by the fund. Members agree to proceed on the basis that they believe they have received appropriate advice. Alternatively, the members of this fund have chosen to waive their right to Independent Legal and Financial Advice and accept liability for any failure, negligence or omission which may occur as a result of not obtaining such advice.

## **APPENDIX A - PRODUCT DISCLOSURE STATEMENT**

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# **PRODUCT DISCLOSURE STATEMENT**

*The Corporation Act 2001 (Cth) requires corporate trustee to provide a Product Disclosure Statement (PDS) to all prospective members of a self-managed superannuation fund and any Super Fund that will contribute for a member to this self-managed superannuation fund.*

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## **1. Overview**

*The information provided in the PDS is of a general nature only. It does not take into account your individual objectives, financial situation or needs. As a result of this, you should consider the appropriateness of this product having regard to your objectives, financial situation, and needs, and we recommend you seek advice from an appropriately qualified financial adviser before investing.*

Neither the Trustee nor any service provider to the Fund can guarantee the performance of the Fund, the repayment of capital or any particular rate of return from the Fund. Investment in the Fund is subject to investment risk, including possible delays in pension payments or repayment upon withdrawal and loss of capital or income. You should read this document in full before making a decision to acquire the product.

## **2. Definitions in this PDS**

**We/Us/Our** means the Trustee;

**You/Your** means a member or potential member in Fund.

## **3. Definition of an S.M.SF (Self-Managed Superannuation Fund)**

A Self-managed super fund (**SMSF**) is defined by the *Superannuation Industry Supervision Act of 1993* section 17A and *1994 (SIS Act)* administered by the ATO and (Ch) 7 of the *Corporations Act 2001* administered by ASIC, superannuation is a way of saving for retirement, which will enable you to invest your contributions and the earnings (whether positive or negative) in your account into allowed investments as per this deed. When you retire, you can take your account balance as a lump sum or you can convert it into an income stream also known as an account-based pension. In essence, an SMSF is a regulated superannuation fund with less than five members, who are primarily family members or close associates. The sole purpose of the fund is to provide income streams and/or lump sum benefits to members and their dependents and non-dependents, where allowed under the Superannuation Laws such as on the retirement, death or disability of the member.

## **4. Superannuation**

The superannuation system is regulated by several key Government agencies:

- (a) the Australian Taxation Office (**ATO**)—which administers the relevant legislation for SMSFs and assists SMSF trustees to comply with their obligations under the superannuation industry supervision act SISA and the ITAA 97 Tax Act;
- (b) ASIC—which regulates financial services to protect consumers, including monitoring compliance with the FSR Act and the *corporations Act 2001* Chapter 7;

**Warning:** A self-managed super fund, has internal provisions within its deed, but S.M.S.F's are not subject to any appeals or compensation services as compared to retail and industry funds. There are a number of superannuation peak bodies which, while not necessarily serving a regulatory function, provide fund trustees with guidance and training such as the:

- SMSF Association - [www.smsfassociation.com](http://www.smsfassociation.com).

COMPARISON OF SUPER FUND PRODUCTS		
	SMSF's	Retail /Industry Fund
Own and Control fund	Yes	Beneficial Owner
Choice of investments	Unlimited	Limited
Tax deductible fees	Yes	No
Insurance tax benefits	Yes, for life / Tpd	No
Estate planning	Flexible	Binding nomination 3 yrs
Annual fees	Fixed	%
Members	1-6	1
Splitting / Reserve Accounts	Yes	No /Maybe

Comparing Individual Trustees with Corporate (**Company**) Trustees for an SMSF.

	INDIVIDUAL	CORPORATE OR COMPANY
Costs	Cheaper – No Fee	Fee for company setup and renewal each year
Number of members	2 - 6	1 - 6
Change of members	May trigger a capital changes tax event As members act as trustees and assets are owned in the name of members	Assets are owned by the company as trustee Members can be easily added or removed without impact to assets held by the fund
Asset protect	Individuals do not have limited liability protection and assets outside super may be exposed	Companies have limited liability protection and as such are more protected if a party sues an SMSF
Risk	Higher	Lower
Penalties	One penalty unit per trustee I.E: \$1700 x two trustees = \$3,400	1 x entity \$1700
Separation of assets	Risk of mixing personal assets with fund assets, resulting in breaches and penalties	Legal titles to assets are held by the company
Succession planning	Assets must be transferred to new members or beneficiaries Potentially triggering C.G.T	Assets can be transferred and successioned avoiding tax with more ease

## 5. Sole Purpose

Superannuation funds are required under section 62 of the SIS Act (sole purpose test) to be maintained for a sole purpose, broken into a core purpose and an ancillary purpose.

