



Level 1, 224 Rokeby Road Subiaco WA 6008  
PO Box 1725 Subiaco WA 6904  
Tel: (08) 9388 0551  
Fax: (08) 9388 6551  
[www.panthercorp.com.au](http://www.panthercorp.com.au)

## Summary of Reasons for Upgrading SMSF Deeds

### Pre-1999

If your Fund was last amended or was established without subsequent amendment prior to 1999, you should immediately upgrade to ensure that your deed complies in the following areas:

- < All members must be trustees.
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- < The superannuation law definition of “self managed superannuation fund”.
- < Expanded application of the in-house asset rules to related parties.
- < Binding nominations for death benefits.
- < Membership of spouses and spousal contributions.
- < Full preservation of your superannuation entitlements.
- < CGT relief from the sale of business assets proceeds transferred to your superannuation.
- < Expanding application of acquisition of asset rules to related parties.
- < Election to become a regulated superannuation fund.

### 1999 to 2006

If your Fund was last amended or was established without subsequent amendment after 1999, you should upgrade to ensure that your deed complies in the following areas:

- < Contribution Splitting.
- < New pension standards introduced by 2006 Budget
- < New non-commutable pension benefits that allow you to receive an income stream and continue working.
- < Interdependent relationships for beneficiaries.
- < Acceptance of government co-contributions.
- < Changes to compulsory cashing of benefits rules.
- < Changes to contribution acceptance rules.
- < Divorce and superannuation splitting.
- < Children as members and acceptance of contributions for them.
- < Any eligible person to be a Fund member.
- < Acceptance of contributions from any source not prohibited by superannuation law
- < Ability of member’s Estate to receive benefit upon member’s death (applicable where member receiving pension benefit)

### Pre 2007

If your Fund was last amended or was established without subsequent amendment prior to 2007, you should upgrade to ensure that your deed complies in the following areas:

- < Simpler Super Introduced by Federal Government which resulted in changes to the types of benefits that may be provided by a superannuation fund.
- < Self managed funds permitted to borrow on a limited recourse basis. Lenders require express powers to borrow, to give guarantees and indemnities and to appoint attorneys.
- < Benefit payments with no cashing restrictions where member has a terminal medical condition.



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- < Contents of the Fund Rules revised and shortened to reflect “Simpler Super” changes.

#### **Pre 2011**

If your Fund was last amended or was established without subsequent amendment prior to 2011, you should upgrade to ensure that your deed complies in the following areas:

- < Power to pay top up 'anti-detriment' payments on death of a member where lump sum death benefit paid
- < Trustee bound to distribute estate to member's estate if member's Will contains direction about superannuation death benefits (provided not in conflict with any Binding Death Benefit Nomination or Agreement).
- < Power to accept sophisticated death benefit payment arrangements in the form of Death Benefit Agreements or conditional Death Benefit Nominations comprising a combination of binding and non-binding directions (described by some as 'SMSF Wills').
- < Power to accept non-lapsing Death Benefit Nominations in any form acceptable to Fund Trustees without need to comply with any strict formalities that might otherwise be imposed under SISA.
- < Limits placed on power to vary or amend Fund rules where such variation or amendment might inadvertently terminate or make redundant any Death Benefit Nomination, Direction or Agreement that a Member wants to keep in force.

#### **Pre 2012**

If your Fund was last amended or was established without subsequent amendment prior to 2012, you should upgrade to ensure that your deed complies in the following areas:

- < Better able to deal with appointment of parents or guardians where a Fund has a child member who does not have a legal personal representative such as the automatic retirement of a parent or guardian when a child Member attains the age of 18 years.
- < Better control of the appointment of representative trustees where a member has more than one LPR.
- < Exclusion of State legislation on trustees which may impose caps or other limitations on the minimum and maximum number of individual trustees a Fund may appoint.
- < Allow Trustees to be remunerated when permitted under the superannuation law (example; charges for legal work performed by a trustee who is a lawyer) – impending change to SIS Act.
- < A specific rule introduced dealing with QROPS following changes commencing in April 2012 in the UK which introduce reporting requirements for Australian superannuation funds which receive rollovers from UK registered pension schemes.

#### **Pre 2013**

If your Fund was last amended or was established without subsequent amendment prior to 2013, you should upgrade to ensure that your deed complies in or is otherwise better able to deal with the following areas:

- < Better able to deal with excess member contributions as a consequence of changes to tax and superannuation law.
- < Any pension income stream does not automatically cease on death of a member to allow payments to be made after death in the event that minimum pension payment standards were not already satisfied prior to the member's death.

#### **Pre 2014**

If your Fund was last amended or was established without subsequent amendment prior to 2014, you should upgrade to ensure that your deed complies in or is otherwise better able to deal with the following areas:

- < Better able to deal with repayment of earnings on excess contributions repaid by the fund.



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- < Trustees better able to allocate specific fund expenses against a member's account where the expense is not to the benefit or detriment of all members.
- < Unless a BDBN is in place, an LPR of a deceased member must be appointed as trustee/trustee director before continuing trustees can make any decisions about death benefit payment.
- < Better ability of members to provide binding death benefit nominations with less or no prescriptive formality including the acceptance of a BDBN made prior to death but not disclosed to other Trustees/Trustee directors until after member's death.

#### **Pre 2017**

If your Fund was last amended or was established without subsequent amendment prior to 2017, you should upgrade to ensure that your deed complies in or is otherwise better able to deal with the following areas:

- < Definition of terminal medical condition amended to increase the period of expected death from 12 months to 24 months.
- < Changes to insurance rules to reflect conditions of release.
- < Clear power to operate electronic bank accounts and authorisations required to satisfy account opening requirements of some banks.
- < Exclusion of trust law requirement for minimum of two individual trustees at all time that applies in some States.