



## **ACIS RELEASES NEW DISCRETIONARY TRUST DEED**

On 6 October 2004, ACIS will release a new and improved Discretionary Trust Deed.

The deed has been comprehensively reviewed and rewritten to eliminate the older forms of drafting and generally to make the deed simpler to read and understand.

Since our current deed is a good, functional document, we found it unnecessary to make wholesale changes of substance. We have, however, made a number of formal changes and updated the deed to deal with issues that have come to our notice.

The main changes are:

1. the clauses have been reordered so that provisions dealing with common issues appear together or close to each other making it easier to navigate through the deed;
2. the concept of an Alternative Principal has been introduced. Previously, if a Principal was somehow unable to act, the Trustee was required to gather all beneficiaries who were of legal age and capacity to decide on a new Principal (and this will continue to be the case if no Alternative is nominated). Given the nature of the discretionary trust, the number of these beneficiaries could be very large and therefore of some inconvenience. The new deed now permits an Alternative to act in the place of the Principal and to exercise those powers without the inconvenience. We are recommending that the Alternative be a person at arm's length to the trust such as the client's accountant or lawyer;
3. we have expanded the definition of Spouse to include same sex relationships;
4. in response to recent case law, we have made the default distribution occur at the point of midnight on 30 June each year. Without this the courts may interpret standard default provisions widely with the result that undistributed income may be deemed to have been retained and therefore taxed at the highest marginal rates;

5. some difficulty has arisen in some jurisdictions due to an interpretation of trustee legislation that has equivalents in most states. The difficulty arises from the wording of the legislation which states that, in some circumstances, resigning trustees are not discharged from performance of the trusts in the deed and that it is not possible to reduce the number of trustees to only 1 where 2 or more were originally appointed unless the deed has an express provision allowing this. We have now inserted clauses to address this issue specifically. While some jurisdictions may not have the problem due to adequate legislative drafting, the new provisions have general application nationally in any event; and
6. the trustee is now expressly given all the powers of a natural person as if the trustee beneficially owned the trust property. We have maintained the specific powers of the trustee in the deed since some institutions still require to sight those specific powers. The trustee's powers are now divided into banking / financial transactions powers and other general powers to make those powers easier to locate and understand.

These changes affect both our standard discretionary trust deed and our 'Small Business Discretionary Trust' variant. You should also note that our previous order forms for these 2 trust types will not be acceptable from 6 October 2004, as they have been superceded by new forms. These can be obtained from our [website](#).

*Should you have any queries with respect to this matter, please contact us on Freecall 1-800-773-477.*