

Chapter 14

Interpreting and Exercising Powers of Amendment in Superannuation Trusts: An Exercise in Gloss?

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The amendment of trust deeds presents various challenges, which are magnified in the superannuation environment. The latter is punctuated not only by the vagaries of equitable principle, but the application of contractual notions and statutory overlay. This article addresses the various restrictions that apply to the exercise of a power to amend a superannuation trust deed, both as a matter of construction and as a matter of law, and laments the lack of uniform use of both doctrine and terminology in this context.

1 Introduction

To a layperson, the amendment of a contract or trust deed pursuant to a specific power in the document appears to be a straightforward exercise. After all, he or she could sensibly reason, it is simply a matter of giving effect to the words in which the power is expressed, subject to any restrictions imposed by the terms of the power. And most contractual or trust amendments may well fall into this straightforward class. Yet the law is not known for simplicity. Occasions may reveal undue complexity. On the whole, though, the need to adequately cater for multifarious factual variations within the one environment, coupled with the need to recognise sometimes unique dynamics of the relevant relationships, dictate that the law cannot always, or even regularly, be immune from multiple nuances and glosses.

That this article devotes thousands of words to the issue of amending superannuation trust deeds¹ pursuant to a power within the deed – essentially a single issue piece – suggests that trust deed amendment is clearly affected by legal nuances and glosses. To some degree these stem from the underlying relationship in question: the trust relationship through which both practice and statutory regulation structured the provision of superannuation benefits. But beyond this, various specific aspects of the superannuation environment allegedly bring with them unique glosses, or at least ones

¹ Reference to superannuation trust deeds for the purposes of this article includes reference to the governing rules of superannuation funds.

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