(a) The following core purposes:

- (i) The provision of lump sum benefits for each member of the fund upon retirement of the member;
- (ii) The provision of lump sum pension benefits for each member of the fund once a member reaches preservation age;
- (iii) The provision of lump sum or income stream benefits to dependants and non-dependants subject to the SIS Act section 10 requirements upon the death of a member of the fund:
  - (A) Death of a member resulted before retirement age or before preservation age;
  - (B) Benefits are provided to the members Legal Personal Representative (**LPR**) or to any or all of the member's dependants and non-dependants or both.

(b) The following ancillary purposes

- (i) The payment of lump sum or income stream benefits to dependants of the fund (**SMSF**) due to death, ill health, resulting in mental or physical incapacity to a member;
- (ii) The payment of benefits to a legal personal representative (**LPR**) or to any or all of the member's dependants or non-dependants or both;
- (iii) Under a direction by a court, regulator that is approved in writing.

The ATO is the regulator of self-managed super fund (**S.M.S.F**) provided they meet the definition of an SMSF allowing for the 15% and 0% concessional tax treatment.

All members of an SMSF must be trustees and be involved in the decision-making and investment selection process of the fund thereby promoting true self-management.

Contraventions of the SIS Act under the following sections can result in criminal and civil penalties as a consequence resulting in a breach of:

- section 62 of the SIS Act sole purpose test;
- section 65 prohibition on loans to members and relatives;
- sections 66, related party transactions;
- section 71 in-house assets;
- section 67a, limited recourse borrowing arrangements 67b single acquirable assets;
- section 109 arm's length dealings.

You can convert your lump sum superannuation benefit to an Account-based pension:

- (a) When you have reached your preservation age and are not intending to work 10 or more hours per week ever again; or
- (b) When you have retired or resigned from the Super Fund after turning age 60; or
- (c) When you have reached age 65 even if you are still working; or
- (d) When you are permanently incapacitated (at any age); or
- (e) You must draw a minimum age-based pension payment starting at 4% from age 65;
- (f) At any age with unrestricted non-preserved benefits.

## 6. Contributions to Super

You may rollover any amount you have in other superannuation funds (retail or industry or employer funds) into any other providers or an SMSF account during accumulation phase (super- pre-retirement) or before establishing or commencing a pension.

## 7. Regular contributions

- (a) Members can receive or make concession contributions up to \$25,000 per person of any age up to age 75 or over this age if employed. Concessional contributions are taxed at 15% tax rate and include:
  - (i) Employer super guarantee payment up to the cap amount;
  - (ii) Salary sacrifice or personal contributions up to the cap amount.
- (b) Non-concessional contributions are not taxed as there is a limit of:
  - (i) \$100,000 per person in a financial year period; or
  - (ii) The option to bring forward three years to contribute of \$300,000 per person taking up three (3) financial years.
- (c) Once your Account-based pension has commenced, further superannuation contributions or transfers from other funds are not permitted into your pension.

## 8. Super Contributions Table

Year	Age	Concessional Contribution	Non-Concessional Contributions	Bring Forward
2018-19	All Ages	\$25,000 per person	\$100,000 per person	\$300,000 per person
2016-17	Over 49	\$35,000 per person	\$180,000 per person	\$540,000 per person
2016-17	Under 49	\$30,000 per person	\$180,000 per person	\$540,000 per person

**A limit on pension phase balances of \$1.6million per person  
(for new and existing income streams)**

## **9. Spouse Contributions**

The current 18% per cent tax offset of up to \$540 will be available for any individual, whether married or de facto, contributing to a recipient spouses super fund account, whose income is up to \$37,000. This is an increase from the current \$10,800. As is currently the case, the offset is gradually reduced for income above this level and completely phases out at income above \$40,000. No tax offset will be available when the spouse receiving the contribution has exceeded their non-concessional contributions cap or their balance is \$1.6 million or more. There are no changes to the current aged based contribution rules. The spouse receiving the contribution must be under age 70 and meet a work test if aged 65 to 69.

