

SMSF Trust Deed Features: NowInfinity

KEY FEATURE	RULE #	EXPLANATION
TRUSTEES		
Eligibility	2.1	Allows for Individual trustees or a corporate trustee, and any form of trusteeship that satisfies the superannuation law
Registration of Trustees not required	2.2	Ensures appointment of trustees is effective without the need to register under any State Laws
Incapacity of Trustee	2.2	Allows for a Legal Personal Representative (LPR) to be appointed in place of a Trustee under a legal disability such as an LPR with an Enduring Power of Attorney (EPOA) or court or tribunal appointed LPR if there is no EPOA in place
Powers – General and Investment Powers	4.1; 4.5 and 7.2	The NowInfinity Governing Rules contain a wide range of powers, not common powers but also additional powers, such as the power to pay or for the Fund to be reimbursed for costs of establishing, maintaining and operating the Fund (and if applicable a Corporate Trustee); the power to deal with a lost Deed or Governing Rules; and the power to invest, if so desired, in cryptocurrency and other less common investments
Investment Powers – SMSF borrowing	4.1(a), 4.1(k), 4.3(c) and 8.1-8.3	The NowInfinity Governing Rules have all the required clauses for SMSF borrowing and have been accepted by all of the major SMSF Lenders
Investment Powers – property and stamp duty	7.5 and 7.6	Assets can be held for specific members. Also, contributed property can be held for specific members - assists with stamp duty exemptions in various States (particularly WA and NSW) in relation to property purchases and transfers.
GENERAL PROVISIONS		
Voting	2.5	Individual Trustees – matters to be determined by the Trustees are decided by majority and each Trustee has one vote. If a majority decision cannot be reached or if a Trustee requests a formal vote, then voting is based on Member balances. LPRs who become Trustees on behalf of Members are empowered to vote. Corporate Trustee – The directors of a corporate trustee will vote under the provisions of the relevant constitution
Trustee Resolutions	2.6	A resolution, signed by all Trustees, may effect a Trustee decision instead of a Trustee meeting
Indemnity	4.7	Individual Trustees are indemnified except in limited circumstances such as dishonesty
Family Law	15	The Trustee is empowered to undertake and complete actions required in relation to requests for information, Family Law Splitting agreements and Family Law orders

Deed of Confirmation including regarding lost deed and rules	4.1(ii) and 4.11	Allows the Trustee to deal with lost deeds, rules and other documents of the Fund and where the law permits to sign a Deed of Confirmation to rely on copies of lost documents etc
Change of Status to Small APRA	4.1(jj)	Permits the Fund to change its status to a Small APRA Fund
Transfer Balance Cap	10.5	Allows the Trustee to maintain, monitor, report etc regarding a Member's Transfer Balance Cap
RESERVES		
Reserves	10.4	Allows for the establishment of any Reserve Account permitted by law, for a range of purposes
MEMBERSHIP		
Membership	5.1	Allows for admission of anyone permitted by law to be a Member, including minors and Members with nil balances
Cessation of membership	5.6	Appropriate rules to ensure that membership is ceased when appropriate but not necessarily ceased, for example, simply by having a nil balance or ceasing to be a Trustee
CONTRIBUTIONS, TRANSFERS AND ROLLOVERS, GIFTS		
Contributions	6.1	Allows all contributions permitted by Superannuation law including specifying a wide range of contributions such as government co-contributions, child contributions, spouse contributions, splitable contributions, downsizer contributions and in specie contributions
Splitable contributions	6.3	Allows a Member to request that a contribution be split between the Member and their spouse subject to the superannuation law
Ineligible Contributions	6.4	Trustee may repay contributions (including contributions made in error or excess contributions) so long as not in breach of superannuation law. The Trustee is also authorised to repay contributions if directed by the Regulator.
Transfers and Rollovers	13	This rule governs the terms of transfers and rollovers out of, and into the Fund
In-Specie Transfers	6.2	The Trustee is empowered to accept in-specie transfers of assets as contributions, subject to the SIS Act restrictions
Specific Asset for Member only	7.5, 7.6	Assets can be held for specific members. Also, contributed property can be held for specific members - assists with stamp duty exemptions in various States (particularly WA and NSW) in relation to property purchases and transfers.
BENEFIT PAYMENTS		
Dealing with benefits	14.3	Permits payment in one or more lump sums, income streams or a combination of both, by an in specie transfer of assets of the Fund or in any other way permitted by the Superannuation law
Temporary incapacity	14.1	Permits the trustee to pay a Temporary Incapacity benefit
Permanent incapacity	14.1	Permits the trustee to pay a Permanent Incapacity benefit

