

SHOULD SMSF DEEDS BE UPDATED BECAUSE OF THE NEW SUPERANNUATION REFORM LEGISLATIVE CHANGES?

SMSF trustees are approaching the biggest change to the operation of their SMSF since 2007, when Simpler Super was introduced. Prior to the 2007 changes, 1999 was a time of major change, when the term 'Self Managed Super Fund' took over from 'Excluded Fund', preservation and in-house asset changes were made, and the trustee/member rules were introduced.

In both 1999 and 2007, most SMSF trustees amended their trust deeds to ensure they provided the necessary powers (and reflected the restrictions) introduced at that time.

The Superannuation Reform legislation once again changes the way in which superannuation funds operate. Therefore, prudent SMSF trustees will ensure that their trust deeds cater for the ongoing evolution of the superannuation law.

With specific reference to the Superannuation Reform legislation, older deeds may lack in a number of areas which could include:

- the ability to specifically nominate reversionary beneficiaries during the lifetime of the pension (beneficial for avoiding the resetting of pensions and also for grandfathering under Centrelink)
- the ability to refund excess contributions, given there will be greater restrictions on non-concessional contributions
- ensuring you have up to date pension provisions including roll back ability
- ensuring that the segregation provisions are up to date

- ensuring the provisions regarding excess transfer balance tax, excess non-concessional contributions tax and the process for being able to pay excess contributions to the ATO are included and up to date
- flexible BDBN provisions
- the ability to convert defined benefit pensions to market linked pensions for strategic purposes

These new changes also flow through to retirement and estate planning. The changes in pension caps mean that there will be changes in the pension/accumulation mix resulting in a need to review pensions and binding nominations. As there may now be excess death benefit payments that cannot be retained in the Fund, clients should also review their Wills and consider testamentary structures.

More care also needs to be taken now when undertaking SMSF borrowing arrangements and splitting contributions with a spouse to avoid undesirable future implications.

For those SMSF trustees who do undertake an update for their deeds, care should be taken to ensure that the deed they update to provides the ability to grandfather income streams and binding nominations currently in place within the Fund.

The Topdocs SMSF trust deed is renowned in the SMSF sector and has received a number of industry awards. With a team of lawyers residing in our legal practice, Topdocs Legal, providing individual

legal review of each and every deed update we prepare, our team also ensure that every deed update you receive is valid and effective.

And our industry leading integrations with BGL, Class Super and SuperMate ensure that ordering your deed updates is quick, easy and hassle free.

More information

Find out more about how Topdocs can make the process of updating your SMSF deeds by contacting a Topdocs consultant on 1300 659 242.

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