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Your Reference: Family Discretionary Trust  
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the questions.*

*Adj Professor, Dr Brett Davies - Partner*

Thursday, 11 March 2021

AWB Pty Ltd ACN 214 894 448  
139 Gold Coast Highway  
Palm Beach QLD 4221  
Australia

## Trust Opinion Certificate

### The Polanski Family Trust – Legal Opinion

We confirm that we act for:

AWB Pty Ltd ACN 214 894 448  
139 Gold Coast Highway, Palm Beach QLD 4221, Australia

(Trustee)

as Trustee of the Polanski Family Trust (Trust) constituted by a Deed of Trust Settled by the settlor being Edward Michael ('Trust Deed').

We confirm that:

- (a) Upon being duly executed by the Trustee and the Settlor the Trust commences under Australian laws.
- (b) The terms of the Trust Deed empower and authorise the Trustee to enter into and bind the Trust.
- (c) The Trustee is empowered to grant security and guarantees over the assets from time to time of the Trust and so bind the Trust Assets. Including, as per Clause 4:
  19. borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft.
  20. provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations.
  21. mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the Trust or not.
  22. give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction.

However, Legal Consolidated Barristers & Solicitors, its agents and assigns, expressly state that they are giving no person, including the client, any advice as to the obligations and role of a guarantor.

- (d) The terms of the Trust Deed do not restrict the right of a lender to have recourse to the assets of the Trust to satisfy any liability to the lender properly incurred by the Trustee as Trustee of the Trust.
- (e) The Trust document authorises the Trustee (and while a company, its directors) to enter into transactions despite any conflict of interest and duty that may arise on the part of the Trustee. In particular we note in clause 4:

notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Trustee is a sole trustee) to do all things (including all things set out in clause 4) in such manner, on any terms (favourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit.

- (f) The terms of the Trust Deed do not restrict the right of the Trustee to be fully indemnified out of the assets of the Trust to satisfy any liabilities incurred by the Trustee arising out of transactions (See clause 4 subclause 21 and 22).
- (g) The Trustee is empowered to open and operate bank accounts (see clause 4 subclause 31).
- (h) The Trustee is empowered to enter into contracts personally with the Trust.
- (i) The Trustee is advised by this letter to seek written advice from a Financial Adviser and Accountant as to whether any transaction contemplated is beneficial to the beneficiaries to the Trust.
- (j) The Trustee must act in the beneficiaries' best interests at all times.

We cannot comment on any papers, correspondence or documents (such as variations to the Trust Deed, if any, from time to time) that are not part of the Trust Deed.

This letter is only to be relied on by the lender that is lending the initial moneys (if any) and on the basis that the lender has actually cited the original and then retained a signed stamped (if dutiable) and complete copy of the Trust Deed.

This letter is based on the assumption that the Trust Deed and signatures in the Trust Deed are genuine.

#### **Australian Business Number, TFN & registering for GST**

The trustee is responsible for managing the trust's tax affairs, including registering the trust in the tax system and lodging trust tax returns. Generally, the trustee will not pay tax, rather the beneficiaries of the trust pay tax on their allocated income. Nevertheless, a trust should have its own tax file number (TFN), which the trustee uses in lodging income tax returns for the trust. <https://www.abr.gov.au/business-super-funds-charities/applying-other-registrations/apply-tfn-business>.

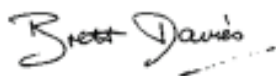
Speak to your accountant about registering for GST, at the same time.

Usually the family trust applies for an Australian Business Number (ABN). The trustee of a Family Trust will generally not apply for an ABN (for itself), as the trustee is not trading. The trustee just holds the assets for the family trust.

Getting an ABN is free and you can get one online: <https://www.abr.gov.au/business-super-funds-charities/applying-abn>.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

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*Dr Brett Davies  
Partner  
Legal Consolidated Barristers & Solicitors*

This Resolution is completed throughout the life of the Trust whenever a new trustee(s) (from time to time) take on the role of Trustee or co-trustee. These pro-forma minutes are bound with your Trust Deed.  
Photocopy as required.

Minute Book page number .....

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Resolution by the Trustees

Held at .....

On ..... day of .....20.....

Trustee full name(s) ('Trustee'):

AWB Pty Ltd ACN 214 894 448  
139 Gold Coast Highway, Palm Beach QLD 4221, Australia

**Quorum:** It was noted that a quorum was present at the meeting.

**Notice of Meeting:** It was noted that all Trustees received notice of this meeting and that all consent to the meeting being held and waive any requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any failure to give notice as required under any rules, Constitutions or the Corporations Act.