You will be entitled to a tax offset of up to \$540 per year if:

- (a) the sum of your spouse's assessable income, total reportable fringe benefits amounts and reportable employer superannuation contributions was less than \$40,000;
- (b) the contributions were not deductible to you;
- (c) the person was your spouse when you made the contribution;
- (d) both you and your spouse were Australian residents when the contributions were made;
- (e) when making the contributions you and your spouse were not living separately and apart on a permanent basis, and
- (f) your spouse did not have:
  - (i) non-concessional contributions totalling more than their non-concessional contributions cap, or
  - (ii) at 30 June 2017, a total superannuation balance of \$1.6 million or more.

Source: <http://www.ato.gov.au/> 31st of May 2018.

## **10. Excess Super Contribution Treatment**

The consequences of exceeding your concessional cap generally involve extra income tax rather than onerous penalty tax, and exceeding your cap also involves some administrative inconvenience. Your excess concessional contributions will count towards your personal assessable income, and you will have to pay income tax at your marginal income tax rate from your personal savings on those excess concessional contributions since they are treated as part of your regular income. The ATO will apply a 15% tax offset when processing your tax return, to recognise the 15% contributions tax already deducted from the excess concessional contributions.

**Note:** You will also incur an excess concessional contributions charge on the increase in income tax payable, to recognise the delay in paying income tax on this income.

**Note:** From 1<sup>st</sup> July 2017, any salary sacrifice components or personal contributions made to a superannuation fund will be tax deductible.

## 11. Types of Super Benefits: Tax Free Benefits – (Inclusive of Preserved benefits)

All tax-free contributions made by members and all tax-free fund earnings, form the funds ‘Untaxed elements’. These benefits can be paid subject to a member meeting a condition of release such as, retirement at 60, total and permanent incapacity or under hardship provisions, subject to the proportioning rules.

### (a) Unrestricted non-preserved benefit

Include benefits held in super, for which a member has previously satisfied conditions of release and decided to keep the money in the fund. These benefits do not require a condition of release and can generally be cashed at any time on demand, irrespective of age, employment situation or financial position, providing the SIS Act rules allow the payment.

### (b) Taxable benefits (inclusive of restricted non-preserved benefits)

These ‘Taxed elements’ are usually benefits contributed by employers (super guarantee 9.5%) or members up to the concessional contribution cap limits and age-based limits and taxed fund earnings, which are only accessible when a condition of release is met such as pension age or total and permanent incapacity or under hardship provisions, subject to the proportioning rules. Taxable benefits are taxable to non-dependant beneficiaries or an estate.

**Example 1:** Working out the tax-free and taxable proportions.

Kevin is approaching his preservation age and is considering his options when he retires. The value of Kevin’s super interest is \$400,000, which consists of the following components:

- tax-free component of \$100,000;
- taxable component of \$300,000.

Work out the tax-free and taxable proportions of Kevin’s super interest as follows:

Tax-free proportion %	= tax-free component ÷ value of the interest = \$100,000 ÷ \$400,000 = 25%
Taxable proportion %	= 100% – tax-free proportion % = 100% – 25% = 75%

Source: ATO – [www.ato.gov.au](http://www.ato.gov.au)

## **12. Types of Pensions**

A pension is a way to receive your superannuation entitlement through a regular income stream instead of a one-off lump sum payment. There are two ways for you to open a pension account, these are either an Account-based pension or a Transition to retirement (TTR) pension.

### **(a) Account-Based Pension**

All members, who have retired and reached preservation age or have reached age 65, can convert a lump sum superannuation benefit into an Account-based pension where the following conditions are satisfied:

- (i) When you have reached your preservation age and are not intending to work 10 or more hours per week ever again; or
- (ii) When you have retired or resigned from employment after turning age 60; or
- (iii) When you have reached age 65 even if you are still working; or
- (iv) When you are permanently incapacitated (at any age); or
- (v) At any age with unrestricted non-preserved benefits.

## **13. Transition to Retirement (TTR) pension**

Allows members aged between preservation age and 65, access to their benefits in the form of an income stream; where a minimum pension amount is required to be taken, which is 4% of the asset value forming the pension and a maximum of 10% of the asset value; without having to retire or leave the workforce.

