

THE VIRTUE OF A GOOD DEED



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DOCUMENTS USING PLAIN LANGUAGE CAN HELP ENSURE THAT TRUSTEES OF A SELF-MANAGED SUPERANNUATION FUND UNDERSTAND THEIR RESPONSIBILITIES, AS SET OUT IN THE FUND'S DEED.

When you say to your clients something like ... "You have responsibilities as a trustee of your SMSF. Here is the deed. Read it carefully. You must make sure you comply with it. This is really important." ... how do you reckon your clients feel?

The chances are their hearts sink.

The deeds that set out the rules for self-managed superannuation funds (SMSFs) can be complicated and intimidating for the best of us. The deeds must be a struggle for many trustees – and more than a struggle for some trustees. Indeed, a recent study by the CPA confirmed that up to 33 percent of SMSF trustees do not understand – or worse, do not even recognise – their responsibilities in relation to their fund.

NON-COMPLIANCE RISKS

The ATO has repeatedly expressed its intent to pursue non-complying funds with increased vigour. The prospect of the ATO reviewing a fund with a complicated deed – one that the trustees do not understand, and so may not have complied with – presents a risky combination for the fund's accountant. Also, heavy, complicated deeds are likely to sour the relationship between you and your clients. On the other hand, clear, plain-language documents can help sweeten relationships. Imagine if your clients rang back and said: "You know, I actually had a look at the deed. In fact, I read it all. It's refreshingly clear."

Just as importantly, if trustees can understand their obligations, then they are much more likely to comply.

PUTTING IT PLAINLY

Thankfully, plain language is becoming increasingly common in Australian legal



documents. It's about time. For too long, lawyers used their own uncertainties about "what the original document really meant" to resist the demands for clarity being made by everyone else. Nowadays, all of Australia's major national law firms, and many of the smaller firms, at least claim to write in plain language – and many of them actually do. Even the people who write legislation are striving for clarity: think of the tables and graphs being used in tax legislation.

There's a long way to go, but progress is being made. Better still, it's a one way street – nobody ever says, "Can't we go back to the old documents, the ones that we couldn't understand and that our clients found intimidating?" That just doesn't happen.

Now that it is available, all professional advisers should be choosing and providing clarity. If they do so, then when the ATO comes calling, the adviser can show they have conscientiously done what they can to help the trustees understand their responsibilities. All that is likely to reflect well on the adviser.

THE CAUSES OF CONFUSION

Traditional legal documents tend to be unclear because of the language used, the way the ideas are organised (the structure)

and how the text looks on the page (the design).

The hallmarks of the language of legal writing are:

1. Long sentences, often 50 or 100 words – sometimes longer.
2. The words used are unfamiliar and often specialised. Rarely does anyone attempt to explain the unfamiliar terms let alone to give an example of how they apply. It should be noted that, in recent legislation, Parliament is using examples. If Parliament can use examples, then surely we can use them in SMSF deeds. Perhaps we could use examples to show the sorts of payments or purchases that are acceptable, or how calculations work.
3. There are too many words. Writers seem to revel in phrases such as "in the event that ..." or "where the circumstances are such that ...". when they could replace either of those with "if". They say "... it happened on two occasions ..." when they mean "... it happened twice ...".
4. Complicated formal sentence structures are used where simpler structures are possible. There are usually many unnecessary passive sentences. For example, the passive: "Payment is to be made to the member by the trustee if ..."

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could be replaced with the shorter and more direct, active: "The trustee is to pay the member if ...". and 12 words reduce to eight.

There are problems with structure too. Often, ideas are ordered in a way that may have been easy for the lawyer who wrote the documents but which make little sense to the first-time reader trying to come to grips with their obligations and rights. Documents – even legal documents – can be written so that they have a beginning, a middle, and an end. In that way, the document makes sense to someone trying to get the story of the document. Getting the story gives them an overview which helps them to understand the detail.

Instead, the ideas in traditional legal documents are often organised in a way that makes sense only to the expert who wants to quickly check a particular clause. Mind you, even the experts often find it tricky to locate the particular clause they are after.

It doesn't have to be like this.

THE QUEST FOR CLARITY

Believe it or not, by using familiar language and shorter sentences, and by ordering ideas

logically, even SMSF deeds can be made clear. The 'before' and 'after' examples in the box to the right demonstrate this.

The example given has been reduced by one-third in word length. Imagine if the documents you gave to your clients and then urged them to read were 30 percent shorter than they currently are.

This would be good for them, good for you, and good for how your clients feel about you. That's got to be good for your organisation's brand.

The documents you provide for your client form the 'voice' of your brand. When clients read those documents, you have a chance to demonstrate that you and your organisation really are innovative and client-focused, and to demonstrate that you really do make life easier for your clients and that you help them to manage and grow their wealth and their businesses. Indeed, arranging clear documents is part of providing great service.

At the same time, by arranging clear documents, you improve the chances of the fund complying, and therefore you help to protect yourself and your firm. **NA**

CEO of Cleardocs, Christopher Balmford is a former lawyer whose website provides plain-language legal document packages for accountants. He also provides training and document rewriting services. Visit <www.cleardocs.com> for more information.

BEFORE:

1. ESTABLISHMENT

The Employer establishes a fund which is known by the name described in the Schedule as the Fund's Name and which commences on the Date of the Deed Specified in Schedule A.

We could reduce:

"which is known by the name described in the Schedule as the Fund's Name"

to:

"known by the Fund Name in Schedule A".

Then we could put the point about the date the fund commences in a separate sentence. So that the whole paragraph reads:

AFTER:

The Employer establishes a fund known by the Fund Name in Schedule A. The fund starts on the start date in Schedule A.

A 32 word sentence shrinks to 23 words, a saving of just over 33 percent – and that in one of the simplest parts of the document.

WHAT DOES THIS SORT OF PARAGRAPH ADD TO A READER'S UNDERSTANDING?

"This Deed is divided into Part I, Part II, Part III, and Part IV. Part I shall govern the fund's basic administration, Part II shall govern the Classes into which Members may be categorised, Part III shall govern how benefits are to be determined, calculated, and paid, and Part IV deals with miscellaneous matters."

We could delete that entire paragraph, and be better off for doing so. It adds nothing to the information we can see from the table of contents. If we are to persist with that sort of information being set out in a paragraph, then in each Part, we should presumably add a sentence saying something like: "This Part is divided into Clauses 1, Clause 2, Clause 3 ... " and so on. Then we should set out a sentence describing what each clause in the Part deals with.

But all of this adds nothing.

This sort of writing discourages SMSF trustees from reading, or continuing to read, the deeds. For some readers, it's almost as though they can tell from "the smell of the document" that there's no point even trying to read it.

This can have disastrous consequences – first, for a trustee's understanding of their responsibilities and then for the fund's compliance. In turn, that has implications for the people advising the trustees.