**Person chairing the meeting:** It was resolved that the person signing these minutes be the person chairing the meeting (**Person chairing the meeting**).

Upon tabling the declared and fully executed Trust Deed that established the Polanski Family Trust as settled by the settlor being Edward Michael (and any variations, in any, from time to time) IT WAS RESOLVED that:

1. the Trustee accepted the role of Trustee of the Polanski Family Trust.
2. the Trustee has received a copy of the Polanski Family Trust Deed.
3. the Trustee will carry out such duties according to law.
4. authority is given to allow Bank Accounts to be opened and updated, as required.
5. consider registering online for an TFN, ABN and GST.

**Closure:** There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

..... Person chairing the meeting



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*Adj Professor, Dr Brett Davies - Partner*

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## Discretionary Trust Deed to establish the Polanski Family Trust

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This Deed is between:

AWB Pty Ltd ACN 214 894 448  
139 Gold Coast Highway, Palm Beach QLD 4221, Australia

(Trustee)

and

Edward Michael  
303 Adelaide Circle, Brisbane City QLD 4000, Australia

(Settlor)

*Family Trusts reduce the overall tax rate between family members, protect assets from creditors and provide succession planning. They are useful in wealth creation and retention.*

## 1 Trust Declaration

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1. Upon the signing of the Trust Deed, Edward Michael, as Settlor, has paid to the Trustee \$10 to settle and declare the Trust known as the Polanski Family Trust.
2. The Trustee accepts the appointment as trustee under the terms of the Trust Deed and acknowledges receipt of the settled sum being \$10 from the Settlor.

## 2 Dictionary

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**Appointor** being:

Peter Polanski

and persons appointed as Appointor under the Trust Deed from time to time, including all references and other terms used for persons who control the Trustee and can appoint the Trustee and includes such expressions as Appointer, Principal, Guardian, Nominator and Decider.

**Associate or Associated Entity** interpreted in the widest most inclusive manner includes under any of section 318 *Tax Act 1936*; Part 8, section 70B *Superannuation Industry (Supervision) Act 1993*; sections 10 to 17 *Corporations Act 2001*; section 50AAA *Corporations Act 2001*; and section 820-905 *Tax Act 1997*.

**Back up Appointors** Biological children of Peter Polanski unless otherwise appointed by the Appointor from time to time.

**Beneficiary** (but never the Settlor):

- (a) as at the Commencement Date the Default Beneficiaries, Trustee, Appointor and Back up Appointors;
- (b) any entity, subsidiary, parent company, company and association (whether incorporated or not) that has an interest in, related to, Associate, or Associated Entity in any of the Default Beneficiaries, Trustee, Appointor and Back up Appointors and each of their directors, members, employers, employees, contractors, independent contractors (and in all cases including whether equitable and legal, whether vested, expectant or contingent);
- (c) charities and charities listed by the Australian Charities and Not-for-profits Commission from time to time; and

- (d) schools, universities, colleges and other educational bodies of any kind, private and otherwise, either within or outside Australia from time to time.

(Each referred to as **Persons**)

Plus, for each of the **Persons** the following classes:

- (a) any Spouse, Children, Grandchildren, Great grandchildren, parent, grandparent, sibling, uncle, aunt, niece, nephew;
- (b) any entity of which the Person is a director, trustee or partner;
- (c) any entity in which the Person has a legal or equitable interest (whether vested, expectant or contingent);
- (d) any entity for which the Person is a Beneficiary or potential Beneficiary (whether vested, expectant or contingent);
- (e) any entity who is the personal representative of the Person;
- (f) any entity employed by or employs the Persons;
- (g) any charitable, religious or community organisation, group or association of which the person is a member, participant or benefactor;
- (h) any entity who would be or could possibly be an Associate of any of those Persons; and
- (i) any entity or classes nominated by the Trustee from time to time (in the Appointor's direction).

The classes are open to include an entity that has not yet come into existence or has not yet identified.

The term 'entity' in this definition, also includes natural persons, companies, partnerships, associations, groups and entities.

**Child, Children, Grandchildren and Great-grandchildren** include illegitimate children, defacto children and legally adopted children and children adopted out, from time to time.