Item	Age of Beneficiary	Percentage Factor
1	Under 65	4
2	65 – 74	5
3	75 – 79	6
4	80 – 84	7
5	85 – 89	9
6	90 – 94	11
7	95 or more	14

However, transition to retirement pension will have a maximum withdrawal limit of 10%.

From 1<sup>st</sup> July 2017, all new and existing pension are subject to the transfer balance of \$1.6 million which is tax-free (0%) any additional funds must be moved into accumulation phase. This requires careful consideration where, in specie assets (such as property) are used to form a pension and where a benefit from a dependant spouse is received by the fund.

(a) **Withdrawals**

You are able to withdraw a portion of or your entire Account-based pension. If you request a full withdrawal, an additional pension payment may be made to you first, to ensure the minimum pro-rated pension payment requirements are met for the financial year.

A PERSONS PRESERVATION AGE	
Person born before 1 July 1960:	55 years
Person born during the year 1 July 1961 to 30 June 1962	56 years
Person born during the year 1 July 1961 to 30 June 1962	57 years
Person born during the year 1 July 1962 to 30 June 1963	58 years
Person born during the year 1 July 1963 to 30 June 1964	59 years
Person born after 30 June 1964	60 years

If you have chosen more than one investment option for your pension, any withdrawal will be deducted from each investment option in the same manner as for the payment of your monthly pension.

(b) **Cessation of your pension**

An Account-based pension will cease when the balance of your account has reduced to zero or your balance is fully withdrawn.

(c) **Reversionary beneficiary**

You may wish to nominate a Reversionary beneficiary to receive the balance of your Account-based pension in the event of your death, which the Trustee may continue to pay in pension form or pay your benefit out as a lump sum. You may only nominate a Reversionary beneficiary at the time you commence your pension. If you have not nominated a Reversionary beneficiary, you have the option of nominating a binding or non-binding beneficiary.

(d) **Contributions**

The same contribution rules apply as for an Account-based pension except that the \$25,000 initial contribution can be made up of any type of superannuation component, including preserved monies.

(e) **Withdrawals**

There are limited circumstances in which you can withdraw your TTR Account-based pension to a lump sum. No part of a TTR Account-based pension can be withdrawn as a lump sum unless you meet a condition of release. However, you may be able to take a lump sum from a TTR Account-based pension to:

- (i) comply with a *Family Law Act 1975* splitting agreement;

- (ii) pay superannuation surcharge tax liability;
- (iii) withdraw any unrestricted non-preserved benefits; or
- (iv) pay excess contributions tax to the Australian Taxation Office (ATO) if authorised by the ATO.

You may choose to reduce or stop your TTR Account-based pension at any time and transfer the money back into your superannuation account, provided you have met your minimum pension payment requirements for the year.

## 14. Conditions of Release of Super Monies

Preserved benefits (most super money is preserved) cannot be paid to a member unless a condition of release has been met. These conditions of release are:

- (a) Permanent retirement after attaining preservation age;
- (b) Termination of employment after age 60;
- (c) Attaining age 65;
- (d) Commencing a Transition to Retirement Income stream after attaining preservation age;
- (e) Death;
- (f) **Permanent Incapacity:** To satisfy this condition of release the member must, as a result of ill health, be unlikely to ever engage in gainful employment for which the member is reasonably qualified by education, training or experience. Any Member seeking payment of benefits on this ground, must provide to the Trustee a certificate signed by two registered medical practitioners certifying that in the opinion of those medical practitioners, the Member is unlikely to ever be able to work again in a job for which the Member is reasonably qualified by education, training or experience;
- (g) **Severe financial hardship:** Satisfying this condition of release depends on a person's age relative to their preservation age. If the member is younger than their preservation age the trustee must be satisfied that the member is unable to meet reasonable and immediate family living expenses and obtain proof that the member has received Commonwealth income support payments for a continuous period of 26 weeks. If the member has reached their preservation age, and wants to access all their super entitlements, the trustee must obtain proof that the member has received support payments for a period of 39 weeks after having reached preservation age and not in gainful employment when applying for superannuation payment. If they want to access a restricted amount, then it is 26 weeks of support payments;
- (h) **Compassionate grounds:** to release on this condition the trustee must get approval from the Department of Human Services and show that the member has no other means of making payment. There are strict guidelines on what released benefits can be used on i.e. medical treatment, loan repayment to stop foreclosure on family home, palliative care etc;

- (i) **Terminal illness:** this condition was introduced on the 1<sup>st</sup> July 2007 and to satisfy it two registered medical practitioners must provide proof that the member is likely to die in the next 24 months as a result of an injury/illness. At least one of the medical practitioners needs to be a specialist in the area related to the injury/illness.

