

SMSF Documentation – The Impact of Recent Reforms

Recent reforms to the superannuation rules have been far-reaching, impacting in particular on the ability of members to make super contributions, abolishing the compulsory cashing rules, changing the kinds of income streams that can be paid and significantly altering terminology used.

SMSF Trust Deeds

Key provisions you should find in an up-to-date deed include the following. After all, strategies developed in response to new legislation may be of little use to members of a fund with inflexible old governing rules!

Contributions – Deeds should give trustees discretion to accept all contributions permitted at law, including contributions for members aged up to 75 years.

Compulsory Cashing – Deeds should not incorrectly reflect repealed compulsory cashing rules, which require benefits to be paid on reaching 65 years or ceasing employment.

Benefits – Deeds should empower trustees to pay all of the kinds of benefits permitted at law, including lump sums and the new Account-Based Pensions and Transition to Retirement Income Streams. Deeds should also permit existing pensions (eg Allocated Pensions) to be continued or commuted by way of *internal roll-over* and converted to one of the new types of income streams and, critically, should also preserve whatever powers a trustee already has to pay Defined Benefit Pensions, but should not amend them or introduce new ones.

Estate Planning – Deeds should empower members to make binding and non-binding death benefit nominations, should compel the trustee to comply with a valid BDBN and should empower members to nominate the full range of dependants who can now receive a death benefit (including a person with whom a member has an interdependency relationship).

General Deeming Clause – Superannuation law is constantly changing, so deeds should also include a general deeming clause which is flexible enough to empower the trustee to do anything that is *permitted* to be done as well as compelling it to do anything that is *required* to be done.

Deed Upgrades

To assist in determining which deeds need to be upgraded, we offer the following general guidance.

- Due to the enormity of the recent superannuation reforms, we recommend that all trustees consider the need to upgrade their trust deeds. This is particularly important where members of an SMSF are reviewing their retirement or estate plans.
- We acknowledge that if deeds have been updated recently, trustees may prefer not to upgrade them again immediately. We strongly recommend, however, that such deeds be reviewed in detail before any major decision is implemented, eg commencing an income stream, making substantial contributions, splitting a contribution with a spouse or undertaking estate planning.

New SMSF Annual Update Service

In light of the real possibility of further changes to the superannuation rules and our determination to provide superior quality, value for money solutions, we have recently introduced an Annual Update Service priced at \$150 per annum (including GST) which overcomes what we consider to be the shortcomings of certain other *automatic* update services on offer.

Special Offer

For those seeking the peace of mind of having the latest version of the DBA Butler deed, clients who established new superannuation funds or upgraded deeds through us between 1 January 2006 and now may, until 31 October 2007, subscribe to the new Annual Update Service for only \$100 plus GST for the period to 30 June 2008. Note that this offer only applies where there have been no changes to the trusteeship or membership of the fund and deeds have not been amended since they were established or last updated by us.

Pension Documentation

We offer a comprehensive range of services to facilitate the documentation the new Account-Based Pensions and Transition to Retirement Income Streams, as well as Allocated and Market Linked Pensions.

Our **Premium Service** involves DBA documenting a pension for a particular fund member. Documents comprise the following tailored by us in accordance with your detailed instructions:

- an explanatory letter;
- a personalised pension product disclosure statement;
- a personalised member application form;
- personalised draft trustee resolutions;
- a summary for the pensioner of the terms and conditions of the pension; and
- the relevant ATO forms for you to complete as appropriate.

Our **Pension Kits** comprise documents similar to our Premium Service. They are designed to provide advisers with precedent documentation and guidance to document a pension themselves.

We also offer packages to document the **Roll-Back** of an existing Pension, **Conversion Kits** to document the conversion of an Allocated Pension to a new Account-Based Pension and **Crystallisation Kits** to assist advisers to calculate and document the components of a member's *crystallised segment* as at 30 June 2007.

New Pension Licences

Please note that Multi-Use Licences are now available for advisers who wish to document a number of pensions, pension roll-backs, conversions from Allocated to Account-Based Pensions or the components of members' *crystallised segments* as at 30 June 2007.

Please contact us if you have any queries or visit www.dbabutler.com.au