**Categories** a category, character, type, class, part, item or source, including (but not limited to) the categories: Net Capital Gains, Net Capital Losses; gains, profits or any losses of capital or of a capital nature treated as assessable income or allowable deductions under the Tax Act for the Trust Income for any Financial Year; gains and profits or any losses of capital or of a capital nature that are not treated as assessable income or allowable deductions for taxation purposes for the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account that are or are treated as assessable income or allowable deductions for taxation purposes in relation to the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account whether treated as assessable income or allowable deductions for taxation purposes for any Financial Year; any income, receipts, gains or profits that are exempt or otherwise not liable to tax under the Tax Act or any other act or regulation; Franked Dividends; Unfranked Dividends; any foreign income, foreign income tax credit, other tax credit, interest; any royalties, minors and others with proceeds from deceased estates, superannuation funds and life insurance and additional categories set out in any minutes.

*Family Trust protects assets and saves tax*

1. each year pay trust income to family members on low marginal tax rates
2. protect assets from creditors (asset protection)
3. succession planning – no CGT or stamp duty when you die

Plus, categories mentioned in any Australian Taxation Office publication, from time to time; and any combination or part of the above.

**Commencement Date** the date the Trust Deed is signed.

**Default Beneficiaries** Biological children of Peter Polanski.

**Financial Year** 1 July in a year to 30 June in the next year or the lesser period ending on 30 June after the date of the Trust Deed; and 1 July until the termination of the Trust before 30 June of the next year or otherwise as the Trustee decides (as directed by the Appointor).

**Insolvency Event** is where the person or company receives a legitimate writ of litigation for over \$250,000, goes into liquidation, insolvent under administration (including under section 9 *Corporations Act 2001*), is declared bankrupt or is unlikely to be able to pay his, her or its debts as and when they fall due.

**Spouse** includes common-law, statutory, and ceremonial marriage relationships, a person while not legally married is living with the other person on a permanent and bona fide domestic basis, widow, widower, including of the same gender, in number.

**Tax Act** *Income Taxation Assessment Act 1936* (Cth) and *Income Tax Act 1997* (Cth), as applicable.

**Trust Income** unless the Trustee otherwise determines from time to time of the Trust as defined in section 95(1) *Income Tax Assessment Act 1997* (Cth).

**Trust Fund** includes the Settled Sum, additional property, undistributed income, accretions and additions to the Trust Fund from any source and any amount of Trust Income.

**Trust Deed** this Trust document evidencing the Polanski Family Trust, from time to time.

**Trustee** being:

AWB Pty Ltd ACN 214 894 448

or any person or persons stated as such in the Trust Deed.

**Vesting Day** 80 years minus one day from the Commencement Date unless the laws as applicable to the Trust Deed do not apply the rule against perpetuities, in this purpose, (such as, currently, South Australia) then as decided by the Trustee (as directed by the Appointor).

### **3 Failure to distribute Trust Income or capital**

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Where the Trustee fails to distribute any:

1. Trust Income by 30 June in a financial year; or
2. unapplied and undistributed income before the Vesting Day;

then such income and capital are held by the Trustee in trust for the Default Beneficiaries who are alive. If more than one, then equally as tenants in common. If they are all dead

4. the trust can loan money to family members to buy investments – delivering tax breaks
5. invest in insurance bonds to access lower aged care fees
6. hold shares in a company
7. hold units in a unit trust



then such income and capital is held for the next of kin of the Default Beneficiaries equally as tenants in common.

## 4 Trustee Powers

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Only exercisable with the Appointor's prior approval or direction, but otherwise, with absolute discretion, the Trustee has all the maximum possible powers of both a natural person and of a Trustee, as though the Trustee was both the legal and beneficial owner of the Trust Fund, including dealing as principal, agent or otherwise, such power includes to:

### Change Beneficiaries

1. Add, remove, redefine, exclude and change Beneficiaries, Default Beneficiaries and classes of Eligible Beneficiaries.
2. Receive a request from a Beneficiary for that Beneficiary to be removed as such, and either accept or reject such requests under any terms the Trustee deems fit to apply.

