

## **We recommend you upgrade your Discretionary Trust Deed now**

When you set up your discretionary trust it was for a specific purpose - whether asset protection, tax minimisation or to build a family wealth structure. However, like a mobile phone, what features were once popular may have gone by the wayside. Remember the Nokia at the turn of the century compared to modern mobile phones that do everything. It is vital to have a modern up to date discretionary trust deed.

In addition, rulings from the Commissioner of Taxation and also a range of 2022 court cases show it is important to have a modern and up to date trust deed or you may find that the Trustee of your discretionary trust may be removed.

These are the reasons why we strongly recommend that you update your discretionary trust deed:

1. **Build a line of Succession:** We all saw with the Queens passing how quickly the line of succession to the throne and the Crown Estate was completed without any fuss or drama. Your trust, which is your crown estate needs to have a line of succession, not in Trustees, but in the Appointors who sit on top of Trust and control it. If there is only one Appointor the Trust may run to a halt for years if that Appointor dies. You must have at least two levels of Successor Appointors – *see data capture attached to provide us with your details.*
2. **Improved Asset Protection for the Trust:** There have been a number of cases where poor trust deeds and documentation has enabled the family wealth in a discretionary trust to be attacked successfully. This can be alleviated with a modern asset protection discretionary trust deed.
3. **Quarantining for bloodline only:** The trust you have is not built for bloodline beneficiaries and family wealth protection. If that is important to you and you want to ensure that your children's de facto or spouses cannot access assets in the trust in the event of separation, it is important to upgrade.
4. **Danger of 45% Taxation:** Each year the Trustee must prepare detailed trust distribution minutes detailing how income from the Trust is to be distributed amongst beneficiaries. *Failure to distribute all income properly means that there will be 45% tax to pay.* With the deed we recommend from Abbott & Mourly Lawyers tied into corresponding trust distribution minutes the task is more effective, quicker and less prone to costly tax penalties. If you don't upgrade then we will be forced to charge more for completing these resolutions for you or alternatively you can take the risk of doing them yourselves – they are complicated!
5. **Land Tax Dangers:** Most States have put in place a 2% land tax surcharge on property held in a discretionary trust that does not specifically exclude foreign person beneficiaries. Our modern discretionary trust deed upgrade does and also ensures that the accounting standards changes which require expensive "financial accounts" do not apply. Both of these recent measures in the last year can prove costly.
6. **Excluding Beneficiaries:** Recent court cases highlight the dangers of having within the field of beneficiaries children or other persons who may make a claim against the

trust. If you have ANY concerns about any of your family members or their spouses, we can exclude them from your trust with an upgrade.

7. **Make your Trust perpetual:** Currently your trust deed has a finite life running from a few years to 80 years maximum. If you, as Trustee choose to use South Australia as the jurisdiction of the Trust, even though assets and the Trustee are in this state, the Trust will not terminate meaning a future saving on capital gains tax and stamp duties.

Given all of the above and our desire to ensure that our clients have the best family succession, asset protection and trust estate planning structure and strategies in place, we highly recommend that we, through our partnership with Abbott & Mourly Lawyers, prepare a deed upgrade for you. We have your old deed and simply need to know your line of succession of appointors (see below), any excluded beneficiaries and we will do the rest. The cost of the deed upgrade is \$450. Please do not delay as Abbott & Mourly Lawyers are dealing with a tragic case where the Trustee and Appointors both died together leaving the trust rudderless and all wealth in the trust locked up for two years.

If choose not to upgrade your deed and litigation ensues based on the provisions or failures of an older deed, we note that we ask that you sign below by no later than 30 days indemnifying our firm for not taking up our recommendation.

Kind Regards

Your Name

Firm

### **Declaration of Indemnity**

We hereby hold our accountants indemnified against any litigation, regulatory action or other financial penalties for keeping our current deed and trust resolution process.

Signed

Trustee of the Trust

## DATA CAPTURE

### 1. Succession Appointors

Please include the following as Successor Appointors – for each line you can have joint Successor Appointors:

Position	Name and Address
Successor Appointor	
Second Successor Appointor	
Third Successor Appointor	

### 2. Excluded Persons

Please include the following as Excluded Beneficiaries:

Person	Name and Address
Excluded Beneficiary	
Excluded Beneficiary	
Excluded Beneficiary	