



# Class Ignite 2024 | Get Connected

The Hilton Sydney, 18 - 19 September 2024

Till Docs do us  
part.....

---

Get Connected. Explore Opportunities.  
Be Inspired.



# Till Docs do us part....



Mike Spakman  
Product Consultant  
NowInfinity  
[Mike.Spakman@class.com.au](mailto:Mike.Spakman@class.com.au)



Kevin McFadden  
Technical Compliance and  
Consulting Manager  
NowInfinity  
[Kevin.mcfadden@class.com.au](mailto:Kevin.mcfadden@class.com.au)

# — Today's presentation

- Why is up to date documentation for your SMSFs so important?
- What provisions should you look for in your SMSF deed, investment strategy and pension docs?
- How can you ensure your SMSF documentation is always up to date?

## — Disclaimer

This presentation and its associated notes are provided for general information only. This presentation is not intended to be (and should not be considered to be) financial product or legal advice

The presentation is no substitute for client specific expert advice, and is based on our view of the law, and proposed law, at the time of presentation

Anyone relying on these notes should, before acting on the information provided, obtain expert advice from a specialist superannuation or tax professional, to confirm particular application to their specific investment and/or compliance issues



## — SMSF docs are all the same....right?

- Well, no!
- Myriad of providers in the market
- Legislation and regulations change regularly
- Legal documents also need to be updated regularly to include these changes
- If your legal documents are not regularly reviewed and updated
  - your clients and their intended beneficiaries may inadvertently be exposed to legal and regulator risk
  - Your clients won't be able to maximise the opportunities an SMSF provides to them

## — Does it really make that much difference?

- Yes!
- Litigation cases are high and the outcomes of these cases could largely have been avoided
- We can learn from the outcomes of court cases to mitigate a Fund's exposure to future litigation
- Many outcomes could have been avoided if:
  - The deed for the Fund had be reviewed carefully, and the death benefit provisions followed according to the deed's provisions
  - or better yet, the deed had been BETTER DRAFTED to avoid specific procedures having to be followed in the first place!
  - The BDBN had been carefully and clearly drafted

— Ok – if they are so important, how do I know what to look for?

- Great question!
- Today we will examine the key provisions of your
  - SMSF Deed;
  - investment strategies; and
  - SMSF pensions
- To show you what these important documents should provide for to ensure your clients maximise the opportunities their SMSF provides to them

# The SMSF Deed



# — The SMSF Deed – It's your rule book!

- The deed of your SMSFs is one of, if not the most important document
- Why? Because it dictates what your clients can and can't do
  - If legislation says you can and deed says you can't – you can't!
- For this reason it is incredibly important to ensure your SMSF deeds always contain the most up to date legislative provisions

# — What areas should I focus on in the Deed?

The key areas we will discuss today are:

- Death benefit provisions (planning for death and ensuring benefits are protected from dispute on death); and
- Payment provisions (ensuring all payment methods are sufficiently catered for, particularly income streams)

# — Death Benefit Provisions

- Death Benefit payments are the highest area of SMSF litigation
- Higher member balances and more blended families = more risk of challenge
- Making sure your SMSF Deed has clear and practical death benefit provisions ensures:
  - Your clients can strategically plan their finances upon their death in a way that best suits their wishes
  - You can assist your clients to mitigate the risk of their wishes being challenged when they die

# — Death Benefit Provisions – What to look for

- Clear hierarchy of death benefit instruments
  - Itemises what gets paid in a practical and clear manner
- The ability to change pension reversion nominations
  - To cater for changes in member circumstances

# — Death Benefit Provisions – What to look for

- Flexibility in the drafting of Binding Death Benefit Nominations
  - BDBNs shouldn't lapse after 3 years
  - There should be no formatting or procedural notice requirements
  - BDBNs should be able to be drafted in a flexible way to cater for a wide range of client needs and circumstances
- Retention of prior binding instruments when updating the deed
  - Existing binding instruments should be retained and not inadvertently invalidated when a new deed is adopted

# — Income Streams

It is largely taken for granted that income streams can be paid from an SMSF, but the provisions of the deed, and as we will see later, the provisions of the income stream documents themselves, are incredibly important to ensure:

- ECPI is granted for each year for the Fund
- Pension benefits are passed to the desired beneficiary



## — Income Streams – what to look for in the deed

- Specific power to pay the intended income stream
- Specific reference to the condition of release the member must satisfy to commence the pension
- The ability to nominate a reversionary beneficiary at the commencement of the pension
- The ability to change the reversionary beneficiary nomination during the course of the pension without the need to commute the pension to do so

## — Income Streams – what to look for in the deed

- Clear hierarchy of death benefit payments when a BDBN and Pension are both in place for a member
  - To mitigate challenges to the payment of the reversionary pension should a BDBN also be in place for the Fund
- Retention of prior pensions when updating the deed
  - Ensure that pensions currently in place, that can no longer be commenced, can continue to be paid on the same terms and conditions when the deed is updated

## — Income Streams – recent developments

- A recent amendment to TR Ruling 2013/5 is worth noting
- This ruling outlines when a pension commences and ceases
- Changes to paragraph 20 of the ruling
- Effectively if you miss a pension payment, you will need to reset the pension

# Investment Strategy Documentation

# — Investment Strategy Documentation

- There has been a higher level scrutiny of investment strategies over the past 5 years resulting from:
  - ATO sending 17,000 letters to trustees regarding 'diversification'
  - The ATO's publications on the requirements of an investment strategy
  - Amendments to APES Code of Ethics for Professional Accountants
- As a result it is important to ensure your investment strategies include the requirements the ATO has set out and are not just one pagers!

# — Investment Strategy Documentation – Checklist

- Member Specific Details:
  - Age
  - Employment Status
  - Future contribution expectations
  - Short and long term benefit payment requirements
- Insurance coverage for members (will it be held?)