### Distribute

3. Distribute any part of the Trust Income in any financial year and part or all of the Trust Fund and any other capital, asset or right, to any Beneficiary in any proportion and to exclude a Beneficiary.
4. Distribute any part of the Trust Fund for a Beneficiary's current or future maintenance, education, advancement or benefit of that person in any manner.
5. Distribute to a Beneficiaries' parent, guardian or legal personal representative without being responsible for what that person does with the distributed amount.
6. Not be responsible for what is done with any distribution.
7. Make an *in specie* distribution.
8. Redefine the definition of Trust Income before or after 30 June.
9. Accumulate Trust Income and treat it as Trust Fund capital.
10. At any time before 30 June in a Financial Year, decide that a distribution of income for that year is to be made solely from income that the Trustee regards as a particular class of income.
11. Decide when a Beneficiary becomes entitled to the income or capital Categories of that entitlement.
12. Distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any Categories.
13. Distribute an amount to a Beneficiary by setting the amount aside in a separate account in the books in the name of the Beneficiary and that amount may be held on a separate trust for such Beneficiary if so determined by the Trustee, as an

*A trust must have a trustee and a beneficiary. A Family Trust has both of these as well as an Appointor. The Appointor is usually mum and dad and the Trustee is often their company.*

amount owed to the beneficiary as an interest free debt at call to determine that the Trust Income for a financial year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an Unpaid Present Entitlement.

14. Separately allocate all or part of the Trust Income or Capital whether distributed or accumulated.

#### **Vary the Trust Deed**

15. Vary the Trust Deed at any time, in any way, including revoking all the establishes and changing vesting dates, however, such amendments benefit the Settlor or affect a Beneficiary's beneficial entitlement already

#### **Jurisdiction**

16. Declare the law of the jurisdiction that governs the Trust Deed, from and while no declaration is made then the Settlor's State as it appears in the Settlor's address in this Trust Deed.

#### **Terminate Trust Deed earlier than the Vesting Day**

17. Terminate the Trust Deed before the Vesting Day.

#### **Dealings with the Trust Fund**

18. Invest in anything, whether or not authorised by the law for investment Funds including; life, life endowment, term, trauma or other policy, trust common funds, deposits and loans (with or without security), hire purchase, sale, real and personal property (whether income earning or otherwise and whether wasting or not), shares (unlisted or listed on any stock market), stocks, notes, options, debentures and other securities, options, hedging contracts, derivatives, interest rate swaps, interest rate swaps to hedge interest rate exposure, futures contracts, hedging, currency exchanges, foreign currency transactions, warrants and other financial instruments.
19. Advance or lend money to any person, with or without any security, on any commercial or non-commercial terms and at any interest rate, including a zero interest rate.
20. Borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft.
21. Provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations.
22. Mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the Trust or not and the Trustee is fully indemnified from the Trust Fund.
23. Give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction.
24. Deposit securities or documents of title to any real property and chattels with a bank, trust, company, investment broker or like institution in any part of the world.

*Own more than one property in the same State? The more property in one person's name the higher the marginal land tax rate. Instead, hold each property in a separate Family Trust with a different Trustee. You, therefore, get the tax-free threshold for each property.*

25. Purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any chose in action, real or personal property and any Trust Fund.
26. Enter into any contract, arrangement or agreement with any person (including a Beneficiary or Trustee) for the sale, letting or other dealing with the Trust Fund, or to provide any goods or services by or from that person.
27. Pay any person (including a Beneficiary and Trustee) for administering the Trust Fund and including paying such persons their usual rate if they are providing professional services.
28. Pay out of the Trust Fund any outgoing, costs, charges, taxes, duties and expenses of the trust whether related to the trust or not, and allocate such to any income or capital Categories.
29. Exercise all rights and perform all duties of holding shares, stock or debentures in any company.
30. Establish, purchase, acquire, promote or conduct any company, business, undertaking or scheme, either in the Trustee's own capacity or in its capacity as Trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind-up any such company, business, undertaking or scheme.
31. Employ any person (including a Beneficiary or Trustee) to carry on any business or to do anything (whether in connection with matters under this deed, or otherwise), for remuneration or otherwise.
32. Appropriate, wholly or partly, any asset of the Trust Fund to satisfy any person may have in the assets of the trust or any benefit determined or apply for the benefit of, a Beneficiary.
33. Open and operate bank accounts, to draw, make, accept, endorse, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of bank facilities.
34. Give receipts, including for money received.
35. Underwrite shares, securities or other obligations.
36. Grant options (including put and call) including for any of the Trust Fund.
37. Become a director, or appoint any person as a director, of any company, not independently paid for such a position.
38. Receive any chose in action, real or personal property by gift or by bequest as additions to the Trust Fund.
39. Grant, cancel or redeem an annuity.
40. Divide the assets in their own particular form, without first realising or separating between the Trust Fund and any other trusts established.
41. Take any action to protect the Trust Fund.
42. Enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward rate agreement and any other financial risk management agreement, derivative and hedge.

