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Why should you keep your SMSF Trust Deed up to date?

Super legislation governs the rules and regulations for SMSFs, the fund deed is a critical competent to ensure that the fund is managed in accordance with current law.

Deeds were generally recommended to be updated on three previous occasions:

1999: 'Excluded Funds' became 'Self-Managed Super Funds', preservation & in-house assets
2007: 'Simpler Super' contribution & retirement rules etc
2017: Legislation passed in 2016, retirement phase and transfer balance cap etc.

It is wrong to assume that Superannuation law regulates how a superannuation fund must operate, this role is of the Governing Rules of the fund which prescribes superannuation law to the fund. There are many areas of law such as the SIS Act, SIS Regulations, ATO decisions, Case law & common strategies which change after fund establishment and warrant the trust deed of the fund to be updated.

SMSF Trust Deeds should be up to date to ensure trustees have powers to benefit from all legislative changes. It is a myth that deeming clause in a deed which proclaims any change in law is automatically to be included in the deed, trustees must note that any relevant power or authority of the trustee must be conferred to them by its governing rules. **You need a living and breathing trust deed.**

To be sure that the fund governing rules have all the necessary powers to administer the fund and to assure auditors that all actions taken by the trustee are supported by the funds trust deed, trustees must ensure that their fund's trust deed is always compliant with current legislation to avoid any administrative penalties.

Below are some of the unique provisions of our SMSF Trust Deed. The deed has been up dated with superannuation law as on 1st July 2017 (Version 17/2) to include provisions of Superannuation Bill Treasury Laws Amendment (fair & Sustainable superannuation) Bill of 2016 & Treasury Laws Amendment (2017 Measures No. 2) Bill 2017:

#	SMSF Trust Deed provision	Reason / Benefit for inclusion
1	Automatic **appointment of Legal Personal representative of a member in case of unsound** mind such as dementia or other related mental illness.	Dependants do not have to now apply at the Guardian court to manage the fund, if the aged member loses mental capacity.
2	Trustee **votes in case of any disagreement** in a meeting are based on superannuation fund balance of the member ($1 of member balance equals to 1 vote).	Parents with large amounts are able to control the SMSF when in disagreement with kids who have a lower balance.

3	Fund can **accept contributions from a full time employee.**	Removing the need for any salary sacrifice arrangements by employees.
4	**Adjustment to cap amounts** of concessional ($25,000) and non-concessional ($100,000) Contributions which can be made to the fund.	To acknowledge lower cap amounts from 1st July 2017.
5	**Changes to bring forward rules** where non-concessional contributions are restricted by total superannuation balance of the member.	Members will not be able to contribute non-concessional contributions to the fund whose total superannuation balances are more than or equal to the transfer balance cap amount.
6	Acceptance of **additional concessional contributions above the cap amount** in certain circumstances.	Concessional contributions above the cap amount can be made by utilizing unused concessional contribution cap amounts from up to five previous financial years.
7	Trustee **reporting requirement of Transfer Balance Account** of pension members.	Ensures that the trustee reports to ATO all movements in transfer balance account of all pension members at the intervals required by legislation.
8	**Acceptance of a death benefit payment as roll over** from another fund	Allows death benefits to be paid from the SMSF where the deceased is not a member of the SMSF and where the beneficiary of the death benefit is a member of the fund.
9	**Roll out payment of a death benefit** can either be in cash or in-specie.	Allows the roll out of death benefit of a member to another fund where the dependent beneficiary is not a member of the fund.
10	**Internal rollover** or transfer of members benefit from a pension account to an accumulation account.	Helps the member to better manage their transfer balance account in the fund.
11	**Automatic commutation of one or more pension account** of the member to accumulation account of the member.	Avoids the situation where ATO has determined excess transfer balance tax, if the total of all pension accounts breach the transfer balance account of the member to the extent of the excess amount.
12	Offer a **separate investment strategy** for any member of	Allows high earnings from certain assets to be credited to pension accounts, this helps the ECPI percentage of