Terminal medical condition	14.1	Permits payment as a lump sum, income stream or a combination of both
Other benefit payment events	14.1	Allows for the payment of a benefit on compassionate grounds, under the First Home Save Super Scheme and any other circumstances that allow a benefit to be paid

BENEFIT PAYMENTS – INCAPACITY & ESTATE PLANNING

Member Estate Planning, Death Benefit options	9.1	<p>The NowInfinity SMSF Deed allows for:</p> <ol style="list-style-type: none"> 1. Automatic Reversionary Pensions (ARP); 2. Binding Death Benefit Nominations (BDBN) that are non-lapsing unless the Member specifies the BDBN is to be lapsing; 3. Non-Binding Death Benefit Nominations (NBDBN) that are non-lapsing unless the Member specifies the NBDBN is to be lapsing; and 4. Member Directed Superannuation Benefit Plans
Priority of Death Benefit Payments (default position)	9.2	<p>This Rule specifies a clear priority on the order of payment of a Member's Death Benefits (in case the Member has inadvertently signed conflicting estate planning documents):</p> <p>Priority 1 - ARP: If a Member starts a Pension and (at any time) nominates an eligible reversionary beneficiary ('RB'), then on the Member's death, that Pension automatically and immediately reverts to the Member's RB;</p> <p>Priority 2 - BDBN: In respect of Death Benefits not dealt with under an ARP;</p> <p>Priority 3: Death Benefits not dealt with under Priority 1 or 2 are dealt with in accordance with the Trustee's discretion, with the Trustee having power to distribute remaining Death Benefits to the Legal Personal Representative of the estate of the deceased Member (LPR) and/or to Dependant/s of the Member or an Approved Fund for the benefit of Dependant/s.</p>
Option for Member Directed Superannuation Benefit Plan (MDP) to change the Priority of Death Benefit Payments default position.	9.7(c)	<p>Although not common, a Member has the option to change the priority of death benefit payments default position by signing a MDP which contains any order of priority that the Member may wish to apply. An MDP would usually be prepared in consultation with a lawyer and would deal with a Member's particular (possibly unusual) circumstances. The scope of what may be included in the MDP is subject only to the limitations of the superannuation law.</p>
BDBNs	9.4	<p>The deed allows for Lapsing or Non-Lapsing Binding Death Benefit Nominations, with non-lapsing being standard. Even if a BDBN is delivered to a Trustee after the death of the Member, provided it is received by the Trustee prior to the first Death Benefit payment and otherwise complies with the Rules, the BDBN will be binding. BDBNs can be structured in a variety of ways to provide great flexibility for the Members in planning how their SMSF death benefits will be distributed.</p>
Grandfathering	Deed of Variation	<p>The operative provisions of the NowInfinity Deed of Variation, which adopts the NowInfinity Governing Rules, retain all prior Pensions and death benefit instruments ensuring that previous Beneficiary nominations made by the Member remain valid [unless the Member wishes to, and at some future time amends or revokes any such nominations]</p>

Reversionary Pensions v BDBNs (and noting Priority of Death Benefit Payments referred to above)	9.2	<p>Under the NowInfinity Governing Rules a BDBN will not apply to benefits applied under a valid Reversionary Pension Nomination</p> <p>For example, if a Member has an ARP (pension account with a nominated reversionary beneficiary), the commencing value of which was \$250,000; and the Member also has \$50,000 in their accumulation account THEN on the Member's death:</p> <ol style="list-style-type: none"> The ARP will take priority and the \$250,000 pension will revert to the Member's nominated reversionary beneficiary; and The Member's BDBN will relate only to the Member's benefits not in the ARP (ie the Member's BDBN will relate to the \$50,000 balance in the Member's accumulation account) and the \$50,000 will be distributed in accordance with the Member's BDBN (to the Beneficiaries named in the BDBN).
Deemed Revocation of BDBN if Family Law proceedings commenced (unless BDBN stipulates otherwise)	9.5	If a Member nominates their spouse as a beneficiary in a BDBN and they separate and Family Law proceedings are commenced, that nomination is deemed revoked [unless the BDBN specifically states that revocation is not to occur]
Enduring Power of Attorney who has been given specific power to deal with a Member's superannuation interests	9.8	Where an LPR under an Enduring Power of Attorney has been given specific authority under that document to deal with a Member's superannuation interests, the LPR may commence a Pension or vary its terms, revoke or nominate a Reversionary Beneficiary in respect of a Pension, revoke vary or make a BDBN, NBDBN and/or MDP. Those changes by the LPR may not benefit the LPR directly unless the Power of Attorney expressly authorises that to occur. The LPR may benefit indirectly if they are a beneficiary in the deceased Member's estate.
Superannuation Proceeds Trust	9.4(viii) and 14.12(d)	Empowers the Trustee to pay death benefits to a Superannuation Proceeds Trust if directed under a BDBN, or at the discretion of the Trustee
BENEFIT PAYMENTS – INCOME STREAMS		
SMSF pensions	14.8	The NowInfinity Governing Rules allow for the payment of any pension under the Superannuation law, including Account Based Pensions, Transition to Retirement Income Streams and Market Linked Pensions
Grandfathered pensions	14.8	Allows for grandfathering of all prior pensions to ensure they can continue to be paid when the NowInfinity Governing Rules are adopted even if the pension is no longer able to be commenced
Recommencement of a ceased pension	14.10	Deals with recommencement of a pension if, for example, a pension has ceased due to failure to pay minimum pension requirement
Conversions, commutations, Pension resets and internal rollovers	14.11	The Governing Rules allow the Trustee to convert, commute, or internally rollover pensions in accordance with the Superannuation law
Pension reversions	9.3 and 14.12	Provides rules for the payment of pensions to nominated reversionary beneficiaries and, failing any valid reversionary nominations, how death benefits are to be paid