*Only a spouse or defacto can challenge your Family Trust. Children cannot challenge a Family Trust. Family Trusts quarantine assets from challenges to Wills.*

*Build Family Trust Deed:  
<https://www.legalconsolidated.com.au/family-discretionary-trust-intro/>*

43. Mix the Trust Fund with any other money, funds or property, including other trusts' money, funds or property and join with any other person or the Trustee in its personal capacity or as Trustee or any other Trust Fund or both of them in making common investments.
44. Make any election required or permitted at law.
45. Appoint attorneys and managers and delegate the exercise of all or any powers or discretionary authorities.
46. Register the Trust Fund in the name of a nominee and not be concerned if the Trust Fund is not registered in the Trustee's name.
47. Grant a Power of Attorney for fee, remuneration and reward on any terms.
48. Take or not take legal proceedings against a co-trustee for an alleged breach of trust.
49. For the Trustee to receive remuneration in any form including fees, salaries, commission or other remuneration, payable out of the Trust Fund's capital or income.
50. If the Trustee is engaged in a profession or business, charge usual rates for any work done by the Trustee in their capacity as a professional, partner or employee of the Trustee.
51. Add additional powers by way of Minutes (provided that those powers are only then exercisable with the Appointor's prior approval or direction).

*Family Trusts protect a business owner's personal assets from their business assets. This is if their business goes down the gurgler. The common strategy is to build a company as a corporate trustee of a family trust.*

even though and irrespective of the fact that the Trustee or a director, member, associate, Beneficiary or relative of the Trustee has or may have a direct or indirect interest in the method or result of exercising the power or discretion, or may benefit directly or indirectly from its exercise;

notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Trustee is a sole Trustee) to do all things (including all things set out in clause 4) in such manner, on any terms (favourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit; and all such powers can be exercised orally, in writing or by any other means.

## 5 Trustee

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1. The Appointor may replace, add, remove and appoint a Trustee at any time without justification or reason, verbally, in writing, by deed, by minute, by will or any other method, with or without any notification to any outgoing Trustee with no requirement to provide indemnities or similar to any outgoing Trustee.
2. Each Trustee irrevocably appoints and provides a non-renounceable:
  - (a) power of attorney, even if dead or no longer in existence; and
  - (b) permission and right to sign and execute

for the Appointor or its agent to execute any documents, deeds or attend to any matters to allow the removal of the Trustee or any other similar matters to which the Appointor desires.

3. A Trustee may resign as Trustee. However, unless there is a remaining Trustee, or the Appointor deems otherwise, the resignation is effective when a new Trustee is appointed.
4. The Trustee's appointment automatically terminates if the Trustee is of unsound mind, becomes bankrupt, is wound up or makes an arrangement, composition with creditors or suffers an Insolvency Event.
5. Upon ceasing to be a Trustee, the Trustee hands back books, accounts, titles and transfers of ownership.
6. No Person dealing with the Trustee need be concerned to inquire into the adequacy of the Powers of the Trustee for any dealing or the exercise by the Trustee of any of the Trustee's powers, authorities and discretions.
7. No security given is invalid because of an error or omission whether of law or fact on the part of the Trustee or its legal adviser or any breach of duty or trust whatsoever.

## 6 Appointor

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1. Where there is more than one Appointor they act unanimously at all times.
2. An Appointor may decide to cease to act as an Appointor and position at any time.
3. The Appointor may fetter its discretion in general or in relation to trust or any class of assets.
4. The Appointor may amend, in any way, the terms of this Trust.
5. Appointor's declarations, decisions, directions, authorities, minutes can be given and retained verbally, electronically or in any other way law otherwise requires.
6. The Appointor may appoint and amend (including by will) a person as an additional, replacement or Backup Appointor and may change, remove or appoint a Backup Appointor as the Appointor sees fit. This is on any terms and conditions of appointment is made, including the fettering of such an Appointor.
8. **Automatic Removal**
  - (a) If a human Appointor suffers an Insolvency Event, dies, or loses mental capacity, then that person ceases to be an Appointor. Except that, if a sole surviving Appointor loses mental capacity then the Appointor's legal personal representative becomes Appointor, in a fiduciary capacity, for so long as that incapacity continues or that Appointor dies.
  - (b) If a company is an Appointor and enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction), or has an administrator, receiver, controller or receiver and manager appointed to any part of its assets or suffers an Insolvency Event, or ceases to exist then that Appointor ceases to be an Appointor.