	the fund.	following years (but not segregate pension assets for exempt current pension income calculation purposes).
13	**Calculation of Exempt current pension income as per the ATO's new view.**	To ensure that any deduction for ECPI is against income for only the period where there is an accumulation account in the fund where some members are drawing a pension.
14	**Valuation of assets** (real estate and investment in private companies and trusts) **to include selling costs and tax**	Lower valuation of these assets helps in keeping the total superannuation balance of members lower for any further non-concessional contributions.
15	**Reset the cost base** of an asset for 2016 -17 financial year.	Allows Trustees to re-set the cost base of any asset to its market value as per transitional Capital gain tax relief in order to comply with transfer balance cap and new transition to retirement arrangements by making an election with the regulator for 2016 - 17 financial year
16	**Automatic pension conversion** of all new contributions & roll over after the member has commenced a pension.	Avoids the need of any further statement of advice (SOA) from a financial planner to commence pensions for new contribution or roll over made to the fund. Only part of the amount will be converted to pension if the whole amount of new contribution or roll over breaches the transfer balance cap amount.
17	**Maintaining transfer balance cap of each member** of the fund in retirement phase, including any superannuation balance that are not in this fund.	Ensuring before commencing a pension that member does not breach the transfer balance cap amount (*for financial year 2017/18 $1.6M*).
18	Automatically **converting a TRIS to an account based pension** in case of meeting nil conditions of release.	To ensure that TRIS moves itself to retirement phase (conversion to account based pension) on meeting nil conditions of release such as retirement (gainfully working for less than 10 hours per week), or terminal medical condition or permanent incapacity (*item 101, 102A, 103 & 106 of Schedule 1 of SIS Regulation*) or on attaining age 65 (*item 106 of Schedule 1 of SIS Regulation*).
19	**Automatic commutation of TRIS to accumulation account**, where current pension exceed transfer balance cap amount.	To avoid breach of transfer balance cap amount, if the whole transition of retirement pension converts to an account based pension, the excess amount is moved to accumulation account automatically.
20	**Adding / replacing / removing a reversionary beneficiary without commuting a pension.**	Helps the fund in maintaining old pensions due to social security requirements in grandfathering of pensions. Also in case of replacing reversionary beneficiaries in case of marriage breakdown or for any other reason.

21	**Commute part of the pension** and reporting to ATO any movement in Transfer Balance Account.	Helps to maintain transfer balance account of the member where more than the minimum pension is withdrawn to be considered as a commutation rather than a pension payment.
22	**Reverting only part of the pension of the deceased** to not breach the Transfer Balance Account of beneficiary.	Helps in managing the transfer balance account of the beneficiary as reversionary beneficiaries TBA gets credited after death of the member. Balance amount above the transfer balance cap amount is commuted and paid out as a lump sum.
23	**Automatic payment of reversionary pension** to dependant in case of non nomination of reversionary beneficiary without any trustee discretion.	To allow the dependant to benefit from the delay of 12 months to credit their transfer balance account instead of immediate credit in case of death benefit pension.
24	**Ability to pay a reversionary pension via binding and non-binding death benefit nomination**.	Allows the trustee to commence an automatic reversionary pension in case of death of the member to the dependants of the member from BDN instead of only ability to pay a lump sum.
25	**Hierarchy to death benefit payments**, where there are conflicting binding death nominations, pension agreements with or without reversionary beneficiaries.	Deed gives trustee clear instructions to who to pay the benefit, where there are valid or invalid binding death nominations or non-binding death benefit nominations and pension agreements. This clause gives priority to pension agreement and then in case of a Valid binding death nomination where there is no reversionary beneficiary nominated in pension agreement to pay the pension to the beneficiary listed in binding death nomination and where there is an invalid binding death nomination or a non-binding death benefit and no reversionary beneficiary nominated in pension agreement to pay an automatic pension to any dependant without any discretion.