## 15. Investment Strategy

The Trustee of the SMSF has broad investment powers under the proposed trust deed that the fund is using and is able to invest in private or public company shares; cash and fixed interest; commercial, rural and residential property; unit trusts and pooled superannuation trusts and is able to engage in property development and other pursuits provided the investment is in accordance with the Superannuation Laws. The Trustee of the fund may also borrow to acquire an asset provided the acquisition of the asset is permitted by the Superannuation Laws. The structure for any borrowing must be by way of a property trust to ensure the borrowing is compliant with section 67a and is a limited recourse borrowing arrangement (**LRBA**) and that it is a single asset that is acquired per property trust and per loan application made by the SMSF.

The borrowing may be from a bank, building society, non-bank or a related party. The Commissioner of Taxation has issued extensive guidelines in relation to SMSF borrowing. The fund's Trustee can create separate investment strategies for each member of the fund. Alternatively, a Trustee may establish separate investment strategies for differing member accounts including a member's lump sum or pension account where applicable. However, this is not a mandatory requirement. In addition, the Trustee can use their power to create a pooled investment strategy for all members of the fund and all accounts provided the investment strategy meets the necessary requirements of the Superannuation Laws.

## 16. Responsibilities, Risks, Legal, Accounting, Advice

All financial decisions carry risk, so it's important to think carefully about how you choose your investment options to balance the level of risk against the level of financial return and particularly with superannuation. At the end of the day, your superannuation is for your retirement and as retirement can last a very long time, great care must be taken when investing your super assets particularly in an SMSF. As one of the Trustees of the SMSF, it is your responsibility to ensure that your investments are tailored for the long term unless you are close to retirement or taking your benefits as an account-based pension income stream as allowed under the superannuation laws.

## 17. Non-Compliance Risk

Where the Trustee of an SMSF makes an investment, it must meet all the compliance rules under the superannuation laws (the *Superannuation Industry Supervision Act 1993*). These are wide and varied and ensure that the Trustees of the SMSF do not invest in a related party – with some exceptions, do not lend money to a related party, are not to make investments and carry out investment and other transactions on a non-arm's length basis and most important of all to ensure that a member of an SMSF does not benefit from the fund except as allowed under the superannuation laws. A breach of

these laws can not only subject the Trustee to a significant financial penalty including taxing the market value of the assets of the fund at a flat rate of 45% but also land the Trustees of the SMSF in jail.

## 18. Trust Deed Risk

The Trustee of the Fund must acquire a modern trust deed for the fund – one that ensures it copes with changes to the laws and on-going strategies. It is the Trustee's responsibility to read and understand the fund's deed and make sure that it meets the requirements of all the members of the fund. In addition, as superannuation laws change and new strategies become apparent or used by Trustees of SMSFs, it is highly advisable for the fund's trust deed to be regularly upgraded.

## 19. Borrowing Risk

The superannuation laws allow the Trustee of an SMSF to borrow money to acquire a single acquirable asset such as a residential or commercial property and in some cases a collection of shares that have the same characteristics such as market value, class of share, etc. and acquired at the same time.

## 20. Types of Borrowing Allowed

The deed allows conforming LRBA (limited Recourse Borrowing arrangements) and related party borrowing by the fund which conforms to the ATO's PCG 2016/5.