*Your family trust must have a trustee. The trustee is a human or a company. If your Family Trust is just going to hold passive safe assets like shares then there is not much value in having a company as the trustee of your Family Trust. But if your Family Trust is going to hold business assets then building a company and making it the trustee of your family trust is worth the extra cost.*

7. If a sole surviving Appointor dies or ceases to exist or suffers an Insolvency Event without a replacement or Back up Appointor, then the Default Beneficiaries become the Appointors.
8. If a person becomes an Appointor or is designated to become an Appointor but cannot do so because they are a minor, then the minor's guardian takes on the position of Appointor. But the guardian's power is fettered so that the guardian must have regard to and act in the best interests of that minor at all times. Upon the minor coming of age, the minor immediately becomes the Appointor without any such fettering of discretion.
9. Subject to the Appointors agreeing otherwise, the Backup Appointors can only take up their appointment once the current Appointors all cease to act in that capacity for whatever reason.

## 7 Beneficiaries

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1. No Beneficiary has any interest, claim, right, estate or title in any part of the Trust Fund, Trust Income or any of its income.
2. Neither a Beneficiary nor any other person may challenge an exercise of a power or a failure to exercise it, or require a reason for its exercise or non-exercise.
3. No person, including a Beneficiary, may require, and the Trustee is not obliged to give, any account, report or information on the Trust Fund including any entitlement of any Beneficiary, except as required by law.
4. The Trustee is not liable to the Beneficiaries for any loss.
5. No Beneficiary is under any obligation to personally indemnify the Trustee or a creditor of the trust or any sub-trust established under this deed for any liability, loss, damage or expense either incurred or suffered in connection with the trust. The Trustee is unable to exercise against a Beneficiary any right by way of subrogation or indemnity.

## 8 Vesting Day

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The Trust terminates on the Vesting Day.

The Trustee cannot vary the Trust Deed or do anything that causes any part of the Trust Fund to vest after the Vesting Day.

## 9 No Partnership

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The Trust Deed does not create the relationship of partners, or of principal and agent between the Trustee and the Beneficiaries nor as between each other.

## 10 Severing to reduce tax and stamp duty

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1. This Deed and any subsequent Deeds of Variation are interpreted to give effect to the intention to avoid any illegality. If any clause nonetheless fails to reduce Taxes or is illegal, it is severed, read down or fettered, as required, from the Trust Deed or Deed of

*'Discretionary' trust vs 'Family' trust?  
A discretionary trust is often called a Family Trust or Family Discretionary Trust. It means the same thing. It gives the Trustee (acting under the Appointor) huge discretion on who gets the trust income each year.*

Variation to the extent of the illegality or in the furtherance of the reduction of the Taxes.

2. This Deed and any subsequent Deeds of Variation are read down so that no mandatory taxation law or Taxes, from time to time, is contravened that would lead to an unfavourable taxation position.
3. For land ownership registration requirements, including where there is a change of Trustee then all powers in the Trust Deed and this Deed of Variation are severed, read down or fettered, as required, and vesting restricted, as required to allow for minimal duty or stamp duty in the relevant jurisdiction.

## **11 Decision making in more than one place and Notices**

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1. This Deed may be executed in different locations by signing identical documents and all counterparts together constitute the Deed.
2. Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.
3. Notices may be provided via the post or email.

## **12 Interpreting the Trust Deed**

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In the Trust Deed unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a person includes a reference to: individual; body corporate (wherever incorporated); body politic; association of persons (whether incorporated or unincorporated) partnership; trust; person in the capacity as a Trustee; person in the capacity as the Personal Representative of a deceased estate and superannuation fund;
- (c) the plural includes the singular and vice versa and a reference to any gender includes every other gender;
- (d) a reference to the Trust Deed includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time;
- (e) references to any party to this Trust Deed include its successors or permitted assigns;
- (f) references to laws in the Trust Deed refer to those laws as amended as consistent with the overall purpose of the Trust Deed and does not lead to an anomaly; and
- (g) reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute.

Executed as a Deed on the ..... day of ..... 20 .....

SIGNED, SEALED AND DELIVERED by  
Edward Michael, as Settlor

\_\_\_\_\_  
Edward Michael

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

EXECUTED for and on behalf of  
AWB Pty Ltd  
ACN 214 894 448  
Member, by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

*You can build this document here:*

[https://www.legalconsolidated.com.  
au/family-discretionary-trust-  
intro/](https://www.legalconsolidated.com.au/family-discretionary-trust-intro/)

\_\_\_\_\_  
Signature of Director or Secretary

\_\_\_\_\_  
Signature of Director (if a 2<sup>nd</sup>)