# — Investment Strategy Documentation – Checklist

- Diversification
  - Doesn't have to be diverse, but the trustees do have to be seen to have considered diversification and this should be noted in the strategy
- Asset classes – can't all be 0-100%
- Needs to be reviewed regularly
  - 'Review your strategy at least annually and document that you have undertaken this review'

# Income Stream Documentation

# — Income Stream Documentation

- Why is having comprehensive documentation important?
  - Ensures compliance with the auditor and regulator
  - Ensures the reversionary beneficiary will receive the pension without challenge on the death of the member
  - Provides flexibility to change the reversionary

## — Income Stream Documentation – Key Provisions

- Clearly nominate the reversionary beneficiary (if one is desired) that the member wishes to receive their benefit after death
- Clear date by which the income stream is to commence
- Ensure the trust deed permits the type of pension and relevant condition of release being used to access the benefit
- Ensure the trust deed permits subsequent changes to the reversionary beneficiary nomination

# — NowInfinity SMSF Deed, Investment Strategy and Pension Docs

- SMSF Deed drafted to be specific for certain provisions where required and broad to incorporate legislative changes
  - See our team for a full break down of the NI deed rules
- Investment Strategy – captures specific member information, broad range of asset classes (including crypto investments), diversification and insurance requirements
- Pension Suite – Broad range of documents to facilitate new pension commencements, commutations and annual pension payments
  - Recently updated by our team as part of our ongoing commitment to regular reviews and enhancements (see our team for more info!)

How can I ensure my SMSF documentation  
is always up to date?



## — How can I ensure my SMSF documentation is always up to date?

- Whilst we've gone over what to look for in your SMSF documentation as the current legislation and ATO guidance's stand today, SMSF legislation, ATO regulations and case law is constantly evolving
- Therefore it's important to ensure you are constantly on top of changes as they occur
- So how can you do this?

## — How can I ensure my SMSF documentation is always up to date?

- Partner with a firm that monitors the legislative and regulatory environments and updates their documents where necessary
- Use intelligent software that assist you to get your funds onto the most up to date SMSF documentation in a cost effective and time efficient way

## — Keeping your SMSF documents up to date with NowInfinity

- NowInfinity regularly reviews and update our precedents – in the past 18 months we have reviewed and updated our SMSF Trust deed, BDBNs, Investment Strategy and Pension Suite
- We make the process of updating your SMSF deeds to the latest rules quick and easy, removing the time burden usually associated with this process
- We also streamline the process of ordering your ongoing SMSF documents

# — Keeping your SMSF documents up to date with NowInfinity

- Via Super Comply, NowInfinity's SMSF Compliance module, you can:
  - Import the details of your SMSFs directly into the NowInfinity platform from Class, Xero or via an Excel spreadsheet
  - You can then use that information to populate your deed updates application forms streamlining the ordering process
  - You can also order other SMSF documents with all Fund details automatically populated
  - Coming soon - Annual Deed update service to ensure your SMSF deeds are always up to date without the need to enter any client information

# — Updating your SMSF Deeds with NowInfinity

The screenshot shows the NowInfinity website interface. The browser address bar displays <https://mria.nowinfinity.com.au/#/>. The header includes the NowInfinity logo, a menu icon, and navigation links for DOCUMENTS and CREATE DOCUMENT. A search bar is present with the text "SEARCH Companies, Trusts, Documents". The main content area is titled "Select a document you would like to generate" and features a search input field. Below this, there are three columns of document options:

- TRUSTS**
  - [Discretionary Trust](#) (See sample) **3 SAVED**
  - [Discretionary Trust \(Capital Reserved Lineal Descendant\)](#)
  - [Discretionary Trust \(Fully Reserved Lineal Descendants\)](#)
  - [Deed of Variation \(Exclude Foreign Beneficiaries\)](#)
  - [Change of Trustee of Discretionary Trust](#)
  - [Change of Appointor of Discretionary Trust](#)
  - [Change of Discretionary Trust Name](#)
  - [Fixed Unit Trust](#)
  - [NSW Land Tax Unit Trust](#)
  - [Vesting of a Discretionary Trust](#) **2 SAVED**
  - [Vesting of a Unit Trust](#)
  - [Change of Trustee of Unit Trust](#)
  - [Change of Unit Trust Name](#)
  - [Declaration of Trust](#)
- COMPANY FORMATIONS**
  - [Name Reservation](#) **\$81**
  - [Standard Company](#) (See sample) **4 SAVED** **\$597**
  - [SMSF Special Purpose Company](#) **\$597**
  - [SMSF Establishment with Special Purpose Corporate Trustee](#) **2 SAVED** **\$597**
  - [Public Company Limited by Guarantee](#) **\$491**
  - [Public Company Limited by Shares](#) **\$597**
  - [Constitutional Upgrade](#)
  - [Business Name Registration](#)
  - [Business Name Renewal](#)
- SELF MANAGED SUPERANNUATION FUND**
  - [SMSF Deed of Establishment](#) (See sample)
  - [CGT Transitional Provision Election](#)
  - [SMSF Deed of Variation](#) **1 SAVED**
  - [SMSF Holding Trust \(Bare Trust\)](#)
  - [Investment Strategy](#)
  - [Trustee Consent and Member Application](#)
  - [Change of Trustee](#)
  - [Change of Fund Name](#)
  - [SMSF Compliance Statement](#)
  - [SMSF Winding Up](#)
  - [SMSF Member Exit](#)
  - [Binding Death Benefit Nomination](#)

At the bottom right, there is a **Help** button.



# Thank you

[class.com.au](https://class.com.au)



[classlimited](#)



[ClassPtyLimited](#)



[ClassPtyLimited](#)