**Table 1: Safe Harbour 1 – The asset acquired is real property**

<b>Table 1: Safe Harbour 1 – The asset acquired is real property</b>	
Interest Rate	Reserve Bank of Australia Indicator Lending Rates for banks providing standard variable housing loans for investors. Applicable rates: For the 2015-16 year, the rate is 5.75% For the 2016 17 and later years, the rate published for May (the rate for the month of May immediately prior to the start of the relevant financial year)
Fixed / variable	Interest rate may be variable or fixed Variable – uses the applicable rate (as set out above) for each year of the LBRA Fixed – trustees may choose to fix the rate at the commencement of the arrangement for a specified period, up to a maximum of 5 years. The fixed rate is the rate published in May (the rate for the May before the relevant financial year). The 2015-16 rate of 5.75% may be used for LRBAAs in existence on publication of these guidelines if the total period for which the interest rate is fixed does not exceed 5 years (see 'Term of the loan' below)
Fixed / variable Term of the loan	Variable interest rate loan (original) – 15-year maximum loan term (for both residential and commercial) Variable interest rate loan (re-financing) – maximum loan term is 15 years less the duration(s) of any previous loan(s) relating to the asset (for both residential and commercial) Fixed interest rate loan – a new LRBA commencing after publication of these guidelines may involve a loan with a fixed interest rate set at the beginning of the

	<p>arrangement. The rate may be fixed for a maximum period of 5 years and must convert to a variable interest rate loan at the end of the nominated period. The total loan term cannot exceed 15 years.</p> <p>For an LRBA in existence on publication of these guidelines, the trustees may adopt the rate of 5.75% as their fixed rate, provided that the total fixed-rate period does not exceed 5 years. The interest rate must convert to a variable interest rate loan at the end of the nominated period. The total loan cannot exceed 15 years.</p>
Loan to Market Value Ratio ( <b>LVR</b> )	<p>Maximum 70% LVR for both commercial and residential property</p> <p>If more than one loan is taken out to acquire (or refinance) the asset, the total amount of all those loans must not exceed 70% LVR.</p> <p>The market value of the asset is to be established when the loan (original or re-financing) is entered.</p> <p>For an LRBA in existence on publication of these guidelines, the trustees may use the market value of the asset at 1 July 2015.</p>
Security	A registered mortgage over the property is required
Personal guarantee	Not required
Nature & frequency of repayments	<p>Each repayment is of both principal and interest</p> <p>Repayments are monthly</p>
Loan agreement	A written and executed loan agreement is required

Table source: [www.ato.gov.au](http://www.ato.gov.au)

## 21. **Crypto Currency / Virtual or Digital Currency and collectables**

Investment in crypto currency is subject to the following conditions:

- (a) The deed allows collectables;
- (b) The investment strategy has been updated to include crypto currency;
- (c) Coins are stored independently, typically held via a hardware, and like collectables, they are stored in a safe secure independent storage facility so as not to breach the inhouse assets test;
- (d) Clients should sign a statutory declaration to state that the crypto currency they hold is purely for investment purposes and that it is maintained at arm's length without any personal benefit;
- (e) Provide proof of purchase and asset value at the 30th of June each year;
- (f) Review holding arrangements or sign a risk or statutory declaration stating these arrangements;
- (g) Metals and Diamonds are held in a secure vault in an insured premise and that these assets are valued every two years as a minimum.

## **22. Terminating the Fund**

You have the power under the Trust Deed to terminate the Fund, although the Fund is intended to continue indefinitely. The SMSF fund may also be terminated in accordance with the terms of the Trust Deed. In either case, we will notify members in advance. Benefits will be appropriately adjusted and transferred to an alternative complying superannuation fund or retirement savings account in accordance with the Trust Deed and applicable legislation.

## **23. Information about risks associated with the fund**

The significant risks which a member must consider before joining this fund include the following:

- (a) the trustee may not invest the funds wisely, resulting in negative realised and unrealised gains;
- (b) the fund may cease to be a complying superannuation fund either because of any action or inaction of the trustees. For example, the fund can become a noncomplying fund as the trustees may not be in resident of Australia and/or breaches the SIS Act or the SIS Regulations;
- (c) future government policies may remove the current tax treatment of all SMSF. This may adversely affect the future planning of prospective member;
- (d) by mistake the trustee may pay less than the minimum amount of pension, resulting in the fund to be a non-complying fund;
- (e) as trustee of the fund, you are responsible for maintaining the accounts, books and minutes and if are not a meticulous person, you may not be able to devote sufficient time to properly administer the fund;
- (f) since an SMSF is an audited entity, if you are not a pedantic person, who would keep all the documents safely for a successful audit, the auditor may issue a qualifying report;
- (g) you may not keep your trust deed up to date or conduct activities (such as trading in futures) which are not allowed by your trust deed or SIS Act, this will result in your SMSF being non-complying fund and lose all tax concessions;
- (h) you may not be entitled to a government pension due to asset test - 50% exemption for complying income streams.