Changes to Pension reversions mid pension without having to commute the pension	9.3	The Trustee with the consent of the Member may at any time vary the terms and conditions of a pension including a variation which adds, removes or replaces any nomination or direction about the continuation of the pension as a reversionary pension upon the death of the Member
Segregation of pension assets	4.1(dd)	The NowInfinity Governing Rules allow for segregation of pension assets

DEATH BENEFIT PAYMENTS

Deceased Member's	14.2(c)	Trustee must obtain the deceased Member's formally appointed LPR's consent to the manner and form of payment before making any discretionary payments. In some circumstances it may be sufficient for the Trustee to obtain the consent of the person named as the deceased's Executor in their Will (even if Probate has yet to be granted and that person has not been formally appointed as LPR yet).
Trustee may nominate form of Death Benefit payable in some circumstances	14.12(f)	<p>If in respect of a pension, a Member nominates a reversionary beneficiary who is not eligible to receive the Benefit by the time the Member dies eg when a nominated minor child is an adult at the time of the Member's death, the Trustee may pay the Benefit to the adult child as a lump sum.</p> <p>Where an estate planning document does not specify the form of death benefit to be paid the Trustee may agree on the form of payment (eg lump sum or pension) with the nominated Beneficiary otherwise the Trustee may decide.</p>

WHAT WE DON'T INCLUDE & WHY

<p>SMSF Wills or Living Wills</p>	<p>SMSF Wills and Living Wills are terminology used by some document providers. We don't use these terms as:</p> <ul style="list-style-type: none"> The word Will may imply that these can be part of a client's Will and can cause confusion These documents may have little court precedent The NowInfinity Governing Rules cater for possible death benefit strategies including Automatic Reversionary Pensions and non-lapsing BDBNs <p>Members can also utilise Member Directed Superannuation Benefit Plans if they wish</p> <ul style="list-style-type: none"> The NowInfinity Governing Rules provide for the payment of benefits relating to Temporary & Permanent Incapacity (including mental incapacity) and terminal medical conditions
<p>Reversionary Pensions v BDBNs</p>	<p>Some SMSF deed providers direct that:</p> <ul style="list-style-type: none"> a BDBN will take precedence over a Reversionary Pension Nomination; or the most recent document, either BDBN or Reversionary Pension Nomination, will take precedence, <p>which we feel can lead to unintended consequences.</p> <p>Instead, under the NowInfinity Governing Rules, a Reversionary Pension Nomination will take precedence over a BDBN where both are valid and in place for a specific member</p>
<p>Employer Sponsors, Principal Employers or similar</p>	<p>Many older SMSF deeds had Employer Sponsors, Principal Employers or similar as parties to the deed. This has created a number of problems including, if that role was filled by a company, the company may have been sold or deregistered or, if an individual, that person may have passed away. There would then be issues of not being able to update the deed or even a requirement that the Fund be wound up in some cases.</p>
<p>Provide a deed that needs to be varied when a change of trustee occurs</p>	<p>One prominent SMSF deed supplier requires a deed to be varied in full if there is a change of trustee from individuals to corporate or vice versa.</p> <p>The NowInfinity Governing Rules are NOT required to be varied if there is a trustee change.</p>

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