



# MJHC LEGAL LAWYERS

Superannuation · Property · Wills · Commercial

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Dear Peter,

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**RE: REVIEW OF YOUR SMSF TRUST DEED RULES**

I refer to your request that I carry out a review of your SMSF Rules versions 4.01 to 8.0 inclusive covering the period 1 May 2007 to the date of this letter.

The purpose of this review is to provide advice to SMSF auditors. The advice relates to funds using these rules as at 30 June 2016. You are concerned about these rules complying with the Superannuation Industry Supervision Act 1993 (SISA).

I can advise that following my review of the rules any regulated self managed superannuation funds using these versions of the rules as at 30 June 2016 are operating with a deed that fully complies with the SISA legislation subject to the following:

- If any fund is contemplating limited recourse borrowings, version 4.05 or later of the Fund Rules should be adopted.
- Where a terminal illness payment is to be provided by a Fund, Version 4.03 or later of the Fund Rules should be adopted.
- If a terminal illness payment is to be provided by a Fund because a member has a reasonable likelihood of dying within 24 months, version 8.0 of the Fund Rules must be adopted.
- Where an "auto-reversionary pension" is to be provided by a fund, it may be prudent to adopt version 5.1 or later of the fund rules.

Whilst not SISA issues:

- some banks may require modification to Fund Rules versions adopted prior to version 8.0 to permit electronic banking and to also operate bank accounts with a single signatory where there is more than one individual Trustee or Trustee director;
- any Fund proposing to operate at any time with only a sole individual trustee (whilst still satisfying s17A of SISA) should adopt version 8.0 of the Fund Rules to exclude the application of the trustee legislation of some States that impose a minimum requirement of 2 individual trustees;
- some lenders may require modification to Fund Rules versions adopted prior to version 4.05;

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- any Fund proposing to enter into a borrowing arrangement with the CBA should use Fund Rules version 4.09 or later;
  - any Fund proposing to enter into a borrowing arrangement with Westpac should use Fund Rules version 7.0 or later;
  - unless there is a valid BDBN in place, it may be prudent to adopt version 7.0 or later of the Fund Rules to require a deceased member's LPR to be appointed as trustee/trustee director before the deceased member's death benefit can be distributed;
  - any Fund wishing to meet the requirements of QROPS will need to use Fund Rules version 7.1 or later and enter into a Deed of Variation whereby Fund membership is limited to only persons who have attained the age of 55 years or later.

You may forward this letter to any auditors of SMSF's so that they may use it to assist with their audit process.

Yours faithfully,

**MJHC LEGAL**

*Martin JH Craig*

**Martin JH Craig**

Principal