As a trustee you will be involved in the day to day management of your SMSF, you should be in a better position to manage the above risks and protect your retirement benefits.

## **24. Costs of Operating an SMSF**

There is a range of costs associated with establishing, operating and maintaining an SMSF. The level of costs incurred will also depend on the extent to which the Trustee

has sought expertise in ensuring the fund remains complying and also has the best possible strategic set up for the Trustee and members. The general cost involved with operating an SMSF are reflected in the table below.

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

Type of SMSF Fees  ( This is only a guide )	Amount
<b>Accounting Fee</b>	\$1,100 - \$5,500
<b>Auditing Fees</b>	\$440 - \$2,200
<b>Actuarial Fees</b>	\$199 - \$440
<b>Property Valuation Fees</b>	\$110 - \$550
<b>Pension Setup and Annual Fees</b>	\$199 - \$550
<b>Financial Advice Fees</b>	\$1,100 - \$5,500
<b>SMSF Wind Up Fee</b>	\$2,200
<b>ATO Fee</b> (Superannuation supervisory levy* 2018-19 )	\$259*
<b>ASIC Fee ( 2018-19*)</b>	\$53
<b>Property Trustee Company Fees ( 2018-19*)</b>	\$263

## 25. Why Setup a Self Managed Superannuation Fund

These are some of the benefits of setting up a S.M.S.F:

- (a) Members get greater investment choice;
- (b) Members get control of assets and fund monies unlike in a retail or industry fund;
- (c) Participation in the funds management and decision making process;
- (d) The formal reporting requirements are reduced compared with retail, industry and corporate funds;
- (e) Members can customise their investment strategy to suit their needs

- (f) Greater estate planning and benefit distribution flexibility
- (g) Purchase a business premise for their business to operate in;
- (h) control the timing of paying income tax on income received by the fund;
- (i) transfer In-specie contributions to the SMSF; and
- (j) the ability to invest directly in property, both commercial and residential.

However, setting up an SMSF is not for everyone. Individuals considering setting up a self-managed superannuation fund should familiarize themselves with the requirements of running a fund. It is also prudent to discuss this option with a professional adviser (e.g. an accountant, financial planner etc.) before taking the next step.

## **26. Key responsibilities of trustees**

- (a) Member (trustees) of an SMSF must abide by the following:
  - (i) all provisions of the *SIS Act 1993 & 1994*;
  - (ii) superannuation fund trust deed clauses; inclusive of;
  - (iii) other general rules, such as those imposed under tax law and trust law;
- (b) The SIS Act contains covenants or rules that impose certain requirements on trustees and are deemed to be included in the trust deed of every regulated fund. These covenants reflect the duties imposed on a trustee under trust law in general. They require trustees to:
  - (i) act honestly in all matters;
  - (ii) exercise the same degree of care, skill, and diligence as an ordinary prudent person;
  - (iii) act in the best interest of the fund members;
  - (iv) keep the assets of the fund separate from other assets (e.g. the trustee's personal assets);
  - (v) retain control over the fund;
  - (vi) develop and implement an update the super fund's investment strategy; and
  - (vii) allow members access to certain information.
- (c) Whilst trustees are not prevented from engaging or authorizing other persons to do certain acts or things on their behalf (e.g. engaging the services of an investment adviser), they are bound to retain control over the fund. Ultimate responsibility and accountability for running the fund in a prudent manner lie with the trustees.
- (d) Trustees of SMSF's must keep money and other assets of the superannuation fund separate from their own personal assets. Similarly, the assets of the

superannuation fund must also be kept separate from those belonging to a business (e.g. a business run by two partners who decide to set up an SMSF). Money belonging to the fund must not, under any circumstance, be used for personal or business purposes. This money is for retirement purposes and generally, cannot be accessed until retirement. The fund's assets must not be viewed as a form of credit or emergency reserve when faced with a sudden need. The trustee decides the suitability of investments. In making investment decisions the trustees must act in accordance with the fund's trust deed, investment strategy and the provisions of SIS Act. Some of the more important issues to consider when investing an SMSF's assets include the formulation of an appropriate investment strategy and investment restrictions.

