

Guild Lawyers and your Self Managed Super Fund

Preparing or updating a trust deed

A trust deed: Why do I need one?

“All trustees are bound by the trust deed and are equally responsible if its rules are not followed.”

- Australian Tax Office*

A trust deed is a legally binding document that sets out the rules for the establishment and operation of your self managed super fund. Your trust deed, together with superannuation laws, form the governing rules of your fund's operation, as well as the roles, rights and responsibilities of the fund's members and trustees.

The fund's trust deed gives trustees the power to accept contributions, invest super monies in accordance with the fund's investment strategy, and enables trustees to pay pensions in accordance with the rules in a way that meets the needs of the members.

Due to the legal nature of a trust deed, the Australian Taxation Office recommends that it be prepared by someone qualified to do so, such as a solicitor.

Updating an existing trust deed

As a trustee, you need to make sure the trust deed is regularly reviewed and updated so it complies with super laws (including changes to the law) and the members' needs.

- Australian Tax Office*

If you already have a trust deed but it hasn't been updated since 2006, then your trust deed will not reflect current super rules, and may limit your options, for example, to start-up a transition-to retirement plan.

It should be noted that replacing the existing deed with a new deed means a *new* SMSF is created, potentially triggering capital gains tax and stamp duty costs (if property is involved). A *Deed of Variation* will update your trust deed rather than remove and replace it with a new one.

Some examples of when you should update your trust deed:

- Periodically to reflect changes to superannuation laws.
- Immediately if a member is considering a strategy that may not be catered for in the existing deed.
- When a member is considering taking a pension, is planning to invest in unusual and/or high-risk investments, or is planning the distribution of his/her benefits after death.
- When adding or retiring members/trustees of the fund.

How Guild Lawyers can help

Often legal documents can be quite complicated to prepare – let alone understand.

Guild Lawyers appreciate how important it is that trustees and members clearly understand the contents and implications of their fund's trust deed, as well as their roles and responsibilities. Not only will Guild Lawyers ensure that your trust deed is correctly drafted and updated to meet all legal, fund and trustee/member requirements, we will also help clarify your role and obligations, as stipulated by the deed, and the law.

The main clauses of a trust deed will normally detail the following:

- Establishment of the fund.
- Structure and purpose of the fund.
- Details of who can be trustee/member.
- How to appoint and remove trustees.
- Decision making powers of trustees.
- When and who can make contributions.
- How and when benefits can be paid (i.e. pension or lump sum) within SIS Act requirements.
- What investments the fund can make.
- Fund records, audit requirements, disclosure and reporting requirements.
- How to appoint professional advisors (e.g. auditors and managers).
- How to wind up the fund.

The Guild Group

A flexible solution that makes self managed super funds easy

Call Guild Lawyers on 1800 617 624 for further information