

SAMPLE UPGRADE OF SMSF TRUST DEED LETTER

This letter may be used to encourage clients to upgrade their SMSF Trust Deed to the latest Abbott and Mourly SMSF Deed.

**IMPORTANT INFORMATION on THIS DOCUMENT**

Many SMSF deeds are woefully out of date, and our view is:

1. Upgrade your SMSFs and do it at least every three years. The Commissioner requires it and we are upgrading it regularly for new strategies. In fact we just went through a review of the Abbott and Mourly Lawyers SMSF trust deed, and made some serious changes including a lot more strengthening in the bloodline estate planning area;.

The letter attached, for you to tailor, put onto your letterhead and send to your SMSF clients has been designed to encourage clients to upgrade their SMSF Trust Deeds to a Abbott and Mourly Lawyers Trust Deed. Following the significant reforms and legislation changes in the industry, it is vital that SMSF fund rules (i.e. the trust deed) remain both up-to-date and watertight.

**The path to upgrade success starts with a conversation with the client.**  For that we have prepared this letter - *Client Deed Upgrade recommendation letter* – a strong word about compliance and the Commissioner of Taxation’s requirements. Remember also that the fee payable by the Trustee is tax deductible.

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Adviser/Accountant Name

Firm Name

Address

City, State, Postcode

Date

Client Name

Address

City, State, Postcode

Dear Mr./Ms. [Client Name]:

I hope this message finds you well. At [Your Company Name], we are continually focused on providing effective and up-to-date solutions for managing your Self-Managed Superannuation Fund (SMSF). Staying current with legislative changes is vital to safeguard your investments and ensure legal compliance. Upgrading your SMSF deed is a key part of this process. It helps align your fund with the latest superannuation laws, offering enhanced protection and more effective fund management.

In line with these efforts, we are collaborating with Abbott and Mourly Lawyers, specialists in SMSFs and Superannuation Laws, to upgrade your deed to the latest version. This upgrade not only ensures compliance but also enhances your ability to manage your Fund efficiently and provides much needed flexibility.

**Important Upgrade to your SMSF Deed and Rules**

The Commissioner of Taxation requires all SMSF trustee(s) to ensure that their existing deed(s) and governing rules of their SMSF are current and suitable for all members. Failure to have a current and updated deed may result in:

* **Potential Fines:** Trustees and directors of corporate trustees face personal liability for administrative penalties for contravening key provisions of the Superannuation Industry (Supervision) Act 1993 (SIS Act);
* **Compliance Challenges:** Trustees and members may struggle to implement essential new superannuation changes, leading to compliance issues;
* **Strategic Limitations:** Being unable to utilise contemporary strategies can limit the maximisation of SMSF benefits and the reduction of taxation;
* **Audit Issues:** Auditors may discover transactions and actions by trustees that do not comply with recent changes to superannuation and tax laws.

Generally, it is best practice to upgrade your deed when new rules are introduced. Some of the changes to the laws required to be reflected in the deed for your SMSF are:

1. **Increased Member Capacity:** From 1 July 2021, an SMSF can have up to six members, up from the previous limit of four, allowing for a more inclusive family super fund;
2. **Younger Members' Investment Accounts:** The deed should enable younger members to hold their superannuation benefits in separate investment accounts from other members;
3. **Limiting Death Benefit Payments:** The deed might need to limit the payment of superannuation benefits upon a member's death to their lineage or bloodline based on the dependants allowed under the Superannuation Industry (Supervision) Act 1993;
4. **Pension Limit and Payment Rules:** Ensuring the fund complies with pension limit rules and regulations;
5. **Broader Contribution Categories:** Allowing the trustee to accept a wider range of contributions, especially for retired members;
6. **SMSF Living Will:** In case of incapacity due to illness, quarantine, or dementia, the deed should provide clear directions to the trustee. This ensures your enduring power of attorney can act as your replacement trustee and execute your wishes in a binding manner;
7. **SMSF Will:** Directing the trustee in the event of your death, so your executor becomes the replacement trustee, ensuring your wishes are carried out while also providing with more flexibility in distribution of your superannuation benefits.

Because of the above, and in particular, the Commissioner’s requirements, compliance and audit issues and ensuring your SMSF is as strategic, efficient and less likely to hit an expensive roadblock, we strongly advise that you upgrade the current deed and governing rules for your fund.

**Why Upgrade to Abbott and Mourly Lawyers SMSF Deed?**

1. **Enhanced Protections:** With the evolving regulatory landscape of SMSFs in Australia, the Abbott and Mourly Lawyers Deed is designed to integrate the latest legislative changes, ensuring robust protection and legal compliance for your SMSF.
2. **Enhanced Flexibility:** This Deed offers greater flexibility in structuring your SMSF, making it easier to tailor your fund to your unique financial goals and needs. Whether you're planning for retirement, tax efficiency, or estate planning, it provides you with the tools necessary to achieve your objectives.
3. **Cost-Effective Solution:** Upgrading to the Abbott and Mourly Lawyers Deed is a cost-effective way to ensure that your SMSF remains compliant and aligned with your financial goals. Avoid potential penalties and expensive legal fees by staying up to date with the latest documentation.
4. **Risk Mitigation:** It includes vital provisions for identifying and mitigating risks, protecting your retirement savings from unexpected challenges and market volatility.
5. **Greater Control:** Business owners can exercise a high level of control over their SMSFs. This includes investment choices, asset allocation, and retirement planning strategies. This control can be particularly advantageous when aligning investments with the business's goals.
6. **Tax Efficiency:** SMSFs offer tax benefits, including potentially lower capital gains tax (CGT) rates and tax concessions for contributions made to the fund.
7. **Asset Diversification:** SMSFs allow for a wide range of investment options, including direct property investments, shares, fixed income, enabling effective risk distribution and potential enhancement of returns.
8. **Borrowing within the Fund**: Under certain conditions, SMSFs can borrow to acquire assets (business real property), such as property. This can be a useful strategy for business owners looking to expand their investment portfolio while leveraging the fund's assets.
9. **Protection of Assets:** SMSFs offer a level of asset protection from business-related creditors and legal claims. This can be particularly important in the event of business difficulties or bankruptcy.

The cost for the upgrade is $ and the annual upgrade service is $\_\_\_. Can you please check which of the following boxes apply to your SMSF:

* Upgrade: To ensure we comply, meet the ATO guidance, and take full advantage of current laws we would like to upgrade our deed.
* No Upgrade: We hereby disclaim all liability to our professional SMSF advisers for having an old trust deed and governing rules in the event of any compliance, litigation, or ATO actions as a consequence of running the fund with an outdated deed.

As time is of the essence may you please tick one of the boxes above and fax, scan, post, or email this letter back to us promptly

Sincerely,

Name of Professional