- (e) The trustee must establish investment strategies in writing, setting out how fund assets are to be invested and may make a broad range of investments only in accordance with this strategy. The strategies may be altered by the trustee, so long as they remain appropriate. Members may choose between more than one strategy offered by the trustee, but may not choose how the trustee is to execute the strategy.
- (f) SIS Act sets out various rules and restrictions on investments. These include:
  - (i) lending to members and their relatives;
  - (ii) acquiring assets from 'related parties' of the fund;
  - (iii) borrowing;
  - (iv) in-house assets; and
  - (v) making and maintaining investments on an 'arm's length' basis;
- (g) Trustees are also responsible for the fund's 'housekeeping' including:
  - (i) complying with record keeping requirements (such as minutes, books and financial records);
  - (ii) preparing and lodging annual returns with the ATO; and
  - (iii) getting the fund's accounts audited annually.
- (h) If a trustee fails to act in accordance with the rules and obligations imposed on them, the trustee may be sued by affected fund members and/or may jeopardize a fund's eligibility for tax concessions. In addition, the SIS Act imposes substantial penalties on trustees who have failed to carry out their duties. The above does not provide an exhaustive coverage of responsibilities of trustees. Many more obligations are imposed on trustees under different laws including numerous administrative requirements. Trustees need to be familiar with them and when in doubt about these requirements, professional advice should be sought.
  - (i) For more information please refer to: [www.ato.gov.au/super](http://www.ato.gov.au/super).

## **27. Further SMSF reading**

We encourage you to learn about SMSFs and the environment they operate in. The following table sets out some useful SMSF resources and we recommend you read these resources to stay up to date with SMSFs.

Reading	Link	Our comments
My SMSF Property	<a href="https://www.mysmsfproperty.com.au/free-smsf-ebooks/">https://www.mysmsfproperty.com.au/free-smsf-ebooks/</a>	Includes specialist details on SMSF Property strategies
ATO Videos & Publications	<a href="https://www.ato.gov.au/super/self-managed-super-funds/in-detail/smsf-resources/smsf-videos/">https://www.ato.gov.au/super/self-managed-super-funds/in-detail/smsf-resources/smsf-videos/</a>	Sets out the ATO's views on what you need to know about SMSFs
Money Smart Website	<a href="https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super-fund-smsf">https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super-fund-smsf</a>	Great Resources And Tools for members of SMSF's

## **28. Insurance**

As a member, you may request the trustee to obtain risk insurance cover for life and Tpd events, so that if you should: die, become totally and permanently disabled; or become totally and temporarily disabled; then an insurance benefit will be paid to you or your dependants. The amount of insurance required and the cost of this insurance and the terms upon which insurance benefits will be paid will be advised to you by the trustee. In the case of death or total and permanent disablement, the insurance benefit is usually a lump sum that will be added to your account. Usually, In the case of total and temporary disablement, the insurance benefit is generally a lump sum payment or monthly payment from the insurance company, which is only accessible subject to a condition of release (see page \_\_ for more details) Tpd and income protection proceeds may be subject to taxation.

A trustee can also have a reserve account for members. This account is not for any specific member. A reserve account is generally used to smooth the investment returns credited to member accounts over a period of time. Contributions made to an SMSF are deductible to an employer up to the age-based limit of the employee or if the contribution is from a self-employed member the contributions are deductible to the member. From 1st of July 2018 any personal super contribution portion or salary sacrifice portion, is tax deductible to an individual up to the cap limits.

## **29. Further Information**

The Trustee of the fund may be contacted to address any further information requirements relating to the fund's trust deed, the funds' performance or any members rights.

**SMSF Trustee Resolution**  
Minutes of meeting of Corporate Trustees of

As trustees of the

Date

Place

Present

Chair

Investment Strategy The investment strategy for the fund remains unchanged  
Trust Deed the Chair noted that the Company acts as trustee of the Trust established  
by deed dated and is now seeking to update the  
funds deed to take advantage of new provisions in the super laws

**Eligible beneficiaries under the Trust Deed:**

The Chair noted that:

1.1 The 'Primary Beneficiaries' of the Super fund are defined in the Schedule to the Trust Deed as follows:

Any beneficiary named in a binding death nomination

**Resolved**

The meeting considered the Chair's proposal to update the funds deed and resolved in favour of this change. The new deed is here by executed by the signing of this resolution.

**Closure**

There being no further business the Chair declared the meeting closed.

Signed as a true and correct record.

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Chair

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Date Signed